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## More Bang for Their Buck: How Federal Dollars are Militarizing American Law Enforcement, 47 J. Marshall L. Rev. 1479 (2014)

Jeffrey Endebak

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# MORE BANG FOR THEIR BUCK: HOW FEDERAL DOLLARS ARE MILITARIZING AMERICAN LAW ENFORCEMENT

JEFFREY A. ENDEBAK\*

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## ON FERGUSON

The recent events in Ferguson, Missouri, have brought the issue of police militarization into the spotlight. On August 9, 2014, Ferguson Police Officer Darren Wilson shot and killed eighteen-year-old Michael Brown.<sup>1</sup> While law enforcement

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\* J.D. Candidate, 2015, The John Marshall Law School, Chicago, Illinois. This comment is dedicated to my parents, for their love and support, and to my beautiful wife, Mai, whom I love dearly.

<sup>1</sup> *Multiple investigations underway in Ferguson shooting*, KMOV.COM (Aug. 9, 2014, 3:04 PM), available at <http://www.kmov.com/news/local/Heavy-police-presence--270609091.html>; *Ferguson Police Officer Darren Wilson Revealed as Missouri Fatal Shooting Cop*, ABC NEWS (Aug. 15, 2014), available at <http://abcnews.go.com/US/ferguson-police-officer-darren-wilson-revealed->

investigated the circumstances of the shooting, Ferguson residents staged protests, which escalated quickly into riots and looting.<sup>2</sup> On the night of August 10, 2014, at least a dozen businesses were looted. Among these was a QuickTrip convenience store, which was looted and set on fire.<sup>3</sup> The riots and looting continued on and off for a week.<sup>4</sup>

The police response to the violence in Ferguson included common riot control methods. Generally, riot control serves two purposes: crowd control and crowd dispersal. Crowd control is often achieved by kettling, a tactic that involves police officers with riot gear in formation, using their shields and batons to move or contain the crowd. Crowd dispersal, on the other hand, generally involves the use of less-than-lethal weaponry to break up the crowd. Police officers frequently use tear gas, flashbang grenades, smoke grenades, rubber bullets, bean-bag rounds, and water cannons for crowd dispersal. Police officers in Ferguson used both crowd control and crowd dispersal methods at various times during the unrest.<sup>5</sup>

Although these methods are sometimes necessary to cease violence and prevent it from spreading, the police response in Ferguson was heavy-handed and akin to a military operation. On August 11, 2014, a SWAT team occupied a street in Ferguson near the crowd of demonstrators.<sup>6</sup> The SWAT officers wore military camouflage trousers and combat boots, both virtually identical to those worn by United States Marines.<sup>7</sup> They also wore helmets, gas masks, and body armor, and carried the same M4 carbines used by the military with Advanced Combat Optical Gunsights (“ACOG’s”) and four to six extra magazines on their vests.<sup>8</sup> In

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missouri-fatal/story?id=24992945.

<sup>2</sup> Dave Urbanski, *‘Anything We Want!’: Looting, Vandalism Reported After Vigil for Unarmed Teen Fatally Shot by Police*, THE BLAZE (Aug. 10, 2014, 11:24 PM), <http://www.theblaze.com/stories/2014/08/10/anything-we-want-looting-vandalism-reported-after-vigil-for-unarmed-teen-fatally-shot-by-police/>.

<sup>3</sup> Vera Culley et al., *Businesses damaged following violence over Mike Brown’s death*, FOX2NOW.COM (Aug. 10, 2014, 8:45 PM), available at <http://fox2now.com/2014/08/10/report-michael-brown-protesters-damage-police-vehicles-on-west-florissant/>.

<sup>4</sup> Colby Itkowitz, *Timeline of events in Ferguson, Mo.*, WASHINGTON POST (Aug. 16, 2014), available at [http://www.washingtonpost.com/politics/timeline-of-events-in-ferguson-mo/2014/08/16/02f37e8c-2580-11e4-86ca-6f03cbd15c1a\\_story.html](http://www.washingtonpost.com/politics/timeline-of-events-in-ferguson-mo/2014/08/16/02f37e8c-2580-11e4-86ca-6f03cbd15c1a_story.html).

<sup>5</sup> *Police clash with Michael Brown shooting protestors in Ferguson, two reporters briefly detained*, FOX NEWS (Aug. 14, 2014), available at <http://www.foxnews.com/us/2014/08/14/police-clash-with-michael-brown-shooting-protesters-in-ferguson-two-reporters/>.

<sup>6</sup> Paul Szoldra, *This Is The Terrifying Result Of The Militarization Of Police*, BUSINESS INSIDER (Aug. 12, 2014), available at <http://www.businessinsider.com/police-militarization-ferguson-2014-8>.

<sup>7</sup> *Id.*

<sup>8</sup> Lyle Jeremy Rubin, *A Former Marine Explains All the Weapons of War*

fact, “[s]ome veterans of the wars in Afghanistan and Iraq noted that the cops appeared better-armed and outfitted in middle America than the GIs had been in the war zones.”<sup>9</sup> The SWAT officers also brought with them a Bearcat armored vehicle,<sup>10</sup> similar to the Mine-Resistant Ambush Protected (“MRAP”) vehicles used by American soldiers and Marines in Iraq and Afghanistan. The Bearcat, which costs \$360,000, and much of the body armor, was purchased with grant funds from the Department of Homeland Security.<sup>11</sup> Since 2003, the St. Louis Regional Response System, a state agency that administers DHS grants, has spent \$9.4 million of DHS grant funds purchasing equipment for police departments in St. Louis County.<sup>12</sup>

The police response in Ferguson also illustrated the pervasiveness of the warrior mentality. One Ferguson police officer said to the demonstrators: “Bring it. You f\*\*\*\*\*g animals, bring it.”<sup>13</sup> Another Ferguson police officer stated in a comment on Facebook that “[t]hese protestors should be put down like a rabid dog the first night.”<sup>14</sup> In the evening of August 18 and morning of August 19, 2014, six journalists were arrested while covering the situation in Ferguson.<sup>15</sup> On August 19, a police officer in Ferguson aimed his rifle at peaceful protestors and media members and yelled “I will f\*\*\*\*\*g kill you, get back!”<sup>16</sup> The officers’ conduct epitomizes the “us-versus-them” warrior mentality that encourages police officers to treat American streets as a warzone and American citizens as the enemy. Indeed, “it seems that some police officers have shed the blue uniform and have put on the uniform and gear of the military, bringing the attitude along with it.”<sup>17</sup>

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*Being Used by Police in Ferguson*, THE NATION (Aug. 20, 2014), available at <http://www.thenation.com/article/181315/catalog-ferguson-police-weaponry#>.

<sup>9</sup> Mark Thompson, *War Comes Home: The Militarization of U.S. Police Forces*, TIME (Aug. 19, 2014), available at <http://time.com/3144818/ferguson-police-militarization-pictures/>.

<sup>10</sup> Szoldra, *supra* note 6.

<sup>11</sup> Julie Bosman & Matt Apuzzo, *In Wake of Clashes, Calls to Demilitarize Police*, N. Y. TIMES (Aug. 14, 2014), available at [http://www.nytimes.com/2014/08/15/us/ferguson-missouri-in-wake-of-clashes-calls-to-demilitarize-police.html?\\_r=0](http://www.nytimes.com/2014/08/15/us/ferguson-missouri-in-wake-of-clashes-calls-to-demilitarize-police.html?_r=0).

<sup>12</sup> *Id.*

<sup>13</sup> Szoldra, *supra* note 6.

<sup>14</sup> Joshua Berlinger, *St-Louis-area officer fired after Facebook comments on Ferguson protests*, CNN (Aug. 30, 2014), available at <http://www.cnn.com/2014/08/29/us/officer-fired-ferguson/>.

<sup>15</sup> Brian Stelter, *6 more journalists arrested in Ferguson protests*, CNN, <http://www.cnn.com/2014/08/19/us/ferguson-journalists-arrested/> (last updated Aug. 19, 2014).

<sup>16</sup> Sasha Goldstein, *Suburban St. Louis cop suspended for threatening to kill, pointing gun at media in Ferguson, Mo.*, NEW YORK DAILY NEWS (Aug. 20, 2014, 6:59 PM), available at <http://www.nydailynews.com/news/national/st-louis-area-suspended-threatening-kill-media-ferguson-article-1.1911046>.

<sup>17</sup> Szoldra, *supra* note 6.

The police response in Ferguson has pushed the militarization of police into the spotlight. Attorney General Eric Holder commented on the martial display in Ferguson, stating: “At a time when we must seek to rebuild trust between law enforcement and the local community, I am deeply concerned that the deployment of military equipment and vehicles sends a conflicting message.”<sup>18</sup> On August 23, 2014, President Barack Obama ordered a review of federal programs that enable law enforcement agencies to acquire military equipment and weapons.<sup>19</sup> President Obama remarked that “there is a big difference between our military and our local law enforcement, and we don’t want those lines blurred . . . That would be contrary to our traditions.”<sup>20</sup> Although a review of the HSGP and 1033 Programs is a promising start, the lines between military and police have already been blurred, and the American tradition of civil law enforcement is waning.

## I. INTRODUCTION

“Weapons of war have no place on our streets,” declared President Obama at the Minneapolis Police Department’s special operations center.<sup>21</sup> The President was referring to private ownership of semi-automatic rifles,<sup>22</sup> not to the armored vehicles and fully automatic weapons being deployed by police departments around the nation.<sup>23</sup> Although the President’s message was misdirected, his words actually, and unintentionally, describe the problem with the escalating militarization of police in the United States.<sup>24</sup> This militarization has produced harmful and sometimes

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<sup>18</sup> Bosman & Apuzzo, *supra* note 11.

