 KeyCite Yellow Flag - Negative Treatment  
Disagreement Recognized by [Evering v. Rielly](#), S.D.N.Y., September 28, 2001

151 F.Supp.2d 303  
United States District Court,  
S.D. New York.

Reginald **SONDS**, Plaintiff,

v.

**ST. BARNABAS HOSPITAL CORRECTIONAL HEALTH SERVICES**; the City of New York; **Sumpter**, Captain No. 1370; Johnson, **Correction** Officer No. 14488; Ocasio, **Correction** Officer No. 14100; Parks, **Correction** Officer No. 14373; Powell, **Correction** Officer No. 4316; Dr. Robert, Riker's Island; Adolescent Reception Detention Center; Department of **Corrections**; as Individuals in Their Official and Personal Capacities, the State of New York Department of **Corrections**, Defendants.

No. 00 Civ. 4968(CM).

|  
May 21, **2001**.

### Synopsis

Inmate brought pro se § 1983 action against hospital, city, state **corrections** department, and various **corrections** officers, alleging that he was denied necessary medical treatment while at city detention center. Hospital and city moved to dismiss. The District Court, **McMahon, J.**, held that: (1) inmate's admission that he failed to exhaust administrative remedies mandated dismissal of action; (2) cut to inmate's finger, even if skin was "ripped off," was not sufficiently serious injury to support § 1983 claim for denial of adequate medical care; (3) allegations did not show that hospital was deliberately indifferent to inmate's medical needs; (4) allegations did not support excessive force claim; and (5) sua sponte dismissal of claims against nonmoving defendants was warranted.



Complaint dismissed with prejudice.

**Procedural Posture(s):** Motion to Dismiss; Motion to Dismiss for Failure to State a Claim.

West Headnotes (32)


[1] **Civil Rights**  Criminal law enforcement; prisons

Inmate's admission that, prior to commencing § 1983 action, he failed to avail himself of institutional procedures to exhaust his claim that he was deprived of necessary medical treatment mandated dismissal of action pursuant to Prison Litigation Reform Act (PLRA), even though inmate sought only money damages and such relief could not be granted administratively.


 42 U.S.C.A. § 1983; Civil Rights of Institutionalized Persons Act, § 7(a),  42 U.S.C.A. § 1997e(a).

1 Cases that cite this headnote

[2] **Prisons**  Exhaustion of Other Remedies

Prison Litigation Reform Act (PLRA) demands that prisoners challenge the conditions of their confinement through the highest level of available administrative avenues prior to filing suit. Civil Rights of Institutionalized Persons Act, § 7,  42 U.S.C.A. § 1997e.


[3] **Civil Rights**  Criminal law enforcement; prisons

Prison Litigation Reform Act's (PLRA) requirement that inmate claims challenging conditions of confinement be administratively exhausted must be met when inmate is protesting that prison officials were deliberately indifferent to his medical needs. [U.S.C.A. Const.Amend. 8](#); Civil Rights of Institutionalized Persons Act, § 7,  42 U.S.C.A. § 1997e.

2 Cases that cite this headnote

[4] **Prisons**  Exhaustion of Other Remedies


Prisoner challenging conditions of confinement must exhaust his administrative remedies, as required by Prison Litigation Reform Act

(PLRA), even when the relief he requests cannot be awarded by the administrative body hearing the complaint. Civil Rights of Institutionalized Persons Act, § 7,  42 U.S.C.A. § 1997e.

[2 Cases that cite this headnote](#)




[5] **Federal Civil Procedure**  Claim for relief in general

**Federal Civil Procedure**  Insufficiency in general

To survive motion to dismiss for failure to state claim upon which relief may be granted, plaintiff must allege facts that, accepted as true, make out the elements of a claim; it is imperative that complaint contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory.  Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

[1 Cases that cite this headnote](#)


[6] **Civil Rights**  Complaint in general

Complaint alleging a civil rights violation under  § 1983 must contain specific allegations of fact that demonstrate a deprivation of constitutional rights, or it will be dismissed.  42 U.S.C.A. § 1983;  Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

[2 Cases that cite this headnote](#)



[7] **Federal Civil Procedure**  Conclusions in general

**Federal Civil Procedure**  Claim for relief in general



Broad and conclusory statements, coupled with a failure to allege the facts of the alleged offending conduct, are insufficient to state a claim.  Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

[1 Cases that cite this headnote](#)

[8] **Civil Rights**  Complaint in general


Assertions in a complaint that are nothing more than broad, simple, vague and conclusory statements are patently insufficient to support a claim under  § 1983.  42 U.S.C.A. § 1983.

[9] **Civil Rights**  Prisons and jails; probation and parole




Generalized claim that an inmate was denied access to medical treatment will not suffice to state  § 1983 claim.  42 U.S.C.A. § 1983.

[5 Cases that cite this headnote](#)



[10] **Federal Civil Procedure**  Pro Se or Lay Pleadings

Court must apply most liberal pleading standards in determining whether complaint fails to state claim upon which relief may be granted when plaintiff is proceeding pro se.  Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

[11] **Civil Rights**  Criminal law enforcement; prisons

Issue of whether hospital had final policymaking authority as to inmate **health services**, for purposes of inmate's claim that he was denied adequate medical treatment, could not be resolved at pleading stage of inmate's  § 1983 action.  42 U.S.C.A. § 1983;  Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

[12] **Civil Rights**  Questions of Law or Fact

The question of who has final policymaking authority, for purposes of  § 1983 claim, is a question of law.  42 U.S.C.A. § 1983.

[1 Cases that cite this headnote](#)

**[13] Civil Rights** 🔑 Nature and elements of civil actions

To state a cognizable claim under § 1983, plaintiff must allege conduct under color of law that deprives him or her of rights under federal laws and Constitution. 42 U.S.C.A. § 1983.

1 Cases that cite this headnote

**[14] Civil Rights** 🔑 Medical care and treatment

Inmate's § 1983 claim alleging denial of medical treatment is legally sufficient only when the denial qualifies as cruel and unusual punishment in violation of the Eighth Amendment. U.S.C.A. Const.Amend. 8; 42 U.S.C.A. § 1983.

1 Cases that cite this headnote

**[15] Sentencing and Punishment** 🔑 Medical care and treatment

The standard for Eighth Amendment claims for deliberate indifference to inmate's serious medical needs contains two components, one objective and one subjective, and unless both are satisfied, prisoner's claim must be dismissed. U.S.C.A. Const.Amend. 8.

14 Cases that cite this headnote

**[16] Sentencing and Punishment** 🔑 Medical care and treatment

Under objective component of § 1983 claim by inmate alleging denial of adequate medical care, the alleged deprivation must be, in objective terms, sufficiently serious. U.S.C.A. Const.Amend. 8; 42 U.S.C.A. § 1983.

7 Cases that cite this headnote

**[17] Sentencing and Punishment** 🔑 Medical care and treatment

Cut to inmate's finger, even if skin was "ripped off," was not sufficiently serious injury to

support § 1983 relief on Eighth Amendment claim for alleged denial of adequate medical care. U.S.C.A. Const.Amend. 8; 42 U.S.C.A. § 1983.

57 Cases that cite this headnote

**[18] Sentencing and Punishment** 🔑 Medical care and treatment

A medical condition is deemed "serious," for purposes of inmate claim alleging denial of adequate medical care, if condition is one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention. U.S.C.A. Const.Amend. 8; 42 U.S.C.A. § 1983.

6 Cases that cite this headnote

**[19] Sentencing and Punishment** 🔑 Medical care and treatment

If unnecessary and wanton infliction of pain results, or denial of treatment causes inmate to suffer a life-long handicap or permanent loss, inmate's need for medical treatment may be considered serious for purposes of § 1983 claim alleging denial of adequate medical care. U.S.C.A. Const.Amend. 8; 42 U.S.C.A. § 1983.


23 Cases that cite this headnote

**[20] Sentencing and Punishment** 🔑 Medical care and treatment

Subjective component of § 1983 claim that prison officials denied inmate adequate medical care requires showing that officials acted with culpable mental state. U.S.C.A. Const.Amend. 8; 42 U.S.C.A. § 1983.

**[21] Sentencing and Punishment** 🔑 Medical care and treatment


Prison official has sufficient culpable mental state to support inmate's claim for alleged deprivation of adequate medical care if (1) he has actual or constructive knowledge that an inmate faces a substantial risk of serious harm, and, (2) he ignores or disregards that risk, (3) by failing to take reasonable steps to abate the harm, with such lapse constituting more than mere negligence.

U.S.C.A. Const.Amend. 8;  42 U.S.C.A. § 1983.

[9 Cases that cite this headnote](#)


**[22] Sentencing and Punishment**  Medical care and treatment

Inmate's allegations were insufficient to support deliberate indifference element of Eighth Amendment claim against hospital for denial of adequate medical care when inmate did not allege that he was denied any medically necessary treatment, but instead alleged that he was treated within 3 ½ hours after he suffered injury to his finger, that his finger was soaked in brown-colored liquid, that he was given tetanus shot, and that his injury was bandaged, which demonstrated that hospital did not willfully disregard inmate's medical needs.

U.S.C.A. Const.Amend. 8;  42 U.S.C.A. § 1983.

[10 Cases that cite this headnote](#)

**[23] Sentencing and Punishment**  Medical care and treatment

Deliberate indifference supporting inmate's Eighth Amendment claim for inadequate medical care requires intentional or criminally reckless conduct. U.S.C.A. Const.Amend. 8;  42 U.S.C.A. § 1983.

[20 Cases that cite this headnote](#)

**[24] Sentencing and Punishment**  Medical care and treatment

A difference of opinion between a prisoner and prison officials regarding medical treatment does not constitute deliberate indifference supporting

inmate's Eighth Amendment claim alleging denial of adequate medical care, nor does the fact that an inmate might prefer an alternative treatment, or feels that he did not get the level of medical attention he preferred. U.S.C.A.

