

RETHINKING THE PROBLEM OF CUSTODIAL SUICIDE

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Introduction

Several years ago, a 42 year old native Alaskan woman was arrested for public intoxication. Because she was arrested in a small town, police were familiar with her recent history. They knew that in the previous few months, one of her sons had been burned to death and another had been stabbed to death. The woman's mother also had died and her husband had left her. Because the woman had been screaming that someone should locate and check on her two children, the door to the cell area was closed in order to muffle the noise. This facility had experienced 15-20 suicide attempts during a calendar year, and CCTV placement was inadequate. The woman committed suicide. The Supreme Court of Alaska ruled that a jury could conclude that clinical judgment was not required for the police to have been on notice of potential suicide (*Kanayurak v. North Slope Borough*, 677 P.2d 893, Alaska, 1984).

To date, no clinical test can reliably predict suicide without also identifying an unacceptable number of false positives (inmates who are identified as suicidal but who do not kill themselves). Some consultants have constructed lists of behavioral characteristics which are associated with suicide ex post facto, but these lists are not useful in a prospective sense.

In another case, a young man in North Dakota was involved in an auto accident and arrested at the scene for driving while intoxicated. Because he "foul-mouthed" a Bismarck police officer, he was placed in "the hole," a small cell which had four solid walls and contained only a toilet bowl. The only lighting came from two small grill openings at the top and bottom of the door, one of which could be covered by a flap. The cell was located in a noisy basement, which also contained heating and other equipment. The use of "the hole" was generally limited to unruly prisoners who were moved into regular cells once they had settled down. Young Falkenstein was left in the cell all night and was found hanging from the cell door bars with his

T-shirt knotted around his neck. The Supreme Court of North Dakota upheld a lower court judgment stating that there was "substantial evidence to support a conclusion that (the) suicide was the result of a morbid state of mind proximately caused by incarceration in 'the hole' for an extended period of time" (Falkenstein v. City of Bismarck, 268 N.W. 2d 787, N.D., 1978).

In both of these cases, reasonable persons could conclude that the suicides were foreseeable and, therefore, that precautions to prevent the suicides should have been taken. It is my position, however, that many, if not most, custodial suicides do not involve such "obvious" circumstances and, in fact, are not reasonably foreseeable. For example, a young man who has had a minor scrape with the law while drinking might find himself incarcerated. Within hours and without any warning, he may kill himself for reasons, which can never be known. Such custodial suicides are spontaneous in nature and do not display characteristics which clearly serve as signals to corrections personnel. Nevertheless, some juries and even corrections officers themselves may tend to believe the state, county, or municipality was negligent in "allowing" such suicides to occur. As will be shown, this tendency may be more the result of errors in reasoning than illustrative of negligence. More specifically, corrections officers must understand the unpredictable nature of many suicides, and they must come to grips with the "evil-causes-evil fallacy."

The Unpredictable Nature of Custodial Suicides

Statistically speaking, suicide in custody is a rare phenomenon, and rare phenomena are notoriously difficult to forecast due to their low base rate. Note also that the term "forecast" is preferred rather than the term "predict." We cannot predict suicide because social scientists are not fully aware of the causal variables involving suicide. Without sufficient knowledge of cause-effect relationships among variables, prediction is not possible (Nettler, 1978).

To illustrate the statistically rare nature of custodial suicide, certain assumptions must be made. Although far fewer suicides per year have been documented, perhaps 450 or so (Hayes, 1989), I shall assume as have some authors that the real figure is closer to 1,000 (Charlé, 1981). If we assume that only 10,000,000 of the approximately 14,200,000 persons arrested each year spend any time behind bars, then only one out of 10,000 persons at risk of custodial suicide actually commits suicide. Put another way, if the average daily jail population is 408,000, and there are three suicides in custody each day (again, a most liberal estimate), then the chances of a prisoner killing himself on any given day are one out of 136,000. If we add state and federal prisoners to the picture, there are 1.2 million people behind bars at any given time. The chances of a prisoner committing suicide now become one out of 400,000! Even in a psychiatric setting involving patients who are clinically depressed and diagnosed as suicide risks, relatively few actually kill themselves. The actual suicide rates for such desperate populations range from a low of one percent to a high of only seven percent over a period of up to ten years (Motto, 1980; Motto, Heilbron and Juster, 1985). Unfortunately, neither corrections officers nor even psychiatrists are possessed of such precise diagnostic skills as to allow them to select the one individual who will kill himself out of so many who might.

