

In Memory of

James Jim Fyfe

Champion of police best practices, academic colleague, Deputy
Commissioner New York City Police Department, and always a
friend.

Silver (2005) states:

The duty to protect arrestees and jailees from harm and to provide reasonable medical care is premised partially on the notion that the government is responsible for these individuals because it has deprived them of the ability to look after themselves. Silv

However, in such instances, an examination of the post incident reports should conclude the officers failed to follow the best practices, and those failures were the cause of the harm suffered by the prisoner and/or officer. Unfortunately this is unlikely because law enforcement agencies have not viewed custody as a system of activities and events. The reality is that it is highly likely the officers' conduct will not be measured against any standard that considers custody systemically. As a result, the officers' conduct will be excused, the harm suffered by the officer and/or prisoner will be attributed to the prisoner, and police policies, procedures, practices, and training will go unchallenged and unchanged.

Police custody is not a single event but rather many continuous activities conducted by numerous officers over a period of time. Therefore, custody must be considered as a whole rather than as discrete activities. In order for officers to be properly guided and trained in the complexities of custody as a system, policymakers must provide officers with a unified custody policy. Officers should not rely on segmented, discrete policies for effective guidance. For this paper, custody shall be defined as a system of continuing, interrelated, and interacting behaviors, activities, and events contributing to the safety and well-being of both prisoners and the officers

including internal affairs, collective bargaining agreement, discipline, retirement, criminal prosecution of officers, widows and survivors benefits, and others. Of course, the potential for civil litigation is omnipresent.

Unfortunately, many agencies do not provide officers with such guidance and/or training. Also, it is known that arrestees and officers are seriously injured and prisoners, more often than officers, die while in police custody. Under these circumstances, it appears the primary reason for officer and prisoner injuries/deaths is the lack of directives and/or training which results in the officers' lack of understanding of complex custody interactions.

The Challenge

Clearly, law enforcement officers must manage these many activities and events as a complex system. Managing a prisoner in custody requires physical control of the prisoner for the mutual protection of the prisoner and the officer. However, of equal importance is the maintenance of a continuous and accumulative written record of relevant information that accompanies the prisoner and is reviewed by each officer during each successive activity and event while the prisoner is in custody.

The challenge for police policymakers is to develop and provide officers with unified custody policy and procedures and corresponding comprehensive training and education to ensure officers and supervisors understand the many procedural ramifications. This unified policy must recognize custody as a complex system and at the same time present it as simply as possible.

Law enforcement Best Practices must address prisoner custody as two primary custodial elements which, for simplicity and at the expense of being dehumanizing, shall be called packages. Package One is the physical prisoner. Package Two is the relevant information presented as a continuous written record that must accompany the prisoner during custody.

Best Practices

The basic premise of Best Practice has nearly a one hundred year history. The notion of Best Practice was first presented in Principles of Scientific Management by Frederick Taylor in 1919 and became known as the one best way (Kanigel, R., 1997, The One Best Way: Frederick Winslow Taylor and the Enigma of Efficiency. New York: Penguin Books.)

Best Practice is a management idea which asserts that there is a technique, method, process, activity, incentive or reward that is more effective at delivering a particular

view of custody brings to the front problems that aggressively must be solved by law enforcement policymakers.

The standard to test or challenge custody Best Practices is whether the alternative increases the likelihood of risks to prisoners and/or officers and/or decreases their well-being, safety, and security. Of course, alternatives also must be lawful and ethical.

It is understood that the basic premise and obligation for law enforcement officers during all of these activities and

activities, events, and information requirements. The author has no evidence that any law enforcement agency has a directive that addresses custody activities, events, and information as a system.

This administrative failure means prisoners and officers alike, are likely to be exposed to dangerous custody situations created by officers who are left to their own common sense devices. Of course, common sense often is not in the best interest of prisoner and/or officer safety. Officers should not be expected to use common sense approaches to manage the complex and critical dimensions of prisoner custody situations. Likewise, officers should not be expected to comprehend custody as a complex system. If the law enforcement policymakers have not done so, why should individual officers be expected to do so?