<sup>19</sup> Erin McPike & Jessica Ravitz, *Obama orders review of military equipment sales to police*, CNN, <http://www.cnn.com/2014/08/23/politics/military-equipment-police-review/> (last updated Aug. 23, 2014).

<sup>20</sup> *Id.*

<sup>21</sup> Margaret Talev, *Obama Says Consensus Emerging on Gun Buyer Checks*, BLOOMBERG (Feb. 4, 2013, 11:00 PM), <http://www.bloomberg.com/news/2013-02-04/obama-says-consensus-emerging-on-gun-buyer-checks.html>.

<sup>22</sup> *Id.*

<sup>23</sup> See, e.g., *US Police Obtaining Military Vehicles to Aid Hunt for Criminals*, FOXNEWS (Sept. 30, 2013), available at <http://www.foxnews.com/us/2013/09/30/us-police-obtaining-military-vehicles-to-aid-hunt-for-criminals/> (reporting that the Dallas County Sheriff’s Office, the police department of Murfreesboro, Tenn., and Ohio State University, acquired MRAP armored vehicles from the Department of Defense).

<sup>24</sup> See Andrew Becker & G.W. Schulz, *Local Police Stockpile High-tech, Combat-ready Gear*, CENTER FOR INVESTIGATIVE REPORTING (Dec. 21, 2011), <http://cironline.org/reports/local-police-stockpile-high-tech-combat-ready-gear-2913> (reporting that federal grant spending has caused a rapid militarization of police across the United States).

deadly results.<sup>25</sup>

Jose Guerena, a Marine and Iraq Campaign veteran, lived with his wife and two sons in Tucson, Arizona.<sup>26</sup> On the morning of May 5, 2011, Guerena was sleeping after his twelve-hour night shift at the Asarco copper mine when his wife saw armed men outside their home.<sup>27</sup> Guerena awoke to his wife's calls and told

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<sup>25</sup> See, e.g., Corey Williams & Ed White, *Aiyana Jones, 7-Year-Old Shot and Killed by Detroit Police, Was Sleeping According to Family*, HUFFINGTON POST (May 17, 2010, 10:26 PM), [http://www.huffingtonpost.com/2010/05/17/aiyana-jones-7-year-old-s\\_n\\_578246.html](http://www.huffingtonpost.com/2010/05/17/aiyana-jones-7-year-old-s_n_578246.html) (reporting that a Detroit police officer shot and killed a sleeping 7-year-old girl after throwing a flash grenade through a window); Virginia Hennessey, *Monterey County Agrees to Pay \$2.6 Million in 'Flash-bang' Death of Greenfield Man*, MONTEREY COUNTY HERALD (Aug. 19, 2013, 10:19 PM), available at [http://www.montereyherald.com/localnews/ci\\_23897554/monterey-county-agrees-pay-2-6-million-flash](http://www.montereyherald.com/localnews/ci_23897554/monterey-county-agrees-pay-2-6-million-flash) (reporting that Monterey County will pay a \$2.6 million settlement to the family of 31-year-old Rogelio Serrato Jr., who was killed by a fire started when the Monterey County Sheriff's Office SWAT Team threw a flash-bang into Serrato's home); *DA: Man Killed in Framingham Drug Raid Accidentally Shot by Police*, CBS BOSTON (Mar. 9, 2011, 6:45 PM), <http://boston.cbslocal.com/2011/03/09/da-man-killed-in-framingham-drug-raid-accidentally-shot-by-police/> (reporting that the shooting death of 68-year-old Eurie Stamps, who was shot while laying on the floor with his hands up when a SWAT team member moving to secure Stamps stumbled and discharged his firearm, was accidental); Michael McLaughlin, *Andrew Messina's Parents Talk about SWAT Team Killing Teen in Atlanta Suburb*, HUFFINGTON POST, [http://www.huffingtonpost.com/2012/10/28/andrew-messinas-parents-swat-team-kill-teen-atlanta\\_n\\_2034198.html](http://www.huffingtonpost.com/2012/10/28/andrew-messinas-parents-swat-team-kill-teen-atlanta_n_2034198.html) (last updated Oct. 29, 2012) (reporting on the parents of Andrew Messina, a 16-year-old boy who was killed by a SWAT team sniper at the family home when he brandished a .357 magnum and threatened to commit suicide, who criticized the police for the aggressive tactics used against their son); Corey Mitchell & Randy Furst, *Botched Raid Costs Minneapolis \$1 Million*, STAR TRIBUNE, <http://www.startribune.com/local/135343023.html?page=all&prepage=1&c=y#continue> (last updated Dec. 9, 2011, 9:56 PM) (reporting that Rickia Russell would receive a one million dollar settlement for injuries she suffered when a Minneapolis police SWAT team which was executing a search warrant at Russell's home threw a flash-bang grenade that detonated near Russell's legs and caused third and fourth-degree burns to her leg).

<sup>26</sup> Radley Balko, *Jose Guerena Killed: Arizona Cops Shoot Former Marine in Botched Pot Raid*, HUFFINGTON POST, [http://www.huffingtonpost.com/2011/05/25/jose-guerena-arizona\\_n\\_867020.html](http://www.huffingtonpost.com/2011/05/25/jose-guerena-arizona_n_867020.html) (last updated Aug. 19, 2011, 5:44 PM) [hereinafter *Jose Guerena Killed*]. Guerena's four-year-old son was home at the time, but his six-year-old son was at school. *Id.*

<sup>27</sup> Ellen Tumposky, *Arizona SWAT Team Defends Shooting Iraq Vet 60 Times*, ABC NEWS (May 20, 2011), available at <http://abcnews.go.com/US/tucson-swat-team-defends-shooting-iraq-marine-veteran/story?id=13640112>. Tumposky's article incorrectly reported that Guerena was shot sixty times, but an autopsy report later revealed that he was only shot twenty-three times. See *Jose Guerena Killed*, *supra* note 25 (reporting that an autopsy confirmed Guerena had been shot only 23 times).

her to hide in a closet with their son.<sup>28</sup> Guerena armed himself with his AR-15<sup>29</sup> and prepared to defend his family from the unidentified armed men breaking into his home. In a matter of seconds,<sup>30</sup> the Pima County SWAT Team forced its way through the door and fired seventy-one rounds into the home.<sup>31</sup> Guerena was hit twenty-three times.<sup>32</sup>

As Guerena lay dying on the floor, his wife called 911 to request medical assistance for her husband.<sup>33</sup> Although an ambulance arrived quickly, officers did not allow paramedics into the home until they secured the scene more than an hour later.<sup>34</sup> By that time, Guerena had bled to death.<sup>35</sup>

The Pima County Sheriff's Department was forced to retract its initial claim that Guerena fired first after evidence showed his rifle was never fired and still had the safety engaged when he died.<sup>36</sup> It was also discovered that the SWAT Team used flashbang grenades in the backyard of Guerena's home as a distraction.<sup>37</sup> This likely caused confusion in the moments before the shooting.<sup>38</sup> The SWAT team was evidently executing a search warrant for marijuana.<sup>39</sup> However, Guerena had no prior convictions and the SWAT Team found no evidence of wrongdoing in the home.<sup>40</sup>

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<sup>28</sup> Tumposky, *supra* note 27.

<sup>29</sup> *Jose Guerena Killed*, *supra* note 25.

<sup>30</sup> Radley Balko, *Family of Jose Guerena, Former Marine Killed by SWAT Team, to Receive \$3.4 Million*, HUFFINGTON POST, [http://www.huffingtonpost.com/2013/09/26/jose-guerena\\_n\\_3988658.html](http://www.huffingtonpost.com/2013/09/26/jose-guerena_n_3988658.html) (last updated Sept. 26, 2013, 12:27 PM) [hereinafter *Family of Jose Guerena*]. A video of the SWAT Team raid on Guerena's house showed that only about thirty-eight seconds passed from when the SWAT Team sounded the siren while pulling into Guerena's driveway to when they shot Guerena. *Id.*

<sup>31</sup> David Axe, *Drug Raid Turns Ugly as SWAT Guns Down Marine Vet*, WIRED (May 30, 2011, 1:00 PM), <http://www.wired.com/dangerroom/2011/05/drug-raid-turns-ugly-as-swat-guns-down-marine-vet/>.

<sup>32</sup> *Jose Guerena Killed*, *supra* note 25.

<sup>33</sup> Tumposky, *supra* note 27.

<sup>34</sup> *Id.* Michael Storie, an attorney for the police union, defended the SWAT Team's decision, claiming that the Team did not know how many shooters were inside and had to assume that it would be ambushed upon entering the home. *Jose Guerena Killed*, *supra* note 25. This explanation is unconvincing, though, because the essential purpose of SWAT Teams is to subdue dangerous suspects and secure the premises quickly. *Id.*

<sup>35</sup> Tumposky, *supra* note 27.

<sup>36</sup> *Jose Guerena Killed*, *supra* note 25.

<sup>37</sup> *Family of Jose Guerena*, *supra* note 30.

<sup>38</sup> *Id.*

<sup>39</sup> *Jose Guerena Killed*, *supra* note 25.

<sup>40</sup> *Id.* The police union's lawyer, Michael Storie, announced that the SWAT Team recovered firearms, body armor, and part of a law enforcement uniform. *Id.* The Guerena family's attorney, Chris Scileppi, noted that the firearms and body armor are both legal to own in Arizona. *Id.* He also pointed out that the partial law enforcement uniform consisted of only a border patrol cap, which is easy to obtain and legal to own. *Id.*

Guerena's story is a tragic example of the damage inflicted by police using military equipment and tactics even when unwarranted.

