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Penal Institutions and the Eighth Amendment - A Broadened Conception of Cruel and Unusual Punishment

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NOTES

PENAL INSTITUTIONS AND THE EIGHTH AMENDMENT—A BROADENED CONCEPTION OF CRUEL AND UNUSUAL PUNISHMENT

Prisoners in the Orleans Parish Prison brought a class action against various officials of the city of New Orleans[1] for injunctive relief alleging that the prison conditions were so deplorable that confinement contravened their right to be free from cruel and unusual punishment. The building was in a state of deterioration[2] and was extremely overcrowded. The number of guards was inadequate, conditions were unsanitary,[3] hospital facilities and medical attention were inadequate,[4] and inmates were continually subjected to bodily injury and sexual attacks by other prisoners.[5] The court stated that it had jurisdiction of the parties and subject matter under 42 U.S.C. § 1983. *Held*, confinement in the prison under the enumerated conditions constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution. The court ordered that the conditions be corrected and that a report of progress be filed within thirty days.[6] *Hamilton v. Schiro*, Civil No. 69-2443 (E.D. La., June 26, 1970).

1. The officials included the mayor, councilmen, superintendent of police, city attorney, superintendent of fire, superintendent of the Department of Health, criminal sheriff, and warden of the Orleans Parish Prison.

2. Ventilation through the entire structure was very poor; inmates were subjected to extreme temperature in summer and winter; the entire structure was infested with rats, mice, roaches and vermin; because of faulty and inadequate plumbing, most of the building and particularly the kitchen was permeated by a foul odor; the deteriorating ironwork was material from which inmates could easily fashion deadly weapons.

3. Some cells only had water from the toilet because of the inoperable condition of the hand bowl; the toilet and hand bowls were so badly corroded and rusted that cleanliness was impossible; inmates were issued mattresses, which were rarely cleaned; in the kitchen plaster had fallen off the walls and tiles were missing; bathing facilities were entirely inadequate.

4. Prescribed medication often never reached the inmate; no survey was made to detect prisoners with contagious diseases; there was no isolation or quarantine area for those with contagious diseases.

5. Other conditions found by the court to exist were that the cells had no interior lighting; outdoor exercise was allowed only once every twenty or thirty days for two to three hours; a constant danger existed that the inmate would lose his life if a fire occurred in the prison; the allotment by the city of $1.25 per diem per person for food, bedding, uniforms, medication, janitors, supplies, kitchen maintenance, laundry equipment, and other needs was not adequate to provide the minimum needs of the inmates.

6. The officials in New Orleans have been very cooperative in trying to remedy the unconstitutional conditions in the prison. In compliance with the court's order to make a progress report within thirty days, the city attorney outlined a seven-point plan to upgrade the parish prison by alleviating overcrowded and unsanitary conditions. The city attorney also reported plans to build a new $12 million prison.

Although some prisoners have applied for relief by a writ of habeas corpus,[7] most allegations that prison conditions were unconstitutional have been brought under the Civil Rights Act first passed in 1871:[8]

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding of redress."[9]

Until recently, the federal courts would not grant relief to prisoners under this act.[10] The courts explained that an assumption of jurisdiction on their part would constitute an unwarranted intrusion into the discipline of penal institutions.[11] This policy of non-interference, referred to by legal writers as the "hands-off doctrine,"[12] left prison officials enormous discretion to define the conditions of imprisonment.[13] But, while accepting the general principle that internal prison management was vested in the heads of those institutions, the courts began to recognize

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7. Glenn v. Ciccone, 370 F.2d 361 (8th Cir. 1966); Kostal v. Tinsley, 337 F.2d 845 (10th Cir. 1964); Roberts v. Pegelow, 313 F.2d 548 (4th Cir. 1963); Sutton v. Settle, 302 F.2d 286 (8th Cir. 1962); Coffin v. Reichard, 143 F.2d 443 (6th Cir. 1944); Johnson v. Avery, 252 F. Supp. 783 (M.D. Tenn. 1966); Fulwood v. Clemmer, 206 F. Supp. 370 (D.D.C. 1962); *Ex parte* Pickens, 101 F. Supp. 285 (D. Alas. 1951). *See* Note, 18 WESTERN RESERVE L. REV. 681 (1967).

