

**COMMUNITY CALL FOR TRUTH & JUSTICE IN PATTERNS & PRACTICES
WITHIN THE GREENSBORO, NC POLICE DEPARTMENT
c/o Beloved Community Center
Post Office Box 875 • Greensboro, NC 27402 • 336-230-0001**

September 2, 2021

Steven Rosenbaum
Chief, Special Litigation Section
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

*Delivered via USPO Certified Mail and E-mail at
Steven.Rosenbaum@usdoj.gov*

Dear Mr. Rosenbaum:

We write pursuant to 42 U.S.C. § 14141, to urge the Special Litigation Section of the United States Department of Justice to open a pattern and practice investigation into racially and sexually discriminatory policing by the Greensboro, North Carolina Police Department (GPD), as well as into its grossly inadequate supervision, discipline, and training with regard to police brutality and other misconduct.

The Marcus Smith Case

Marcus Deon Smith was a 38-year-old Black man, who was suffering from a mental health crisis and was pleading to be taken to the hospital, but was instead fatally hogtied by eight white Greensboro police officers, two of whom were supervisors who refused to intervene to stop the brutal process. A video of the hogtying can be seen at:

https://greensboro.com/video/news/greensboro-releases-compilation-of-body-cam-videos-from-arrest-of-marcus-deon-smith-in-september/video_05acd51e-4a0d-58f4-a819-658116be04db.html

The GPD and the City of Greensboro then embarked on a cover-up that continues to this day. The Chief of Police at that time, after reviewing the police body cam videos, issued two successive press releases in which he and his department omitted the crucial operative fact - - - that Marcus was hogtied - - - while falsely asserting that he “collapsed” while in police custody. They maintained this fiction until, three months later, the North Carolina Medical Examiner publicly announced that Marcus’ death was a homicide with the leading cause being prone restraint.

The GPD then conducted an internal “investigation,” publicly exonerated the officers before its “investigation” was complete, and followed with a report that failed to probe either the obvious failures in training, supervision, or whether there was a practice and custom of similar unconstitutional hogtyings, while formally absolving all

of the officers. After Black and white ministers, along with numerous community organizations, called for an independent investigation, the Greensboro City Council, in April of 2019, agreed to consider doing so, only to indefinitely table it two weeks later after the Smith family filed a 42 U.S.C. § 1983 lawsuit alleging excessive force and municipal liability. Two years later, in April of 2021, City Councilwoman Michelle Kennedy again called for an independent investigation, this time not only into the Smith case, but also into other police interactions with minorities and how department policies have contributed to a climate of “fear and distrust.” The Council again agreed to consider an independent investigation, only to decide in June, in a closed meeting that violated the North Carolina Open Meetings Act, not to pursue such a probe.

Evidence Uncovered in the Smith Civil Case

During the intensive discovery period in the Smith civil case, a wealth of pattern and practice evidence has been disgorged from the GPD that graphically demonstrates that the GPD’s internal disciplinary system unfailingly exonerates police officers who are accused of committing misconduct; that their supervisors encourage, rather than intervene to stop, the unnecessary use of force; that their reporting system is similarly deficient; that there is no effective mechanism in place to identify repeater cops or patterns and practices of misconduct; that GPD training, both in the academy and on the job, does not mitigate racially motivated police misconduct; and that there is no effective procedure for disciplining or removing the Chief of Police when he commits on the job misconduct such as former Chief Wayne Scott did when he issued false and misleading press releases in the Smith case. All of these deficiencies were demonstrated in relation to the decades long pattern and practice of unconstitutionally hogtying of untold hundreds of disproportionately Black, Greensboro Citizens.

The Widespread Pattern and Practice of Racially and Sexually Discriminatory Hogtying

In 1995, the U.S. Department of Justice called for the banning of hogtying, and the RIPP Hobble company prominently displayed a DO NOT HOGTIE disclaimer on the RIPP Hobbles supplied to all GPD officers, but the GPD ignored these admonitions, and hogtying, for which the GPD used the euphemism “maximum restraint,” became a routine method of subduing persons in custody for the next 25 years. The GPD did not consider hogtying to be a use of force, so no reporting was required.