In Part II, this comment discusses the creation and purpose of the Department of Homeland Security ("DHS"), the Homeland Security Grant Program ("HSGP"), and the Department of Defense Excess Property Program ("1033 Program"). In Part III, this comment analyzes how the DHS, HSGP, and 1033 Program have fueled the militarization of police, and why militarization is problematic. Finally, in Part IV, this comment presents a path to demilitarization.

## II. BACKGROUND

The terrorist attacks of September 11, 2001, highlighted America's vulnerability to terrorism. The Intelligence Authorization Act for Fiscal Year 2003 created The National Commission on Terrorist Attacks Upon the United States ("9-11 Commission").<sup>41</sup> The 9-11 Commission was formed to determine how the September 11th attacks happened and how the United States could avoid such attacks in the future.<sup>42</sup> The 9-11 Commission found that the attacks revealed failures in "imagination, policy, capabilities, and management."<sup>43</sup> To address the failure in imagination, according to the 9-11 Commission, the United States needed to find a way to "bureaucratiz[e]" the use of imagination.<sup>44</sup> In analyzing the failure in management, the 9-11 Commission compared the existing federal agencies to medical specialists in a hospital "ordering tests, looking for symptoms, and prescribing medications," but lacking the attending physician to make them work as a team.<sup>45</sup>

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<sup>41</sup> Intelligence Authorization Act for Fiscal Year 2003, Pub. L. No. 107-306, § 601, 116 Stat. 2383 (2003).

<sup>42</sup> NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., THE 9-11 COMMISSION REPORT xv (2004), *available at* <http://govinfo.library.unt.edu/911/report/911Report.pdf> [hereinafter THE 9-11 COMMISSION REPORT]. Specifically, the 9-11 Commission's was to report: the facts and causes of the September 11th attacks, the circumstances surrounding the attacks, the level of preparedness for the attacks, the response to the attacks, the Commission's own recommendations for preventing future terrorist attacks. Intelligence Authorization Act for Fiscal Year 2003, Pub. L. No. 107-306, § 602, 116 Stat. 2383 (2003).

<sup>43</sup> THE 9-11 COMMISSION REPORT, *supra* note 42, at 339.

<sup>44</sup> *Id.* at 344. The 9-11 Commission, while admitting that imagination is not commonly associated with bureaucracies, determined that it is "crucial to find a way of routinizing, even bureaucratizing, the exercise of imagination." *Id.*

<sup>45</sup> *Id.* at 353. The 9-11 Commission Report also noted that action officers failed to share information or pool analysis. *Id.* Exchanges of information were often lost between divides separating foreign and domestic agencies. *Id.*



### A. *The Department of Homeland Security*

In response to the September 11th terrorist attacks, President George W. Bush issued Executive Order 13228, establishing the Office of Homeland Security.<sup>46</sup> The mission of this new Office was to develop and implement a national strategy to secure the United States from future terrorist attacks.<sup>47</sup>

Congress recognized that homeland security efforts at the time were “dispersed, disorganized, and dysfunctional.” Congress also understood that, to address the threat of domestic terrorism, they needed to become “coherent, consolidated, and coordinated.”<sup>48</sup> To meet these goals, Congress enacted the Homeland Security Act of 2002 (“Homeland Security Act”).<sup>49</sup> The Homeland Security Act officially created the Department of Homeland Security (“DHS”)<sup>50</sup> for the purposes of preventing, reducing vulnerability to, and assisting in recovery from terrorist attacks in the United States.<sup>51</sup>

From the time when DHS was established until October of 2013, DHS absorbed twenty-two different departments, including the United States Coast Guard, the Immigration and Naturalization Service, and the Federal Emergency Management Agency.<sup>52</sup> As of 2013, DHS was the third largest cabinet-level department, with more than 240,000 employees<sup>53</sup> and a 2013 budget of fifty-nine billion dollars.<sup>54</sup>

### B. *The Homeland Security Grant Program*

The 9-11 Commission Report,<sup>55</sup> released on July 22, 2004,<sup>56</sup>

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<sup>46</sup> Exec. Order No. 13228, 66 Fed. Reg. 51,812 (Oct. 8, 2001).

<sup>47</sup> *Id.* § 2.

<sup>48</sup> STAFF OF S. GOVERNMENTAL AFFAIRS COMM., 107TH CONG., THE CASE FOR THE HOMELAND SECURITY DEPARTMENT 1 (2001), available at [http://handy.gslsolutions.com/gov/senate/hsgac/public/\\_archive/081202dhsendorsedgac.pdf](http://handy.gslsolutions.com/gov/senate/hsgac/public/_archive/081202dhsendorsedgac.pdf).

<sup>49</sup> Pub. L. No. 107—296, 116 Stat. 2135 (codified as amended at 6 U.S.C. §§ 101 to 613 (2012)).

<sup>50</sup> 6 U.S.C. § 111(a) (2012).

<sup>51</sup> 6 U.S.C. § 111(b)(1) (2012).

<sup>52</sup> DEPARTMENT OF HOMELAND SECURITY, *Who Joined DHS*, <http://www.dhs.gov/who-joined-dhs> (last visited July 30, 2014).

<sup>53</sup> DEPARTMENT OF HOMELAND SECURITY, *About DHS*, <http://www.dhs.gov/about-dhs> (last visited July 30, 2014).

<sup>54</sup> Shaun Waterman, *Homeland Security Budget Tops \$59 Billion*, WASH. TIMES (Feb. 13, 2012), available at <http://www.washingtontimes.com/news/2012/feb/13/homeland-security-budget-tops-59-billion/>.

<sup>55</sup> Richard Posner published an article in The New York Times, in which he both praised and criticized the 9-11 Commission Report. Richard Posner, *The 9/11 Report: A Dissent*, N.Y. TIMES (Aug. 29, 2004), available at <http://www.nytimes.com/2004/08/29/books/review/29POSNERL.html>. Posner praised the 9-11 Commission Report for its prose, riveting narrative, and

provided a number of recommendations intended to protect against and prepare for terrorist attacks.<sup>57</sup> The Report acknowledged ongoing problems with the allocation of “[h]omeland security assistance”<sup>58</sup> and recommended that the assistance “supplement state and local resources based on the risks or vulnerabilities that merit additional support.”<sup>59</sup>

Congress subsequently passed the Implementing Recommendations of the 9/11 Commission Act of 2007 (“9/11 Act”).<sup>60</sup> The 9/11 Act created the Homeland Security Grant Program<sup>61</sup> (“HSGP”) as a mechanism for allocating DHS grant funds. The HSGP is managed by FEMA and comprises three separate grant programs: the State Homeland Security Program (“SHSP”), the Urban Areas Security Initiative (“UASI”), and Operation Stonegarden (“OPSG”).<sup>62</sup> These grant programs direct federal funds to state and local governments<sup>63</sup> pursuant to the programs’ assigned purposes.<sup>64</sup>

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forthrightness, even calling it an “improbable literary triumph.” *Id.* Posner criticized the report, however, for its inclusion of recommendations. *Id.* Posner suggests that the 9-11 Commission was incorrect in concluding that the attacks resulted from failures in the intelligence and security apparatus. *Id.* Posner argues that the 9-11 Commission Report’s narrative points to something else: that it is nearly impossible to prevent something that hasn’t previously occurred. *Id.* Posner also criticized the 9-11 Commission’s insistence on unanimity, which “deprives decision makers of a full range of alternatives.” *Id.*

<sup>56</sup> NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., 9-11 COMMISSION RELEASES UNANIMOUS FINAL REPORT 1 (2004), available at [http://govinfo.library.unt.edu/911/press/pr\\_2004-07-22.pdf](http://govinfo.library.unt.edu/911/press/pr_2004-07-22.pdf).

<sup>57</sup> THE 9-11 COMMISSION REPORT, *supra* note 42, at 383.

<sup>58</sup> *Id.* at 396.

<sup>59</sup> *Id.*

<sup>60</sup> Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-52, 121 Stat. 266 (codified in scattered sections of 6 U.S.C.).

<sup>61</sup> 6 U.S.C. § 603 (2012).

<sup>62</sup> *FY 2013 Homeland Security Grant Program*, FED. EMERGENCY MGMT. AGENCY, <http://www.fema.gov/fy-2013-homeland-security-grant-program-hsgp-0> (last visited July 31, 2014).

<sup>63</sup> 6 U.S.C. §§ 604, 605 (2012). The Implementing Recommendations of the 9/11 Commission Act of 2007 states that the mission of both the SHSP and UASI is to assist “in preventing, preparing for, protecting against, and responding to acts of terrorism.” *Id.* § 604(a). The programs differ, however, in where they direct this assistance. The SHSP targets State, local, and tribal governments, *id.* § 605(a), whereas the UASI targets high-risk urban areas, *id.* § 604(a).

