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JAILHOUSE SUICIDES—WHERE IS THE ABUSE OF POWER?

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I. INTRODUCTION

On August 22, 1992, André Jones was found hanging by a shoelace in his jail cell in Simpson County, Mississippi.[1] Law enforcement officials claimed his death was a suicide; the family claimed murder.[2] The family's murder claim is beyond the scope of this article, as murder, under color of state law, would be an abuse of governmental authority which 42 U.S.C. § 1983 was designed to compensate. The Jones dilemma, however, "focused attention on the [forty-six] hanging deaths in Mississippi jails and prisons since 1987."[3] Civil rights leaders reportedly call the suicides a "new form of lynching."[4] "Experts" blame an increase in jail suicides on "crowding, little or no training of personnel, inadequate screening of incoming inmates, lack of supervision of suicidal inmates and a lack of statewide oversight of jails."[5]

Although the media seeks to characterize the increase in suicides as a civil rights issue, it is not in most cases. This is not to say that local law enforcement entities could not do more in an effort to curtail suicide incidents – budgetary constraints permitting. For example, it is easy to scream "overcrowding," but where is the money for the new jails that might be built? These issues are what the local governmental entities must face, but civil rights laws are not the avenues by which to force the local governments to do so.

As this article will show, the theory that law enforcement officials and governmental entities should be liable for an inmate's suicide pursuant to 42 U.S.C.

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1. *Federal Panel Plans Jail Probe*, CLARION-LEDGER (Jackson, Miss.), March 27, 1993, at A1 [hereinafter *Probe*]. On August 20, 1993, the Jones family filed a civil rights action in the United States District Court for the Southern District of Mississippi. Jones v. Simpson County, Civ. No. 3:93cv535-L-C (S.D. Miss. filed Aug. 20, 1993). They also filed a separate lawsuit claiming negligence and deplorable jail conditions in the Circuit Court of Hinds County. Jones v. Simpson County, Civ. No. 93-76-368 (Hinds County, Miss. Cir. Ct. filed Aug. 20, 1993).

2. Jerry Mitchell and Grace Simmons, *Inmate Hangings on Rise in State Jails; Little Done to Stem Tide*, CLARION-LEDGER (Jackson, Miss.), Feb. 28, 1993, at A1 [hereinafter *Hangings*]. In their lawsuit, the family continued to claim that Jones did not commit suicide but was murdered. The family alternatively pled that Jones may have committed suicide but that the suicide was a result of deliberate indifference on behalf of jail officials and/or deplorable jail conditions. *Id.*

3. *Probe*, *supra* note 1, at A1 (See *Hangings*, *supra*, note 2 at A1, for the accurate number of suicides – 46).

4. *Id.*

5. *Hangings*, *supra* note 2, at A1.

§ 1983[6] has exploded in recent years. Due to the availability of attorneys' fees for civil rights violations[7] and the lack of availability of sovereign immunity defenses,[8] many attorneys try to bring ordinary negligence claims within § 1983's reach. This effort is extremely clear in the area of jailhouse suicides, and courts have correctly refrained from this temptation. Section 1983 is a statute designed to address abuse of governmental power; it is not designed to federalize state tort principles.[9]

II. JAIL SUICIDES IN MISSISSIPPI

From 1987 until August 1993, forty-six inmates have died by hanging in Mississippi.[10] In 1987, a total of six inmates died by hanging—two in Lee County and one each in Harrison County, Chickasaw County, Jackson County, and Itawamba County.[11] In 1988, a total of seven inmates died by hanging—two in Harrison County and one each in Winston County, Lafayette County, Union County, Sunflower County,[12] and Lowndes County.[13] The year 1989 claimed the greatest number of hangings, fourteen—two hangings in Alcorn County[14] and one hanging each in the counties of Tunica, Quitman, Simpson, Hinds, Pontotoc, Warren, Tallahatchie, Monroe, Washington,[15] Lee, Lauderdale, and Lincoln.[16] In 1990, the numbers began to decrease claiming only five hangings—one each in the counties of Grenada, Sunflower, Oktibbeha, Itawamba,[17] and Neshoba.[18] The year 1991 also claimed five lives—one each in the counties of Scott, Benton,

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6. 42 U.S.C. § 1983 (1988) provides:
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. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. *Id.*

7. 42 U.S.C. § 1988 (1988).

8. *See* Owen v. City of Independence, 445 U.S. 622 (1980).

9. Paul v. Davis, 424 U.S. 693, 699-701 (1976).

10. *For Your Information*, CLARION-LEDGER (Jackson, Miss.), Feb. 28, 1993, at A10 [hereinafter *Information*]. This information was compiled from the State Medical Examiner's Office and local authorities.

11. *Id.*

12. Sunflower County is the site of the Mississippi State Penitentiary.

13. *Information*, *supra* note 10, at A10.

14. Both hangings in Alcorn County have resulted in civil rights lawsuits being filed in the United States District Court for the Northern District of Mississippi. *See* Hare v. City of Corinth, Civ. No. 1:91cv248-D-G (N.D. Miss. filed Sept. 11, 1991); Gunn v. City of Corinth, Civ. No. EC90-222-S-D (N.D. Miss. filed Sept. 18, 1990).

15. This hanging involved a black female youth. Her family has filed a civil rights suit in the United States District Court for the Northern District of Mississippi. Barney v. City of Greenville, Civ. No. 4:92cv130-S-O (N.D. Miss. filed May 22, 1992).

16. *Information*, *supra* note 10, at A10.

17. This hanging resulted in a civil rights lawsuit being filed in the United States District Court for the Northern District of Mississippi. Hood v. Itawamba County, Miss., 819 F. Supp. 556 (N.D. Miss. 1993). The Honorable Glen Davidson, United States District Court Judge, granted summary judgment in favor of the defendant county on April 22, 1993. *Id.*

18. *Information*, *supra* note 10, at A10. The family of the victim in Neshoba County believes that the death was not suicide. *Hangings*, *supra* note 2, at A10.

Bolivar, Jones, and Harrison.[19] The year 1992 claimed seven hangings – one each in the counties of Sunflower, Scott, Hinds, Simpson, Rankin, Copiah, and Stone.[20] In 1993, the state showed the fewest number of suicides, two – one each in Hinds and Adams counties.[21]

Of these forty-six suicides, only four occurred in state prisons; the remainder occurred in municipal and county jails.[22] Those professing to be experts in the area of jail conditions attribute much of the increase in suicides to overcrowding and lack of training.[23]

While it is true that many local facilities are overcrowded, much of the problem is a result of a federal district court injunction and a marked increase in crime. While crime has increased in the State of Mississippi, the State has been unable to build new or larger facilities. This event is exacerbated by a federal court injunction issued in *Gates v. Collier.*[24] In *Gates*, the Honorable William C. Keady ordered the State to reduce prison population at the state penitentiary.[25] Since many inmates cannot be transferred to the state penitentiary upon conviction because the penitentiary is already at capacity, many of these prisoners have remained at local facilities, thus resulting in overcrowding at municipal and county jails. Unfortunately, most local facilities are antiquated structures which still have metal bars and exposed pipes. These structures make it easier for inmates to commit suicide.