The Smith family sought to discover evidence about the incidents of hogtying for the four years prior to Marcus’ death, but were met with unremitting resistance from the GPD and its lawyers. After many months of litigation and several Court orders, the City, on July 16, 2021, turned over the Body Worn Camera (BWC) footage for 50 hogtying incidents that directly preceded the fatal hogtying of Marcus Smith. The Smith legal team’s analysis of the footage, which covered the approximately 9-month period from December of 2018 to September of 2019, and four years of police reports, revealed a pattern and practice of racially and sexually discriminatory hogtying, often accompanied by the use of excessive force, which the Smith lawyers, after viewing the footage, summarized as follows:

- Of the 50 incidents produced, 38 of the victims (76%) were Black, and 39 (78%) were of color;
- Additionally, the vast majority of the hogtiers (84%) were white, 24 of the victims (48%) were women, and all of these women were hogtied either by all male officers (58%) or by a crew of majority white officers (42%);
- Analysis of the incident reports from 2014 to September of 2018 where “maximum restraint” was mentioned, showed 275 incidents, with 68% of the victims being Black, and 17% suffering from a mental health crisis;
- Several of the eight officers who participated in the hogtying of Marcus Smith, and the supervising sergeant and corporal, were repeat hogtiers, with one having 16 prior hogtie complaints.

The individual incidents also revealed the racially and sexually-discriminatory use of life endangering excessive force:

- A Black woman hogtied by a Defendant with her legs at less than 90 degrees from her body, left prone on the ground for more than five minutes, with her breasts exposed, yelling and screaming in pain, outrage and humiliation;
- Other persons expressing pain with seven other victims also saying they could not breathe;
- Indifference and verbal abuse by the Defendant hogtiers to the pain and suffering of the victims;
- Numerous examples of persons with their legs bent at an angle of less than 90 degrees from their back, including during an incident only hours before Marcus Smith was hogtied;
- The tightening of the RIPP Hobble beyond the 90-degree angle despite being told by a fellow officer not to do so;
- An officer complaining that they don’t make the RIPP Hobbles like they used to, and that the new ones hurt more;
- An officer responding to an older Black woman peacefully asking for her lawyer by hogtying her while she screamed out in pain;
- An officer, while hogtying a Black victim without apparent cause, saying that he ends up Ripp Hobbling people all the time for “some reason;”
- A veteran officer saying that “just about every time” he’s had to use a RIPP Hobble, he’s had to go back and get a new one “because it’s covered in blood;”

- On one occasion, an officer has his knee on the neck of a pregnant Black female victim, similar to how George Floyd was fatally restrained, for more than 2 minutes while she is being hogtied; she is prone, hogtied, and crying out that she can't breathe;
- An elderly woman suffering from dementia was Ripp Hobbled while she repeatedly complained that the officers were hurting her arms. She is crying while on the ground, facedown, with her dress up throughout the Ripp Hobbling;
- Officers put pressure on the head, back, and/or buttocks of the victims on numerous occasions while hogtying, and pushed a victim's face into the ground;
- Victims were left in a prone position after hogtying on numerous occasions;
- Several hogtied victims were placed face down in a squad car.

It is also significant to note that Greensboro Assistant City Manager (and former GPD Commander) Nathaniel "Trey" Davis recently admitted that there was "some" racial "disproportionality," as to who was hogtied, while former Chief Scott admitted to supervising between 125 and 200 hogtyings, and current Chief Brian James, who was the command supervisor of the officers who hogtied Marcus Smith, approved the report that exonerated those officers.

Evidence of Other Examples of a Pattern and Practice Racially Discriminatory Policing

During the decade that preceded the Smith homicide, there is additional evidence that further establishes a pattern and practice of racist policing, including a significant number of police brutality allegations for which the offending officers were not disciplined; a scandal implicating former Chief Wray that led to a lawsuit by numerous Black officers against the GPD for discriminatory retaliation, and in 2015, the revelation, in a *New York Times* study, that

[GPD] officers pulled over African-American drivers for traffic violations at a rate far out of proportion with their share of the local driving population. They used their discretion to search black drivers or their cars more than twice as often as white motorists — even though they found drugs and weapons significantly more often when the driver was white."