<sup>64</sup> Oklahoma Republican Senator Tom Coburn brought national attention to the HSGP when he alleged that UASI grant funds were spent wastefully. Caroline May, *Homeland Security Grants Went to ‘Zombie Apocalypse’ Training*, DAILY CALLER (Dec. 5, 2012, 1:47 PM), <http://dailycaller.com/2012/12/05/homeland-security-grants-went-to-zombie-apocalypse-training/>. The DHS determined that grant funds could be used for a \$1000 entry fee to a HALO Counter-Terrorism Summit. TOM COBURN, SAFETY AT ANY PRICE: ASSESSING THE IMPACT OF HOMELAND SECURITY SPENDING IN U.S. CITIES 24-25 (2012), available at

## 1. The State Homeland Security Program

The SHSP allocates federal funds to assist state and local governments in “preventing, preparing for, protecting against, and responding to acts of terrorism.”<sup>65</sup> Each state may apply for grants under the SHSP.<sup>66</sup> In its application, a state must include: the purpose for seeking the funds, a justification for needing the funds to meet its target capabilities, a plan for allocating funds to local governments and Indian tribes, and a budget for spending the funds.<sup>67</sup>

In fiscal year 2013, the SHSP had available funding of \$354 million.<sup>68</sup> State recipients of SHSP grant funds must make at least eighty percent of the grant funds available to local and tribal governments.<sup>69</sup>

## 2. The Urban Areas Security Initiative

The purpose of the UASI is to assist “high-risk urban areas” in preparing for and preventing terrorist acts.<sup>70</sup> Each fiscal year, the Administrator of FEMA<sup>71</sup> must conduct an initial assessment of “the relative threat, vulnerability, and consequences from acts of terrorism faced by each eligible metropolitan area.”<sup>72</sup> An initial assessment includes consideration of certain enumerated factors<sup>73</sup> and any relevant information submitted by the eligible metropolitan area.<sup>74</sup> After reviewing the assessment, the Administrator must designate high-risk urban areas that are

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[http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File\\_id=b86fdaeb-86ff-4d19-a112-415ec85aa9b6](http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=b86fdaeb-86ff-4d19-a112-415ec85aa9b6). The summit was held at a resort and spa and featured a zombie apocalypse demonstration. *Id.* In his report, Senator Coburn highlighted other examples of HSGP waste, such as Indianapolis’ purchase of a \$69,000 hovercraft, Columbus’ purchase of a \$98,000 underwater robot (which was used to recover a \$2 million ‘sunken treasure’), and Kleberg County’s purchase of two 2011 Camaros. *Id.* at 24-28.

<sup>65</sup> 6 U.S.C. § 605 (2012).

<sup>66</sup> *Id.* § 605(b)(1).

<sup>67</sup> *Id.* § 605(b)(2).

<sup>68</sup> FED. EMERGENCY MGMT. AGENCY, *supra* note 62.

<sup>69</sup> 6 U.S.C. § 605(c)(1)(a) (2012).

<sup>70</sup> *Id.* § 604(a).

<sup>71</sup> *See id.* § 601(1) (defining the term “Administrator” as “the Administrator of the Federal Emergency Management Agency”).

<sup>72</sup> *Id.* § 604(b)(2)(A).

<sup>73</sup> The initial assessment takes into consideration other factors, including: the metropolitan area’s population, the area’s population density, the area’s history of threats, the threat’s seriousness, the current threat assessments, the area’s distance from an international border or international waters, the area’s role in responding to acts of terrorism in nearby jurisdictions, and the other factors specified by the Administrator. *Id.* § 608(a)(1)(A)-(H), (K).

<sup>74</sup> *Id.* § 604(b)(2)(B)(i) (2012).

eligible to apply for grants under the UASI.<sup>75</sup> Congressional politics have also played a part in the allocation of UASI grants, as politicians lobby to get funds for their communities.<sup>76</sup> In fiscal year 2013, the UASI had available funding of more than \$558 million.<sup>77</sup>

### 3. Operation Stonegarden

The purpose of OPSG is to secure United States borders by enhancing cooperation among law enforcement at all levels of government.<sup>78</sup> Both local governments at the county level and tribal governments bordering Canada and Mexico are eligible to apply for OPSG grants through their state Administrative Agency.<sup>79</sup> In fiscal year 2013, the OPSG had available funding of fifty-five million dollars.<sup>80</sup>

### 4. Law Enforcement Terrorism Prevention Program

State recipients of SHSP and UASI grants must appropriate twenty-five percent or more of the total funds received to “law enforcement terrorism prevention activities.”<sup>81</sup> The Program Guidance and Application Kit for the Fiscal Year 2007 Homeland Security Grant Program outlines categories of permissible expenditures under the Law Enforcement Terrorism Prevention Program (LETPP).<sup>82</sup> The categories include planning, organization, equipment, training, exercises, and personnel.<sup>83</sup> The DHS Authorized Equipment List<sup>84</sup> is extensive and includes: body armor, ballistic helmets, ballistic shields, battle dress uniforms,

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<sup>75</sup> *Id.* § 604(b)(1).

<sup>76</sup> COBURN, *supra* note 64, at 15-18.

<sup>77</sup> FED. EMERGENCY MGMT. AGENCY, *supra* note 62. In 2003, the UASI had an annual funding of \$596.3 million. COBURN, *supra* note 64, at 11. The UASIs annual funding peaked in 2010 at \$832.5 million, and reached its lowest funding level in 2012 at \$490.3 million. *Id.*

<sup>78</sup> FED. EMERGENCY MGMT. AGENCY, *supra* note 62.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> 6 U.S.C. § 607(a)(1). Approved law enforcement terrorism prevention activities include: sharing and analyzing information, hardening targets, recognizing threats, interdicting terrorists, paying law enforcement overtime expenses, establishing fusion centers, paying information analysts, and completing other activities permitted by the Administrator or the Fiscal Year 2007 Program Guidance of the Law Enforcement Terrorism Prevention Program. *Id.* § 607(a)(2)(A)-(I).

<sup>82</sup> DEPT OF HOMELAND SEC., FY 2007 HOMELAND SECURITY GRANT PROGRAM, PROGRAM GUIDANCE AND APPLICATION KIT 53-57 (2007), available at

[http://www.fema.gov/pdf/government/grant/bulletins/fy07\\_hsgp\\_guidance.pdf](http://www.fema.gov/pdf/government/grant/bulletins/fy07_hsgp_guidance.pdf).

<sup>83</sup> *Id.*

<sup>84</sup> The DHS Authorized Equipment List specifies what equipment purchases may be designated as expenditures of Law Enforcement Terrorism Prevention Program funds. *Id.* at 54.

tactical padding,<sup>85</sup> explosive entry equipment,<sup>86</sup> tactical intervention vehicles, and all-terrain vehicles.<sup>87</sup>

According to the Center for Investigative Reporting, DHS has handed out thirty-four billion dollars in grants since the September 11th terrorist attacks.<sup>88</sup> With these federal funds, local communities across all fifty states have been on a “gear-buying spree,” purchasing everything from pilotless surveillance drones to ballistic helmets and bomb robots.<sup>89</sup>

### C. The Department of Defense Excess Property Program

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<sup>85</sup> DEPT OF HOMELAND SEC., DHS AUTHORIZED EQUIPMENT LIST 13-14 (2005), *available at* [https://www.lis.dhs.gov/sites/default/files/AEL\\_PDF\\_Complete.pdf](https://www.lis.dhs.gov/sites/default/files/AEL_PDF_Complete.pdf) (last visited July 31, 2014).

<sup>86</sup> *Id.* at 36.

<sup>87</sup> *Id.* at 135-36.

<sup>88</sup> Becker & Schulz, *supra* note 24.

<sup>89</sup> *Id.* The FAA Modernization and Reform Act of 2012, signed into law on February 14, 2012, will allow drones to be used in the United States for a variety of commercial and law enforcement purposes. Nick Wingfield, *Drones Set Sights on U.S. Skies*, N.Y. TIMES (Feb. 17, 2012), *available at* <http://www.nytimes.com/2012/02/18/technology/drones-with-an-eye-on-the-public-cleared-to-fly.html?pagewanted=all&r=0>. The new law, although promising for manufacturers of drones, raises serious privacy and civil rights issues. *Id.* Many questions remain unanswered. *Id.* Will drones be allowed to take pictures through windows and skylights? For what can the images be used? While drones may be great for fighting crime, they also can subject American citizens to “unblinking scrutiny.” Steve Chapman, *Limiting police drones in Illinois*, CHICAGO TRIBUNE (May 31, 2013), [http://articles.chicagotribune.com/2013-05-31/opinion/chi-illinois-lawmakers-pass-drone-bill-20130531\\_1\\_drones-prisoner-escape-search-warrants](http://articles.chicagotribune.com/2013-05-31/opinion/chi-illinois-lawmakers-pass-drone-bill-20130531_1_drones-prisoner-escape-search-warrants). Police may soon have access to drones fitted with less than lethal weapons, such as rubber bullets, Tasers, and tear gas. AM. CIVIL LIBERTIES UNION, *Weaponized Drones* (Mar. 5, 2013), <https://www.aclu.org/criminal-law-reform/weaponized-drones>. The Chief Deputy of the Montgomery County Sheriff’s Office in Texas has stated that his Office is contemplating arming its drone with tear gas and rubber bullets. *Groups Concerned Over Arming Of Domestic Drones*, CBS DC (May 23, 2012, 1:18 PM), <http://washington.cbslocal.com/2012/05/23/groups-concerned-over-arming-of-domestic-drones/>. The ACLU has recommended that drones be deployed by police only with a warrant or in an emergency and that images only be retained when there is reasonable suspicion that they contain evidence of a crime. AM. CIVIL LIBERTIES UNION, *Domestic Drones*, <https://www.aclu.org/blog/tag/domestic-drones> (last visited July 31, 2014). Illinois recently enacted the Freedom From Drone Surveillance Act. Michael Maharrey, *Illinois Governor Signs Bill Limiting Drone Use Into Law*, TENTH AMENDMENT CENTER (Oct. 1, 2013), <http://blog.tenthamentendmentcenter.com/2013/10/illinois-governor-signs-bill-limiting-drone-use-into-law/#.Uk8fiZNesqo>. The Drone Act will require, with a few exceptions, that law enforcement obtain a warrant to gather evidence with drones. *Id.* The Drone Act will allow drones use when there is a high risk of terrorist attack, there is a need to locate a missing person but no criminal investigation is being undertaken, and there is a need for photographing a crime scene or a crash. *Id.*

