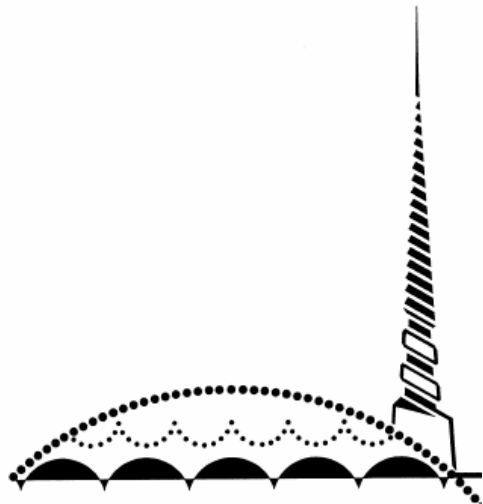
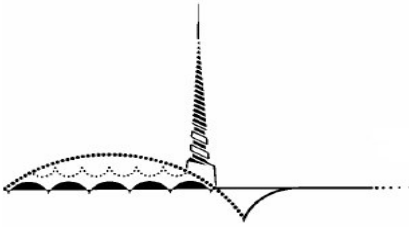

2006-2007 MARIN COUNTY GRAND JURY

TITLE OF REPORT: HOGTIEING: A LETHAL RESTRAINT?

Date of Report: February 14, 2007





Marin County Grand Jury

HOGTIEING: A LETHAL RESTRAINT?

SUMMARY

Hogtieing can be lethal.

Hogtieing is the term for “the restraint of an individual with the wrists and ankles bound together behind the back.” (American Journal of Forensic Medicine and Pathology, March 2000). Other terms for essentially the same procedure include maximum restraint, Total Appendage Restraint Procedure (TARP) and, sometimes, hobbling. Adequate policies, procedures, and training are essential to protect from injury both the person being restrained and the law enforcement personnel involved, to prevent property damage and to limit law enforcement liability.

The Grand Jury surveyed all of the municipal law enforcement agencies in Marin County and the Marin County Sheriff’s Office and reviewed the portion of their state-mandated policy manuals that applies to maximum restraint equipment and procedures. The Grand Jury further inquired into police and Sheriff procedures and training in the use of restraints, types of restraint equipment, and frequency of use of such restraint equipment.

The Grand Jury found the incidence of hogtieing by law enforcement personnel in Marin County to be low. However, the policies, procedures and training regarding its use vary widely among law enforcement agencies. Many law enforcement agencies studiously avoid even using the term hogtieing, despite practicing it. **Because hogtieing can be dangerous and even lethal** to the detainee, the Grand Jury believes it is critically important for restraint training, policies and procedures to be clearly and uniformly articulated and carefully and consistently followed.

The Grand Jury strongly recommends that hogtieing be prohibited by all law enforcement agencies in Marin County. Better, safer alternatives are available. Further, the Grand Jury strongly recommends that a set of “best practices” regarding maximum restraint be immediately established by the Police Chiefs’ Association and swiftly implemented by all Marin County law enforcement agencies.

METHODOLOGY

The Grand Jury took the following steps during its investigation:

- Examined the policy manuals of the Marin County Sheriff's Office and the 10 municipal law enforcement agencies.
- Surveyed the Marin County Sheriff's Office and the 10 municipal law enforcement agencies regarding procedures, equipment, training and frequency of use and injury related to hogtieing.
- Interviewed representatives from a majority of the law enforcement agencies in Marin County.
- Surveyed law enforcement agencies outside of Marin County at the city, county, state and federal levels.
- Examined depositions, the coroner's inquest report and the jail video related to the Cary Grime case.
- Interviewed a representative of the state agency responsible for police officer standards and training (POST).

BACKGROUND

On August 17, 2003, Cary Grime, aged 47, was stopped by Marin County Sheriff's officers, arrested, hogtied, and taken in a patrol car to the Marin County Jail. Shortly after he arrived at the jail, he suffered a heart attack and cardio-respiratory arrest. Two days later his family discontinued life support and he died. The coroner's inquest concluded that hogtieing was not the cause of death but may have been a contributing factor. In September, 2006, Marin County settled a wrongful death claim brought by Grime's family for \$1,000,000. (See Appendix.)