Const.Amend. 8;  42 U.S.C.A. § 1983.


[132 Cases that cite this headnote](#)

**[25] Sentencing and Punishment**  Medical care and treatment

As long as the medical care received by inmate is adequate, there is no Eighth Amendment violation. U.S.C.A. Const.Amend. 8.

[12 Cases that cite this headnote](#)

**[26] Civil Rights**  Medical care and treatment

Prison officials and medical officers have wide discretion in treating prisoners, and  § 1983 is not designed to permit federal courts to interfere in the ordinary medical practices of state prisons.

 42 U.S.C.A. § 1983.



[14 Cases that cite this headnote](#)

**[27] Health**  Presumptions

Determinations of medical providers concerning the care and safety of patients are given a presumption of **correctness**.

[8 Cases that cite this headnote](#)

**[28] Sentencing and Punishment**  Medical care and treatment

Disagreements over medications, diagnostic techniques, forms of treatment, or the need for specialists or the timing of their intervention are not adequate grounds for a  § 1983 claim by inmate, in that such issues implicate medical judgments and, at worst, negligence amounting to medical malpractice, but not the Eighth Amendment. U.S.C.A. Const.Amend. 8;  42 U.S.C.A. § 1983.

331 Cases that cite this headnote

[29] **Prisons** 🔑 Use of force

Allegations that injury to inmate's finger was caused by defective door at **corrections** facility did not support claim for use of excessive force where there were no allegations that any **corrections** officer laid hands on inmate or deliberately shut cell door on his finger. U.S.C.A. Const.Amend. 4.

1 Cases that cite this headnote

[30] **Federal Civil Procedure** 🔑 Dismissal on court's own motion

Sua sponte dismissal of inmate's § 1983 claims against nonmoving defendants was warranted, on grounds that complaint failed to state claim, where inmate had opportunity to respond to motion to dismiss by other defendants, complaint made identical allegations against moving and nonmoving defendants, and dismissal was required as to moving defendants. 42 U.S.C.A. § 1983; Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

9 Cases that cite this headnote

[31] **Federal Civil Procedure** 🔑 Dismissal on court's own motion

District court may dismiss a complaint sua sponte for failure to state a claim, as long as the plaintiff has been given an opportunity to be heard.

6 Cases that cite this headnote

[32] **Federal Courts** 🔑 Law Enforcement

Eleventh Amendment barred inmate's § 1983 action against New York State Department of **Corrections**. U.S.C.A. Const.Amend. 11; 42 U.S.C.A. § 1983.

## Attorneys and Law Firms

\*306 Reginald **Sonds**, pro se.

Rose M. Weber, Assistant Corporation Counsel, Law Department of the City of New York City, Andrew Zwerling, Garbarini & Scher, New York City, for defendants.

## MEMORANDUM DECISION AND ORDER DISMISSING COMPLAINT

McMAHON, District Judge.

*Pro Se* Plaintiff Reginald **Sonds** sues **St. Barnabas Correctional Health Services** ("St.Barnabas"), the City of New York, the City of New York Department of **Corrections**, and various **correction** officers pursuant to 42 U.S.C. § 1983 for denying him necessary medical treatment while a prisoner on Riker's Island in the City of New York. Defendants **St. Barnabas** and the City of New York have moved to dismiss \*307 the instant complaint. Return of service of summons and complaint were executed as to **St. Barnabas, Correctional Health Services**, and the City of New York on March 14, 2001.

Two separate grounds exist for dismissal of the civil rights claim asserted by plaintiff against the moving defendants, either of which is sufficient to justify granting such relief.

First, the complaint must be dismissed because the plaintiff has admitted that he failed, prior to commencing this lawsuit, to avail himself of institutional administrative procedures in order to raise his claim that he was deprived of necessary medical treatment. Decisional law makes it plain that a failure to exhaust administrative remedies, as required by the Prison Litigation Reform Act, mandates dismissal of a complaint.

Second, plaintiff fails to state a claim for relief under 42 U.S.C. § 1983, because Plaintiff's injury does not qualify as "serious" under the objective prong of the "deliberate indifference" test. Furthermore, as to defendant **St. Barnabas**, plaintiff fails to allege deliberate indifference, since he admits that he received medical attention from the physicians affiliated with defendant.



## STATEMENT OF FACTS

The following factual allegations, drawn from the four corners of the complaint, are deemed true for purposes of evaluating this motion to dismiss.

At approximately 4:00 PM on July 11, 1998, plaintiff injured his finger in a cell door at the Rikers Island Adolescent Reception Detention Center, where he was being held. According to the complaint, skin was ripped off his finger, leaving it “bleeding, red and burning.” The complaint alleges that Plaintiff filled out an injury report, and that he was allowed to go to the clinic at approximately 7:00 PM. Plaintiff was given a [tetanus](#) shot and his finger was bandaged.

The following day, July 12, plaintiff removed the bandage from his finger. The skin peeled off. Plaintiff thereafter went back to the clinic, where he received a second treatment, the nature of which is not specified.

Although it is not entirely clear, it seems that plaintiff is alleging that the defendants were deliberately indifferent to his medical needs in the following ways: a medical officer did not come to his cell immediately to treat his injury; there was a delay in taking plaintiff to the clinic; plaintiff's [wound](#) was not stitched; and plaintiff's finger was not x-rayed to ascertain whether he suffered from “internal bleeding or damages.” The complaint does not contain any allegation of permanent disability due to the injury to plaintiff's finger.

## CONCLUSIONS OF LAW

1. *Plaintiff has not exhausted his administrative remedies.*

[1] The plaintiff admits in his complaint that, prior to instituting this lawsuit, he failed to resort to institutional administrative procedures in order to protest the fact that he was allegedly denied proper medical care. This fact compels dismissal of the complaint.

[2] [3] Under the Prison Litigation Reform Act (“PLRA”), an inmate is required to exhaust all available administrative remedies before bringing suit on a federal claim. Specifically, the PLRA provides:

No action shall be brought with respect to prison conditions under

[section...1983](#) [of this title], or any other Federal law, by a prisoner confined in any jail, prison, or other [correctional](#) \*308 facility until such administrative remedies as are available are exhausted.

[42 U.S.C. § 1997e\(a\)](#). As interpreted by decisional law, this statute demands that prisoners first challenge the conditions of their confinement through the highest level of available administrative avenues prior to filing suit.

[Santiago v. Meinsen](#), 89 F.Supp.2d 435 (S.D.N.Y.2000). This requirement must be met where an inmate is protesting that prison officials were deliberately indifferent to his medical needs. [Id.](#) at 435.

New York State has procedures for filing grievances in each of its [correctional](#) facilities. *Id.* Plaintiff admits that this is so. (Compl. at II A.). Plaintiff further admits that he did not avail himself of those procedures to challenge to the purported denial of medical care to him. (*Id.* at II B.) Consequently, his civil rights complaint must be dismissed.

[4] Plaintiff argues that he was not required to exhaust the available administrative remedies because he seeks only money damages. As the City points out in its reply letter, the Second Circuit has not yet ruled on whether the PLRA's exhaustion requirement applies where a prisoner seeks only money damages and the available administrative remedies make no provision for such relief. [Nussle v. Willette](#), 224 F.3d 95, 100 n. 5 (2d Cir.2000). While there is some disagreement among the district judges in this Circuit about this issue, there is a clear trend among district court judges within the Second Circuit to find that a prisoner must exhaust his administrative remedies even where the relief he requests “cannot be awarded by the administrative body hearing the complaint.” [Sulton v. Greiner](#), No. Civ.A. 00-0727, 2000 WL 1809284 (S.D.N.Y. Dec.11, 2000) (Sweet, J.) (citing [Santiago](#), 89 F.Supp.2d at 440; [Snider v. Melindez](#), 199 F.3d 108, 114 n. 2 (2d Cir.1999)). I agree with this trend and rule that the exhaustion requirement applies in this case.

2. *Even If Plaintiff Did Not have to Exhaust Administrative Remedies. The Complaint Would have to be dismissed.*

Even if **Sonds** did not have to exhaust his administrative remedies, or if he had actually done so, his complaint would have to be dismissed for failure to state a claim on which relief could be granted. [Fed.R.Civ.P. 12\(b\)\(6\)](#).

[5] [6] To survive a 12(b) motion, a plaintiff must allege facts that, accepted as true, make out the elements of a claim. [Johnson v. A.P. Products, Ltd.](#), 934 F.Supp. 625, 626 (S.D.N.Y.1996). It is imperative that the complaint contain “either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory.” This standard applies to civil rights claims brought pursuant to [Section 1983](#). [Muka v. Greene County](#), 101 A.D.2d 965, 477 N.Y.S.2d 444 (3d Dep’t 1984). See also [Koch v. Yunich](#), 533 F.2d 80, 85 (2d Cir.1976); 5 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure, ¶ 1230. Thus, a complaint alleging a civil rights violation under [Section 1983](#) must contain specific allegations of fact that demonstrate a deprivation of constitutional rights, or it will be dismissed. [Alfaro Motors Inc. v. Ward](#), 814 F.2d 883, 887 (2d Cir.1987).

[7] [8] [9] Broad and conclusory statements, coupled with a failure to allege the facts of the alleged offending conduct, are insufficient to state a claim. See [Pang Hung Leung v. City of New York](#), 216 A.D.2d 10, 627 N.Y.S.2d 369 (1st Dep’t 1995). Assertions in a complaint that are nothing more than broad, simple, vague and conclusory statements are patently insufficient \*309 to support a claim under [Section 1983](#). [Alfaro Motors](#), 814 F.2d at 887. The law requires more than a “litany of general conclusions that shock but have no meaning.” [Barr v. Abrams](#), 810 F.2d 358, (2d Cir.1987). Likewise, a generalized claim that an inmate was denied access to medical treatment will not suffice. [Green v. Portuondo](#), No. CIV.A. 97–2639, 2000 WL 1808562 (S.D.N.Y. Dec.11, 2000); [Church v. Hegstrom](#), 416 F.2d 449, 450 (2d Cir.1969) (complaint dismissed where there were no specific allegations that any defendants knew that treatment was required for preservation of inmate’s life, that the inmate ever requested such treatment, or even that any defendant was aware of inmate’s condition).

