Federal Probation

JOURNAL

Mission of the Federal Bureau of Prisons

It is the mission of the Federal Bureau of Prisons to protect society by confining offenders in the controlled environments of prison and community-based facilities that are safe, humane, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

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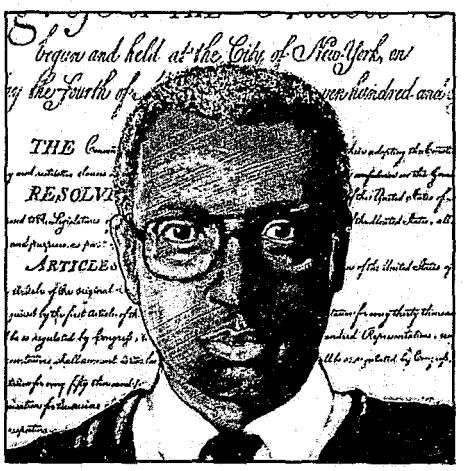


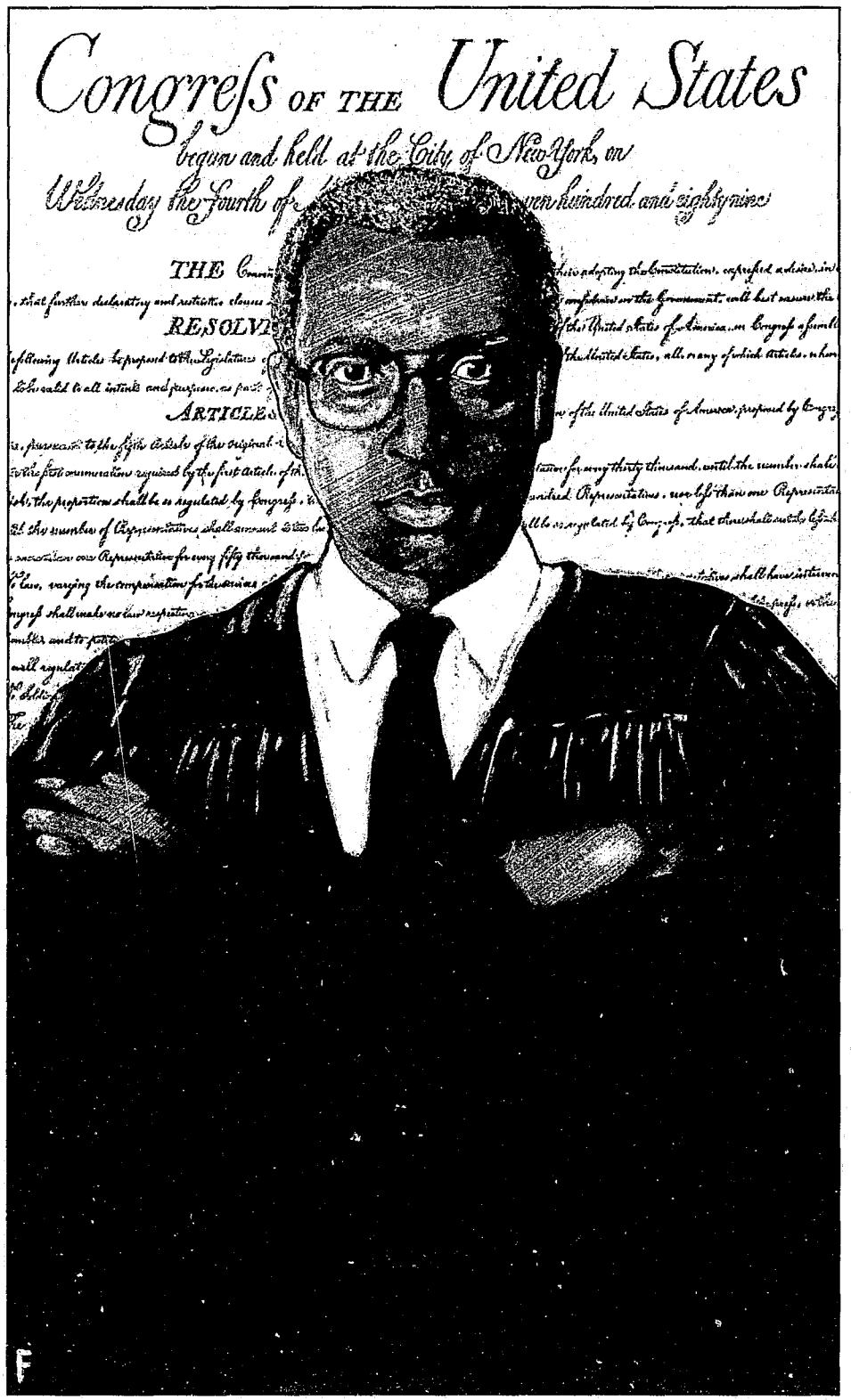
Conditions of Confinement Suits

What has the Bureau of Prisons learned?

Scott Styles

For more than 60 years the Federal Bureau of Prisons (BOP) has succeeded in avoiding major judicial intervention to correct conditions of confinement in its facilities. In contrast to many State correctional systems, the BOP has effectively implemented policies and procedures to address conditions of confinement that could potentially lead to serious litigation. These measures have made it difficult for inmates to prove that conditions of confinement in Bureau facilities are unconstitutional.

As the Bureau enters a new decade, however, and with no abatement in the increase of the inmate population in sight, common sense recommends an increase in vigilance over conditions in BOP facilities. If the Bureau cannot remain one step ahead of litigation, then it will jeopardize what it takes pride in maintaining: credible, independent management. Reviewing State facilities' experiences with conditions of confinement suits, and those of the Bureau, can provide insight into how the Bureau might preserve its reputation and avoid judicial intervention.



History of judicial intervention

Before the 1960's, courts did not view it as their province to intervene in the internal affairs of America's prisons. Inmates whose grievances were not settled by their wardens could not expect sympathy from the courts. As recently as 1954, courts commonly held in favor of administrators, as the Federal circuit court did in *Banning v. Looney*: "[judges do not have] the power to supervise

prison administration or to interfere with ordinary prison rules or regulations.[1]" Keeping hands off was expected.

