

The Supreme Court and Corrections

Estelle v. Gamble

429 U.S. 97 (1976)

By William C. Collins

Every correctional health care professional encounters Estelle v. Gamble at some point in his or her career, usually very early, and often as part of training on “legal issues” or “preventing liability.” While Estelle is often misunderstood as granting inmates a right to health care not enjoyed by the general public, it does not do so. What it does do is to require correctional facilities to provide “health care adequate to avoid needless pain and suffering” (Cohen, 2017). Specifically, the Supreme Court recognized two key concepts in its Estelle decision: serious condition and deliberate indifference. In this article, adapted from his forthcoming book, “The Supreme Court and Corrections: 20 Landmark Cases That Have Shaped America’s Prisons and Jails,” William C. Collins examines the conditions and issues raised in the case, legal arguments made before the high court, and the impact of the court’s ruling, which, perhaps more than any other, guides the policies and practices of health care in corrections today.

In one of the interesting ironies that seem to abound in corrections cases, **Estelle v. Gamble** affirmed an inmate’s constitutional right to adequate medical care, even though the inmate lost the case. Although the Court would later extend the principles established in *Estelle*, it remains one of the most important corrections cases decided by the Supreme Court. What the Court said in *Estelle*, essentially, was this: Inmates arrive in prison with or later develop all manner of injuries, illnesses, and ailments, from the minor to life-threatening. Without treatment, some of these conditions will result in prolonged and unnecessary pain, or even death. Thus, to deny treatment for such medical problems, or to offer treatment so inadequate as to

ensure needless suffering, amounts to unconstitutionally cruel punishment.

Turn the clock back to the 1960s and ‘70s and it is not hard to find that sort of cruelly inadequate medical care being provided to inmates. A single example from an early case involving Alabama’s entire prison medical system proves the point: A quadriplegic inmate had suffered a wound. The dressings on the wound weren’t changed and the wound developed maggots. It took *nearly three weeks* after the maggots were found for the wound to be cleaned and new dressings applied. **Newman v. Alabama**, 503 F.2d 1320 (5th Cir., 1974).

It should come as no surprise that medical care became one of the most frequently litigated issues facing federal courts in those years and that one of the early Supreme Court decisions recognized that medical care could raise a question of cruel and unusual punishment under the Eighth Amendment and defined the legal test against which medical care, or the lack thereof, would be measured. Welcome to **Estelle v. Gamble**, 509 U.S. 97 (1976).

Principle Established

Medical care, or the lack thereof, which shows “deliberate indifference to a serious medical need” amounts to cruel and unusual punishment in violation of the Eighth Amendment.

How Estelle Affected Policy and Practice

The principle that inadequate medical care could be the basis for an Eighth Amendment claim was well established in the lower courts so agencies already knew that providing medical care was part of their mission that was subject to federal court scrutiny. **Estelle** also did not significantly alter the test most courts used for evaluating medical care.

By affirming that lower courts were clearly correct in addressing medical issues, **Estelle** endorsed litigation that was to force dramatic improvements in the provision of inmate medical care. **Estelle** still serves this function.

Facts

J. W. Gamble filed a lawsuit in 1974 about medical care for a back injury and heart ailment he had been receiving, suing a doctor, who was also the medical director of the entire Texas DOC, the warden of the prison in which he was housed, and the Director of the Department. J.W. filed his case “*pro se*,” meaning that he represented himself, without the assistance of an attorney.

A federal magistrate looked at the complaint and decided that there was no way J.W. was going to be able to prove a constitutional violation and recommended that the case be dismissed before even getting a response to the allegations from the defendants. The district court judge agreed and the case ended almost before it began.

J.W. appealed and the Fifth Circuit court of appeals came to his rescue in the summer of 1975. In short, the Fifth Circuit said the factual allegations in the complaint might (emphasize “might”) state a claim for relief so district court should reinstate the case, appoint counsel for J.W., and allow the case to start over. **Gamble v. Estelle**, 515 F.2d 937 (5th Cir., 1975).

Even after the Fifth Circuit’s decision, this case remained a very simple one, probably easily disposed of by the defendants back at the district court level. But for reasons that are not clear, Texas asked the Supreme Court to review the case. The Court accepted review and in 1976 decided that J.W.’s complaint still failed to state a claim against the doctor, but sent the case back to the Fifth Circuit to allow further examination of the actions of the other defendants, the department director and the warden.

