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statement tends to prove another fact in addition to the defendant's predisposition.[135] Juries in the Fourth Circuit thus cannot assess the memory, perception, or sincerity of witnesses whose testimony is crucial to the central issue of predisposition in entrapment cases.[136]

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VIII. PRISONERS' RIGHTS

Schrader v. White: *Fourth Circuit Rejects Totality Analysis for Cruel and Unusual Conditions of Confinement*

The eighth amendment of the United States Constitution prohibits the infliction of cruel and unusual punishment upon prisoners confined within state and federal prisons.[1] In *Rhodes v. Chapman*[2] the United States Supreme

135. *See Hunt,* 749 F.2d at 1083-84 (in some circumstances, confrontation clause does not apply to hearsay that proves Government's reason for investigating as well as predisposition).

136. *See supra* note 1 and accompanying text (concerning value of witness' testimony at trial); *supra* note 83 (predisposition central to entrapment defense).

1. U.S. CONST. amend. VIII. The eighth amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." *Id.* The drafters of the eighth amendment, men familiar with the practices of burning at the stake, disembowelment, quartering, breaking on the wheel, and the use of the rack and thumbscrew as punishment, sought to eliminate these practices through a prohibition of "cruel and unusual" punishment. *See* In re Kemmler, 136 U.S. 436, 447 (1890) (punishments that involve torture or lingering death are cruel). The meaning of the phrase "cruel and unusual" must constantly adapt to prevailing standards of decency and humanitarianism, standards that constantly change as society evolves toward a more civilized state. *See* Trop v. Dulles, 356 U.S. 86, 101 (1958) (punishment of expatriation held more primitive than torture). Although courts focus upon the cruelty rather than the unusual nature of a punishment, some confusion exists over whether a distinction should be drawn between the words cruel and unusual. *See Trop,* 356 U.S. 86, 100 n.32 (1957) (Court's refusal to distinguish between words cruel and unusual); Furman v. Georgia, 408 U.S. 238, 379 (1972) (Burger, C.J., dissenting) (word unusual neither limits nor expands eighth amendment's ban on cruel punishments). *But see Furman,* 408 U.S. at 274 (Brennan, J., concurring) (word unusual may have distinct meaning); *Furman,* 408 U.S. at 309 (Stewart, J., concurring) (infrequent imposition of death penalty may be unconstitutionally unusual). *See generally* Grannucci, *"Nor Cruel and Unusual Punishments Inflicted": The Original Meaning,* 57 CALIF. L. REV. 839 (1969) (historical study of phrase "cruel and unusual").

The eighth amendment is applicable to the states through the due process clause of the fourteenth amendment. *See* Robinson v. California, 370 U.S. 660, 666 (1962) (Court applies eighth amendment to states by using fourteenth amendment); U.S. CONST. amend XIV (mandates that no state shall deny any person of life, liberty, or property without due process of law). The United States Supreme Court has held that the eighth amendment protects prisoners from

Court held that the cruel and unusual punishment clause is applicable to conditions of confinement.[3] The *Rhodes* conditions of confinement standard mandates that prison conditions which involve the unnecessary and wanton infliction of pain, or which constitute a deprivation of basic human needs, or which are excessive in relation to the crime committed, violate the eighth amendment's proscription against cruel and unusual punishment.[4] The *Rhodes*

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cruel and unusual punishment in three areas. *See* Ingraham v. Wright, 430 U.S. 651, 664-65 (1977). In *Ingraham v. Wright,* the United States Supreme Court held that the eighth amendment acts as a check on types of punishment which courts may impose, limits the activities which courts may proscribe as criminal and prohibits any punishment which is excessive in relation to the crime committed. *Id.; see also* Slakan v. Porter, 737 F.2d 368, 372-73 (4th Cir. 1984) (eighth amendment protects prisoners from cruel and unusual punishment inflicted through brutality of prison official), *cert. denied,* 105 S. Ct. 1413 (1985); *Robinson,* 370 U.S. at 667 (holding unconstitutional a California statute that made addiction to drugs a criminal offense); Weems v. United States, 217 U.S. 349, 382 (1910) (punishment of hard labor and chains for 12 years for crime of falsifying records constitutes cruel and unusual punishment).

In the past, federal courts practiced a "hands-off" policy in regard to addressing prisoners' claims of cruel and unusual conditions of confinement. *See* Note, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts,* 72 YALE L.J. 506, 516-26 (1969) (discussion of "hands-off" policy). The "hands-off" policy reflected the idea that matters relating to prison conditions of confinement are not within the jurisdiction of the courts. *Id.* at 526. Today courts take an active role in evaluating particular punishments and prison conditions in light of the eighth amendment. *See* Rhodes v. Chapman, 452 U.S. 337, 352 (1981) (courts have duty to address prisoners' claims of cruel and unusual conditions of confinement); Martin v. White, 742 F.2d 469, 473 (8th Cir. 1984) (dicta) (courts are only source of protection for prisoners' rights); *see also infra* note 8 (listing cases in which courts have addressed eighth amendment challenges to prison conditions). The great amount of filed complaints challenging conditions of confinement illustrate the need for judicial scrutiny of prison conditions. *See* 3 NATIONAL INSTITUTE OF JUSTICE, AMERICAN PRISONS AND JAILS 34 (1980) (8000 complaints filed by inmates challenging prison conditions of confinement during 1980).

2. 452 U.S. 337 (1981).

3. *See* Rhodes v. Chapman, 452 U.S. at 337 (Court states that eighth amendment is applicable to conditions of confinement). In *Rhodes v. Chapman,* prisoners at the Southern Ohio Correctional Facility (SOCF) challenged the prison's practice of double celling as violative of the eighth amendment. *Id.* at 340. Double celling refers to the practice of housing two prisoners in one cell. *Id.* at 339-40; *see also Rhodes,* 452 U.S. at 344-45 (identifying *Rhodes* as first eighth amendment challenge to conditions of confinement that United States Supreme Court has addressed). *But see Rhodes,* 452 U.S. at 368 (Blackmun, J., concurring) (suggesting that the Supreme Court first addressed issue of whether prison conditions could constitute cruel and unusual punishment in Hutto v. Finney); Hutto v. Finney, 437 U.S. 678, 685-88 (1978).

In *Hutto v. Finney,* the United States Supreme Court reviewed a district court's order that prohibited Arkansas prisons from placing a prisoner in punitive isolation for longer than thirty days. Hutto v. Finney, 437 U.S. 678, 685 (1978). The repeated failure of the Arkansas prisons to remedy judicially determined eighth amendment violations such as punitive isolation practices compelled the district court to order specific remedies. *Id.* at 687. The Supreme Court in *Hutto* noted that many factors, including the length of time prisoners spent in isolation, contributed to the unconstitutionality of the punitive isolation practice carried out within Arkansas' prisons. *Id.* The Court, therefore, upheld the district court's order, that directed remedies for each factor that contributed to the unconstitutionality of punitive isolation within the Arkansas prison system. *Id.*

4. *See Rhodes,* 452 U.S. at 347; *see also* Weems v. United States, 217 U.S. 349, 382

decision's analysis examined the cumulative effect of factors related to double ceiling[5]—a condition of confinement—to determine whether that prison condition violated the eighth amendment.[6] The *Rhodes* opinion provided both a standard and an analysis for the lower federal courts to utilize when faced with inmates' challenges to conditions of confinement within a prison.[7] A division, however, exists among the federal courts concerning the proper application of the *Rhodes* analysis to cases involving more than one particular challenged condition of confinement.[8] Some federal courts examine the totality of the challenged prison conditions to determine whether the cumulative effect of the prison conditions amounts to cruel and unusual punishment.[9] Other federal courts review each individual challenged prison condition in an isolated fashion to determine whether the individual condition of confinement amounts to cruel and unusual punishment.[10] In

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(1910) (punishment of 12 years of hard labor in chains for crime of falsifying records is excessive punishment in violation of eighth amendment); Hutto v. Finney, 437 U.S. 678, 681-83 (1978) (sanitation, food, personal safety, and clothing are examples of basic human needs).

5. *See supra* note 3 and accompanying text (definition of double celling and brief factual summary of *Rhodes).*

6. *Rhodes,* 452 U.S. at 347-49. To determine whether double celling violated the eighth amendment, the Supreme Court in *Rhodes* examined the duration of prisoners' sentences, the overpopulation within the prison, the amount of space inmates were required to share, the percent of time inmates spent in prison cells, and the length of time the prison administration planned to practice double celling. *Id.*

7. *See Rhodes,* 452 U.S. at 347-49 (Rhodes standard and analysis); *see also supra* text accompanying notes 4 & 6 (same).

8. *Compare* Union County Jail Inmates v. Di Buono, 713 F.2d 984, 999 (3d Cir. 1983) (requires finding of specific, individual eighth amendment violations, rejects totality analysis), *cert. denied,* 465 U.S. 1102 (1984); Smith v. Fairman, 690 F.2d 122, 125 (7th Cir. 1982) (rejects totality of conditions analysis), *cert. denied,* 461 U.S. 946 (1983); Hoptowit v. Ray, 682 F.2d 1237, 1246-47 n.3 (9th Cir. 1982) (applying individual condition analysis and rejecting idea that totality of otherwise constitutional conditions of confinement may become unconstitutional through aggregation); *with* Doe v. District of Columbia, 701 F.2d 948, 957 (D.C. Cir. 1983) (separate statement) (totality of conditions analysis applicable to litigation involving challenges to conditions of confinement); Howard v. King, 707 F.2d 215, 219 (5th Cir. 1983) (same); Bienvenu v. Beauregard Parish Police Jury, 705 F.2d 1457, 1460 (5th Cir. 1983) (same); Stewart v. Winter, 669 F.2d 328, 335-36 (5th Cir. 1982) (same); Nelson v. Collins, 659 F.2d 420, 428 (4th Cir. 1981) (same); Benjamin v. Malcolm, 564 F. Supp. 668, 687 (S.D.N.Y. 1983) (same); Laaman v. Helgemoe, 437 F. Supp. 269, 317 (D.N.H. 1977) (same).

