LEGAL BULLETIN 7.2
Conditions of Confinement

Set 7: Cruel and Unusual Punishment (Updated February 2008)

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The Eighth Amendment protects you against "cruel and unusual punishments" not only in sentencing, but also in what happens in prison as to conditions of confinement, assaults by other inmates, abuses by officers, and medical neglect. The issues of medical care and neglect are covered in our Bulletins 8.1, 8.2, and 8.3. The issues of assaults and beatings are covered in Bulletin 7.1. This Bulletin covers "conditions of confinement" which refers to living arrangements and to other conditions in prisons such as temperature, sanitation, exercise time, and so forth.

Pre-trial detainees: If you have not been convicted then you are not technically receiving any "punishment" in order to claim an Eighth Amendment violation. If you are suffering such abuses discussed here then you should claim that your Fifth Amendment "Due Process" rights have been violated since you are being punished without a trial.

The Eighth Amendment and Conditions of Confinement

The Eighth Amendment, written as part of The Bill of Rights in 1791, states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The "cruel and unusual punishment" clause was originally intended to stop torture and other similar practices that occurred during the reigns of the Stuart Kings in Great Britain. Over time the meaning of "cruel and unusual punishment" has grown to include many things. In Trop v. Dulles, 356 U.S. 86, 78 S. Ct. 590, 598 (1958), the U.S. Supreme Court stated, "the words of the Amendment are not precise, and that their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."

Because the Eighth Amendment does not specify what constitutes "cruel and unusual punishment" the courts have developed certain guidelines that they follow. A punishment is "cruel and unusual" if it is disproportionate to the offense. If the punishment is too severe or harsh, compared to the general ideas of dignity, decency, and civilized standards, it is proscribed by the Eighth Amendment.

In Furman v. Georgia, 408 U.S. 238, 92 S. Ct. 2726, 2742-47 (1972), the U.S. Supreme Court stated that there is a principal inherent in the Eighth Amendment that "the state must not arbitrarily inflict a severe punishment. The very words "cruel and unusual punishments" imply condemnation of the arbitrary infliction of severe punishments. A punishment is excessive under this principle if it is unnecessary, and the infliction of a severe punishment by the state cannot comport with human dignity when it is nothing more than the pointless infliction of suffering. And, if there is a significantly less severe punishment adequate to achieve the purposes for which the punishment is inflicted, the punishment is unnecessary and therefore excessive."

The courts do not draw a distinction between "cruel" and "unusual" punishment. A punishment that qualifies as "cruel" does not need to be "unusual" to be prohibited. Likewise, a sanction that is "unusual" but not "cruel" may be covered by the Eighth Amendment. The phrase is treated as a single legal "term of art."

However, courts have also said that restrictive and possible harsh, conditions are part of the punishment that criminal offenders must expect to receive. Conditions in prisons are not supposed to be country clubs, but neither are conditions suppose to encourage hatred against society or to degrade the prisoner.

Also note that the primary responsibility for operating prisons belongs to prison administrators, other state law enforcement officials, and to the state legislature. It does not belong to the courts. Also, in courts, prison authorities are given substantial deference with regards to the adoption and implementation of prison regulations and policies. Prison regulations and policies are held to be valid so long as they are reasonably related to legitimate penological interests, such as security. Accordingly, only a significant deprivation of an inmate's rights will rise to the level of "cruel and unusual punishment" under the Eight Amendment.

Types of Eighth Amendment Cases

There are two general types of Eighth Amendment claims that can be brought. One type of claim looks at prison conditions as a whole, the other type examines a single issue.

In Rhodes v. Chapman, 452 U.S. 337, 101 S.Ct. 2392 (1981), the U.S. Supreme Court said that in determining when prison conditions become cruel and unusual one must examine the effect upon the imprisoned. "The court must examine the effect upon inmates of the condition of the physical plant (lighting, heat, plumbing, ventilation, living space, noise levels, recreation space); sanitation (control of vermin and insects, food preparation, medical facilities, lavatories and showers, clean places for eating, sleeping, and working); safety (protection from violent, deranged, or diseased inmates, fire protection, emergency evacuation); inmate needs and services (clothing, nutrition, bedding, medical, dental, and mental care, visitation time, exercise and recreation, educational and rehabilitative programming); and staffing (trained and adequate guards and other staff, avoidance of placing inmates in positions of authority over other inmates). *Id*. at 2408. And when "the cumulative impact of the conditions of incarceration threatens the physical, mental, and emotional health and well-being of the inmates and/or creates a probability of recidivism and future incarceration, the court must conclude that the conditions violate the Constitution." *Id*.

