

A Right of Access to Medical and Mental Health Care for the Incarcerated

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It is general knowledge throughout the country that the nation's economy is struggling to rebound and millions of people are without employment and health insurance. Frustration is running high for many people. Health care reform is now a top priority for President Obama. Generally speaking, President Obama seeks to extend medical coverage to 45 million uninsured Americans while "lowering costs, improving quality and preserving consumer choice."¹ Such an ambitious undertaking is admirable, especially when medical bills are behind more than 60 percent of personal bankruptcies in the United States.²

Background

While millions of individuals are concerned about the rising cost of health care or lack of access to it, a recent article in *The Houston Chronicle* inflamed some readers even more when it reported that the Harris County Jail violated prisoners' constitutional right to health care and presented life-threatening conditions.³ According to a Department of Justice (DOJ) report, the jail repeatedly failed to provide inmates with adequate (1) medical care; (2) mental health care; (3) protection from serious harm and (4) protection from life safety hazards.⁴ Specifics regarding the report were not released and Harris County officials stated that most of the issues have since been resolved.⁵

However, the release of news regarding the DOJ report resulted in nearly 200 comments being posted by readers on the newspaper's website regarding an inmate's "constitutional right" to health care. One commentator wrote: "I'm not an inmate, but I can't afford health care and my work is life-threatening every day."⁶ Similar comments were posted; while some expressed understanding for basic medical needs of inmates – many others argued that no inmate deserves much of anything, let alone health care access.

Historically, the particulars of the United States correctional system have largely been shielded from public view; horrendous medical conditions permeated prisons for decades and were only widely revealed in the early 1970s.⁷ At that time, lawsuits brought by the

¹ Sheryl Gay Stolberg, *Obama to Forge a Greater Role on Health Care*, N.Y. TIMES, (June 6, 2009), available at http://www.nytimes.com/2009/06/07/us/politics/07policy.html?_r=1&scp=1&sq=obama+to+forge+a+greater+role&st=nyt (last visited June 9, 2009).

² Maggie Fox, *Medical Bills Underlie 60 Percent of U.S. Bankrupts: Study*, REUTERS, (June 4, 2009), available at <http://www.reuters.com/article/healthNews/idUSTRE5530Y020090604?feedType=RSS&feedName=healthNews> (last visited June 9, 2009).

³ Roma Khanna, *County Jail Fails Feds' Probe*, HOUS. CHRON., (June 5, 2009), available at <http://www.chron.com/disp/story.mpl/headline/metro/6460438.html> (last visited June 9, 2009).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ William J. Rold, *30 Years After Estelle v. Gamble: A Legal Retrospective*, NAT'L COMM. ON CORR. HEALTH CARE, available at http://www.ncchc.org/pubs/CC/legal_30years.html (last visited June 9, 2009).

incarcerated illustrated conditions where prisoners performed medical procedures on fellow inmates – including pulling teeth, suturing, and surgery.⁸ More extreme cases resulted in deaths due to neglect by prison officials.⁹

The Landmark Case of *Estelle v. Gamble*

The United States Supreme Court decided a landmark case that would serve as the foothold to an inmate’s “constitutional right” to health care access.¹⁰ J.W. Gamble was a Texas inmate working on a prison farm when a bale of cotton fell on him while he was unloading a truck.¹¹ After a brief medical examination, Gamble was sent back to his cell and was later given medications for pain.¹² Physicians diagnosed Gamble’s injury as a lower back strain and placed him on bed rest.¹³ As Gamble’s pain persisted, he informed prison officials that he was unable to work and was brought before a disciplinary committee.¹⁴ After being met with delayed treatment – and in some cases, none at all – Gamble brought suit against the facility, its warden, and the Texas Department of Corrections for lack of adequate medical treatment, for denying him a work excuse, and for punishing him for refusing to work when medically unfit.¹⁵

After weaving its way through the lower courts for years, Gamble’s case finally reached the Supreme Court in 1976. At the time of the Court’s decision, numerous state, federal, and Supreme Court opinions had dealt with the notion of “cruel and unusual punishments” in violation of the Eighth Amendment involving “torture or a lingering death.”¹⁶ However, the Court went further in *Estelle* and noted that punishments are violative of the Eighth Amendment if they are incompatible with “the evolving standards of decency that mark the progress of a maturing society,”¹⁷ or “involve the unnecessary and wanton infliction of pain.”¹⁸

In fashioning its decision, Justice Marshall, writing for the Court, reasoned that 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.’”¹⁹ In less serious cases, denial of medical care could result in pain and suffering “which no one suggests would serve any penological purpose.”²⁰

⁸ *Id.*

⁹ *Id.*

¹⁰ *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285 (1976).