The National Defense Authorization Act of 1997 created the Department of Defense Excess Property Program (“1033 Program”)<sup>90</sup> to transfer excess Department of Defense (“DOD”) property to law enforcement agencies.<sup>91</sup> The Law Enforcement Support Office (“LESO”) has transferred more than ten million pieces of property to more than eleven thousand law enforcement agencies.<sup>92</sup> LESO conducts these transfers to increase the capabilities of the recipient law enforcement agencies.<sup>93</sup>

Under the 1033 Program, state and local police agencies throughout the United States have acquired surplus military weapons and equipment.<sup>94</sup> The distributed surplus includes Light Armored Vehicles (LAVs),<sup>95</sup> amphibious tanks,<sup>96</sup> and Mine-Resistant Ambush Protected (MRAP) vehicles.<sup>97</sup> Many have criticized the 1033 Program because its lack of sufficient oversight allows abuse by recipients of DOD property.<sup>98</sup>

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<sup>90</sup> See 10 U.S.C. § 2576(a) (2012) (permitting the Secretary of Defense to transfer to federal and state agencies, personal property of the DOD including small arms and ammunition that is suitable for law enforcement activities and is not necessary for the DOD).

<sup>91</sup> LAW ENFORCEMENT SUPPORT OFFICE, DEFENSE LOGISTICS AGENCY, 2013 BROCHURE 2 (2013).

<sup>92</sup> *Id.* at 2-3. DOD property may be transferred only if the property is drawn from existing DOD stocks and accepted on an as-is and where-is basis, the DOD funds for the procurement of defense equipment are not expended in the transfer, and the transfer costs are covered by the recipient. 10 U.S.C. § 2576(b) (2012).

<sup>93</sup> LAW ENFORCEMENT SUPPORT OFFICE, *supra* note 91, at 2.

<sup>94</sup> See Lorenzo Francheschi-Bicchierai, *Small-Town Cops Pile Up on Useless Military Gear*, WIRED (Jun. 26, 2012, 6:31 AM), <http://www.wired.com/dangerroom/2012/06/cops-military-gear/all/> (reporting that small police departments across the United States are receiving vast amounts of military equipment and weapons through the 1033 Program).

<sup>95</sup> See, e.g., Zach Pluhacek, *Nebraska State Patrol Trains in Light Armored Vehicles*, JOURNALSTAR.COM (Feb. 16, 2010, 5:24 PM), [http://journalstar.com/news/local/article\\_93f6952e-1b29-11df-9182-001cc4c002e0.html](http://journalstar.com/news/local/article_93f6952e-1b29-11df-9182-001cc4c002e0.html) (reporting that the Nebraska State Patrol acquired three LAVs from the DOD through the 1033 Program and plan to use them for natural disasters).

<sup>96</sup> See, e.g., Robert Johnson, *The Pentagon Is Offering Free Military Hardware to Every Police Department in the U.S.*, BUSINESS INSIDER (Dec. 5, 2011, 11:09 AM), available at <http://www.businessinsider.com/program-1033-military-equipment-police-2011-12> (stating that police in Cobb County, Georgia, have acquired an amphibious tank through the 1033 Program).

<sup>97</sup> See, e.g., Oliver Darcy, *Police Department Acquires \$600K Military Vehicle Built to Withstand Arms Fire, Mine Blasts, IED's and Other Emerging Threats*, THE BLAZE (Sept. 28, 2013, 9:20 AM), <http://www.theblaze.com/stories/2013/09/28/police-department-acquires-tank-built-to-withstand-arms-fire-mine-blasts-ieds-and-other-emerging-threats/> (reporting that Dallas County Sheriff's deputies acquired a MaxxPro MRAP).

<sup>98</sup> Michael Kunzelman, *AP Impact: Little Restraint in Military Giveaways*, ASSOCIATED PRESS (July 31, 2013, 7:31 PM), available at <http://bigstory.ap.org/article/ap-impact-little-restraint-military-giveaways>. An

### III. ANALYSIS

The militarization of police in the United States is not a recent phenomenon. Rather, it is a continuing trend that has accelerated in the wake of the September 11th terrorist attacks.<sup>99</sup> This analysis will discuss how the programs introduced above have fueled the militarization of police, what militarization has resulted in, and why the shooting of Jose Guerena is instructive.

#### A. Militarization

The DHS, HSGP, and 1033 Program have fueled the militarization of American police in two basic ways. First, these programs have armed police departments with military equipment—weapons and tools traditionally reserved for the battlefield.<sup>100</sup> Second, the military equipment and training provided to police departments have encouraged law enforcement officers to adopt a warrior mentality.<sup>101</sup>

##### 1. Armed to the Teeth

The DHS and HSGP departments have distributed a staggering thirty-four billion dollars in grant funds and military equipment to police departments.<sup>102</sup> The government does not

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Associated Press investigation into the 1033 Program revealed that a disproportionate amount of the equipment handed over to law enforcement agencies went to rural areas with less crime and fewer officers. *Id.* For instance, a police chief in Morven, Georgia received boats, scuba gear, rescue rafts and life preservers even though his town's deepest body of water is an ankle-deep creek. *Id.* Also, the police chief – and only full-time officer – of Rising Star, Texas, received over three million dollars in televisions, computers, meat slicers, and other equipment. *Id.* There were even more instances of flagrant abuse, including a sheriff in Bureau County, Illinois who was accused of lending M-14 rifles to his friends and a firearms manager in North Carolina who pled guilty stealing and selling firearms. *Id.*

<sup>99</sup> See Peter B. Kraska, *Researching the Police-Military Blur: Lessons Learned*, 14 POLICE FORUM 3, 2 (2005) [hereinafter *Researching the Police-Military Blur*] (describing militarization as a trend that originated in the 1980's and intensified after the September 11th attacks).

<sup>100</sup> See, e.g., Becker & Schulz, *supra* note 24 (reporting that police departments across the country are obtaining a wide variety of military weapons and equipment by way of federal grant funds and DOD equipment transfers); LAW ENFORCEMENT SUPPORT OFFICE, *supra* note 91 (stating that the Law Enforcement Support Office has transferred ten million pieces of DOD property to law enforcement agencies).

<sup>101</sup> DIANE CECILIA WEBER, WARRIOR COPS: THE OMINOUS GROWTH OF PARAMILITARISM IN AMERICAN POLICE DEPARTMENTS 1-2 (1999), available at <http://object.cato.org/sites/cato.org/files/pubs/pdf/bp50.pdf>.

<sup>102</sup> Becker & Schulz, *supra* note 24.

track exactly what is purchased with these funds.<sup>103</sup> There is a clear indication, however, that police departments across the country are transforming into “small army-like forces.”<sup>104</sup>

The small town of Keene, New Hampshire, which had a population of 23,409 in 2013, used its federal grant funds to purchase a BearCat armored vehicle.<sup>105</sup> The vehicle, manufactured by Lenco, is equipped with features such as .50 caliber armor protection, a V-Hull design, and blast seats.<sup>106</sup> The town’s application for the DHS grant funds mentioned the need for “terrorism-prevention tools.” A city councilmember explained that it is “just something you put in the grant application to get the money.”<sup>107</sup>

The 1033 Program has facilitated the transfer of more than ten million pieces of DOD property to law enforcement agencies around the country.<sup>108</sup> From 1997 to 1999 alone, some 253 aircraft, including Blackhawk helicopters, were transferred to police departments.<sup>109</sup> Other DOD equipment transfers included thousands of M-16 rifles, bulletproof helmets, grenade launchers, and night-vision goggles.<sup>110</sup>

## 2. Encouraging the Warrior Mentality

The warrior mentality is most easily understood by considering the mindset of a soldier at war. When police officers adopt a warrior mentality, the problem becomes apparent: “American streets are viewed as the ‘front’ and American citizens as the ‘enemy.’”<sup>111</sup> Police officers’ assumption of a warrior mentality is improper because the police and military serve different functions. “The soldier learns to use lethal force on the enemy . . . and initiates violence on command.”<sup>112</sup> In contrast, “[t]he civilian law enforcement officer . . . confronts not an ‘enemy’ but individuals who, like him, are both subject to the nation’s laws

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Allie Bohm & Emma Andersson, *Towns Don’t Need Tanks, but They Have Them*, ACLU BLOG OF RIGHTS (Mar. 7, 2013, 2:59 PM), <https://www.aclu.org/blog/criminal-law-reform-free-speech/towns-dont-need-tanks-they-have-them>.

<sup>106</sup> *BearCat G3*, Lenco ARMORED VEHICLES, <http://www.lencoarmor.com/law-enforcement/bearcat-variants/g3/> (last visited July 31, 2014).

<sup>107</sup> Bohm & Andersson, *supra* note 105.

<sup>108</sup> LAW ENFORCEMENT SUPPORT OFFICE, *supra* note 91.

<sup>109</sup> RADLEY BALKO, *RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA’S POLICE FORCES* 210 (2013) [hereinafter *RISE OF THE WARRIOR COP*].