In June of 1977, the Fifth Circuit summarily dismissed the case against both the warden and director without taking any more evidence from either party, noting that the director and warden were not involved at all in the medical treatment decisions.

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So, somewhat more than three years after filing his complaint, J.W. Gamble's case was dismissed in its entirety. J.W. received no relief whatsoever, but his name is immortalized in the annals of correctional law.

In the early 1970s, Texas prisons operated on the plantation system, with many inmates working on the growing, harvesting, and processing of various crops. J. W. Gamble was such an inmate and on November 9, 1973, a 600 pound cotton bale fell on him. He kept working for a while, but after a few hours his back stiffened up and he was excused to go to the prison hospital.

A "medical assistant" referred to as Captain Blunt checked J.W. for a hernia and sent him to his cell. The pain intensified and within hours, J.W. was back in the hospital where he was first given pills by an inmate (!) nurse and then examined by a doctor. He saw a doctor again the next day, was given a pain reliever and a muscle relaxant and placed on "cell-pass, cell feed" status which was later modified to "cell-pass."

Over the next several weeks, he saw the doctor twice and continued to receive a pain medication and muscle relaxant.

So far as we know, all of the treatment prescribed for the back pain complaints was based on the medical providers' examination of Gamble, but not on any sort of medical testing. No X-rays were ever taken.

Gamble's condition did not change, but on December 3, the doctor classified him as ready for light work, continuing him on a pain reliever. Gamble told the Major he couldn't work so the Major moved him to administrative segregation. A disciplinary committee saw him two days later. The committee heard Gamble's explanation that he was in too much pain to work and referred him to another doctor.

The new doctor prescribed a blood pressure medication and renewed the prescription for pain reliever. Gamble went to the prison hospital twice more in December, seeing Captain Blunt both times, who gave him another muscle relaxant. Gamble remained in administrative segregation during December.

In January, the prison put more pressure on Gamble to return to work but he remained on the muscle relaxant and pain

killers, which he said weren't working. He stayed in administrative segregation.

Finally, at the end of January, he returned to the disciplinary committee. Captain Blunt told the committee that J.W. was in "first class" medical condition and, despite Gamble's statements that he was in severe back pain and suffering from high blood pressure, he was placed in disciplinary solitary confinement. We are not told how long this placement was to last.

Four days later, at eight in the morning, J.W. asked to see a doctor for chest pains and "blank outs." Almost 12 hours later, he finally saw a medical assistant who ordered him hospitalized. Over the next two days he was given an electrocardiogram and medicated for an irregular cardiac rhythm. He was moved back to administrative segregation. The next day, February 7, he complained of more chest, left arm, and back pains and asked to see a doctor. The officers refused these requests for two days, when he again saw a doctor who renewed the heart medication.

Two days later, Gamble filed his Complaint in the case that would become **Estelle v. Gamble**.

Lower Court Decisions

The detailed facts summarized above come exclusively from the 24-page complaint that Gamble filed. Because he asked to file his case, "*in forma pauperis*," i.e., without paying filing fees, the court reviewed the merits of the complaint as part of considering the fee waiver request. The judge decided that Gamble's allegations failed to state a claim for which relief could be granted. So, in virtually the same breath, the judge waived the filing fee, allowed the case to be filed, and dismissed it. The defendants literally had no idea the case had been filed until it reached the court of appeals, so the factual record contains no input whatsoever from the defendants.

The decision about whether a complaint "fails to state a claim for which relief may be granted," is based solely on the allegations the plaintiff makes in the complaint. Therefore, the district court and a reviewing appellate court must assume all of the facts alleged by the plaintiff are true. The appellate court that considered Gamble's appeal also recognized that various Supreme Court decisions required that *pro se* complaints filed by inmates who typically had little or no knowledge of

legal procedures must be given a liberal reading and "special care and scrutiny." In other words, at this point in the proceedings, a court had to give the *pro se* inmate a little more leeway and be cautious about dismissing a complaint early.

