CONSTITUTIONAL LAW—PRISONERS' RIGHTS—PRISON REGULATIONS CONSTITUTIONALLY VALID IF REASONABLY RELATED TO LEGITIMATE PENOLOGICAL INTERESTS—*Turner v. Safley*, 107 S. Ct. 2254 (1987).

Over the past several years, courts have witnessed an increase in constitutional challenges to prison regulations.[1] Faced with this expansion, they have deferred to the judgment of prison

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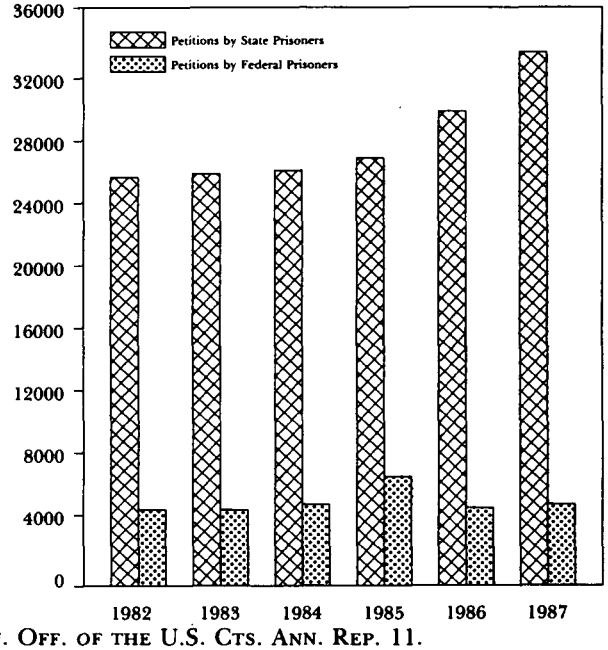
1 PETITIONS FILED BY STATE AND FEDERAL PRISONERS 1982 Through 1987



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The increase in prisoner filings is partly attributable to the fact that the prisoner's right of access to the courts has been afforded great protection. *See* Valentine v. Beyer, 850 F.2d 951 (3d Cir. 1988). In *Valentine*, the Third Circuit recently affirmed the district court's granting of a preliminary injunction in favor of inmates at Trenton State Prison regarding prisoner access to the courts. *Id.* at 958. In legal access claims, "[t]he central inquiry in determining if the proposed legal access program withstands constitutional scrutiny is whether *adequate assistance from persons trained in the law is made available to prisoners who do not have access to [a] law library*." *Id.* at 956 (citing Bounds v. Smith, 430 U.S. 817, 828 (1977)) (emphasis added). "An untrained legal research staff is insufficient to safeguard an inmate's right of access to the courts." *Id.* (citations omitted).

This increase may also be the consequence of courts liberally construing prisoner complaints. *See* Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam) ("[A]llegations of [a] *pro se* complaint [are to be held] to less stringent standards than formal pleadings drafted by lawyers."). Additionally, this increase may be attributable to the prisoner's ability to file complaints without paying court costs. *See* 28 U.S.C. § 1915(a) (1982). This section provides:

authorities in the sensitive area of prison administration.[2] While

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> Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.
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> An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

Id.

Furthermore, in order to maintain a cause of action in district court, an inmate need only allege under 42 U.S.C. § 1983 (1982) that he was deprived of his constitutional rights by a defendant acting under color of law. Gomez v. Toledo, 446 U.S. 635, 638 (1980). *See also* West v. Atkins, 108 S. Ct. 2250, 2255 (1988) ("To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law."). Thus, inmates must allege facts in their complaints which rise to constitutional dimension. For example, in order to state an eighth amendment claim, the inmate must allege a deliberate indifference to his serious medical needs. *See* Estelle v. Gamble, 429 U.S. 97 (1976). Following *Estelle*, the Third Circuit has noted that this standard is satisfied when "the medical needs [are] *serious*, and the defendant's response [is] *deliberate indifference*." Hamilton v. Roth, 624 F.2d 1204, 1207 (3d Cir. 1980) (emphasis in original). In addition, the Third Circuit has held that "[a]ppropriately [the *Estelle*] test affords considerable latitude to prison medical authorities in the diagnosis and treatment of the medical problems of inmate patients. Courts will 'disavow any attempt to second-guess the propriety or adequacy of a particular course of treatment . . . [which] remains a question of sound professional judgment.' " Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979) (quoting Bowring v. Godwin, 551 F.2d 44, 48 (4th Cir. 1977)). It is clear, then, that alleged negligence on behalf of the defendant is insufficient to maintain a cause of action pursuant to § 1983. *See* Daniels v. Williams, 474 U.S. 327 (1986).

[2] *See* Turner v. Safley, 107 S. Ct. 2254, 2261 (1987). The tradition of deferring to prison officials has been questioned when prisons are operated by private parties. *See* Wecht, *Breaking the Code of Deference: Judicial Review of Private Prisons*, 96 YALE L.J. 815 (1987). In addition, judges have expressed concern that deferring to prison administrators may ultimately result in the upholding of all challenges to prison regulations. *See* Cooper v. Tard, 855 F.2d 125, 131 (3d Cir. 1988) (Higginbotham, J., dissenting) ("Affirmance [by the majority supports] the proposition that *any* proffered justification by a prison administration justifies infringement upon the inmates' constitutional rights.") (emphasis in original).

Deference to prison officials is premised on the belief that serious harm may result from potential disturbances. *See, e.g.*, Ryan v. Burlington County, 674 F. Supp. 464 (D.N.J. 1987). Judge Barry aptly noted the violence that can occur in a prison setting:

> On October 3, 1983, plaintiff Timothy Ryan was a pretrial detainee in the Burlington County jail. He was a healthy, fully functioning human being capable of the things human beings take for granted. He could walk, feed himself, go to the bathroom on his own, and make love. On October 4, 1983, Timothy Ryan was rendered quadriplegic. The person who caused this injury, Michael Scott, was Ryan's cellmate and a criminal convicted of a crime involving death or injury to another.

Id. at 466 (footnote omitted). It is interesting to note that the Burlington County

recognizing the need of prison officials to preserve discipline and order in penological settings, courts have been unsettled on the extent to which prisoners' constitutional rights survive incarceration.[3]

While the weighing of competing interests has been an ac-

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jail does not house New Jersey's most dangerous prisoners. *See Cooper*, 855 F.2d at 126 ("[t]he type of inmate at Trenton State [Prison], the only fully maximum custodial institution of the New Jersey Prison System, is demonstrated by the percent serving sentences for murder, rape, assault or robbery in 1981 which was respectively 45, 7, 8 and 24").

As a result of the potential for serious harm that may result from prison disturbances, the Supreme Court recently held that "[w]hen the 'ever-present potential for violent confrontation and conflagration,' ripens into *actual* unrest and conflict, the admonition that 'a prison's internal security is peculiarly a matter normally left to the discretion of prison administrators,' *carries a special weight*." Whitley v. Albers, 475 U.S. 312, 321 (1986) (citations omitted) (first emphasis in original, second emphasis added). According to the Court:

> That deference extends to a prison security measure taken in response to an actual confrontation with riotous inmates, just as it does to prophylactic or preventive measures intended to reduce the incidence of these or any other breaches of prison discipline. It does not insulate from review actions taken in bad faith and for no legitimate purpose, but it requires that neither judge nor jury freely substitute their judgment for that of officials who have made a considered choice. Accordingly, in ruling on a motion for a directed verdict in a case such as this, courts must determine whether the evidence goes beyond a mere dispute over the reasonableness of a particular use of force or the existence of arguably superior alternatives. *Unless it appears that the evidence, viewed in the light most favorable to the plaintiff, will support a reliable inference of wantonness in the infliction of pain under the standard we have described, the case should not go to the jury.*

Id. at 322 (emphasis added).

The judicial practice of deferring to the judgment of prison authorities is also grounded in separation of powers principles. *See Turner*, 107 S. Ct. at 2259. The Court has explained:

> Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the Legislative and Executive Branches of Government. Prison administration is, moreover, a task that has been committed to the responsibility of those branches, and separation of powers concerns counsel a policy of judicial restraint.

Id.