It is interesting to note that most suicide victims are not convicted prisoners.[26] A majority of the victims are pre-trial detainees and commit suicide within the first twenty-four hours after arrest.[27] One individual, Lindsay Hayes, assistant director for the National Center on Institutions and Alternatives in Mansfield, Massachusetts, reportedly attributes this fact to better training on the state level.[28] Another viable theory is simply that many local arrestees are either intoxicated or under the influence of drugs at the time of arrest and members of lower income brackets – individuals who meet the high suicide profile.[29]

Some experts also cite lack of training as being a factor in the suicide increase.[30] Other possible contributing factors may be the education level and low salaries of most local jailers. Many law enforcement officials on a local level have only a high

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19. *Information*, *supra* note 10, at A10.

20. *Information*, *supra* note 10, at A10.

21. *Information*, *supra* note 10, at A10.

22. *Hangings*, *supra* note 2, at A10.

23. *Hangings*, *supra* note 2, at A1.

24. 390 F. Supp. 482 (N.D. Miss. 1975).

25. *Id.*

26. *Hangings*, *supra* note 2, at A10.

27. *Hangings*, *supra* note 2, at A10 (These statistics were compiled from the National Center on Institutions and Alternatives whose assistant director was interviewed for this article.).

28. *Hangings*, *supra* note 2, at A10.

29. *Hangings*, *supra* note 2, at A10.

30. *Hangings*, *supra* note 2, at A10.

school diploma or its equivalent.[31] Salaries for jailers are generally low, about $15,000 per year,[32] thus making law enforcement an unattractive career for the college educated. However, the Mississippi Law Enforcement Training Academy recently began offering training for local jail personnel.[33] Suicide screening is among several lessons taught during this training period.[34]

One may wonder why most of the suicides are by hanging, a most unconventional suicide method. It is important to remember, however, that during the booking process inmates are deprived of all other traditional methods of suicide such as weapons or drugs. All too often such innocuous items as belts, shoelaces, or ties are missed or simply discounted during the booking process, resulting in inmates retaining possession of these items during incarceration. The suicides in Mississippi usually are accomplished by using shoelaces, belts, or the blankets found in the cell.[35]

Whatever the cause of the suicide increase, it is not the result of civil rights violations except in the cases where murder can be proven. The media may wish to characterize the issue as one implicating civil rights, but it is simply a funding problem.[36] Unfortunately, Mississippi is an extremely poor state, and this funding dilemma is something the Mississippi Legislature must address.

III. HISTORY OF § 1983

Section 1983 was a growth from the Civil War and, although known today as § 1983, was originally known as section 1 of the "Ku Klux Klan Act of 1871."[37] The Ku Klux Klan Act was enacted in response to a written concern which former President Ulysses S. Grant expressed:

> A condition of affairs now exists in some States of the Union rendering life and property insecure . . . . That the power to correct these evils is beyond the control of State authorities I do not doubt; that the power of the Executive of the United States, acting within the limits of existing laws, is sufficient for present emergencies is not clear. Therefore, I urgently recommend such legislation as in the judgment of Congress shall effectually secure life, liberty, and property, and the enforcement of law in all parts of the United States.[38]

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31. Grace Simmons, *State Requires No Training for Local Jailers*, CLARION-LEDGER (Jackson, Miss.), Feb. 28, 1993, at A10.

32. *Id.*

33. *Id.*

34. *Id.*

35. Jerry Mitchell, *Preventing Jail Suicides Not Costly, Officials Say*, CLARION-LEDGER (Jackson, Miss.), Feb. 28, 1993, at A10 [hereinafter *Preventing*].

36. Courts have recognized that funding is a legitimate defense to civil rights actions based on prison suicides. *See, e.g.*, Simmons v. City of Philadelphia, 947 F.2d 1042, 1074 (3d Cir. 1991), *cert. denied*, 112 S. Ct. 1671 (1992) ("[E]vidence that all available preventive measures were costly might justify an inference that the City had a legitimate countervailing governmental interest for electing not to implement additional suicide prevention measures . . . .").

37. CONG. GLOBE, 42d Cong., 1st Sess. 244 (1871).

38. *Id.* at 244.

In response the House created a committee[39] which shortly thereafter proposed the following provision which in large part later became section 1 of the Ku Klux Klan Act:

> That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.[40]

Opponents to this section expressed concerns that the section would do nothing but federalize state common law.[41] Representative Michael Kerr of Indiana stated during congressional debates:

> This section gives to any person who may have been injured in any of his rights, privileges, or immunities of person or property, a civil action for damages against the wrongdoer in the Federal courts. The offense committed against him may be the common violations of the municipal law of his State. It may give rise to numerous vexatious and outrageous prosecutions, inspired by mere mercenary considerations, prosecuted in a spirit of plunder, aided by the crimes of perjury and subornation of perjury, more reckless and dangerous to society than the alleged offenses out of which the cause of action may have arisen. It is a covert attempt to transfer another large portion of jurisdiction from the State tribunals, to which it of right belongs, to those of the United States. It is neither authorized nor expedient, and is not calculated to bring peace, or order, or domestic content or prosperity to the disturbed society of the South. The contrary will certainly be its effect.[42]

Senator Allen Thurman of Ohio expressed similar concerns:

> Its whole effect is to give to the Federal Judiciary that which now does not belong to it – a jurisdiction that may be constitutionally conferred upon it, I grant, but that has never yet been conferred upon it. It authorizes any person who is deprived of any right, privilege, or immunity secured to him by the Constitution of the United States, to bring an action against the wrong-doer in the Federal courts, and that without any limit whatsoever as to the amount in controversy. The deprivation may be of the slightest conceivable character, the damages in the estimation of any sensible man may not be five dollars or even five cents; they may be what lawyers call merely nominal damages; and yet by this section jurisdiction of that civil action is given to the Federal courts instead of its being prosecuted as now in the courts of the States.[43]

Thurman was not opposed to providing redress for those deprived of their constitutional rights, but he considered the provision "a most impolitic provision"

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39. *Id.* at 249.
40. *Id.* at 317.
41. *Id.*
42. *Id.* at app. 50.
43. *Id.* at 216.

because of its "centralizing tendency of transferring all mere private suits . . . from the State into the Federal courts."[44]

Despite congressional concerns that the section may be interpreted to give federal courts jurisdiction of many actions that rightly belong to the state, Congress passed section 1 of the Ku Klux Klan Act of 1871, or 42 U.S.C. § 1983, on April 20, 1871.[45] The judicial system did not, however, get a full opportunity to interpret section 1 of the Ku Klux Klan Act (hereinafter referred to as "§ 1983") until the civil rights movement of the 1950s and 1960s.