As one can see, in a "totality of conditions" case the large number of issues that must be addressed requires large numbers of expert witnesses, many prisoners' testimony, a number of legal counsel, and extensive access to prison records. These cases can take years to complete and require more legal staff than is usually available. A single issue case only addresses one small area, such as overcrowding or sanitation, and therefore, is more likely to be successful.

If such an Eighth Amendment claim is successfully tried in court then the court will usually issue an injunction against the conditions. The injunction will order an improvement in conditions to be made within a certain amount of time. In certain cases the judge may appoint an agent to see to the

improvements. If it is left to the discretion of prison officials on how to improve the condition, and they fail to improve it, the court will take action to rectify the conditions. However, this process may take many years until improvements are finally achieved. Damages are often difficult to receive.

What Needs to be Shown

In 1991 The U.S. Supreme Court ruled in the landmark case Wilson v. Seiter, 501 U.S. 294, 111 S. Ct. 2321 (1991), that it is not enough to show that conditions are "cruel and unusual" due to overcrowding, inadequate heating, and so forth. To win a claim of an Eighth Amendment violation you must show that your abuse was intentionally inflicted. The court requires an "inquiry" into a prison official's state of mind to see if the bad conditions were due to "a culpable state of mind."

Also, as touched on above, when you read Wilson notice that you should not try to combine abuses to add them up into a "totality of conditions" to make a better case of "cruel and unusual" punishment. Focus on a single abuse, like enduring extreme cold without heat or enough blankets, but don't include a claim on lesser difficulties such as cockroaches, the noise, and other discomforts you are suffering, but which do not rise to the required level of constitutional claim and are not related to the cold you are enduring.

To win a "cruel and unusual punishment" claim it is not necessary to show that officials exhibited "persistent malicious cruelty," but you must show that there was "deliberate indifference" and that the conduct was a "wanton" abuse (wanton means unnecessary, sadistic, as if for amusement). To assist in understand "deliberate indifference" you should review how it is applied in our Bulletin 8.1 which discusses medical care.

Although the Wilson ruling seems discouraging it is not as horrible as it sounds. John Boston, writing in the National Prison Project Journal (summer, 1991), says that this standard is not such a setback as it may seem as "deliberate indifference is generally established by examining the tact's of prison officials' behavior rather than evidence of their state of mind…[It] has been construed to include the collective defaults of state and local governments, including their failure to provide adequate staffing and funding…the focus is on the defendants' actual behavior."

So, in your 1983 or 1331 complaint of an Eighth Amendment violation, it is not enough to say that the conditions existed. Claim that the officials (or the government agency which did not provide enough funds) observed the bad conditions, knew the conditions existed, but did not attempt to correct those conditions. Also, be sure to show that the offense you suffered was serious, and that it gave you pain or offended the "evolving standards of decency." A cold jail-cell floor for one night is not likely to move the heart of a court, but one for weeks or months on end will, while a temperature of 60 degrees might not impress, but maybe 54 degrees will. For your assistance, below are some brief summaries of Eighth Amendment law in specific areas of interest.

Specific Areas of Interest

Recreation

As stated in Peterkin v. Jeffes, 855 F.2d 1021 (3d Cir. 1988), meaningful recreation "is extremely important to the psychological and physical well-being of inmates." *Id*. at 1031. And that inmates have a constitutional right to regular exercise. *Id*. Courts have frequently stated that there must be opportunities for recreation or exercise. Courts have allowed as little as 2 hours and 20 minutes a week as barely acceptable. In other cases they have ordered up to 2 hours a day to be made available. The amount varies depending on the crowding situation, behavior of the prisoners and adequacy of the facilities. Under current BOP regulations, inmates are entitled to a minimum of one hour of exercise per day, five days per week (see BOP Program Statement #5270.5 Special Housing Unites).

