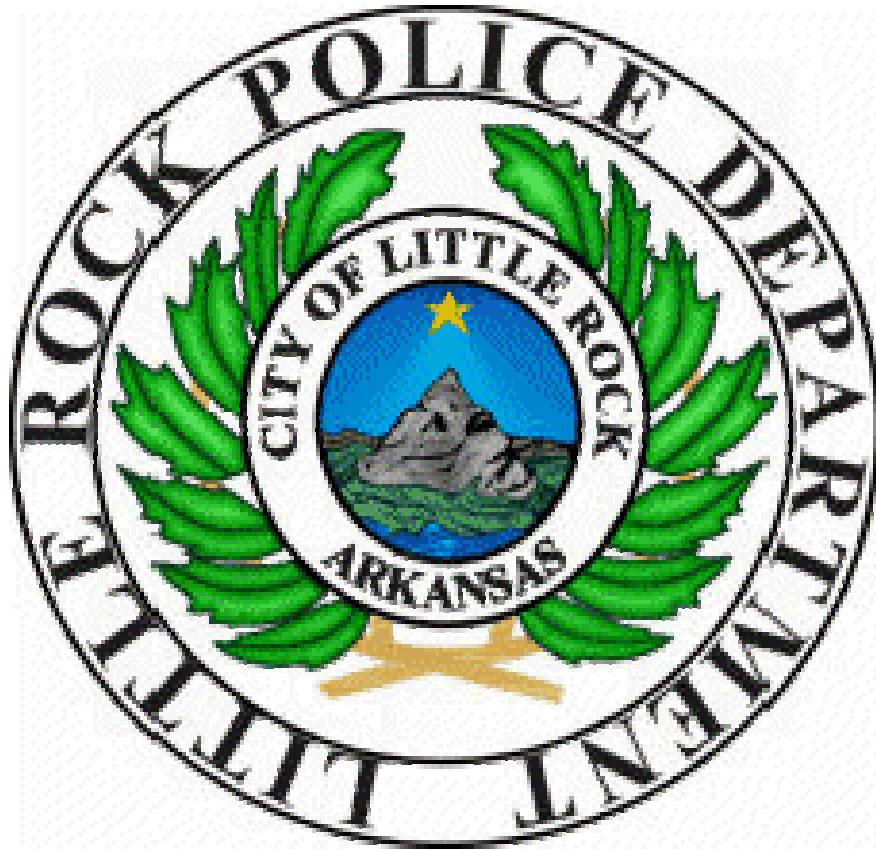


In-Custody Deaths



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INTRODUCTION

When a police officer is forced to use his firearm and inflict a fatal wound upon someone while in the performance of his duties, it makes primetime news. If a police officer causes the death of anyone while performing his duties, it is news worthy. And rightly so. Most agencies have in place policies that cover how the investigations into these deaths are to be handled. The involved officer(s) is placed on administrative leave and the department begins to investigate the incident as a criminal investigation. Usually, a separate investigation is also conducted to insure that the officer followed departmental policy.

Why do agencies conduct these bifurcated investigations? Why is there so much emphasis placed on officer involved shootings? Should we not place as much emphasis on in-custody deaths? The answer to the first two questions seems obvious from the eyes of someone looking from within. The answer to the third question for most people is a resounding “YESS!!”. However this is not being very pragmatic.

We as a society give to our police officers the right to make arrest. We realize that there are times when the persons being arrested may decide that they prefer not to be arrested and will resist said arrest with what ever force is available to them. For this reason, we as a society have also given the police the right to carry a gun and to use that gun to protect themselves and others from bodily harm. When a police officer employs deadly force, he is considered to be utilizing the ultimate option available to him and his actions are heavily scrutinized. This scrutiny comes not just from the department but the citizens and many times the courts. Without getting too far into the history of this, this country has a history of being suspect of its government. The police, being a part of the government, come under a lot of scrutiny because they are the ones who have the authority to take away one’s freedom and one’s life. This country was built on freedom and we tend to guard our freedoms very jealously.

As you will see in the next section, in-custody deaths come in different forms. I believe that, while most in-custody deaths should receive the same level of scrutiny that deadly force incidents receive, there are a few that need not be held under as strong of a microscope.

I have been a member of the Little Rock Police Department for seventeen years. I received my Master of Arts degree in Criminal Justice from the University of Arkansas at Little Rock in 1992. I was promoted to sergeant in March of 2003. My main duty assignments have revolved around patrol. So, I have seventeen years of experience in being a “street cop”. I have assisted in the investigations of several instances where officers were forced to use force which caused the injury or death of another person. I have been involved with three in-custody deaths, as a supervisor, in the last two years. The first two I initially had no direction from the administration as to how they wished the deaths to be investigated. It wasn’t until after the second incident that a policy was written detailing how an in-custody death was to be investigated and by whom.