<sup>110</sup> *Id.*

<sup>111</sup> WEBER, *supra* note 101, at 10.

<sup>112</sup> *Id.*



and protected by the Bill of Rights.<sup>113</sup>

The DHS, HSGP, and 1033 Program instill a warrior mentality in law enforcement by providing the military equipment and federal funds necessary to create their own SWAT teams<sup>114</sup> or other paramilitary units that utilize military training and tactics.<sup>115</sup>

In the mid 1980's, about twenty percent of towns with populations between 25,000 and 50,000 people had a SWAT team.<sup>116</sup> By 2007, that number had increased to eighty percent.<sup>117</sup> In Wisconsin, for example, sixteen SWAT teams have been formed since 2000.<sup>118</sup> Many of these new SWAT teams were formed in very small towns such as Forest County,<sup>119</sup> with a population of 9,304,<sup>120</sup> and Mukwonago,<sup>121</sup> with a population of 7,355.<sup>122</sup>

Military special forces regularly train SWAT teams<sup>123</sup> in areas such as urban combat, helicopter attack, and sniping.<sup>124</sup> Private contractors also provide training in military weapons and tactics.<sup>125</sup> One such company, Special Operations Systems, is staffed by instructors selected from Army Special Forces, United States Marines, Naval Special Warfare, and law enforcement.<sup>126</sup> Special Operations Systems offers training to SWAT teams and other law enforcement agencies in areas such as explosive breaching, urban sniping, close quarters battle ("CQB"), vehicle

<sup>113</sup> *Id.*

<sup>114</sup> RADLEY BALKO, *OVERKILL: THE RISE OF PARAMILITARY POLICE RAIDS IN AMERICA* 8 (2006), available at [http://object.cato.org/sites/cato.org/files/pubs/pdf/balko\\_whitepaper\\_2006.pdf](http://object.cato.org/sites/cato.org/files/pubs/pdf/balko_whitepaper_2006.pdf) [hereinafter *OVERKILL*].

<sup>115</sup> *RISE OF THE WARRIOR COP*, *supra* note 109, at xi-xii.

<sup>116</sup> Peter Kraska, *Militarization and Policing—Its Relevance to 21st Century Police*, 1 *POLICING* 501, 506 (2007), available at <http://cjmasters.eku.edu/sites/cjmasters.eku.edu/files/21stmilitarization.pdf>.

<sup>117</sup> *Id.*

<sup>118</sup> *OVERKILL*, *supra* note 114, at 10.

<sup>119</sup> *Id.*

<sup>120</sup> *Community Facts*, UNITED STATES CENSUS BUREAU, [http://factfinder2.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml) (last visited July 31, 2014) (reporting the population as of 2010).

<sup>121</sup> *OVERKILL*, *supra* note 114, at 10.

<sup>122</sup> *Community Facts*, UNITED STATES CENSUS BUREAU, [http://factfinder2.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml#none](http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none) (last visited July 31, 2014) (reporting the population as of 2010).

<sup>123</sup> See Peter B. Kraska & Victor E. Kappeler, *Militarizing American Police: The Rise and Normalization of Paramilitary Units*, 44 *SOC. PROBLEMS* 1, 11 (1997) (reporting that in a survey of police paramilitary units, forty-three percent "trained with 'active-duty military experts in special operations.'")

<sup>124</sup> *OVERKILL*, *supra* note 114, at 14.

<sup>125</sup> *Law Enforcement Training*, SPECIAL OPERATIONS SYSTEMS, <http://specopsystems.com/law-enforcement-training/> (last visited July 31, 2014).

<sup>126</sup> *Staff*, SPECIAL OPERATIONS SYSTEMS, <http://specopsystems.com/staff/> (last visited July 31, 2014).

assault, clandestine operations, and weapons training.<sup>127</sup>

Training may appear to be a “purely technical exercise.”<sup>128</sup> But training “constructs and reinforces the ‘dangerousness’ of the group’s work, the importance of feeling and thinking as a team” and the “‘pleasure’ that comes from playing out ‘warrior fantasies.’”<sup>129</sup> By embracing military equipment and training, police officers have “accept[ed] the military as a model for their behavior and outlook”<sup>130</sup> and “adopt[ed] the tactics and mindset of their military mentors.”<sup>131</sup> One former SWAT team member, Betty Taylor, explained that “the mentality changes when they get put on the SWAT team . . . [t]he us-versus-them mentality takes over.”<sup>132</sup> She lamented, “when you get into that mentality, there are no innocent people. There’s us and there’s the enemy.”<sup>133</sup>

### B. What’s So Bad About Warrior Cops?

In defending the militarization of police, some have argued that police must keep abreast of the threats they face in the war on drugs,<sup>134</sup> war on crime, and war against terrorism.<sup>135</sup>

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<sup>127</sup> *Law Enforcement Training*, *supra* note 125.

<sup>128</sup> Kraska & Kappeler, *supra* note 123, at 11.

<sup>129</sup> *Id.*

<sup>130</sup> WEBER, *supra* note 101, at 1.

<sup>131</sup> *Id.* at 2.

<sup>132</sup> See RISE OF THE WARRIOR COP, *supra* note 109, at 241 (describing a conversation with Betty Taylor, a former SWAT team member, in which Taylor explains the mentality of SWAT officers).

<sup>133</sup> *Id.*

<sup>134</sup> Phrases such as the “war on drugs” and “war on crime,” sometimes referred to as “martial metaphors,” also contribute to the warrior mentality among American police. WEBER, *supra* note 101, at 10. They have a tendency to turn “high-crime areas into ‘war zones,’ citizens into potential enemies, and police officers into soldiers.” *Id.* This rhetoric is echoed by police officers themselves, many of who openly advocate the warrior mentality. Radley Balko, *SWAT Cop Says American Neighborhoods Are ‘Battlefields,’ Claims Cops Face Same Dangers as Soldiers in Afghanistan*, HUFFINGTON POST (Aug. 21, 2013), [http://www.huffingtonpost.com/2013/08/18/swat-cop-says-american-ne\\_n\\_3776501.html](http://www.huffingtonpost.com/2013/08/18/swat-cop-says-american-ne_n_3776501.html). Glenn French, a SWAT team commander in Sterling Heights, Michigan, stated that trainers have spent a decade teaching officers to treat their “sector[s]” like a battlefield. *Id.* French further stated that officers should use the same technologies, weapons, and tactics that “[their] military comrades do.” *Id.* French even went so far as to dub SWAT officers “mysterious warriors.” *Id.* French’s argument illustrates perfectly how police officers are encouraged to “accept the military as a model for their behavior and outlook.” WEBER, *supra* note 101, at 1.

<sup>135</sup> See, e.g., Radley Balko, *Rise of the Warrior Cop: Is it Time to Reconsider the Militarization of American Policing?*, WALL ST. J. (Aug. 7, 2013, 3:44 PM), *available*

at <http://online.wsj.com/news/articles/SB10001424127887323848804578608040780519904> (stating that advocates for the use of aggressive military tactics against drug dealers argued that drug dealers were acquiring bigger weapons and the police needed to keep a step ahead of them); RISE OF THE WARRIOR

Aggressive military tactics are necessary, they claim, because criminals are becoming more heavily armed.<sup>136</sup> However, the evidence suggests that the vast majority of violent criminals are not so equipped.<sup>137</sup> In 2011, 8,583 murders were committed with a firearm.<sup>138</sup> Only 323 of those murders involved the use of a rifle,<sup>139</sup> whereas 6,220 of them involved handguns.<sup>140</sup> In fact, more murders were committed with blunt objects than were committed with rifles.<sup>141</sup>

Opponents of militarization also point to countless cases when militarized police and SWAT teams caused property damage, serious injuries, and wrongful deaths.<sup>142</sup> These instances highlight the two central problems created by the militarization of American police: mission creep and violation of the Castle Doctrine.

### 1. Mission Creep

With the proliferation of SWAT teams in the United States, another symptom of militarization emerged: mission creep.<sup>143</sup>

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COP, *supra* note 109, at 254 (explaining how police agencies would argue that military equipment was necessary in case of a rare school shooting or terrorist attack but would then use the equipment for drug raids); Bohm & Andersson, *supra* note 105 (reporting that the Sheriff of Richland County, North Carolina, defended his Department's acquisition of an armored personnel carrier by saying that it would save lives); Becker & Schulz, *supra* note 24 (reporting that a Fargo police Lieutenant defended the town's recent acquisition of military assault rifles, Kevlar helmets, bomb detecting robots, and an armored vehicle by saying that Fargo did not face terrorism threats every day but had to be prepared).

<sup>136</sup> OVERKILL, *supra* note 114, at 27.

<sup>137</sup> CRIMINAL JUSTICE INFO. SERV. DIV., FEDERAL BUREAU OF INVESTIGATION, *Crime in The United States 2011: Expanded Homicide Data Table 8*, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2011/crime-in-the-u.s.-2011/tables/expanded-homicide-data-table-8> (last visited July 31, 2014).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> See, e.g., RISE OF THE WARRIOR COP, *supra* note 109, at 288 (stating that a Maricopa County SWAT team, led by recently deputized Steven Segal, drove a tank into the living room of Jesus Llovera, who was suspected of cockfighting, and killed Llovera's dog); *id.* at 291 (stating that a California police officer shot and killed a boxer puppy and pregnant Chihuahua in 2012 and then claimed that the Chihuahua was caught in the crossfire after the boxer puppy threatened him); OVERKILL, *supra* note 114, at 37 (describing a 2003 no-knock raid that was mistakenly conducted on the home of 57-year-old Alberta Spruill, who suffered a fatal heart attack when police burst into her home and deployed a flashbang grenade).