9. *See* Stewart v. Winter, 669 F.2d 328, 335-36 (5th Cir. 1982) (explanation of totality of conditions analysis). The United States Court of Appeals for the Fifth Circuit in *Stewart v. Winter* demonstrated that courts that examine prison conditions under the totality of conditions analysis review the cumulative impact of all the conditions of confinement within a prison as well as the factors that have created the conditions to determine whether the totality of conditions violates the eighth amendment. *Id.* at 336; *see also supra* note 8 (listing other courts that employ totality of conditions analysis).

10. *See* Hoptowit v. Ray, 682 F.2d 1237, 1246-47 (9th Cir. 1982) (explanation of individual condition analysis). Courts which examine prison conditions under the individual condition analysis recognize that many factors contribute to a particular prison condition. *Id.* These courts, however, review each prison condition in isolation to determine whether the specific condition itself amounts to an eighth amendment violation. *Id.* at 1247; *see also supra* note 8 (listing other courts that employ an individual condition analysis).

Shrader v. White,[11] the United States Court of Appeals for the Fourth Circuit recently applied the *Rhodes* standard to determine whether several different conditions of confinement at the Virginia State Penitentiary (VSP) amounted to cruel and unusual punishment.[12]

In *Shrader,* inmates at the VSP brought a class action in the United States District Court for the Eastern District of Virginia challenging conditions of confinement at the VSP.[13] The VSP inmates claimed that factors including the frequency of attacks at the VSP, the inadequacy of the VSP security and the prevalence of illegal drugs and weapons among the VSP prison population combined to create a severe threat to inmate safety.[14] The VSP inmates further alleged that threats to inmate safety, inadequate physical facilities,[15] fire hazards,[16] and inadequate food[17] at the VSP violated

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11. 761 F.2d 975 (4th Cir. 1985).

12. *See* Shrader v. White, 761 F.2d at 977-80 (discussing applicability of *Rhodes* eighth amendment standard to *Shrader*). In *Shrader,* the United States Court of Appeals for the Fourth Circuit applied the *Rhodes* standard through the unprecedented use of a specific factor analysis. *Id.* at 977-987; *see infra* notes 137-144 and accompanying text (demonstrating dissimilarity between *Shrader* court's specific factor analysis and other analyses). The specific factor analysis examines whether each specific factor involved in a particular prison condition amounts individually to an eighth amendment violation. *Id.*

13. *See Shrader,* 761 F.2d at 977. In *Shrader,* the inmates brought a eighth amendment claim under 42 U.S.C. § 1983. *Id.; see* 42 U.S.C. § 1983 (1982). Section 1983 mandates that any person acting under color of state law who deprives a person of constitutionally guaranteed civil rights shall be liable to the deprived person. 42 U.S.C. § 1983 (1982). Federal courts have original jurisdiction over section 1983 claims under Article III, Section 2 of the United States Constitution, which declares in part that the judicial power of the federal courts shall extend to all cases arising under the laws of the United States. U.S.CONST. art. III, § 2. State courts may also entertain § 1983 claims. Martinez v. California, 444 U.S. 277, 283 n.7, *reh'g denied,* 445 U.S. 920 (1980). In cases involving prisoners' claims that state officials caused the prisoners to suffer deprivation of the eighth amendment right to be free from cruel and unusual conditions of confinement, the alleged deprivation must be the result of either the prison official's intentional or reckless disregard of the prisoner's rights. *See* Branchcomb v. Brewer, 669 F.2d 1297, 1298 (8th Cir. 1982) (must show intentional and reckless disregard of prisoners' rights to establish an eighth amendment violation); *see also* Parratt v. Taylor, 451 U.S. 527, 535 (1981) (claimant under 42 U.S.C. § 1983 must show that defendant committed conduct under color of state law and thus deprived plaintiff of constitutional or lawful right, privilege or immunity); Spain v. Procunier, 600 F.2d 189, 193-94 (9th Cir. 1979) (person's eighth amendment right to freedom from cruel and unusual punishment still protected when person incarcerated) *appeal after remand,* 690 F.2d 742 (1979). *See generally* Turner, *When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts,* 92 HARV. L. REV. 610, 610-657 (1979).

14. *Shrader,* 761 F.2d at 980.

15. *See id.* at 983-84. In *Shrader,* the VSP inmates complained specifically of a leaky prison roof that caused water damage, nesting of pigeons in the roof, shower malfunctions, and inadequate lighting. *Id.*

16. *See id.* at 984-86. The VSP inmates in *Shrader* argued that the prison presented a fire threat to the inmates because the architecture of the VSP did not allow smoke and fumes to escape from the prison. *Id.* at 985.

17. *See id.* at 986. In *Shrader,* the VSP inmates claimed that unsanitary prison conditions resulted in inadequate, unsanitary food. *Id.*

the eighth amendment.[18] At the district court, the plaintiffs and defendants consented to a trial before a United States District Court magistrate.[19]

In addressing the issue of inmate safety, the district court magistrate applied a standard that required the VSP prisoners to demonstrate that the VSP inmate population experienced mental pain resulting from fear of attack to support a claim of cruel and unusual prison conditions.[20] In addition, the magistrate's standard mandated that the VSP prisoners demonstrate prison officials' reckless and wanton infliction of mental pain in order to establish an eighth amendment violation.[21] Furthermore, the district court magistrate required the VSP inmates to establish that the pain prisoners experienced served no penological purpose.[22] Finally, the district court magistrate suggested that an examination of the inmate population's actual fear of harm might indicate whether the risk of violence at the VSP amounted to an eighth amendment violation.[23]

In applying the reckless and wanton infliction of pain standard, the district court magistrate did not examine the overall threat presented to inmate safety at the VSP.[24] Instead, the magistrate applied the standard to each individual factor that contributed to the threat to inmate safety.[25] The district court magistrate first addressed the inmates' complaint of frequent attacks among prisoners at the VSP.[26] The magistrate, considering conflicting evidence, found that the amount of attacks at the VSP did not cause any

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18. *Id.* at 977.

19. *See id.* at 977; *see also* FED. R. CIV. P. 73(a). Rule 73(a) permits a specially designated magistrate to preside over a case normally brought in a district court as long as the parties involved consent to the magistrate's jurisdiction. FED. R. CIV. P. 73(a). Section 636(c) of Title 28 of the United States Code provides the authority for the magistrate's permissible jurisdiction. 28 U.S.C. § 636(c) (1982). Parties may appeal a magistrate's decision in the circuit court of appeals for the magistrate's district unless the parties have agreed to follow the optional appeal route provided in Section 636(d). 28 U.S.C. § 636(c)(3) (1982). The optional appeal rule provides that, at the time of reference to a magistrate, the parties may consent to an appeal on the record to a district court judge. FED. R. CIV. P. 73(d).

20. *See Shrader,* 761 F.2d at 978-79. The magistrate in *Shrader* held that a showing of serious mental and emotional deterioration will establish the existence of pain necessary to constitute an eighth amendment violation. *Id.* at 979.

21. *See id.* at 979 (discussing magistrate's standard).

22. *See id.* Gregg v. Georgia, 428 U.S. 153, 182-83 (1976) (joint option). In *Gregg v. Georgia,* the United States Supreme Court noted that the penological purpose of a punishment refers to goals of criminal justice that the particular punishment intends to further. *Id.; see also* Pell v. Procunier, 417 U.S. 817, 822-23 (1974) (deterrence, rehabilitation and internal prison security are legitimate penological goals). *See generally* S. RUBIN, THE LAW OF CRIMINAL CORRECTION 736-37 (2d ed. 1973) (justifiable goals of punishment include retribution, deterrence, and rehabilitation).

23. *See Shrader,* 761 F.2d at 978-79 (discussion of magistrate's standard).

24. *See infra* notes 25-39 and accompanying text (explaining magistrate's application of standard to specific factors involved in prison conditions).

25. *Id.*

26. *See Shrader,* 761 F.2d at 987 (discussing magistrate's analysis); *supra* note 14 and accompanying text (VSP inmates complain that frequent attacks contribute to prison condition of threat to inmate safety).

real fear among the prison population and, thus, did not present harm of constitutional magnitude.[27] In addition, the magistrate determined that the only prisoners harmed by prison violence were those prisoners who instigated fights or were involved in illicit activities.[28] The magistrate, therefore, concluded that the frequency of attacks at the VSP did not amount to an unconstitutional risk of harm.[29]

The magistrate next considered the VSP inmates' complaint of inadequate security.[30] Noting that the VSP's three to one inmate-to-guard ratio compared favorably to the national average inmate-to-guard ratio of five to one, that the VSP prison officials separated potentially hostile inmates, and that the VSP prison officials administered routine cell and inmate searches, the magistrate found that security conditions at the VSP did not violate the eighth amendment.[31]

The magistrate then reviewed the prisoners' complaints of widespread illegal drug abuse and trafficking at the VSP.[32] Despite the magistrate's earlier determination that only prisoners who engaged in illicit activities were in danger of violent attacks, the magistrate found no evidence that illicit drug use led to increased violence.[33] Consequently, the magistrate held that drug availability

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27. *See Shrader*, 761 F.2d at 981 (discussing magistrate's findings). The evidence presented in *Shrader* conflicted on every issue. *Id.* at 980. The conflicting evidence required the magistrate to make specific credibility determinations. *Id.* The *Shrader* magistrate's conclusion that the VSP prisoners did not experience fear from the frequency of attacks rested upon the testimonies of those prison administrators and inmates whom the magistrate determined were credible witnesses. *Id.* at 981. The magistrate chose to ignore other witnesses testimonies that attested to the need for self-protection practices such as weapon carrying and self-imposed isolation which prisoners practiced to avoid harm. *See id.* at 993-94 (Sprouse, J., concurring and dissenting) (dissent's consideration of inmates' testimonies concerning fear).