[10] The basis of the plaintiff’s civil rights complaint is twofold: first, that he was denied a medical treatment for his injured finger for three and one half hours because a

**corrections** officer refused to take plaintiff in for treatment, due to the plaintiff’s failure to have identification; second, that he was not given appropriate treatment. Although I must use the most liberal pleading standards because plaintiff is proceeding *pro se*, see [Platsky v.CIA](#), 953 F.2d 26, 28 (2d Cir.1991), these allegations woefully fall short of what is necessary to state a legally sufficient claim for violation of civil rights.

[11] **St. Barnabas** (the only moving defendant to raise this as an alternative ground for relief) suggests two reasons why it would be entitled to dismissal for failure to state a claim. First, **St. Barnabas** asserts that plaintiff had not alleged an essential element of a claim against the hospital under [Section 1983](#): namely, that **St. Barnabas** possessed *final policymaking authority* in relation to inmate **health services** and, with deliberate indifference to his medical needs, implemented a policy or custom that caused injury to him. Second, **St. Barnabas** contends that plaintiff’s allegations do not, as a matter of law, rise to the level necessary to establish a violation of his Constitutional rights. Obviously, the first ground is peculiar to **St. Barnabas** alone, while the second ground would apply equally to the City—and, indeed, to the non-moving defendants.

[12] **St. Barnabas** is **correct** about the pleading deficiency concerning final policymaking authority. However, on the record before me, I could not conclude anything definitive about who actually has that authority. The question of who has final policymaking authority is a question of law. See [Gordon v. County of Rockland](#), 110 F.3d 886, 888–89 (2d Cir.1997) (noting that the policymaker inquiry involves a fact-specific inquiry, which should be distinguished from an issue of fact). **St. Barnabas** has not gone beyond the pleading to introduce into the record any laws or regulations that establish who, in fact, has final policymaking authority concerning the provision of inmate **health services**. I therefore cannot conclude, in a motion addressed solely to the pleadings, that plaintiff could not demonstrate that **St. Barnabas** in fact had the requisite final policymaking authority—although I very much doubt it to be the case.

[13] [14] However, to state a cognizable claim under [42 U.S.C. Section 1983](#), a plaintiff must allege conduct under color of law that deprives him or her of rights under the law and Constitution. [Dwares v. City of New York](#), 985 F.2d 94, 97 (2d Cir.1993); [Bell v. Artuz](#), No. Civ.A. 98–

4710, 1999 WL 253607 (S.D.N.Y. Apr.29, 1999).<sup>1</sup> In cases where the allegation is \*310 denial of medical treatment, a claim is legally sufficient only when the denial qualifies as cruel and unusual punishment, in violation of the Eighth Amendment to the United States Constitution. As the United States Supreme Court has held, this standard is only met when it can be established that prison officials were “deliberately indifferent either to a prisoner's existing serious medical needs or to conditions posing a substantial risk of serious future harm.” *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); *Koehl v. Dalsheim*, 85 F.3d 86, 88 (2d Cir.1996).

[15] The standard of “deliberate indifference to serious medical needs” contains two components—one objective, one subjective. *Farmer v. Brennan*, 511 U.S. 825, 838, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994); *Wandell v. Koenigsmann*, No. Civ.A. 99–8652, 2000 WL 1036030 (S.D.N.Y. July 27, 2000). Unless both are satisfied, a prisoner's claim must be dismissed.

#### 1. Objective Standard

[16] [17] First, there is an objective component, i.e., the alleged deprivation must be, in objective terms, sufficiently serious. *Farmer*, 511 U.S. at 838, 114 S.Ct. 1970. “[A] prison official's act or omission must result in the denial of the ‘minimal civilized measure of life's necessities.’ For a claim... based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm.” *Id.* at 832, 114 S.Ct. 1970; *Porter v. Coughlin*, 964 F.Supp. 97, 104 (W.D.N.Y.1997). See *Camilo–Robles v. Hoyos*, 151 F.3d 1, 7 (1st Cir.1998) (objective component requires “grave risk of harm”).

[18] [19] A medical condition is deemed “serious” if it is “one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention.... The seriousness of an inmate's medical need may also be determined by reference to the effect of denying the particular treatment.” *Hunt v. Uphoff*, 199 F.3d 1220 (10th Cir.1999). Thus, if “unnecessary and wanton infliction of pain” results, or where the denial of treatment causes an inmate to suffer a life-long handicap or permanent loss, the medical need may be considered serious. *Harrison v. Barkley*, 219 F.3d



132, 136 (2d Cir.2000). The term “sufficiently serious” has also been described as “a condition of urgency, one that may produce death, degeneration, or extreme pain.” *Hathaway v. Coughlin*, 99 F.3d 550, 553 (2d Cir.1996); *Bonner v. New York City Police Dep't*, No. Civ.A. 99–3207, 2000 WL 1171150 (S.D.N.Y. Aug.17, 2000) (fact that plaintiff suffered from discomfort and one of his fingers did not close did not constitute serious medical need); *Grant v. Burroughs*, No. Civ.A. 96–2753, 2000 WL 1277592 (S.D.N.Y. Sept.8, 2000) (even assuming plaintiff was in pain for two months, plaintiff's pain was not so severe as to constitute a serious medical condition); *Davidson v. Harris*, 960 F.Supp. 644 (W.D.N.Y.1997) (even though plaintiff was recovering from surgery for multiple stab wounds, and allegedly was denied oxygen and pain killers for six to eight hours, there was no showing of serious medical condition).




\*311 Plaintiff has failed to plead an objectively serious injury. A bleeding finger does not pose a substantial risk of serious harm. Case law holds that the objective prong of the deliberate indifference test is not satisfied even where a finger is broken. *Henderson v. Doe*, No. Civ.A. 98–5011, 1999 WL 378333 (S.D.N.Y. June 10, 1999) (holding that injury to a finger is not “sufficiently serious” because it does not produce death, degeneration or extreme pain); *Rivera v. S.B. Johnson*, No. Civ.A. 95–0845, 1996 WL 549336 (W.D.N.Y. Sept.20, 1996) (a broken finger, without more, simply does not present a condition of urgency which correspondingly merits constitutional protection). Certainly, then, a cut finger, even where skin is “ripped off,” as the plaintiff alleges, does not, as a matter of law, qualify as an injury severe enough to justify civil rights relief.





#### 2. Subjective Standard




[20] [21] [22] The second component is a subjective one, requiring a showing that the officials accused of the deprivation act with the requisite culpable mental state. *Wilson v. Seiter*, 501 U.S. 294, 111 S.Ct. 2321, 2324, 115 L.Ed.2d 271 (1991); *Hathaway v. Coughlin*, 37 F.3d 63, 66 (2d Cir.1994) This component is multi-tiered. A prison official has sufficient culpable mental state if: 1) he has actual or constructive knowledge that an inmate faces a substantial risk of serious harm, and, 2) he ignores or disregards that risk, 3) by failing to take reasonable steps to abate the harm, with such lapse constituting more than mere negligence.





 *Farmer*, 511 U.S. at 838, 114 S.Ct. 1970;  *Cuoco v. Moritsugu*, 222 F.3d 99 (2d Cir.2000).



[23] As the Supreme Court has stated, “deliberate indifference is a stringent standard of fault.”  *Bd. of the County Comm’rs of Bryan County, Oklahoma v. Brown*, 520 U.S. 397, 117 S.Ct. 1382, 1391, 137 L.Ed.2d 626 (1997). It is more than “more blameworthy than negligence,” but less than “acts or omissions for the very purpose of causing harm or with knowledge that harm will result.”  *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). Deliberate indifference requires intentional or criminally reckless conduct. *Wandell v. Koenigsmann*, No. Civ.A. 99–8652, 2000 WL 1036030 at \*3 (S.D.N.Y. July 27, 2000) (citing  *Farmer v. Brennan*, 511 U.S. at 835–840, 114 S.Ct. 1970).


[24] [25] A difference of opinion between a prisoner and prison officials regarding medical treatment does not, as a matter of law, constitute deliberate indifference.  *Chance v. Armstrong*, 143 F.3d 698, 703 (2d Cir.1998);   *United States ex rel. Hyde v. McGinnis*, 429 F.2d 864, 867 (2d Cir.1970) (citing *Coppinger v. Townsend*, 398 F.2d 392, 394 (10th Cir.1968)); *McCloud v. Delaney*, 677 F.Supp. 230, 232 (S.D.N.Y.1988) (“[t]here is no right to the medical treatment of one’s choice...”). Nor does the fact that an inmate might prefer an alternative treatment, or feels that he did not get the level of medical attention he preferred.  *Dean v. Coughlin*, 804 F.2d 207, 215 (2d Cir.1986). As long as the medical care is adequate, there is no Eighth Amendment violation. *Wandell*, 2000 WL 1036030 at \*3.

[26] [27] Indeed, prison officials and medical officers have wide discretion in treating prisoners, and  Section 1983 is not designed to permit federal courts to interfere in the ordinary medical practices of state prisons.  *Church v. Hegstrom*, 416 F.2d 449, 450–451 (2d Cir.1969). Federal courts are generally hesitant to second guess medical judgments and to constitutionalize claims which sound in state tort law.  *Dean v. Coughlin*, 804 F.2d 207, 215 (2d Cir.1986) (“The Constitution does not command that inmates be given medical attention that judges would wish to have \*312 for themselves.”) So strong is this view that determinations of medical providers concerning the care and safety of patients are given a “presumption of **correctness**.”

 *Perez v. The County of Westchester*, 83 F.Supp.2d 435, 440 (S.D.N.Y.2000) (citing  *Kulak v. City of New York*, 88 F.3d 63, 77 (2d Cir.1996)).



