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ANOTHER SUSPICIOUS POLICE KILLING

Published in Flagpole Magazine, p. 5 (September 3, 1997). See also Note, "Fit to be Tied? Fourth Amendment Analysis of the Hog-Tie Restraint Procedure," 33 Ga. L. Rev. 281 (1998).

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The July 19th death of Eric William Irby is the third suspicious killing of a citizen by police in Clarke County since 1994.

Irby, 25, died while in police custody following a multicounty chase for traffic offenses. Clarke County officers were among the police involved in the chase and capture.

Although police initially said Irby died of "heart failure" or a "heart attack," the coroner has ruled, based on an autopsy, that Irby died of suffocation resulting from being hogtied by unnamed police officers.

Hogtying means handcuffing a prisoner behind his back and securing the prisoner's legs to his hands by means of a rope, flex-cuffs, or another set of handcuffs. The prisoner is thus left with his hands and feet bound behind his back while lying face down.

It is generally recognized that hogtying suspects poses an unreasonable risk of death or serious bodily injury. Articles published in law enforcement journals state that hogtying threatens the prisoner's respiratory functions and is a potentially fatal method of restraint that should be discouraged. According to a 1992 San Diego police department report, in recent years at least 94 persons have died as a result of being hogtied by police. Numerous lawsuits have been brought by relatives of prisoners who died while hogtied.

In fact, so serious has the problem of police use of this restraint procedure become that a new medical term has been coined: "positional asphyxia"--a fatal suffocation caused by hogtying. The coroner's report in Irby's case gives "positional asphyxiation" as the cause of death.

As is usual when police slay people under mysterious circumstances, the investigation of Irby's death has been secretive and half-hearted, smacking of a coverup. Some, perhaps most, of the official reports have yet to be released to the public. Although Irby died on a Saturday, police revealed nothing until the following Monday when they were approached by reporters who had been tipped off. Days after the killing Irby's mother reported she had been told practically nothing. There are conflicting reports about whether shots were fired by police. Citizens who saw Irby lying on the ground have made statements which appear to conflict with official accounts.

When a possibly criminal homicide occurs police sources usually leak information damaging to the alleged killer. But here the police have been strangely tightlipped.

As is also usual when police kill somebody, law enforcement and other government officials closed ranks to defend the killing before all the facts were in and before the public was in a position to judge the matter. Less than a week after Irby's death, Clarke County's new police chief announced there was no indication officers did anything wrong, even though he acknowledged he didn't have all the facts and even though he was in Ohio at the time Irby died and at the time of making the announcement. The coroner was quoted in a local newspaper on Aug. 20 as saying "I see no intent on the officers' part," whatever that means. "Athens-Clarke Officials Stand by Police" proclaims an Aug. 24 headline in an Athens newspaper.

According to newspaper accounts, the police chief had banned hogtying before the Irby incident but not all his officers had been informed of the directive.

The GBI has now completed its investigation and delivered its report to the district attorney. If matters proceed as they did in the other two recent police killings of citizens here, or as they often do when Americans are slain by police, it seems likely that the full facts of Irby's death will never be known and that no police officers will be prosecuted criminally or administratively disciplined.

It is reassuring to know that Clarke County police are hereafter prohibited from hogtying persons in their custody. As a leading authority on police violence has noted: "[T]he hogtie procedure is unnecessary and arcane. The term itself characterizes the suspect as animal." However, the practice should never have been used against Irby or anyone else; and it difficult to understand how the chief's directive forbidding its use could have been unknown to any local officer.

Over the last several decades there have been scores, perhaps hundreds, of suspicious or mysterious deaths of citizens at the hands of police in this country. The Irby case is simply one more.

As long as Americans continue to perish under mysterious circumstances while in custody or while "resisting arrest," police will steadily lose community respect; and eventually, if reforms are not made, police will be universally regarded with fear and loathing.