Rule 52(a) of the Federal Rules of Civil Procedure suggests that an appellate court may reverse a district court magistrate's findings of fact when the findings of fact are clearly erroneous. FED. R. CIV. P. 52(a). A finding is clearly erroneous when the reviewing court is firmly convinced that, although some evidence supports the magistrate's decision, the magistrate's decision is incorrect. *Id. But cf.* Olgin v. Darnell, 664 F.2d 107, 108 (5th Cir. 1981) (appellate court cannot reappraise the credibility of witnesses); Phillips v. Crown Cent. Petroleum Corp., 556 F.2d 702, 703 (4th Cir. 1977), *cert. denied*, 444 U.S. 1074 (1980) (appellate court must respect district court's credibility findings); 9 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 2586 at 736-37 (1971) (appellate court must respect district court factfinder's credibility determinations).

28. *See Shrader*, 761 F.2d at 981 (discussing magistrate's analysis).

29. *See id.* (discussing magistrate's conclusion)

30. See *id.* (discussing magistrate's analysis); note 14 and accompanying text (VSP inmates complained that inadequate security contributed to prison condition of threat to inmate safety).

31. *See id.* at 994 (Sprouse, J., concurring and dissenting). In *Shrader*, the magistrate examined only whether preventative practices existed and did not examine the effectiveness of the preventative practices. *Id.* at 995-96. *But cf.* Hoptowit v. Ray, 682 F.2d 1237, 1249-50 (court still might find deliberate indifference towards threat of harm despite prison officials' attempt to remedy harm).

32. *See Shrader*, 761 F.2d at 981 (discussing magistrate's findings).

33. *See id.* at 992 (Sprouse, J., dissenting and concurring) (Sharder dissent examines magistrate's contradictory findings of fact).

and trafficking at the VSP did not endanger the VSP prisoners and, therefore, did not violate the eighth amendment.[34]

Finally, the district court magistrate addressed the inmates' claim that materials, which inmates could craft into dangerous weapons, were left unprotected and were easily accessible to the prison population.[35] Although the magistrate found that the evidence supported the inmates' claim,[36] the magistrate held that the eighth amendment protects prisoners from the act of assault rather than from the existence of dangerous weapons.[37] Consequently, the district court magistrate dismissed the inmates' complaint that the availability of weapons constituted an eighth amendment violation.[38] Subsequently, the magistrate also dismissed the fire hazard, physical plant, and food quality issues on the ground that those individual prison conditions did not violate the eighth amendment.[39]

The VSP inmates appealed the magistrate's dismissal of the *Shrader* suit to the United States Court of Appeals for the Fourth Circuit.[40] First, the inmates contended that the district court magistrate applied an incorrect legal standard to the inmates' claim for relief from the threat of violent attacks by other inmates at the VSP.[41] The prisoners argued that the magistrate's standard failed to consider the Fourth Circuit's holdings in *Woodhous v. Virginia*[42] and *Withers v. Levine*.[43] *Woodhous* and *Withers* effectively held

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34. *See id.* (discussing magistrate's findings).

35. *See id.* at 982-83 (discussing magistrate's analysis). In *Shrader*, the inmates provided evidence concerning the weapons that prisoners used in carrying out inmate upon inmate assaults. *Id.* at 990 (Sprouse, J., concurring and dissenting). Knives and daggers manufactured in the prison chair factory from pieces of scrap metal stolen from the metal shop were the most widely used weapons at the VSP. *Id.* at 991. The prison-made knives were generally 10 to 12 inches in length and were manufactured at the rate of 30 knives per week. *Id.* at 991. Prisoners at the VSP also employed horseshoe pegs, ice picks, pipe, scalding water, and acid as weapons. *Id.* at 990-91.

36. *See supra* text accompanying note 14 (inmates claimed that weapons were prevalent throughout prison).

37. *See Shrader*, 761 F.2d at 982 (discussing magistrate's explanation that weapons are not dangerous in themselves).

38. *Id.*

39. *Id.* at 983-86.

40. *Id.* at 977; *see supra* note 19 (examining inmates' ability to appeal to circuit court of appeals); *infra* notes 41-47 and accompanying text (discussing grounds for inmates' appeal).

41. *Shrader*, 761 F.2d at 977; *see infra* notes 42-45 (explaining inmates' complaint that magistrate used wrong standard of review for determining presence of eighth amendment violation).

42. 487 F.2d 889 (4th Cir. 1973). In *Woodhous v. Virginia*, the United States Court of Appeals for the Fourth Circuit held that relief is appropriate for a prisoner who establishes the existence of a pervasive risk of harm from fellow prisoners and negligence on the part of a prison official in protecting prisoners from violence or threats of violence. *Id.* at 890.

43. 615 F.2d 158 (4th Cir.); *cert. denied*, 449 U.S. 849 (1980). In *Withers v. Levine*, the United States Court of Appeals for the Fourth Circuit held that evidence that the frequency of assaults within a prison puts prisoners in reasonable fear for their safety and reasonably alerts prison officials of the need for security precautions establishes a pervasive risk of harm. *Id.* at 161.

that to establish an eighth amendment violation a prisoner must prove that a prison official negligently disregarded a pervasive risk of harm which resulted in the prisoner's reasonable fear of violence.[44] The inmates challenged the district court magistrate's determination that the *Rhodes* opinion modified the *Woodhous-Withers* eighth amendment standard to require evidence of a prison official's unnecessary and wanton activity which resulted in actual pain to prisoners.[45] Second, the VSP prisoners contended that the district court magistrate made clearly erroneous findings of fact in regard to the challenged prison conditions of inadequate safety, inadequate physical facilities, inadequate food and fire hazards allegedly violative of the eighth amendment.[46] On appeal, the prisoners argued primarily that the threat of harm to the inmates which resulted from the combination of frequent inmate attacks at the VSP, the inadequate security manpower at the VSP, and the prevalance of drugs and weapons at the VSP, supported a finding of cruel and unusual punishment.[47]

The Fourth Circuit in *Shrader* commenced a review of the district court's decision with an examination of the standard that the district court magistrate applied to determine whether the threat of violence at the VSP constituted an eighth amendment violation.[48] The *Shrader* court upheld the magistrate's determination that the *Rhodes* conditions of confinement standard would require evidence of a prison official's reckless or wanton disregard of a pervasive risk of harm to inmate safety to establish an eighth amendment violation.[49] Furthermore, the *Shrader* court recognized that the *Rhodes* standard would require the VSP prisoners to demonstrate that the reckless activity of a prison official caused severe mental pain to prisoners fearing attack.[50] The Fourth Circuit in *Shrader*, therefore, agreed with the magistrate that *Rhodes* modified the *Woodhouse-Withers* eighth amendment standard, a standard

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44. *See Woodhous*, 487 F.2d at 890. *Woodhous* required only a showing of a prison official's lack of reasonable care toward a pervasive risk of harm to support an eighth amendment claim. *Id.; Withers*, 615 F.2d at 162. The *Withers* court required that prisoners establish only a reasonable fear of harm, not actual mental pain, or order to support an eighth amendment violation. *Withers*, 615 F.2d at 158; *also supra* notes 42 and 43 (explaining *Woodhous* and *Withers)*.

45. *See Shrader*, 761 F.2d at 977-79 (inmates argue that only negligent prison official activity and reasonable fear among prisoners necessary for successful eighth amendment challenge to prison conditions).

46. *See id.* at 977 (prisoners appealed magistrate's findings).

47. *See id.* at 980 (inmates argued that combination of factors endangered prisoners' safety in violation of eighth amendment).

48. *See id.* at 977-80 (reviewing magistrate's standard).

49. *Id.* at 979-80. The *Shrader* court rejected the VSP inmates' theory that *Rhodes'* unnecessary and wanton infliction of pain standard does not apply beyond the specific facts of *Rhodes. Id.* at 980. Instead, the *Shrader* court found that *Rhodes'* unnecessary and wanton infliction of pain standard applied to all prisoners' claims of cruel and unusual punishment. *Id.* at 980.

50. *See id.* at 978-79 (suggesting that presence of fear among prisoners indicates magnitude of threat to inmate safety).

which had originally required merely a showing that a prisoner's reasonable fear of harm resulted from a prison official's negligent behavior.[51] The *Shrader* court upheld the magistrate's determination that a showing of a prison official's reckless behavior and of prison inmates' suffering of mental pain are crucial to the success of an eighth amendment claim under the modified *Woodhouse-Withers* standard.[52] The *Shrader* court, therefore, rejected the inmates' claim that the magistrate had applied an erroneous legal standard in considering the prisoners' claim of constitutionally inadequate inmate safety.[53]

The Fourth Circuit in *Shrader* next addressed the inmates' second ground for appeal—that the district court magistrate made clearly erroneous findings of fact concerning conditions of confinement at the VSP.[54] The *Shrader* court, like the district court magistrate, analyzed each specific factor that allegedly had threatened inmate safety to determine whether each particular factor, considered alone, amounted to a pervasive risk of harm.[55] Although the *Shrader* court applied a specific factor analysis, the *Shrader* court awarded great deference to the district court's findings of fact concerning issues on which evidence conflicted.[56] For example, the *Shrader* court considered the prisoners' claim that the frequency of attacks at the VSP contributed to a threat to inmate safety in violation of the eighth amendment.[57] The *Shrader*

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51. *See id.* at 978-80; *see also supra* notes 44-45 and accompanying text (explaining difference in evidence necessary to satisfy the *Rhodes* and *Withers-Woodhous* eighth amendment standards).

52. *Shrader,* 761 F.2d at 977-80. The *Shrader* court agreed with the district court magistrate that the Supreme Court's decision in *Rhodes* must take precedence over the federal court's *Withers-Woodhous* standard. *Id.* Consequently, the *Shrader* court noted that after *Rhodes,* prisoners who claim cruel and unusual threats to inmate safety must allege that a prison official's reckless activity resulted in a pervasive risk of harm to prisoners and caused the prisoners significant mental pain due to fear of attack. *Id.*

53. *Id.* at 980.