Summary of Common Custody Physical Activities and Events from Arrest to Jail/Lockup Release: (Prisoner--Package One)

1. Force used to make arrest (OC, TASER, sustained struggle, positional compression, baton strikes, K-9, firearm, others);
2. The moment of arrest/restraint/handcuffed;
3. Physical movement to the transport vehicle, walk/escort, mobile transportation to a hospital,

lock-up, jail, court, or other facility;

4. Transportation by car or wagon;

5. Physical movement from mobile transport vehicle to lockup/jail cell or other facility;

6. Processing (intake, booking, property, medical treatment, court, and other activities out of lock-up/cell);

7. Isolation/Placement into cell;

8. Control/supervision while in cell;

9. Physical movement out of cell to mobile transportation or release from custody.

At first blush these activities may appear to be simple and capable of being accomplished by mere common sense. However, over many years, law enforcement agencies, researchers, academics, and professional organizations have made numerous recommendations regarding prisoner custody and officer safety that have influenced police policies and training. As a result, Best Practices have evolved and include the following to accomplish the previously listed activities and events.

Summary Outline of Generally Accepted Best Practices of Physical Control of Prisoner and Officer for Security and Safety

includes: (Prisoner--Package One)

1. Handcuff from behind and double lock handcuffs;

2. Pat-down for weapons/contraband;

3. Walk/stay behind and to the side of prisoner to limit risk of officer being kicked or lounged at;
4. Touch/hold prisoner while walking to prevent falling/escape;
5. Match/use equipment to prisoner needs (physical disability, pregnant, leg shackle chain to be longer than height of highest step, etc.);
6. Restrain with seatbelts in rear of car or wagon during transportation;
7. Separate officer from prisoner with barrier (car cage, cell bars/wall/doors);
8. Search transport vehicle and cell/holding area for weapons and contraband;
9. Officer must manage and control ingress and egress at all doors (violators car, police car, residence, wagon, sally port, cell, etc.);
10. Remove and/or apply handcuffs from behind prisoner while being separated by a barrier (prisoner not facing officer);
11. Collect, report, and secure all property;
12. Never leave prisoner alone/unattended;
13. Maintain control and security of all prisoner and officers' weapons;

14. Do not enter any enclosed area alone with prisoner (rear car seat, wagon, cell);

15. Maintain one-on-one ratio of officers to prisoners on the street and at lockup;

16. Verify prisoner identity before removing him/her from cell;

17. Review all prior documentation regarding prisoner;

18. Maintain current written record;

19. Others.

The issue of information and reporting requirements, to provide all officers who have a responsibility for the custody and safety of prisoners and attendant officers with a continuous record of custody, is complex, problematic, but necessary and critically important for officer and prisoner safety.

Summary of Common Information Requirements from Arrest to

Jail/Lockup Release: (Package Two)

1. Crime for which prisoner has been arrested?
2. Has prisoner threatened officers?
3. Has prisoner threatened harm to self?
4. Is prisoner injured?
5. Is prisoner physically disabled?
6. Is prisoner diabetic, epileptic, pregnant, other?
7. Does prisoner wear a prosthetic?

8. Does prisoner take any medication?
9. What is the medication?
10. Is prisoner under a doctor's care?
11. Does prisoner have any Med-Alert type identifiers?
12. Is prisoner responsible for any unattended children, dependant, or sick people?
13. Describe prisoner's on-going/changing behavior?
14. What information can witnesses/neighbors provide about the prisoner?
15. What is the prisoner's mood/behavior?
16. Is prisoner, based on police training, exhibiting signs or symptoms of mental illness or emotional disturbance?
17. Prisoner is released to whom?
18. Others.

At the expense of being repetitious, law enforcement Best Practices must address prisoner custody as two primary custodial elements. Package One is the physical prisoner. Package Two is the relevant information presented as a continuous/y written record that must accompany the prisoner during custody. The physical and informational dimensions of police custody must not be and cannot be neatly separated and discrete. Physical custody and custody information are integrated and interactive, as presented below.