It’s true that in-custody deaths are not that common a thing police agencies have to deal with. However, more and more offenders are trying to hide the evidence of their crimes in their bodies and are becoming more violent when being arrested. This causes the police to have to use more force to affect the arrest. There has also been an increase in the use of drugs in the community that have analgesic effects on the body. These same drugs can produce paranoia and aggressive behavior. This increases the possibility of a suspect incurring life threatening injuries during an arrest, without them or the arresting officers realizing what has happened. All this can, will and has lead to claims of police abuse and excessive force.

Many consider deaths in a prison setting to be the same as a death in police custody. For the purposes of this paper, an in-custody death is one that occurs after a person has been arrested for a crime but not adjudicated and/or is awaiting trial on charges.

For the purposes of this paper, in-custody deaths do not include those deaths that occur while a subject is incarcerated in a county or state penal institution serving a sentence. All of these inmates have already had their cases adjudicated. These institutions have populations such that deaths of their inmates, while not frequent, are a regular occurrence. These deaths are normally the result of the offender’s sentence outlasting the offender’s life span. These agencies have policies in place to handle these instances.

I wish to explore the main causes of in-custody deaths and the different ways that police agencies handle these deaths. I also want to propose some guidelines that should be considered when an agency is looking to develop policy concerning the investigation of in-custody deaths.

Categories of In-Custody Deaths

I have, based upon my experience and research, developed several different categories of in-custody deaths. These categories range from the extreme of officer misconduct to the benign of pre-existing medical conditions to the new phenomena of “excited delirium”. Each is different in its nature. While, in the broad stroke of the brush, they should all be investigated similarly, there will be differences in how the details would be investigated.

OFFICER NEGLIGENCE

This category covers a variety of different situations. They all involve an officer being aware of a situation and failing to take reasonably appropriate action to protect the arrestee from the threat.

There is a restraint system that has been used in law enforcement circles for years. This system is commonly called “hog tying”. This very effective method of controlling combative individuals has also lead to deaths cause by positional asphyxiation. After many lawsuits, many police departments around the nation have developed policies forbidding the use of this restraint system. In those agencies where it is still allowed, it is incumbent upon the officer to monitor the prisoner and watch for signs of breathing difficulties.

There are times when persons involved in criminal activity will swallow the evidence of that crime in order to prevent it from being used against them in court. Some police officers say, “Oh well...What ever happens to them is their own fault.” The

problem is that once a person is in police custody that officer then becomes responsible for that suspect's well being. If an officer knows that a suspect has ingested something that could endanger that person's life, it is the responsibility of that officer to get the appropriate medical treatment for the suspect. Failure to do so would quite appropriately be considered negligence on the part of the officer.

Sometimes a suspect will sustain injuries during the course of fleeing from the officers or the arrest. Or, the injuries may not be the result of any police action but may still be present and obvious to the officer. Any injuries, whether the result of police action or not, should be treated. Failure to do so opens up the officer and the agency to civil liability.

OFFENDER ACTIONS

I have divided this category into three sub-categories:

Suicide

Unintentional Suicide

Medical Conditions.

Suicide in pre-trial detention is much higher than the general population. It is almost three times as high as the rate of suicides in prison (AELE Law Journal, 2007). It is extremely hard to guard against a person committing suicide. While it is possible to recognize the symptoms of depression and suicidal ideations, there are times when the suicidal person is able to mask or hide these symptoms from the outside world. These symptoms may also pass unnoticed by persons who are not trained to recognize them. Suicide by Cop is a possibility but would not be part of this category, nor would it be labeled an In-Custody Death. In Suicide by Cop, the officer is forced to action by the actions of the suspect usually prior to being taken into custody. Lethal force is used by the officer and would (and should) be investigated as any other officer's use of deadly force case.

