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THE SYSTEMATIC NEGLECT OF INMATES SUFFERING FROM SUBSTANCE-USE DISORDER IN THE AMERICAN PRISON SYSTEMS

J Lyons¹

According to the National Center for Addiction and Substance Abuse, “65% of all U.S. inmates meet the medical criteria for substance abuse addiction,”² presenting a significant obstacle for providing requisite medical assistance. Among the sizeable population of confined criminals in the United States, only an estimated 11 percent of inmates receive treatment for such addictions.³ This ongoing pathological condition is a major contributing factor to criminal recidivism. While the problem of crime and its perpetuation is multifactorial and inherently complex, the mental and physical health of criminals falls under the legal oversight of the penal system. Prisoners have a legal right to quality medical care⁴—a right that is often forgotten and neglected by society at large and, more specifically, the court system itself.

1 J Lyons is studying computer science with an emphasis in animation and a minor in the digital humanities. To Tressa Bussio, Anne-Greyson Long, and Michelle Beus much gratitude is due for their editorial contributions and general advice. He would also like to thank his wife for her patience in working through word choice and phrasing as he authored this article.

2 The National Center on Addiction and Substance Abuse, *New CASA Report Finds: 65% of All U.S. Inmates Meet Medical Criteria for Substance Abuse Addiction, Only 11% Receive Any Treatment*, (Feb. 25, 2010), <http://www.centeronaddiction.org/newsroom/press-releases/2010-behind-bars-II>.

3 *Id.*

4 The specific details of this claim will be elaborated in the *Current Legal Precedent* section of this article.

On May 14, 2015, one such inmate, Tyler Tabor, succumbed to the misfortune of poorly structured penal health systems at an Adams County Detention Facility in Colorado.⁵ A known heroin addict, Tyler was not treated for heroin withdrawal syndrome. His deteriorating condition was ignored by the detention facility, whose apathy resulted in Tabor's death several days later.⁶ His cause of death was determined to be severe dehydration—a painful, though predictable, side effect of untreated heroin withdrawal.⁷ Tabor's case was reviewed by the regional district attorney, who concluded, "All of the evidence indicates that Mr. Tabor died as a natural result of heroin withdrawal."⁸ This conclusion is technically accurate, though deeming such as a "natural" or inevitable consequence is not if treatment can be reasonably provided. Narcotics withdrawal is simply and effectively treated with the use of appropriate pharmaceuticals and the implementation of so fundamental a practice as proper hydration.⁹ As such, this detention facility and others like it must be held responsible for inmate deaths resulting from like medical negligence and inattention. The court systems have not fulfilled their obligation in holding the penal systems accountable for their "deliberate indifference"¹⁰ toward addicted convicts, despite sufficient evidence of its necessity, and must apply this precedent to establish effective medical services for all substance-dependent criminals.

Throughout this paper, the neglected legal precedent, which, if considered, would remedy many of the systemic shortcomings cited

5 Michael E. Miller, *A Heroin Addict Begged His Jailers for an IV. They Refused. Six Hours Later, He Died of Dehydration*, WASHINGTON POST (Oct. 21, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/10/21/a-heroin-addict-begged-his-jailers-for-an-iv-they-refused-six-hours-later-he-died-of-dehydration/>.

6 *Id.*

7 *Id.*

8 DISTRICT ATTORNEY'S OFFICE, 17TH JUDICIAL DISTRICT, ADAMS & BROOMFIELD COUNTIES LETTER OF REVIEW OF DEATH OF TYLER TABOR (2015).

9 Jacob L. Heller, *Opiate and Opioid Withdrawal*, MEDLINEPLUS (Apr. 20, 2016), <https://medlineplus.gov/ency/article/000949.htm>.

10 *Estelle v. Gamble*, 429 U.S. 97, 104 (1975).

in cases such as Tyler Tabor's, will be presented. The following section will provide a more in-depth explanation of the current legal structure surrounding this issue. The remaining sections will explore various cases illustrating the court's shortcomings in applying the aforementioned precedent. In conclusion, the severity of court negligence will be described in an effort to incite necessary change of current practice.