With the civil rights era of the 1960's, however, suits filed by inmates received increased judicial attention. Federal courts began to recognize inmates as a class whose rights were protected by the First, Fifth, Eighth, and Fourteenth amendments. In 1962, the district court in *Fulwood v. Clemmer* found isolation for 2 years in solitary confinement "cruel and unusual." Twelve years later, in *Wolff v. McDonnell* (1974), the Supreme Court entered a decision that stated clearly its position on inmate rights:

"...though his rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country."[2]

Into the '80's, judicial perspectives continued to evolve. Judges began to carefully evaluate claims that conditions in certain correctional facilities abridged the constitutional rights of inmates.

Correctional officials, in turn, began to believe that this new judicial involvement could lead to changes in their management practices. They worried whether judicial scrutiny would prevent them from achieving traditional goals of inmate management—keeping inmates busy, keeping them from injuring staff, and keeping them from injuring themselves. They soon discovered, however, that if they employed constitutionally questionable means of accomplishing these goals, they would no longer be exempt from judicial intervention.

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***Wolff v. McDonnell* (1974)**

In the early '70's, public interest groups such as the American Civil Liberties Union (ACLU), undaunted by the courts' historical indifference to the concerns of inmates, rose to the fore and expressed their opposition to the mistreatment of inmates by taking legal action. Inmates with unresolved grievances found the ACLU's National Prison Project ready to assist them with legal advice-and representation. The Project helped spawn a wave of lawsuits aimed at securing humane treatment and livable environs for inmates at State facilities.

Court responses

As the number of conditions suits grew throughout the '70's, so did conflicts for the courts, particularly in trying to establish fair remedies for aggrieved inmates. Having had little or no knowledge of the operations of correctional institutions, courts had difficulty convincing administrators of institutions alleged to have violated the Eighth Amendment against "cruel and unusual" punishment that remedial action would be fair to them. Many State prison officials thought the courts were biased and resisted measures that would change the ways in which they traditionally operated their facilities.

