

The Burger Court Opinion Writing Database

Estelle v. Gamble

429 U.S. 97 (1976)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

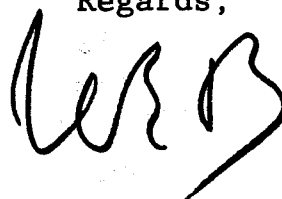
November 11, 1976

Re: 75-929 - Estelle v. Gamble

Dear Thurgood:

Although I agree with the result,
some of the language gives me pause. I
will try to focus my thoughts next week.

Regards,



Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

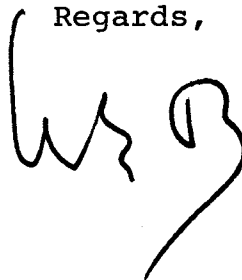
CHAMBERS OF
THE CHIEF JUSTICE

Re: No. 75-929 Estelle v. Gamble

Dear Thurgood:

I find myself in general agreement with Bill
Rehnquist's memorandum of November 19.

Regards,



Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

3

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 16, 1976

RE: No. 75-929 Estelle v. Gamble

Dear Thurgood:

I agree.

Sincerely,

Bul

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

October 22, 1976

No. 75-929 - Estelle v. Gamble

Dear Thurgood,

As indicated at our Conference, my position in this case is essentially the same as that of Lewis and Bill Rehnquist. I suppose, however, that our dispositive action will be to remand the case "for further proceedings consistent with this opinion," and that this disposition will leave the lower courts free to consider whether Gamble has stated a valid cause of action based on the conduct of prison personnel who were not physicians.

Sincerely yours,

PS,
1.

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

November 15, 1976

75-929 - Estelle v. Gamble

Dear Thurgood,

Would you consider making the following changes in the opinion you have circulated:

- (1) Insert the word "intentionally" between the words "in" and "denying" in the last line of the text on page 7.
- (2) Insert the word "intentionally" between the word "or" and "interfering" in the first line of the text on page 8.
- (3) Substitute something along the following lines for the final paragraph of the opinion beginning toward the top of page 11:

The Court of Appeals focused primarily on the alleged actions of the doctors, and did not separately consider whether the allegations against the Director of the Department of Corrections, Estelle, and the warden of the prison, Husbands, stated a cause of action. Although we reverse the judgment as to the doctors, we remand the case to the Court of Appeals to allow it an opportunity to consider, in conformity with this opinion, whether a cause of action has been stated against the other prison officials.

If your opinion were amended along the above lines, I would be glad to join it.

Sincerely yours,

Mr. Justice Marshall

Copies to the Conference

P.S.
/

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

November 22, 1976

No. 75-929 - Estelle v. Gamble

Dear Thurgood,

Bill Rehnquist's suggested deletion
of the language about executives and legis-
lators is wholly satisfactory to me.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

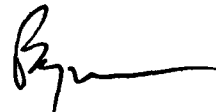
November 15, 1976

Re: No. 75-929 - Estelle v. Gamble

Dear Thurgood:

Please join me.

Sincerely,

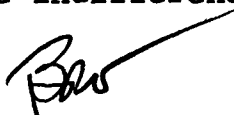


Mr. Justice Marshall

Copies to Conference

Thurgood:

Could you possibly change "Callous disregard" in line three on page eight to "Deliberate indifference"? These ring differently for me, and I would rather stick to the deliberate indifference standard.



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 26, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 75-929 - Estelle v. Gamble

In the light of Lewis' memorandum and the responses of Potter, Harry, and Rehnquist, I think the record should be made clear.

According to my records, Lewis is recorded as voting "Flat reversal--nothing else"; Rehnquist is recorded as agreeing with LFP"; Harry as seeing the problem as "absence vs inadequacy of medical care--might go along with questions other than medical treatment"; Potter as "malpractice and no more".

My vote is recorded as "affirm in part (medical treatment)-remand with instructions to look into the claims other than the medical claims".

The opinion was assigned to me and I have written it with an effort to get some place in between all of this without abandoning my position in toto.

It will be circulated this week--I hope!

T.M.
T.M.