I. CURRENT LEGAL PRECEDENT

Relevant to this issue, a 1975 court ruling, *Estelle v. Gamble*, concluded that prison systems are indeed responsible for providing medical assistance to the incarcerated. Knowingly neglecting these needs of the inmates is considered "deliberate indifference" and a "wanton infliction of pain."¹¹ This finding provides a foundation for the legal claims made throughout this paper. In addition, it has been determined in following cases, namely *Farmer v. Brennan*, that deliberate indifference constitutes any disregard for a prisoner's health, "even if no prison official has an improper subjective state of mind."¹² It was argued that the original precedent alone had "improperly protected prison officials"¹³ making the extensions provided by *Farmer v. Brennan* a more appropriate balancing of prisoner rights with the responsibilities of prison officials.

Estelle v. Gamble has since been extended in a way relevant to these types of inmates by *Brown v. Plata*. The medical issues that the original ruling specifically related to were "chronic conditions aggravated by the conditions of the prison."¹⁴ *Brown* determined that there exists a standard of health care that the prison systems must reach in order to qualify as having provided acceptable medical assistance. These conditions are set at "contemporary standards of

11 *Estelle v. Gamble*, 429 U.S. 97, 104 (1975).

12 *Farmer v. Brennan*, 511 U.S. 825, 825 (1994).

13 Summary for *Farmer v. Brennan*, 511 U.S. 825, 812 (1994) (summary of Blackmun, J., concurring).

14 Jonathan Simon, *From Health to Humanity: Re-Reading Estelle v. Gamble after Brown v. Plata*, 25 Fed. Sentencing Rep. 4, 276, 276–277.

decency”¹⁵ and any services not provided to this level are considered in violation of the rights set forth by *Estelle v. Gamble*, which by extension would stand in violation of the Eighth Amendment.

Finally, it is important to note how addictions qualify as a medical need. The Diagnostic and Statistical Manual of Mental Disorders defines addiction as a legitimate mental illness, as the umbrella under which substance use disorders are compartmentalized.¹⁶ It is also stated that a defining symptom of these disorders is withdrawal. Any criminal entering the prison system with an addiction will, because of their immediate drug use restrictions, find themselves suffering from withdrawal, a symptom which is “[aggravated] by the conditions of the prison.” Legally, in *Linder v. US (1925)* the Court had earlier determined that addicted individuals “are diseased and proper subjects for . . . treatment,”¹⁷ showing that individuals suffering from substance use disorder do indeed require medical attention. This provides insight into a clear medical need as it is legally defined.

All of this culminates in a criterion that can easily be applied, for example, in the case with Tyler Tabor. He should have been afforded the protections of *Estelle v. Gamble* due to his heroin addiction, yet suffered the adverse side-effect of withdrawal—his death—which manifested while in prison. After the district attorney’s investigation, it was determined that Mr. Tabor did not die as a result of malintent on the part of prison guards or an incurable condition, but “as a natural result of heroin withdrawal.”¹⁸ In this case, the natural progression of his illness ran its course, and yet the proper intervention should have averted his death. As such, Tabor’s case shows a violation of the precedent set by *Farmer v. Brennan*, since it is not malfeasance alone that constitutes deliberate indifference, but a more general negligence. The prison administered him various liquids,

15 Jonathan Simon, *From Health to Humanity: Re-Reading Estelle v. Gamble after Brown v. Plata*, 25 Fed. Sentencing Rep. 4, 276, 278.

16 American Psychiatric Association, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS*, (2013).

17 *Linder v. United States*, 268 U.S. 5, 18 (1925).

18 DISTRICT ATTORNEY’S OFFICE, 17TH JUDICIAL DISTRICT, ADAMS & BROOMFIELD COUNTIES LETTER OF REVIEW OF DEATH OF TYLER TABOR (2015).

mostly Gatorade, to stave off dehydration. Though one of the methods to alleviate the symptoms of withdrawal is indeed rehydration, this still contradicts *Brown v. Plata*, in that only providing Gatorade, rather than any medication, an IV drip, or any of other available treatments, constitutes as below the current “standards of decency,” thus making the prison accountable.