With these principles in mind, the Fifth Circuit reversed the district court's dismissal and sent the case back to the lower court. The court felt that Gamble's complaint showed that:

... the only medication prescribed was to relieve the pain, not to cure the injury; indeed, the exact nature of the back injury remained unknown. Certainly the pain pills had no curative effect, even though they were administered for some 3 months. Moreover, Gamble still had high blood pressure, "blank outs", and heart disease. And what makes this all the more disconcerting is the fact that he had spent months in solitary confinement without medical care and stood a good chance of remaining that way without intervention. 516 F.2d at 941.

The Fifth Circuit didn't announce what it felt the appropriate legal test should be for evaluating the constitutionality of inmate medical care but only held that Gamble's claim be considered more fully. However, the first case cited by the Fifth Circuit to support its conclusion that Gamble's constitutional claim warranted additional consideration stated the rule as follows:

A complaint under section 1983 based on inadequate medical treatment states a cause of action if it alleges conduct which "shocks the conscience," such as deliberate indifference by prison authorities to a prisoner's request for essential medical treatment. Williams v. Vincent, 508 F.2d 541, 543-544. (2d Cir., 1974).

That test sounds very similar to the test ultimately adopted by Supreme Court.

The bizarre allegations of the *Williams* case deserve mention. Again, these facts come just from the inmate's complaint. Williams claimed that another inmate cut off a large piece of his ear in an assault. Williams said he asked medical staff to sew severed piece of his ear back on. The medical staff member's response was to

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tell Williams he didn't need the ear, and then to throw the piece away in front of Williams. The Second Circuit felt that these actions could have shown deliberate indifference. If nothing else, they don't show much of a bedside manner.

The minimal impact of the Fifth Circuit's decision cannot be over-emphasized. It broke no new legal ground, saying only that Gamble might have a claim.

Following the court of appeals decision, Texas had two choices. One was to accept the court of appeals order and fight the case in the district court. There was no question that Gamble had received medical care, but were aspects of it so poor as to "shock the conscience?" Were pain medication and muscle relaxants appropriate, or was the fact that they didn't seem to be doing any good suggestive that other treatment avenues should have been explored?¹

Texas' second choice was to seek review from the Supreme Court. The officials chose this option.

Issues Presented

At the Supreme Court, Texas officials conceded as a general matter that medical care issues could, conceivably, violate the Cruel and Unusual Punishment Clause of the 8th Amendment but only if there was "a total failure or refusal to provide medical care." (Transcript of Oral Argument, http://www.oyez.org/cases/1970-1979/1976/1976_75_929/.) Since Gamble received some care, his case failed.

J.W. Gamble argued in response that prison officials' deliberate indifference to medical needs violated the 8th Amendment.

Both parties conceded that "mere" negligence in the delivery of medical care would not violate the Constitution.

Gamble also argued that the process followed by the district court in dismissing the complaint from an illiterate inmate acting *pro se* without ordering a responsive pleading from prison officials or reviewing the inmate's medical records was improper. Questions from the Justices about this issue, particularly from Justice Marshall, consumed a substantial portion of the oral argument but garnered only a brief mention in a footnote in Justice Stevens' dissenting

opinion, where he impliedly criticized the practice but noted that the issue was not formally raised by the parties.

Counsel for the Texas officials opened his argument with a dire, somewhat hyperbolic warning:

... [T]he crux of this case is whether the Federal District Courts and the Fifth Circuit will in the future sit as medical review boards to review the diagnosis and treatment by doctors in correctional institutions or whether that Federal Courts and the Fifth Circuit will operate within the confines as the limitations imposed by the Constitution and by the jurisdictional part of Section 1983 . . . (http://www.oyez.org/cases/1970-1979/1976/1976_75_929/).

Defense counsel went on to suggest that if an inmate wanted to complain about medical care, he had the traditional remedies of medical malpractices claims available in state courts.

By the time oral argument in the Supreme Court ended, counsel for the Texas officials acknowledged that he and opposing counsel agreed on the legal test to be applied—deliberate indifference—and only disagreed as to how the test should be applied to the facts of the case.

Ruling

In a 7-2 decision, **Estelle v. Gamble** asserted the principle that prison officials violate an inmate's right under the Eighth Amendment to be free from cruel and unusual punishment when they (1) are deliberately indifferent to (2) an inmate's serious medical need. The Court then applied that rule to J.W. Gamble's allegations against the doctor and concluded the allegations failed to show deliberate indifference.