The Grand Jury's intent is not to reopen the Grime case but to investigate both the incidence of hogtieing in Marin County and the adequacy of training, policies and procedures regarding its use.

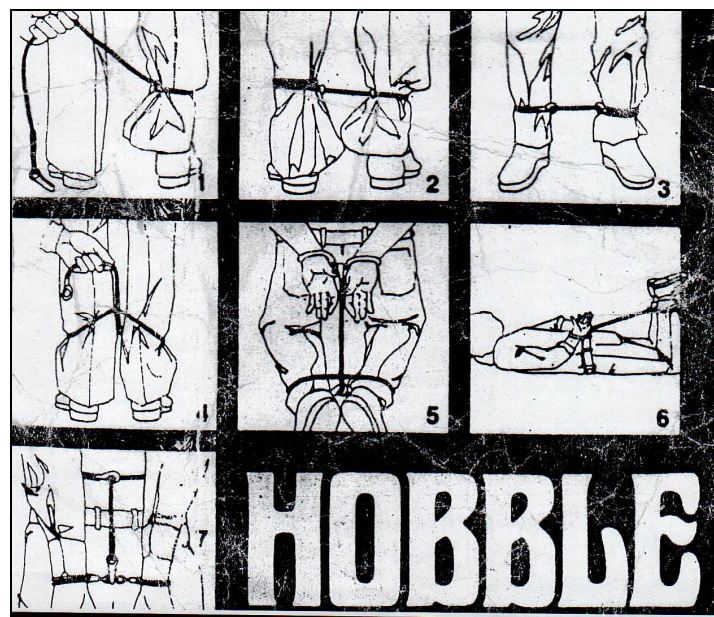
What is a hobble? What is hogtieing?

A *hobble* is a rope, strap or other flexible device with clasps or clips at one or both ends. It can be wrapped around an individual's legs and then attached to another object, often the individual's handcuffed wrists in front of or behind the individual's back.

This is a picture of a typical hobble:



Hogtieg is the term for “the restraint of an individual with the wrists and ankles bound together behind the back.” (American Journal of Forensic Medicine and Pathology, March 2000). A hobble is commonly used to hogtie a detainee. Below is a copy of the ONLY instructions that come with the particular brand of hobble used to hogtie Cary Grime. When a hobble is used to hogtie an individual, binding together his handcuffed wrists and ankles behind his back, this type of product can be lethal. Frame number six is a sketch of a person who has been hogtied. Notice the 90-degree bend in the knees and that the subject is face down in a highly dangerous position:



The RIPP HOBBLE is another brand of hobble commonly used by law enforcement in Marin County. Its one-page instruction sheet, not pictured, concludes: “NEVER HOGTIE ANYONE.”

Why and when is hogtieing used?

Most Marin County police department policy manuals make no distinction between the use of hogtieing and the use of leg restraints, a less restrictive restraint technique. The following are typical guidelines for the use of leg restraints:

In determining whether to use leg restraints officers should consider the following:

- 1) Are the officer and/or others subject to harm due to the assaultive behavior of a violent, resisting and/or attacking suspect?
- 2) Is it reasonable to protect the suspect from his or her own actions that would place him or her in danger, i.e., hitting his or her head against the interior of the patrol unit, running away from the arresting officer while handcuffed, kicking at officers or objects?
- 3) The leg restraint shall only be used after a person has been handcuffed.

Hogtieing is used when less severe methods of restraint are inadequate. It is intended for use to prevent injury to the detained individual or to another person, or to prevent property damage by the detained individual.

Risks associated with hogtieing

The primary risk associated with hogtieing is *positional asphyxia*, also known as *postural asphyxia* or *restraint asphyxia*. Asphyxia, much like suffocation, is a condition in which an extreme decrease in the concentration of oxygen in the body accompanied by an increase in the concentration of carbon dioxide leads to loss of consciousness or death.