The United States Supreme Court decision of *Monroe v. Pape*[46] was the first case to address § 1983's scope. In *Monroe*, the plaintiffs alleged that thirteen Chicago police officers broke into their home, routed them from their bed, made them stand naked in the living room, ransacked every room, emptied drawers, and ripped mattress covers.[47] The police officers allegedly took Mr. Monroe to the police station, interrogated him, and detained him for ten hours.[48] However, the police officers never charged Mr. Monroe with a crime, and the officers did not have a search warrant or arrest warrant.[49] After addressing the congressional history, the Court had no problem in finding that § 1983 was "supplementary" to any state remedies:

> Although the legislation was enacted because of the conditions that existed in the South at that time, it is cast in general language and is as applicable to Illinois as it is to the States whose names were mentioned over and again in the debates. It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked. Hence the fact that Illinois by its constitution and laws outlaws unreasonable searches and seizures is no barrier to the present suit in the federal court.[50]

The Court further had no trouble in holding that § 1983 was constitutional. "Congress has the power to enforce provisions of the Fourteenth Amendment

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44. *Id.*

45. *Id.* at app. 335. In the Revised Statutes of 1874, § 1 of the Ku Klux Klan Act became § 1979. As it appeared in the Revised Statutes, § 1 read:

> Every person who, under color of 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.

REV. STATUTES OF THE U.S., tit. 24, § 1979 (1874). The current codification of § 1 in 42 U.S.C. § 1983 (1988) is identical to the 1874 formulation.

46. 365 U.S. 167 (1961).

47. *Id.* at 169.

48. *Id.* at 170.

49. *Id.*

50. *Id.* at 183. The *Monroe* Court further held that municipalities were not "persons" within the meaning of § 1983 and could not, therefore, be sued pursuant to § 1983. *Id.* at 191-92. This portion of the *Monroe* decision was overruled in Monell v. Department of Social Services, 436 U.S. 658, 690 (1978).

against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it."[51]

In the context of jail suicides, the courts have correctly remembered this congressional history and have required plaintiffs to show an abuse of governmental power to state a § 1983 claim.

IV. SECTION 1983 AND THE JAIL SYSTEMS

Most § 1983 plaintiffs sue both the individual custodial defendants and the governmental entity. The respondeat superior tort doctrine, however, is unavailable in § 1983 litigation.[52] Whether a jailhouse suicide is compensable, therefore, is determined by different legal principles depending on who the defendant is.

A. The Individual Defendant

It is easily accepted that an inmate stripped of all means of self-defense should be placed in a reasonably safe and protected custodial setting. Furthermore, since an inmate cannot provide for his own medical needs, it is also easily accepted that custodial officials should provide reasonable medical care to inmates.[53] But when can the failure to provide such care state a § 1983 claim?

Courts continually grapple with the question of when custodial officials should be subjected to § 1983 liability for inmate injuries. Some courts have erroneously flirted with the opportunity to allow recovery under the Due Process Clause for merely negligent acts.[54] Although the Supreme Court once stated that an alleged loss, "even though negligently caused, amount[s] to a deprivation,"[55] it later overruled this holding, stating that "the Due Process Clause is simply not implicated by a *negligent* act of an official causing unintended loss of or injury to life, liberty, or property."[56] The Court explained:

> The Fourteenth Amendment is a part of a Constitution generally designed to allocate governing authority among the Branches of the Federal Government and between that Government and the States, and to secure certain individual rights against both State and Federal Government. When dealing with a claim that such a document creates a right in prisoners to sue a government official because he negligently created an unsafe condition in the prison, we bear in mind Chief Justice Marshall's admonition that "we must never forget, that it is *a constitution* we are expounding . . . ." Our Constitution deals with the large concerns of the governors and the governed, but it does not purport to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society. We have previously rejected reasoning that " 'would make of the Fourteenth

51. Monroe v. Pape, 365 U.S. 167, 171-72 (1961) (citing *Ex parte* Virginia, 100 U.S. 339, 346-47 (1879)).

52. *Monell*, 436 U.S. at 691.

53. Bell v. Wolfish, 441 U.S. 520, 530 (1979).

54. *See, e.g.*, Parratt v. Taylor, 451 U.S. 527 (1981).

55. *Parratt*, 451 U.S. at 536-37.

56. Daniels v. Williams, 474 U.S. 327 (1986) (emphasis added).

> Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the States.' "[57]

In rejecting the concept that the Due Process Clause can be implicated by negligence, the Court stated that any such effort would "trivialize" the Due Process Clause.[58] The Court further clearly indicated that Congress did not intend that custodial officials should be liable under the Due Process Clause via § 1983 merely because they may have taken actions to prevent harm to an inmate:

> Jailers may owe a special duty of care to those in their custody under state tort law . . . but for the reasons previously stated we reject the contention that the Due Process Clause of the Fourteenth Amendment embraces such a tort law concept. Petitioner alleges that he was injured by the negligence of respondent, a custodial official at the city jail. Whatever other provisions of state law or general jurisprudence he may rightly invoke, the Fourteenth Amendment to the United States Constitution does not afford him a remedy.[59]

The *Daniels* Court makes clear that simple negligence is insufficient to establish § 1983 liability.[60] The Seventh Circuit Court of Appeals also flatly rejected a gross negligence standard in the context of providing medical needs to prisoners in *Salazar v. City of Chicago*.[61]

A plaintiff must, therefore, show that the custodial officials were "deliberately indifferent" to an inmate's constitutional right to reasonable protection from a pervasive risk.[62] Courts have defined "deliberate indifference" as being one of "outrageous insensitivity" or "flagrant indifference" to a substantial and pervasive risk known to the defendant.[63] The Fifth Circuit Court of Appeals succinctly explained the standard:

> The state has an "obligation to provide medical care for those whom it is punishing by incarceration." "[A]cts or omissions sufficiently harmful to evidence *deliberate indifference to serious medical needs*" of inmates constitutes cruel and unusual punishment. Neither inadvertent failure to provide adequate medical care, nor

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57. *Id.* at 332 (citing Paul v. Davis, 424 U.S. 693, 701 (1976), *quoted in Parratt*, 451 U.S. at 544).

58. *Daniels*, 474 U.S. at 335.

59. *Id.* at 335-36.

60. *Id.*

61. 940 F.2d 233 (7th Cir. 1991). In *Salazar*, the Seventh Circuit explained that the line between simple negligence and gross negligence was not bright enough to be drawn. *Id.* at 238. It explained:

> If negligence does not violate due process, neither does gross negligence. The line between negligence and gross negligence is so indistinct that it cannot be policed, and "a line that cannot be policed is not a line worth drawing in constitutional law." Moreover, the line is not worth drawing in any event because the distinction between negligence and gross negligence does not respond to the due process clause's function, which is to control abuses of government power. A "gross" error is still only an error, and an error is not an abuse of power. Since an error by a government official is not unconstitutional, "it follows that 'gross negligence' is not a sufficient basis for liability."

Id. (quoting Archie v. City of Racine, 847 F.2d 1211, 1220 (7th Cir. 1988) (en banc), *cert. denied*, 489 U.S. 1065 (1989)).