54. *Id.* at 980-87.

55. *Id.* at 980-83; *see also infra* notes 56-74 and accompanying text (demonstrating *Shrader* court's specific factor analysis).

56. *See supra* note 27 (discussing appellate court function in review of district court's credibility determinations). The *Shrader* majority stressed that the court's application of the clearly erroneous standard must accord great deference to the magistrate's credibility determinations of all the evidence presented. *Shrader,* 761 F.2d at 980. The *Shrader* dissent argued that, while the court should accord the magistrate's specific credibility determinations wide latitude, the magistrate's general credibility findings, made when evidence conflicted, should be subject completely to the clearly erroneous standard of review. *Id.* at 987 (Sprouse, J., concurring and dissenting). In *Philipps v. Crown Cent. Petroleum Corp.,* the United States Court of Appeals for the Fourth Circuit held that a district court's findings based upon credibility determinations will stand unless the reviewing court determines that the district court's findings are clearly erroneous. Phillips v. Crown Cent. Petroleum Corp., 556 F.2d 702, 703 (4th Cir. 1977), *cert. denied,* 444 U.S. 1074 (1980). The Fourth Circuit's holding in *Phillips,* therefore, supports the *Shrader* dissent's argument that a magistrate's findings of fact are not insulated from a clearly erroneous standard of review merely because the findings rested upon credibility determinations. *Id.*

57. *See Shrader,* 761 F.2d at 981. In *Shrader,* the inmates presented statistical evidence

court's specific factor analysis, however, limited the issue to whether the frequency of attacks alone amounted to cruel and unusual punishment.[58] Due to conflicting evidence, the *Shrader* court relied upon the magistrate's finding that the prisoners did not fear attacks from other prisoners.[59] The *Shrader* court reasoned that prisoners who did not experience fear could not experience pain from fear.[60] Thus, the *Shrader* court held that the VSP prisoners failed to demonstrate the pain requirement of the *Rhodes* standard.[61] The *Shrader* court, therefore, relied on the magistrate's factual findings to affirm the magistrate's conclusion that the frequency of attacks at the VSP did not amount to a constitutional violation.[62]

The *Shrader* court subsequently considered the magistrate's decision that the security at the VSP did not amount to a consitutional violation.[63] Evidence that the VSP's inmate-to-guard ratio of three to one compared favorably to the national average inmate-to-guard ratio of five to one convinced the *Shrader* court that the magistrate committed no error in concluding that, as a specific factor, the security staffing at the VSP did not present a pervasive risk of harm.[64] The *Shrader* court also relied on the validity of the magistrate's findings concerning the problem of illegal drug use at the VSP.[65] The magistrate found that only a small percentage of the inmate population used drugs and that the VSP prison officials had taken steps to reduce the availability of drugs.[66] The magistrate, therefore, concluded that illegal drug use at the

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of 7 inmate murders, 54 prisoner stabbings, and 24 prisoner upon prisoner assaults that occurred during the five years prior to trial. *Id.* at 988 (Sprouse, J., concurring and dissenting).

58. *See id.* at 981 (examining whether frequency of attacks alone causes significant fear to prisoners).

59. *Id.* The district court magistrate in *Shrader* chose to rely on the testimony of some of the VSP inmates who claimed no fear of assault. *Id.* The magistrate thus rejected testimonial evidence that prisoners actually feared violence and employed self-defense measures including carrying knives, carrying martial arts weapons, avoiding social activities and locking themselves in prison cells. *Id.* at 993-94 (Sprouse, J., concurring and dissenting).

60. *Id.* at 981.

61. *See Rhodes,* 452 U.S. at 346 (punishment that unnecessarily and wantonly inflicts pain amounts to cruel and unusual punishment) (quoting *Gregg v. Georgia,* 428 U.S. 153, 173 (1976)).

62. *Shrader,* 761 F.2d at 981.

63. *Id.* at 981.

64. *Id. But see id.* at 994 (Sprouse, J., concurring and dissenting). The *Shrader* dissent suggested that the numerical inmate-to-guard ratio at the VSP was misleading. *Id.* The dissent's contention rested on evidence that the prison was severely understaffed for a facility of the VSP's maximum security needs and that some security officials worked many hours of overtime. *Id.* The dissent therefore maintained that the favorable inmate-to-guard ratio greatly overstated the effectiveness of security manpower at the VSP. *Id.; see also* NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, CORRECTIONS, 482-483 (1973) (recommending that workload distribution plans for correctional officers should consider the complexity of cases, capability of staff, and nature of case assignments in addition to numerical inmate-to-guard ratio).

65. *Shrader,* 761 F.2d at 981.

66. *Id.; see also* note 81 and accompanying text (Shrader dissent suggests that prison officials' preventative measures are meaningless unless effective).

VSP did not amount to a constitutional violation.[67] Complete reliance on the magistrate's findings of fact led to the *Shrader* court to affirm the magistrate's conclusion that drug activity at VSP did not amount to an unconstitutional threat to inmate safety.[68]

The last factor of the threat to inmate safety that the *Shrader* court reviewed involved the magistrate's claim that the unprotected availability of weapons and scrap metal to the prison population did not amount to a risk of harm violative of the eighth amendment.[69] The *Shrader* court accepted the magistrate's findings that weapons and scrap materials were easily accessible to the VSP prison population.[70] The *Shrader* court, however, criticized the magistrate's conclusion that the availability and accessibility of weapons did not amount to a eighth amendment violation.[71] Although the magistrate stated that the VSP prisoners did not enjoy constitutional protection from the availability of weapons,[72] the *Shrader* court held that a pervasive risk of harm resulting from the use of the available weapons would demand attention from prison officials.[73] The *Shrader* court, therefore, remanded the weapons issue to the district court for a determination of whether the manufacture and distribution of weapons among the VSP inmates amounted to a pervasive risk of harm and, if so, whether the prison officials had been recklessly indifferent towards the pervasive risk of harm.[74] The *Shrader* court then upheld the magistrate's individual findings of constitutionality concerning the prison conditions of fire hazards, food quality, and physical facilities at the VSP.[75]

The *Shrader* dissent concurred with the *Shrader* majority in finding that the district court correctly combined the *Woodhous-Withers* and *Rhodes* standards to create a legal standard applicable to prisoners' challenges to violent and dangerous conditions of confinement.[76] The dissent, however,

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67. *See Shrader,* 761 F.2d at 981 (discussing magistrate's conclusion).

68. *Id.* In *Shrader,* the Fourth Circuit relied on the magistrate's findings of fact but failed to consider testimony from inmates that suggested a high correlation between drug activity and violence at the VSP. *Id.* at 990, 992 (Sprouse, J., concurring and dissenting).

69. *Id.* at 982.

70. *Id.*

71. *See id.; supra* notes 35-38 and accompanying text (discussion of magistrate's reasoning); *see also infra* notes 72-74 and accompanying text (Shrader court's criticism of magistrate's reasoning and weapons issue).

72. *See Shrader,* 761 F.2d at 982 (discussing magistrate's analysis).

73. *Id.* The *Shrader* court noted that a prison official's failure to adequately safeguard dangerous materials and to restrict the known ability of prisoners to manufacture dangerous materials into weapons might amount to a reckless disregard of a pervasive risk of harm. *Id.*

74. *Id.* at 983.

75. *See Shrader,* 761 F.2d at 983-87. The *Shrader* court affirmed the magistrate's decision that the VSP's physical facilities did not pose any health hazards nor did the facilities violate societal notions of decency. *Id.* at 984. The *Shrader* court agreed also with the magistrate that fire hazards at the VSP were not unreasonable and that the food services provided to the inmate population were adequate. *Id.* at 985-86. The *Shrader* court recognized that the Constitution does not require comfortable prisons and that prisons, by their nature, will always cause some discomfort to those incarcerated within. *Id.* at 987.

76. *Id.* at 987. *See id.* at 988 (Sprouse, J., concurring and dissenting) (arguing that the VSP prisoners presented sufficient evidence to satisfy the majority's legal standard).

suggested that the *Shrader* majority erred in isolating each factor of the threat to inmate safety and examining whether each factor individually met the *Rhodes* standard.[77] The dissent argued that a court should examine the cumulative effect of factors involved in a condition of confinement rather than the specific, individual effect of a particular factor.[78] The *Shrader* dissent argued that the aggregation of the factors underlying the condition of allegedly inadequate inmate safety amounted to an unnecessary and wanton infliction of pain upon the VSP prisoners and thus required a finding of an eighth amendment violation.[79]

The *Shrader* dissent argued that the different factors constituting a threat to inmate safety are inextricably linked and, therefore, a court should consider the factors cumulatively.[80] For example, the *Shrader* dissent noted that weapon availability and inadequate security within a prison facilitate a prisoner's ability to conduct a violent attack.[81] Moreover, the threat of attack depends not only upon the lack of security practices but also depends upon the ineffectiveness of security practices in relation to the curtailing, manufacture, dispensing, and use of weapons.[82] The *Shrader* dissent, therefore, argued the necessity of considering the VSP prisoners' evidence cumulatively.[83] In addition, the *Shrader* dissent demonstrated that the magistrate's application of a specific factor analysis caused the magistrate to make contradictory findings on the issue of whether illegal drug activity at the VSP led to increased violence among prisoners at the VSP.[84] The magistrate in *Shrader* held that the evidence did not indicate that drug activity at the

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77. *Id.* at 987-88 (Sprouse, J., concurring and dissenting). The *Shrader* dissent's disagreement with the *Shrader* court's analysis is most evident in the manner in which the dissent argued that the prisoners had satisfied the *Rhodes* conditions of confinement standard. *Id.* The *Shrader* dissent examined the cumulative effect of the factors contributing to the threat of violence at the VSP. *Id.* In comparison to the dissent's approach, the *Shrader* majority considered the effect of each individual factor affecting inmate safety in isolation. *See supra* notes 55-75 and accompanying text (demonstrating *Shrader* majority's method of analysis); *see also infra* notes 113-18 and accompanying text (demonstrating ramifications of two different approaches).