Here again, the complaint is deficient, because there is no allegation by the plaintiff that **St. Barnabas** denied him any medically-necessary treatment. To the contrary, the plaintiff alleges in the complaint that he was treated within 3 ½ hours of his injury, had his finger soaked in a brown colored liquid, was given a **tetanus** shot, and had the injury bandaged. These facts undermine any claim of deliberate indifference by **St. Barnabas** and demonstrate that it did not willfully disregard the plaintiff’s medical needs. *See also*  *Henderson v. Doe*, No. Civ.A. 98–5011, 1999 WL 378333 (S.D.N.Y. June 10, 1999); *Marshall v. Strack*, No. Civ.A. 96–6789, 1998 WL 118167 (S.D.N.Y. Mar.16, 1998) (defendants provided medical attention throughout plaintiff’s incarceration); *Walker v. Reid*, No. Civ.A. 84–5281, 1985 WL 192 (S.D.N.Y. Jan.14, 1985) (complaint alleged that plaintiff received medical treatment for his finger injury in that medical personnel inside and outside prison facilities administered treatment to plaintiff’s injured finger). To the extent that plaintiff alleges that a **corrections** officer caused some delay in the commencement of treatment, his claim (assuming, *arguendo*, that it rises to a constitutional level), does not lie against **St. Barnabas**. Moreover, concerning the alleged delay of 3 ½ hours between the injury and treatment, “[a]s any lay person is well accustomed, patients are frequently faced with delays in receiving medical care, particularly when, [as in this case], their medical condition is not grave.”  *Davidson v. Harris*, 960 F.Supp. 644, 648 (W.D.N.Y.1997).

[28] Finally, to the extent that plaintiff alleges that he was not properly treated, or that he disagreed with the treatment given him by the doctors from **St. Barnabas** (for example, his claim that the doctors failed to x-ray his finger), that conduct does not rise to the level of a constitutional violation. Courts have repeatedly held that an omission of this nature does not amount to a constitutional violation, *See*  *Rivera v. SB Johnson*, No. Civ.A. 95–0845, 1996 WL 549336 (W.D.N.Y. Sept.20, 1996) (citation omitted), and disagreements between a prisoner and prison officials over treatment decisions fall short of cruel and unusual punishment. Thus, disagreements over medications, diagnostic techniques (e.g., the need for X-rays), forms of treatment, or the need for specialists or the timing of their intervention, are not adequate grounds for a  Section 1983 claim. These issues implicate medical

judgments and, at worst, negligence amounting to medical malpractice, but not the Eighth Amendment.  *Estelle v. Gamble*, 429 U.S. 97, 107, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976).

### 3. *As a Matter of Law, There Has Been no Excessive Force*

[29] In his response to the City's motion, plaintiff alleges, for the first time, that the injury to his finger resulted from excessive force on the part of prison officials at Rikers, and further that the defective cell door in which he cut his finger constituted a weapon. As no defendant has answered, plaintiff has an absolute right to amend his complaint, without seeking leave of Court. Fed.R.Civ.P. 15(a). However, assuming, *arguendo*, that plaintiff's responsive letter were deemed to assert an amendment to the complaint, the allegation would have to be dismissed.

In essence, plaintiff contends that prison officials caused him injury by having a \*313 defective door in the facility. There is, however, no allegation in either the original complaint or in plaintiff's responsive letter (where he raises the spectre of excessive force) that any **corrections** officer laid hands on plaintiff, let alone that an officer deliberately shut the door on his finger. Thus, there exists no factual predicate for a claim of excessive force. Even in some situations where deliberate acts are committed by a state officer to cause harm to an inmate, courts have found no excessive force.  *Whitley v. Albers*, 475 U.S. 312, 319, 106 S.Ct. 1078, 1085, 89 L.Ed.2d 251 (1986) (prison guard's shooting of inmate in the leg during prison riot is not excessive);  *Pristell v. County of Sullivan*,

No. Civ.A. 91-6317, 1996 WL 11210 at \*4 (S.D.N.Y. Jan. 10, 1996) (restraint of disorderly detainee resulting in fractured rib is not excessive force). Because there is no allegation whatsoever that force was used by prison guards against plaintiff, this claim also would fail.

### CONCLUSION


[30] [31] [32] The individual **Corrections** Officers, the Department of **Corrections** and "Dr. Robert" have not moved to dismiss the amended complaint. However, the court dismisses the claims against the non-moving defendants *sua sponte*. The District Court may dismiss a complaint *sua sponte* for failure to state a claim, as long as the plaintiff has been given an opportunity to be heard. *Thomas v. Scully*, 943 F.2d 259, 260 (2d Cir.1991). In this case, plaintiff has been heard—in his responses to the existing motion. The complaint makes identical allegations against each non-moving defendant as it does against some moving defendants. Moreover, as against the New York State Department of **Corrections**, the Eleventh Amendment bars plaintiff's suit.


For the above reasons, plaintiff's complaint is dismissed with prejudice as against all defendants. The Clerk of the Court is directed to close the case.

### All Citations

151 F.Supp.2d 303

### Footnotes

<sup>1</sup>  42 U.S.C. Section 1983 provides, *inter alia*, as follows:  
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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...

 KeyCite Yellow Flag - Negative Treatment  
Not Followed on State Law Grounds [Billings v. Gates](#), Or.App.,  
February 22, 1995

97 S.Ct. 285  
Supreme Court of the United States

W. J. ESTELLE, Jr., Director, Texas  
Department of **Corrections**, et al., Petitioners,

v.

**J. W. GAMBLE.**


No. 75-929.

|  
Argued Oct. 5, 1976.

|  
Decided Nov. 30, 1976.

|  
Rehearing Denied Jan. 17, 1977.  
See [429 U.S. 1066](#), [97 S.Ct. 798](#).

### Synopsis

State prisoner filed a pro se complaint against various prison officials under civil rights statute for failure to provide adequate medical care. The United States District Court for the Southern District of Texas, at Houston, dismissed the cause and the prisoner appealed. The United States Court of Appeals for the Fifth Circuit,  [516 F.2d 937](#), reversed and remanded, and denied rehearing en banc, [521 F.2d 815](#). Certiorari was granted. The Supreme Court, Mr. Justice Marshall, J., held, inter alia, that while deliberate indifference to prisoner's serious illness or injury constitutes cruel and unusual punishment in violation of Eighth Amendment, prisoner's pro se complaint showing that he had been seen and treated by medical personnel on 17 occasions within three-month period was insufficient to state a cause of action against physician both in his capacity as treating physician and as medical director of the **corrections** department, but case would be remanded to consider whether a cause of action was stated against other prison officials.


Reversed and remanded.

Mr. Justice Blackmun concurred in the judgment.

Mr. Justice Stevens filed a dissenting opinion.

West Headnotes (14)

[1] **Federal Courts**  **Scope and Extent of Review**

Since prisoner's civil rights complaint was dismissed for failure to state a claim, Supreme Court must take as true its handwritten, pro se allegations.  [42 U.S.C.A. § 1983](#).

[3727 Cases that cite this headnote](#)

[2] **Sentencing and Punishment**  **Purpose of prohibition**

Primary concern of drafter of constitutional prohibition against cruel and unusual punishment was to proscribe torture and other barbarous methods of punishment; amendment proscribes more than physically barbarous punishments and embodies broad and idealistic concepts of dignity, civilized standards, humanity and decency against which court must evaluate penal measures. [U.S.C.A.Const. Amend. 8](#).

[1250 Cases that cite this headnote](#)

[3] **Sentencing and Punishment**  **Scope of Prohibition**

Punishments which are incompatible with evolving standards of decency that mark progress of maturing society or which involve unnecessary or wanton infliction of pain are repugnant to Eighth Amendment. [U.S.C.A.Const. Amend. 8](#).

[3819 Cases that cite this headnote](#)

[4] **Sentencing and Punishment**  **Proportionality**

Eighth Amendment proscribes punishments which are grossly disproportionate to the severity of crime. [U.S.C.A.Const. Amend. 8](#).

[164 Cases that cite this headnote](#)

[5] **Sentencing and Punishment** 🔑 Declaring Act Criminal

Eighth Amendment imposes substantive limits on what can be made criminal and punished. U.S.C.A.Const. Amend. 8.

[29 Cases that cite this headnote](#)

[6] **Prisons** 🔑 Health and Medical Care

Government has obligation to provide medical care for those whom it is punishing by incarceration. U.S.C.A.Const. Amend. 8.


[1148 Cases that cite this headnote](#)

[7] **Sentencing and Punishment** 🔑 Medical care and treatment

Infliction of unnecessary suffering on prisoner by failure to treat his medical needs is inconsistent with contemporary standards of decency and violates the Eighth Amendment. U.S.C.A.Const. Amend. 8.

[8051 Cases that cite this headnote](#)


[8] **Civil Rights** 🔑 Medical care and treatment  
**Sentencing and Punishment** 🔑 Medical care and treatment

Deliberate indifference to serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain proscribed by Eighth Amendment whether the indifference is manifested by prison doctors in response to prison needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with treatment once prescribed; regardless of how evidenced deliberate indifference to prisoner's serious illness or injuries states cause of action under civil rights statute. U.S.C.A.Const. Amend. 8;  42 U.S.C.A. § 1983.

[35107 Cases that cite this headnote](#)


[9] **Civil Rights** 🔑 Prisons

Accident even though it may produce added anguish is not on that basis alone to be characterized as wanton infliction of unnecessary pain on prisoner as the basis for a cause of action under civil rights statute.

U.S.C.A.Const. Amend. 8;  42 U.S.C.A. § 1983.

[691 Cases that cite this headnote](#)


[10] **Civil Rights** 🔑 Medical care and treatment

Inadvertent failure to provide adequate medical care to prisoner cannot be said to constitute a wanton infliction of unnecessary pain on prisoner or to be repugnant to conscience of mankind for purpose of providing cause of action under civil rights statute. U.S.C.A.Const. Amend. 8;  42 U.S.C.A. § 1983.