Today, debates continue over the scope of the courts' remedial power and how they should interpret the Constitution. Nationwide, most correctional officials acknowledge that a court can implement remedies, but believe that unless it is done prudently, prison administrators will have to sacrifice autonomy to comply with the Constitution—a sacrifice they would prefer not to make.

Each of the following cases, *Ruiz v. Estelle, Black v. Ricketts, and Occoquan v. Barry,* is an example of what field officials characterize as "intrusive" judicial intervention: the appointment of a Special Master, the signing of a consent decree, or the imposition of a population cap. Even though all were State cases, they provide insight into what kinds of intervention could befall Federal facilities as well.

***Ruiz v. Estelle* (Special Master)**

In June 1972, David Ruiz filed a handwritten lawsuit against the Texas Department of Corrections (TDC). He alleged that conditions of confinement were unconstitutional in his institution and throughout facilities operated by TDC. Other inmates joined his cause in 1974, forming a large class of inmate-plaintiffs. Six years later and after heated confrontations with representatives of

TDC, Federal District Judge William Wayne Justice ruled in agreement with the plaintiffs. In what became the largest conditions of confinement suit in American history, Justice ordered a massive restructuring of TDC's operational policies and procedures.

To redress overcrowding, the use of inmates as guards, inadequate medical care, and brutality against inmates, Justice appointed a Special Master to oversee compliance with his order. Until March 1990, when he was removed, the Special Master had reported to Justice the state of TDC's progress toward operating a constitutional system. Proponents of masterships have argued that without a special agent serving as the "eyes and ears of the court," TDC would never have changed for the better, given the extent of its problems and its reluctance to cooperate with plaintiffs' attorneys. TDC officials, on the other hand, characterized the appointment of a special master as prejudicial and intrusive. They wanted to fix their own problems in their own ways, without third-party oversight.

***Black v. Ricketts* (consent decree)**
A consent decree is a settlement agreement, with the authority of a judicial order, between litigants in a lawsuit. In conditions of confinement cases, they are usually negotiated agreements as to how the prison should be managed in the future.

In early 1984, a group of prisoners led by Charles Black filed suit against the Arizona Department of Corrections, charging that conditions in the administrative segregation unit were oppressive. Cells were filthy, infested with vermin, and lacked light and adequate plumbing.

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Inmates were beaten by guards and subject to random rectal cavity searches under the pretense of security. After about a year and a half of litigation and partial settlements, the parties reached a final settlement in May 1985. The court signed the agreement into a consent decree the following month.

The agreement outlined how the facility intended to uphold the constitutional rights of inmates placed in the administrative segregation unit. Recognizing that managing a prison is no easy task, the parties agreed to allow the Arizona Department of Corrections to make modifications in its policies and procedures at any time, provided they were consistent with the principles of the decree. The burden would be on the *plaintiffs* to show that a change in policy would be detrimental to those inmates affected. Such a policy modification "[would] not be invalidated, even upon a conclusion of substantial detriment, if defendants establish that such a policy is necessary to the operation of the administrative segregation unit," read the decree. The Department of Corrections would therefore have ample room to administer its facilities in the manner it deemed appropriate—at least on paper. As we will see when the General Counsel of the BOP has his word, signing consent decrees in conditions of confinement cases is not always in the best interests of correctional facilities.

***Occoquan v. Barry* (population cap)**
In 1986, inmates housed at the Lorton Correctional Complex filed suit against the District of Columbia Department of Corrections, alleging that conditions at its Occoquan facilities violated the Fifth and Eighth amendments. Inmates cited deficiencies in areas not limited to medical services, safety, and food preparation, and that when considered alone or in combination abridged their constitutional rights. After review of the available facts and applicable standards, the District Court held that "overcrowding and systemically deficient conditions constituted cruel and unusual punishment justifying equitable relief." *Occoquan v. Barry*, 650 F. Supp. 619 (D.D.C. 1986).