62. *Daniels*, 474 U.S. at 331; Davidson v. Cannon, 474 U.S. 344, 347-48 (1986); Nishiyama v. Dickson County, 814 F.2d 277, 281-82 (6th Cir. 1987); Ruiz v. Estelle, 679 F.2d 1115, 1149 (5th Cir. 1982).

63. Morgan v. District of Columbia, 824 F.2d 1049, 1058 (D.C. Cir. 1987).

carelessness, nor even deliberate failure to conform to the standards suggested by experts is cruel and unusual punishment . . . . [The Constitution] prohibits only "deliberate indifference to serious medical needs."[64]

The Fifth Circuit was the first court of appeals to address § 1983 liability for jailhouse suicides. In *Partridge v. Two Unknown Police Officers*,[65] the Fifth Circuit was presented with an individual arrested by a Houston police officer on the suspicion of burglary and theft.[66] The individual became "hysterical" during questioning,[67] and the individual's father told the officers that his son had suffered a nervous breakdown.[68] The father also directed the officers' attention to two medical bracelets on the boy's wrists.[69] The bracelets read "Medical Warning[,] See Wallet Card" and "Heart Patient."[70] The officers removed the bracelets and told the boy's father "that if he would obtain a letter from a psychiatrist attesting to the boy's condition and to the danger of his being confined that the boy would in all likelihood be released."[71]

The officers then transported the boy to the jail.[72] During the trip to the jail, the boy "intentionally struck his head at least once against the plexiglass divider between the front and back seats."[73] On the boy's booking card, the officers noted that he had "heart" and "mental" problems.[74] Three hours after he was placed in solitary confinement, the boy hung himself with a pair of socks.[75]

The family then brought a § 1983 claim against the custodial defendants.[76] The district court dismissed the family's claim on a Federal Rules of Civil Procedure 12(b)(6) motion; however, the Fifth Circuit reversed and remanded in part.[77]

In analyzing the family's claim, the Fifth Circuit first noted that inmates have a right to reasonable medical care which included a right to psychiatric care.[78] The Fifth Circuit then correctly noted that the family could not state a claim under

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64. Barksdale v. King, 699 F.2d 744, 748 (5th Cir. 1983) (emphasis added) (*quoting Ruiz*, 679 F.2d at 1149).
65. 791 F.2d 1182 (5th Cir. 1986).
66. *Id.* at 1184.
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.*
75. *Id.*
76. *Id.* at 1185.
77. *Id.* at 1190.
78. *Id.* at 1187. The Fifth Circuit stated:

> Under the *Bell v. Wolfish* standard, the defendants had a duty, at a minimum, not to be deliberately indifferent to Partridge's serious medical needs. A serious medical need may exist for psychological or psychiatric treatment, just as it may exist for physical ills. A psychological or psychiatric condition can be as serious as any physical pathology or injury, especially when it results in suicidal tendencies. And just as a failure to act to save a detainee from suffering from gangrene might violate the duty to provide reasonable medical care absent an intervening legitimate government objective, failure to take any steps to save a suicidal detainee from injuring himself may also constitute a due process violation under *Bell v. Wolfish*.

Id.

§ 1983 for mere negligence.[79] It further stated, however, that "to the extent that the claim rests on the detention center's deliberate and systematic lack of adequate care for detainees, it alleges the kind of arbitrariness and abuse of power that is preserved as a component of the due process clause in *Daniels*."[80]

In subsequent cases, courts have almost universally cited the *Partridge* decision for the proposition that custodial defendants can be held liable for an inmate's suicide.[81] It is important to note, however, that *Partridge* was a Rule 12(b)(6) decision wherein a court must consider all "well-pleaded facts as true and view them in the light most favorable to the plaintiff."[82] The decision does not in any way suggest that a custodial defendant is liable under § 1983 for an inmate's suicide even if there were steps he might have taken to lessen the possibility of suicide. The decision clearly states that the appropriate standard is "deliberate indifference" to serious medical needs.[83] Indeed, all circuit courts which have considered this issue have concluded that the Eighth Amendment's deliberate indifference standard[84] applies via the Fourteenth Amendment Due Process Clause.[85]

Plaintiffs cannot establish deliberate indifference without subsidiary proof that the custodial defendants knew or should have known of the detainee's suicidal tendencies.[86] Two Third Circuit decisions have explained why a plaintiff must show knowledge of suicidal tendencies. In *Colburn I*,[87] the Third Circuit reasoned that a complaint survives a Rule 12(b)(6) motion "if . . . [custodial] officials *knew or should know of the particular vulnerability to suicide of an inmate* . . . ."[88] In explaining this burden, the Third Circuit reasoned that:

> "[S]hould have known," as used in *Colburn I*, is a phrase of art with a meaning distinct from its usual meaning in the context of the law of torts. It does not refer to a failure to note a risk that would be perceived with the use of ordinary prudence. *It*

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79. *Id.*

80. *Id.* at 1187.

81. *See, e.g.*, Bowen v. City of Manchester, 966 F.2d 13, 16-17 (1st Cir. 1992); Hall v. Ryan, 957 F.2d 402, 406 n.6 (7th Cir. 1992); Bell v. Stigers, 937 F.2d 1340, 1343 (8th Cir. 1991).

82. Partridge v. Two Unknown Police Officers, 791 F.2d 1182, 1185-86 (5th Cir. 1986). In *Conley v. Gibson*, the United States Supreme Court stated that a complaint should not be dismissed pursuant to Federal Rules of Civil Procedure 12(b)(6) "unless 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 (1957).

83. *Partridge*, 791 F.2d at 1187.

84. The Fifth Circuit has held, though not in the suicide context, that pretrial detainees are entitled to "reasonable" medical care. *See, e.g.*, Cupit v. Jones, 835 F.2d 82, 85 (5th Cir. 1987). Cases decided since and interpreting *Cupit*, however, have equated "reasonableness" with reckless disregard or intentional indifference. *See, e.g.*, Simpson v. Hines, 903 F.2d 400, 404 (5th Cir. 1990) (noting that the distinction between deliberate indifference and reasonableness is a "distinction . . . without a difference"); Thomas v. Kipperman, 846 F.2d 1009, 1011 (5th Cir. 1988) (Pretrial detainee's denial of medical care claim must "implicate more than mere negligence.").

85. *See, e.g.*, Burns v. City of Galveston, 905 F.2d 100, 103 (5th Cir. 1990); Edward v. Gilbert, 867 F.2d 1271, 1274-75 (11th Cir. 1989); Cabrales v. County of Los Angeles, 864 F.2d 1454, 1461 n.2 (9th Cir. 1988), *vacated on other grounds*, 490 U.S. 1087 (1989); Roberts v. City of Troy, 773 F.2d 720, 723-24 (6th Cir. 1985).

86. Popham v. City of Talladega, 908 F.2d 1561, 1563-64 (11th Cir. 1990); Belcher v. Oliver, 898 F.2d 32, 35 (4th Cir. 1990); McDay v. City of Atlanta, 740 F. Supp. 852, 857 (N.D. Ga. 1990), *aff'd*, 927 F.2d 614 (11th Cir. 1991); Francis v. Pike County, 708 F. Supp. 170, 172 (S.D. Ohio 1988), *aff'd*, 875 F.2d 863 (6th Cir. 1989).