A Unified Custody Policy-Integrating Physical Activities,
Events, and In 9grpTrTJer a System of Custody Best Practices :

A Summary Narrative

A unified custody policy must address, at a minimum, the following topics and reflect the complex interactions inherent to custody. In turn officers must be educated and trained so they understand custody er a system. They must no longer view custody er arrest or transportpTrTJor 9gce or restraint.

Rather, officers must view custody er arrest, transportpTrTJ 9gce restraint, er an example. Simply, systemr are really ebout understanding . EducatrTJ training are most importpnt 3Gu*1Am[(and)] TJETBT/.67 4

prisoner is grossly obese, contaminated excessively with body fluids, violent, or any other reason that seatbelt/restraint cannot be accomplished, the prisoner will not be transported in a police vehicle. Medical transport will be arranged and the prisoner transported to a medical facility.

. Determine visually if prisoner is physically injured, intoxicated, able to understand and respond coherently. Determine visually if he has a Med-Alert type necklace or bracelet. Ask prisoner if he is injured. Ask if he takes any medication from a doctor (prescription). Ask same questions of others who may know prisoner.

Record

prisoner's initial mood at time of arrest and any changes in behavior/mood during custody. For example, changes in mood from anger to happy to sad, to crying, to silence can be important indicators of potential suicide later in police lockup and/or jail. Lockup and jail officers should be provided this information. Likewise, behavior may indicate an illness such as diabetes or seizure as the prisoner does not respond coherently.

The presence of alcohol can mask serious physical and mental conditions.

The officer must consider all facts present. Any prisoner being non-responsive to questions, unconscious, bleeding, exhibiting symptoms of mental illness or other illness, extreme alcohol or drug intoxication, display of Med-Alert type identification, who talks about suicide, or states he is sick or requests medical care.

. Inform police dispatch with prisoner name, location, odometer reading, and destination. If prisoner is of the opposite sex of driving police officer, interior vehicle lights should be illuminated so police/prisoner activities can be better observed from the outside. Interior lights should not be illuminated if officer has reasonable information someone is likely to use a firearm to shoot the officer or prisoner.

Ask prisoner, witnesses and neighbors about prisoner health and medications. This is especially true if prisoner appears to be intoxicated or otherwise non-responsive to officer's questions. Alcohol, for example, can mask other serious medical conditions.

A police officer on the street should never enter or reach into an occupied vehicle. An officer, likewise, should never enter an occupied cell alone. When a prisoner is entering any lock-up, holding/detention/jail cell or room the control of the door/locks and keys are critical and the responsibility of the officer(s). It is always better to have two officers present at the cell, one to control the prisoner and the other to control the door. If no sally port search was conducted, when the prisoner is in the cell/holding area, conduct search for weapons, contraband etc. This area should be free of office equipment, tools, and articles that could be used as a weapon or for self-destruction. Adjoining office and other doors should be closed and locked. If the prisoner is going to be unhandcuffed in the cell, his belt, shoelaces, and other items in his possession that could be used as a weapon or for self-destruction should be removed and recorded as property. Prisoners should not be handcuffed for excessively long periods of time, due to the potential for injuries to wrists and shoulders.

An officer should open the cell door and have the prisoners enter the cell handcuffed. The door should be closed and locked and the prisoner, if he is to be unhandcuffed, should be asked to back up against the cell bars and the officer unlock and

remove them while the officer is safely outside the cell. When the cell or room does not have bars or a grill to allow for the above described unhandcuffing technique, the cell door should be opened with the prisoner slightly inside the cell facing the rear of the cell and handcuffs removed. An officer should enter the cell alone, but stand behind the prisoner, in a position when the officer can better withdraw from the doorway and close the door rapidly should the prisoner become agitated, non-compliant, or aggressive.

Preferably, non-violent prisoners should not be celled alone allowing other prisoners to observe one another. Prisoners should be observed continuously by closed circuit television (CCTV) and every 30 minutes by an officer's personal visual observation. This allows the officer present to use his senses to better hear, see, or smell anything that would indicate the prisoner is in distress or in some way threatening himself, others, or the facility.

Just as officers on the street direct suspects to turnaround, kneel/get down, etc., prisoners in custody should be given appropriate directions to enhance officer and prisoner safety. Directing the prisoner come to the door, turn around, and back out the cell doorway, is safer than having the officer enter the cell and escort the prisoner out.