Imposing a population cap on the Occoquan facilities, argued the Court, would be the most effective means of addressing the complaints while not interfering with the administration of the facilities in question. The cap would not improve conditions to the point where inmates lived comfortably (see *Rhodes v. Chapman*, 452 U.S. at 347, 101 S.Ct. at 2399), but to where the already existing restrictions on their quality of life would not be exacerbated by a lack of resources

available to meet their daily needs. The Court maintained that it was within its equitable power to issue a cap, and required the defense to submit a plan for complying with the cap and periodic written assessments of its progress toward full compliance.

The Appellate Court did not share this analysis. It criticized the District's use of standards formulated by professional organizations and concluded that the District had overstepped its equitable authority by imposing a population cap. Constitutional violations found by courts should be addressed by remedies tailored to each problem specifically, not broadly. Only if a causal connection between overcrowding and unconstitutional conditions could be proven should the courts even consider establishing population limits. As many correctional officials and legal counsel would agree, population caps should be not a first initiative, but a last resort.

The Bureau's experience

The Bureau has not experienced a similar degree of court intervention, but not because fewer conditions suits have been filed against it. The Bureau is sued virtually as often as States are, yet is able to have most cases dismissed or settled. When cases have gone to trial, the overwhelming majority have been decided in the Bureau's favor, *Bell v. Wolfish* (1979) being a prime example. Exceptions have been few, but a recent case resolved on grounds less desirable than *Wolfish* is *Loe v. Smith.* Reviewing the circumstances of each can provide insight into conditions of confinement cases involving Bureau facilities.

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Bell v. Wolfish

In 1977, pretrial detainees filed suit charging that the living conditions and confinement practices at the Federally operated Metropolitan Correctional Center (MCC) in Manhattan were unconstitutional. Detainees complained that they had to live with others in cells built only for one. They had not been found guilty of a crime, yet still had to, in some cases, share space with those who had. This practice flouted the principle "innocent until proven guilty," was an invasion of privacy, and violated the Fifth Amendment's due process clause. Although the District and Appeals Courts ruled in favor of the plaintiffs, their success was short-lived after the Supreme Court decided it would hear the case.

In 1979, the Supreme Court struck down the lower courts' rulings, arguing that the "confinement of two inmates in individual rooms originally intended for single occupancy did not deny due process." Contrary to the lower courts' rulings, the Supreme Court held that correctional facilities did not have to prove that there was a "compelling necessity" to justify double-bunking. Instead, any rational action fulfilling a legitimate incarcerative interest (i.e., ensuring the detainee's presence at trial) was adjudged legally permissible. The Supreme Court reasoned that double-bunking did not amount to punishment, particularly when virtually all inmates were to be released in 60 days, and thus did not violate the Fifth Amendment.

Wolfish was quite a victory for the Bureau. It essentially affirmed the ability of a BOP facility to house—humanely—more inmates than its rated capacity. According to the Court of Appeals, the MCC represented the "architectural embodiment of the best and most progressive penological planning." Detainees were not confined two to a cell for longer than 7-8 hours at a time (sleeping hours); they were free to move about their rooms and common areas during the rest of the day. The horrors of confinement and overcrowding some State facilities had experienced had not been visited upon the MCC. Management had kept conditions in the facility above constitutional standards. This accomplishment, though, was not true in one of its sister facilities to the south.

Loe v. Smith

In early 1984, Richard Loe (and later Jorge Morales-Alphonso), on behalf of all inmates confined at the U.S. Penitentiary, Atlanta, Georgia, brought suit against Attorney General William French Smith et al. Loe alleged that conditions of confinement violated the First, Fifth, Sixth, Eighth, and Fourteenth amendments. Among other problems, access to existing law libraries was poor, educational and vocational opportunities were

few, housing resources (bedding, clothing, recreational materials) were inadequate, food was prepared in unsanitary conditions, and there was a lack of trained physicians and mental health staff.