NOV 8 1976

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-929

W. J. Estelle, Jr., Director, Texas Department of Corrections, et al., Petitioners, v. J. W. Gamble,	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
--	---	---

[November —, 1976]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Respondent J. W. Gamble, an inmate of the Texas Department of Corrections, was injured on November 9, 1973, while performing a prison work assignment. On February 11, 1974, he instituted this civil rights action under 42 U. S. C. § 1983,¹ complaining of the treatment he received after the injury. Named as defendants were the petitioners, W. J. Estelle, Director of the Department of Corrections, H. H. Husbands, Warden of the prison, and Dr. Ralph Gray, medical director of the Department and chief medical officer of the prison hospital. The District Court, *sua sponte*, dismissed the complaint for failure to state a claim upon which relief could be granted.² The Court of Appeals

¹ Title 42 U. S. C. § 1983 provides:

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

² It appears that the petitioner-defendants were not even aware of the suit until it reached the Court of Appeals. Tr. of Oral Arg., at 7, 13-15. This probably resulted because the District Court dismissed the complaint simultaneously with granting leave to file it.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 9, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 75-929, Estelle v. Gamble

I thought it would be helpful if you each had a copy of the affidavit filed by petitioner in the Court of Appeals. Since the xeroxed copy is barely legible, I'm also including our best effort at transcription.

T.M.
T.M.

"J.W. Gamble"

"Appellant,"

"v. s."

"W.J. Estelle Jr,"

"H, H, Husband" "

"Dr, Ralph Gray"

"Appellee"

"United, States,"

"Court, of, Appeal,"

"New Orleans, "LA."

"Civil-"-Right"

"Civil-" Action"

"74-3127"

"Supplemental"

"Brief, "

"SUPPLEMENTAL, BRIEF, "

"To, The Honorable Judge of Said Court"

"Appellant" is a layman unskilled in law and does not possess the legal knowledge and skill which is imperative to litigate this action, "

"Appellant" filed this action on or about 31th day of January 1974 appellant was placed in solitary confinement the same day of filing this action and have remained in solitary confinement everyday sence, "

"ORAL, ARGUMENT, AND, "

"STATEMENT, OF, THE CASE"

appellant was Brought in front of the wall unit disciplinary committee on or about 31th day of January 1974, on charges of Refusing to work Hurting the Committee place appellant in solitary confinement on or about 12-day of February 1974 appellant was taken out of solitary confinement and transferred to the Retrieve Unit of Angleton Texas on or about the same day appellant was Brought in front of the Retrieve Unit disciplinary committee on some charge as above refusing to work Hurting the committee placed appellant in solitary confinement, plaintiff has Been on said unit for

NOV 15 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-929

<p>W. J. Estelle, Jr., Director, Texas Department of Corrections, et al., Petitioners, v. J. W. Gamble.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.</p>
---	---	---

[November —, 1976]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Respondent J. W. Gamble, an inmate of the Texas Department of Corrections, was injured on November 9, 1973, while performing a prison work assignment. On February 11, 1974, he instituted this civil rights action under 42 U. S. C. § 1983,¹ complaining of the treatment he received after the injury. Named as defendants were the petitioners, W. J. Estelle, Jr., Director of the Department of Corrections, H. H. Husbands, Warden of the prison, and Dr. Ralph Gray, medical director of the Department and chief medical officer of the prison hospital. The District Court, *sua sponte*, dismissed the complaint for failure to state a claim upon which relief could be granted.² The Court of Appeals

¹ Title 42 U. S. C. § 1983 provides:

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

² It appears that the petitioner-defendants were not even aware of the suit until it reached the Court of Appeals. Tr. of Oral Arg., at 7, 13-15. This probably resulted because the District Court dismissed the complaint simultaneously with granting leave to file it.

P 2-4, 7-9

to: the Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: _____

Recirculated: NOV 19 1976

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-929

W. J. Estelle, Jr., Director, Texas
 Department of Corrections,
 et al., Petitioners,
 v.
 J. W. Gamble.

On Writ of Certiorari to
 the United States Court
 of Appeals for the Fifth
 Circuit.