. Prisoners in single and multiple occupancy cells present unique issues. But certain practices are common. Officer control of the cell door is both critical and obvious. The officer controlling the cell door or the officer nearest the prisoners must not be armed. The officer should verbally identify the prisoner to be moved, by name and/or seat location, if in a multi-prisoner cell and have that prisoner stand. All other prisoners should remain seated. The officer should not open the door until he visually observes the prisoner and determines the prisoners handcuffs are in place, he is not holding anything in his hands, and not injured, bleeding, or has visible body fluids on his clothing or in the cell. The officer should remain outside the cell and observe the prisoner by having the prisoner turn 360 degrees. When satisfied the prisoner is prepared to be moved out of the cell the prisoner should be instructed to move toward the door. Before the officer opens the cell door the prisoner should be instructed to turn around, back to the cell door/officer. The officer may now open the door and escort the prisoner out backward by holding him and controlling the cell door. This technique reduces the likelihood the prisoner will lunge or kick, since the prisoner's back is toward the officer. Likewise, by holding the prisoner

the officer increases direct physical control and reduces the likelihood the prisoner will fall.

. More than one officer is required and appropriate weapons (OC, TASER, Baton, others) may be required, as appropriate. Restraint chairs and security/restraints blankets must be used consistent with policies and prisoner must never be left unattended. Supervisors must be summoned at any sign of distress and evaluated, as trained, for transportation to medical assistance.

An officer may be permitted to enter a cell alone only if the cell is occupied by one prisoner and that prisoner is in medical distress, i.e., hanging or other situation where the officer is trained and equipped to take immediate action in an attempt to save the prisoner's life or prevent further injury.

(See above.)

Because custody is a system of interrelated activities the death or serious injury of a prisoner/officer must be subject to IA investigation. Even when a death or injury occurs in a facility not controlled by the arresting officer's agency, ex. local police prisoner dies in sheriff's jail, the death must be subject to an IA investigation by the police agency making that prisoner's arrest and commitment to the jail, and another IAI by the department responsible for the management of the lockup/jail. This is essential to determine whether any actions or inactions by the arresting and/or transporting officers contributed to the death or injury in the sheriff's jail. This usually relates to the quality/absence of the information package the police provide jail staff and the jail staff's response to the police information.

. From the moment the officer comes into contact with the subject on the street until the subject is released hours or days later from jail, that subject and often numerous officers and agencies are involved with the custody of the subject/prisoner in a variety of ways. These activities and interactions must follow Best Practices including critical information recorded and transmitted/passed appropriately.

Lockup/Jail intake officers must have all relevant

Continuous Information: Meeting the Challenge

Officers must not only be trained; they must be educated to understand custody issues that range from the very obvious to the very subtle. This understanding will better enable officers to detect, record, and transmit essential custody related information. Likewise, this understanding will better motivate officers to consider carefully what officers reported previously during a prisoner's custody.

It is proposed that law enforcement agencies develop a Continuous Custody Chart (3C) in which, all officers are competently trained and educated. (Yes, another piece of paper or computer template.) The 3C should reflect the essence of the agency's unified custody policy, in which the officers have been trained and educated. The 3C should serve the officers just as the pre-flight check sheet/card serves pilots. It should reflect the physical and information Best Practices that leave little to officer memory. The 3C is not a ritual but rather a means to get results as measured by reduced risk of injury and death to officers and prisoners, alike. Likewise, the 3C or any checklist will not be the end product. It is only a means to remind officers of the many custody factors they have learned during their training and education.

The 3C is not meant to demean officers in any way. It is meant to assist officers. Military and commercial pilots who

are educated and well-trained are provided printed pre-flight and pre-landing check sheets/cards to systematically check all procedures, operations, and systems. This process reflects aviation's best practice and leaves lit M

and track internal affairs investigations and command reviews; and performance appraisals, as examples. But no unified protocol is available to assist officers manage the unique and most critical aspect of law enforcement in a free society—protecting prisoners and officers during police custody. As a result, individual officers are left to their own devices and to their individual memory as to what the many police policies require of them as they navigate through the complex waters of protecting and serving persons in police custody and at the same time protecting themselves.