[6369 Cases that cite this headnote](#)

[11] **Civil Rights** 🔑 Prisons and jails; probation and parole


**Sentencing and Punishment** 🔑 Medical care and treatment

Complaint that physician has been negligent in diagnosing or treating medical condition of prisoner does not state a valid claim of medical mistreatment under the Eighth Amendment; medical malpractice does not become a constitutional violation merely because victim is a prisoner. U.S.C.A.Const. Amend. 8;  42 U.S.C.A. § 1983.

[11604 Cases that cite this headnote](#)

[12] **Civil Rights** 🔑 Medical care and treatment  
**Sentencing and Punishment** 🔑 Medical care and treatment

In order to state a cognizable claim under civil rights statute because of inadequate medical care, prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.

U.S.C.A.Const. Amend. 8;  42 U.S.C.A. § 1983.

[25815 Cases that cite this headnote](#)

**[13] Federal Civil Procedure** 🔑 Prisoners' pleadings


**Federal Civil Procedure** 🔑 Civil Rights Actions

Handwritten pro se civil rights complaint of prisoner was to be liberally construed and must be held to less stringent standards than formal pleadings by lawyer, and complaint could be dismissed for failure to state a claim only if it appeared beyond doubt that plaintiff could prove no set of facts in support of claim which would entitle him to relief.

[14123 Cases that cite this headnote](#)


**[14] Civil Rights** 🔑 Prisons and jails; probation and parole

Complaint of prisoner alleging inadequate medical care but showing that he was seen by medical personnel on 17 occasions in a three-month period during which he was treated for his back injury, high blood pressure and heart problem and merely contending that more should have been done by the way of diagnosis and treatment failed to state cause of action against physician in his capacity either as treating physician or as medical director of **corrections** department, although case was remanded to determine whether cause of action had been stated against other prison officials.


U.S.C.A.Const. Amend. 8;  42 U.S.C.A. § 1983.

[1267 Cases that cite this headnote](#)

**\*\*287 Syllabus\***

**\*97** Respondent state inmate brought this civil rights action under  42 U.S.C. s 1983 against petitioners, the state **corrections** department medical director (Gray) and two **correctional** officials, claiming that he was subjected to cruel and unusual punishment in violation of the Eighth

Amendment for inadequate treatment of a back injury assertedly sustained while he was engaged in prison work. The District Court dismissed the complaint for failure to state a claim upon which relief could be granted. The Court of Appeals held that the alleged insufficiency of the medical treatment required reinstatement of the complaint. Held: Deliberate indifference by prison personnel to a prisoner's serious illness or injury constitutes cruel and unusual punishment contravening the Eighth Amendment. Here, however, respondent's claims against Gray do not suggest such indifference, the allegations revealing that Gray and other medical personnel saw respondent on 17 occasions during a 3-month span and treated his injury and other problems. The failure to perform an X-ray or to use additional diagnostic techniques does not constitute cruel and unusual punishment but is at most medical malpractice cognizable in the state courts. The question whether respondent has stated a constitutional claim against the other petitioners, the Director of the Department of **Corrections** and the **\*\*288** warden of the prison, was not separately evaluated by the Court of Appeals and should be considered on remand. Pp. 289-293.

 516 F.2d 937, reversed and remanded.


#### Attorneys and Law Firms

Bert W. Pluymen, Austin, Tex., for petitioners, pro hac vice, by special leave of Court.

**\*98** Daniel K. Hedges, Houston, Tex., for respondent, pro hac vice, by special leave of Court.

#### Opinion

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. s 1983,<sup>1</sup> 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.<sup>2</sup> The Court of Appeals reversed and remanded



with instructions to reinstate the complaint. [516 F.2d 937 \(C.A.5 1975\)](#). We granted certiorari, [424 U.S. 907, 96 S.Ct. 1101, 47 L.Ed.2d 311 \(1976\)](#).

**\*99 I**

[1] Because the complaint was dismissed for failure to state a claim, we must take as true its handwritten, pro se allegations. [Cooper v. Pate, 378 U.S. 546, 84 S.Ct. 1733, 12 L.Ed.2d 1030 \(1964\)](#). According to the complaint, Gamble was injured on November 9, 1973, when a bale of cotton<sup>3</sup> fell on him while he was unloading a truck. He continued to work but after four hours he became stiff and was granted a pass to the unit hospital. At the hospital a medical assistant, “Captain” Blunt, checked him for a [hernia](#) and sent him back to his cell. Within two hours the pain became so intense that Gamble returned to the hospital where he was given pain pills by an inmate nurse and then was examined by a doctor. The following day, Gamble saw a Dr. Astone who diagnosed the injury as a lower [back strain](#), prescribed Zactirin (a pain reliever) and [Robaxin](#) (a muscle relaxant),<sup>4</sup> and placed respondent on “cell-pass, cell-feed” status for two days, allowing him to remain in his cell at all times except for showers. On November 12, Gamble again saw Dr. Astone who continued the medication and cell-pass, cell-feed for another seven days. He also ordered that respondent be moved from an upper to a lower bunk for one week, but the prison authorities did not comply with that directive. The following week, Gamble returned to Dr. Astone. The doctor continued the muscle relaxant but prescribed a new pain reliever, [Febridyne](#), and placed respondent on cell-pass for seven days, permitting him to remain in his cell except for meals and showers. On November 26, respondent **\*\*289** again saw Dr. Astone, who put respondent back on the original pain reliever for five days and continued the cell-pass for another week.

**\*100** On December 3, despite Gamble's statement that his back hurt as much as it had the first day, Dr. Astone took him off cell-pass, thereby certifying him to be capable of light work. At the same time, Dr. Astone prescribed [Febridyne](#) for seven days. Gamble then went to a Major Muddox and told him that he was in too much pain to work. Muddox had respondent moved to “administrative segregation.”<sup>5</sup> On December 5, Gamble was taken before the prison disciplinary committee, apparently because of his refusal to work. When

the committee heard his complaint of back pain and [high blood pressure](#), it directed that he be seen by another doctor.

On December 6, respondent saw petitioner Gray, who performed a urinalysis, blood test, and blood pressure measurement. Dr. Gray prescribed the drug [Ser-Ap-Es](#) for the [high blood pressure](#) and more [Febridyne](#) for the back pain. The following week respondent again saw Dr. Gray, who continued the [Ser-Ap-Es](#) for an additional 30 days. The prescription was not filled for four days, however, because the staff lost it. Respondent went to the unit hospital twice more in December; both times he was seen by Captain Blunt, who prescribed Tiognolos (described as a muscle relaxant). For all of December, respondent remained in administrative segregation.

In early January, Gamble was told on two occasions that he would be sent to the “farm” if he did not return to work. He refused, nonetheless, claiming to be in too much pain. On January 7, 1974, he requested to go on sick call for his back pain and [migraine headaches](#). After an initial refusal, he saw Captain Blunt who prescribed sodium salicylate (a **\*101** pain reliever) for seven days and [Ser-Ap-Es](#) for 30 days. Respondent returned to Captain Blunt on January 17 and January 25, and received renewals of the pain reliever prescription both times. Throughout the month, respondent was kept in administrative segregation.

On January 31, Gamble was brought before the prison disciplinary committee for his refusal to work in early January. He told the committee that he could not work because of his severe back pain and his [high blood pressure](#). Captain Blunt testified that Gamble was in “first class” medical condition. The committee, with no further medical examination or testimony, placed respondent in solitary confinement.

Four days later, on February 4, at 8 a. m., respondent asked to see a doctor for [chest pains](#) and “blank outs.” It was not until 7:30 that night that a medical assistant examined him and ordered him hospitalized. The following day a Dr. Heaton performed an [electrocardiogram](#); one day later respondent was placed on [Quinidine](#) for treatment of irregular cardiac rhythm and moved to administrative segregation. On February 7, respondent again experienced [pain in his chest](#), left arm, and back and asked to see a doctor. The guards refused. He asked again the next day. The guards again refused. Finally, on February 9, he was allowed to see Dr. Heaton, who ordered the Quinidine continued for three more days. On February 11, he swore out his complaint.

## II

The gravamen of respondent's [s 1983](#) complaint is that petitioners have subjected him to cruel and unusual punishment in violation of the Eighth Amendment, made applicable to the States by the Fourteenth.<sup>6</sup> \*\*290 See [\\*102 Robinson v. California](#), 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962). We therefore base our evaluation of respondent's complaint on those Amendments and our decisions interpreting them.

[2] [3] The history of the constitutional prohibition of "cruel and unusual punishments" has been recounted at length in prior opinions of the Court and need not be repeated here. See, e. g., [Gregg v. Georgia](#), 428 U.S. 153, 169-173, 96 S.Ct. 2909, 2923, 49 L.Ed.2d 859 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ. (hereinafter joint opinion)); see also Granucci, *Nor Cruel and Unusual Punishment Inflicted: The Original Meaning*, 57 Calif.L.Rev. 839 (1969). It suffices to note that the primary concern of the drafters was to proscribe "torture(s)" and other "barbar(ous)" methods of punishment. *Id.*, at 842. Accordingly, this Court first applied the Eighth Amendment by comparing challenged methods of execution to concededly inhuman techniques of punishment. See [Wilkerson v. Utah](#), 99 U.S. 130, 136, 25 L.Ed. 345 (1879) ("(I)t is safe to affirm that punishments of torture . . . and all others in the same line of unnecessary cruelty, are forbidden by that amendment . . ."); [In re Kemmler](#), 136 U.S. 436, 447, 10 S.Ct. 930, 933, 34 L.Ed. 519 (1890) ("Punishments are cruel when they involve torture or a lingering death . . .").