8. *E.g.*, Roberts v. Pepersack, 256 F. Supp. 415 (D. Md. 1966). For a comprehensive list of cases brought under the Civil Rights Act and alleging the unconstitutionality of prison conditions *see* 42 U.S.C.A. § 1983 annots. 103-19, 189, 231, 248, 298, 317, 341, 376, 387, 430, 437 (1870). For a very recent decision *see* Palmigiano v. Travisono, 39 U.S.L.W. 2150 (U.S. Aug. 8, 1970).

9. 42 U.S.C. § 1983 (1964).

10. For a complete discussion *see* Hirschkop, *The Unconstitutionality of Prison Life*, 55 VA. L. REV. 795 (1969) and Note, 9 WM. & MARY L. REV. 178 (1967).

11. Startti v. Beto, 405 F.2d 859 (5th Cir. 1969); Cole v. Smith, 344 F.2d 721 (8th Cir. 1965); United States *ex rel.* Atterbury v. Ragen, 237 F.2d 953 (7th Cir. 1956); Eaton v. Bibb, 217 F.2d 446 (7th Cir. 1955), *cert. denied*, 350 U.S. 915 (1955); Siegel v. Ragen, 180 F.2d 785 (7th Cir. 1950); Blythe v. Ellis, 194 F. Supp. 139 (S.D. Tex. 1961).

12. Apparently so named in FITCH, CIVIL RIGHTS OF PRISON INMATES 31 (1961). For discussion of the "hands-off" doctrine prior to 1962, *see generally* Note, 110 PA. L. REV. 985 (1962) and Note, 72 YALE L. J. 506 (1963).

13. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT (1967).

an exception to this general rule in regard to claims alleging infringement of federally created and protected civil rights.[14]

In regard to state prisons, one way the lower federal courts avoided reviewing charges of unconstitutional conditions was by holding that state remedies had to be exhausted before a plaintiff could obtain relief in a federal court under the civil rights statute.[15] But in the case of *Monroe v. Pape*,[16] the Supreme Court declared that state remedies need not be exhausted before federal remedies could be utilized. The courts also avoided complaints concerning state prison conditions when they declared that the Eighth Amendment's prohibition against cruel and unusual punishment was inapplicable to the states.[17] In 1962, in *Robinson v. California*,[18] the Supreme Court applied the cruel and unusual punishment clause of the Eighth Amendment to the states through the Fourteenth Amendment.

After *Robinson v. California*, the question of relief for prisoners based upon the Eighth Amendment depended upon the court's interpretation of cruel and unusual punishment. Since cruel and unusual punishment defied and still defies a concrete definition,[19] the courts had wide discretion. As originally

14. Redding v. Pate, 220 F. Supp. 124 (N.D. Ill. 1963). *See also* Beard v. Lee, 396 F.2d 749 (5th Cir. 1968). As early as 1944, the courts recognized that a person did not lose all of his civil rights when he was incarcerated. Coffin v. Reichard, 143 F.2d 443 (6th Cir. 1944). *See also* Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968); Talley v. Stephens, 247 F. Supp. 683 (E.D. Ark. 1965). It seems that the "hands-off" doctrine still operates to the extent that it prevents judicial review of conditions which are the necessary or reasonable consequence of imprisonment. Bethea v. Crouse, 417 F.2d 504, 506 (10th Cir. 1969). Roberts v. Pepersack speaks of a fine line between mere matters of discipline and the constitutional rights of the prisoner.

15. Pierce v. La Vallee, 293 F.2d 233 (2d Cir. 1961); Siegel v. Ragen, 180 F.2d 785 (7th Cir. 1950).

16. 365 U.S. 167 (1961). This case was reaffirmed in McNeese v. Board of Educ., 373 U.S. 668 (1963). *See also* Wright v. McMann, 387 F.2d 519 (2d Cir. 1967); Hancock v. Avery, 301 F. Supp. 786 (M.D. Tenn. 1969); Miller v. Purtell, 289 F. Supp. 733 (E.D. Wis. 1968).

17. Ruark v. Schooley, 211 F. Supp. 921 (D. Colo. 1962); Blythe v. Ellis, 194 F. Supp. 139 (S.D. Tex. 1961); Bryant v. Harrelson, 187 F. Supp. 738 (S.D. Tex. 1960). However, there were a few cases where federal district courts did take jurisdiction when the prisoner alleged cruel treatment while being held in a state prison. McCollum v. Mayfield, 130 F. Supp. 112 (N.D. Cal. 1955); Gordon v. Garrison, 77 F. Supp. 477 (E.D. Ill. 1948). The courts did not use the Eighth Amendment as their basis of jurisdiction. They were, in effect, creating a new federal civil right. Redding v. Pate, 220 F. Supp. 124 (N.D. Ill. 1963); Blythe v. Ellis, 194 F. Supp. 139 (S.D. Tex. 1961).