87. Colburn v. Upper Darby Township, 838 F.2d 663 (3d Cir. 1988), *cert. denied*, 489 U.S. 1065 (1989) [hereinafter *Colburn I*].

88. *Id.* at 669 (emphasis added).

connotes something more than a negligent failure to appreciate the risk of suicide presented by the particular detainee, though something less than subjective appreciation of that risk. The "strong likelihood" of suicide must be "so obvious that a lay person would easily recognize the necessity for" preventative action; *the risk of self-inflicted injury must be not only great, but also sufficiently apparent that a lay custodian's failure to appreciate it evidences an absence of any concern for the welfare of his or her charges*.[89]

In the absence of previous suicide attempts or a medical diagnosis of suicidal tendencies, a plaintiff must establish that an inmate's suicidal tendencies were so *obvious* that a lay person would easily recognize the need for medical treatment.[90] In *Colburn II*, the Third Circuit observed "[c]ustodians have been found to 'know' of a particular vulnerability to suicide when they have had actual knowledge of an obviously serious suicide threat, a history of suicide attempts, or psychiatric diagnosis identifying suicidal propensities."[91]

Most of the jailhouse suicide litigation has centered on whether an inmate's suicidal tendencies were obvious. Plaintiffs have argued that obviousness can be shown by one of two characteristics: (1) the detainee fits a high suicide profile;[92] or (2) the detainee has threatened suicide in the past.[93]

Courts, however, have correctly held that obviousness cannot be shown by the mere fact that a detainee fits a high suicide risk profile.[94] Suicides are frequent occurrences in jail settings. Unfortunately, many of the individuals whom local authorities arrest fit the suicide victim profile. The most frequent suicide victim is a young male, between the ages of eighteen and twenty-five; he is almost always charged with a minor crime; often he has never been behind bars before; and he is usually under the influence of drugs or alcohol.[95] Indeed, many plaintiffs and their experts have attempted to persuade courts to equate intoxication or drug addiction

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89. Colburn v. Upper Darby Township, 946 F.2d 1017, 1025 (3d Cir. 1991) (emphasis added) (citations omitted) [hereinafter *Colburn II*].

90. *See* Bowen v. City of Manchester, 966 F.2d 13, 17 (1st Cir. 1992) (inmate must show clear signs of suicidal tendencies of which the officials had actual knowledge); Barber v. City of Salem, 953 F.2d 232, 239-40 (6th Cir. 1992) (inmate must show strong likelihood that he will take his own life); Elliott v. Cheshire County, 940 F.2d 7, 10 (1st Cir. 1991) (suicide risk must be "large" and "strong"). *Cf.* Gaudreault v. Municipality of Salem, 923 F.2d 203, 208 (1st Cir. 1990) ("A medical need is 'serious' if it is one that has been diagnosed by a physician as mandating treatment, or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention."), *cert. denied*, 111 S. Ct. 2266 (1991).

91. *Colburn II*, 946 F.2d at 1025 n.1 (citations omitted).

92. *See, e.g.*, *Colburn II*, 946 F.2d at 1017; Belcher v. Oliver, 898 F.2d 32, 34-35 (4th Cir. 1990); Burns v. City of Galveston, 905 F.2d 100, 104 (5th Cir. 1990).

93. *See, e.g.*, *Colburn II*, 946 F.2d at 1026; *Burns*, 905 F.2d at 104; Danese v. Asman, 875 F.2d 1239, 1243 (6th Cir. 1989); Estate of Cartwright v. City of Concord, 856 F.2d 1437, 1438 (9th Cir. 1988).

94. *Barber*, 953 F.2d at 239; *Colburn II*, 946 F.2d at 1026; Popham v. City of Talladega, 908 F.2d 1561, 1564 (11th Cir. 1990); Williams v. Borough of West Chester, 891 F.2d 458, 465-66 (3d Cir. 1989); *Danese*, 875 F.2d at 1243-44; Edwards v. Gilbert, 867 F.2d 1271, 1274-76 (11th Cir. 1989); Estate of Cartwright v. City of Concord, 856 F.2d 1437, 1438 (9th Cir. 1988); Gagne v. City of Galveston, 805 F.2d 558, 559-60 (5th Cir. 1986), *cert. denied sub nom.* Gagne v. Putnal, 483 U.S. 1021 (1987).

95. Lindsey M. Hayes, *And Darkness Closes In—National Study of Jail Suicides*, 10 CRIM. JUST. & BEHAV. 461, 467-68 (1981).

with a "particular vulnerability to suicide."[96] The courts have uniformly rejected these arguments.[97] In *Colburn II*, the Third Circuit Court of Appeals explained why such an argument must be rejected:

> In support of her argument, Colburn presented expert testimony that intoxication is one of the most "serious red flags" in jailhouse suicides. However, while the expert insisted that all detainees under the influence of alcohol "have got to be considered high risk candidates for suicide," the expert offered no data that would enable a trier of fact to assess the suicide risk presented by an intoxicated detainee. His testimony included a reference to a survey reporting that two-thirds of all prison suicides are intoxicated upon admission, but he also indicated that approximately two-thirds of all who are admitted are intoxicated. The record contains no data with respect to the percentage of intoxicated detainees who commit suicide or the percentage of suicides in the general population.[98]

Furthermore, custodians are not constitutionally required to regard every suicide remark by a detainee as a serious suicide threat.[99] A *negligent* failure to appreciate a risk of suicide is insufficient to establish an officer's § 1983 liability.[100] In the leading case of *Danese v. Asman*,[101] the inmate told the police officers that he was going to kill himself and even discussed the method he was planning to use.[102] The officers did not respond to his threat.[103] In rejecting plaintiff's claim that the officers were deliberately indifferent to Danese's serious medical needs, the Sixth Circuit held:

> The "right" that is truly at issue here is the right of a detainee to be screened correctly for suicidal tendencies and the right to have steps taken that would have prevented suicide. The general right to medical care, for example, is not sufficient to require a

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96. *See, e.g.*, Hall v. Ryan, 957 F.2d 402, 406 n.6 (7th Cir. 1992); Simmons v. City of Philadelphia, 947 F.2d 1042, 1068 n.23 (3d Cir. 1991); Buffington v. Baltimore County, 913 F.2d 113, 120 (4th Cir. 1990); Freedman v. City of Allentown, 853 F.2d 1111, 1118 (3d Cir. 1988).