Moreover, although inmates are generally not entitled to be provided with any particular type of clothing, they are entitled to suitable clothing for exercise under the circumstances. When inmates are restricted to only outside recreation and not given appropriate clothing, they must choose between losing their recreational privileges or having to go outside with improper clothing. Either choice could result in serious detrimental effects to the inmate's physical and psychological well-being. It necessarily follows that plaintiff must be afforded indoor recreation during inclement weather or be provided with appropriate clothing for outdoor recreation. See Gerber v. Sweeney, 292 F. Supp. 2d 700 (E.D. Pa. 2003).

Work

According to the 13th Amendment slavery or involuntary servitude is forbidden except as punishment for a crime. The crucial question is at what point does forced work become cruel and unusual punishment? In Talley v. Stephens, 247 F. Supp. 683, 687 (E.D. Ark 1965) the court stated "in this connection the court has no difficulty with the proposition that for prison officials knowingly to compel convicts to perform physical labor which is beyond their strength, or which constitutes danger to their lives or health, or which is unduly painful constitutes an infliction of cruel and unusual punishment prohibited by the Eighth Amendment of the Constitution of the United States."

Prisoners do not have to work in violation of their religious beliefs if they are sincerely held. (Refer to our PLE on prisoners' 1st Amendment religious rights for an explanation of this legal standard). The 8th Amendment does not prohibit long hours, no pay, or differences in hours or rates of pay, reassignment without hearing, being removed from a job, or being denied work. Sometimes courts have ordered work opportunities to be made available. This is usually only in cases where prisoners have a lack of rehabilitation programs and are forced to be idle by a lack of recreational facilities.

Programs

Generally rehabilitation programs are not required. However, according to some courts, prisoners should not be forced to be idle. Rehabilitation programs allow the prisoners some form of useful activity and have been recommended. Lack of programs may be important if improvements are ordered by the court after a case is won. "The courts have not yet found a Constitutional right on the part of prisoners to be rehabilitated…While courts have thus far declined to elevate a positive rehabilitation program to the level of a Constitutional right, it is clear that a penal system cannot be operated in such a manner that it impedes an inmate's ability to attempt rehabilitation." Barnes v. Government of Virgin Islands, 415 F. Supp. 1218 (Dist. Vir. Is.1976).

Overcrowding

To determine if the number of inmates per cell constitutes overcrowding the courts look at several factors including the amount of in-cell time, understaffing, general conditions of the prison, and the amount of violent activity within the prison. For example, in Rhodes v. Chapman, 452 U.S. 337, 101 S. Ct. 2392 (1981), the court found that double-celling within 63 square foot cells was not a violation of the prisoners' Eighth Amendment rights because the prisoners had enough food, shelter, protection, education, work opportunities, and rehabilitation programs, and also, the facilities were in good condition. However, overcrowding existed in other cases where the cells were slightly larger because there was a large amount of violence and lock-in-time. Basically, the amount of in-cell time coupled with the conditions of the prison will determine the amount of cell room needed per inmate.

Overcrowding is a persistent concern. Using the guide in Wilson, if you suffer serious overcrowding, claim that as the central complaint from which any others follow. Don't try to toss overcrowding in as an afterthought.

Fisher v. Koehler, 902 F.2d 2 (2nd Cir. 1990) upheld the district court's decision that overcrowding caused excessive levels of violence.

In Morales-Peliciano v. Parole Board of Commonwealth of Puerto Rico, 881 F.2d 1 (1st Cir. 1989) the court enforced a limit of 35 square feet per inmate.

In French v. Owens, 777 F.2d 1250 (1985)*overruled on other grounds*, the court ruled that where conditions were generally bad, with dirty, dark, badly ventilated cells, double-bunking was cruel and unusual, though it is constitutional in better conditions.

Likewise in a very old prison in Pennsylvania the court ruled, in Tillery v. Owens, 907 F.2d 418 (3rd Cir. 1990) that where prisoners are serving long sentences double-celling, and even single-celling, in 39 square feet cells with inadequate ventilation, lighting, and showers, were unconstitutional. (In such situations one could call on the standards of decency quotation here from Trop).