Positional asphyxia is a form of asphyxia that occurs when a person’s position prevents him from breathing adequately. Every year a small but significant number of people die suddenly and without apparent reason during restraint by law enforcement, corrections and health care staff. *Positional asphyxia* may be a factor in these deaths.

Positional asphyxia is more likely to occur when one or more of the following take place:

- 1) Hobbles are improperly applied by bending the individual’s knees to an angle of less than 90 degrees, i.e. hogtieing the individual. This can cause a backward arching of the spine, impeding the ability of the lungs to expand and making breathing difficult.

2) The individual is left lying on his stomach rather than on his side. This position limits expansion of the lungs and can impede breathing. All law enforcement policy manuals reviewed by the Grand Jury require that individuals not be left on their stomachs while hogtied.

3) Pressure is exerted on the individual's back or neck, either while on his stomach or side. This can hamper expansion of the lungs and impede breathing.

4) The individual is not monitored at all times for signs of difficulty breathing. All policy manuals reviewed by the Grand Jury require that a hogtied detainee be monitored at all times for signs of difficulty breathing. Even a short period of oxygen deprivation can cause serious injury or death.

In its report titled "The Lethal Hazard of Prone Restraint: Positional Asphyxiation," April 2002, Protection and Advocacy, Inc. (PAI) of Oakland, California states the following:

"PAI's investigations determined that prone is a hazardous and potentially lethal restraint position and likely contributed to the deaths or injuries of each of the individuals described in this report. Based upon its investigations, PAI recommends that:

- Individuals must never be placed in the prone position when restrained;
- Temporary prone containment should only be attempted when all other techniques are ineffective to prevent imminent serious harm and when there are sufficient safeguards in place to protect the individual from positional asphyxiation;
- Restraint and containment must be viewed as the result of a treatment failure, not a treatment intervention; and
- All first responders must be educated regarding the risks of positional asphyxiation with prone restraint."

DISCUSSION

Policies and procedures within Marin County regarding hogtieving

As required by the State of California, all Marin County law enforcement agencies have written policy manuals. Interested citizens can obtain copies of these policies directly from the agencies. There is no legal requirement that all law enforcement agencies have the same policies and procedures regarding restraints. Common sense suggests that there exists one set of "best practices" that should be developed by the Police Chiefs' Association and applied countywide. Areas where there are noticeable discrepancies from agency to agency in Marin County include:

Attachment of hobble to handcuff: Some law enforcement agencies prohibit the attachment of the hobble to the handcuff; others permit it. Some restrict the degree of knee bend, thereby reducing risk; others do not. One law enforcement agency requires

that the loose end of the hobble be attached to the detainee's belt rather than his handcuffs.

Transport: Some law enforcement agencies require transport of a hogtied person in an ambulance or paramedic vehicle; others do not. Most agencies permit only the driver to be in the vehicle with a hogtied person. One agency requires a second officer in the vehicle to monitor the detainee.

Training: Some law enforcement agencies' officers are trained in the hogtied procedure; some are not. In training, some officers have been hogtied or hobbled themselves and have a genuine appreciation of the procedure; others have not. It is clear that some agencies' training is better than others.

Purchase and issuance of equipment: Most law enforcement agencies specify a certain brand of hobble and provide it to their officers. As of this writing, some agencies allow officers to buy their own. Some have one in every patrol car; others permit only supervisors to carry them.

Policies and procedures outside Marin County regarding hogtieding

The Grand Jury solicited information from law enforcement agencies outside Marin County regarding hogtieding. The following agencies, all of which deal with large populations and high crime rates, were contacted. Their policies, in part, state:

San Francisco PD: "...policy **forbids hogtieding** under any circumstances."

San Jose PD: "Hogtieding, TARP and maximum restraint are all viewed to be the same and are **prohibited under all circumstances.**"

Los Angeles PD: "The hobble restraint device **shall not be used in any manner to bind an individual's hands to his/her feet in any manner.**"

U.S. Marshals: **Does not practice hogtieding. Does not condone hogtieding.** However, does not have a written policy prohibiting hogtieding.

California Department of Corrections: **Hogtieding is not practiced and not authorized.**

Oakland PD: Uses a product called the "Wrap". **Oakland PD does not practice hogtieding.** The practice is not specifically prohibited.