<sup>143</sup> See Kenneth B. Nunn, *Race, Crime and the Pool of Surplus Criminality: Or Why the 'War On Drugs' Was a 'War On Blacks'*, 6 J. GENDER RACE & JUST. 381, 405 (2002) (stating that while the original purpose of SWAT teams was responding to "extreme and dangerous situations . . . the ubiquity of SWAT teams means that police departments often use their paramilitary

Mission creep is responsible for the “growing tendency of police departments to use SWAT units in *routine* policing activity.”<sup>144</sup> SWAT teams were originally intended to respond to extraordinarily dangerous situations, such as hostage, sniper, and terrorist situations.<sup>145</sup> Unfortunately, SWAT teams and military tactics are increasingly being used to execute search warrants<sup>146</sup> for non-violent offenses<sup>147</sup> or to enforce regulatory law.<sup>148</sup>

The average number of yearly SWAT deployments nationwide has increased from approximately 3,000 in the early 1980's to about 40,000 in 2001.<sup>149</sup> The Governor's Office of Crime Control and Prevention reported that, in 2012, there were 1,651 SWAT team deployments in Maryland.<sup>150</sup> The report also revealed that 89.5% of these SWAT deployments were for the execution of search

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units for routine law enforcement activities.”)

<sup>144</sup> WEBER, *supra* note 101, at 8.

<sup>145</sup> *Researching the Police-Military Blur*, *supra* note 99, at 5.

<sup>146</sup> *Id.* In Arlington, Texas, a SWAT team executed a search warrant for marijuana plants on an organic farm. Radley Balko, *Texas Police Hit Organic Farm with Massive SWAT Raid*, HUFFINGTON POST, [http://www.huffingtonpost.com/2013/08/15/texas-swat-team-conducts-\\_n\\_3764951.html](http://www.huffingtonpost.com/2013/08/15/texas-swat-team-conducts-_n_3764951.html) (last updated Aug. 18, 2013, 7:26 AM). The police held the residents at gunpoint for a half hour, but found no marijuana plants. *Id.* After ten hours the police confiscated blackberry bushes, okra and tomatillo plants, sunflowers, and native grasses. *Id.* A SWAT team conducted a drug raid on the home of Ronald Terebesi in Easton, Connecticut. MariAn Gail Brown, *A Costly SWAT Raid Gone Wrong*, CONNECTICUT POST, <http://www.ctpost.com/local/article/A-costly-SWAT-raid-gone-wrong-4303215.php> (last updated Feb. 23, 2013, 11:42 PM). In the mayhem of detonating flashbang grenades, one officer became confused. *Id.* Believing that he had been hit, the officer shot and killed Terebesi's friend, Gonzalo Guizan. *Id.* The spokesman for the Connecticut State Police responded that “[c]ertainly, this is not the result anyone would want[.]” *Id.*

<sup>147</sup> See RISE OF THE WARRIOR COP, *supra* note 109, at 282 (stating that when the popularity of Texas Hold 'Em rose in the 2000's, police responded to private games and tournaments with SWAT raids). A SWAT team in Dallas, Texas raided a Veterans of Foreign Wars post that held charity poker games. *Id.* In Greenville, South Carolina police raided a poker tournament held by seventy-two-year-old Aaron Awtry. *Id.* at 283. When the police beating down Awtry's door with a battering ram, Awtry thought he was being robbed and fired through the door, injuring one officer. *Id.* The police returned fire and Awtry was struck once. *Id.* Other players stated that the police neither knocked nor identified themselves as police. *Id.* Awtry was charged with attempted murder, to which he pled guilty in exchange for a reduced sentence of five years imprisonment. *Id.*

<sup>148</sup> See *The Militarization of the Police*, S.C. POLICY COUNCIL (Aug. 14, 2013), <http://www.scpolicycouncil.org/research/budget/policemilitarization> (reporting that SWAT teams have been used to enforce regulatory law such as underage drinking and barbering without a license).

<sup>149</sup> *Researching the Police-Military Blur*, *supra* note 99, at 5.

<sup>150</sup> MD. STATISTICAL ANALYSIS CTR., GOVERNOR'S OFFICE OF CRIME CONTROL & PREVENTION, THIRD REPORT TO THE STATE OF MARYLAND UNDER PUBLIC SAFETY ARTICLE § 3-507 3 (2012), *available at* <http://www.goccp.maryland.gov/msac/documents/SWATReport2012.pdf>.

warrants.<sup>151</sup> More than half of the total SWAT team deployments were for “Part II Crimes” and only involved the recovery and seizure of “illegal drugs and other contraband.”<sup>152</sup>

In Kenosha, Wisconsin, nine agents from the state’s Department of Natural Resources (DNR) and four deputy sheriffs raided an animal shelter in search of a baby deer<sup>153</sup> that was killed on site.<sup>154</sup> One shelter employee described the agents as “armed to the teeth.”<sup>155</sup> The DNR supervisor tried to justify DNR’s decision not to provide prior notice to the shelter by explaining that sheriffs’ departments do not call ahead to ask for drugs when they execute a search warrant for narcotics.<sup>156</sup>

The result of mission creep is evident: as SWAT teams are increasingly deployed for routine police activities, non-violent offenders are subjected to violent assaults in their own homes.

<sup>151</sup> *Id.* at 6. The report categorizes the “legal authority for activation” of SWAT teams as: arrest warrant, search warrant, barricade, exigent circumstances, and “other.” *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> Animals, mostly the family dog, are frequently victims of violent SWAT raids. RISE OF THE WARRIOR COP, *supra* note 109, at 290. In Maricopa County, Arizona a SWAT team conducted a raid using tear gas and an armored personnel carrier. Radley Balko, *The Drug War Goes to the Dogs*, CATO INSTITUTE (Apr. 5, 2006), *available at* <http://www.cato.org/publications/commentary/drug-war-goes-dogs>. The targeted home caught fire, and when a puppy tried to escape the flames, a SWAT officer chased him back into the building with a fire extinguisher. *Id.* The puppy burned to death. *Id.* In Tampa, Florida a police officer headed to a drug raid took a short cut across the neighbor’s yard, killing the neighbor’s two dogs on the way. *Id.* In Fremont, California, police raided the home of a medicinal marijuana patient and shot his dog nine times. *Id.* In Berwyn Heights, Maryland, a Prince George’s County SWAT team burst into the home of the town’s mayor. *Mayor Wants Federal Probe after SWAT Raids House, Kills Dogs*, CNN, <http://www.cnn.com/2008/CRIME/08/07/mayor.warrant/> (last updated Aug. 7, 2008, 7:47 PM). The SWAT team cuffed the mayor, forced him to the floor, and shot his two dogs. *Id.* While there are no national statistics for such shootings, it is clear that police officers are regularly shooting dogs with little or no provocation. RISE OF THE WARRIOR COP, *supra* note 109, at 290. According to a study by the National Canine Research Council, half of intentional shootings by police involve dogs, even though there are no documented cases of a dog killing a police officer. Mike Carter, *Half of Intentional Shootings by Police Involve Dogs, Study Says*, SEATTLE TIMES (Dec. 1, 2012), *available at* [http://seattletimes.com/html/localnews/2019809359\\_rosie02m.html](http://seattletimes.com/html/localnews/2019809359_rosie02m.html).

<sup>154</sup> Jessica Chasmar, *13 Wisconsin officials raid animal shelter to kill baby deer named Giggles*, WASHINGTON TIMES (Aug. 1, 2013), *available at* <http://www.washingtontimes.com/news/2013/aug/1/13-wisconsin-officials-raid-animal-shelter-kill-ba/>. Wisconsin law forbids the possession of wild animals. *Id.* The shelter received the baby deer from a family who feared that the deer had been abandoned, and had planned bring the deer to a wildlife preserve the day after the raid. *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

## 2. Violation of the Castle Doctrine

The Castle Doctrine is rooted in the principles that “a [person’s] house is his [or her] castle”<sup>157</sup> and that the home “should be protected as a place of refuge, peace, and sanctuary.”<sup>158</sup> The Doctrine encompasses the idea that “the state is permitted to violate the home’s sanctity only under limited circumstances, only as a last resort, and only under conditions that protect the threshold from unnecessary violence.”<sup>159</sup> The knock-and-announce rule “logically extends from this entrenched legal reverence for the home.”<sup>160</sup> The rule requires that law enforcement officers announce their presence to give residents an opportunity “to open the door[.]”<sup>161</sup>

The prevalence of no-knock and quick-knock raids<sup>162</sup> is the result of police departments choosing to use dangerous and aggressive military tactics<sup>163</sup> that evince a lack of concern for avoiding violence. One study found that more than eighty percent of SWAT team deployments were for no-knock and quick-knock drug raids that involved forced entry.<sup>164</sup> These raids are often conducted in the pre-dawn hours.<sup>165</sup> They frequently involve violent forced entry with battering rams or explosives and use of flashbang grenades.<sup>166</sup> Violent governmental intrusions into the home foreclose the “opportunity to comply with the law and to avoid the destruction of property” and utterly destroy the “elements of privacy and dignity” which the knock-and-announce rule and the Castle Doctrine are meant to protect.<sup>167</sup>

Although the Supreme Court of the United States held that the knock-and-announce rule “forms a part of the Fourth Amendment reasonableness inquiry,”<sup>168</sup> the Court later carved out exceptions to the rule.<sup>169</sup> The Court has now made the rule

<sup>157</sup> *Miller v. United States*, 357 U.S. 301, 307 (1958).