II. “DELIBERATE INDIFFERENCE”

The death of Christy Sanders illustrates the many insufficiencies of the Santa Cruz County Main Jail and makes a near perfect example of “deliberate indifference.” Christy Sanders was arrested on August 12, 2012 for petty theft and the violation of her probation.¹⁹ Suffering from addiction to heroin and due to complications she suffered from withdrawal, Sanders died twelve days later while still in jail. A timeline published in a report by the Santa Cruz County Grand Jury shows that Sanders was refused medical attention on three different occasions. Five days after being placed in jail, Sanders began displaying the symptoms of heroin detox. She was initially placed on the detox protocol, but began to have seizures and difficulty breathing the following day. At this point she requested to be sent to the Dominican Hospital but was denied. Five days later, with no improvement of her symptoms, she asked again to be sent to the hospital, and again was denied. The following day she began showing signs of a fever and on this occasion was denied any medical assistance at all. The following morning of August 25, a fellow inmate noticed that Sanders had stopped breathing.²⁰ She was pronounced dead that morning. The Coroner’s Report confirmed that she had died from the collapse of both lungs; a side effect of acute heroin withdrawal.²¹

19 2013-2014 SANTA CRUZ COUNTY GRAND JURY, *Five Deaths in Santa Cruz: An Investigation of In-Custody Deaths*, 5 (May 2014), http://www.co.santa-cruz.ca.us/Portals/0/County/GrandJury/GJ2014_final/Death%20in%20Custody%20Report%20for%20release.pdf.

20 *Id.* at 6.

21 *Id.*

To demonstrate that her death was the result of a constitutional violation by the Santa Cruz County Main Jail, it must be shown that Christy Sanders fell victim to deliberate indifference and that her death and the pain she suffered was wantonly inflicted. Under the original precedent established by *Estelle v. Gamble* alone, it may seem simple to refute this claim. The report shows no indication that Sanders was refused medical assistance with the intent of inflicting bodily harm. In fact, it gives little detail into the motivations of the corrections officers and could be that their refusals were simply an oversight. In short, it is clear that Sanders was deliberately denied medical attention, though it is unclear that these denials were intentionally abusive. Fortunately, *Farmer v. Brennan* clarified that officials may violate the Eighth Amendment even if no prison official has an intentionally punitive state of mind.²² It does not seem that the jail's officers were acting maliciously, but their refusals of Sanders' medical needs are considered "deliberate indifference" nonetheless.

III. SERIOUS MEDICAL NEED

Another important qualification for these tests is that the individual suffering at the expense of the penal system does in actuality have a serious medical condition which is not being managed with proper medical care. This has been a well-established precedent throughout the legal system, but failures to appropriately manage a substance use disorder as a serious medical need have not been properly punished by the courts. The New York City death of Oswald Livermore is well-suited for delineating this fatal oversight. Oswald Livermore was arrested on the evening of May 9, 2007.²³ Over the course of the following two days, Livermore suffered severe alcohol withdrawal symptoms and died as a result.²⁴ According to the Medical Review

22 *Farmer v. Brennan*, 511 U.S. 825, 825 (1994).

23 NEW YORK STATE COMMISSION OF CORRECTION, FINAL REPORT OF THE NEW YORK STATE COMMISSION OF CORRECTION (IN THE MATTER OF THE DEATH OF OSWALD LIVERMORE, AN INMATE OF THE MANHATTAN DETENTION CENTER), 3 (2008).

24 *Id.* at 2.

Board, Livermore died specifically of “unrecognized and untreated acute alcohol withdrawal with delirium tremens.”²⁵ Livermore was attended to periodically for his delusional behavior alone, but not in a manner that treated it as a symptom of his alcohol withdrawal.²⁶ As determined by the New York State Commission of Correction, “Livermore’s death may have been prevented had he received timely medical diagnosis and treatment.”²⁷

The severity of this neglect is exacerbated by the Department of Health and Mental Hygiene’s own policies not being considered in this situation. Their Management for Alcohol Withdrawal states:

For patients who report alcohol dependence, daily drinking, or those the clinician suspects may be undergoing alcohol withdrawal, an Alcohol Withdrawal Sheet should be generated.