Majority Opinion

That the government has an obligation to provide some level of medical care for those it incarcerates was not a novel idea since the principle dated back to common law. The reason for the state's obligation to provide some level of medical care for prisoners is obvious:

An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical

"torture or a lingering death" . . . the evils of most immediate concern to the drafters of the Amendment. In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose. 429 U.S. at 103.

The principle that the government must provide for the needs of those whom it incarcerates, lest such needs be unmet, reaches well beyond medical care and was later extended to other basic human needs, such as food, clothing, and shelter.

Given that the state has some duty to address the medical need of the people it imprisons, and given that "mere" medical malpractice is not unconstitutional, when would inadequate care cross the Eighth Amendment line?

Answering that question begins with a review of Eighth Amendment history. The phrase "cruel and unusual punishment" has been a difficult concept to define since its origin in 1688 in the English Declaration of Rights. Over the years, at the same time the Supreme Court has struggled to clarify the meaning of the phrase, the scope of what was included under the heading of "cruel and unusual punishment" has expanded.

The "primary concern of the drafters [of the Constitution] was to proscribe 'torture[s]' and other 'barbar[ous]' methods of punishment." 429 U.S. at 102. A case from the late 19th century said "Punishments are cruel when they involve torture or a lingering death . . ." *In Re Kemmler*, 1356 U.S. 426, 447 (1890). In the 20th century, the Supreme Court began to take a broader, more flexible view of what "cruel and unusual punishment" might mean. A 1968 decision from the 8th Circuit, which held that beating inmates with a leather strap as punishment for violating prison rules violated the Eighth Amendment, included a review of the evolution of the concept of cruel and unusual punishment. **Jackson v. Bishop**, 404 F.2d 517 (8th Cir., 1968)².

In **Estelle**, the Court noted that:

The Amendment embodies "broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . ." against which we must evaluate penal measures. Thus, we have held repugnant to the Eighth Amendment punishments which

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are incompatible with “the evolving standards of decency that mark the progress of a maturing society,” or which “involve the unnecessary and wanton infliction of pain.” 429 U.S. at 102-103.

In *Estelle*, the Court relied on the final phrase, “wanton and unnecessary infliction of pain” to conclude that medical care, or the lack thereof, could become cruel and unusual punishment.

At oral argument, the attorney for the Texas officials acknowledged that there was “no disagreement” between the parties—the deliberate indifference test was the correct test to evaluate the constitutional sufficiency of medical treatment. Almost surprisingly, given the independence of the Supreme Court, a seven-justice majority in *Estelle* largely agreed, saying:

*We therefore conclude that **deliberate indifference to serious medical needs** [emphasis added] of prisoners constitutes the “unnecessary and wanton infliction of pain” proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner’s needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner’s serious illness or injury states a cause of action under § 1983. 429 U.S. at 104-105.*

This short paragraph makes it clear that potential liability under the general heading of “medical” is not limited to medical providers, but extends to officers as well.

Deliberate indifference. Note the test from *Estelle* has two distinct parts. The first is “deliberate indifference,” a phrase the Court did not define except to explain what it is not:

This conclusion does not mean, however, that every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment. An accident, although it may produce added anguish, is not on that basis alone to be characterized as wanton infliction of unnecessary pain.

Similarly . . . a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. 429 U.S. at 105-106.

To oversimplify this last quoted paragraph, when a prison doctor treating an inmate says “oops,” that suggests negligence; only if the doctor says “who cares?” has he crossed into deliberate indifference and an Eighth Amendment violation. (If “who cares” is followed by “wow, that must hurt,” there is probably a serious medical need.)

By clearly stating that negligence—something even more egregious than

incompetence or medical malpractice—does not violate the Eighth Amendment, the Court addressed Texas’s attorney’s concern that federal courts were going to become “medical review boards to review the diagnosis and treatment by doctors in correctional institutions.”

Serious medical need. The second part of the test is that the medical need must have been “serious.” By adding the “serious” qualifier, the Court made explicit what was largely implicit from the lower federal court decisions dealing with inmate medical claims—the nature of the medical problem that was allegedly not being addressed was an essential part of the constitutional equation.

Some medical conditions are obviously serious and others are obviously not. However, there is a large gray area between the two obvious extremes, particularly with conditions which at first would not be considered serious but which, if ignored, may become serious at some point. The serious/non-serious difference would become the subject of much lower court litigation.