[3] In some instances, courts have assumed a "hands-off" posture when evaluating inmates' constitutionally-based claims. *See, e.g.*, Krupnick v. Crouse, 366 F.2d 851 (10th Cir. 1966); McCloskey v. Maryland, 337 F.2d 72 (4th Cir. 1964). Other courts have required that for the restriction to be constitutionally valid, "the defendants must show that its [sic] interest cannot be satisfied by alternative methods less restrictive of the individual right abridged." Lockert v. Faulkner, 574 F. Supp. 606, 609 (N.D. Ind. 1983). Still other courts have required that the state demonstrate a compelling state interest in order to validate the constitutional infringement. *See, e.g.*, Morales v. Schmidt, 340 F. Supp. 544 (W.D. Wis. 1972); Fortune Soc'y v. McGinnis, 319 F. Supp. 901 (S.D.N.Y. 1970).

cepted means of achieving a constitutional balance, the appropriate standard of review for inmates' claims has remained unresolved.[4] In its recent decision of *Turner v. Safley*,[5] the United States Supreme Court eliminated this disparity by holding that a "reasonable relationship" standard is appropriate in analyzing the constitutionality of prison regulations.[6]

The controversy in *Turner* stemmed from regulations limiting inmate rights at the Renz Correctional Institution.[7] The Renz facility was originally constructed as a minimum security prison farm, and as such, maintained a minimum security perimeter without walls or guard towers.[8] Since the late 1970s, the facility's population consisted of inmates of both sexes, as well as prisoners of varying security levels.[9]

The Missouri Division of Corrections promulgated two prison regulations which affected the rights of inmates housed within its jurisdiction.[10] The first regulation governed correspondence between inmates at different institutions within the state.[11] The rule permitted correspondence with immediate family members, who were inmates in other penal institutions, and correspondence between "inmates concerning legal matters."[12]

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4 *See supra* note 3 and *infra* note 34.

5 107 S. Ct. 2254 (1987).

6 *Id.* at 2261.

7 *Id.* at 2257. Although the regulation applied to all inmates within the Missouri Division of Corrections, the challenges in this case only concerned the practices at Renz. *Id.*

8 *Id.* at 2257-58.

9 *Id.* at 2257. A majority of the male inmates were classified as minimum security level offenders, while most of the female prisoners were categorized as medium or maximum security inmates. *Id.*

10 *Id.*

11 *Id.* at 2258. The Division of Corrections regulation provided in pertinent part:

> Correspondence with immediate family members who are inmates in other correctional institutions will be permitted. Such correspondence may be permitted between non-family members if the classification/treatment team of each inmate deems it in the best interest of the parties involved. Correspondence between inmates in all division institutions will be permitted concerning legal matters.

Joint Appendix at 34, Turner v. Safley, 107 S. Ct. 2254 (1987) (No. 85-1384). The restriction placed no limitations on mail to and from nonprisoners except for the prohibition against escape plots, contraband and the like. Safley v. Turner, 777 F.2d 1307, 1308 n.4 (8th Cir. 1985), *aff'd in part, rev'd in part*, 107 S. Ct. 2254 (1987).

12 *Turner*, 107 S. Ct. at 2258. With regard to correspondence with incarcerated family members, the court of appeals stated "[p]resumably, the prohibition against contraband and the provisions for notice of confiscation apply to family as well as non-family mail." *Turner*, 777 F.2d at 1308 n.5.

The regulation further provided, however, that other mail between inmates was allowed only if the "classification/treatment" team deemed it in the best interest of the inmates involved.[13] The rule, in effect, disallowed inmates from writing or receiving mail from non-family inmates housed within the state's penal system.[14]

The second challenged regulation governed inmate marriages.[15] Its provisions permitted an inmate to marry only with the approval of the superintendent of the prison and provided that the inmate had the burden of establishing compelling reasons for the consent.[16] Although the term "compelling" was not defined in the regulation itself, trial testimony indicated that only pregnancy or the birth of an illegitimate child would satisfy such a requirement.[17]

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[13] *Turner*, 107 S. Ct. at 2258. Composed of a caseworker, a classification assistant and the inmate in question, the "classification/treatment" team was to utilize any psychological reports, reports of conduct violations involving the inmate in question and progress reports to determine whether to permit such correspondence. *Turner*, 777 F.2d at 1308 & n.2. Trial testimony indicated that due to the team's familiarity with most inmate files, the materials were not consulted on every occasion. *Id.* at 1308. Thus, decisions regarding correspondence were based on prior approval or disapproval of the inmates in question, rather than the review of each individual piece of mail. *Id.*

[14] Safley v. Turner, 586 F. Supp. 589, 591 (W.D. Mo. 1984), *aff'd*, 777 F.2d 1308 (8th Cir. 1985), *aff'd in part, rev'd in part*, 107 S. Ct. 2254 (1987). Indeed, an orientation booklet distributed to inmates upon arrival at Renz stated that correspondence would not be permitted between non-family inmates. *Turner*, 777 F.2d at 1315. In addition, an unwritten facility rule governing inmate-to-inmate legal mail made prior approval a requisite. *Id.* at 1309. Absent this approval, mail would regularly be opened and refused in disregard of the division regulation which declared that such mail "would be permitted." *Id.* Among the reasons proffered by Renz for such practices were riot prevention, escape plan interception, and the restriction of the formation and activities of prison gangs and disturbances. *Id.* These concerns were magnified by the fact that Renz had a "minimum security perimeter." *Id.*

[15] *Turner*, 107 S. Ct. at 2258. Interestingly, the marriage regulation was promulgated subsequent to the filing of the lawsuit. *Id.* Nevertheless, the Court addressed the rights implicated by the challenged regulation. *Id.* at 2265-67. Prior to the promulgation of the challenged rule, the Missouri prison system functioned under a regulation which did not oblige the Missouri Division of Corrections to assist an inmate who desired to get married. *Turner*, 586 F. Supp. at 592. However, this rule also did not confer authorization upon institution superintendents to prohibit inmate marriages. *Id.* The district court also noted that "[i]nmates have been informed that Renz does not permit marriages." *Id.*

[16] *Turner*, 586 F. Supp. at 592.

[17] *Turner*, 107 S. Ct. at 2258. The marriage restriction at Renz was imposed primarily on female inmates and resulted mainly from protective attitudes. *Turner*, 777 F.2d at 1309. Marriage requests were often denied for unexplained reasons and were simply deemed not to be in the inmate's "best interest." *Turner*, 586 F. Supp. at 592. If a prisoner attempted to exercise rights that were limited by the

Prisoners at the Renz facility instituted a class action in the United States District Court for the Western District of Missouri challenging the constitutionality of the prison rules on first amendment and right to privacy grounds.[18] Applying a strict scrutiny analysis, the district court held both regulations unconstitutional.[19] The court concluded that the marriage regulation was more restrictive than was reasonable or necessary.[20] Additionally, the court determined that the correspondence regulation was unnecessarily broad and applied in an arbitrary and capricious manner.[21] On appeal, the United States Court of Appeals for the Eighth Circuit affirmed the district court's opinion, adopting the lower court's application of the strict scrutiny test.[22] The United States Supreme Court granted certiorari[23] and reversed the decision of the court of appeals. The Court held that a "reasonable relation" test is appropriate in evaluating the constitutionality of prison rules.[24] Applying this standard, the Court concluded that the correspondence regulation was "reasonably related to legitimate security interests" but determined that the marriage restriction did not satisfy the reasonable relationship

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regulations at issue, they were threatened with the loss of their correspondence privileges in general, their visitation privileges, and their parole privileges. *Id.* at 593.

18 *Turner*, 586 F. Supp. at 590. The district court, in its findings of fact, outlined the particular circumstances of two inmates in the class which gave rise to the litigation. *See id.* at 593-94. The court found that Len Safley and P.J. Watson developed a relationship and were subsequently involved in a "noisy lovers' quarrel." *Id.* at 593. Safley was then transferred to another institution. *Id.* In addition, correspondence between the two was prohibited, as it was not deemed to be in Ms. Watson's best interest. *Id.* In order to avoid the prohibition, Safley maintained a post office box under the pseudonym Jack King. *Id.* Although this may have facilitated communication from Watson to Safley, the district court found that "[v]arious letters and cards mailed to [Ms.] Watson from Safley's mother were refused by Renz, apparently because the letter contained Safley's name or a message such as 'Len sends his love.'" *Id.* In addition, letters from Safley's friends to Ms. Watson "were returned, apparently for the reason that they contained greetings from Safley." *Id.* at 594. Safley was given permission to leave his institution for visitation purposes; however, he was denied permission to visit with Watson. *Id.*

19 *Turner*, 107 S. Ct. at 2258. The court relied on the decision of Procunier v. Martinez, 416 U.S. 396 (1974), in applying a strict scrutiny analysis. *Turner*, 586 F. Supp. at 595. *See infra* notes 35-44 and accompanying text (discussing the *Martinez* decision). Application of the strict scrutiny analysis to prison regulations was later rejected by the Supreme Court. *Turner*, 107 S. Ct. at 2261.

20 *See Turner*, 586 F. Supp. at 594.

21 *Id.* at 596.

22 Safley v. Turner, 777 F.2d 1307, 1316 (8th Cir. 1985), *aff'd in part, rev'd in part*, 107 S. Ct. 2254 (1987).

23 Turner v. Safley, 106 S. Ct. 2244 (1986).

24 *Turner*, 107 S. Ct. at 2261.

standard.[25]

Courts have traditionally exhibited apprehension and resistance in adjudicating claims involving prisoners' rights.[26] Under this judicial policy, known as the "hands-off" doctrine,[27] courts confronted with challenges to prison restrictions defer to the judgment of prison officials.[28] The rationale for this policy of judicial abstention is that prison management is a complex administrative matter and judicial interference into an area requiring such expertise may jeopardize security.[29] Consistent with this

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25 *Id.* at 2262-63.