[4] [5] Our more recent cases, however, have held that the Amendment proscribes more than physically barbarous punishments. See, e. g., [Gregg v. Georgia](#), *supra*, at 171, 96 S.Ct. at 2924 (joint opinion); [Trop v. Dulles](#), 356 U.S. 86, 100-101, 78 S.Ct. 590, 597, 598, 2 L.Ed.2d 630 (1958); [Weems v. United States](#), 217 U.S. 349, 373, 30 S.Ct. 544, 551, 54 L.Ed. 793 (1910). The Amendment embodies "broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . . ," [Jackson v. Bishop](#), 404 F.2d 571, 579 (C.A.8 1968), against which we must evaluate penal measures. Thus, we have held repugnant to the Eighth Amendment punishments which are incompatible with "the evolving standards of decency that mark the progress of a

maturing society." [Trop v. Dulles](#), *supra*, at 101, 78 S.Ct. at 598; see also [Gregg v. Georgia](#), *supra*, at 172-173, 96 S.Ct. at 2925 (joint opinion); [\\*103 Weems v. United States](#), *supra*, 217 U.S. at 378, 30 S.Ct. at 553, or which "involve the unnecessary and wanton infliction of pain," [Gregg v. Georgia](#), *supra*, at 173, 96 S.Ct. at 2925 (joint opinion); see also [Louisiana ex rel. Francis v. Resweber](#), 329 U.S. 459, 463, 67 S.Ct. 374, 376, 91 L.Ed. 422 (1947); [Wilkerson v. Utah](#), *supra*, 99 U.S. at 136.<sup>7</sup>

[6] [7] 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 *re Kemmler*, *supra*, 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. Cf. [Gregg v. Georgia](#), *supra*, at 173, 96 S.Ct. at 2924-25 (joint opinion). The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency as manifested in modern legislation<sup>8</sup> codifying the com \*\*291 mon-law \*104 view that "(i)t is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself."<sup>9</sup>

[8] We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the "unnecessary and wanton infliction of pain," [Gregg v. Georgia](#), *supra*, at 173, 96 S.Ct. at 2925 (joint opinion), proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs<sup>10</sup> or by prison guards in intentionally denying or delaying access to medical \*105 care<sup>11</sup> or intentionally interfering with the treatment once prescribed.<sup>12</sup> Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under [s 1983](#).

[9] 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. In [Louisiana ex rel. Francis v. Resweber](#), 329 U.S. 459, 67 S.Ct. 374, 91 L.Ed. 422 (1947), for example, the Court concluded that it was not unconstitutional to force a prisoner to undergo a second effort to electrocute him after a mechanical malfunction had thwarted the first attempt. Writing for the plurality, **\*\*292** Mr. Justice Reed reasoned that the second execution would not violate the Eighth Amendment because the first attempt was an “unforeseeable accident.” [Id.](#), at 464, 67 S.Ct. 376. Mr. Justice Frankfurter's concurrence, based solely on the Due Process Clause of the Fourteenth Amendment, concluded that since the first attempt had failed because of “an innocent misadventure,” [id.](#), at 470, 67 S.Ct. at 379, the second would not be “repugnant to the conscience of mankind,” [id.](#), at 471, 67 S.Ct. at 380, quoting [Palko v. Connecticut](#), 302 U.S. 319, 323, 58 S.Ct. 149, 150, 82 L.Ed. 288 (1937).<sup>13</sup>

[10] [11] [12] Similarly, in the medical context, inadvertent failure to provide adequate medical care cannot be said to constitute “an unnecessary and wanton infliction of pain” or to be **\*106** “repugnant to the conscience of mankind.” Thus, 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. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend “evolving standards of decency” in violation of the Eighth Amendment.<sup>14</sup>

### III

[13] Against this backdrop, we now consider whether respondent's complaint states a cognizable [§ 1983](#) claim. The handwritten pro se document is to be liberally construed.

As the Court unanimously held in [Haines v. Kerner](#), 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), a pro se complaint, “however inartfully pleaded,” must be held to “less stringent standards than formal pleadings drafted by

lawyers” and can only be dismissed for failure to state a claim if it appears “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” [Id.](#), at 520-521, 92 S.Ct. at 596, quoting [Conley v. Gibson](#), 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

[14] **\*107** Even applying these liberal standards, however, Gamble's claims against Dr. Gray, both in his capacity as treating physician and as medical director of the **Corrections** Department, are not cognizable under [§ 1983](#). Gamble was seen by medical personnel on 17 occasions spanning a 3-month period: by Dr. Astone five times; by Dr. Gray twice; by Dr. Heaton three times; by an unidentified doctor and inmate nurse on the day of the injury; and by medical assistant Blunt six times. They treated his back injury, **high blood pressure**, and heart problems. Gamble has disclaimed any objection to the treatment provided for his **high blood pressure** and his heart problem; his complaint is “based solely on the lack of diagnosis and inadequate treatment of his back injury.” Response to Pet. for Cert. 4; see also Brief for Respondent at 19. The doctors diagnosed his injury as a lower **back strain** and treated it with bed rest, muscle relaxants and pain relievers. Respondent contends that more should have been done by way of diagnosis and treatment, and **\*\*293** suggests a number of options that were not pursued. [Id.](#), at 17, 19. The Court of Appeals agreed, stating: “Certainly an x-ray of (Gamble's) lower back might have been in order and other tests conducted that would have led to appropriate diagnosis and treatment for the daily pain and suffering he was experiencing.” [516 F.2d](#), at 941. But the question whether an X-ray or additional diagnostic techniques or forms of treatment is indicated is a classic example of a matter for medical judgment. A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment. At most it is medical malpractice, and as such the proper forum is the state court under the Texas Tort Claims Act.<sup>15</sup> The Court of Appeals was in error in holding that the alleged insufficiency of the **\*108** medical treatment required reversal and remand. That portion of the judgment of the District Court should have been affirmed.<sup>16</sup>

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 medical director, 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.

It is so ordered.

Mr. Justice BLACKMUN concurs in the judgment of the Court.

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 \*109 officer of the prison, it is not faithful to the rule normally applied in construing the allegations in a pleading prepared by an uncounseled 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 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 indifferent to his medical needs, and that as a result of that indifference he has been mistreated and his condition has worsened.

The indifference is allegedly manifested, not merely by the failure or refusal to diagnose and treat his injury properly, but also by the conduct of the prison staff. Gamble was placed in solitary confinement for prolonged periods as punishment for \*\*294 refusing to perform assigned work which he was physically unable to perform.<sup>1</sup> The only medical evidence

presented to the disciplinary committee was the statement of a medical assistant that he was in first-class condition, when in fact he was suffering not only from the [back sprain](#) but from [high blood pressure](#). Prison guards refused \*110 to permit him to sleep in the bunk that a doctor had assigned. On at least one occasion a medical prescription was not filled for four days because it was lost by staff personnel. When he suffered [chest pains](#) and blackouts while in solitary, he was forced to wait 12 hours to see a doctor because clearance had to be obtained from the warden. His complaint also draws into question the character of the attention he received from the doctors and the inmate nurse in response to his 17 attempts to obtain proper diagnosis and treatment for his condition. However, apart from the medical director who saw him twice, he has not sued any of the individuals who saw him on these occasions. In short, he complains that the system as a whole is inadequate.

On the basis of Gamble's handwritten complaint it is impossible to assess the quality of the medical attention he received. As the Court points out, even if what he alleges is true, the doctors may be guilty of nothing more than negligence or malpractice. On the other hand, it is surely not inconceivable that an overworked, undermanned medical staff in a crowded prison<sup>2</sup> is following the expedient course of routinely prescribing nothing more than pain killers when a thorough diagnosis would disclose an obvious need for remedial treatment.<sup>3</sup> Three fine judges \*111 sitting on the United States Court of Appeals for the Fifth Circuit<sup>4</sup> thought that enough had \*\*295 been alleged to require some inquiry into the actual facts. If this Court meant what it said in [Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652](#), these judges were clearly right.<sup>5</sup>

\*112 The Haines test is not whether the facts alleged in the complaint would entitle the plaintiff to relief. Rather, it is whether the Court can say with assurance on the basis of the complaint that, beyond any doubt, no set of facts could be proved that would entitle the plaintiff to relief.<sup>6</sup> The reasons for the Haines test are manifest. A pro se complaint provides an unsatisfactory foundation for deciding the merits of important questions because typically it is inartfully drawn, unclear, and equivocal, and because thorough pleadings, affidavits, and possibly an evidentiary hearing will usually bring out facts which simplify or make unnecessary the decision of questions presented by the naked complaint.<sup>7</sup>



\*113 Admittedly, it is tempting to eliminate the meritless complaint at the pleading stage. Unfortunately, this “is another instance of judicial haste which in the long run makes waste,” [Dioguardi v. Durning](#), 139 F.2d 774, 775 (C.A.2 1944) (Clark, J.), cited with approval in [Haines v. Kerner](#), *supra*, 404 U.S., at 521, 92 S.Ct., at 596. In the instant case, if the District Court had resisted the temptation of premature dismissal, \*\*296 the case might long since have ended with the filing of medical records or affidavits demonstrating adequate treatment. Likewise, if the decision of the Fifth Circuit reinstating the complaint had been allowed to stand and the case had run its normal course, the litigation probably would have come to an end without the need for review by this Court. Even if the Fifth Circuit had wrongly decided the pleading issue, no great harm would have been done by requiring the State to produce its medical records and move for summary judgment. Instead, the case has been prolonged by two stages of appellate review, and is still not over: The case against two of the defendants may still proceed, and even the \*114 claims against the prison doctors have not been disposed of with finality.<sup>8</sup>

The principal beneficiaries of today's decision will not be federal judges, very little of whose time will be saved, but rather the “writ-writers” within the prison walls, whose semiprofessional services will be in greater demand. I have no doubt about the ability of such a semiprofessional to embellish this pleading with conclusory allegations which could be made in all good faith and which would foreclose a dismissal without any response from the State. It is unfortunate that today's decision will increase prisoners' dependence on those writ-writers. See [Cruz v. Beto](#), 405 U.S. 319, 327 n. 7, 92 S.Ct. 1079, 1084, 31 L.Ed.2d 263 (Rehnquist, J., dissenting).