After evaluating the facility themselves and studying the complaint, the U.S. Attorney's Office and BOP counsel from the southeast region began to prepare the defense. Counsel contended that plaintiffs (mostly Cuban) were difficult to control. They caused many of their own problems: they assaulted staff, threw feces at guards, and lit fires. Did this environment not constitute chaos, which produced an overwhelming level of stress on all staff and led to their inability to maintain constitutional conditions of confinement? If so, should the staff not be excused? Even though this argument might have been soundly reasoned, it did not mitigate the fact that inmates lived in conditions that warranted serious attention.

Clearly, USP Atlanta had not been expecting such a sudden increase in inmates and its concomitant challenges for management. Regional Counsel Wally Cheney was presented with a dilemma: either go to court and risk losing the case, or negotiate a consent agreement and risk having the Atlanta staff lose control over some areas of prison operation. He chose the latter. He comments in retrospect:

"I think it was the best decision to sign it, but I regret having to sign it...I wish that we had not had to sign it, but unfortunately if we had gone to court we would have come out worse than if we had signed a consent decree. There were definitely some potential constitutional problems...."

The Bureau has historically had a good relationship with the courts... because the Bureau has traditionally exhibited a willingness to cooperate and accept suggestions.

Signing the agreement seemed the only viable option at the time.

Today, the General Counsel's office would have serious reservations about signing a consent order itself or allowing one to be signed on the regional level. Only as a last resort and with the presumption that it was the "lesser of two evils" would the Office even entertain the idea of negotiating a settlement. Beyond the fact that the Department of Justice discourages such settlements, there is another reason for the BOP not to be party to them, says Cheney:

"[...the main issue is flexibility.] A consent order eases the plaintiff's ability to get back into court, charging that the defense was in contempt (e.g., not delivering mail on a regular basis)."

Consent agreements not only curtail the autonomy of management, but allow further potentially unfavorable litigation in the future, if—for whatever reason—the facilities at issue could not abide by them.

Why has the Bureau done so well?

Fortunately, the Bureau has not had to worry much about avoiding consent agreements because it has not had to litigate many serious conditions of confinement suits. Its relationship with the courts, its self-evaluation mechanisms and policies, and its overall outlook on corrections have guided it through narrow legal straits largely unscathed.

Relations with the courts

The Bureau has historically had a good relationship with the courts, not just because inmates have filed unsubstantiated lawsuits against the Bureau, but because the Bureau has traditionally exhibited a willingness to cooperate and accept suggestions. When courts have recommended that the Bureau take pretrial action to make adjustments in the management of a particular facility, it frequently has.

Over the last 20 years, Directors Carlson and Quinlan have invited judges to visit and comment on facilities at their leisure, both when cases were pending and when they were not. Judges have found that visiting facilities shatters their preconceived notions about conditions of confinement. Debunking myths about prison life has also built a foundation of understanding between the courts and the Bureau, so that claims made by plaintiffs can be put into proper context. Over time, a mutual respect has developed: each side is aware of what the other expects.

Still, conflict and disagreement have not completely disappeared, only ignorance and animosity, feelings that impede a fair, unbiased relationship between the courts and corrections.

Program reviews

At the macro level, the Bureau's Program Review Division oversees all Bureau operations and programs; at the institutional level, wardens and their executive staff monitor their own facilities. Program reviews help each institution operate in a manner consistent with Bureau policies and procedures. If, for example, a reviewer finds inoperative thermostats that subject inmates to extremes of temperature, he or she reports to the warden and field staff so that remedial measures can be expediently taken. Without this level of oversight, corrective action might take longer to implement. Inmates impatient with the pace of change might then bring suit. The Program Review Division keeps the field and headquarters apprised of standards of living in Bureau facilities and helps facilitate correction of deficiencies before they get worse.

Administrative remedies

Before an inmate files a formal grievance, Bureau policy requires that he or she first try and resolve the matter informally with staff. If the correctional counselor does not offer a remedy the inmate thinks sufficient, the inmate may then enter into the formal grievance process.

Inmates who do not exhaust all means within the Bureau for settling their grievances usually have their cases dismissed by judges. On the other hand, institutions that insincerely address concerns raised by inmates usually do not get very far before a judge suggests settlement or the case goes to trial. While an institution cannot take all claims as urgent directives, it must ensure that if a case goes to trial, it can defend the measures it took to address the inmate's complaints.