26 *See* Note, *State Must Show "Substantial Governmental Interest" to Justify Censorship of Inmates' Personal Mail and Must Allow Lay Investigators Access to Prisons*, 6 SETON HALL L. REV. 167, 170 (1974) (authored by John M. Donnelly). *See also* Procunier v. Martinez, 416 U.S. 396 (1974). The *Martinez* Court explained:

> Traditionally, federal courts have adopted a broad hands-off attitude toward problems of prison administration. . . . The Herculean obstacles to effective discharge of [the duties of maintaining a prison] are too apparent to warrant explication. Suffice it to say that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. For all of those reasons, courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform.

Id. at 404-05; *see also* Dayton v. Hunter, 176 F.2d 108, 109 (10th Cir.), *cert. denied*, 338 U.S. 888 (1949) ("A court of equity does not have power . . . to superintend . . . the conduct of a federal penitentiary or its discipline.").

27 *See* Note, *supra* note 26, at 170. *See also Martinez*, 416 U.S. at 404. For a discussion of the application of the "hands-off" doctrine, see Goldfarb & Singer, *Redressing Prisoners' Grievances*, 39 GEO. WASH. L. REV. 175 (1970).

28 *Martinez*, 416 U.S. at 404-05. *See also* Cruz v. Beto, 405 U.S. 319, 321 (1972) ("prison officials must be accorded latitude"); United States *ex rel.* Knight v. Ragen, 337 F.2d 425, 426 (7th Cir. 1964) ("Except under exceptional circumstances, internal matters in state penitentiaries are the sole concern of the states and federal courts will not inquire concerning them."); McCloskey v. Maryland, 337 F.2d 72, 74 (4th Cir. 1964) (Prison officials "must have a wide discretion in promulgating rules to govern the prison population and in imposing disciplinary sanctions for their violation."). This policy has been employed repeatedly by the federal courts. *See, e.g.*, United States *ex rel.* Lawrence v. Ragen, 323 F.2d 410, 412 (7th Cir. 1963) ("It is not the function of federal courts to interfere with the conduct of state officials in carrying out such duties under state law."); Gray v. Creamer, 329 F. Supp. 418 (W.D. Pa. 1971), *rev'd*, 465 F.2d 179 (3d Cir. 1972) (lawful incarceration prompts necessary limitation or withdrawal of many rights and the task of deciding rights and deprivations of state prisoners rests primarily upon prison authorities, whose judgment will not ordinarily be questioned by federal courts).

29 *See* Comment, Jones v. North Carolina Prisoners' Labor Union: *A Threat To Unionization In Prisons*, 4 NEW ENG. J. ON PRISON L. 157, 161 (1977). *See also* Golub v. Krimsky, 185 F. Supp. 783, 784 (S.D.N.Y. 1960) (Prisoner denied right to sue the warden of a federal prison because "to allow such actions would be prejudicial to the proper maintenance of discipline."). Additionally, courts have cited the con-

reasoning, and as a result of the widespread application of the doctrine,[30] courts have almost invariably refrained from intervening in the control and discipline of prisons.[31]

Judicial policy towards inmates' rights developed from a "hands-off" approach to a limited examination of administrative regulations.[32] While this progression provided for judicial re-

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cept of separation of powers as a judicial rationale for avoiding prisoners' complaints. The Eighth Circuit has explained:

> [I]t is not the function of the courts to run the prisons, or to undertake to supervise the day-to-day treatment and disciplining of individual inmates; much must be left to the discretion and good faith of prison administrators. That is not to say, of course, that the federal courts should not exercise the jurisdiction in proper cases, *but the exercise of [jurisdiction] should be sparing.*

Sawyer v. Sigler, 445 F.2d 818, 819 (8th Cir. 1971) (emphasis added). *See also* Pope v. Daggett, 350 F.2d 296, 297 (10th Cir. 1965) ("[A court does] not have the power through the injunctive process to supervise the conduct of a federal penitentiary or its discipline. That power lies in the Attorney General and the Bureau of Prisons."); Powell v. Hunter, 172 F.2d 330, 331 (10th Cir. 1949) ("The prison system is under the administration of the Attorney General . . . and not of the district courts.").

[30] The doctrine, however, has not been applied so routinely as to bar all prisoners' suits. For example, in *Ex parte* Hull, 312 U.S. 546 (1941), the Court established that due process protections required that inmates be allowed access to the courts, and therefore, an inmate's legal mail could not be confiscated. *Id.* at 549. The judiciary has routinely extended jurisdiction over prisoner litigation involving access to the courts. *See* Goldfarb & Singer, *supra* note 27, at 183.

[31] *See* Lee v. Tahash, 352 F.2d 970 (8th Cir. 1965) (prison regulations subjecting prisoner correspondence to censorship and limiting the number of persons with whom an inmate could correspond did not give rise to an action for deprivation of rights); Pope v. Daggett, 350 F.2d 296 (10th Cir. 1965) (court had no injunctive power to supervise the discipline and conduct of the prison, and thus, the penitentiary's control over prisoner mail did not violate the constitutional rights of the prisoner); United States *ex rel.* Lee v. Illinois, 343 F.2d 120 (7th Cir. 1965) (prison rule limiting the number of personal letters which an inmate could accumulate did not necessitate judicial intervention); Lawrence v. Davis, 401 F. Supp. 1203 (W.D. Va. 1975) (officials permitted to read and withhold inmate-to-inmate correspondence containing references to criminal activity).

[32] *See* Comment, *supra* note 29, at 160-61 ("Judicial attitudes towards inmates' First Amendment rights have evolved from the 'hands-off doctrine' to a limited review of administrative regulations."). The "hands-off" doctrine survived intact until the 1960s when the Supreme Court began to scrutinize police and prosecutorial conduct that allegedly interfered with the rights of defendants. *See, e.g.*, Miranda v. Arizona, 384 U.S. 436 (1966); Mapp v. Ohio, 367 U.S. 643 (1961). Moreover, in 1964, the Supreme Court declared that state inmates are entitled to the safeguards and protections of the Federal Civil Rights Act, pursuant to 42 U.S.C. § 1983 (1964). Cooper v. Pate, 378 U.S. 546, 546 (1964) (per curiam). *See* Goldfarb & Singer, *supra* note 27, at 184 (discussing the federal development leading up to the *Cooper* decision). As a result, courts have slowly abandoned the "hands-off" doctrine. *See* Note, *Prison Mail Censorship and the First Amendment*, 81 YALE L.J. 87, 91-93 (1971). The *Cooper* decision, however, has not been universally accepted, and consequently, inmates have had to acquire many legal rights through

view of institutional restrictions, traces of the doctrine remained as a consequence of the Supreme Court's broad deference to administrative judgments.[33] The United States Supreme Court, prior to *Turner*, had not formulated a rigid test with respect to prison determinations regarding inmates' rights. Consequently, federal courts have employed a variety of approaches in an attempt to apply the proper standard of review.[34] As a result, there has been a disparate treatment by the courts of inmate claims.

In 1974, the Supreme Court addressed for the first time the proper standard of review for prison regulations impinging upon inmates' freedom of speech. In *Procunier v. Martinez*,[35] the Court

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litigation. These courts have only abandoned the "hands-off" policy as each right became established. *See* Millemann, *Protected Inmate Liberties: A Case for Judicial Responsibility*, 53 OR. L. REV. 29 (1973).

33 *See* Comment, *supra* note 29, at 161. *See also* 1 S. RUBIN, UNITED STATES PRISON LAW 1-4 (1975) (explaining that although courts now entertain prisoner complaints, the "hands-off" policy has not been abandoned).

34 For instance, some courts have maintained a "hands-off" approach when considering inmate claims of first amendment violations. *See supra* note 28 (discussing cases adopting "hands-off" approach). Other courts have required that a prison regulation be "reasonably" related to institutional goals in order to survive constitutional scrutiny. *See, e.g.*, Wilkerson v. Warden of United States Reformatory, 465 F.2d 956, 957 (10th Cir. 1972); Crafton v. Rose, 369 F. Supp. 131, 133 (E.D. Tenn. 1972). Other courts have maintained an intermediate position and required that a prison regulation be "reasonably and necessarily" related to the advancement of a justifiable purpose of incarceration. *See, e.g.*, LeMon v. Zelker, 358 F. Supp. 554, 556-57 (S.D.N.Y. 1972); Carothers v. Follette, 314 F. Supp. 1014, 1024 (S.D.N.Y. 1970). Adopting a more protective position, other courts have required the state to demonstrate a compelling interest to justify the invasion of an inmate's first amendment rights. *See, e.g.*, Jackson v. Godwin, 400 F.2d 529, 541 (5th Cir. 1968).