Patients will be evaluated as being either minor or major alcohol abstinence syndrome. Every patient with alcohol withdrawal issues is to be placed in an infirmary setting.²⁸

According to the New York State Commission of Correction, these policies were not followed and Livermore’s alcohol dependence issues remained “unrecognized and untreated.”²⁹ Had these policies been followed, Livermore would have received the treatment he needed and could have presumably survived his severe withdrawals.

Though a court case was filed, New York City decided to settle and “continue[d] to maintain that Mr. Livermore received appropriate care.”³⁰ With this settlement, the city was not properly held accountable for their violation of the Eighth Amendment. The precedent has been set that situations like these constitute such a violation, and it is

25 *Id.* at 2.

26 *Id.* at 4–5.

27 *Id.*

28 *Id.*

29 *Id.*

30 Benjamin Weiser, *City Will Pay \$2 Million After an Inmate’s Death*, N. Y. TIMES (May, 25, 2011), <http://nytimes.com/2011/05/26/nyregion/city-to-pay-2-million-in-lawsuit-involving-inmates-death.html>.

the court's responsibility to apply this. Without proper accountability, neither New York City nor other communities are discouraged from continuing to disregard these legal rights of their prisoners. The oversight committed by the detention center is only overshadowed by the gross oversight of the Federal District Court in Manhattan, having not properly called the constitutionality of such misconduct into question.³¹

IV. CONTEMPORARY STANDARDS OF DECENCY

Absent any violations, the final legal benchmark required of the penal system is that of providing the incarcerated with medical assistance consistent with what is termed "contemporary standards of decency." Martin Harrison provides a tragic example of a lack of this decency in the following anecdote. Harrison was arrested on August 13, 2010.³² The main failure in Harrison's case was the contemptible assistance provided by a nurse when he was first admitted to the hospital. During Harrison's initial medical screening, it was clearly recognized that he had a dependency on alcohol.³³ The form used during screening documented these details about Harrison's drinking problems. However, the nurse's requests that would have otherwise produced more appropriate medical attention were initially written, and then crossed out.³⁴ Harrison was then simply told that if he felt that he needed more medical attention he could fill out a "slip/sick call form."³⁵ In the deposition of Bill Wilson, Corizon Health Services Administrator, he "confirmed that Corizon Health believed [Nurse] Sancho should have placed Harrison on CIWA³⁶ [Clinical Institute Withdrawal Assessment]."³⁷ Had Harrison received this as-

31 *Id.*

32 *M.H. v. County of Alameda*, 90 F.Supp.3d 889, 894 (2013).

33 *Id.* at 895.

34 *Id.* at 897.

35 *Id.* at 898.

36 This is the term that was originally included in the nurse's form that she later crossed out. See note 34.

37 *M.H. v. County of Alameda*, 90 F.Supp.3d 889, 904 (2013).

essment, he would have been monitored for alcohol withdrawal over a twenty-four hour period or longer, at which point his treatment would have met contemporary standards of decency.³⁸ This was not the case, however, and Harrison died shortly thereafter.

Harrison's case was settled for \$8.3 million with various agreements to improve how deputies were trained to handle withdrawal,³⁹ a fortunate reformation by any estimate, which should benefit inmates like Harrison, but it could not restore the loss of life that had occurred. Additionally, the courts did not hold the jail accountable for their violations of the Eighth Amendment, simply reprimanding them for what was deemed a wrongful death.⁴⁰ If Harrison had not died, there would have been no wrongful death suit, and it is likely that no settlement or reformations would have occurred. Of greatest concern, however, is the constitutional breach which was never addressed, and which would have occurred whether or not the jail's misdeeds cost Harrison his life.

V. MOVING FORWARD

Clearly, sufficient legal precedent exists to render the penal system accountable for the bodily harm, and often death, which substance-addicted inmates suffer in the course of their incarceration. It is the obligation of the courts to feature such precedent more prominently in cases which require drug treatment. It is important for these

38 The court documents show a number of other issues involving Harrison's case (the sick slips he filed that were not acted upon, the beatings he received from the deputies in order to restrain him, the tasing also used to restrain him, etc.), but the failure specifically important to substance-using inmates was that the jail failed to provide him with the medical assessment that would have revealed his withdrawal symptoms and could have saved his life.