Professional associations such as the American Correctional Association make recommendations about size of cell and other conditions; and inmate litigants sometimes hope to challenge conditions by using these standards. Unfortunately the Eighth Amendment requires only that conditions rise above the cruel and unusual level. When a District court judge tried to impose those standards in his ruling, he was struck down in the appeals court; in Gary v. Hegstrom, 831 F.2d 1430 (9th Cir. 1987) the higher court ruled that complete adoption of professional associations' model institutions as if they were constitutionally mandated was unwarranted.

Finally, the sudden emergence in 1991 of TB, tuberculosis, and of multiple drug resistant TB (MDR-TB) gives the strongest argument yet against over-crowding.

Sanitation

Prisoners do have an Eighth Amendment right to adequate sanitation. For example there must be available adequate plumbing, vermin free conditions, adequate cleaning/cleaning supplies, and

adequate garbage disposal, even if the inmates are responsible for keeping the conditions. Although it is not necessary that those conditions meet state health standards such standards are useful in determining whether the conditions are adequate. However, for inadequate sanitation claims inmates must still show that there was a wanton disregard of the conditions by prison officials and that the inmates suffered an injury as a result. For example, in Dellis v. Corrections Corp. of America, 257 F.3d 508 (6th Circ. 2001), a plaintiff's claims that he was deprived of a working toilet and subjected to a flooded cell were denied because the court found them to be only temporary inconveniences and did not demonstrate that the conditions fell beneath the minimal civilized measure of life's necessities as measured by a contemporary standard of decency.

Food

Individual complaints about food quality or dining arrangements are usually not taken seriously. However, food that is unclean, nutritionally deficient, or spoiled, can be grounds for an Eighth Amendment violation. In general food must be nutritionally adequate, and must be prepared and served, so there is little danger to the health of the prisoners. There is no requirement that the food be "tasty" or "aesthetically pleasing." LeMaire v. Maass, 12 F.3d 1444, 1456 (9th cir. 1993). Also, specific diets as a punishment might not violate the Eighth Amendment. Arnett v. Snyder, 331 Ill. App. 3d 518, 769 N.E.2d 943 (Ill. App. Ct. 4th Dist. 2001)(a specific diet of a loaf and water as a punishment did not violate the Eighth Amendment because it was nutritionally adequate and posed little danger to the health of the prisoners).

Note that isolated cases of spoiled food, or occasional foreign objects in the food, are not sufficient for an Eighth Amendment violation. The courts generally treat this as a problem of internal prison administration. Also, in class action cases it is quite possible to get injunctions ordering for improvements of food preparation and service. Also note that a few courts have required the handling of food to conform to standards outside the prison, and that courts have often allowed for special diets for medical or religious reasons.

Personal Hygiene

Although some courts do not take personal hygiene seriously most courts allow prisoners to have basic toilet articles like soap, a towel, toothbrush and toothpaste. They also uphold the right of access to warm showers, clean clothing, and bedding. Rhodes v. Chapman, 452 U.S. at 335. Prisoners in segregation units are not required to have the same level of access as the general population but are entitled to the basic articles necessary to maintain some minimum level of cleanliness, but they are not required to provide these items free of charge to those inmates who are capable of purchasing them on their own. Parker-Bey v. Roth, 1993 U.S. Dist 13845 (N.D. Ill. 1993).

Furnishings

Prison authorities must supply enough furnishings in a cell in order to allow a prisoner to sleep and eat without being excessively uncomfortable. Courts have stated that prisoners must have proper bedding and room to move.

Heating

While temperature variations that are merely uncomfortable are not unconstitutional. A lack of heating or excessive heat or cold is considered unconstitutional. Prison officials are obligated to provide a minimal level of heating even if funds are tight. The amount of heating is closely linked to the quality of clothing and bedding provided. If warm clothes and good blankets are provide then heating can be less adequate. Prisons need only provide prisoners with "adequate" heat. Del Raine v. Williford, 32 F.3d 1024 (7th Circ. 1994).

