

THE RUTHERFORD INSTITUTE

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June 7, 2017

Chief Al S. Thomas, Jr.
City of Charlottesville Police Department
P.O. Box 911
Charlottesville, Virginia 22902

**Re: The need for greater restraint by local law enforcement in
response to rising tensions in the community**

Dear Chief Thomas:

At this time in history, the City of Charlottesville's Police Department has a critical role to play in ensuring that Charlottesville remains a place where residents and visitors alike are safe from violence, secure in their liberties, assured of fair and equal treatment under the law, and able to fully enjoy the rich history, beautiful surroundings, diversity, and vibrant culture this community has to offer.

While police should always tread cautiously in their efforts to maintain law and order while respecting the First Amendment rights of the community, circumstances arising out of the heated debate over the Robert E. Lee monument in Lee Park will require even greater restraint on the part of local law enforcement. Your department has a critical role to play in this unfolding drama. It is crucial that the City of Charlottesville's Police Department not contribute to the simmering tensions that threaten to bubble over into violence.

No one wants to see this dispute end in tragedy. Yet heavy-handed tactics, militarized equipment, excess force and an authoritarian approach to law-and-order could very well set the match to an increasingly volatile situation.

As you know, The Rutherford Institute¹ has been vocal in warning that the use of aggressive tactics by police officers establishes a confrontational relationship between law enforcement and those they are charged with protecting and serving. Too many

¹ The Rutherford Institute is a non-profit civil liberties organization that provides free legal representation to individuals whose civil rights are threatened or infringed.

communities across the country are suffering the aftershocks that result from police employing an unwarranted and excessive use of force in situations that might have been resolved with less aggressive methods.²

In an effort to avert a similar outcome in Charlottesville, I am urging you to take steps now to reduce the aggression used by officers in order to foster greater trust and cooperation with the community.

When police treat citizens as hostile forces and approach encounters anticipating violence and exercising control through the demonstration and application of force, thereby adopting overly aggressive and confrontational tactics, true community policing—which results by forming partnerships with citizens—cannot be achieved. Instead, we will find ourselves locked in a vicious cycle of distrust that will only make the community less safe.

This climate of distrust and heightened tension will only be aggravated by the arrival of outsiders intent on bringing their unrest and demonstrations to the City.³

For starters, I would caution you against relying on heavy-handed, militarized, shock-and-awe tactics (swarms of police banging on doors in the middle of the night, SWAT team raids, flashbang devices, etc.) for routine police work,⁴ which send an ominous message to the community and could result in the kind of tragedies that we do not want or need in Charlottesville.

Just recently, for instance, in a gross display of force, at 12:30 a.m. on June 2, 2017, five Charlottesville police officers and five police cars executed a warrant for a misdemeanor assault charge against 72-year-old Jeffrey Fogel, a respected local attorney and candidate for the office of Commonwealth's Attorney, at his residence.⁵

This ill-advised show of force on the part of the Charlottesville police was undertaken in the middle of the night despite the fact that Mr. Fogel is well-known within the community and to the local police, and clearly presented neither a risk of flight nor a danger to officers. Moreover, even though it is standard practice to advise a person

² Mark Joseph Stern, "Appeals Court: Officer Who Shot and Killed Innocent Man in His Own Home Cannot Be Sued," *The Slate* (March 17, 2017), http://www.slate.com/blogs/the_slatest/2017/03/17/appeals-court-rules-officer-who-killed-man-in-his-own-home_cannot_be_sued.html.

³ "Controversial Activists File Permits to Hold Rallies in Charlottesville," *NBC29.com* (June 5, 2017), <http://www.nbc29.com/story/35594532/controversial-activists-file-permits-to-hold-rallies-in-charlottesville>.

⁴ "Former Police Chief Has A Plan For 'How To Fix America's Police,'" *NPR* (July 10, 2016), <http://www.npr.org/2016/07/10/485460453/former-police-chief-has-a-plan-for-how-to-fix-americas-police>.