39 *Record-Setting \$8.3 Million Wrongful Death Settlement In Case Of Santa Rita Jail Beating Includes Sweeping Reforms*, CBS SFBAY AREA, (Feb. 10, 2015, 7:01 PM) <http://sanfrancisco.cbslocal.com/2015/02/10/record-setting-8-3m-wrongful-death-settlement-in-case-of-oakland-jail-beating-includes-sweeping-reforms/>.

40 *Id.*

inmates, and in some cases the surviving family members, to retain legal counsel in filing their cases so that the constitutional rights of inmates are not overlooked. Ideally, future prisons would be incentivized to protect the human rights of inmates, providing them with the health services that the law, and human decency, require. Without this pressure, jails and prisons are left to their own devices which, as history and this article show us, have utterly failed in applying the law.

In addition to the implementation of humane inmate treatment, it is also important to note that there are significant monetary benefits available for the communities that implement such changes. It has been shown that every dollar spent toward assisting the recovery of substance-dependent individuals brings a proportionate seven dollars in return.⁴¹ The public might also preserve millions of tax dollars spent paying out the settlements from similar cases against the state departments that manage state prisons. The lawsuits mentioned in this paper alone account for more than \$10 million of taxpayer dollars.

V. CONCLUSION

Tyler Tabor, Christy Sanders, Oswald Livermore, and Martin Harrison are only a few of the numerous inmates who faced the painful results of substance use disorders, and whose pain was exacerbated by the lack of responsibility placed on the penal systems. These tragic oversights are especially reprehensible because they ignore the fundamental legal structure that has been defined throughout American legal history; there is, therefore, no justification for ignorance. It is necessary that the courts recognize this legal precedent, meant to protect and assist incarcerated individuals suffering from substance use disorder and adjudicate according to its comprehensive application: holding the penal systems responsible and supporting inmates to the extent already required by the law.

The responsibility resting on the court systems in this regard cannot be emphasized enough. If the courts would systematically

41 *\$7 in Societal Savings for Every \$1 Spent on Drug Abuse Treatment*, NEWSWISE (Oct. 27, 2005, 12:00 AM), <http://www.newswise.com/articles/7-in-societal-savings-for-every-1-spent-on-drug-abuse-treatment>.

apply this precedent, the penal system would not be able to get away with the negligence that so often results in the pain, and even death, inflicted on inmates in violation of the Eighth Amendment. If they were required to abide by this precedent, prisons would be strongly incentivized, and legally required, to assist their substance-using prisoners. There would be new protocols to follow,⁴² better addiction treatment would be developed, and cruel or unusual punishment would no longer be negligently inflicted as it has been. The same inmates would benefit from conditions much more conducive to their rehabilitation than can be found today. It is the hope of the author that swift restitution be made for this vulnerable population and that the judicial system earn no additional liability for this heedless loss of life. It is only in this way that future innovation may result in constitutional and decent progress.⁴³

42 See footnote 29. In the situation involving Oswald Livermore protocols had been developed but were not being properly followed. Had they been, Livermore may have survived. In the event that he succumbed to withdrawal, proper application of this legal precedent would have incentivized the prison system to develop the protocol until all such shortcomings had been removed.

43 An important issue related to this content, though well beyond the scope of this paper itself, is the treatments in assisting substance-using individuals. Ideally, the courts would hold the penal systems accountable to the inmates and they would then obtain treatment to assist them through their disorder, as has been conveyed in this article. It is a worry of the author that if the courts improve, the treatment the inmates would then receive would not be sufficient. This should increase the gravity of the court's responsibility because the current practice masks the underlying issue of treatment, which is, itself, at least as severe of a dilemma. For more information on this subject see the book *Principles of Addictions and the Law: Applications in Forensic, Mental Health, and Medical Practice* by Norman S. Miller (which has been especially helpful in crafting this paper), the research done by Bruce K. Alexander, specifically "The Myth of Drug-Induced Addiction," a paper delivered to the Canadian Senate in January of 2001, and "Vietnam Veterans Three Years after Vietnam: How Our Study Changed Our View of Heroin," published in the *American Journal on Addictions* (19.3 [2010] 203-11) by Lee N. Robins et al., and look to Portugal for insight (<https://www.opensocietyfoundations.org/sites/default/files/drug-policy-in-portugal-english-20120814.pdf>).