[November —, 1976]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Respondent J. W. Gamble, an inmate of the Texas Department of Corrections, was injured on November 9, 1973, while performing a prison work assignment. On February 11, 1974, he instituted this civil rights action under 42 U. S. C. § 1983,¹ complaining of the treatment he received after the injury. Named as defendants were the petitioners, W. J. Estelle, Jr., Director of the Department of Corrections, H. H. Husbands, Warden of the prison, and Dr. Ralph Gray, medical director of the Department and chief medical officer of the prison hospital. The District Court, *sua sponte*, dismissed the complaint for failure to state a claim upon which relief could be granted.² The Court of Appeals

¹ Title 42 U. S. C. § 1983 provides:

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

² It appears that the petitioner-defendants were not even aware of the suit until it reached the Court of Appeals. Tr. of Oral Arg., at 7, 13-15. This probably resulted because the District Court dismissed the complaint simultaneously with granting leave to file it.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 22, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 75-929, Estelle v. Gamble

Bill Rehnquist, joined by Lewis Powell, would delete
". . . or by executives and legislators in failing to provide
adequate medical care facilities." at the top of page 8. I have
no objection to taking it out unless there is sentiment for keeping
it in.

JM.
T. M.

7, 9, 10, 11

11/23/76



4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-929

W. J. Estelle, Jr., Director, Texas
 Department of Corrections,
 et al., Petitioners,
 v.
 J. W. Gamble.

On Writ of Certiorari to
 the United States Court
 of Appeals for the Fifth
 Circuit.

[November —, 1976]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Respondent J. W. Gamble, an inmate of the Texas Department of Corrections, was injured on November 9, 1973, while performing a prison work assignment. On February 11, 1974, he instituted this civil rights action under 42 U. S. C. § 1983,¹ complaining of the treatment he received after the injury. Named as defendants were the petitioners, W. J. Estelle, Jr., Director of the Department of Corrections, H. H. Husbands, Warden of the prison, and Dr. Ralph Gray, medical director of the Department and chief medical officer of the prison hospital. The District Court, *sua sponte*, dismissed the complaint for failure to state a claim upon which relief could be granted.² The Court of Appeals

¹ Title 42 U. S. C. § 1983 provides:

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

² It appears that the petitioner-defendants were not even aware of the suit until it reached the Court of Appeals. Tr. of Oral Arg., at 7, 13-15. This probably resulted because the District Court dismissed the complaint simultaneously with granting leave to file it.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 28, 1976

MEMORANDUM TO THE CONFERENCE

Re: Case held for 75-929 -- Estelle v. Gamble

No. 75-7003 -- Scherer v. Pogue

From May through September 1975, petitioner filed four separate civil rights complaints in the U.S. District Court for the District of Nevada. The trial judge considered them together. He found that parts of the first three complaints stated a claim and consolidated those with an already pending action. Counsel was appointed and the defendant ordered to answer those charges. The fourth complaint was dismissed for failure to state a claim, and it is that ruling that petitioner appealed unsuccessfully to the Court of Appeals and is challenging herein.

✓ Petitioner complains of the dental care he received in the prison. Based on my examination of the record, I believe that his complaint falls within the medical malpractice category that Estelle held not cognizable under 1983. Petitioner was seen by the dentist on numerous occasions while in prison. In his visits in 1971, the dentist filled two cavities. Recently, in 1975 the dentist took five x-rays to determine the extent of petitioner's problems and recommended extraction of two teeth. Petitioner, however, refuses the extractions. He says that the earlier fillings were incompetently performed and that he does not want this dentist to work on him anymore. He further asserts that gold inlays would save these teeth and that since the prison won't give him gold inlays he has a right to be sent for dental care outside the prison. His only other objection goes to the prison's brand of aspirin.

✓ Since I can find no suggestion of deliberate indifference here, I will vote to deny.


T.M.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 22, 1976

Re: No. 75-929 - Estelle v. Gamble

Dear Thurgood:

My position in this case is to reverse and not to remand except, possibly, along the narrow lines suggested by Potter.

Sincerely,



Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 22, 1976

Re: No. 75-929 - Estelle v. Gamble

Dear Thurgood:

I have deferred writing you about this case until the suggestions proposed by Lewis and Bill Rehnquist had been considered and resolved. I think now that I should concur only in the judgment, and I shall appreciate your noting me to that effect. I should give reasons, of course, for doing this. They are:

1. I share Bill Rehnquist's and others' concern about the reference in this case to the failure of executives and legislators to provide "adequate medical care facilities" (top of page 8 of the third draft).

2. I was sympathetic with the concerns expressed by Lewis on page 2 of his letter of November 16. You have met these concerns, I believe, in part, but not entirely.

3. In the second sentence of the first full paragraph on page 6, I would have preferred the insertion of the word "usually" after the words "an inmate." I have known too many instances where a prison inmate has received medical, and particularly surgical, treatment outside the prison walls when treatment of that kind was indicated.