⁵ Lisa Provence, "Miller's Time: Candidate arrested in mall shout-down," *C-ville* (June 2, 2017), <http://www.c-ville.com/millers-time-candidate-arrested-mall-shout/#.WTahSU2GMdU>.

charged with a minor crime of the existence of the warrant and allow them to voluntarily appear on the charge, Charlottesville police chose to personally execute the warrant for the misdemeanor assault charge in such a manner as to exacerbate an already tumultuous situation.⁶

In another ill-advised show of force, a “phalanx” of police carried out another late-night arrest of a local activist, again for a minor offense.⁷ And in yet another incident, Charlottesville police carried out a SWAT raid accompanied by the use of a flash-bang grenade against two individuals who were accused of attempting to rob a food truck with a weapon.

Despite the fact that no money was taken and no one was injured during the alleged attempted robbery, Charlottesville police mounted a SWAT team raid on the suspects’ home, which is in the middle of a populated urban area. The flash-bang device which police used to enter the home ignited a fire on a couch in the residence, requiring the deployment of firefighters to the scene.⁸ Although the residence suffered \$500 in damages, thankfully, no one was injured as a result of the Charlottesville SWAT team’s use of a flash-bang device.⁹

That is not always the case, however. A few years ago, in Georgia, a SWAT team—attempting to carry out a faulty “no-knock” search warrant—threw a flash-bang grenade into a home in which a family with four young children (ages 7, 5, 3 and 18 months) was staying. The grenade landed and detonated in the toddler’s pack-and-play crib, leaving him with severe burns, a collapsed left lung and a lifetime of plastic surgeries to correct the disfigurement from the burns.¹⁰ The suspect the police were pursuing was later arrested hours after the raid without the need of a “no-knock” warrant and without the use of a SWAT team.

⁶ Five officers and five police cars arrived at Mr. Fogel’s residence at 12:30 a.m., and proceeded to bang on his door, ignoring a doorbell that was available to summon him. Mr. Fogel, who was asleep, answered promptly and agreed to cooperate with his arrest, but was denied permission to change into appropriate clothing or to bring his keys with him. Although a summons could have been issued in this case, Mr. Fogel’s arrest was ordered by the magistrate in this case because, according to Mr. Fogel, of the way Mr. Fogel had spoken to police earlier in the evening. As a result of this charge, Mr. Fogel was required to post a \$5000 personal recognizance bond and is forbidden from leaving the state.

⁷ Lisa Provence, “Fitzhugh and Fogel make first court appearances,” *C-ville* (June 5, 2017), <http://www.c-ville.com/fitzhugh-fogel-make-first-court-appearances/#.WTbF5evysdU>.

⁸ Henry Graff, “Update: 2 Arrested After Charlottesville SWAT Team Raid,” *NBC29.com* (May 31, 2017), <http://www.nbc29.com/story/35470275/developing-two-arrested-after-charlottesville-swat-team-raid>.

⁹ “SWAT team raid results in small fire,” *CBS 19* (May 19, 2017), <http://www.newsplex.com/content/news/SWAT-team-raid-results-in-small-fire-423163234.html>.

¹⁰ Alison Lynn and Matt Gutman, “Family of Toddler Injured by SWAT ‘Grenade’ Faces \$1M in Medical Bills,” *ABC News* (Dec. 18, 2014), <http://abcnews.go.com/US/family-toddler-injured-swat-grenade-faces-1m-medical/story?id=27671521>.

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The lesson we should all learn is this: as a community, we need to take the necessary steps now to address the issue of police aggression before it becomes part of the culture of the Charlottesville (and Albemarle) police department.

As a member of this community and the head of an organization with a long track record in advising police in how best to respect the rights of local citizens, The Rutherford Institute stands ready to offer its assistance in helping local police contribute to a safe and free Charlottesville.

Please do not hesitate to call upon us if we can help in any way.

Sincerely yours,

A handwritten signature in black ink, reading "John W. Whitehead". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John W. Whitehead
President

The Rutherford Institute

Cc: Chief Ron Lantz, Albemarle County Police Department