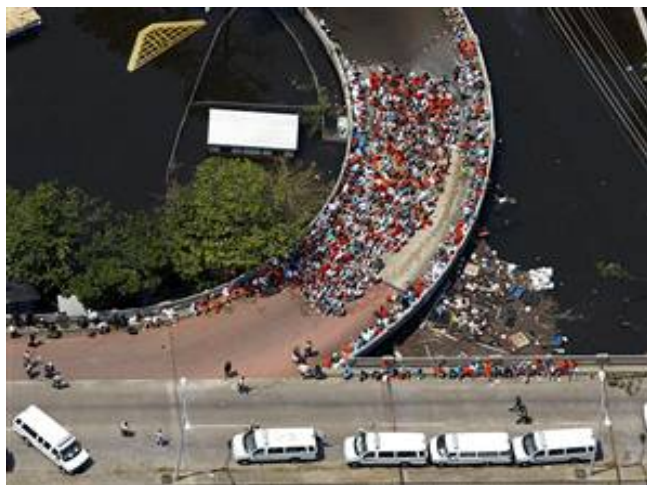
As stated above, there are those who try to hide or destroy evidence of their wrong doing by ingesting the evidence. The suspect may do so prior to an officer noticing what has happened. The suspect may later die as a result of an unintentional overdose. The suspect may also injure themselves while fleeing to the extent that it causes their death sometime after being captured. While this would obviously be unintentional, the results would still be an in-custody death.

Suspects may have medical conditions that are not related in any way to their arrest or detention. While the suspect may not show any symptoms at the time of his arrest, he may become symptomatic very quickly later on without warning. I put medical conditions in this category because, while the suspect may not have control over this, how the suspect's body reacts to the illness is his action on a condition not intentionally caused by the suspect or others.

ACCIDENTAL DEATHS

The one part of this category that gets the most public scrutiny is what I like to call "Falls and Unintentional Acts". This is a broad sub-category that tries to encompass a large body of accidents. Believe it or not, inmates do die sometimes from unassisted falls. There are also times when an inmate might die from some other type of accident inside the holding facility or while outside in a recreation area. These deaths need to be investigated thoroughly to insure they were not the result of criminal or otherwise improper activity.

This type of in-custody death occurs very infrequently and is usually very obvious in its cause. This does not mean that it does not deserve to be investigated. In fact this is the one category of in-custody deaths that the public is probably the most suspicious of. There are be a myriad of accidents that could befall a suspect while in



custody. An officer who is transporting the suspect could be involved in a vehicle crash while enroute. The prisoner could be exposed to some sort of natural disaster. How many of us can remember the videos and pictures of the prisoners in New Orleans that had climbed onto the ceiling supports and roofs of their jail to escape the rising flood waters and being evacuated to a nearby highway ramp after Hurricane Katrina? I know I do. In my home state of Arkansas there is the very real chance of a jail or holding facility receiving a direct hit from a very strong tornado. Jails are, by their very nature, extremely sturdy and are able to withstand a great deal of punishment. However, very little can stand up to an F4 or F5 tornado. And the local jail in my community had a very strong F4 tornado hit just south and east of it in 1999 causing millions of dollars in damage, several injuries and at least one death.

THIRD PARTY ACTIONS

Below is probably the most infamous third party action caught on film to date. It is the murder of Lee Harvey Oswald by Jack Ruby. Oswald had been arrested for the assassination of President Kennedy. Some have said this was justice and some have said it was further proof of some conspiracy. All I know is I would have hated to be the officers escorting Mr. Oswald.

Prisoners are not just at risk when being escorted to and from police stations or jails. They are also at risk when sitting in the rear of an officer's vehicle. Suspects have



been shot while confined in the rear of a patrol car. I have been on scenes when I have had to remind officers that they needed to stay with their vehicles because it had a prisoner inside it. Most of the time they are guarding against someone opening the door and freeing the prisoner. But, they are also there to ensure that the prisoner is not assaulted by the victim(s), friends of the victim(s) or relatives. I have been in

situations where I have had to protect a suspect from friends and family of the victim.

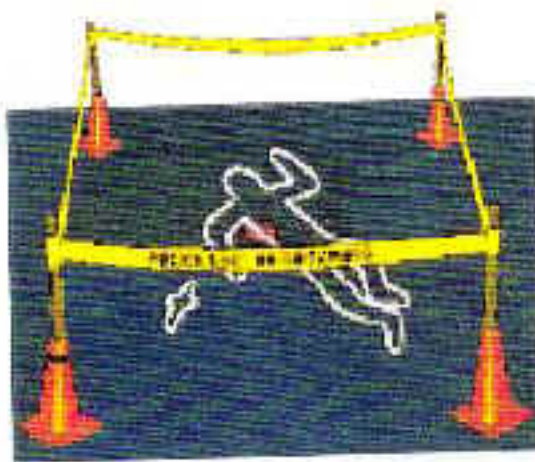
Just because a prisoner is safely tucked away in jail does not mean they are safe. Deadly assaults have befallen many a prisoner while in jail. These may be carried out by fellow inmates. They could also be the actions of corrupt jail personnel. It could be retaliatory for the crime for which they are accused or it may be for past conduct of which the authorities are unaware.