35 416 U.S. 396 (1974). In addition to freedom of speech, courts have recognized that a prisoner enjoys all rights enjoyed by a free citizen except "those expressly, or by necessary implication, taken from him by law." Coffin v. Reichard, 143 F.2d 443, 445 (6th Cir. 1944), *cert. denied*, 325 U.S. 887 (1945). Since the government has a right to punish by incarceration, its penal laws "by necessary implication" deprive the convict of the right to physical freedom. *Coffin*, 143 F.2d at 445. However, the prisoner retains the right to remain free from bodily harm and suffering while incarcerated. *See id.* Thus, incarceration does not completely vitiate an inmate's constitutional rights. *See* Wolff v. McDonnell, 418 U.S. 539, 555-56 (1974) ("There is no iron curtain drawn between the Constitution and the prisons of this country."); Haines v. Kerner, 404 U.S. 519 (1972) (prisoners enjoy the safeguards of due process); Johnson v. Avery, 393 U.S. 483 (1969) (inmates retain the right to petition the government for the redress of grievances). The equal protection clause of the fourteenth amendment protects inmates from invidious racial discrimination. *See, e.g.*, Lee v. Washington, 390 U.S. 333 (1968); Jackson v. Godwin, 400 F.2d 529 (5th Cir. 1968); Rivers v. Royster, 360 F.2d 592 (4th Cir. 1966). Prisoners also maintain their right of access to the courts. *See, e.g.*, Edwards v. Duncan, 355 F.2d 993 (4th Cir. 1966). Additionally, inmates have a right to religious protection. *See, e.g.*, Cooper v. Pate, 378 U.S. 546 (1964) (per curiam); Barnett v. Rodgers, 410 F.2d 995 (D.C. Cir. 1969).

evaluated a regulation promulgated by the California Department of Corrections which prohibited inmates from writing about grievances in their correspondence.[36] Additionally, the regulation provided that prisoners could neither send nor receive correspondence that was "lewd [or] obscene," contained "foreign matter," or was "otherwise inappropriate."[37] In assessing the validity of the regulation, the Supreme Court held that rules governing the censorship of prisoners' mail are justified only if they "further an important or substantial governmental interest unrelated to the suppression of expression" and are not more restrictive than necessary for the protection of the state's interest.[38] Notwithstanding its recognition of the "hands-off" doctrine,[39] the majority posited that when there is a valid constitutional challenge to a prison regulation, a court must evaluate the claim.[40]

The Court noted that in determining the proper standard of review, it was not necessary to examine the extent to which first amendment protection extends to inmates.[41] Rather, in this instance, the Court suggested that the constitutional focus be on the first amendment liberties afforded to free citizens.[42] Recognizing that correspondents have "a particularized interest in communicating with [inmates]," the Court noted that the "interests of both parties are inextricably meshed."[43] Thus, employing a strict scrutiny test, the Court struck down the content-based regulation as an unconstitutional infringement upon the first

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36 *Martinez*, 416 U.S. at 398-99. The inmates, however, were permitted to write about their grievances to their attorneys or holders of public office. *Id.* at 399.

37 *Id.* at 400. Inmates also challenged the ban against using legal paraprofessionals and law students to conduct attorney-inmate interviews. *Id.* at 398. The Court concluded that this rule constituted an unconstitutional restriction on the inmates' right of access to the courts. *Id.* at 419.

38 *Id.* at 413. The Court declared that officials may not censor correspondence to eliminate unflattering opinions or inaccurate statements. *Id.* Instead, the Court noted, they must demonstrate a governmental interest in order, security or rehabilitation before censoring. *Id.*

39 *Id.* at 404. Specifically, the Court stated that:

> [C]ourts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism. Moreover, where state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities.

Id. at 405 (footnote omitted).

40 *Id.* at 405-06 (citing Johnson v. Avery, 393 U.S. 483, 486 (1969)).

41 *See id.* at 408-09.

42 *See id.* at 408.

43 *Id.* at 409.

amendment rights of those citizens who correspond with inmates.[44]

In the same term that the Court rendered its opinion in *Martinez*, it exhibited adherence to the vestiges of the "hands-off" doctrine in *Pell v. Procunier*.[45] In *Pell*, a provision promulgated by the California Department of Corrections prohibited face-to-face interviews between members of the press and particular inmates who press representatives specifically requested to interview.[46] Four California prison inmates and three professional journalists filed a suit challenging the constitutionality of the provision on first and fourteenth amendment grounds after the prison denied a request for an interview with the inmates.[47]

The *Pell* Court held that the regulation denying media interviews did not unconstitutionally infringe upon the prison inmates' freedom of speech.[48] Arriving at its conclusion, the Court assessed the validity of the regulation in light of the legitimate penal goals of the state.[49] In rejecting the first amendment challenge, the Court recognized that decisions with respect to security policies "are peculiarly within the province and professional expertise of corrections officials."[50] Additionally, the Court posited that the prison regulation could not be viewed in isolation but rather should be examined in light of other alternative chan-

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44 *See id.* at 413-16. The Court explained that "any regulation or practice that restricts inmate correspondence must be generally necessary to protect one or more . . . legitimate governmental interests." *Id.* at 414.

45 417 U.S. 817 (1974).

46 *Id.* at 819.

47 *Id.* at 819-20.

48 *Id.* at 828. The Court explained that:

> [A] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system. Thus, challenges to prison restrictions that are asserted to inhibit First Amendment interests must be analyzed in terms of the legitimate policies and goals of the corrections system . . . in accordance with due process of law.

Id. at 822.

49 *Id.* at 823. The penal objectives articulated by the Court were deterrence of crime, rehabilitation, and internal security. *Id.* at 822-23.

50 *Id.* at 827. Such deference exists only where there is an "absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations." *Id.* Limitations on administrative discretion include the following: the regulation must be neutral without regard to content of the material; the regulation cannot be a response which is exaggerated with respect to internal security; alternative avenues of communication must remain available; communication may be regulated only as to time, place and manner; and the restriction must be in furtherance of a legitimate state interest. *Id.* at 827-28.

nels of communication available to the inmate.[51]

Three years later, in *Jones v. North Carolina Prisoners' Labor Union*,[52] the Court again assessed the validity of prison regulations impinging on inmates' first amendment rights. In *Jones*, the North Carolina Department of Correction promulgated regulations which prohibited inmate-to-inmate solicitation of union membership, barred all union meetings, and denied delivery of bulk mail of union publications received by inmates for distribution to other inmates.[53] The union challenged the restrictions asserting that they were violative of the first and fourteenth amendment rights of the union and its members.[54]

The Supreme Court, noting that the lower court failed to give appropriate deference to the judgment of prison administrators,[55] held that the prohibitions served a legitimate institutional purpose[56] and were reasonable and consistent with the prisoners' status as inmates.[57] Based on the prison officials' determination that the presence of a prison labor union may jeopardize prison security, the Court recognized the need to permit prison authorities to take reasonable precautions to thwart potentially violent confrontations.[58]

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[51] *Id.* at 825. According to the Court, under the challenged regulation, "inmates have an unrestricted opportunity to communicate with the press or any other member of the public through their families, friends, clergy, or attorneys who are permitted to visit them at the prison." *Id. Cf.* Road v. Aytch, 565 F.2d 54, 56-57 (3d Cir. 1977) (prison regulation banning group inmate-press conferences held valid based on *Pell* rationale since two alternative means of communication with the public remained available: mail and individual press interviews).

[52] 433 U.S. 119 (1977).

[53] *Id.* at 121. The purpose of the union, in part, was to alter or eliminate policies of the Department of Correction which it did not favor and to serve as an avenue for the presentation and resolution of prisoner grievances. *Id.* at 122.

[54] *Id.* Specifically, the petitioners asserted that their rights "to engage in protected free speech, association, and assembly activities were being infringed by the no-solicitation and no-meeting rules." *Id.*

[55] *Id.* at 125. The Court noted that the district court "got off on the wrong foot in this case by not giving appropriate deference to the decisions of prison administrators and appropriate recognition to the peculiar and restrictive circumstances of penal confinement." *Id.*

[56] *Id.* at 126.

[57] *Id.* at 129-30 (citing Meachum v. Fano, 427 U.S. 215 (1976); Pell v. Procunier, 417 U.S. 817 (1974); Procunier v. Martinez, 416 U.S. 396 (1974)).

[58] *Id.* at 132 (citing Wolff v. McDonnell, 418 U.S. 539 (1974)). In an earlier decision, the Court described the environment of a prison as containing a great potential for violent confrontation and conflagration. Wolff v. McDonnell, 418 U.S. 539, 561-62 (1974). In *Wolff*, the Court explained that incarcerated persons

> may have little regard for the safety of others or their property or for the rules designed to provide an orderly and reasonably safe prison life. . . . Frustration, resentment, and despair [in a prison] are commonplace.