97. *See, e.g.*, Belcher v. Oliver, 898 F.2d 32, 35 (4th Cir. 1990) ("The officers had no absolute duty to protect Belcher from harming himself merely because he was intoxicated, where they had no reason to believe that his intoxicated state would lead to harm which was self-inflicted."); Burns v. City of Galveston, 905 F.2d 100, 104 (5th Cir. 1990) (rejecting claim that intoxicated detainee showed a serious suicidal tendency because this result would be tantamount to stating that detainee had a right to psychological screening under the Constitution); St. Charles v. Camic, 712 F.2d 1140, 1146 (7th Cir. 1983) (where defendant police officers knew that decedent was intoxicated and uncooperative, court found no question of material fact as to whether the defendants had knowledge of, or even any particular reason to suspect, suicidal tendencies on the part of the decedent), *cert. denied*, 464 U.S. 995 (1983).

98. Colburn v. Upper Darby Township (Colburn II), 946 F.2d 1017, 1026 (3d Cir. 1991).

99. *See id.*; *Burns*, 905 F.2d at 103; Danese v. Asman, 875 F.2d 1239, 1241, 1243 (6th Cir. 1989), *cert. denied*, 494 U.S. 1027 (1990); Estate of Cartwright v. City of Concord, 856 F.2d 1437, 1438 (4th Cir. 1988). *But see* Greason v. Kemp, 891 F.2d 829, 835-36 (11th Cir. 1990) (when prison personnel knows of a suicide attempt or even a threat, their failure to take steps to prevent the suicide can amount to deliberate indifference).

100. *See, e.g.*, *Colburn II*, 946 F.2d at 1025 ("It connotes something more than a negligent failure to appreciate the risk of suicide presented by the particular detainee . . . ."); *Burns*, 905 F.2d at 103; *Danese*, 875 F.2d at 1243. *See also* Zwalesky v. Manistee County, 749 F. Supp. 815, 819 n.3 (W.D. Mich. 1990).

101. *Danese*, 875 F.2d at 1244.

102. *Id.* at 1241.

103. *Id.*

police officer to have known that he had to determine that Danese was seriously contemplating suicide and stop him from following through.[104]

The Constitution, however, does not require that custodial officials conduct a medical screening of every inmate in an effort to determine suicidal tendencies.[105] Such a requirement would be tantamount to requiring police officers to have medical training and making them liable for medical malpractice.

Even if a custodian has knowledge of suicidal tendencies, the plaintiff must still establish the core element of the claim—deliberate indifference to the needs.[106] The Eighth Circuit explained this inquiry in *Rellergert v. Cape Girardeau County*:[107]

> Whether or not the measures taken by jailers are sufficient to preclude a finding of deliberate indifference, thereby providing qualified immunity to the jailers, must be determined by considering the measures taken in light of the practical limitations on jailers to prevent inmate suicides. Evaluation of the measures cannot be made from an *ex post facto* perspective. Once a suicide has been accomplished in spite of preventive measures, it is all to [sic] easy to point out the flaws of that failure. The proper consideration of the measures implemented by the jailers can only be from an objective point of view. While the jailers should learn from their failure to aid in the prevention of later suicides, we cannot fairly judge them by that failure.
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> . . .[T]he search for blame or fault, particularly with the benefit of hindsight, can too easily infect what must be a dispassionate analysis. Simply laying blame or fault and pointing out what might have been done is insufficient. *The question is not whether the jailers did all they could have, but whether they did all the Constitution requires.*[108]

As clearly stated by *Rellergert*, the appropriate inquiry is what the Constitution requires in the face of a serious suicide risk.[109] Whatever else can be said of this inquiry, it is clear that the Constitution *does not* require that custodial officers ensure the safety of inmates or provide a suicide-proof jail.[110] The Constitution requires instead that defendants not be *deliberately indifferent*[111]—indifference is apathy or unconcern.

Obviously, mere negligence does not show a deliberate indifference. Courts have, therefore, correctly held that law enforcement officers cannot be subjected

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104. *Id.* at 1244.

105. Burns v. City of Galveston, 905 F.2d 100, 104 (5th Cir. 1990). *See also* Belcher v. Oliver, 898 F.2d 32, 34-35 (4th Cir. 1990).

106. Gordon v. Kidd, 971 F.2d 1087, 1094 (4th Cir. 1992); Partridge v. Two Unknown Police Officers, 791 F.2d 1182, 1187 (5th Cir. 1986). *See also Burns*, 905 F.2d at 1-3; Edward v. Gilbert, 867 F.2d 1271, 1274-75 (11th Cir. 1989); Roberts v. City of Troy, 773 F.2d 720, 723 (6th Cir. 1985).

107. 924 F.2d 794 (8th Cir. 1991).

108. *Id.* at 796-97 (emphasis added).

109. *Id.* at 797.

110. *Id.* at 796.

111. *Id.*

to § 1983 liability for failing to remove a belt or shoelaces even though such actions may be prudent.[112]

Deliberate indifference has been shown in a handful of cases. For example, in *Lewis v. Parish of Terrebonne*,[113] the Fifth Circuit affirmed a jury verdict finding deliberate indifference of an inmate's psychiatric needs after he committed suicide.[114] The facts show that the inmate was arrested on an attempted forcible rape charge.[115] Shortly thereafter, he told a nurse and a jail warden that he "wanted to die and that someone was trying to kill him."[116] He then claimed to have swallowed a large number of pills and was transferred to a local hospital to have his stomach pumped.[117] While at the hospital, a physician classified the inmate as "suicidal."[118] The psychiatrist wrote down instructions regarding suicidal precautions and placed them in an envelope.[119] The warden never opened the envelope and placed the inmate in solitary confinement.[120] The Fifth Circuit upheld a verdict against the warden explaining:

> Suffice it to say, the jury heard evidence from which they could deduce that Warden Boquet knew (1) that the deceased had expressed a death wish, (2) that the decedent alleged consuming an inordinate number of pills which required medical emergency treatment, (3) that the emergency room physician ordered a psychiatric examination, (4) that the deceased was transported to New Orleans from the jail for such an examination, (5) that the deceased was transported from New Orleans to the jail after the examination, (6) that the envelope given to the driver of the transporting vehicle was delivered to the jail, (7) that another jail employee believed the deceased to be suicidal and should not be left alone and (8) that the deceased was housed in a solitary confinement cell immediately prior to this death. More than mere negligence on the part of Boquet is evident. Boquet personally participated in the order for solitary confinement when he knew or should have known of the suicidal tendencies of his ward. The evidence, when considered in a light most favorable to the plaintiff, is more than adequate to justify a jury determination that Mr. Boquet was indifferent to the serious medical needs of [the plaintiff].[121]

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112. Bell v. Stigers, 937 F.2d 1340, 1344 (8th Cir. 1991); Belcher v. Oliver, 898 F.2d 32, 36 (4th Cir. 1990) (A law enforcement official's "failure to follow procedures [such as removing a belt] established for the general protection and welfare of inmates does not constitute deliberate disregard for the medical needs of a particular intoxicated individual."); Williams v. Borough of West Chester, 891 F.2d 458, 466 (3d Cir. 1989).

113. 894 F.2d 142 (5th Cir. 1990).

114. *Id.* at 144-45.

115. *Id.* at 144.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.* at 145.