OFFICER MISCONDUCT



This category is alleged more often than any other. This category includes officers beating, torturing, or in some way physically abusing a prisoner in their custody. This does not include justifiable force used to affect an arrest or to control a combative prisoner. This is when the officer abuses the prisoner using physical force when the prisoner is compliant and non-combative. This also involves officers who intentionally use deadly force on a suspect already in custody when they know it is not justified. If an officer refuses medical aid to a suspect who is in obvious distress it would fit in this category. Basically this category is when an officer, either through his actions or inactions, and with malice, causes the death of a prisoner. It also causes the biggest black eye for the agency involved and law enforcement as a whole.

EXCITED DELIRIUM



This is a state of hyper-psychological activity that has been found to be present in otherwise unexplained in-custody deaths (Conner, 2006). It is also referred to in some circles as “Sudden In-Custody Death Syndrome” (Robinson, 2005). It is characterized by increased body temperature in association with a great deal of sweating (sometimes the other extreme is present), increased heart rate and hypertension, increase tolerance of pain, aggressive and apparent psychotic behavior (PoliceOne.com). Having been a street officer for seventeen years and a Drug Recognition Expert for twelve years, it does seem to mimic the signs of PCP use. In fact the use of PCP, Cocaine and Methamphetamine have been seen as precursors or contributing factors to these episodes (Peters, 2006). So are certain mental disorders such as paranoia and by-polar disorder.

Police usually receive a call to the subject who is exhibiting extremely unusual behavior. The person may be nude or partially clothed, sweating profusely and in an agitated state. These usually culminate in the officer being forced to use some measure of force to bring the situation under control. The officer will then notice the suspect slipping into a sudden relaxed state with the officer then noticing that the suspect is not responsive and in cardiopulmonary arrest. Even with prompt emergency medical treatment, the suspect rarely recovers. Leaving the officers and the community asking questions about what happened and why. (Benner, 1996)

The exact cause of this phenomena is unknown at this time. There is even disagreement over whether the phenomena even exist. It is not yet an official diagnosis for a disease, a disorder or a cause of death; however, some medical examiners and coroners have recognized the symptoms and are accepting it as a legitimate if unexplainable cause in some deaths. (Peters, 2006)

Investigating In-Custody Deaths

While prisons have had policies governing this issue, many municipal, county and state law enforcement agencies have none. I believe that it is very important for an agency to address this issue before it occurs. As I said before, I have been involved in three instances where a suspect died in police custody. My department has just recently developed a policy concerning how in-custody deaths are to be investigated. The first two were handled without any guidelines of departmental policy. The third was after the policy had been written. Even so, there was still some confusion as to who had to be called to investigate and what other notifications had to be made.

But, why have investigations at all? Are there not instances where the cause of death is obvious and no investigation needed? Why do we need to waist precious resources to investigate the death of a criminal when his death is not going to affect anyone in any way?

Jails are populated by those who are accused of committing crimes. Some of these crimes are very serious in nature. Contrary to what these same inmates claim, many of them are in fact guilty of their crimes. It stands to reason that just because the inmates are in jail their criminal ways may not cease. It is not unheard of for one inmate to decide that he would be better off if another inmate's heart were to stop beating.

This country was founded by men who had a healthy distrust of government. The police, being an arm of the government, have naturally suffered from this ingrained distrust. Whether this distrust is misguided or not is a topic for another paper. For our

purposes, the distrust is a fact of life and a department's administration needs to keep it in mind when developing policy.

It is essential for a department to retain the confidence of its citizens. Particularly when those citizens are predisposed to be very suspicious of the police department and its administration. The police department is a unique entity in that it investigates itself in administrative cases as well as those involving criminal activity. For this reason, departments should take care to ensure that any in-custody death is investigated thoroughly. This will help to retain that public trust.

Consequently, based upon my experience, I believe that any death which occurs while that person is in the custody of a police department should be investigated. I believe that this investigation should be conducted in two parts. One should be the criminal side of the investigation. The other side should be administrative.

This should not, however, be a witch hunt. The investigation should be specific in its scope. This type of bifurcated investigation protects the rights of the officer(s) involved, the agency administration and the appropriate city or county government and ensures that the criminal investigation is not compromised. It also shows the citizenry that the department is serious in investigating its officers' actions and making sure that its officers are conducting themselves in a manner that brings credit to the department and thus the community as a whole.

The criminal investigation should start as soon as the death is discovered. In most instances this will involve an investigator either tasked from that department or from an outside agency with which the department has a mutual aid agreement. Some departments who are not large enough to have full time investigators have brought in assistance from their state police agency or investigative bureau. This actually can have a two fold positive effect. One that there is less allegation of a cover-up. Two, it increases the public trust that the original agency is doing all it can to find out the truth. Suicides should be treated as homicides until the evidence clearly shows the death was a suicide.