Inadequate Lighting

A prisoner has a right to adequate lighting in prison during some part of the day. Although there are no concrete guidelines courts have stated that there must be enough light to read by for at least a few hours each day. Inadequate lighting is one of the fundamental attributes of adequate shelter required by the Eighth Amendment. In Haptowit v. Spellman, 753 F.2d 779 (9th Circ. 1985), the court found there to be inadequate lighting when it was inadequate for reading purposes, caused eyestrain and fatigue and hindered attempts to ensure basic sanitation.

Noise

Although cells can be noisy a claim can be made if there is too much noise to sleep or to be able to converse normally. Excessive noise may violate the Eighth Amendment. Malley v. McGongle, 1990 U.S. App. LEXIS 12926 (1st Circ. 1990).

Dilapidation

Generally claims are hard to win unless the prison has deteriorated to extreme levels. It is often possible to combine the run down nature of the prison with some other claim such as poor heating or overcrowding.

Ventilation

Claims that the ventilation in the cells violates the Eighth Amendment usually do not meet with much success. However, if the odor or stale air in a room is particularly bad, it is possible to get an injunction against the conditions. The Lewisburg Prison Project won such a case against officials at USP Lewisburg in 1978. See Jordan v. Arnold, 472 F. Supp. 265 (M.D. Pa. 1979).

Fire Protection

Proving that a prison has inadequate fire protection is difficult. Because of prison administration concerns for security courts will usually not intervene. However, if fire precautions are far below state and local statutes then a claim can be made. If a fire has occurred before there is a greater chance of success. "Prisoners have the right not to be subjected to the unreasonable threat of injury or death by fire and they need not wait until casualties occur in order to obtain relief from such conditions." Leeds v. Watson, 630 F.2d 674 (9th Circ. 1989).

Emergency Conditions

In Hoptowit v. Ray, 682 F.2d 1237, 1258 (9th cir. 1982) the court stated "When a genuine emergency exists, prison officials may be more restrictive than they otherwise may be, and certain services may be suspended temporarily. The more basic the particular need, the shorter the time it can be withheld. It is doubtful, for example, that any circumstances would permit a denial of access to emergency medical care. Less critical needs may be denied, however, for reasonable periods of time when disciplinary needs warrant."

Courts will usually uphold prison officials decisions on what constitutes an emergency and what restrictions on activities are needed. It is possible to challenge the length of an emergency in court or the declaration of an emergency if prison officials acted in bad faith or were unreasonable. Restrictions on activities have included religious activity, law library access, time limits on disciplinary proceedings, visiting, showers, exercise, routine medical services, programs, and sanitation.

CONCLUSION

The Eighth Amendment has made a major contribution to improving the conditions of prisons. The above summary should be used to help you determine whether the conditions in your prison, or unit, are constitutionally adequate. Only conditions that amount to "cruel or unusual punishment" as interpreted by the courts can be a basis for an Eighth Amendment claim. If you suspect that some condition is substandard then you should (1) carefully document the evidence of the condition, and (2) search the applicable law in the prison law library. If you find substantiation for your claim, seek further assistance as necessary.

Also, remember that courts view some routine discomfort as part of the penalty that criminal offenders pay for their offenses against society and only extreme deprivations are sufficient for a conditions claim. See Hudson v. McMillian, 503 U.S. 1, 112 S. Ct. 995 (1992). However, the courts realize that you do not need to "await a tragic event" before seeking relief, but you must show, at the very least, that the condition poses an unreasonable risk of serious damage to your future health or safety. See Chandler, 379 F.3d at 1289. Also, a prison official cannot be found liable under the Eighth Amendment for the condition unless the official knows about it, and disregards it while knowing that it could result in a substantial risk of serious harm. Id. at 1295.

Other Resources

The Legal Bulletins of the Lewisburg Prison Project, like the one your are currently reading, explain what your rights are and how to pursue them for most kind of abuses which happen inside of prisons. They are distributed at moderate costs. Write for our list. Bulletins are updated from time to time so you may need a new edition for your case.

The Southern Center for Human Rights, 83 Poplar Street, N.W., Atlanta, Georgia 30303-21222, provides legal self-help books and directories for inmates.

The ACLU National Prison Project, 915 15th Street, NW, 7th Floor Washington, D.C. 20005 provides publications and follows problems, and conducts class action lawsuits, but not individual cases.