78. *See Shrader*, 761 F.2d at 987-88 (Sprouse, J., concurring and dissenting) (suggesting that drug activity stimulates assaults, that weapon availability increases the harm done in assaults, and that inadequate security results in greater violence. *Id.* The dissent thus demonstrated that the threat to inmate safety resulted from several factors. *Id.*

79. *See id.* The *Shrader* dissent contended that the prevalence of illegal drug and weapons at the VSP, along with the inadequacy of security and frequent assaults among inmates at the VSP, created a pervasive risk of harm that caused pain to inmates that prison officials ignored. *Id.* at 987-92.

80. *See supra* notes 77-79 and accompanying text (Shrader dissent's criticism of majority's analysis).

81. *Shrader*, 761 F.2d at 991 (Sprouse, J., concurring and dissenting).

82. *See id.* 994-95 (Sprouse, J., concurring and dissenting) (suggesting that effectiveness of security practices critical in determining whether security is adequate).

83. *Id.* at 997.

84. *See infra* notes 85-87 and accompanying text (explaining that magistrate's contradictory holdings resulted from overly narrow examination of factors involved in the VSP inmates' inmate safety claim).

VSP led to high incidents of violence such as robbery or larceny.[85] In contrast, the magistrate discounted the rate of violence at the VSP because the only prisoners harmed by violence were inmates who engaged in the drug trade and other illicit activities and thus had brought violence upon themselves.[86] The *Shrader* dissent, therefore, contended that the interrelationship between factors involved in a particular condition of confinement required a comprehensive examination of the cumulative effects of those factors to avoid contradictory findings.[87]

The *Shrader* court correctly applied the substantive aspects of the *Rhodes* conditions of confinement test to the facts of *Shrader*.[88] First, the *Shrader* court recognized that *Rhodes* requires that prisoners must suffer pain in order to establish an eighth amendment claim.[89] Unlike the *Rhodes* decision, however, which examines the particular physical effects of double celling,[90] the *Shrader* decision addressed the constitutionality of a dangerous prison environment.[91] While physical conditions of confinement such as double celling are capable of causing physical pain,[92] confinement within an institution that poses a great threat of physical violence presents a risk of mental and emotional, rather than physical, pain.[93] Consequently, the *Shrader* court held that the VSP prisoners could satisfy the *Rhodes* pain requirement through a showing of mental, rather than physical, pain.[94] Although the *Rhodes* opinion addresses only physical pain, the *Shrader* opinion extends the scope of the *Rhodes*

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85. *See Shrader*, 761 F.2d at 992 (Sprouse, J., concurring and dissenting) (discussing magistrate's holding).

86. *See id.* at 981-82 (discussing magistrate's findings of fact).

87. *See supra* notes 77-83 and accompanying text (examining *Shrader* dissent's position on the interrelationship between different factors involved in the threat to inmate safety).

88. *See infra* notes 89-104 and accompanying text (explaining validity of *Shrader* court's interpretation of *Rhodes* condition of confinement standard).

89. *See Shrader*, 761 F.2d at 979; *see also supra* note 61 and accompanying text (Rhodes requires unnecessary and wanton infliction of pain to prove eighth amendment violation).

90. *See supra* note 3 (definition of double celling).

91. *See Shrader*, 761 F.2d at 980 (inmates complained that violent prison environment threatened safety of prison population).

92. *See Rhodes*, 452 U.S. at 348. The Supreme Court in *Rhodes* examined the constitutionality of double celling in light of the physical effects involved in double celling. *Id.* Finding that no deprivation of food, medical care or adequate sanitation resulted from double celling, the Court upheld the practice. *Id.* at 352. *But see Rhodes*, 452 U.S. at 368 n.17 (quoting Capps v. Atiyeh, 495 F. Supp. 802, 810-814 (D. Or. 1980)) (Brennan, J., concurring) (suggesting that overcrowding may threaten mental health).

93. *See Shrader*, 761 F.2d at 993-94 (Sprouse, J., concurring and dissenting) (examining testimonies of witnesses and corrections experts on the issue of mental pain from fear of violence). The United States Supreme Court has acknowledged that mental pain may amount to an eighth amendment violation. *See* Trop v. Dulles, 356 U.S. 86, 101 (1958). In *Trop*, the Supreme Court held that mental anguish caused by expatriation constitutes a punishment more primitive than torture. *Id.*

94. *See Shrader* at 978-79 (affirming magistrate's holding that successful eighth amendment challenge to violent prison conditions must demonstrate prisoners' mental and emotional deterioration).

pain requirement to include mental pain because of the different nature of the prison condition in *Shrader* as compared to the condition examined in *Rhodes*.[95]

Secondly, the *Shrader* court required the VSP inmates to demonstrate that the unnecessary or wanton activity of prison officials resulted in a pervasive risk of harm.[96] The *Rhodes* decision, in holding that a prison official's infliction of pain must be unnecessary and wanton, eliminates the possibility that a prison official's negligent activity could provide adequate grounds for an eighth amendment claim.[97] Furthermore, federal courts rendering decisions after *Rhodes* require that a prison official act recklessly or deliberately indifferent, rather than merely negligent toward a pervasive risk of harm to constitute an eighth amendment violation.[98] For example, in the District of Columbia Court case of *Murphy v. United States,*[99] a group of Lorton Youth Center inmates attacked, beat and stabbed the plaintiff, a nineteen year old inmate, causing the plaintiff to suffer permanent partial paralysis.[100] The plaintiff brought suit under the eighth amendment and provided statistics of violence at the Youth Center in an effort to demonstrate a pervasive risk of harm.[101] The *Murphy* court found that the assault statistics did not amount to a risk of harm sufficient to alert officials of a need to take special protection measures.[102] Consequently, the *Murphy* court held

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95. *See supra* notes 90-94 and accompanying text (discussion of differing nature of *Rhodes* and *Shrader* facts).

96. *See supra* note 49 and accompanying text (*Shrader* court's affirmation of district court's adaptation of *Rhodes'* unnecessary and wanton behavior requirement).

97. *Rhodes*, 452 U.S. at 347-49; *see also supra* notes 51-52 and accompanying text (*Rhodes* opinion modified earlier Fourth Circuit decision in *Woodhous v. Virginia* which held that a showing of a prison officials' negligence is sufficient to establish an eighth amendment claims brought under 42 U.S.C. § 1983).

98. *See, e.g.*, Thomas v. Booker, 762 F.2d 654, 658-59 (8th Cir. 1985) (proof of reckless disregard of prisoner's right to safety necessary to establish eighth amendment claim); Davidson v. O'Lone, 752 F.2d 817, 828 (3d Cir. 1984) (must demonstrate prison officials' intentional, deliberate or reckless indifference toward prisoners' safety to prove violation of eighth amendment); Slakan v. Porter, 737 F.2d 368, 373 (4th Cir. 1984) (must show reckless indifference to prisoners' right to safety or tacit authorization of practices that deprive prisoner of safety to validate eighth amendment claim), *cert. denied*, 105 S. Ct. 1413 (1985); Walsh v. Brewer, 733 F.2d 473, 476 (7th Cir. 1984) (must show deliberate indifference to pervasive risk of harm); Stewart v. Love, 696 F.2d 43, 43-44 (6th Cir. 1982) (must show more than mere negligence of prison official to sustain eighth amendment claim); Hoptowit v. Ray, 682 F.2d at 1253 (must prove deliberate indifference of prison official to establish an eighth amendment claim); Murphy v. United States, 653 F.2d 637, 644 (D.C. Cir. 1981) (must show deliberate indifference to pervasive risk of harm to satisfy claim of eighth amendment violation).

99. 653 F.2d 637 (D.C. Cir. 1981).

100. *Id.* at 639.

101. *See id.* at 645. In *Murphy,* the plaintiff provided evidence that, during the 1976 calendar year, 20 assaults occurred at the Lorton Youth Center, which housed 344 inmates. Six of the 20 assaults occurred in Dormitory #3, which housed 100 inmates. *Id.*

102. *Id.; see also* Matzker v. Herr, 748 F.2d 1142, 1149 (7th Cir. 1984) (frequent occurrences of assault that cause a prisoner to reasonably fear for safety and cause prison officials' to be

that the plaintiff could not succeed with an eighth amendment claim because the plaintiff failed to demonstrate prison officials' deliberate indifference towards a pervasive risk of harm.[103] The *Shrader* court's reckless and wanton behavior requirement, therefore, is consistent with both the Supreme Court's opinion in *Rhodes* and with the opinions of other federal courts that have considered prison officials' responsibility for violence within prisons.[104]

Finally, the *Shrader* court, relying on *Rhodes,* affirmed the district court's order holding that unnecessarily and wantonly inflicted pain also must be devoid of any penological justification.[105] Actually, the district court's order misinterpreted the *Rhodes* opinion's statement that pain without penological justification is an example of unnecessarily and wantonly inflicted pain.[106] The *Rhodes* opinion does not mandate that pain inflicted from a prison condition must be penologically unjustified to establish an eighth amendment violation.[107] Furthermore, no lower federal courts suggest that a finding of penologically unjustified pain is indispensable to an eighth amendment claim.[108] The *Shrader* court's misunderstanding of the *Rhodes* opinion's statement concerning penologically unjustified pain, however, did not affect the court's decision since the court had no need to consider the penological justification issue.[109] With the exception of the penological justification issue, the Fourth Circuit in *Shrader* properly interpreted the *Rhodes* eighth amendment standard.[110]

Although *Shrader* and *Rhodes* each examined a specific condition of confinement, each court used a different analysis to examine the factors which constituted the condition of confinement.[111] The analysis applied in *Rhodes*

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aware of need for protection may constitute a pervasive risk of harm); Walsh v. Brewer, 733 F.2d 473-476 (7th Cir. 1984) (frequency of assaults may demonstrate pervasive risk of harm).

