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April 25, 2012

Via Email, Facsimile and U.S. Mail

Chief Bryan T. Norwood
Richmond Police Department
200 West Grace Street
Richmond, Virginia 23220

Re: "Wake Up Call" Initiative

Dear Chief Norwood:

As an organization dedicated to safeguarding the constitutional rights of all Americans, including the Fourth Amendment right to be free from unreasonable searches and seizures by government agents, The Rutherford Institute¹ has grave concerns about the threats to the privacy and security of homeowners posed by the Richmond Police Department's "Wake Up Call" initiative.

The initiative, which is carried out between the hours of midnight and 4:00 a.m., reportedly tasks officers with examining the interiors of vehicles parked on neighborhood streets to determine whether any valuables are in plain view inside the vehicle. If officers determine that valuables are present in plain view, they will then verify through motor vehicle records whether the owner lives in the neighborhood, and if so, "midnight shift officers will knock on the [owner's] front door for an unexpected wakeup call."²

Not only is this initiative a misguided effort to curb property crimes that will primarily alienate residents of the City, but the initiative infringes upon the Fourth Amendment rights of citizens to privacy and to be free of unreasonable police intrusions. While police officers do not necessarily violate the prohibition on unreasonable searches and seizures by approaching a residence, knocking on the door and asking to speak with

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

² See "RPD to make 'wake up calls' to cut crime," reported at <http://www.nbc12.com/story/17364222/richmond-police-officers-to-give-overnight-wake-up-calls>.

the occupants, the right of police to come upon a walkway, entranceway or porch of a residence is not absolute. In fact, the “Wake Up Call” initiative wholly exceeds and abuses the idea of “implied consent” which allows this kind of encroachment by police upon the curtilage of a residence.³ The implied invitation to intrude upon residential property applies only when police have a legitimate purpose *and during reasonable times of the day*.⁴ Thus, “entering the property late at night ... may exceed the scope of the implied invitation.”⁵ Because the “Wake Up Call” initiative is carried out between midnight and 4:00 a.m., it is by definition unreasonable and beyond the scope of the implied consent that might exist during daytime and early evening hours. The Fourth Amendment condemns this kind of middle-of-the-night intrusion by government officials, which is reason enough to end this misguided initiative.

There is an additional public safety reason for stopping this practice which far outweighs any benefit it might have in reducing vehicle break-ins. There can be little doubt that a police officer’s late-night knock on a resident’s door may spark a violent confrontation with an alarmed resident who could certainly believe that any intrusion at his or her residence at that time poses a danger to them. As one court has written in condemning late-night intrusions by police:

Furtive intrusion late at night or in the predawn hours is not conduct that is expected from ordinary visitors. Indeed, if observed by a resident of the premises, it could be a cause for great alarm. As compared to open daytime approaches, surreptitious searches under cover of darkness create a greater risk of armed response—with potentially tragic results—from fearful residents who may mistake the police officers for criminal intruders.⁶

The recent Trayvon Martin incident from Florida should serve as a stark warning of how the fear and misunderstanding of a homeowner can turn a benign situation into a tragedy involving loss of life. Except in the most compelling of circumstances, the Richmond police should avoid intrusions that create this kind of danger to themselves and residents.

We are also concerned that the initiative could become a pretext for officers to engage in “fishing expeditions” at residences that officers might desire to inspect or search but lack probable cause as required by the Fourth Amendment to the U.S. Constitution. It is hardly unimaginable that officers with a “hunch” that illegal activity is taking place in a residence will use the “Wake Up Call” initiative as an excuse to get the occupant of a house to open his or her door, thereby allowing the police to view the

³ *Robinson v. Commonwealth*, 47 Va. App. 533, 547, 625 S.E.2d 651, 657 (2006), *affirmed*, 273 Va. 26, 639 S.E.2d 217 (2007).

⁴ *State v. Cloutier*, 544 A.2d 1277, 1280 (Me. 1988).

⁵ *Id.*, 47 Va. App. at 550, 625 S.E.2d at 659.

⁶ *State v. Cada*, 129 Idaho 224, 233, 923 P.2d 469, 478 (Idaho App. 1996).

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interior of the residence. There is no indication that the initiative is constrained by any criteria which might prevent this kind of abuse of the authority of police to engage in “community caretaking” functions.

There are certainly other means available to the Richmond Police to serve the goals of the “Wake Up Call” initiative without invading the privacy and security of homeowners. The owners of vehicles observed to have valuables could be sent letters, thereby avoiding a risky early-morning encounter with police. Valuable police resources ought to be devoted to preventing serious criminal behavior, not creating annoyance and fear in homeowners.

If we can provide any assistance to the Richmond Police Department as it seeks to strike a more appropriate balance between respecting the rights of members of the Richmond community and providing for the security of those in your care, please do not hesitate to contact us.

Sincerely yours,



John W. Whitehead
President