B. Governmental Liability

In *Monell v. Department of Social Services*,[122] the United States Supreme Court held that local governmental entities were "persons" which could be sued under § 1983.[123] The Court, however, rejected any notion that a governmental entity could be liable under a respondeat superior theory.[124] It concluded that a governmental entity could only be liable "when execution of government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury . . . ."[125] Thus, to prevail against a governmental entity under § 1983, a plaintiff must show that "he was deprived of a constitutional right either as a result of a policy . . . or a governmental 'custom' even though such a 'custom' had not received formal approval through the City's official decisionmaking channels."[126]

As stated in the introduction, *The Clarion-Ledger*, a Jackson, Mississippi, newspaper, reports that experts blame the suicide rate in Mississippi jails on "crowding, little or no training of personnel, inadequate screening of incoming inmates, and a lack of statewide oversight of jails."[127] Obviously, many of the decisions in this area can be directly linked to "decisionmaking channels"; however, the core element needed to show a civil rights violation is a deliberate choice to be indifferent.[128] Not one "expert" has even remotely suggested that any local governmental entity in Mississippi has deliberately chosen a course of action in an effort to ignore an inmate's suicidal tendencies.

Obviously, a governmental entity has no direct control over crowding in jail facilities. If a police officer has probable cause to believe a criminal offense has been committed or has an arrest warrant, he is obligated to arrest and incarcerate the suspect. Of course, once the judicial system has imposed a jail sentence, the individual must be incarcerated. The only choice a local governmental entity has with regard to overcrowding is the possibility of construction of larger jails. Due to budgetary constraints and insufficient tax dollars, this "choice" is often not available.

Most plaintiffs in this area seek to find a policy in a "failure to train" context. In *City of Oklahoma City v. Tuttle*,[129] the United States Supreme Court held that a governmental entity can be found liable for inadequately training its police force.[130] The term "policy," however, generally "implies a course of action

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122. Monell v. Department of Social Servs., 436 U.S. 658, 658 (1978).

123. *Id.* at 690.

124. *Id.* at 694.

125. *Id.*

126. Rymer v. Davis, 754 F.2d 198, 200 (6th Cir. 1985), *cert. granted, judgment vacated, and case remanded for further consideration in light of* Oklahoma City v. Tuttle, 471 U.S. 808 (1985).

127. *Hangings*, *supra* note 2, at A1.

128. Beddingfield v. City of Pulaski, 861 F.2d 968, 971 (6th Cir. 1988).

129. 471 U.S. 808 (1985).

130. *Id.*

consciously chosen from among various alternatives . . . ."[131] Although finding that a governmental entity could be liable for a failure to train, the Supreme Court cautioned in *Tuttle*: "[I]t is . . . difficult in one sense even to accept the submission that someone pursues a 'policy' of 'inadequate training,' unless evidence be adduced which proves that the inadequacies resulted from conscious choice – that is, proof that the policymakers deliberately chose a training program which would prove inadequate."[132] The Supreme Court further cautioned that the plaintiff must be required to establish an "affirmative link between the policy and the particular constitutional violation alleged."[133]

Perhaps one of the leading cases discussing potential governmental liability for jail suicides is *Molton v. City of Cleveland*.[134] In *Molton*, the plaintiff sought to impose municipal liability arguing that the city showed deliberate indifference to an inmate's suicidal tendencies by:

> (1) operati[ng] . . . a jail with a remote cell block; (2) fail[ing] to develop and use health screening forms; (3) permitting . . . a rookie officer[] to supervise the jail facility; (4) inadequately training its officers in the prevention of jail suicides; (5) fail[ing] to install an audio communication system between the cell block and the office area; (6) fail[ing] to modify cell architecture to render suicide less likely; and (7) fail[ing] to take corrective measures after eight prior suicides had occurred in the jail facility.[135]

After discussing *Tuttle*, the Sixth Circuit rejected the plaintiff's arguments stating plaintiff had failed to show that there was a "deliberate and discernible policy to maintain an inadequately trained police department, or nonsuicide-proof, inadequately designed and equipped jails . . . ."[136]

Thus, in the context of jailhouse suicides, the governmental entity is only liable if: (1) there are "deliberate and discernible [governmental] policies or customs to inadequately train [government] personnel and to inadequately supervise the [government's] holding facility," and (2) "the [government's] policies were the 'moving forces' of [the suicide]."[137] It is important to note that a showing of better available training is insufficient to show "deliberate indifference."[138]

Many plaintiffs have unsuccessfully argued that a local governmental entity can be found liable for a failure to train its police officers regarding medical screening of inmates.[139] Others point to the American Correctional Association's suggestion that law enforcement officials inquire of each inmate upon arrival whether the in-

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131. *Id.* at 823.
132. *Id.*
133. *Tuttle*, 471 U.S. at 823.
134. 839 F.2d 240 (6th Cir. 1988), *cert. denied*, 489 U.S. 1069 (1989).
135. *Id.* at 246.
136. *Id.*
137. Beddingfield v. City of Pulaski, 801 F.2d 968, 971 (6th Cir. 1988).
138. *Id.* at 972.
139. *See, e.g.*, Burns v. City of Galveston, 905 F.2d 100, 104 (5th Cir. 1990); Popham v. City of Talladega, 908 F.2d 1561, 1564-65 (11th Cir. 1990); Belcher v. Oliver, 898 F.2d 32, 34-35 (4th Cir. 1990).

mate has undergone or is undergoing "past and present treatment or hospitalization for mental disturbance or suicide."[140] Plaintiffs often argue that failure to train according to these standards is a policy decision.[141] Plaintiffs should fail in this argument, however, because (1) the availability of better training does not state a failure to train, and (2) the Constitution does not require medical screening of inmates.

It is true that the United States Supreme Court held in *City of Canton v. Harris*,[142] that a municipality can be held liable when it fails to provide training that is "so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need."[143] This decision, however, should not be read to hold that a local governmental entity can be held liable for failure to train according to the highest standards available. The key term in the Supreme Court's quote is "so obvious."[144] In the Court's own words, the need for a *particular type of training* must be obvious:

> For example, city policymakers know to a moral certainty that their police officers will be required to arrest fleeing felons. The city has armed its officers with firearms, in part to allow them to accomplish this task. Thus, the need to train officers in the constitutional limitations on the use of deadly force can be said to be "so obvious," that failure to do so could properly be characterized as "deliberate indifference" to constitutional rights.
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> It could also be that the police, in exercising their discretion, so often violate constitutional rights that the need for further training must have been plainly obvious to the city policymakers, who, nevertheless, are "deliberately indifferent" to the need.[145]

The *City of Canton* decision places strict evidentiary requirements in order to maintain a failure to train case under § 1983. Subsequent decisions analyzing *City of Canton* have discussed the necessary evidentiary requirements:

> A particular officer's unsatisfactory training cannot alone suffice to attach liability to the state. An officer's faults . . . may result from factors other than the deficient training program. Nor can plaintiffs prevail merely by proving that an accident or injury could have been avoided had an officer received enhanced training forestalling the particular conduct resulting in the injury. Even adequately trained officers sometimes err, and such error says little about their training program or the legal basis for liability. . . . This is why claims alleging a constitutional deprivation due to failure to provide training . . . yield liability, only if that defendant's failure to

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140. AMERICAN CORRECTIONAL ASS'N, STANDARDS FOR ADULT LOCAL DETENTION FACILITIES 95 (3d ed. 1991).