After examining the potential abridgement of constitutional rights posed by the regulations, the Court determined that the first and fourteenth amendment rights of inmates were "barely implicated" by the bulk mailing prohibition.[59] Thus, the Court declared that such a restriction was "reasonable" under the circumstances.[60] Similarly, the Court rejected the constitutional challenge to the restriction affecting both solicitation and union meetings, because the ban on these activities was "rationally related to the reasonable, indeed to the central, objectives of prison administration."[61]

The rationale of the *Jones* majority appeared again, two years later, in *Bell v. Wolfish*.[62] In November 1975, pretrial detainees housed at the Metropolitan Correctional Center (MCC) instituted a class action[63] challenging the numerous practices and conditions of confinement at the facility, including the constitutionality of its "publisher-only" rule.[64] This regulation prohibited the receipt by inmates of hardback books mailed from outside the institution, unless the books were sent directly from

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> Relationships among the inmates are varied and complex and perhaps subject to the unwritten code that exhorts inmates not to inform on a fellow prisoner.

Id. at 562.

59 *Jones*, 433 U.S. at 130. According to the Court, mailing rights were not per se implicated. *Id.* Petitioners also argued that in preventing them from using bulk mail, which is less costly and more convenient, while permitting other inmates to use bulk mail, the regulation violated their rights to equal protection under the law. *Id.* & n.7. In rejecting this argument, the Court concluded that the loss of these advantages did not "fundamentally implicate *free speech* values." *Id.* at 130-31 (emphasis in original).

60 *Id.* at 131. The Court's determination of the restriction's reasonableness was based, in part, on the availability of other channels of communication. *Id.* "Since other avenues of outside informational flow by the Union remain available, the prohibition on bulk mailing, reasonable in the absence of First Amendment considerations, remains reasonable." *Id.* (footnotes omitted) (citing Saxbe v. Washington Post Co., 417 U.S. 843 (1974); Pell v. Procunier, 417 U.S. 817 (1974)).

61 *Id.* at 129 (citing Pell v. Procunier, 417 U.S. 817 (1974)). The Court further noted that it was not irrational to conclude that solicitation or concerted group activity would pose additional problems for internal security. *Id.*

62 441 U.S. 520 (1979).

63 *Id.* at 523. The class was comprised of all persons confined at the Metropolitan Correctional Center (MCC) in New York City. *Id.* at 526. The MCC is a federally operated temporary custodial facility designed for the principal purpose of housing pretrial detainees. *Id.* at 524. Additionally, the MCC served as a place of confinement for the following persons: those individuals awaiting sentencing or relocation to a federal penitentiary; persons serving a short-term sentence; convicted prisoners confined to the facility to insure their attendance at trial; witnesses in protective custody and persons imprisoned for contempt. *Id.*

64 *Id.* at 528.

book clubs, publishers or bookstores.[65]

Cognizant of a pretrial detainee's presumption of innocence,[66] the Supreme Court held that "[a]bsent a showing of an expressed intent to punish on the part of detention facility officials,"[67] a restriction will be constitutionally valid so long as it is rationally or reasonably connected to a legitimate governmental interest.[68] In applying this test, the Court determined that the restriction on hardbacked books was a "rational response" by prison authorities to obvious security problems, and therefore, not violative of the first amendment rights of the MCC detainees.[69] Concluding that the rule was not an exaggerated response to security problems, the Court declared that prison officials must be accorded deference in the absence of overbroad prohibitions.[70] The Court, in rendering its decision, was also influenced by both the availability of alternative sources of reading material, as well as the rule's neutral operation without regard to the material's content.[71]

In 1984, in *Block v. Rutherford*,[72] the Court applied the *Bell*

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65 *Id.* Originally, the "publisher-only" rule allowed inmates to receive magazines and books only if the reading materials were mailed directly from a book club or publisher. *Id.* Subsequent to the court of appeals' decision rendering the prohibition unconstitutional, the rule was amended to allow the receipt of magazines and books from bookstores, as well as book clubs and publishers. *Id.* at 549. Additionally, the defendants were to propose an amendment which would permit the receipt of magazines, paperback books and other soft-covered materials, regardless of their source. *Id.* On appeal, the Supreme Court narrowed the precise issue for consideration. *Id.* Thus, at petitioners' request, the Court limited its review to the prohibition of receipt of hardback books not mailed directly from publishers, bookstores, or book clubs. *Id.* at 549-50. Other conditions and practices challenged included "double bunking," whereby two inmates were housed in one room intended for individual occupancy; a prohibition against prisoners' receipt of packages containing personal items and food from outside the institution; the practice of body cavity searches of prisoners following contact visits and the requirement that pretrial detainees remain outside their rooms during routine inspection. *Id.* at 528-29.

66 *Id.* at 536. A pretrial detainee may not be punished before an adjudication of guilt is rendered without violating the due process clause of the Constitution. *Id.* at 535. The Supreme Court has noted a distinction between sentenced inmates and pretrial detainees. *See* United States v. Lovett, 328 U.S. 303, 317-18 (1946).

67 *Bell*, 441 U.S. at 538.

68 *Id.* at 550.

69 *Id.* According to the warden of the MCC, the concealment of money, drugs, weapons or other contraband in the covers of hardback books caused serious security and administrative problems. *Id.* at 549 (citation omitted).

70 *Id.* at 550-51 (citing Jones v. North Carolina Prisoners' Labor Union, 433 U.S. 119, 128 (1977); Pell v. Procunier, 417 U.S. 817, 827 (1974)).

71 *Id.* at 551-52. Additionally, the Court considered the fact that the rule's effect on pretrial detainees would be limited to a maximum of 60 days. *Id.* at 552.

72 468 U.S. 576 (1984).

reasoning to adjudicate inmates' challenges to a prison policy regarding contact visits. In *Rutherford*, pretrial detainees filed a class action against the county sheriff of Los Angeles and other administrators challenging the county jail's blanket policy of banning contact visits of pretrial detainees with their spouses, children, relatives and friends.[73] Upholding the regulation, the Court posited that "the Constitution does not require that detainees be allowed contact visits when responsible, experienced administrators have determined, in their sound discretion, that such visits will jeopardize the security of the facility."[74] Borrowing from the rationale articulated in *Bell*, the Court explained that the prohibition was a nonpunitive, reasonable response to legitimate security concerns, and therefore, was consistent with the fourteenth amendment.[75] Significantly, the Court again recognized the need to defer to judgments made by responsible, experienced administrators regarding the internal security of the facility.[76]

In 1987, the confusion and uncertainty surrounding the proper standard of review applicable to prisoners' constitutional claims was dispelled by the *Turner*[77] decision. In an opinion authored by Justice O'Connor,[78] the Court articulated that when a prison regulation impinges upon the constitutional rights of inmates, it only need be "reasonably related to legitimate penological interests" to be sustained.[79]

The majority began its analysis by reexamining the *Martinez*[80] decision which posited two conflicting principles relevant to

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[73] *Id.* at 577-78. Other policies and conditions of confinement were initially challenged, but only the contact visit prohibition and the practice of searches of cells in the absence of its occupants were before the Court. *Id.* at 578. The Court refused to reconsider the search issue, however, stating that the *Bell* decision was controlling, and therefore, such a restriction was a reasonable response to legitimate security concerns. *Id.* at 591.

[74] *Id.* at 589.

[75] *Id.* at 588.

[76] *See id.* The Court stated that it was not denigrating the importance of such visits, nor did it intend to suggest that the visits might not be a contributing factor to the detainees' ultimate reintegration into society. *Id.* at 589. According to the Court, however, the Constitution does not mandate contact visitation. *Id.*

[77] 107 S. Ct. 2254 (1987).

[78] *Id.* at 2257. Justice O'Connor was joined by Chief Justice Rehnquist and Justices White, Powell and Scalia. Justice Stevens filed an opinion concurring in part and dissenting in part which was joined by Justices Brennan, Marshall, and Blackmun.

[79] *Id.* at 2261.

[80] For a discussion of the *Martinez* decision, see *supra* text accompanying notes 35-44.

the analysis of inmates' constitutional claims—that federal courts must " 'discharge their duty to protect [the] constitutional rights' "[81] of inmates, and that they are " 'ill equipped to deal with the increasingly urgent problems of prison administration and reform.' "[82] Recognizing that the strict scrutiny standard employed in the *Martinez* decision was premised on the first amendment liberties of free citizens rather than those of inmates, the Court acknowledged that *Martinez* expressly reserved the question of the appropriate standard of review in prisoners' rights cases.[83] Thus, the *Turner* Court determined that its task was to formulate a standard that was responsive both to " 'the policy of judicial restraint regarding prisoner complaints and [to] the need to protect [prisoners'] constitutional rights.' "[84]

Justice O'Connor next examined four cases decided after *Martinez* that addressed infringements on inmates' rights.[85] In first reviewing the case of *Pell v. Procunier*,[86] the Court noted that a prison regulation prohibiting in person media interviews was upheld on the grounds that courts should defer to the judgment of correction officials on such matters as they " 'are peculiarly within the province and professional expertise of corrections officials.' "[87] Additionally, Justice O'Connor referred to the deci-

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81 *Turner*, 107 S. Ct. at 2259 (quoting Procunier v. Martinez, 416 U.S. 396, 405-06 (1974)).