It is well established that psychologists, psychiatrists, and sociologists are unable to forecast suicides in any practical sense (Murphy, 1983; Pokorny, 1983). To date, no clinical test

can reliably predict suicide without also identifying an unacceptable number of false positives (inmates who are identified as suicidal but who do not kill themselves). Some consultants have constructed lists of behavioral characteristics, which are associated with suicide ex post facto, but these lists are not useful in a prospective sense. In other words, knowing that an inmate is depressed does not help to determine if he will kill himself since most inmates are somewhat depressed by their situation, at least at first, and do not kill themselves. Being agitated and/or intoxicated are not predictive of suicide, although they may be postdictive. These lists of "warning signs" are more useful in telling us what did happen, not what will happen. Demographic profiles of custodial suicide victims are also of little predictive validity (Kennedy and Homant, 1988).

Recent surveys of practicing psychiatrists indicate that perhaps 51 percent have experienced the suicide of a patient under their care (Chemtob et al., 1988). This sad fact suggests that even those skilled mental health professionals, who have the time for extensive personal interaction with troubled individuals either cannot forecast suicide or are unable to prevent patient suicide even if it had been somewhat anticipated. Indeed, as more and more studies show that mental health professionals often fail to reach reliable or valid conclusions (Faust and Ziskin, 1988), some plaintiff's experts are telling jurors that almost all custodial suicides can be prevented. The fact is, of course, that many suicides can be prevented if corrections officers have reason to forecast that a given individual is likely to kill himself. But even if the suicide attempt of an individual is forecast, the only certain method of preventing him from committing suicide is to station an officer within arm's reach at all times (Atlas, 1989). Given the strong probability that even this inmate will not kill himself, the manpower dilemma in which many small departments find themselves becomes obvious.

Contrary to the questionable notion that proper interviewing will generally elicit truthful answers from individuals in the booking process, many individuals who kill themselves probably do not know they intend to do so when asked their intentions. Furthermore, if they truly did wish to die, why would they tell this to the booking officer since to do so would make it more difficult for them to harm themselves? Finally, how truthful are inmates anyway? In one study wherein detainees were screened twice within 72 hours, only 48 percent made totally consistent responses to the same question and 33 percent made one inconsistent response (Sherman and Morschauer, 1989).

Custodial suicides are extremely difficult to forecast due to their spontaneous nature, particularly where younger inmates are concerned. For example, family physicians who have recently been in contact with suicided adolescents rarely detect sufficient signals to anticipate self-destruction (Teicher and Jacobs, 1966). Studies in English prisons suggest that in at least 50 percent of the cases, suicide was performed on a sudden impulse (Topp, 1979). It is because suicide is so impulsive (Murphy, 1983; Salive, Smith and Brewer, 1989; Williams, Davidson and Montgomery, 1980) that it is so hard to forecast. Corrections workers cannot be expected to know of an individual's self-destructive intentions if the inmate himself is not yet aware of them.

The "Evil Causes Evil Fallacy"

Several decades ago, noted criminologist Albert Cohen described what he called the "evil-causes-evil fallacy." In essence, this is the belief that bad consequences must have had bad

causes. Thus, if something bad such as a suicide occurs in a jail, then somebody must have been negligent. If a young man turns out to be antisocial, then his parents must have reared him improperly. If a given football team does poorly in competition, then it must have had poor coaching, and so forth. The fact of the matter is, of course, that many things happen for reasons beyond human control. Sociopathic behavior can occur as a result of delayed development of the Reticular Activating System, a biological problem (Bartol, 1991). Football teams may fail because of pure skill limitations, independent of coaching.