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The Legal Department

The General Counsel's Office oversees all legal affairs of the Bureau and serves to guide Regional Counsel if any "conditions" suits arise. Through its monthly newsletter, the General Counsel's Office communicates with the field about current and future legal issues.

When a conditions suit is filed, attorneys at the particular institution or at the Regional Counsel's Office handle the litigation. They may visit the facility, take statements and affidavits from staff and inmates, and look for witnesses. Depending on the gravity of the suit, the attorneys would first try to convince the court to dismiss it. If there were potential for genuine legal conflict, they would then attempt to craft a mutually acceptable resolution. If efforts at resolution failed, they would probably go to trial.

One question consistently asked by field staff is "How might we avoid going to court altogether?" As General Counsel Cheney comments, "We need to convince those in the field to use legal counsel more often and to consult with us when legal issues might be at stake in any policy decision. The staff needs to recognize the legal issues before they 'bite' them."

Information resources

Centralized repositories of data provide direct information on living environments and trends for prison managers.

Beyond attempting to control population as a way to prevent conditions suits, the Bureau has established ways of collecting and evaluating objective and subjective data on its facilities. Key Indicators/ Strategic Support System is a computer data base that provides statistical and trend information on a selected facility over time. Being able to monitor the population is an important asset, but perhaps the most significant data this system could provide managers worried about conditions suits is how frequently inmates file certain categories of complaints for administrative remedies. Do

inmates file more complaints about the medical care than about the staff, for example? If so, managers would want to assure themselves that they could defend the facility against a suit alleging poor medical care.

The Prison Social Climate Survey was formulated to measure how inmates feel about their living conditions. Questions cover a broad range of subjects: How many times do you think an inmate was physically injured in an assault, not involving a weapon, by one or more inmates? How often have insects, rats, mice, dirt, or litter been a problem in the housing units? Do you think the administrative remedy procedure affects the quality of life at this prison? The answers to such questions are indispensable information to correctional managers. When field staff better understand how inmates think, they will know how to better handle complaints and maintain inmate-staff harmony within their institutions.

Looking to the future

If the Bureau has not historically been involved in major conditions of confinement litigation, has a good relationship with the courts, and has self-evaluation mechanisms that work well, to what extent should it worry about conditions of confinement suits that may lie ahead? The easy answer is that it should always worry about being sued on legally defensible grounds; a more complete answer must be based on current projections and trends.

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Inmate population is a key factor, among others, in predicting the numbers of conditions of confinement suits that might be filed. Where institutions have populations that greatly exceed their rated capacities, one might assume that inmates would file a larger than average number of suits, of which more would need to be taken seriously. This logic has held true more on the State level than on the Federal.[3]

The latest figures project 100,000 inmates in Bureau facilities by 1995. More inmates invariably place more strain on an institution's resources. The importance of dedicated field staff cannot be overstated; if they lose pride in their jobs, conditions might deteriorate, and inmates might grow displeased with their living conditions and feel justified in bringing suit.

Although problems will arise, there is reason to be optimistic, says General Counsel Wally Cheney: "We've been through the worst, with the Mariel Cubans, and now we expect an average workload for the foreseeable future. We are optimistic that we will not get burned, but we don't know for sure...we're cautious...we are all shocked that it has not been worse...we have been lucky."

Maybe not "lucky," but "committed" is the correct term. The Bureau has been sincerely committed to providing its inmates with normalized living conditions. It has every reason to expect it can continue to promote conditions of confinement that all staff, courts, and even inmates can respect. ■

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Notes

1. DiIulio, John, *Courts, Corrections and the Constitution.* Oxford: 1990, p. 8.

2. Jack E. Call, "Recent Case Law on Overcrowded Conditions of Confinement," *Federal Probation,* p.23-32, 1983.

3. For a comprehensive examination of overcrowding and judicial intervention, see "Prison Crowding and Court Ordered Population Caps: Report to the President," Department of Justice, February 1990, p. 1-43; appendices.