Los Angeles County Sheriff: **Permits hogtieding** but refers to it as TARP, total appendage restraint position. Policies are very carefully crafted. Only those officers who have received department-authorized training may do it. When possible, a field supervisor is on scene **before TARP**. Medical personnel are requested to the scene **before TARP**. TARP should be **videotaped** if possible. Transport is to be via ambulance. Application of

TARP is considered “significant force” and is reportable as such.

Officer training regarding the use of hobbles

The organization in California responsible for standards for law enforcement personnel training is the Commission on Peace Officer Standards and Training (POST). POST sets the minimum proficiency levels for peace officers in various areas and at various levels of training. POST must approve training programs conducted by a local law enforcement agency.

Officers receive three levels of training. Newly minted officers arrive at their agencies after completing *Basic Training* at a law enforcement academy. They then receive approximately 16 weeks of one-on-one *Field Training* by a POST-certified Field Training Officer. Training continues with *In-service Training* at least every 24 months, and frequently as often as yearly. There is also periodic *roll call training*, at which topics of current interest are discussed.

Many law enforcement agencies believe that all recruits receive training in hobbling and hogtieing procedures in *Basic Training*. This is not accurate. The section of the POST manual dealing with restraints, called Domain 33, contains nothing on any of the restraint methods addressed in this Grand Jury Report.

Better, Safer Alternatives to Hogtieing

A better, safer alternative procedure to hogtieing is available. It is called either a “wrap” or by one of its trademarked names, “The Body Guard.” The “wrap,” pictured in use below, consists of a layer of canvas or other heavy material with stiffening elements running its length. It is wrapped around the detainee’s legs from ankles to thighs and is secured by Velcro straps. The detainee is then placed in a shoulder harness and his torso is connected to his knees by means of a strap. The end result is that the detainee is immobilized in a sitting position and the risk of positional asphyxiation is eliminated.



Among the law enforcement agencies surveyed by the Grand Jury, the Oakland Police Department and the Sausalito Police Department use the wrap. It is also under active consideration by the Novato Police Department. In its survey response, the Marin County Sheriff's Office informed the Grand Jury that the MCSO will prohibit the use of hobbles *and* hogtieing and move exclusively to the use of the "wrap" in the spring of 2007.

FINDINGS

The Marin County Grand Jury finds that:

F1: Hogtieing is a "maximum restraint" procedure that can be dangerous and even lethal.

F2: Better and safer restraint procedures exist as alternatives to hogtieing.

F3: The primary risk associated with hogtieing is positional asphyxia.

F4: Hogtieing is practiced in Marin County, though the incidence is low.

F5: The purpose of policies, procedures and training in maximum restraint is to protect both restrained detainees and law enforcement personnel.

F6: There are significant differences among maximum restraint policies of law enforcement agencies in Marin County (and elsewhere).

F7: Many large law enforcement agencies outside Marin County prohibit hogtieing.

F8: The Los Angeles County Sheriff's Office permits hogtieing, but its policies and procedures are much more demanding than those found in Marin County.

F9: Most law enforcement agencies questioned by the Grand Jury incorrectly believe that officer *Basic Training* includes training in the use of hobbles and/or hogtieing.

F10: Training and awareness of policies by law enforcement personnel who practice hobbling and/or hogtieing vary widely.

RECOMMENDATIONS

The Marin County Civil Grand Jury recommends that:

R1: Hogtieing, as distinguished from hobbling, be prohibited by all law enforcement agencies in Marin County. Better, safer alternatives are available.

R2: Whether or not hogtieing is prohibited, a countywide set of best practices be immediately established by the Police Chiefs' Association and swiftly implemented by all law enforcement agencies in Marin County. These best practices should include the proper use of the hobble and the dangers of hogtieing.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

- The City and Town Councils of Belvedere, Corte Madera, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, San Rafael, Sausalito and Tiburon: F1, F2, F3, F4, F5, F10, R1, R2

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code section 933(c) and subject to the notice, agenda and open meeting requirements of the Brown Act.