18. 370 U.S. 660 (1962), *rehearing denied*, 371 U.S. 905 (1962).

19. Trop v. Dulles, 356 U.S. 86 (1958); Weems v. United States, 217 U.S. 349 (1910); *In re* Kemmler, 136 U.S. 436 (1890); Wilkerson v. Utah, 99 U.S. 130 (1878); Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970); Hancock v. Avery, 301 F. Supp. 786 (M.D. Tenn. 1969).

interpreted,[20] the Eighth Amendment prohibited punishment which was torturous, barbarous, or inhuman,[21] but over the years the courts have broadened the concept of cruel and unusual.[22] This fact is consistent with a declaration made by many courts that the scope of the Eighth Amendment is not static, but receives its meaning from evolving standards of decency.[23]

A striking example of the changing concept of cruel and unusual punishment is illustrated by two cases involving the constitutionality of the use of the strap in the Arkansas penitentiary system. In a case decided in 1965,[24] the federal district court was unwilling to say that the whipping of prisoners was unconstitutional *per se*. The court did stipulate that punishment must be carried out with appropriate safeguards. Only two years later, the United States Court of Appeals for the Eighth Circuit[25] declared that the use of the strap violated the Eighth Amendment of the United States Constitution. In this case a former director of the Federal Bureau of Prisons and the director of the Missouri Division of Corrections testified that corporal punishment had not been used in federal prisons for years and only Mississippi, in addition to Arkansas, used it officially in the state prisons. The final result of these cases

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20. The phrase "cruel and unusual punishment" was originally used in the English Bill of Rights of 1688. It was later included in the Virginia Declaration of Rights adopted in 1776. In 1791 it became part of the Eighth Amendment of the United States Constitution. Note, 36 N.Y.U. L. REV. 846 (1961).

21. Robinson v. California, 370 U.S. 660 (1962) (concurring opinion); *In re* Kemmler, 136 U.S. 436 (1890); Wilkerson v. Utah, 99 U.S. 130 (1878).

22. Rudolph v. Alabama, 375 U.S. 889 (1963); Robinson v. California, 370 U.S. 660 (1962); Weems v. United States, 217 U.S. 349 (1910); Hancock v. Avery, 301 F. Supp. 786 (M.D. Tenn. 1969); Jordan v. Fitzharris, 257 F. Supp. 674 (N.D. Cal. 1966); United States *ex rel.* Bongiorno v. Ragen, 54 F. Supp. 973 (N.D. Ill. 1944), *aff'd*, 146 F.2d 349 (7th Cir. 1944), *cert. denied*, 325 U.S. 865 (1945). For a discussion of the length of the sentence as cruel and unusual punishment *see* Annot., 33 A.L.R.3d 335 (1970).

23. Rudolph v. Alabama, 375 U.S. 889 (1963) (dissenting opinion); Trop v. Dulles, 356 U.S. 86 (1958); Weems v. United States, 217 U.S. 349 (1910); Lee v. Tahash, 352 F.2d 970 (8th Cir. 1965); Goss v. Bomar, 337 F.2d 341 (6th Cir. 1964); Hancock v. Avery, 301 F. Supp. 786 (M.D. Tenn. 1969); Austin v. Harris, 226 F. Supp. 304 (W.D. Mo. 1964).

24. Talley v. Stephens, 247 F. Supp. 683 (E.D. Ark. 1965).

25. Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968). In the lower court the use of an electric shocking device, a teeter board, and whipping on bare buttocks were likewise declared violative of the Eighth Amendment, and these practices were permanently enjoined. The lower court also enjoined "the use of the strap as punishment at the penitentiary until proper and adequate safeguards surrounding its use are provided by those in charge of prison administration." Jackson v. Bishop, 268 F. Supp. 804, 815 (E.D. Ark. 1967).

was that corporal punishment was outlawed in the Arkansas penitentiary system.[26]