Dissent

Justice Stevens dissented from the majority opinion, wondering why the Court accepted the case for review at all.

[I]f the Court thought that . . . the case presented an important constitutional question about the State’s duty to provide medical care to prisoners, the crude allegations of this complaint do not provide the kind of factual basis the Court normally requires as a predicate for the

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adjudication of a novel and serious constitutional issue. Moreover, as the Court notes, all the Courts of Appeals to consider the question have reached substantially the same conclusion that the Court adopts. Since the Court seldom takes a case merely to reaffirm settled law, I fail to understand why it has chosen to make this case an exception to its normal practice. 429 U.S. at 115.

Justice Stevens also expressed concern about the deliberate indifference test, noting that it “improperly attaches significance to the subjective motivation of the defendant as a criterion for determining whether cruel and unusual punishment has been inflicted . . . whether the constitutional standard has been violated should turn on the character of the punishment rather than the motivation of the individual who inflicted it.” *Id.* He argued that the end result should be what determines an Eighth Amendment violation, not the motivation of the official accused of causing the violation but never managed to bring other Justices to his way of thinking.

Impact on Previous Court Rulings

Estelle had little immediate impact on federal courts’ approach to evaluating inmate medical care. As Justice Stevens’s dissent noted, lower courts generally had adopted the deliberate indifference test already. In hindsight, one wonders why Texas went to the trouble of even seeking Supreme Court review. The Fifth Circuit decision required only that the District Court reopen the case. Had this happened, the most likely result would have been a summary judgment in favor of the defendants.

After discussing the deliberate indifference test, the Supreme Court concluded that Gamble received enough attention and care from the various doctors to defeat any claim of deliberate indifference to the doctor he sued. However, the Court found that the Court of Appeals had not clearly considered Gamble’s claims against the director of the Texas Department of Corrections or the warden of the prison in which Gamble was housed. So the case was sent back to the Fifth Circuit to consider the claim against those officials. On remand, it took the Fifth Circuit but one short paragraph in a four paragraph opinion to dismiss the claims against the Director and Warden.

Effect on Correctional Practice

Estelle essentially affirmed the constitutional test federal appeals courts were using to evaluate inmate medical care claims and thus put the Supreme Court’s imprimatur on the deliberate indifference test. It also made clear that a medical need must be “serious” before it gains constitutional protection.

Medical issues have been and continue to be a major category of litigation for both prisons and jails. “Medical” care obviously includes mental health care. Cases range from major class actions attacking systemic inadequacies of care as well as actions brought by individual inmates which may raise serious claims or may border on the frivolous. All these cases continue to be evaluated under the **Estelle** test. Particularly the early medical cases, some coming before and others after **Estelle** showed truly abysmal medical care—and neglect—by correctional officials, including both medical and custody staff.

Estelle cemented the principles for court review of medical care complaints from prisoners, albeit in very general

terms. It remained for lower courts to determine the day to day meaning of “serious medical need” and “deliberate indifference,” both in cases like *J.W. Gamble’s*, which involved one inmate complaining about the care he received, and in class actions which alleged the entire medical delivery system of a prison or even a department of corrections was attacked.

Ironically, just about the time Gamble’s original complaint was summarily dismissed, such a system-wide class action was gathering steam before a different federal district court judge in Texas. That case, **Ruiz v. Estelle**, would become probably the biggest, most sweeping prisoner rights case this country has ever seen, including virtually every issue about prison operations, including medical care, one could imagine. The first reported decision in **Ruiz** came in 1980. As for **Estelle v. Gamble**, its “deliberate indifference to serious medical needs” test remains unchanged. Indeed, the phrase “deliberate indifference to serious medical needs” appears over 14,000 times in reported federal court decisions.

End Notes

1. The Court of Appeals opinion says Gamble received only pain medications, but the Supreme Court says he received both painkillers and muscle relaxants.
2. Jackson also rejected the notion that there was a significant distinction between “cruel” and “unusual” in the Eighth Amendment. “We would not wish to place ourselves in the position of condoning punishment which is shown to be only ‘cruel’ but not ‘unusual’ or vice versa.” 404 F. 2d at 581.

Reference

Cohen, Fred: “The Legal Framework for Correctional Health Care,” in *Correctional Health Care: Practice, Administration and Law*, edited by Fred Cohen, 2017, Civic Research Institute, Kingston, NJ. ■



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