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Indirect prisoner
surveillance in small

jails

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You have asked us to research cases where courts have approved the use of indirect supervision (i.e., monitoring by closed circuit television, hereafter CCTV) of prisoners in local jails housing 30 prisoners or less. As we see it, there are two legal questions involved: (1) whether use of CCTV is constitutional, and (2) whether CCTV monitoring subjects jails to civil liability.

While we have not conducted exhaustive research, it appears that CCTV is discussed in relatively few reported cases, that is, those that are published and are readily available as legal precedents. Some general guidelines can, however, be found.

The constitutional question seems to be directly addressed by a case that raised a claim of cruel and unusual punishment after an inmate, monitored only by CCTV, committed suicide. Popham v. City of Talladega, 908 F.2d 1561 (11th Cir. 1990) (lower court decision reported at 742 F. Supp. 1504 (N.D. Ala. 1989)). This case arose in the context of a 42 U.S.C. • 1983 civil rights action, where the constitutional standard is "deliberate indifference to serious medical needs" rather than the tort standard of civil negligence. The Popham court denied relief, even though no staff was on duty except a dispatcher, and the CCTV could not monitor all areas of the cell where the suicide occurred. If negligence were the standard in this case, the result would probably have been different.

One of the two cases you brought to our attention (the other is unpublished) did not hold that CCTV supervision of inmates is inadequate per se, but only that it is inadequate when CCTV cameras focused on the corridors outside the cells rather than the cells themselves. Ahrens v. Thomas, 434 F. Supp 873 (E.D. Mo. 1977). This case decision is not particularly helpful, however, because the ruling on CCTV was only a small part of the court's ruling, which involved all aspects of the conditions in a

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jail with a number of serious problems. Again, this case involved a federal civil rights under 42 U.S.C. • 1983, not a civil tort action.

Regarding the second question posed by your request, a number of cases offer some guidance, including two cases from Alaska. As an initial matter, it is clear that jailers owe a duty of care to prisoners, and must take reasonable steps to protect them. In Wilson v. City of Kotzebue, 627 P.2d 623, 628 (Alaska 1981), the court held that a jailer owes a duty to a prisoner to exercise reasonable care for the protection of his life and health. This duty encompasses a duty to prevent even self-inflicted harm, assuming such harm is reasonably foreseeable. Id. at 631.

If visibility by CCTV is not good and a prisoner is injured, that does not automatically mean a city will lose a lawsuit. The outcome will depend on all the surrounding circumstances. In Kanayurak v. North Slope Borough, 677 P.2d 893 (Alaska 1984), an intoxicated woman who was incarcerated in the Barrow city jail (a state contract jail) committed suicide. The city had reason to believe that the victim was severely depressed; she was very intoxicated; the cell area where she was held was equipped with CCTV, but the camera was partially blocked by a metal bar so the cell visibility was very poor; and, because she was yelling and screaming, the door to the cell area was closed to muffle the noise. The lower court granted summary judgment to the city, in essence ruling that the city was not negligent as a matter of law. The Alaska Supreme Court reversed, and sent the case back for trial, because it believed that a question of fact existed as to whether the city officials acted reasonably under the circumstances. The court did indicate, however, that there is a higher standard of care owed to an intoxicated prisoner than to an ordinary, sane, sober prisoner in control of his or her mental faculties. 677 P.2d at 898-99 (citing Wilson v. City of Kotzebue, 627 P.2d at 627-28).

In Daniels v. Andersen, 237 N.W. 2d 397 (Neb. 1975), a prisoner brought a negligence action against municipal officials for injuries he received as a result of an assault on him while he was intoxicated in a drunk tank. An audio monitor for the drunk tank was not turned on, one of two video cameras for the drunk tank was not working and the other could not view the part of the cell where the prisoner was attacked, and jail rules required a constant watch of the CCTV monitors and an hourly inspection of all jail cells. The court held that, in light of the jail rules regarding constant monitoring and hourly inspections, reasonable care called for more than hourly inspections when the audio monitor and the CCTV camera were not

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functioning. Since only hourly inspections were conducted, negligence was found.

Also of potential relevance to both questions raised by your request are the American Correctional Association Standards for Small Jail Facilities. These standards apply to jails of up to 50 inmates, jails considerably larger than any of Alaska's contract jails, and are thus arguably more rigorous than standards that should be applied here. These standards are not required constitutionally or statutorily, but are recommended rules. Expert witnesses might, however, rely on the ACA standards in presenting testimony, as would a court in formulating a "reasonableness" instruction to be applied by a jury in a civil negligence action.

I have attached a copy of some of the standards that appear relevant. Some of the standards are designated as "mandatory" and other as "non-mandatory". To be accredited by the ACA, a jail must adhere to all of the mandatory standards and 90% of the non-mandatory ones. See ACA Standards at p. X. Standard SJ-083 is non-mandatory, and suggests that for "personal privacy" reasons CCTV should not be used for surveillance of an inmate in his living area, except for special management situations (i.e., suicide risks), and that CCTV is not a substitute for staff supervision. Other standards suggest that an "audio" communication system may be used to supplement staff supervision (SJ-081).

Based on these authorities, jail managers in Alaska should apply a large measure of common sense on a case-by-case basis in the use of CCTV in contract jails. For an ordinary prisoner, where staff at a contract facility does not have reason to believe the person presents a serious risk of injury, illness or suicide, then CCTV surveillance of that inmate's cell should be sufficient to protect the jail from civil liability if the camera functions properly and presents a clear view of the entire cell, and the staff makes periodic observations of the CCTV and personally investigates any questionable situations. It would also be advisable, although by no means necessary, to have the staff make periodic in-person observations of inmate living areas (e.g., once per hour). Obviously, any emergency that arises should result in an appropriate emergency response. Additionally, an audio system designed to overhear loud noises should be considered unless the staff member on duty is in a position to overhear such noises.

For an inmate who presents a foreseeable risk of serious injury, illness or suicide, use of CCTV is probably also adequate, under the conditions set out above; but the jail should also provide periodic (several times per hour) personal

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surveillance, and medical care for the prisoner should be sought.

In between these two extremes is the prisoner who does not give any indication of a risk of injury or suicide, but is merely intoxicated. Under the two Alaska cases described above, the jail owes a higher duty of care to intoxicated prisoners than to ordinary sober prisoners, but that does not necessarily mean the same precautions must be taken as with known suicide risks and other persons who present a highly foreseeable risk of injury. Jails should adopt reasonable policies relating to surveillance of intoxicated prisoners, depending on the level of intoxication and other factors known at the time. This may include CCTV surveillance coupled with periodic surveillance, perhaps twice per hour, again depending on the level of intoxication and other information known about the prisoner. Obviously, the more foreseeable a risk of harm to the prisoner, the greater the duty for surveillance.

Please let us know if you have any questions.

MJS/sf

Attachment