____ "The Disproportionate Risks of
Driving While Black," *New York Times*,
October 24, 2015.

The evidence of racially and sexually discriminatory policing by the GPD over the past decade is abundantly clear and now available - - - including in the use of force, in stops and arrests, and in brutal hogtying. As clear is the woefully inadequate discipline, supervision and training in these extremely significant areas. The City of Greensboro and its police department has shown that it will not initiate an independent

investigation, has fought to keep the pattern and practice evidence of hogtying secret, and, at the highest levels of the City and the GPD, engaged in denial and cover-up. We therefore call on the Department of Justice to open a 42 U.S.C. §14141 investigation into the ongoing patterns and practices of racially and sexually discriminatory policing by the Greensboro, North Carolina Police Department, as well as into its grossly inadequate supervision, discipline, and training with regard to police brutality and other misconduct.

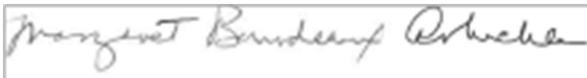
Sincerely yours,



Carolyn Allen, Former Greensboro Mayor, 1993-1999



Rev. W. Steven Allen, Sr., President, Pulpit Forum of Greensboro & Vicinity and Pastor, Shiloh Baptist Church



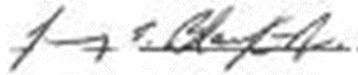
Margaret Bourdeaux Arbuckle, Former Guilford County Commissioner and Elder, First Presbyterian Church



Bishop William J. Barber, II, President, Repairers of the Breach and Co-Chair, Poor Peoples' Campaign



Ingram R. Bell, Community Organizer



Gene Blackmon, President, Prestige Barber College



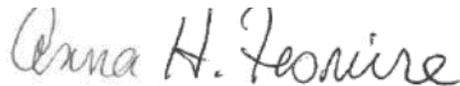
Rev. Cardes H. Brown, Pastor, New Light Missionary Baptist Church and Former President, Pulpit Forum



Rev. Lisa Caldwell, Pastor, St. Phillips AME Zion Church and Former President, Pulpit Forum



Rev. Frank Dew, Peace & Justice Advocate, Salem Presbytery



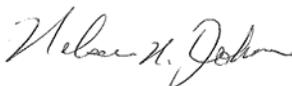
Anna H. Fesmire, Concerned Citizen



Rev. Gregory T. Headen, Pastor Emeritus, Genesis Baptist Church and Former President, Pulpit Forum



Rev. C. Bradley Hunt, President, Greensboro NAACP



Rev. Nelson N. Johnson, Co-Executive Director, Beloved Community Center and Former President, Pulpit Forum



Rev. Randall Keeney, Vicar, St. Barnabas Episcopal Church



Gary Kenton, Concerned Citizen



Rev. Julie Peebles, Pastor, Congregational United Church of Christ



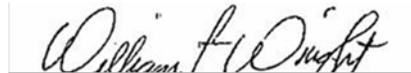
Hester Petty, Greensboro Justice Coalition



Lewis Pitts, Retired Civil Rights Attorney



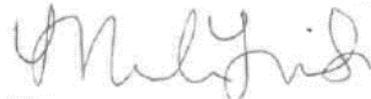
Casey Merie Thomas, Community Organizer



Rev. William F. Wright, Pastor, New Zion Missionary Baptist Church and Former President, Pulpit Forum



Emmanuel Agyemang-Dua, Elon Law School,
Black Law Student Association



Madison Fields, Elon Law School,
Black Law Student Association



Director, Washington Lawyers' Committee for
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Rev. Wesley J. Morris, Senior Pastor,
Faith Community Church



Dr. Gladys A. Robinson, NC State Senator, District 28

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