Unintended Death Sentences

Prosecuting prisoner suicide cases against the state when a loved one dies while in custody

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2016 November

The frequency of suicides in our jails and prisons is reprehensible. Even worse is that most of these suicides are preventable. A recent study of all 154 suicides that occurred in the California Department of Corrections and Rehabilitation[1] between 1999 and 2004 determined that 60%[2] of those suicides were foreseeable, preventable, or both. (Patterson and Hughes, "Review of Completed Suicides in the California Department of Corrections and Rehabilitation, 1999 to 2004," *Psychiatric Services*, Vol. 59, No. 6, June 2008, pp. 676-82.) The study identified numerous examples of ways in which both custodial staff and clinical staff often failed to adequately assess and refer suicidal inmates for more intensive monitoring and, even when such inmates were identified, failed to provide them with the care they needed. (*Ibid.*)

Tragically, many of these same issues persist today, as our society continues to underfund mental health treatment facilities and incarcerate the mentally ill. Far too often, people desperately in need of mental health treatment instead find themselves self-medicating and engaging in criminality to finance their habits. This ultimately leads to incarceration, where they are ill-equipped to deal with isolation and loss of liberty. Correctional facilities that do not have adequate suicide prevention policies in place and/or fail to train their employees to follow their policies then compound the problem, and people who never should have been in jail in the first place fall through the cracks in the system and end their own suffering.

When this happens – when a spouse, a parent, or a child loses a loved one to an in-custody suicide – the law provides an opportunity to seek recovery for the loss of the decedent's Constitutional rights. This article provides an overview of the Constitutional and statutory bases for such claims and some of the defenses likely to be encountered when prosecuting them.

Authority for in-custody suicide claims

Pursuant to 42 U.S.C. § 1983, the estate of a deceased inmate can bring federal claims,[3] on behalf of the decedent, for violations of the decedent's Constitutional rights. A municipal entity may be liable for an in-custody suicide if it is found that the entity's policies, or lack thereof, caused a violation of the inmate's Constitutional rights. (*City of Canton v. Harris* (1989) 489 U.S. 378.)

Right to medical care

The 8th Amendment's[4] ban on cruel and unusual punishment requires prison officials to take reasonable measures to guarantee the safety of inmates, including providing them with reasonably adequate medical[5] care. (*Farmer v. Brennan* (1994) 511 U.S. 825.) To prevail on an 8th Amendment claim, a plaintiff must establish both a subjective and an objective component: (1) the harm to the inmate must have been objectively, sufficiently serious and a substantial risk to his health or safety and (2) the defendant must have been deliberately indifferent to that risk. (*Mendiola-Martinez v. Arpaio* (9th Cir. 2016*) _ F.3d _ 2016 WL 4729476*.) The first component is always met in inmate suicide cases. (*Collins v. Seeman* (7th Cir. 2006) 462 F.3d 757, 760.)

Consequently, in an inmate suicide case, the analysis of the second prong is the focus. It, too, consists of a two part test: the plaintiff must prove that the defendant: (1) subjectively knew that the inmate was at a substantial risk of committing suicide and (2) intentionally disregarded that risk. (*Ibid.*) The standard requires "more than mere or gross negligence, but less than purposeful infliction of harm." (*Matos ex rel. Matos v. O'Sullivan* (7th Cir. 2003) 335 F.3d 553, 557.) "It is not enough that there was a danger of which a prison official objectively should have been aware. '[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.'" (*Estate of Novack ex rel. Turbin v. County of Wood* (7th Cir. 2000) 226 F.3d 525, 529), quoting *Farmer, supra*, at 837. There can be no liability if the official was not alerted to the likelihood that the inmate was a genuine suicide risk. (*Boncher ex rel. Boncher v. Brown County* (7th Cir. 2001) 272 F.3d 484, 488.)

Deliberate indifference

The deliberate indifference standard is very high. In *Matos, supra*, jail officials were granted summary judgment in a case where an inmate with a psychiatric and drug abuse history and who had previously attempted suicide hung himself in his cell. Although there was a medical form indicating that the decedent had previously attempted suicide, there was no evidence that it had been included in the decedent's medical records or that any of the officials who examined the decedent had any actual knowledge that he posed a high risk of suicide.

Similarly, in *Collins, supra*, prison officials obtained summary judgment in a case where the decedent told a correctional officer that he was feeling suicidal and wanted to see a prison crisis officer. The officer relayed the message to his superiors, but someone higher up the chain of command neglected to include the reference to the inmate's suicidal ideation. Prison officials nevertheless requested a counselor, and, in the meantime, the decedent informed the officer that he was alright and could wait for the counselor. The officer checked on the inmate two more times before finding him hanging in his cell.