The scene should be treated just like any homicide scene with restricted access and the orderly and systematic collection of forensic evidence (Peters, 2006). This may require the relocation of several inmates who had shared a cell with the deceased. Any

act or omission that might raise the ugly head of cover-up allegations should be avoided. All witnesses and officers involved should be interviewed.

In the case of a traffic accident, the services of an accident reconstructionist should be called upon to conduct or assist in the investigation. If he were to find that a criminal act, as apposed to a traffic offense, was the cause of the crash, the reconstructionist would then notify a criminal investigator. Otherwise, the reconstructionist would be all that was necessary to complete the investigation.

Even in the case of a natural disaster, a complete investigation needs to be conducted to insure that the death was not the result of an opportunistic foe taking advantage of the confusion of the situation. While this investigation may not be exhaustive it would be required to insure the family and public that no foul play was involved.

While prisons may not investigate natural deaths the way they would an unexpected death, this state's prison system still sends the body of the deceased to the state medical examiner for autopsy to ensure that no previously undiscovered crime was involved. This is a good example for agencies which have their own jails. Any inmate who dies of apparent natural causes should be investigated until foul play is ruled out. Persons who have well documented medical conditions that are terminal in nature and have reached the time when death is eminent are not going to stay in a jail awaiting adjudication on some criminal charge. They will be released and sent to a hospital or residence for hospice care.

Most of all, I believe it is the job of the criminal investigation to clear innocent officers of any wrong doing in the incident and to discover those officers who may be culpable to a crime.

The administrative investigation has several different purposes. The first is to determine if the officers involved violated any departmental policies. If the officers did violate policy, then what was the nature of the violation? Is it a violation that has no bearing on the death but that needs to be addressed? Or, is it a violation that shows the officer was negligent in his duties and who's continued employment needs to be re-evaluated? Even though an officer may not be guilty of any criminal offense, he may be

found to have violated departmental policy so egregiously that it merits severe discipline or termination.

The administrative investigation should also look at the adequacy of departmental policy. This will help to determine if a policy change might prevent this same kind of death in the future. Training of the employees should also be a part of this investigation. This can help in developing training for officers that might let them recognize certain symptoms of medical conditions and react accordingly, possibly saving a life instead of unintentionally taking it. It is not reasonable to expect officers to be trained as emergency room doctors or psychologist. Officers do have to change as new methods are deployed and new information disseminated. Two decades ago officers began to receive information about the similarities between alcoholic aggressiveness and diabetic reactions (Peters, 2006). This has saved many lives and prevented the arrest of innocent individuals who were in desperate need of medical attention. So to will be the police response to excited delirium one day and administrative investigations will play a big part in figuring out this medical and/or psychological riddle.

Legally these two different investigations cannot compliment each other. That is the criminal investigator cannot use information gathered by the administrative investigator for the criminal case. Particularly if the officer is a suspect in the death. This is referred to as the Garrity Protections. This is not the hindrance that it might seem at first. In this manner, the agency can say that two separate investigations were conducted and this is what was found. This can go a long way to showing the public that the agency is serious about investigating its own and that two separate investigations came to the same conclusion.

These investigations aid in retaining public support for the department. Particularly when the public sees the department doing this as an avenue of improving its service to the community. This is what all departments should be striving to accomplish. And, again, it is the job of the investigation to clear innocent officers of any wrongdoing.

CONCLUSION

I have identified six main categories of in-custody deaths: Officer Negligence, Offender Actions, Third Party Actions, Accidental, Officer Misconduct and Excited Delirium. I believe that these broad categories cover all instances of in-custody death. Inside each category there are several different “sub-categories”. In some instances the number of these really are subject only to a person’s imagination of how to commit the act.

If an agency does not have a published written policy concerning how such instances are to be investigated, it opens the agency up to public criticism and possible civil liability. An agency should have a policy that details how an in-custody death is to be investigated. It should detail who is going to do the investigation and what notifications have to be made and who is responsible for making them. The policy should be specific enough that it takes into account the different variables of the six categories mentioned above. But, it should also be broad enough with the knowledge that very few incidents go by the book. It should give the responsible supervisors some flexibility to adjust their response as the situation dictates.

I have suggested a bifurcated investigation to all in-custody deaths. The first being the criminal investigation. The second being the administrative investigation. Legally these investigations cannot compliment each other. The whole purpose of these investigations is to find out what happened, who is responsible (if anybody), what can be done to prevent it in the future and to retain the public trust. Without the trust and support of its citizens no police agency can function.

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