82 *Id.* (quoting Procunier v. Martinez, 416 U.S. 396, 405 (1974)). In support of this conclusion, the Court noted that " 'the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree.' " *Id.* (quoting Procunier v. Martinez, 416 U.S. 396, 404-05 (1974)).

83 *Id.* at 2260. Although *Martinez* applied a stricter standard of review, the *Turner* Court distinguished *Martinez* by noting that the holding "turned on the fact that the challenged regulation caused a 'consequential restriction on the First and Fourteenth Amendment rights of those who are *not* prisoners.' " *Id.* at 2260 (emphasis in original) (quoting Procunier v. Martinez, 416 U.S. 396, 409 (1974)). The Court of Appeals for the Eighth Circuit, however, interpreted *Martinez* as requiring a strict scrutiny review of the constitutionality of a prison regulation. *See* Safley v. Turner, 777 F.2d 1307, 1316 (8th Cir. 1985), *aff'd in part, rev'd in part*, 107 S. Ct. 2254 (1987). The Supreme Court rejected this reasoning. *See Turner*, 107 S. Ct. at 2261.

84 *Turner*, 107 S. Ct. at 2259 (quoting Procunier v. Martinez, 416 U.S. 396, 406 (1974)).

85 *Id.* at 2260.

86 417 U.S. 817 (1974). For a discussion of the *Pell* decision, see *supra* text accompanying notes 45-51.

87 *Turner*, 107 S. Ct. at 2260 (quoting Pell v. Procunier, 417 U.S. 817, 827 (1974)). The *Turner* Court rejected the court of appeals' characterization of the regulation at issue in *Pell* as a "time, place or manner" restriction. *Id.* at 2261. According to the Court, the *Pell* decision could not be so narrowly construed. *Id.* "*Pell* thus simply teaches that it is appropriate to consider the extent of [the] bur-

sions of *Jones v. North Carolina Prisoners' Labor Union*[88] and *Bell v. Wolfish*,[89] where the Court applied a reasonable or rational relation test to sustain prison regulations which abridged inmates' first amendment rights.[90] Finally, the Court reviewed the holding of *Block v. Rutherford*[91] where the Supreme Court applied a reasonable relation test in concluding that a ban on contact visits with prisoners was not in violation of their due process liberties.[92] Accordingly, the majority noted that the strict scrutiny standard was not applied in any of these four cases.[93] Rather, the Court determined that the focus was whether a prison regulation which infringed upon prisoners' fundamental rights was " 'reasonably related' to legitimate penological objectives, or whether it represent[ed] an 'exaggerated response' to those concerns."[94]

In accord with this reasoning, the majority held that when a prison regulation impinges on an inmate's constitutional rights, it will only be sustained if it is "reasonably related to legitimate penological interests."[95] Advancing that a rigid strict scrutiny analysis would hinder the ability of prison officials to respond to security problems, the Court further declared that it would also hamper their decision-making process.[96] Consistent with these

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den when 'we are called upon to balance First Amendment rights against legitimate governmental interests.' " *Id.* (quoting Pell v. Procunier, 417 U.S. 817, 824 (1974)).

88 433 U.S. 119 (1977). For a discussion of the *Jones* decision, see *supra* text accompanying notes 52-61.

89 441 U.S. 520 (1979). For a discussion of the *Bell* decision, see *supra* text accompanying notes 62-71.

The Court rejected the court of appeals' proposition that the reasonableness standard employed in *Jones* and *Bell* is only appropriately applied when the issue involves "presumptively dangerous" inmate activities. *Turner*, 107 S. Ct. at 2261. The Court opined that finding an activity "presumptively dangerous" merely amounts to a conclusion about the reasonableness of a prison regulation in considering the enunciated security interests. *Id.* Moreover, the Court observed that the court of appeals did not indicate the manner by which it would identify "presumptively dangerous" conduct. *Id.* Based on this reasoning, the Court therefore posited that such judgments "provide[] a tenuous basis for creating a hierarchy of standards of review." *Id.*

90 *Turner*, 107 S. Ct. at 2260.

91 468 U.S. 576 (1984). For a discussion of the *Rutherford* decision, see *supra* text accompanying notes 72-76.

92 *Turner*, 107 S. Ct. at 2260.

93 *Id.*

94 *Id.* at 2260-61 (citations omitted).

95 *Id.* at 2261.

96 *Id.* at 2262. The Court commented that "every administrative judgment would be subject to the possibility that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand." *Id.* Thus, the Court feared that prison administrators would be less likely "to adopt innovative solutions to the intractable problems of prison administration." *Id.*

observations, the Court predicted that "[c]ourts inevitably would become the primary arbiters of what constitutes the best solution to every administrative problem, thereby 'unnecessarily perpetuating the involvement of the federal courts in affairs of prison administration.' "[97]

After establishing the appropriate standard of review, Justice O'Connor next considered the factors that would determine a regulation's reasonableness.[98] First, she posited that there must be a " 'valid, rational connection' " between the prison regulation and the legitimate governmental interest proposed to justify it.[99] A second factor proffered by the majority for determining the reasonableness of a prison regulation is whether substitute channels of communication exist for inmates to exercise their first amendment rights.[100] Thirdly, the Court stated that the effect an accommodation of the asserted right would have on the correction staff, inmates, and the penal institution must be considered.[101] Lastly, the Court emphasized that the absence of alternatives is evidence of a regulation's reasonableness.[102]

Applying this analysis to the Missouri rule banning inmate-to-inmate correspondence, Justice O'Connor concluded that the prohibition was logically related to valid security interests.[103] Noting that the provision was promulgated primarily because of security concerns, the majority recognized various institutional problems that would require such a mandate, including the in-

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97 *Id.* (quoting Procunier v. Martinez, 416 U.S. 396, 407 (1974)).

98 *See id.*

99 *Id.* (quoting Block v. Rutherford, 468 U.S. 516, 586 (1984)). Thus, the majority rationalized, a regulation cannot be upheld where the relationship between it and the express goal is so tenuous that it creates a capricious or irrational prison policy. *Id.* Furthermore, the Court opined that the governmental goal must be both legitimate and neutral; that is, the regulation must operate in a neutral manner without regard to the expression's content. *Id.* (citing Bell v. Wolfish, 441 U.S. 520, 551 (1979); Pell v. Procunier, 417 U.S. 817, 828 (1974)).

100 *Id.*

101 *Id.* In addition, the Court was concerned with the impact on prison resources resulting from an accommodation of the constitutional right at issue. *Id.*

102 *Id.* The majority pointed out that the existence of alternatives may be evidence that the prison policy is unreasonable and an "exaggerated response" to prison problems. *Id.* The Court commented that this is not a "least restrictive alternative" test but rather an opportunity for an inmate to demonstrate that an alternative completely accommodates inmates' rights at a *de minimis* cost to legitimate penological concerns. *Id.* "[P]rison officials do not have to set up and then shoot down every conceivable attentive method of accommodating the [prisoner's] constitutional complaint." *Id.*

103 *Id.* at 2262-63.

crease of prison gangs[104] and the communication of escape plans.[105] In addition to this reasonable connection, the majority articulated that the correspondence restriction did not deprive inmates of all avenues of expression but rather banned correspondence with a limited class of persons with whom prison authorities had particular reasons to be concerned.[106]

Justice O'Connor next considered the effect that the exercise of the inmates' asserted rights would have on prison personnel and other inmates.[107] The Court observed that the prisoners' correspondence rights could only be exercised at the expense of the safety and liberty of both prisoners and corrections officers.[108] Based on these considerations, the Court concluded that where an exercise of a right requires a sacrifice on the part of prison organization, broad deference should be accorded to the professional expertise of prison officials.[109]

Finally, the Court stated that no feasible alternative existed to the policy currently in place at the Renz facility.[110] Rejecting the suggestion that all inmate mail could be monitored, the majority reasoned that the "risk of missing dangerous communications, taken together with the sheer burden on staff resources required to conduct item-by-item censorship" supports the position that such an alternative would not be an adequate one for restricting correspondence.[111] Justice O'Connor articulated that the correspondence prohibition was reasonably related to legitimate corrections objectives and that its operation in a content-neutral fashion logically furthered the goals of internal security

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104 *Id.* at 2263. The Court stated that the restriction of communication among prison gang members was a significant factor in thwarting this problem. *Id.*

105 *Id.* The Court also pointed out that mail could be used to plan assaults and arrange other violent acts. *Id.* Additionally, the Court recognized the claim of prison officials that permitting correspondence between Renz inmates and inmates at other institutions would compromise the safety of those held in protective custody at Renz. *Id.*

106 *Id.* The Court emphasized that the regulation in question only restricted correspondence between the inmates at Renz, and prisoners at other facilities within the state prison system. *Id.*

107 *Id.*

108 *Id.* The Court noted that the enjoyment of such correspondence rights would interfere with prison security and the functions of prison administration. *Id.*

109 *Id.* (citing Pell v. Procunier, 417 U.S. 817, 827 (1974)).