The need that humans have to attribute causation to phenomena may be explained by attribution theory (Goldstein, 1980). Essentially, people have a need to explain things, even if their explanations are wrong. Attribution does serve a number of purposes. For example, by identifying the "causes" of a tragedy such as a custodial suicide, we tell ourselves that we are now in control of our environment, and therefore our future. Our world becomes a safer place to be, even at the price of blaming ourselves for something which was not our fault. Even traumatized children have created false explanations for their tragedies as a mechanism by which the "breached ego" attempts retrospectively to regain control and mastery (Terr, 1981).

Unfortunately, misplaced attribution by corrections workers themselves can lead to inappropriate guilt and even liability as a consequence of custodial suicide. Not long ago, I examined a jail suicide on behalf of a county sheriff being sued vicariously for the death of an inmate. The inmate had a history of alcoholism and suicidal ideation. He asked for counseling assistance. A graduate MSW with several years experience was assigned the case and immediately placed the inmate on a suicide watch in the medical cellblock. The social worker helped the inmate resolve his immediate anxiety. The inmate started a diary, was reenrolled in the jail AA program and expressed satisfaction with his own progress. The inmate asked to be transferred to a newer part of the jail providing podular, direct supervision.

After documenting the inmate's progress thoroughly, the social worker made a conscious decision to place the inmate back in the general population. Consistent with current psychotherapeutic theory concerning the treatment of suicide, she believed the salubrious benefits of the less restrictive setting would outweigh the possibility of acute relapse (Bongar, 1991). The inmate hanged himself soon after being taken off suicide watch, and the family sued.

The social worker was plagued with guilt feelings. Unconsciously, she assumed she exercised poor professional judgment leading to a man's death. "After all," her unconscious mind told her, "you must have made a negligent decision because he did kill himself." The proper test of professional competency is whether she made a reasonable decision given all the facts she knew at the time the decision was made. The ultimate outcome is not the sole measure of the quality of the decision. In this case, the social worker's decision at the time was perfectly appropriate, and a jury agreed. Nevertheless, this perfectly competent and dedicated mental health provider suffered unjust feelings of guilt for a long time after this tragedy.

It may be, of course, that attribution theory only explains a part of the "evil-causes-evil fallacy." Years ago, Elizabeth Kubler-Ross described five stages through which people were believed to pass as they were dying: denial, anger, bargaining, depression, and acceptance (Kubler-Ross, 1969). Subsequent scholars have posited the existence of a similar pattern, which

describes the reactions of survivors to the death of persons with whom they have been affectively involved in some way. According to Kavanaugh (1974), Rando (1984) and Stone (1972), guilt feelings are a natural part of the bereavement process. When corrections officers display a sense of guilt over the death of an inmate, jurors in civil trials may tend to take such guilt as evidence of professional negligence in the care of the deceased prisoner. Corrections officers and the attorneys who defend them must take precautions to distinguish between guilt as a natural element of the grieving process and feelings of guilt generated by actual professional malpractice.

Conclusions

As we have seen, suicide by an inmate is not a matter, which can easily be forecast. In hindsight, some deaths could have been foreseen due to the prisoners' obvious despondency, prior history, and current self-destructive ideation. It is unlikely, however, that most suicidal inmates broadcast such strong signals. As an impulsive act, suicide is an inherently difficult act to forecast or predict. The statistical rarity of suicide in the prisoner population complicates the problem of anticipating suicides even further.

The "evil-causes-evil fallacy" suggests that bad outcomes must have had bad antecedents. Even corrections officers with near perfect service records may tend to look at themselves as contributing to the death of an inmate. Such guilt is often the result of the need that humans have to attribute suicide causation to something concrete, which they can understand. Guilt is also a natural companion of grief and must not be taken automatically as a sign that, indeed, one was professionally negligent. These concepts in no way absolve the corrections officer from the duty to watch closely for the signs of suicide. If a suicide can be foreseen, it can often be prevented through appropriate measures. Still, corrections officers are not mind readers, and they must not be told after the fact that they should have been.

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