The court held that the officer was entitled to summary judgment, because he immediately passed along the request to see the counselor, checked on the decedent more than once, and was told by the decedent that he would be fine until the counselor arrived. The officials higher up the chain of command were also entitled to summary judgment, because there was no evidence that any of them were alerted to the likelihood that the decedent was at imminent risk of suicide.

Summary judgment was denied, however, in *Cavalieri v. Shepard* (7th Cir. 2003) 321 F.3d 616. In that case, a detainee was arrested after kidnapping his former girlfriend. While he was in custody, both his mother and his girlfriend informed the arresting police officer that the detainee was suicidal and should be on suicide watch. The officer assured the mother that he would pass along that information to the jail, but he decided not to do so after interviewing the detainee himself and determining he was not a suicide risk. The detainee was not put on suicide watch and attempted unsuccessfully to hang himself with a phone cord. The court denied the officer's motion for summary judgment, because it found that a jury could conclude that he had been deliberately indifferent in failing to pass along the mother's and girlfriend's concerns to the jail.

The deliberate indifference standard is admittedly a high hurdle. It is not, however, insurmountable. Where a plaintiff can show that a defendant reasonably should have known of a substantial risk of suicide and intentionally disregarded that risk, liability may be found.

Monell claims

An aggrieved family member may also sue a municipality and/or other local governmental units for an in-custody suicide when the action that is declared to be unconstitutional implements a policy or rule officially adopted or promulgated by the body in question. (*Monell v. New York City Dept. of Social Services* (1978) 436 U.S. 658.) To prevail on a *Monell* claim, a plaintiff must show: (1) that he possessed a Constitutional right of which he was deprived; (2) that the municipality had a policy; (3) that the policy exhibited deliberate indifference to the Constitutional right; and (4) that the policy is the moving force behind the Constitutional violation. (*Plumeau v. School Dist #40* (9th Cir. 1997) 130 F.3d 432, 438.) However, a city or county may not be held vicariously liable for the unconstitutional acts of its employees under the theory of *respondeat superior*. (*Board of Comm'rs of Bryan County Oklahoma v. Brown* (1997) 520 U.S. 397, 403.)

Liability based on a municipal policy may be satisfied in one of three ways: (1) by showing that a city or county employee committed the alleged Constitutional violation under a formal governmental policy or longstanding practice or custom that is the customary operating procedure of the local government entity; (2) by establishing that the individual who committed the Constitutional tort was an official with final policymaking authority, and that the challenged action itself was an act of official governmental policy and was the result of a deliberate choice made from among various alternatives; or (3) by proving that an official with final policymaking authority either delegated policymaking authority to a subordinate or ratified a subordinate's unconstitutional decision or action and the basis for it. (*Fuller v. City of Oakland* (9th Cir. 1995) 47 F.3d 1522, 1534.)

It is not enough for a § 1983 plaintiff to merely identify conduct attributable to the municipality. (*Board of Comm'rs v. Brown*, *supra*, 520 U.S. at 404.) Rather the plaintiff must again establish deliberate indifference; that is "through its deliberate conduct, the municipality was the 'moving force' behind the injury alleged." (*Ibid.*) A plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a causal link between the municipal action and the deprivation of federal rights. (*Ibid.*) "Where a plaintiff claims that the municipality has not directly inflicted an injury, but nevertheless has caused an employee to do so, rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employees." (*Id.* at 405.)

"Jail managers who decided to take no precautions against the possibility of inmate suicide – have no policy, for example, no suicide-watch option – would be guilty of deliberate indifference ...." (*Boncher v. Brown County* (8th Cir. 2001) 274 F.3d 484, 486.) However, where there were suicide preventions in place, such as suicide-watch or safety cells and other policies, the question becomes whether those policies were so inadequate that such an inadequacy should have been obvious. (*Id.* at 486-487.) "A defendant is liable for denying needed medical care only if he 'knows of and disregards an excessive risk to inmate health and safety.'" (Yet, simply having such policies in place does little good if those policies are not followed. "For all intents and purposes, ignoring a policy is the same as having no policy in place in the first place." (*Woodward v. Corr. Med. Servs. Of Ill., Inc.* (7th Cir. 2004) 368 F.3d 917, 929.)

Again, the deliberate indifference standard is considerable, but there are circumstances under which survivors may successfully establish liability against municipal entities for failing to have appropriate mechanisms in place to protect suicidal inmates.