Each officer at every moment while a prisoner is in custody must physically protect the prisoner. However, in order to do this effectively officers must be aware of all prior activities and events relevant to the prisoner. This continuous information is critical for constantly evaluating potential and changing risks to officers and prisoners. Likewise, this information must be in a form that is readily available and easily passed to and reviewed by each officer having custody and control of the prisoner. This is crucial for officer and prisoner safety and well-being during the total custody experience.

It is submitted that the foundation for prisoner and officer safety and well-being throughout a prisoner's custody is effective communications of relevant information. Because

systemic communications is more complex than common sense can accommodate, police must develop a formal model that best assures prisoner and officer safety. Simply, what an arresting officer knows on the street or should know about a person being arrested has important implications about the prisoner's and officer's safety and well-being hours or days later while in custody and under the supervision and control of officers other than the arresting officer(s).

All of the practices, techniques, processes, and methods offered in a Continuous Custody Chart may or may not be found in a criminal justice agency's existing policies, procedures, and training. Nevertheless, what a Continuous Custody Chart will do is compile them into a system of custody Best Practices. A Continuous Custody Chart satisfies the requirements of Best Practice, i.e., it leads to exceptional protection of prisoners and officers; and police organizations and experts recognize prisoner and officer safety, security, and well-being as universal goals and outcomes of prisoner custody.

Training and Education

Law enforcement must continue its struggle from that of a technical craft to becoming a well-educated and highly trained profession. In a complex police organization, training is the organizational function that translates policies to practice.

However, because police officer selection, education, intelligence, attitudes, values, and beliefs are so variable, police training, as well, is variable. Also, it is recognized that some officers are marginally trainable. One training approach, albeit undesirable, is for police trainers to teach-to-test, i.e., the instruction focuses on having the student officer know the answers to tests, rather than having the student officer thoroughly understand the concepts. It is for these and other reasons that police training, whether organizational or centralized statewide, must be viewed with a critical eye. The mere exposure to training courses and materials does not mean the officers learned the meaning of the content information. Likewise, the failure to learn means the officers do not understand the information. These training deficiencies can have serious consequences for officers' lives and careers and deadly for those in police custody.

Information--Package Two will require more than technical police training which instructs officers to do things. Package Two will require officers to understand it is done. This is a fundamental difference between training and education and it is a reason for providing a Continuous Custody Chart, in some form, and having policy makers, supervisors, trainers, and officers understand the

Without understanding custody activities are done and custody information necessary, the likelihood of officers having the knowledge base to appreciate physical and information custody problems is unlikely. Expecting officers to conduct an analysis and formulate a reasonable Best Practice solution to a custody problem is even more remote. Management must accept the responsibility and make the time and invest the resources to provide officers and citizens in police custody with the Best Practices. It is education training that better fosters critical thinking and problem-solving on the streets and in police executive suites.

Conclusion

Herman Goldstein, and later others have advanced the idea of problem solving and problem-oriented policing in the context of community policing. Although the term problem solving has been interpreted various ways, generally it has focused on the external problems associated with crime in the community. It is argued here that the complex problems associated with police custody must be resolved internally using the same problem solving methods advanced in community policing. Essential to both is the identification of necessary information and treating it systemically. In this way Best Practices can be discovered, articulated, implemented, and tested.

Police failure to properly control and manage a prisoner and provide relevant information during custody can create a situation requiring the use of force. As a result, should a prisoner become injured or die while in police custody; police policies, practices, and procedures will most likely be carefully scrutinized and rightly so. Using Best Practices as the standard of analysis, four fundamental questions come to the surface:

1. Did the police use superior practices, techniques, methods, or processes that optimized the officers' ability to manage and control the physical environment and provide the officer with the physical and psychological advantage to improve the protection, safety, security, and well-being of the person in

to the level of deliberate indifference and open the door to federal civil rights actions?

4. Should agency Best Practices be considered as conditions of work or considered as safety, health, and welfare issues in collective bargaining?