Although merely placing a prisoner in solitary confinement has not been considered cruel and unusual,[27] certain conditions aggravating the isolation will cause such incarceration to be violative of constitutional rights.[28] In *Jordan v. Fitzharris*[29] federal relief was granted to a plaintiff who was forced to sleep in the nude on a stiff canvas mat which was placed on a bare concrete floor. The prisoner was deprived at all times of adequate light and ventilation and was provided with no means to maintain his personal cleanliness. He testified that he "was required to eat the meager prison fare in the stench and filth that surrounded him, together with the accompanying odors that ordinarily permeated the cell."[30] While not specifying the exact conditions which must be present to meet constitutional standards, the court said that practices outlined in the American Correctional Association's Manual of Correctional Standards would satisfy the minimum requirements. In *Wright v. McMann*[31] the court, faced with similar facts, described prison conditions as being foul, inhuman, and contrary to concepts of decency and, therefore, violative of the Eighth Amendment. In *Wright*, the court took judicial notice of the directives of the United States Bureau of Prisons[32] but said that these policies would not determine, *ipso facto*, whether state authorities had exceeded the bounds of the Eighth Amendment. However, the court found it "interesting" that the Bureau of Prisons does not permit the conditions alleged in *Wright*.

In *Holt v. Sarver*[33] a federal district court held that Arkansas had failed in its constitutional duty to make sure that

26. Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970).

27. United States *ex rel.* Knight v. Ragen, 337 F.2d 425 (7th Cir. 1964); Roberts v. Barbosa, 227 F. Supp. 20 (S.D. Cal. 1964).

28. Roberts v. Pepersack, 256 F. Supp. 415 (D. Md. 1966).

29. 257 F. Supp. 674 (N.D. Cal. 1966). In a practically identical case, cruel and unusual punishment was also found to exist in Hancock v. Avery, 301 F. Supp. 786 (M.D. Tenn. 1969).

30. Jordan v. Fitzharris, 257 F. Supp. 674, 678 (N.D. Cal. 1966). But on similar facts, no cruel and unusual punishment was found in Roberts v. Pepersack, 256 F. Supp. 415 (D. Md. 1966) .

31. 387 F.2d 519 (2d Cir. 1967).

32. The bureau requires that isolation units be adequately lighted, ventilated, and heated and kept in a sanitary condition at all times; that inmates be deprived of clothing only for medical or psychiatric reasons; and that toilet tissue, toothbrush, comb, etc. be provided. United States Bureau of Prisons, Policy Statement 7400.5 app. A at 2 (Nov. 28, 1966).

33. 300 F. Supp. 825 (E.D. Ark. 1969).

prison conditions were safe and that overcrowded, dirty, and unsanitary isolation cells, permeated by bad odors, are unconstitutional. The court gave the respondent thirty days to report their plans explaining how conditions found to be cruel and unusual would be corrected. After the decree, conditions were improved somewhat, but continuing complaints of the inmates and information that lack of finances had caused prison conditions to deteriorate again prompted the court to give further consideration to the conditions of the Arkansas prison system. Thus, the court examined the conditions again in the second case of *Holt v. Sarver*.[34]

The importance of this second case was recognized by the court. In previous cases only specific practices and abuses had been attacked as violative of cruel and unusual punishment; this was the "first time that convicts have attacked an *entire penitentiary system* in any court, either State or federal."[35] To determine if the confinement violated the Eighth Amendment, all the different aspects of penitentiary life were considered. Although the overcrowding in the isolation cells had been corrected, the cells were still dirty and unsanitary. The abuses of the trustee system[36] and the life in the barracks were found to be intolerable. There were no precautions to prevent sexual assaults, fights, stabbings, and killings which continually occurred within the penitentiary. Conditions in the barracks were made worse by the fact that inmates had access to liquor, beer, and drugs. Other practices existed which were not in themselves unconstitutional but which aggravated the more serious defects. The medical and dental standards were considered substandard by the court, as were the sanitary conditions in the kitchen. The lack of a rehabilitation program also

34. 309 F. Supp. 362 (E.D. Ark. 1970).

35. *Id.* at 365. (Emphasis added.)

36. While not questioning the propriety of according trustee status to deserving convicts, the trustee system in the Arkansas prison was found to be *sui generis*. The trustees ran the prison, performed many administrative tasks as well as guarding other inmates, had access to prison records, and even had telephone communications with the outside world. The trustees had great authority over the other inmates. The court felt that the trustee guards had the power of life and death over other prisoners. A guard could murder another inmate with practical impunity, and the danger of such an event happening was always present. The trustees sold favors, easy jobs, and coveted positions. Since they controlled the slaughter house, the kitchen, and the prison store, the trustees were able to steal food and other products to sell to fellow inmates. The trustees had broad privileges concerning leaving the farms. They often returned with weapons, liquor, and drugs which they sold to certain inmates at high prices. *Id.* at 373-76.

became a factor. The court concluded that the Fourteenth Amendment prohibits confinement under these conditions and held that the Arkansas Penitentiary System was unconstitutional in its present state.