110 *Id.*

111 *Id.* at 2264. The Court reasoned that it would be virtually impossible to read all inmate correspondence, and thus, there would exist a significant risk of missing potentially dangerous messages. *Id.* Moreover, the Court noted that prisoners can communicate in code or in slang, in order to avoid detection of their true messages. *Id.*

as identified by Missouri authorities.[112] Furthermore, the Court posited that the rule was not an exaggerated response to prison goals and consequently, "[did] not unconstitutionally abridge the first amendment rights of prison inmates."[113]

The majority next addressed the constitutional challenge to the marriage regulation.[114] Reiterating the principle that an inmate "retains those [constitutional] rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system,"[115] the Court declared that the fundamental right to marry extends to inmates.[116] The majority noted, however, that the right to marry is subject to substantial restrictions as a consequence of imprisonment.[117] Recognizing that numerous limitations are placed on marriage as a result of incarceration, the Court nevertheless concluded that many attributes continue to exist.[118]

The Court reasoned that inmate marriages are "expressions of emotional support and public commitment" and that such elements are a significant part of the marital bond.[119] Observing that many regard the marriage commitment as having spiritual significance, the Court recognized that marriage may be an exercise of religious faith as well as a sign of personal dedication.[120] In addition, the Court noted that marital status is frequently a requisite to the enjoyment of property rights, as well as government and other less tangible benefits, and that these incidents of marriage are unaffected by imprisonment or the pursuit of valid corrections goals.[121] Finally, the Court commented that most prisoners will ultimately be released, and therefore, many inmates will marry with the expectation that their marriage will eventually be fully consummated.[122] In sum, the majority postulated that these elements, taken together, form a "constitution-

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112 *Id.*

113 *Id.*

114 *Id.* at 2265.

115 *Id.* (quoting Pell v. Procunier, 417 U.S. 817, 822 (1974)).

116 *Id.* The Court noted that Zablocki v. Redhail, 434 U.S. 374 (1978), established the right to marry as fundamental and constitutionally protected. *Turner*, 107 S. Ct. at 2265.

117 *Id.*

118 *Id.*

119 *Id.*

120 *Id.*

121 *Id.* The Court noted, for example, that marriage is often a precondition to receiving social security benefits and inheritance rights, as well as legitimizing children born out of wedlock. *Id.*

122 *Id.*

ally protected marital relationship in the prison context."[123]

Based on this notion, the Court began its constitutional analysis of the marriage regulation at Renz by recognizing that it prohibited marriages between prisoners and free citizens, as well as marriages between prisoners.[124] Although the rule implicated the rights of nonprisoners, the Court noted that it was not necessary to address the question of whether the *Martinez* stricter standard applied since the marriage prohibition could not even pass constitutional muster under a "reasonable relationship" test.[125] Recognizing that valid safety concerns may justify the implementation of reasonable restrictions upon a prisoner's right to marry, the majority opined that the Missouri regulation only amounted to an "exaggerated response" to prison objectives.[126] In support of this position, the Court reasoned that an inmate marriage is not an instance which necessarily jeopardizes the security of the prison staff or other inmates.[127] Additionally, the Court posited that when a prisoner decides to marry a nonprisoner, the choice is a completely private one.[128] Moreover, the Court declared that the marriage regulation was not reasonably related to the

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123 *Id.* The Court distinguished its holding in Butler v. Wilson, 415 U.S. 953 (1974), *summarily aff'g*, Johnson v. Rockefeller, 365 F. Supp. 377 (S.D.N.Y. 1973) (prison regulation prohibiting marriages of inmates who were sentenced to life imprisonment constitutionally permitted since the denial of the right was intended to operate as a form of punishment).

124 *Turner*, 107 S. Ct. at 2265-66. Generally, as the regulation operated, only the birth of a child or pregnancy constituted compelling reasons to allow marriages at the Missouri facilities. *See id.*

125 *Id.* at 2266. See *supra* text accompanying notes 35-44 for a discussion of the standard of review adopted by the Court in the *Martinez* decision.

126 *Turner*, 107 S. Ct. at 2266. Prison officials argued that both security and rehabilitation concerns supported the ban on marriages. *Id.* Specifically, they asserted that security at the facilities was threatened by the development of "love triangles" which could possibly lead to violent confrontations between inmates. *Id.* In terms of rehabilitation, prison officials contended that marriages in which females were abused by their husbands resulted in violent propensities in female inmates. *Id.* In rejecting these proffered objectives, the Court emphasized that there were "obvious, easy alternatives to the Missouri regulation that accommodate the right to marry while imposing a *de minimis* burden on the pursuit of security objectives." *Id.*

127 In rejecting petitioner's contention that the formation of "love triangles" is a valid security concern, the Court reasoned:

> Common sense likewise suggests that there is no logical connection between the marriage restriction and the formation of love triangles: surely in prisons housing both male and female prisoners, inmate rivalries are as likely to develop without a formal marriage ceremony as with one.

Id.

128 *Id.*

prison's proffered goal of rehabilitation.[129] Indeed, the Court suggested that the rehabilitative objective asserted by the Missouri prison officials may in fact be "suspect."[130] Thus, the majority concluded that Missouri's policy of refusing to grant permission to marry, absent a compelling reason, was a rule which swept too broadly and did not satisfactorily justify the ban on marriages.[131]

Justice Stevens concurred with the majority's determination that the marriage regulation was unconstitutional, but dissented to the extent that the majority upheld the correspondence restriction.[132] Justice Stevens initially observed that the manner in which "a court describes its standard of review . . . often has far less consequence for the inmates than the actual showing that the court demands of the [s]tate in order to uphold the regulation."[133] Stating that the *Turner* case provided a prime example of this proposition, Justice Stevens reasoned that a slight difference existed between the district court's standard, which prohibits a prison regulation from being needlessly broad, and the majority's standard, mandating that a regulation be "reasonably related to legitimate penological interests" and not an "exaggerated response" to those concerns.[134] The Justice stated, however, that "if the standard can be satisfied by nothing more than a '*logical* connection' between the regulation and any legitimate penological concern perceived by a cautious warden," then the constitutional protection offered to inmates by the majority is virtually nonexistent.[135]

Justice Stevens opined that the application of the majority's standard would operate to ignore prisoners' constitutional rights whenever a warden's imagination produced a plausible security concern and a deferential trial court was able to discern a logical

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[129] *Id.* The Court explained that since the rehabilitation efforts focused on female inmates marrying other prisoners or ex-felons in an effort to prevent violence among females, it did not account for the ban on prisoner-civilian marriages. *Id.* at 2266-67.

[130] *Id.* at 2267. Although not required for the disposition of the case, the Court noted that the rehabilitation concern was suspect since it operated in a paternalistic fashion scrutinizing female inmate marriages but routinely approving male prisoner marriages. *Id.*

[131] *Id.*

[132] *Id.* at 2268 (Stevens, J., concurring in part and dissenting in part).

[133] *Id.* at 2267 (Stevens, J., concurring in part and dissenting in part).

[134] *Id.*

[135] *Id.* at 2267-68 (Stevens, J., concurring in part and dissenting in part) (emphasis in original) (citation omitted).

connection between it and the challenged regulation.[136] The Justice exemplified his proposition by satirically citing the bullwhipping of prisoners and the banning of all communication as regulations having a logical connection to the goal of prison discipline.[137] Based on this reasoning, Justice Stevens was unable to join the majority's conclusion that the application of the "*logical* connection" test was appropriate in prisoners' rights cases.[138] Rather, he implied that such a standard vitiates virtually all the inmates' constitutional protections and delegates to prison authorities the power to decide what rights a prisoner shall enjoy.[139]

Justice Stevens viewed the Court's validation of the mailing restriction as a product of the application of the majority's "newly minted" standard, as well as an "improper appellate encroachment into the fact-finding domain of the [d]istrict [c]ourt."[140] The dissent stressed that the court of appeals' determination was based on a proper review of the trial record.[141] Justice Stevens maintained that the majority failed to recognize this, and instead "sift[ed] the trial testimony" in order to uphold the correspondence prohibition.[142]

In disagreeing with the majority's validation of the mailing regulation, the dissent proceeded to criticize the Court for making unsupported factual conclusions regarding the restriction.[143] Specifically, Justice Stevens noted that there was an absence of proof indicating that a prohibition of inmate-to-inmate corre-

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136 *Id.*

137 *Id.* at 2268 (Stevens, J., concurring in part and dissenting in part).