Qualified Immunity

Yet another impediment to establishing liability against government actors is the concept of qualified immunity,[6] which shields an officer from suit when he or she makes a decision that, even if Constitutionally deficient, reasonably misapprehends the law governing the circumstances he or she confronted. (*Brosseau v. Haugen* (2004) 543 U.S. 194, 198.) Qualified immunity is more than a mere defense to liability; it is "an entitlement not to stand trial or face other burdens of litigation" and "is effectively lost if a case is erroneously permitted to go to trial." (*Mitchell v. Forsyth* (1985) 472 U.S. 511, 526.)

Qualified immunity encourages officials to exercise their discretion without the fear of liability when the state of the law is unclear or their actions are reasonable under the totality of the circumstances. (*Carlo v. City of Chino* (9th Cir. 1997) 105 F.3d 493, 500). Qualified immunity must be granted if the discretionary function of a public official did not violate clearly established law of which a reasonable person would have known. (*Harlow v. Fitzgerald* (1982) 457 U.S. 800, 818-819.)

A law is clearly established when it is clear to every reasonable officer that his conduct was unlawful given the particular situation confronted. A government official's conduct violates clearly established law when, at the time of the conduct, "[t]he contours of [a] right [are] sufficiently clear" that every "reasonable official would have understood that what he is doing violates that right," beyond debate. (*Ashcroft v. al-Kidd* (2011) 563 U.S. _ 131 S. Ct. 2074, 2083.) The term "clearly established" requires that the unlawfulness be apparent in light of existing law. (*Anderson v. Creighton* (1987) 483 U.S. 635, 640.)

Even if an officer is mistaken as to the legal constraints on his conduct, qualified immunity must still be given if the mistake is reasonable, as the doctrine recognizes that "reasonable mistakes can be made as to the legal constraints on particular police conduct." (*Saucier v. Katz* (2001) 533 U.S., 205-206.) "If an official could reasonably have believed her actions were legal in light of clearly established law and the information she possessed at the time, she is protected by qualified immunity." (*Franklin v. Fox* (9th Cir. 2002) 312 F.3d 423, 437.) Qualified immunity is an extremely deferential standard that "gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law." *Hunter v. Bryant* (1991) 502 U.S. 224, 229. In essence, qualified immunity gives government officials breathing room to make reasonable but mistaken judgments. (*Messerschmidt v. Millender* (2012) 132 S. Ct. 1235, 1244-1245.)

Clearly, this is a very deferential standard. The current state of the law essentially requires plaintiffs to show that the government actors had no rational justifications for their actions.

Conclusion

The loss of a loved one to an in-custody suicide can be devastating. The idea that a loved one died alone in a cold cell with no one to comfort him can be haunting. Though these cases can present enormous challenges, they deserve to be brought. We must do our part to improve mental health treatment in our jails and prisons.

Endnote

[1] The rate of suicides in jails is considerably higher than it is in prisons. Mumola, "Suicide and Homicide in State Prisons and Local Jails: Bureau of Justice Statistics Special Report," Washington, D.C., U.S. Department of Justice, Aug. 2005.

[2] Although suicides are not necessarily predictable, the authors of this study – two psychiatry professors who conducted the review in the wake of *Coleman v. Schwarzenegger*, a class-action suit challenging the adequacy of mental health services available to prisoners – used the terms "foreseeable" and "preventable" to indicate cases in which there was an elevated risk of suicide or events occurred that should have triggered clinical or custodial reactions that would have reduced the likelihood that the suicide would be completed. Patterson and Hughes.

[3] Aggrieved family members can also bring suit in California state court for – among others – wrongful death, survival, loss of consortium, and failure to take reasonable action to summon medical care for an inmate the official knows or has reason to know requires immediate medical care. (Cal.Gov.Code, § 845.6). Under certain circumstances, such claims can be brought in federal court, but state law claims are beyond the scope of this article.

[4] The Fourteenth Amendment's Due Process Clause, rather than the Eighth Amendment's protection against cruel and unusual punishment, applies to pretrial detainees, and the same standards are applied. *Bell v. Wolfish* (1979) 441 U.S. 520, 537 n. 16; *Cabrales v. County of Los Angeles* (9th Cir. 1988) 864 F.2d 1454, 1461.

[5] The requirements for Constitutionally adequate mental health care are essentially the same as those for physical health care needs. *Doty v. County of Lassen* (9th Cir. 1994) 37 F.3d 540, 546.

[6] Numerous state law immunities may also insulate state actors from liability under certain circumstances. These include: Cal.Gov.Code §§ 815, 820.4, 844.6, and 856. These are also beyond the scope of this article.

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Government Claims

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