103. *See Murphy,* 653 F.2d at 645 (courts hold level of violence at Lorton Youth Center not high enough to require prison officials' awareness of need for protective measures).

104. *See supra* notes 96-103 and accompanying text (demonstrating validity of *Shrader* court's affirmation of magistrate's application of unnecessary and wanton behavior standard).

105. *Shrader,* 761 F.2d at 979; *see supra* note 22 (definition of penological).

106. *Compare Shrader,* 761 F.2d at 979 (pain must be without penological justification to establish eighth amendment claims) *with Rhodes,* 452 U.S. at 346 (noting that one example of unnecessary and wanton pain is pain inflicted without any penological justification) (quoting *Gregg v. Georgia,* 428 U.S. 183, 153 (1976)).

107. *See Rhodes,* 452 U.S. at 346.

108. *See* Smith v. Coughlin, 748 F.2d 783, 787 (2d Cir. 1984) (holding unconstitutional punishment that is grossly disproportionate to the crime committed, unnecessarily and wantonly inflicted, or totally without penological justification); Martin v. White, 742 F.2d 469, 474 (8th Cir. 1984) (example of unnecessary and wanton pain is pain inflicted without penological justification).

109. *See Shrader,* 761 F.2d at 979-80. The *Shrader* court affirmed the district court's finding that the VSP inmates did not experience pain from fear of violence. *Id.* Consequently, the *Shrader* court never reached the issue whether penological justification existed for the pain inflicted upon prisoners. *Id.*

110. *See supra* notes 88-104 and accompanying text (explaining validity of *Shrader* court's interpretation of *Rhodes* conditions of confinement standard).

111. *See infra* notes 112-18 and accompanying text (distinguishing *Shrader* court's analysis from *Rhodes* analysis).

undertook an examination of the cumulative effect of all the factors involved in double celling at the Southern Ohio Correctional Facility.[112] In contrast to the *Rhodes* analysis, the *Shrader* court's specific factor analysis involved a review of the constitutionality of each specific factor that contributed to the threat of inmate safety at the VSP.[113] The *Shrader* court's remand of the weapons issue to the district court, without the simultaneous remand of other factors that also contributed to the lack of inmate safety, demonstrates the *Shrader* court's specific factor analysis.[114] The *Shrader* court's specific factor analysis fails to recognize the interdependence of different factors involved in a condition of confinement and, therefore, fails to examine the factors' cumulative effect.[115] The *Shrader* court's specific factor analysis, therefore, establishes artificial divisions between factors which together create a unique condition of confinement.[116] Consequently, the *Shrader* court's specific factor analysis is not only inconsistent with the Supreme Court's specific factor analysis in *Rhodes*,[117] but the specific factor analysis also fails to recognize that an eighth amendment inquiry should focus on the entire effect of punishment upon prisoners.[118]

With the exception of *Shrader,* the federal courts agree that the constitutionality of a particular condition of confinement depends upon the cumulative effect of several factors.[119] The federal courts, however, are divided concerning whether a totality of otherwise individually constitutional prison conditions may become unconstitutional through aggregation.[120] Courts that apply the totality of conditions analysis examine the cumulative impact of different prison conditions of confinement to determine whether the

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112. *See supra* notes 5-6 and accompanying text (Rhodes analysis).

113. *Compare* notes 5-6 and accompanying text (Rhodes analysis) *with* notes 55-75 and accompanying text (Shrader analysis.

114. *See supra* notes 70-74 and accompanying text (Shrader court remands weapons issue to district court without evidence of frequent attacks, drug activity or inadequate security factors which may exacerbate dangerousness of weapons).

115. *See supra* notes 84-87 and accompanying text (demonstrating narrowness of *Shrader* court's specific factor review of inmate safety issue).

116. *See id.; also Shrader*, 761 F.2d at 980 (VSP inmates complain that several factors, in combination, amount to threat to inmate safety); *infra* notes 155-62 and accompanying text (arguing artificiality of analyses which do not examine cumulative effects of different circumstances).

117. *See supra* notes 111-16 and accompanying text (discussion of inconsistencies between *Rhodes* and *Shrader* analyses).

118. *See infra* notes 146-51 and accompanying text (demonstrating need to examine entire effect of imprisoned).

119. *See infra* notes 124 & 129 and accompanying text (examining *Jones v. Diamond* and *Hoptowit v. Ray* as models of federal courts' agreement that particular prison conditions are aggregations of several factors).

120. *See infra* notes 121-35 and accompanying text (demonstrating division between federal courts on totality issue). *Compare* Wright v. Rushen, 642 F.2d 1129, 1132 (9th Cir. 1981) (courts may not find eighth amendment violation based upon totality of conditions) *with* Doe v. District of Columbia, 701 F.2d 948, 957 (D.C. Cir. 1983) (totality of conditions of confinement may violate eighth amendment).

conditions' overall effect amounts to cruel and unusual punishment.[121] For example, in *Jones v. Diamond,*[122] the United States Court of Appeals for the Fifth Circuit employed a totality of conditions analysis to determine whether prison conditions at the Jackson County Jail (JCJ) in Mississippi violated the eighth amendment.[123] First, the *Jones* court examined the cumulative impact of factors that contributed to each challenged condition of confinement.[124] The *Jones* court then determined that the totality of the challenged conditions of confinement namely the threat to inmate safety, overcrowding, inadequate food, lack of exercise, and lack of santitation at the JCJ—amounted to cruel and unusual punishment in violation of the eighth amendment.[125]

Alternatively, federal courts that reject the totality of conditions analysis interpret the *Rhodes* opinion to require that a specific condition of confinement must individually amount to an eighth amendment violation before a court will declare the condition unconstitutional.[126] For example, in *Hoptowit v. Ray,*[127] the United States Court of Appeals for the Ninth Circuit applied the individual condition analysis to determine whether prison conditions at the Washington State Penitentiary (WSP) constituted a violation of the eighth amendment.[128] The *Hoptowit* court first determined the cumulative effect of several different factors involved in the threat to inmate safety at the WSP.[129] The first part of the *Hoptowit* analysis, therefore, is identical

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121. *See infra* notes 122-124 and accompanying text (examining *Jones* court's application of the totality of conditions analysis).

122. 636 F.2d 1364 (5th Cir.), *cert. dismissed sub nom.,* Ledbetter v. Jones, 453 U.S. 950 (1981).

123. *See supra* notes 121 & 122 (Jones court's application of totality analysis).

124. *See Jones,* 636 F.2d at 1373. One of the challenged conditions of confinement in *Jones* was the threat to inmate safety. *Id.* The *Jones* court recognized that different factors such as prisoner abuse from other prisoners, inaccess to prisoners of jail security personnel, inmate-controlled prison management, continuous violence, and a prisoner-run kangaroo court amounted to a condition of confinement that posed a threat to inmate safety. *Id.*

125. *Id.* at 1374.

126. *See, e.g.,* Toussaint v. Yockey, 722 F.2d 1490, 1492-93 (9th Cir. 1984) (examining each challenged condition of confinement individually rather than employing totality analysis); Wellman v. Faulkner, 715 F.2d 269, 275 (7th Cir. 1983) (holding that otherwise constitutional conditions may not become unconstitutional through aggregation), *cert. denied,* 104 S. Ct. 3587 (1984); Smith v. Fairman, 690 F.2d 122, 125 (7th Cir. 1982) (holding that vague conclusion that totality of conditions amounts to eighth amendment violation not sufficient to establish cruel and unusual punishment); Hoptowit v. Ray, 682 F.2d 1237, 1246-47 n.3 (9th Cir. 1982) (specific condition must amount to eighth amendment violation); Wright v. Rushen, 642 F.2d 1129, 1132 (9th Cir. 1981) (same); Balla v. Idaho State Bd. of Corrections, 595 F. Supp. 1558, 1563 (D. Idaho 1984) (holding that threat to inmate safety constituted specific condition of confinement in violation of eighth amendment).

127. 642 F.2d 1129 (9th Cir. 1981).

128. *See Hoptowit,* 682 F.2d at 1246-47 (under individual condition analysis, several otherwise constitutional conditions may not, in combination, amount to eighth amendment violation).

129. *See id.* at 1249-50 (examining cumulative effects of factors contributing to threat to inmate safety). The *Hoptowit* court acknowledged that overcrowding, idleness, a deteriorating

to the first part of the *Jones* analysis.[130] The second step in the *Hoptowit* individual condition analysis, however, distinguishes the *Hoptowit* court's analysis from the *Jones* court's analysis.[131] In contrast to the *Jones* court's examination of the constitutionality of the totality of the challenged conditions of confinement,[132] the *Hoptowit* court examined the constitutionality of each particular condition of confinement.[133] Under the individual condition analysis, the *Hoptowit* court found that the condition of the threat to inmate safety constituted a violation of the eighth amendment.[134] Unlike the *Jones* court, however, the *Hoptowit* court held that otherwise constitutional prison conditions could not, in combination, amount to an eighth amendment violation.[135]

The *Shrader* court applied the *Hoptowit* court's individual condition analysis to the VSP inmates' complaints that lack of fire protection, inadequate physical prison facilities, and unsanitary food at the VSP constituted cruel and unusual conditions of confinement.[136] The *Shrader* court, however, applied an unprecedented specific factor analysis to the VSP prisoners' complaint that the threat of danger to prison inmates constituted a cruel and unusual condition of confinement.[137] The specific factor analysis examines

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physical plant, lack of medical care and other factors cumulatively had a negative effect upon WSP prisoners which, in turn, caused high levels of violence. *Id.* The *Hoptowit* court found that the high levels of violence constituted a violation of the eighth amendment. *Id.* at 1250.

130. *See supra* note 124 and accompanying text (explanation of first step involved in application of *Jones* totality of conditions analysis); *supra* note 129 and accompanying text (explanation of first step involved in application of *Hoptowit* individual condition analysis). Both the *Jones* totality of conditions analysis and the *Hoptowit* individual condition analysis begin with an examination of the cumulative effect of factors contributing to a particular prison condition. *Jones*, 636 F.2d at 1373; *Hoptowit*, 682 F.2d at 1249-50.