## II

Like the District Court's decision to dismiss the complaint, this Court's decision to hear this case, in violation of its normal practice of denying interlocutory review, see \*115 R. Stern & E. Gressman, *Supreme Court Practice* 180 (4th ed. 1969), ill serves the interest of judicial economy.

Frankly, I was, and still am, puzzled by the Court's decision to grant certiorari.<sup>9</sup> If the Court merely thought the Fifth Circuit

misapplied *Haines v. Kerner* by reading the complaint too liberally, the grant of certiorari is inexplicable. On the other hand, if the Court thought that instead of a pleading question, 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<sup>10</sup> the Court normally requires as a predicate for the adjudication of a novel and serious constitutional issue, see, e. g., \*\*297 *Rescue Army v. Municipal Court*, 331 U.S. 549, 568-575, 67 S.Ct. 1409, 1419-1423, 91 L.Ed. 1666; *Ellis v. Dixon*, 349 U.S. 458, 464, 75 S.Ct. 850, 854, 99 L.Ed. 1231; *Wainwright v. City of New Orleans*, 392 U.S. 598, 88 S.Ct. 2243, 20 L.Ed.2d 1322 (Harlan, J., concurring).<sup>11</sup> Moreover, as the Court notes, all the Courts of Appeals to consider the question have reached substantially the same conclusion that the Court adopts. Ante, at 292 n. 14. 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.

## \*116 III

By its reference to the accidental character of the first unsuccessful attempt to electrocute the prisoner in [Louisiana ex rel. Francis v. Resweber](#), 329 U.S. 459, 67 S.Ct. 374, 91 L.Ed. 422, see ante, at 291, and by its repeated references to “deliberate indifference” and the “intentional” denial of adequate medical care, I believe the Court improperly attaches significance to the subjective motivation of the defendant as a criterion for determining whether cruel and unusual punishment has been inflicted.<sup>12</sup> Subjective motivation may well determine what, if any, remedy is appropriate against a particular defendant. However, 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.<sup>13</sup> Whether the conditions in Andersonville were the \*117 product of design, negligence, or mere poverty, they were cruel and inhuman.

In sum, I remain convinced that the petition for certiorari should have been denied. It having been granted, I would affirm the judgment of the Court of Appeals.

## All Citations

429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251









## Footnotes



- \* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See [United States v. Detroit Timber & Lumber Co.](#), 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499, 505.
- 1 [Title 42 U.S.C. s 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. 7, 13-15. This probably resulted because the District Court dismissed the complaint simultaneously with granting leave to file it in forma pauperis.
- 3 His complaint states that the bale weighed “6.00 pound.” The Court of Appeals interpreted this to mean 600 pounds. [516 F.2d 937, 938 \(CA5 1975\)](#).
- 4 The names and descriptions of the drugs administered to respondent are taken from his complaint, App. A-5 A-11, and his brief, at 19-20.
- 5 There are a number of terms in the complaint whose meaning is unclear and, with no answer from the State, must remain so. For example, “administrative segregation” is never defined. The Court of Appeals deemed it the equivalent of solitary confinement. [516 F.2d, at 939](#). We note, however, that Gamble stated he was in “administrative segregation” when he was in the “32A-7 five building” and “32A20 five building,” but when he was in “solitary confinement,” he was in “3102 five building.”
- 6 The Eighth Amendment provides:  
 “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”  
 At oral argument, counsel for respondent agreed that his only claim was based on the Eighth Amendment. Tr. of Oral Arg. 42-43.
- 7 The Amendment also proscribes punishments grossly disproportionate to the severity of the crime, [Gregg v. Georgia](#), 428 U.S. 153, 173, 96 S.Ct. at 2925 (1976) (joint opinion); [Weems v. United States](#), 217 U.S. 349, 367, 30 S.Ct. 544, 549 (1910), and it imposes substantive limits on what can be made criminal and punished, [Robinson v. California](#), 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962). Neither of these principles is involved here.
- 8 See, e. g., Ala.Code Tit. 45, s 125 (1958); [Alaska Stat. s 33.30.050 \(1975\)](#); [Ariz.Rev.Stat. Ann. s 31-201.01 \(Supp.1975\)](#); [Conn.Gen.Stat. Ann. s 18-7 \(1975\)](#); Ga.Code Ann. s 77-309(e) (1973); [Idaho Code s 20-209 \(Supp.1976\)](#); Ill. Ann. Stat. c. 38, s 103-2 (1970); Ind. Ann. Stat. s 11-1-1.1-30.5 (1973); Kan. Stat. Ann. s 75-4249 (Supp. 1975); Md. Ann. Code Art. 27 s 698 (1976); [Mass. Ann. Laws, c. 127, s 90A \(1974\)](#); Mich. Stat. Ann. s 14.84 (1969); [Miss. Code Ann. s 47-1-57 \(1972\)](#); [Mo. Ann. Stat. s 221.120 \(1962\)](#); [Neb. Rev. Stat. s 83-181 \(1971\)](#); N.H. Rev. Stat. Ann. s 619.9 (1974); N.M. Stat. Ann. s 42-2-4 (1972); Tenn. Code Ann. ss 41-318, 41-1115, 41-1226 (1975); Utah Code Ann. ss 64-9-13, 64-9-19, 64-9-20, 64-9-53 (1968); Va. Code Ann. ss 32-81, 32-82 (1973); [W. Va. Code Ann. s 25-1-16 \(Supp. 1976\)](#); Wyo. Stat. Ann. s 18-299 (1959).
- Many States have also adopted regulations which specify, in varying degrees of detail, the standards of medical care to be provided to prisoners. See Comment, The Rights of Prisoners to Medical Care and the Implications for Drug-Dependent Prisoners and Pretrial Detainees, 42 U. Chi. L. Rev. 705, 708-709 (1975).<sup>9</sup>


Model **correctional** legislation and proposed minimum standards are all in accord. See American Law Institute, *Model Penal Code* ss 303.4, 304.5 (1962); National Advisory Commission on Criminal Justice Standards and Goals, Standards on Rights of Offenders, Standard 2.6 (1973); National Council on Crime and Delinquency, Model Act for the Protection of Rights of Prisoners, s 1(b) (1972); National Sheriffs' Association, Standards for Inmates' Legal Rights, Right No. 3 (1974); Fourth United Nations Congress on Prevention of Crime and Treatment of Offenders, Standard Minimum Rules for the Treatment of Prisoners, Rules 22-26 (1955). The foregoing may all be found in U.S. Dept. of Justice Law Enforcement Assistance Administration Compendium of Model **Correctional** Legislation and Standards (2d ed. 1975).








9  *Spicer v. Williamson*, 191 N.C. 487, 490, 132 S.E. 291, 293 (1926).


10 See, e. g.,  *Williams v. Vincent*, 508 F.2d 541 (C.A.2 1974) (doctor's choosing the "easier and less efficacious treatment" of throwing away the prisoner's ear and stitching the stump may be attributable to "deliberate indifference . . . rather than an exercise of professional judgment");  *Thomas v. Pate*, 493 F.2d 151, 158 (C.A.7), cert. denied sub nom. *Thomas v. Cannon*, 419 U.S. 879, 95 S.Ct. 143, 42 L.Ed.2d 119 (1974) (injection of penicillin with knowledge that prisoner was allergic, and refusal of doctor to treat allergic reaction); *Jones v. Lockhart*, 484 F.2d 1192 (C.A.8 1973) (refusal of paramedic to provide treatment);  *Martinez v. Mancusi*, 443 F.2d 921 (C.A.2 1970), cert. denied, 401 U.S. 983, 91 S.Ct. 1202, 28 L.Ed.2d 335 (1971) (prison physician refuses to administer the prescribed pain killer and renders leg surgery unsuccessful by requiring prisoner to stand despite contrary instructions of surgeon).


11 See, e. g.,  *Westlake v. Lucas*, 537 F.2d 857 (C.A.6 1976);  *Thomas v. Pate*, supra, 493 F.2d 151, at 158-159;  *Fitzke v. Shappell*, 468 F.2d 1072 (C.A.6 1972); *Hutchens v. Alabama*, 466 F.2d 507 (C.A.5 1972); *Riley v. Rhay*, 407 F.2d 496 (C.A.9 1969);  *Edwards v. Duncan*, 355 F.2d 993 (C.A.4 1966);  *Hughes v. Noble*, 295 F.2d 495 (C.A.5 1961).

12 See, e. g., *Wilbron v. Hutto*, 509 F.2d 621, 622 (C.A.8 1975);  *Campbell v. Beto*, 460 F.2d 765 (C.A.5 1972); *Martinez v. Mancusi*, supra;  *Tolbert v. Eyman*, 434 F.2d 625 (C.A.9 1970); *Edwards v. Duncan*, supra.

13 He noted, however, that "a series of abortive attempts" or "a single, cruelly willful attempt" would present a different case.  329 U.S., at 471, 67 S.Ct., at 380.


14 The Courts of Appeals are in essential agreement with this standard. All agree that mere allegations of malpractice do not state a claim, and, while their terminology regarding what is sufficient varies, their results are not inconsistent with the standard of deliberate indifference. See *Page v. Sharpe*, 487 F.2d 567, 569 (C.A.1 1973);  *Williams v. Vincent*, supra, 508 F.2d 541, at 544 (uses the phrase "deliberate indifference");  *Gittlemacker v. Prasse*, 428 F.2d 1, 6 (C.A.3 1970); *Russell v. Sheffer*, 528 F.2d 318 (C.A.4 1975);  *Newman v. Alabama*, 503 F.2d 1320, 1330 n. 14 (C.A.5 1974), cert. denied, 421 U.S. 948, 95 S.Ct. 1680, 44 L.Ed.2d 102 (1975) ("callous indifference");  *Westlake v. Lucas*, supra, 537 F.2d, at 860 ("deliberate indifference");  *Thomas v. Pate*, supra, 493 F.2d, at 158; *Wilbron v. Hutto*, supra, 509 F.2d, at 622 ("deliberate indifference");  *Tolbert v. Eyman*, supra, 434 F.2d, at 626;  *Dewell v. Lawson*, 489 F.2d 877, 881-882 (C.A.10 1974).