The California Penal Code section 933(c) states that "...the governing body of the public agency shall comment to the presiding judge on the findings and recommendations pertaining to matters under the control of the governing body." Further, the Ralph M. Brown Act requires that any action of a public entity governing board occur only at a noticed and agendized public meeting.

From the following individuals:

- All chiefs of municipal police departments in Marin County: F1, F2, F3, F4, F5, F10, R1, R2
- The Marin County Sheriff: F1, F2, F3, F4, F5, F10, R1, R2

The Grand Jury invites the following association to respond:

- The Marin County Police Chiefs' Association: all of the findings and recommendations

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

APPENDIX

Cary Grime: A case of hogtieving gone wrong.

The information provided below comes primarily from the coroner's inquest into the death of Cary Grime conducted on October 16, 2003. Additional information comes from various depositions of parties participating in or witnessing the events. It is not the aim of the Grand Jury to assign blame to individuals in the case. Accordingly, the names of law enforcement personnel have been omitted.

In August 2003, Cary Grime was stopped by a MCSO deputy at the intersection of Enfrente Road and Ignacio Boulevard in Novato. He was arrested, hogtied and placed in the back seat of a patrol car for transport to the Marin County Jail. Shortly after arrival at the jail he suffered a "heart attack and cardio-respiratory arrest."

The case raised concerns about law enforcement agencies' restraint policies and procedures and the adequacy of training of personnel as follows:

- There was conflicting testimony about how close Mr. Grime's feet were to his hands when he was hogtied. The officer who performed the hogtie stated in his deposition, "I best recall Mr. Grime's legs positioned to where his heels, if they were not touching his buttocks, they were close." When asked whether "close" meant within six inches, he answered in the affirmative. There was, however, other testimony indicating there were two feet of slack between Mr. Grime's hands and feet, and a third witness said there was "at least a foot."
- After being hogtied, Mr. Grime was laid face down on the back seat of a patrol car. This was contra-indicated by every policy manual the Grand Jury examined. This dangerous error was corrected by the sergeant on the scene and Mr. Grime was turned on his side for transport to the jail.

- The two MCSO deputies who performed the hogtie of Mr. Grime presented conflicting statements at the coroner's inquest. One deputy said, "To the best of my knowledge, there is no written codified policy with regard to the hobbling device. It has been and still continues to be an accepted practice given the nature of the situation." The other deputy was asked, "Was the manner in which the hobble was used consistent with your understanding of the MCSO policy on that subject?" He replied, "Yes, yes, it was." Whatever the policy is, it is clear that not everyone knows it, is trained consistently in it, or interprets it the same way.
- Mr. Grime was transported lying down on his side in the back seat of a MCSO patrol car. Most Marin County law enforcement agencies require that a person unable to sit upright in a patrol car for any reason be transported in an ambulance or paramedic vehicle and accompanied by a sworn officer. This would cover virtually every hogtied prisoner because it is impossible to sit upright while hogtied. Only if such transport is unavailable is it generally permitted that a person may be transported while lying down in the back seat of a patrol car.
- During transport of Mr. Grime to the jail, only the driver was in the patrol car. Most law enforcement agencies in Marin County permit transport in this fashion with the additional requirement that the officer who is driving also observe the arrestee for signs of medical distress. However, an officer driving a car cannot adequately (or safely) monitor a passenger lying down in the back seat, who is likely to be barely visible at best. This situation contradicts the accepted policy that hogtied prisoners should be carefully monitored at all times.

In the final analysis, the coroner's inquest into Cary Grime's death concluded that hogtieing was not the cause of death. The Grime family's wrongful death lawsuit was settled for \$1million and never went to court. The forensic pathologist concluded that the cause of death was comprised of four factors. She said, "The cause of death in this case is mixed drug toxicity associated with physiological stress while being restrained. A significant medical condition in this case is cardio hypertrophy (enlargement of the heart) and coronary vascular atherosclerosis (narrowing of the arteries)." (Parenthetic definitions added.)

The forensic pathologist went on to indicate that, all else being equal, an individual would have a better chance of survival if he were not restrained. She further indicated that an individual would have a better chance of survival if he were restrained less than someone who was restrained to a higher degree.