141. *See, e.g.*, Hare v. City of Corinth, 814 F. Supp. 1312, 1325 (N.D. Miss. 1993).

142. 489 U.S. 378 (1989).

143. *Id.* at 390.

144. *Id.*

145. *Id.* at 390 n.10.

> train demonstrates its "deliberate indifference" to the constitutional rights of its residents.[146]

The Sixth Circuit also stated:

> Plaintiff's central contention is that the City should have adopted different training and surveillance measures, presumably those espoused by TCI. Even assuming that TCI's classes would have provided the City's officers with "better" training, plaintiff has failed to show that the City *deliberately* acted with indifference to the danger of [the inmate's] suicide. If the facility's personnel were inadequately trained, it was the result of negligence rather than deliberate decisionmaking.[147]

Only one decision to date has found that a plaintiff met the stringent requirements of showing a failure to train in a suicide context.[148] In *Simmons v. City of Philadelphia*,[149] the Third Circuit upheld a jury verdict against the City of Philadelphia in which it was found to have failed to train officers in suicide prevention.[150] In *Simmons*, the decedent's family sued claiming that the City was deliberately indifferent to the medical needs of the intoxicated and potentially suicidal detainees.[151] The court set the following evidentiary standards in the context of *City of Canton*: (1) responsible policymakers must have been "aware of the number of suicides in City lockups" and the ways to prevent them but either deliberately chose not to pursue them or "acquiesced in a long-standing policy or custom of inaction"; (2) these policymakers must either have deliberately chosen not to provide officers with training or acquiesced in such a custom; and (3) there must be causation between the City's decision and the constitutional deprivation.[152] It must be emphasized, however, that the basis of the *Simmons* decision was the City's failure to react to a large number of suicides in its prison system.[153]

As shown above, plaintiffs have also argued that the failure to give training regarding screening of inmates violates their constitutional rights.[154] Courts, however, have uniformly held that individuals have no constitutional right to psychological screening prior to incarceration.[155] The Fifth Circuit explained:

> It is one thing to require a municipality to train its police officers to recognize and not ignore obvious medical needs of detainees with known, demonstrable, and serious mental disorders. It is quite another to require as a constitutional minimum that

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146. Erwin v. County of Manitowoc, 872 F.2d 1292, 1298 (7th Cir. 1989).

147. Beddingfield v. City of Pulaski, 861 F.2d 968, 972 (6th Cir. 1988) (emphasis added). *Cf.* Molton v. City of Cleveland, 839 F.2d 240, 243 (6th Cir. 1988) (failure to build suicide proof jail cell may well be an act of negligent omission, but if plaintiff fails to establish a deliberate choice to follow a course of action made from "various alternatives," he cannot establish a claim against a local governmental entity for failure to train).

148. Simmons v. City of Philadelphia, 947 F.2d 1042 (3d Cir. 1991), *cert. denied*, 112 S. Ct. 1671 (1992).

149. *Id.*

150. *Id.*

151. *Id.* at 1056.

152. *Id.*

153. *Id.* at 1066, 1088-89.

154. *See, e.g.*, Burns v. City of Galveston, 905 F.2d 100, 104 (5th Cir. 1990); Popham v. City of Talladega, 908 F.2d 1561, 1564-65 (11th Cir. 1990); Belcher v. Oliver, 898 F.2d 32, 34-35 (4th Cir. 1990).

155. *See, e.g.*, *Burns*, 905 F.2d at 104; *Popham*, 908 F.2d at 1564-65; *Belcher*, 898 F.2d at 34-35.

> a municipality train its officers to medically screen each pretrial detainee so that the officers will unerringly detect suicidal tendencies. The latter requires the skills of an experienced medical professional with psychiatric training, an ability beyond that required of the average police officer by the due process clause.[156]

Of course, if suicides are a frequent occurrence on the local level, failure to address the problems can amount to deliberate indifference.[157]

V. CONCLUSION

It is easy to scream civil rights violations when the alleged aggressor is a local governmental entity. Any attempt to bring all government actions within the context of federal civil rights laws would do nothing but trivialize the Constitution. Any attempt to lower § 1983's standard should not be tolerated.

While the increase in suicides may not be a civil rights issue, it could become one if the current problems are not addressed. For example, in *Simmons v. City of Philadelphia*,[158] the Third Circuit affirmed a jury verdict against the City of Philadelphia based on evidence that the City was aware of a large number of suicides and of the alternatives for preventing them but "deliberately chose not to pursue these alternatives."[159] Additionally, with the abolition of sovereign immunity, local officials are much more vulnerable to state tort actions.

Thus, local officials would be wise to pay heed to recommendations on how to curb the suicide tide. These recommendations include:

1. Ensure that staffing is adequate to meet inmate needs such as health care, academic, vocational, library, and recreational.
2. Provide training to all law enforcement personnel which includes training in the area of suicide prevention.
3. Provide reference materials to all law enforcement personnel regarding how to handle the high risk suicide victim, i.e., the intoxicated, the low income, or the drug addicted.
4. Provide on-going continuing education to law enforcement officials.
5. The number of inmates should not exceed the rated bed capacity (the original design capacity, plus or minus capacity changes resulting from building additions, reductions, or revisions).
6. All living areas should be constructed to facilitate continuous staff observation, excluding electronic surveillance.
7. The jail facility should be designed to facilitate continuous personal contact and interaction between staff and inmates.

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156. *Burns*, 905 F.2d at 104. *See also Popham*, 908 F.2d at 1564-65; Danese v. Asman, 875 F.2d 1239, 1245 (6th Cir. 1989), *cert. denied*, 494 U.S. 1029 (1990); *Belcher*, 898 F.2d at 35.

157. *Cf.* Simmons v. City of Philadelphia, 947 F.2d 1042, 1064 (3d Cir. 1991), *cert. denied*, 112 S. Ct. 1671 (1992); City of Canton v. Harris, 489 U.S. 378, 390 n.10 (1989) (failure to take remedial action after plainly unconstitutional conduct by police officers could constitute deliberate indifference).

158. *Simmons*, 947 F.2d at 1042.

159. *Id.* at 1064.

8. Ensure that items such as belts and shoelaces are removed from all inmates, regardless of whether the inmate is considered a suicide risk.
9. Make continuous inspections of the cell area, preferably through the use of a full-time jailer.
10. Conduct screening of all arrestees which includes questions regarding use of alcohol, drugs, past and present treatment, or hospitalization for mental disturbance or suicide. The law enforcement official should note the arrestee's behavior, including state of consciousness, mental status, appearance, conduct, tremor, sweating, and indications of drug abuse.
11. If the arrestee has an arrest record, check all records regarding any previous problems with the arrestee.