15  *Tex.Rev.Civ.Stat., Art. 6252-19, s 3 (Supp.1976)*. Petitioners assured the Court at argument that this statute can be used by prisoners to assert malpractice claims. Tr. of Oral Arg.

16 Contrary to Mr. Justice STEVENS' assertion in dissent, this case signals no retreat from  *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). In contrast to the general allegations in *Haines*, *Gamble*'s complaint provides a detailed factual accounting of the treatment he received. By his exhaustive description

he renders speculation unnecessary. It is apparent from his complaint that he received extensive medical care and that the doctors were not indifferent to his needs.

1 In his complaint, Gamble alleged that he had been placed in administrative segregation and remained there through December and January. At the end of January he was placed in solitary confinement. In an affidavit filed in the Court of Appeals the following December, see n. 8, *infra*, Gamble alleged that with the exception of one day in which he was taken out of solitary to be brought before the disciplinary committee he had remained in solitary up to the date of the affidavit.

2 According to a state legislative report quoted by the Court of Appeals, the Texas Department of **Corrections** has had at various times one to three doctors to care for 17,000 inmates with occasional part-time help.  [516 F.2d 937, 940-941, n. 1 \(1975\)](#).

3 This poorly drafted complaint attempts to describe conditions which resemble those reported in other prison systems. For instance, a study of the Pennsylvania prison system reported:

"When ill, the prisoner's point of contact with a prison's health care program is the sick-call line. Access may be barred by a guard, who refuses to give the convict a hospital pass out of whimsy or prejudice, or in light of a history of undiagnosed complaints. At sick call the convict commonly first sees a civilian paraprofessional or a nurse, who may treat the case with a placebo without actual examination, history-taking or recorded diagnosis. Even seeing the doctor at some prisons produces no more than aspirin for symptoms, such as dizziness and fainting, which have persisted for years." Health Law Project, University of Pennsylvania, *Health Care and Conditions in Pennsylvania's State Prisons*, in American Bar Association Commission on **Correctional** Facilities and **Services**, *Medical and Health Care in Jails, Prisons, and Other Correctional Facilities: A Compilation of Standards and Materials*, 71, 81-82 (Aug. 1974).

A legislative report on California prisons found:



"By far, the area with the greatest problem at the hospital (at one major prison), and perhaps at all the hospitals, was that of the abusive doctor-patient relationship. Although the indifference of M.T.A.s (medical technical assistants) toward medical complaints by inmates is not unique at Folsom, and has been reported continuously elsewhere, the calloused and frequently hostile attitude exhibited by the doctors is uniquely reprehensible. . . .

"Typical complaints against (one doctor) were that he would . . . not adequately diagnose or treat a patient who was a disciplinary problem at the prison . . . ." Assembly Select Committee on Prison Reform and Rehabilitation, *An Examination of California's Prison Hospitals*, 60-61 (1972).

These statements by responsible observers demonstrate that it is far from fanciful to read a prisoner's complaint as alleging that only pro forma treatment was provided.

4 The panel included Mr. Justice Clark, a retired member of this Court, sitting by designation, and Circuit Judges Goldberg and Ainsworth.


5 In *Haines* a unanimous Supreme Court admonished the federal judiciary to be especially solicitous of the problems of the uneducated inmate seeking to litigate on his own behalf. The Court said:

"Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'  [Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2 L.Ed.2d 80 \(1957\)](#). See  [Dioguardi](#)

[v. Durning, 139 F.2d 774 \(C.A.2 1944\)](#)."  [404 U.S., at 520-521, 92 S.Ct., at 595-596](#).

Under that test the complaint should not have been dismissed without, at the very minimum, requiring some response from the defendants. It appears from the record that although the complaint was filed in February, instead of causing it to be served on the defendants as required by [Fed.Rule Civ.Proc. 4](#), the Clerk of the District Court referred it to a magistrate who decided in June that the case should be dismissed before any of the normal procedures were even commenced. At least one Circuit has held that dismissal without service on

- the defendants is improper, [Nichols v. Schubert](#), 499 F.2d 946 (C.A.7 1974). The Court's disposition of this case should not be taken as an endorsement of this practice since the question was not raised by the parties.
- 6 This is the test actually applied in *Haines*, for although the Court ordered the complaint reinstated, it expressly “intimate(d) no view whatever on the merits of petitioner's allegations,” [404 U.S.](#), at 521, [92 S.Ct.](#), at 596. It is significant that the Court took this approach despite being pressed by the State to decide the merits. As in this case, the State argued forcefully that the facts alleged in the complaint did not amount to a constitutional violation. (Only in one footnote in its 51-page brief did the State discuss the pleading question, Brief for Respondents 22-23, n. 20, in No. 70-5025, O.T. 1971.) Yet, this Court devoted not a single word of its opinion to answering the argument that no constitutional violation was alleged.
- 7 Thus, *Haines* teaches that the decision on the merits of the complaint should normally be postponed until the facts have been ascertained. The same approach was taken in [Polk Co. v. Glover](#), [305 U.S. 5](#), [59 S.Ct. 15](#), [83 L.Ed. 6](#), in which the Court reversed the dismissal of a complaint, without intimating any view of the constitutional issues, on “(t)he salutary principle that the essential facts should be determined before passing upon grave constitutional questions . . . .” *Id.*, at 10, [59 S.Ct. at 17](#). See also [Borden's Co. v. Baldwin](#), [293 U.S. 194](#), [213](#), [55 S.Ct. 187](#), [193](#), [79 L.Ed. 281](#) (Cardozo and Stone, JJ., concurring in result). This approach potentially avoids the necessity of ever deciding the constitutional issue since the facts as proved may remove any constitutional question. Alternatively, a more concrete record will be available on which to decide the constitutional issues. See generally [Rescue Army v. Municipal Court](#), [331 U.S. 549](#), [574-575](#), [67 S.Ct. 1409](#), [1422](#), [1423](#), [19 L.Ed. 1666](#). Even when constitutional principles are not involved, it is important that “the conceptual legal theories be explored and assayed in the light of actual facts, not as a pleader's supposition,” so that courts may avoid “elucidating legal responsibilities as to facts which may never be.” [Shull v. Pilot Life Ins. Co.](#), [313 F.2d 445](#), [447](#) (C.A.5 1963).
- 8 In an affidavit filed in the Court of Appeals, Gamble states that he has been transferred to another prison, placed in solitary confinement, and denied any medical care at all. These conditions allegedly were continuing on December 3, 1974, the date of the affidavit. The Court of Appeals apparently considered these allegations, as shown by a reference to “the fact that (Gamble) has spent months in solitary confinement without medical care and stands a good chance of remaining that way without intervention,” [516 F.2d](#), at 941. Presumably the Court's remand does not bar Gamble from pursuing these charges, if necessary through filing a new complaint or formal amendment of the present complaint. The original complaint also alleged that prison officials failed to comply with a doctor's order to move Gamble to a lower bunk, that they put him in solitary confinement when he claimed to be physically unable to work, and that they refused to allow him to see a doctor for two days while he was in solitary. Gamble's medical condition is relevant to all these allegations. It is therefore probable that the medical records will be produced and that testimony will be elicited about Gamble's medical care. If the evidence should show that he in fact sustained a serious injury and received only pro forma care, he would surely be allowed to amend his pleading to reassert a claim against one or more of the prison doctors.
- 9 “The only remarkable thing about this case is its presence in this Court. For the case involves no more than the application of well-settled principles to a familiar situation, and has little significance except for the respondent. Why certiorari was granted is a mystery to me particularly at a time when the Court is thought by many to be burdened by too heavy a caseload.” [Butz v. Glover Livestock Comm'n Co.](#), [411 U.S. 182](#), [189](#), [93 S.Ct. 1455](#), [1460](#), [36 L.Ed.2d 142](#) (Stewart, J., dissenting).
- 10 As this Court notes, ante, at 289 n. 5, even the meaning of some of the terms used in the complaint is unclear.
- 11 If this was the reason for granting certiorari, the writ should have been dismissed as improvidently granted when it became clear at oral argument that the parties agreed on the constitutional standard and disagreed only as to its application to the allegations of this particular complaint. See Tr. of Oral Arg. 38, 48.
- 12 As the four dissenting Justices in *Resweber* pointed out:

“The intent of the executioner cannot lessen the torture or excuse the result. It was the statutory duty of the state officials to make sure that there was no failure.”  329 U.S., at 477, 67 S.Ct., at 382 (Burton, J., joined by Douglas, Murphy, and Rutledge, JJ.).

- 13 The Court indicates the Eighth Amendment is violated “by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed.” Ante, at 291. If this is meant to indicate that intent is a necessary part of an Eighth Amendment violation, I disagree. If a State elects to impose imprisonment as a punishment for crime, I believe it has an obligation to provide the persons in its custody with a health care system which meets minimal standards of adequacy. As a part of that basic obligation, the State and its agents have an affirmative duty to provide reasonable access to medical care, to provide competent, diligent medical personnel, and to ensure that prescribed care is in fact delivered. For denial of medical care is surely not part of the punishment which civilized nations may impose for crime. Of course, not every instance of improper health care violates the Eighth Amendment. Like the rest of us, prisoners must take the risk that a competent, diligent physician will make an error. Such an error may give rise to a tort claim but not necessarily to a constitutional claim. But when the State adds to this risk, as by providing a physician who does not meet minimum standards of competence or diligence or who cannot give adequate care because of an excessive caseload or inadequate facilities, then the prisoner may suffer from a breach of the State's constitutional duty.