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Today’s Presenters

- Gabe Eber
  - ACLU National Prison Project

- Peter Erlinder and Peter Nickitas
  - International Humanitarian Law Institute

- Joel Thompson
  - Prisoner Legal Services of Massachusetts
**HOUSEKEEPING**

- Type questions into the chat box or use the “Raise Hand” feature. Questions addressed at the end.

- Please ask questions that address these cases specifically – no legal advice.

- Discussion forum at NHCN Google Group, link provided via email.

- For more info or if you have questions, email rich@hepeducation.org.

- Visit www.hcvinprison.org and email Rich to be added to mailing list.
Deliberate Indifference in a Nutshell

Gabriel B. Eber, JD, MPH, CCHP
Senior Staff Counsel, ACLU National Prison Project
Associate, Dept. of Epidemiology, Johns Hopkins Bloomberg School of Public Health
“Deliberate indifference” is the most common legal claim used by prisoners in cases involving health care.
1. This is a class action that seeks declaratory and injunctive relief under 42 U.S.C. §1983 for violation of the Eighth Amendment as a result of the deliberate indifference of defendants, the Commissioner of the Massachusetts Department of Correction and the Massachusetts Partnership for Correctional Healthcare, LLC (“MPCH”), to the serious medical needs of plaintiffs and the members of the class, who are infected with the Hepatitis C virus.
standard of care, with reference to *Erickson v. Pardus*, 551 U.S. 89, 90, 127 S. Ct. 2197 (2007), which constitutes a deliberate indifference to the serious medical needs of Plaintiffs LIGONS, MICHAELSON, and all similarly situated Plaintiffs
So what does it mean?
The Bill of Rights

Congress of the United States,

Assembled at the City of New York, on
17th March, in the year of our Lord one thousand seven hundred and eighty-nine.

The

RESOLVED,

That the raising or keeping of an unnecessary and burdensome military establishment for life, in time of peace, is conducive to the spirit of rebellion and usurpation, and is likely to operate as a dangerous prelude to an overruling and cumulative cultivation of those principles which endanger the liberties and independence of a free people.

The Eighth Amendment
The Eighth Amendment to the United States Constitution

**Eighth Amendment**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
Three Landmark Cases Interpreting the Eighth Amendment
Estelle v. Gamble

The Key Facts

• Texas prisoner suffered a workplace injury

• Over the next several weeks, he was seen by prison health care staff

• Citing several alleged failures to provide him with proper medical care, he filed a lawsuit claiming that prison staff violated his constitutional rights

• Case went to the United States Supreme Court
Estelle v. Gamble

These elementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration.
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,”

In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose.
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.
In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.
So... to violate the Constitution, there must be “deliberate indifference to serious medical needs”
Deliberate Indifference

Objective Prong

Subjective Prong
The Objective Prong

• Refers to the nature/seriousness of the health need at issue in the case

• Health need must be more than minor

• Ask: “Did/does the patient have a serious health need?”

• Threshold for satisfying the objective prong is not high (the health need does not need to be catastrophic)
The Subjective Prong

- Refers to whether health care staff knew about the patient’s serious health need

- “Should have known about” is not good enough

- Calls for pretty close to “actual knowledge”

- Ask: “Did health care staff at the prison know about the patient’s serious health need?”
Huh????
Farmer v. Brennan

511 U.S. 825, 128 L.Ed.2d 811

Dee FARMER, Petitioner

v.

Edward BRENNAN, Warden, et al.

No. 92–7247.


Prison officials can be held liable for a constitutional violation if they:

Have knowledge of a substantial risk of serious harm and fail to take reasonable steps to abate that risk.

511 U.S. 825, 847 (1994)
Helling v. McKinney

Prison officials can be held liable for future risks of harm (i.e., harms that have yet to materialize):

“That the Eighth Amendment protects against future harm to inmates is not a novel proposition.”

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