¹¹ *Id.* at 99.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 100.

¹⁵ *Id.*; see also Rold, *supra* note 7.

¹⁶ *Gamble*, 439 U.S. at 102 (citing *Gregg v. Georgia*, 428 U.S. 153, 169-73, 96 S.Ct. 2909, 2923 (1976); *Wilkerson v. Utah*, 99 U.S. 130, 136 (1879); *In Re Kemmler*, 136 U.S. 436, 447 (1890)).

¹⁷ *Id.* (citing *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

¹⁸ *Id.* at 103 (citing *Gregg v. Georgia*, 428 U.S. at 173)).

¹⁹ *Id.*

²⁰ *Id.*

The Court concluded that “deliberate indifference” to “serious medical needs” of prisoners constitutes the “unnecessary and wanton infliction of pain.”²¹ Some courts since the *Estelle* decision have held that a medical need is serious if it “has been diagnosed by a physician as mandating treatment or...is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.”²²

In the 30 years since *Estelle*, three basic rights have emerged: (1) the right of access to health care; (2) the right to care that is ordered, and (3) the right to a professional medical judgment.²³ However, some states’ correctional systems fail to meet the demands placed on them by *Estelle*.

Health Care in Correctional Facilities Since *Estelle*

Physician Joe Goldenson, Program Director and Medical Director for the San Francisco Public Health Department’s Jail Health Services, testified to the Commission on Safety and Abuse in America’s Prisons in 2005, and noted that the state of health care in many correctional systems remains poor and fails to meet the constitutional standard set by the Supreme Court.²⁴ Dr. Goldenson noted the following issues in many such facilities:

[l]ack of timely access to routine, specialty, and emergency care; lack of chronic care programs; incompetent and inadequate care; and deficient medical records systems are common problems.²⁵

The Texas prison system has mirrored the problems articulated by Dr. Goldenson. In 2006, the vice president for correctional health for the University of Texas Medical Branch at Galveston said the state was “on a thin line” in terms of the correctional system being constitutional.²⁶ State officials noted problems of skyrocketing health care costs and an aging inmate population afflicted with serious illnesses.²⁷

The Houston jail is not the only facility that has come under attack for failing to provide adequate health care access to inmates. In 2008, the Cook County Jail in Chicago, Illinois, came under fire from DOJ investigators who found some inmates were not receiving medications for their mental illnesses while others were given such drugs

²¹ *Id.* at 104.

²² Rold, *supra* note 7 (citing *Duran v. Anaya*, 642 F.Supp. 510, 524 (D.N.M. 1986); *Ramos v. Lamm*, 639 F.2d 559, 575 (10th Cir. 1980)). It is important to note that the Court in *Estelle* specifically noted that actions deemed to be medical malpractice do not rise to the level of an Eighth Amendment violation.

²³ William J. Rold, *30 Years After Estelle v. Gamble: A Legal Retrospective*, Nat’l Comm. on Corr. Health Care, available at http://www.ncchc.org/pubs/CC/legal_30years.html (last visited June 9, 2009).

²⁴ Joe Goldenson, M.D., *Testimony: Submitted to the Comm. on Safety and Abuse in America’s Prisons*, (July 20, 2005), available at http://www.prisoncommission.org/statements/goldenson_joe.pdf (last visited June 9, 2009).

²⁵ *Id.*

²⁶ Mike Ward, *Texas Prison Health Care System on Critical List*, AUSTIN AM.-STATESMAN, (July 24, 2006), available at <http://www.aclutx.org/article.php?aid=338> (last visited June 9, 2009).

²⁷ *Id.*

without any record as to why.²⁸ Prior to that, an inmate's leg was amputated after an infection beneath a cast went untreated.²⁹ As is the case with many other facilities, the Cook County Jail had problems with inadequate staffing, overcrowding, and insufficient supervision.³⁰

Conclusion

It is understandable that many individuals are frustrated by the state of the health care system in the United States. Some might say that it is broken and in desperate need of reform. However, those that are incarcerated do not have the ability to drive to the nearest emergency room or call for assistance when faced with a serious medical need. He or she must rely on prison officials in that instance. Thus, providing some measure of oversight to ensure that inmates receive basic health care access for serious illness or conditions seems reasonable.

Health Law Perspectives (June 2009), available at:
<http://www.law.uh.edu/healthlaw/perspectives/homepage.asp>

²⁸ Monica Davey, *Federal Report Finds Poor Conditions at Cook County Jail*, N.Y. TIMES, (July 18, 2008), available at <http://www.nytimes.com/2008/07/18/us/18cook.html> (last visited June 9, 2009).

²⁹ *Id.*

³⁰ *Id.*