The result in *Hamilton v. Schiro*[37] parallels that of the Arkansas Federal District Court in *Holt*. Reaffirming the declaration made in *Monroe v. Pape*,[38] the federal court for the eastern district of Louisiana said in *Hamilton* that prisoners need not exhaust state remedies before relief in a federal district court based on 42 U.S.C. § 1983 was available. The court recognized that a state prisoner has the right to be free from cruel and unusual punishment and asserted that the federal courts would intervene in matters of prison administration to protect this right. Like *Holt*, *Hamilton* did not declare specific practices and abuses of prison life unconstitutional. The judge listed areas in which the prison was deficient and considering all of these facts together declared that the prisoners' confinement in Orleans Parish Prison constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

In recent years, judges have spoken of punishment which "shocks the conscience" as violating the Eighth Amendment.[39] *Hamilton* followed these cases by stating that confinement in the Orleans Parish Prison "shocks the conscience as a matter of elemental decency." But the judge in the instant case added that the conditions were "more cruel than is necessary to achieve a legitimate penal aim." This language has been used in lower court decisions[40] but has never commanded the concurrence of a majority of the Supreme Court.[41]

To apply this test, it is initially necessary to determine what constitutes a legitimate penal aim. There seems to be conflicting opinion as to the primary purpose of prisons. Some penologists believe that punishment for the crime and protection to the

37. Civil No. 69-2443 (E.D. La., June 26, 1970).

38. 365 U.S. 167 (1961).

39. Louisiana *ex rel.* Francis v. Resweber, 329 U.S. 459 (1947); Bethea v. Crouse, 417 F.2d 504 (10th Cir. 1969); Lee v. Tahash, 352 F.2d 970 (8th Cir. 1965); Hancock v. Avery, 301 F. Supp. 786 (M.D. Tenn. 1969); Jordan v. Fitzharris, 257 F. Supp. 674 (N.D. Cal. 1966).

40. Hancock v. Avery, 301 F. Supp. 786 (M.D. Tenn. 1969); Jordan v. Fitzharris, 257 F. Supp. 674 (N.D. Cal. 1966) .

41. Rudolph v. Alabama, 375 U.S. 889 (1963) (dissenting opinion); Robinson v. California, 370 U.S. 660 (1962) (concurring opinion).

public are the major objectives.[42] But as early as 1870, reformation rather than punishment was considered to be the ultimate goal.[43] Any or all of these objectives could be considered by the courts as legitimate penal aims. Thus, it would be possible for a court using the "legitimate penal aim" test to say that rehabilitation is the only legitimate aim. Theoretically, such a determination would allow courts to declare a prison unconstitutional simply because it lacked a rehabilitation program. It is submitted that the importance of rehabilitation in a prison should not be de-emphasized by the state and local authorities, but the courts would be expanding the interpretation of cruel and unusual greatly if the lack of such a program were allowed to influence their decision. The Eighth Amendment forbids *cruel and unusual punishment.* Presumably, it does not give the courts the power to determine the penal aims of prisons. Such a determination would seem to be an intrusion by the federal courts into an area which should be left to the state and local governments. For these reasons, the use of the "legitimate penal aim" test in the *Hamilton* case was unfortunate and should be rejected by courts in the future.

The only time that rehabilitation has been considered in determining the constitutionality of prison conditions was in the case of *Holt v. Sarver.*[44] The court stated that the absence of an affirmative program of rehabilitation has not "yet" been considered as causing confinement in such a prison to be unconstitutional. However, the lack of a rehabilitation program was considered to have constitutional significance where the other conditions and practices were working contrary to reform and rehabilitation. Actually, the reference to rehabilitation in *Holt* was unnecessary to that decision, and for the reasons previously stated it is felt that the court was unwise to engage in a discussion of this matter.

A difficult problem is the enforcement of the orders to correct unconstitutional conditions. At least one judge has threatened that "[u]nless conditions at the Penitentiary farms are brought up to a level of constitutional tolerability, the farms

42. Holt v. Sarver, 309 F. Supp. 362, 379 (E.D. Ark. 1970).

43. For discussion, *see* Note, 9 WM. & MARY L. REV. 178 (1967). A recent Louis Harris and Associates poll of a national sample of correctional personnel showed that rehabilitation is still considered to be the number one goal of correction. Cohn, *Managing Change in Correction,* 15 CR. & DELINQ. 219 (1969).