131. *See infra* notes 132-35 and accompanying text (discussion of difference between *Jones* and *Hoptowit* courts' analyses).

132. *See* supra note 125 and accompanying text (demonstration of *Jones* totality of conditions analysis).

133. *See Hoptowit*, 682 F.2d at 1247 (discussion of use of individual condition analysis in addressing challenges to conditions of confinement). The *Hoptowit* court held that a court must show that a specific condition violates the eighth amendment in order to hold that specific condition unconstitutional. *Id.* Furthermore, the *Hoptowit* court found erroneous the district court's attempt to remedy a condition of confinement that merely contributed to the unconstitutionality of another condition of confinement. *Id.* at 1255-56. The *Hoptowit* court held the specific condition itself must amount to an eighth amendment violation in order for a court to address or remedy the condition. *Id.*

134. *See id.* 642 F.2d at 1249-50 (court considered all factors contributing to threat to inmate safety).

135. *Id.* at 1246-47.

136. *See supra* note 75 and accompanying text (Shrader court examined each condition of confinement including fire hazards, food inadequacy, prison plant inadequacy and inmate safety individually).

137. *Compare Shrader*, 761 F.2d at 980-83 (considering each factor involved in the threat to inmate safety individually in order to determine whether specific factor amounted to eighth amendment violation) *with Hoptowit*, 642 F.2d at 1249-50 (application of individual condition analysis considers cumulative effect of different factors contributing to prison

the constitutionality of each factor of a prison condition in an isolated fashion.[138] In contrast to both the individual condition and totality of conditions analyses, the specific factor analysis fails to consider the cumulative impact of different factors which constitute a particular prison condition.[139] The *Shrader* court's specific factor analysis thus rejects the individual condition and totality of conditions analyses' premises that a condition of confinement is actually an aggregation of several factors.[140]

In contrast, the *Shrader* dissent argued that the individual condition analysis applied not only to the food adequacy, physical plant and fire hazard prison conditions, but also to the condition of the threat to inmate safety.[141] The *Shrader* dissent explained that, as different factors interact with one another, the combination of factors creates a condition of confinement.[142] The *Shrader* dissent argued that courts considering eighth amendment challenges to prison conditions should examine the constitutionality of an aggregation of factors constituting a condition of confinement rather than the constitutionality of each factor contributing to the challenged prison condition.[143] The *Shrader* dissent, however, did not consider the possibility that conditions of confinement which do not individually constitute eighth amendment violations may, in combination, constitute an eighth amendment violation.[144]

Although the *Shrader* court did not consider the possibility that conditions of confinement, in combination, could constitute an eighth amendment violation, application of the totality of conditions analysis results in a more just adjudication of prisoners' challenges to conditions of confinement.[145] Courts that apply the totality of conditions analysis recognize that prison conditions exert a cumulative impact upon the imprisoned.[146] Since the eighth amendment prohibition against cruel and unusual punishment focuses upon

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condition of threat to inmate safety); *Jones*, 636 F.2d at 1373 (court's application of totality of conditions analysis recognizes cumulative effect of different factors upon particular prison condition).

138. *See supra* notes 113-18 and accompanying text (explaining specific factor analysis).

139. *See supra* notes 119-138 and accompanying text (discussing specific factor analysis and other analyses used to examine factors involved with prison conditions).

140. *Id.*

141. *See supra* notes 77-79 (*Shrader* dissent's argument that *Shrader* majority erred in separating factors involved in threat to inmate safety).

142. *Id.*

143. *Id.*

144. *See Shrader*, 761 F.2d at 988 (Sprouse, J., concurring and dissenting). The *Shrader* dissent suggested that the threat to inmate safety at the VSP constituted an unconstitutional prison condition. *Id.* The *Shrader* dissent also concurred with the majority's decision that the prison conditions of fire hazards, food inadequacy and prison facilities are each, individually, adequate constitutionally. *Id.* at 987-88. The *Shrader* dissent, therefore, supported the individual condition analysis. *Id.*

145. *See infra* notes 146-76 and accompanying text (supporting totality of conditions test).

146. *See* Doe v. District of Columbia, 701 F.2d 948, 957 (D.C. Cir. 1983) (conditions of confinement exist in combination and produce certain effects which each condition alone is incapable of producing).

the prisoner's experience, courts must evaluate the constitutionality of prison conditions as the prisoner experiences the conditions rather than in an isolated fashion.[147] For example, the Supreme Court in *Rhodes* held that double celling, as the practice existed at the Southern Ohio Correctional facility (SOCF),[148] did not constitute an eighth amendment violation.[149] The *Rhodes* decision, however, did not foreclose the possibility that the same type of double celling found at the SOCF, combined with other detrimental conditions of confinement not then present at SOCF, might violate the eighth amendment's prohibition against cruel and unusual punishment.[150] The *Rhodes* opinion therefore suggests that a particular condition of confinement, constitutional when considered alone, may contribute to cruel and unusual conditions of confinement when combined with other undesirable prison conditions.[151]

Application of the totality of conditions analysis also enables the judiciary to protect prisoners' rights to be free from cruel and unusual conditions of confinement.[152] A prisoner's primary source of redress for deprivations of an eighth amendment right is the federal judiciary,[153] whose function encompasses the determination and redress of constitutional violations.[154] A court employing a totality of conditions analysis may address and remedy prison conditions that contribute to cruel and unusual confinement within a prison.[155] In comparison, courts that employ the individual condition ap-

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147. *See id.* (holding that courts should consider prison conditions as a whole in order to correctly assess the impact upon the imprisoned); Holt v. Sarver, 309 F. Supp. 362, 373 (E.D. Ark. 1970) (suggesting cumulative impact upon prisoners of prison conditions in combination) *aff'd,* 442 F.2d 304 (8th Cir. 1971).

148. *See Rhodes,* 452 U.S. at 352 (taking account of specific circumstances under which double-celling existed at SOCF).

149. *Id.* at 348-50.

150. *See id.* at 348. The *Rhodes* opinion suggested that double celling, combined with inadequate sanitation, food or medical care, might amount to an eighth amendment violation. *Id.*

151. *Id.* at 347 (holding that conditions, alone or in combination, may amount to an eighth amendment violation). *But see* Hoptowit v. Ray, 682 F.2d 1237, 1246-47 (7th Cir. 1982) (suggesting courts should not literally interpret *Rhodes* language).

152. *See infra* notes 153-62 and accompanying text (demonstrating superiority of totality of conditions analysis for effective examination of cruel and unusual conditions of confinement).

153. *See Rhodes,* 452 U.S. at 358-60 (Brennan, J., concurring) (noting public apathy to plight of prisoners and political powerlessness of prisoners themselves). Justice Brennan, in *Rhodes,* acknowledged that the judiciary is the driving force behind correction of prison deficiencies which violate the eighth amendment. *Id.; see also* Doe v. District of Columbia, 701 F.2d 948, 960 n.14 (D.C. Cir. 1983) (separate statement by J. Edwards) (prisoners are vulnerable and defenseless); Swygert, *In Defense of Judicial Activism,* 16 VAL. U. L. REV. 439, 453-56 (1982) (judicial activism necessary for protection of prisoners' rights).

154. *See* Hutto v. Finney, 437 U.S. 678, 687 (1978) (judiciary's function is to remedy constitutional violations); Ruiz v. Estelle, 679 F.2d 1115, 1145 (5th Cir. 1982) (courts may require only those remedies necessary to correct a constitutional violation), *cert. denied,* 460 U.S. 1042 (1983).

155. *See* Ruiz v. Estelle, 679 F.2d 1115, 1153 (1982) (court may order remedies for conditions that taken together, violate the eighth amendment), *cert. denied,* 460 U.S. 1042 (1983); Jones v. Diamond, 636 F.2d 1364, 1375 (5th Cir. 1981) (using totality of conditions analysis,

proach address and remedy only conditions of confinement that independently amount to a constitutional violation.[156] Use of the individual condition analysis, therefore, presents the possibility that individually constitutional prison conditions which together amount to cruel and unusual punishment will remain unremedied.[157] The failure to afford remedies may result in injustice to the prison population through exposure to unconstitutional prison conditions.[158] The individual condition analysis also presents the possibility that, after a determination that a particular prison condition is unconstitutional, prison administrators will direct resources to remedy the unconstitutional condition and neglect a highly related but individually constitutional prison condition.[159] Remedying one cruel and unusual condition of confinement without remedying a related but individually constitutional prison condition could result in a misallocation of judicial resources should a new suit be brought challenging the related condition of confinement.[160] Judicial resources are more efficiently allocated through a totality of conditions analysis which addresses all the factors that contribute to cruel and unusual conditions of confinement at one trial.[161] The application of the totality of conditions analysis, therefore, is important to a federal court's efficiency and ability to protect prisoners' right to be free from cruel and unusual prison conditions.[162]

The Supreme Court in *Rhodes* suggested that federal courts should exercise judicial restraint and deference to prison administrators and state legislatures in the determination of how America's state and federal prisons should operate.[163] The *Rhodes* decision's theory of judicial restraint centers on the assumption that prison administrators and state legislatures are not

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court orders injunction to correct abuses that contribute to overall unconstitutionality of prisons' conditions of confinement).

156. *See* Hoptowit v. Ray, 682 F.2d 1237, 1263 (7th Cir. 1982). The *Hoptowit* court used the independent condition analysis to reverse the district court's order to the prison to improve a classification system because the inadequacy of the classification system only contributed to an eighth amendment violation, and did not independently amount to an eighth amendment violation. *Id.*

157. *See id.* (court reinstates prison condition that contributed to an unconstitutional prison condition but did not amount to an unconsitutional prison condition).