138 *Id.* (emphasis added).

139 *See id.* Justice Stevens explained that:

> [A] fundamental difference between the Court of Appeals and this Court in this case—and the principal point of this dissent—rests in the respective ways the two courts have examined and made use of the trial record. In my opinion, the Court of Appeals correctly held that the trial court's findings of fact adequately supported its judgment sustaining the inmates' challenge to the mail regulation as it has been administered at the Renz [facility].

Id.

140 *Id.* (citing Icicle Seafoods, Inc. v. Worthington, 475 U.S. 709 (1986)).

141 *Id.*

142 *Id.* In support of his conclusion, Justice Stevens noted that the majority relied on the amicus curiae briefs of the state of Texas, as well as the trial transcript, in making its findings. *See id.* at 2268 n.2. The dissent criticized the Court for "completely ignor[ing]" the factual findings of the district court which are binding, unless clearly erroneous. *Id.* Moreover, Justice Stevens pointed out that the *Turner* Court did not deem the factual findings of the district court clearly erroneous. *Id.*

143 *Id.* at 2270 (Stevens, J., concurring in part and dissenting in part).

spondence would prevent the communication of escape plots,[144] as well as a lack of testimony indicating that a total ban on prisoner correspondence would hinder gang formation.[145] In addition, Justice Stevens commented that the majority's observation that other methods of communication were available was irrelevant to the question of whether the regulation was unnecessarily broad.[146] In fact, the dissent observed that this type of rationalization would require sustaining the Renz marriage regulation because it too could have been more restrictive.[147] Moreover, Justice Stevens declared that the district court had not found it impossible to screen all correspondence sent to and received by Renz inmates.[148] Because the record contradicts this conclusion of impossibility, the Justice posited that the prohibition was an excessive response to any valid security concerns.[149]

Finally, Justice Stevens opined that the majority's determination that the marriage regulation was overbroad was inconsistent with its validation of the correspondence rule.[150] He maintained that the majority disregarded the same considerations it relied on to invalidate the marriage regulation when it scrutinized the mail regulation.[151] In conclusion, the dissent suggested that a uniform application of the majority's reasoning would result in a finding that the mail restriction at Renz was unconstitutional.[152]

The *Turner* decision marks a significant milestone in the area of prison law by extinguishing the uncertainty surrounding the proper standard of review applicable to inmates' claims. In holding that a reasonable relationship test is sufficient when analyzing

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144 *Id.* at 2270-72 (Stevens, J., concurring in part and dissenting in part).

145 *Id.* In fact, the dissent noted that Superintendent Turner's testimony regarding gang problems was entirely consistent with the district court's finding that the correspondence regulation was unwarranted. *Id.* at 2270 n.5.

146 *Id.* at 2272 (Stevens, J., concurring in part and dissenting in part).

147 *Id.*

148 *Id.*

149 *Id.* at 2273 (Stevens, J., concurring in part and dissenting in part). The dissent further stated that "[t]he blanket prohibition enforced at Renz is not only an 'excessive response' to any legitimate security concern; it is inconsistent with a consensus of expert opinion . . . [which] is far more reliable than the speculation to which this Court accords deference." *Id.* (footnote omitted).

150 *Id.* at 2274 (Stevens, J., concurring in part and dissenting in part).

151 *Id.* For example, the dissent points out that "[t]he marriage rule is said to sweep too broadly because it is more restrictive than the routine practices at other Missouri correctional institutions, but the mail rule at Renz is not an 'exaggerated response' even though it is more restrictive than the practices in the remainder of the state." *Id.*

152 *Id.* at 2275 (Stevens, J., concurring in part and dissenting in part).

the constitutionality of prison regulations,[153] the Court successfully formulates a standard which is responsive both to the protection of inmates' rights and the policy of deference to administrative decisions.[154]

Problems in prison are complex and unique to the institution. Notably, the safety of inmates and prison staff can be jeopardized by mismanagement of a prison.[155] Commanding special attention, such problems can only be eradicated by those who are specialists in the field.[156] As a judicial branch of the government, the *Turner* Court correctly recognized that it lacks the expertise necessary to effectively operate a penal institution.[157] Moreover, as the Court aptly points out, application of a strict scrutiny analysis to the everyday judgments of prison authorities would unequivocally hinder their ability to anticipate and solve problems inherent in prison administration.[158] Such an unworkable and inflexible standard would inevitably lead to courts acting as the "primary arbiters"[159] in prison affairs.

Until the *Turner* decision, the proper standard of review applicable to prisoners' claims had not been definitively established by the Court. The standard announced by the majority, however, is a logically-compelled extension of prior case law.[160] The reasoning articulated in *Pell*, *Jones*, and *Bell* judicially warranted the application of the reasonable relationship test in the *Turner* case. Thus, the dissent's contention that the majority created a "newly minted" standard[161] effectively ignores the established precedent in this area.

Furthermore, the dissent was misfocused in maintaining that the "principal point of this [case]" was the lower court's examination and use of the trial record.[162] The Justice stated that the

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153 *Id.* at 2261.

154 *Id.* at 2259.

155 *See supra* note 29 and accompanying text.

156 *Turner*, 107 S. Ct. at 2259.

157 *Id. See also* Pell v. Procunier, 417 U.S. 817 (1974).

158 *Turner*, 107 S. Ct. at 2262.

159 *Id.*

160 *See* Bell v. Wolfish, 441 U.S. 520 (1979) (prison regulation upheld as rational response to security problem); Jones v. North Carolina Prisoners' Labor Union, 433 U.S. 119 (1977) (rational relationship test employed to hold prison regulation valid); Pell v. Procunier, 417 U.S. 817 (1974) (in absence of evidence indicating an exaggerated response by prison officials, courts should defer to their expert judgment regarding prison administration).

161 *Turner*, 107 S. Ct. at 2268 (Stevens, J., concurring in part and dissenting in part).

162 *Id.*

complainants did not launch an "*exclusively* facial attack"[163] against the correspondence restriction, but rather "leveled [a] primary challenge against the application of [the] regulation."[164] Thus, Justice Stevens declared that it was not particularly helpful to commence the analysis of *Turner* by determining the appropriate standard of review.[165]

Although not exclusively before the Court, the facial validity of the regulation was, in fact, the issue presented squarely before the majority.[166] To adjudicate the constitutionality of that claim, the *Turner* Court properly recognized the importance of developing the appropriate standard. Indeed, the standard of review is the springboard by which constitutional claims are primarily adjudicated.[167] Thus, to examine the application of a regulation without first testing its validity, as the dissent suggested, is illogical. By focusing on the use of the trial record, the dissent overlooked the touchstone of the majority's analysis: the proper standard of review.

Calling attention to the potential flaws in the majority's holding, the dissent justly noted that the minimal protection afforded by the reasonable relationship test, may, in effect, result in the dilution of inmates' rights.[168] The majority, however, by articulating factors relevant in determining the reasonableness of a regulation,[169] makes a forceful effort to ensure that inmates' constitutional rights are adequately protected.

Indeed, the invalidation of the marriage regulation exempli-

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163 *Id.*

164 *Id.*

165 *Id.*

166 *Id.* at 2259-62.

167 In adjudicating equal protection claims, the standard of review adopted by the Court will necessarily determine the constitutionality of the statute or regulation in question. *See* L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 16-6, at 1451 (2d ed. 1988). For example, by employing a "minimum rationality" test in reviewing economic regulations, the state statute is often upheld. *See, e.g.*, Exxon Corp. v. Eagerton, 462 U.S. 176 (1983) (upholding Alabama royalty owner exemption from state gas and oil taxes since Alabama Legislature "could reasonably have determined" that the policy would have resulted in private investment). Conversely, the utilization of a "strict scrutiny" standard for challenges to fundamental rights, such as the right to interstate travel, has generally resulted in finding that the challenged restriction is unconstitutional. *See, e.g.*, Shapiro v. Thompson, 394 U.S. 618 (1969) (applying strict scrutiny test to state and federal provisions denying welfare benefits to individuals who resided in jurisdiction less than one year).

168 *Turner*, 107 S. Ct. at 2267 (Stevens, J., concurring in part and dissenting in part).

169 *Id.* at 2262.

fies that inmates' rights will not be disregarded,[170] but rather, the Court will fully discharge its duties to provide constitutional protection. In addition, the Court will not automatically find a "*logical* connection"[171] as the dissent anxiously perceives, but will instead review the record to determine the reasonableness of a restriction. Accordingly, an analysis of prison regulations under the reasonable relationship standard is the most effective way to protect constitutional rights while maintaining the necessary order and discipline in penal institutions.

Robin Ann Newman

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170 *Id.* at 2265.

171 *Id.* at 2267 (Stevens, J., concurring in part and dissenting in part) (emphasis in original) (citation omitted).