4. I am pleased to see the capitalization and spelling of the trade-name drugs. One or two of the others that are named, so far as I am able to determine, are not listed in the U.S. Pharmacopeia or similar compilations. I wondered, therefore, whether a footnote to the general effect that "Respondent does not claim in any way that the drugs administered to him were themselves improper" would have been indicated.

5. On a number of occasions you cite Gregg v. Georgia and refer to what you call the plurality opinion. I note, however, that you do not make reference to the plurality opinion for the first cite on page 5, for

- 2 -

the last cite on page 6, and for the cite on page 7. I must assume that this is intentional. In any event, I did not join the so-called plurality opinion.

Will you, therefore, please note at the end of your opinion "Mr. Justice Blackmun concurs in the judgment of the Court."

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line drawn underneath it.

Mr. Justice Marshall

cc: The Conference

101
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 22, 1976

No. 75-929 Estelle v. Gamble

Dear Thurgood:

According to my notes, your position at the Conference - in summary - was (i) that CA5 was in error on the "medical treatment issue" but (ii) that the District Court should have required the State to produce evidence on the "deliberate indifference" issue. This would lead one to remand on the latter issue for a hearing by the DC.

My own vote was a flat reversal, as I see no occasion to burden the DC with a hearing where the complaint is as full and detailed - and as meritless - as this one.

There may be a majority for a remand on the "deliberate indifference" issue, as there was a good deal of discussion of that possibility. I believe my view was clear at the Conference, but thought it best to reiterate that I do not think I could join an opinion that would remand this case.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

✓
J
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.


November 16, 1976

No. 75-929 Estelle v. Gamble

Dear Thurgood:

I have now had an opportunity to read carefully your opinion. Although I would have preferred a flat reversal, I can go along with your remand on the basis of the affidavit.

I do have some difficulty with the first full paragraph on page 9. I believe that District Courts and Courts of Appeal will look to that paragraph, more than any other in the opinion, to ascertain the applicable standard for the stating of a valid claim. I suggest the following as a substitute for this paragraph:

 "Similarly, in order to state a valid claim of medical mistreatment under the Eighth Amendment a prisoner must allege acts or omissions that are so harmful or evidence such indifference to serious illness or injury as to shock the conscience of the community. A claim that a licensed physician has been negligent in diagnosing or treating a medical condition will not suffice. Medical malpractice does not violate the Eighth Amendment merely because the victim is a prisoner. It is only deliberate indifference to essential medical needs that the Eighth Amendment proscribes."¹⁵

You will note that, for the most part, I have used your language but have tried to express somewhat more affirmatively the applicable standard. We were in agreement at Conference both that negligence will not suffice, and that a prisoner must allege acts or omissions that meet the "conscience of mankind" standard referred to by you in the preceding paragraph.

- 2 -

The first sentence on page 7 also gives me trouble.
That sentence now states:

"We therefore conclude that failure to provide
needed medical care or deliberate indifference
to the medical needs of prisoners constitutes"
an Eighth Amendment violation.

I am afraid this language would invite a good many claims
simply on the ground that "needed medical care" had not been
provided. I suggest as a substitute for the first two lines
of the sentence, the following:

OK "We therefore conclude that deliberate indifference
to the essential medical needs of . . ."

OK On page 8, line 4, I think the sentence would be more
consistent with the tenor of the opinion if the word "essential"
were inserted between "prisoner's" and "medical".

If you would be willing to make changes along these lines
I will be glad to join your opinion.

Sincerely,

Lewin

Mr. Justice Marshall

lfp/ss

cc: The Conference

✓ ✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 22, 1976

No. 75-929 - Estelle v. Gamble

Dear Thurgood:

In view of the revisions in your circulation of November 19, which I appreciate your making, I am happy to join you.

I think Bill Rehnquist's suggestion with respect to "executives and legislators" is meritorious, and hope you will consider it favorably.