158. *See* Laaman v. Helgemoe, 437 F. Supp. 269, 322-23 (D.N.H. 1977) (presenting idea that otherwise constitutional prison conditions may, in aggregate, amount to cruel and unusual punishment). Under *Laaman,* if several prison conditions constitute an eighth amendment violation, the remedying of one unconstitutional condition may not resolve the violation. *Id.*

159. *See* Note, *Challenging Cruel and Unusual Conditions of Prison Confinement: Refining the Totality of the Conditions Approach,* 26 How. L.J. 227, 247 (1983) (discussing inequities of independent condition analysis).

160. *Id.* at 249-50 (examining continuing litigation over conditions of confinement in Maryland prison after district court applied individual condition analysis and remedy).

161. *See supra* note 155 and accompanying text (court applying totality test may address all conditions that contribute to an eighth amendment violation).

162. *See id.* (demonstrating federal courts' increased ability to redress eighth amendment violations through application of the totality analysis).

163. *See Rhodes,* 452 U.S. at 352 (suggesting need for judicial restraint concerning prison

insensitive to the constitutional limitations and social aims of the American criminal justice system.[164] According to Justice Brennan's concurring opinion in *Rhodes,* however, state legislatures and prison administrators often are insensitive to constitutional requirements forbidding cruel and unusual prison conditions.[165]

In addition to the doctrine's unsound assumption, the judicial doctrine of deference to prison administrators and state legislatures does not outweigh the constitutional mandate that federal courts must consider prisoners' claims of constitutional violations as well as provide guidance for remedying such violations.[166] For example, in *Martin v. White,*[167] the United States Court of Appeals for the Eighth Circuit expressed extreme dissatisfaction with prison authorities' callous failure to provide prisoners at the Missouri Training Center with protection from violence from other inmates.[168] The prison administrator in *White* had failed to establish adequate patrol procedures and had failed to establish a classification scheme that would aid in determining compatibility between prisoners.[169] In addition, the prison administrator in *White* had failed to conduct examinations of cell locks and had failed to report incidents of inmate upon inmate attacks to the prosecutor

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conditions of confinement claims); *see also infra* note 164 and accompanying text (discussing basis for *Rhodes'* judicial restraint policy).

164. *Rhodes,* 452 U.S. at 352; *See also* Rhodes v. Chapman, 452 U.S. 337, 351 (1981) (courts must remember that judicial function is to enforce constitutional requirements and not to determine best manner in which to operate a penal institution) (quoting Bell v. Wolfish, 441 U.S. 520, 539 (1979)); Procunier v. Martinez, 416 U.S. 396, 404-05 (1974) (solutions to deplorable prison conditions require expert knowledge, comprehensive planning and resource commitment, all of which are within realm of legislative and executive government responsibilities and powers).

165. *See Rhodes,* 452 U.S. at 353, 361 (Brennan, J., concurring). Listing decisions in twenty-four states which held that prison conditions violated the eighth amendment, Justice Brennan wrote a separate opinion to emphasize the indispensability of judicial activism in addressing eighth amendment claims. *Id.; Rhodes,* 452 U.S. at 376 (Marshall, J., dissenting) (citing cases from twenty-four states to support theory that state governments and prison administrators are insensitive to eighth amendment requirements).

166. *See* Procunier v. Martinez, 416 U.S. 396, 405 (1974) (courts have primary responsibility to address constitutional violations); Furman v. Georgia, 408 U.S. 238, 269 (1972) (Brennan, J., concurring) (policies concerning judicial restraint cannot prevent court from performing its duty to address valid constitutional claims). In addition to the right to be free from cruel and unusual punishment, prisoners retain other constitutional guarantees during incarceration. *see, e.g.,* Pell v. Procunier, 417 U.S. 817, 837 (1974) (prisoners entitled to first amendment's guarantee of freedom of speech); Wolff v. McDonnell, 418 U.S. 539, 556 (1974) (prisoners entitled to fourteenth amendment's due process right of security against deprivation of life, property or additional liberty); Cruz v. Beto, 405 U.S. 319, 322 (1972) (prisoners guaranteed first amendment right to freedom of speech); Lee v. Washington, 390 U.S. 333 (1968) (fourteenth amendment equal protection clause protects prisoners from discrimination on basis of race).

167. 742 F.2d 469 (8th Cir. 1984).

168. *Id.* at 473; *see infra* text accompanying notes 169-70 (explaining prison administrators' reckless disregard of danger to inmates).

169. *White,* 742 F.2d at 475.

as required by law.[170] The *White* court noted that the prison administrator's failure to employ preventive policies actually may have encouraged inmate violence.[171] The *White* court suggested that courts faced with facts similar to those presented in *White* should not hesitate to make findings of cruel and unusual conditions of confinement.[172] The *White* opinion demonstrates that the federal judiciary's primary function is to consider and remedy valid claims of constitutional violations.[173]

Federal courts need not fear that the totality of conditions analysis will erode the function of the state legislatures and prison administrators in effecting prison reform.[174] The totality of conditions analysis requires that the judiciary determine whether conditions of confinement are unconstitutional, but the judiciary then may defer to the state legislature and prison administration for the fashioning of remedies.[175] Moreover, federal circuit courts have often limited zealous reforms undertaken through the district courts' applications of the totality of conditions analysis.[176]

The Fourth Circuit in *Shrader v. White,* applying the individual condition analysis, erred in failing to consider the cumulative effect of different factors

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170. *Id.*

171. *Id.*

172. *Id.* at 473. In *Martin v. White,* the Court of Appeals for the Eighth Circuit recognized that judicial attention to prison conditions is indispensable to the enforcement of prisoners' constitutional rights. *Id.*

173. *See supra* note 166 and accompanying text (discussing idea that primary function of federal judiciary is to ensure compliance with the requirements of constitution).

174. *See infra* notes 175-76 and accompanying text (demonstrating courts' deference to legislature on remedy determinations and circuit courts' effectiveness at halting overbroad reforms district courts have undertaken).

175. *See* Bell v. Wolfish, 441 U.S. 520, 562 (1979) (after determining whether eighth amendment violations exist, court should defer remedy determinations to prison officials unless such deference would jeopardize goals of eighth amendment); Jones v. Diamond, 636 F.2d 1364, 1368 (5th Cir. 1981) (role of federal courts is to enforce constitutional requirements of eighth amendment without overseeing jail administration); Dawson v. Kendrick, 457 F. Supp. 1252, 1282 (S.D. W.Va. 1981) (courts must not articulate remedies that are not constitutionally compelled). *But cf.* Ruiz v. Estelle, 679 F.2d 1115, 1145 (5th Cir. 1982) (portions of district court's reparative injunction that did not exceed limits of judicial authority were left intact for purpose of correcting constitutional violations); Finney v. Hutto, 410 F. Supp. 251, 257, 279 (E.D. Ark. 1976) (issuing several directives to prison administrators after repeated failure of prison officials to bring prison conditions within constitutionally tolerable limits) aff'd., Finney V. Hutto, 548 F.2d 740 (8th Cir. 1977) aff'd., Hutto v. Finney, 437 U.S. 678 (1978) *reh'g denied,* Hutto v. Finney, 439 U.S. 1122 (1979).

176. *See* Godinez v. Lane, 733 F.2d 1250, 1262 (7th Cir. 1984) (non constitutionally compelled judicial remedies reversed on appeal); Union County Jail Inmates v. Di Buono, 713 F.2d 984, 1002 (3d Cir. 1983) (overly intrusive remedy reversed on appeal in favor of less intrusive remedy), *cert. denied,* 465 U.S. 1102 (1984); Ramos v. Lamm, 639 F.2d 559, 567 (10th Cir. 1980) (district court's intrusive remedial orders vacated on remand), *cert. denied,* 450 U.S. 1041 (1981).

involved in the threat to inmate safety prison condition.[177] The *Shrader* court thus created a specific factor analysis which the court used to examine each factor of the condition of the threat to inmate safety in isolation.[178] Under the specific factor analysis, the *Shrader* court generally upheld the district court's conclusion that each factor involved in the threat to inmate safety at the VSP met the *Rhodes* eighth amendment standard of constitutionality.[179] In contrast, the *Shrader* dissent suggested that a correct application of the individual condition analysis, which would have examined the cumulative effect of the factors involved in the threat to inmate safety, would have warranted a reversal of the district court magistrate's holding.[180]

Although the *Shrader* dissent's individual condition analysis is a legitimate test to use in examining prisoners' challenges to prison condition of confinement,[181] the totality of conditions analysis ensures a more just adjudication of prisoners' claims.[182] The totality of conditions analysis not only provides insight to the prisoners' entire imprisonment experience[183] but, also promotes judicial effectiveness, judicial economy and the proper function of the judiciary.[184] The Fourth Circuit, after *Shrader,* should apply the totality of conditions analysis to prisoners' conditions of confinement challenges to realistically evaluate the constitutionality of prison conditions and to promote the effective function of the American judiciary.[185]

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177. *See supra* notes 124 & 129 and accompanying text (demonstrating recognition among federal courts that prison condition is merely aggregation of different factors).

178. *See supra* notes 55-74 and accompanying text (Shrader court's application of specific factor analysis to threat to inmate safety prison condition).

179. *See id. But see id.* at 982-83 (Shrader court disagreed with magistrate's reasoning that eighth amendment does not protect prisoners from existence of weapons).

180. *See Shrader,* 761 F.2d at 988 (Sprouse, J., concurring and dissenting). The *Shrader* dissent argued that the VSP inmates proved that the threat to inmate safety at the VSP constituted eighth amendment violation. *Id.*

181. *See supra* note 8 (listing courts apply individual condition analysis).

182. *See supra* notes 145-62 and accompanying text (arguing inherent fairness in application of totality analysis).

183. *See supra* notes 146-47 (explanation and demonstration of totality of conditions analysis' examination of prisoners' entire experiences).

184. *See supra* notes 152-62 and accompanying text (explaining judicial aims furthered through application of totality analysis).

185. *See supra* notes 145-76 and accompanying text (arguing in favor of totality analysis).