44. 309 F. Supp. 362, 379 (E.D. Ark. 1970).

can no longer be used for the confinement of convicts."[45] This strong language would indicate that prisoners would have to be released if the state would not or could not correct the unconstitutional conditions. It is hoped the federal courts can find a better method to enforce their decisions than threatening an action which, if carried out, would create greater problems than the situation they are trying to remedy. The courts can require the submission of a plan explaining how and when the cruel and unusual conditions would be eliminated.[46] The court also has the power to initiate its own plan.[47] The injunctive and contempt powers are both available to see that the orders are carried out.[48]

In *Holt* the state officials, while admitting the prison conditions were bad, claimed they were doing the best they could with extremely limited funds. The court recognized the financial handicaps, but this contention by the state officials did not prevent the court from declaring the prison system unconstitutional and ordering appropriate corrective measures to be taken "with all reasonable diligence."[49] The Supreme Court decision of *Griffin v. County School Board of Prince Edward County*[50] seems to stand for the proposition that when a constitutional right is violated, the federal courts have the power to require the appropriate state or local agency to raise funds to remedy the situation. In the case of an unconstitutional state or local prison, this would involve requiring the legislature or local governing body to raise and to appropriate the necessary funds.

45. *Id.* at 383. The court repeated this threat by saying that "[i]f Arkansas is going to operate a Penitentiary System, it is going to have to be a system that is countenanced by the Constitution of the United States." *Id.* at 385. *See also* Bryant v. Hendrick, 7 CRIM. L. R. 2463 (Phil. Ct. of Common Pleas 1970).

46. Hamilton v. Schiro, Civil No. 69-2443 (E.D. La., June 26, 1970); Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970); Holt v. Sarver, 300 F. Supp. 825 (E.D. Ark. 1969).

47. *See* McCarrick, *Desegregation and the Judiciary: The Role of the Federal District Court in Educational Desegregation in Louisiana*, 16 J. PUB. L. 107 (1967).

48. *Id.*

49. Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970).

50. 377 U.S. 218 (1964). The county tried to avoid desegregation by closing the public schools and giving financial aid to white children in private schools. Justice Black, writing for the court, stated that the district court "may if necessary to prevent further racial discrimination require the Supervisors to exercise the power that is theirs to levy taxes to raise funds adequate to reopen, operate, and maintain without racial discrimination a public school system in Prince Edward County like that operated in other counties in Virginia." Id. at 233. Justices Clark and Harlan concurred in the opinion but disagreed with Justice Black's contention that the court had the power to reopen the public schools in Prince Edward County.

The cases of *Holt* and *Hamilton* are a natural extension of the broadening interpretation by the federal courts of cruel and unusual punishment. The importance of these cases in Louisiana today is illustrated by a recent decision of the United States Court of Appeals for the Fifth Circuit. The circuit court ordered the United States District Court for Eastern Louisiana to hear the complaint of an inmate of the Louisiana penitentiary at Angola who alleged that the conditions on death row violate his constitutional guarantee against cruel and unusual punishment. The plaintiff complained that death row inmates were subjected to roach-infested food, rusty drinking water, and filthy living conditions. The court said: "Although federal courts are reluctant to interfere with the internal operation and administration of prisons, we believe that the allegations appellant has made go beyond matters exclusively of prison discipline and administration; and that the court . . . should adjudicate the merits of the appellant's contentions of extreme maltreatment."[51]

Hopefully, the result of cases such as these will be the elimination of the deplorable conditions that exist in many local and state prisons. It must be remembered that in some cases the courts were forced to move into this area because the state and local governing bodies did not appropriate adequate funds to allow prison officials to meet the prison needs. These governing bodies should recognize the importance of suitable prisons to our society and meet their obligations in this matter.

Felix Richard Weill

PROHIBITED SUBSTITUTIONS V. THE LOUISIANA TRUST CODE

By last will and testament Mrs. Kate Crichton Gredler provided for two trusts, each to comprise one-half the residue of her succession in favor of two of her nephews.[1] The testatrix then expressed the intention that upon the termination of each trust, if the named beneficiary thereof were not living, the trust assets were to be delivered free of trust to the child or children of the deceased beneficiary, and in the absence of a living child or children, to successively named alternate bene-

51. Sinclair v. Henderson, No. 30025 (5th Cir., Nov. 17, 1970).

1. The first-named beneficiaries stated that they were beneficiaries of both income and principal in accordance with the intent of the testatrix. The terms of the will imply this to be correct.