Sincerely,

Levin

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

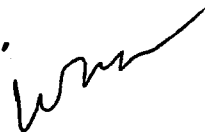
October 22, 1976

Re: No. 75-929 - Estelle v. Gamble

Dear Thurgood:

My position in this case is the same as that stated
by Lewis in his letter to you today.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 16, 1976

Re: No. 75-929 - Estelle v. Gamble

Dear Thurgood:

I have delayed responding to you in this case because at Conference I had expressed the view that we could avoid endorsing either the "deliberate indifference" test or some more stringent test, because on the facts of this case even the more lenient test was not satisfied. You have written the opinion to adopt the "deliberate indifference" standard, and in footnote 15 you say that "this is the conclusion that has been reached by all the courts of appeals that have considered the question". You then refer to a number of cases in the courts of appeals, with brief characterizations after each citation of what the standard there adopted was. While you refer to several of them as adopting "deliberate indifference", the footnote indicates that at least two have stated an arguably different test. Russell v. Sheffer, 528 F. 2d 319 is cited for "deprivation of 'reasonable medical care'"; Tolbert v. Eyman, 434 F. 2d 625 is cited for the standard of "refusal to provide medical care or treatment so cursory as to amount to no treatment at all". Newman v. Alabama, 503 F. 2d 1320, apparently involved a claim that facilities were inadequate, which is an issue not presented here.

It seems to me that at least the first of these descriptive phrases could be inconsistent with what I understand to be "deliberate indifference", and that its incorporation in the

- 2 -

footnotes suggests that deprivation of reasonable medical care is the same as deliberate indifference. I think that is more apt to be the case after the insertion of the language suggested by Potter in the text.

In footnotes 11, 12, and 13 you cite cases from the courts of appeals for the propositions that action of prison guards in intentionally interfering with the treatment once prescribed, or action by executives and legislators in failing to provide adequate medical care facilities, may be denials of prisoners' rights under the Eighth and Fourteenth Amendments.

I am extremely loath to join any opinion which cites as many courts of appeals cases without any disclaimer on our part that we intend to follow their reasoning or analysis. I fear that readers may think the present effect of your footnotes 11, 12, 13, and 15 is to virtually incorporate into your opinion the holdings of those cases from the courts of appeals, and without adequate time to read them all myself, I do not feel I can join the opinion with those footnotes as they are.

I also do not think that we have in this case any question which would require a holding as to what the test is for the application of the cruel and unusual punishment clause when executives and legislators fail to provide adequate medical care facilities, which you cover in your sentence ending with footnote 13 on page 8. I do not believe that the Conference discussion covered that point, and I would prefer to see us avoid expressing any opinion on it.

If you are in a position to accommodate these views, I will join the opinion, reserving the possibility of

- 3 -

concurring in any separate opinion which also concurs in your opinion; I do not intend to write myself in the case. If you want to keep your opinion the way it presently is, I may simply concur in the judgment.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 19, 1976

Re: No. 75-929 - Estelle v. Gamble

Dear Thurgood:

Your revised version of Estelle v. Gamble solves my problem with the reference to the Court of Appeals' decisions very nicely. As I indicated in my previous letter, however, I had a good deal of trouble with your statement on page 8 blanketing in the actions of "executives and legislators in failing to provide adequate medical care facilities" along with the actions of doctors and prison guards. We don't have that issue in this case, and I would not care to express an opinion on it at this time. I should think that the question of whether legislatures and governors chose to appropriate limited funds for mental hospitals rather than prison hospitals might raise somewhat different issues than whether a prison guard failed to carry out a prison doctor's orders.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 23, 1976

Re: No. 75-929 - Estelle v. Gamble

Dear Thurgood:

Please join me in the fourth draft of your circulating opinion.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 ✓ Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: NOV 18 '76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-929

W. J. Estelle, Jr., Director, Texas
 Department of Corrections,
 et al., Petitioners,
 v.
 J. W. Gamble.

On Writ of Certiorari to
 the United States Court
 of Appeals for the Fifth
 Circuit.

[November —, 1976]

MR. JUSTICE STEVENS, dissenting.

Most of what is said in the Court's opinion is entirely consistent with the way the lower federal courts have been processing claims that the medical treatment of prison inmates is so inadequate as to constitute cruel and unusual punishment prohibited by the Eighth Amendment. I have no serious disagreement with the way this area of the law has developed thus far, or with the probable impact of this opinion. Nevertheless, there are three reasons why I am unable to join it. First, insofar as the opinion orders the dismissal of the complaint against the chief medical officer of the prison, it is not faithful to the rule normally applied in construing the allegations in a pleading prepared by an uncounselled inmate. Second, it does not adequately explain why the Court granted certiorari in this case. Third, it places an incorrect emphasis on the subjective motivation of persons accused of violating the Eighth Amendment. *h*

I

The complaint represents a crude attempt to challenge the system of administering medical care in the prison where Gamble is confined. Fairly construed, the complaint alleges that he received a serious disabling back injury in November 1973, that the responsible prison authorities were in-

pp. 3, 6-8

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 — Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: _____

Recirculated: NOV 22 '76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-929

W. J. Estelle, Jr., Director, Texas
 Department of Corrections,
 et al., Petitioners,
 v.
 J. W. Gamble.

On Writ of Certiorari to
 the United States Court
 of Appeals for the Fifth
 Circuit.

[November —, 1976]

MR. JUSTICE STEVENS, dissenting.

Most of what is said in the Court's opinion is entirely consistent with the way the lower federal courts have been processing claims that the medical treatment of prison inmates is so inadequate as to constitute the cruel and unusual punishment prohibited by the Eighth Amendment. I have no serious disagreement with the way this area of the law has developed thus far, or with the probable impact of this opinion. Nevertheless, there are three reasons why I am unable to join it. First, insofar as the opinion orders the dismissal of the complaint against the chief medical officer of the prison, it is not faithful to the rule normally applied in construing the allegations in a pleading prepared by an uncounselled inmate. Second, it does not adequately explain why the Court granted certiorari in this case. Third, it describes the State's duty to provide adequate medical care to prisoners in ambiguous terms which incorrectly relate to the subjective motivation of persons accused of violating the Eighth Amendment rather than to the standard of care required by the Constitution.

I

The complaint represents a crude attempt to challenge the system of administering medical care in the prison where

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 ✓ Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

STYLISTIC CHANGES THROUGHOUT

From: Mr. Justice Stevens

Circulated: _____

Recirculated: **NOV 24 76**

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-929

W. J. Estelle, Jr., Director, Texas
 Department of Corrections,
 et al., Petitioners,
 v.
 J. W. Gamble.

On Writ of Certiorari to
 the United States Court
 of Appeals for the Fifth
 Circuit.

[November —, 1976]

MR. JUSTICE STEVENS, dissenting.

Most of what is said in the Court's opinion is entirely consistent with the way the lower federal courts have been processing claims that the medical treatment of prison inmates is so inadequate as to constitute the cruel and unusual punishment prohibited by the Eighth Amendment. I have no serious disagreement with the way this area of the law has developed thus far, or with the probable impact of this opinion. Nevertheless, there are three reasons why I am unable to join it. First, insofar as the opinion orders the dismissal of the complaint against the chief medical officer of the prison, it is not faithful to the rule normally applied in construing the allegations in a pleading prepared by an uncounselled inmate. Second, it does not adequately explain why the Court granted certiorari in this case. Third, it describes the State's duty to provide adequate medical care to prisoners in ambiguous terms which incorrectly relate to the subjective motivation of persons accused of violating the Eighth Amendment rather than to the standard of care required by the Constitution.

I

The complaint represents a crude attempt to challenge the system of administering medical care in the prison where

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 — Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: _____

Recirculated NOV 29 78

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-929

W. J. Estelle, Jr., Director, Texas
 Department of Corrections,
 et al., Petitioners,
 v.
 J. W. Gamble.

On Writ of Certiorari to
 the United States Court
 of Appeals for the Fifth
 Circuit.

[November —, 1976]

MR. JUSTICE STEVENS, dissenting.

Most of what is said in the Court's opinion is entirely consistent with the way the lower federal courts have been processing claims that the medical treatment of prison inmates is so inadequate as to constitute the cruel and unusual punishment prohibited by the Eighth Amendment. I have no serious disagreement with the way this area of the law has developed thus far, or with the probable impact of this opinion. Nevertheless, there are three reasons why I am unable to join it. First, insofar as the opinion orders the dismissal of the complaint against the chief medical officer of the prison, it is not faithful to the rule normally applied in construing the allegations in a pleading prepared by an uncounselled inmate. Second, it does not adequately explain why the Court granted certiorari in this case. Third, it describes the State's duty to provide adequate medical care to prisoners in ambiguous terms which incorrectly relate to the subjective motivation of persons accused of violating the Eighth Amendment rather than to the standard of care required by the Constitution.

I

The complaint represents a crude attempt to challenge the system of administering medical care in the prison where