<sup>158</sup> RISE OF THE WARRIOR COP, *supra* note 109, at 6.

<sup>159</sup> *Id.*

<sup>160</sup> E. Martin Estrada, *A Toothless Tiger in the Constitutional Jungle: The “Knock and Announce Rule” and the Sacred Castle Door*, 16 U. FLA. J.L. & PUB. POL’Y 77, 81 (2005).

<sup>161</sup> *Hudson v. Michigan*, 547 U.S. 586, 589 (2006).

<sup>162</sup> See *Researching the Police-Military Blur*, *supra* note 99, at 5 (stating that more than eighty percent of police paramilitary unit deployments were for no-knock and quick-knock drug raids involving dynamic entries).

<sup>163</sup> *Id.* at 6.

<sup>164</sup> *Id.* Kraska refers to police paramilitary units, which is a broader term defining a type of police unit into which SWAT teams would fit. *Id.*

<sup>165</sup> *Id.* at 5.

<sup>166</sup> *Id.*

<sup>167</sup> *Hudson*, 547 U.S. at 594.

<sup>168</sup> *Wilson v. Arkansas*, 514 U.S. 927, 930 (1995).

<sup>169</sup> See *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997) (stating that a no-knock entry is permissible where the police have “reasonable suspicion that knocking and announcing their presence, under the particular circumstances,

practically unenforceable.<sup>170</sup> Given the feeble state of the knock-and-announce rule, the proliferation of, and increasing reliance on, SWAT teams, military tactics, and no-knock searches will make violent police raids more commonplace.

### C. *Another Look at the Shooting of Jose Guerena*

A video recording of the Guerena raid, filmed by one of the SWAT officers, is revealing.<sup>171</sup> The video clip begins with a shot of SWAT officers in an armored vehicle and SWAT officers in the yard near the front door.<sup>172</sup> The police vehicle siren is sounded for a total of nine seconds after which SWAT officers near the door can be heard speaking.<sup>173</sup> Then, just thirty-three seconds into the video, the door is kicked open.<sup>174</sup> At forty seconds, the officers begin firing into the home.<sup>175</sup> Four seconds after the shooting begins, an officer moves from the yard to the door and begins firing his pistol into the home.<sup>176</sup> This officer, who is firing over the shoulder of another officer, is clearly unable to see at what he is shooting.<sup>177</sup>

Only thirty-eight seconds passed from the first siren to the shooting and killing of Jose Guerena.<sup>178</sup> Guerena, who was holding an AR-15, was forced to make a split-second decision in responding to the assault.<sup>179</sup> Guerena chose not to fire and the SWAT officers

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would be dangerous or futile, or that it would inhibit the effective investigation of the crime.”)

<sup>170</sup> See *Hudson*, 547 U.S. at 593-94 (holding that violation of the knock and announce rule does not warrant application of the exclusionary rule because “[t]he interests protected by the knock-and-announce requirement . . . do not include the shielding of potential evidence from the government’s eyes”); Jessica M. Weitzman, Note, *They Won’t Come Knocking No More: Hudson v. Michigan and the Demise of the Knock-And-Announce Rule*, 73 BROOK. L. REV. 1209, 1218 (2008) (arguing that because other deterrence mechanisms are ineffective, the exclusionary rule is the only viable remedy for knock-and-announce violations).

<sup>171</sup> Mike McDaniel, *The Jose Guerena Shooting: Update 1, Reprised*, STATELY MCDANIEL MANOR (Dec. 30, 2011), <http://statelymcdanielmanor.wordpress.com/2011/12/30/the-jose-guerena-shooting-update-1-reprised/>. The author, Mike McDaniel, a former SWAT officer, analyzed the video recording of the Guerena shooting in great detail. *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* The SWAT officers can be heard speaking, but they are not loud enough to be understood in the video clip. See *id.* The siren sounds very similar to a car alarm and could have been mistaken for one. See *id.* The siren also could have been mistaken for a passing emergency vehicle. See *id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Family of Jose Guerena*, *supra* note 30.

<sup>179</sup> See McDaniel, *supra* note 171 (stating that only seven seconds passed

took his life.<sup>180</sup> This raid illustrates how police, armed like soldiers and steeled with a warrior mentality, are quick to use aggressive military tactics that treat an Arizona home like the battlefield and an innocent American citizen like the enemy.

#### IV. PROPOSAL

Reversing the militarization trend will require nothing less than a nationwide movement. This section proposes a comprehensive, top-down approach to demilitarization. While some of the proposed measures may seem extreme, the first step in the opposite direction always looks like a big one.

##### A. *Recognizing the Problem*

Reports of botched SWAT raids, excessively violent tactics, and civilian casualties are often disregarded as “isolated incidents.”<sup>181</sup> Thus, the first step to reform is increasing the attention paid to the issue of police militarization. The ACLU’s launch of a nationwide investigation into the militarization of police is a good start.<sup>182</sup> More is needed.

To push militarization into the national spotlight, the House of Representatives should pass a resolution for the formation of a special committee to investigate militarization. The resolution should specify the scope of the investigation. The committee should investigate how militarization works on the ground by studying (1) the prevalence and frequency of SWAT and paramilitary-style police raids, (2) the civilian casualties resulting from such raids, (3) the use by police of military weapons and tactics against civilians, and (4) the use by police of military surveillance technology against civilians. The committee should

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from the time that the SWAT officers kicked in the door to the time that they opened fire on Guerenena).

<sup>180</sup> See *Jose Guerenena Killed*, *supra* note 25 (stating that Guerenena, armed with an AR-15, never fired his weapon at the SWAT officers that killed him).

<sup>181</sup> OVERKILL, *supra* note 94, at 43. Balko argues that these raids are occurring with “disturbing regularity” and that “[t]hey can’t all be isolated incidents.” *Id.* The CATO Institute created an interactive map of botched police raids. *Botched Paramilitary Police Raids*, CATO INSTITUTE, <http://www.cato.org/raidmap> (last visited July 31, 2014). The raids are referred to as an “epidemic of isolated incidents.” *Id.*

<sup>182</sup> See *ACLU Launches Nationwide Investigation into Police Use of Military Technology & Tactics*, ACLU (Mar. 6, 2013), <https://www.aclu.org/criminal-law-reform/aclu-launches-nationwide-investigation-police-use-military-technology-tactics> [hereinafter *ACLU Launches Nationwide Investigation*]. The ACLU filed more than 225 public records requests in 23 states, seeking information concerning law enforcement agencies’ use of SWAT teams, and “cutting edge weapons and technologies.” *Id.* The ACLU will use the information to recommend legal reform concerning the use of military tactics and technology by law enforcement agencies. *Id.*



also address the federal government's role in militarization by examining the allocation and expenditure of HSGP grant funds and the 1033 Program equipment transfers. After completing the investigation, the committee should issue a report of its findings and recommendations to Congress and the public.<sup>183</sup> A Congressional investigation, such as the one proposed in this comment, can, according to Senator Sam Ervin, act as a "catalyst that spurs Congress and the public to support vital reforms in our nation's laws."<sup>184</sup>

### *B. Meaningful Reform*

Any plans for reform must first recognize that the militarization of police is one of the most insidious and pervasive threats to Americans' civil rights.<sup>185</sup> Reform must address the militarization problem from all sides at the national, state, and local levels.

#### 1. National

The flow of grant funds and military equipment from the federal government to state and local governments has accelerated the militarization of police by facilitating the formation and outfitting of SWAT teams and other paramilitary units. Congress' goal should be to stop both the flow of funds and the transfer of equipment. To achieve this result, Congress should enact legislation that would discontinue the HSGP and 1033 Program.

The legislation should repeal 6 U.S.C. Sections 601-613, which created the HSGP and the programs that fall within it, including the SHSP, UASI, and LETPP.<sup>186</sup> The legislation should also repeal 10 U.S.C. Section 2576, which created the 1033 Program.<sup>187</sup> Entirely eliminating these programs is the best way to scale back the flow of federal dollars and military equipment to local law enforcement agencies.

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<sup>183</sup> A good example of the national attention that a congressional investigation is capable of attracting can be seen from the 9/11 Commission Report, which was reprinted as a book and quickly became a best seller. Evan Thomas, *Tragicomic Tale of the 9/11 Report*, N.Y. TIMES (Feb. 4, 2008), available at [http://www.nytimes.com/2008/02/04/books/04thom.html?\\_r=0](http://www.nytimes.com/2008/02/04/books/04thom.html?_r=0).

<sup>184</sup> *A History of Notable Senate Investigations*, UNITED STATES SENATE, <http://www.senate.gov/artandhistory/history/common/briefing/Investigations.htm> (last visited July 31, 2014). Senator Sam Ervin was chairman of the Watergate Committee. *Id.*

<sup>185</sup> *ACLU Launches Nationwide Investigation*, *supra* note 182. The ACLU's advocacy and policy strategist, Allie Bohm, stated that "[t]he militarization of local police is a threat to Americans' right to live without fear of military-style intervention in their daily lives[.]" *Id.*

<sup>186</sup> 6 U.S.C. §§ 603-605, 607 (2012).

<sup>187</sup> 10 U.S.C. § 2576 (2012).

## 2. State

At the state level, the goal should be to promote transparency of law enforcement activities. Transparency is essential because it increases accountability in police departments and, thus, encourages best practices.

To promote transparency states should enact legislation that requires law enforcement agencies to produce and publish annual reports.<sup>188</sup> The reports should describe the frequency of the deployment of SWAT teams and other paramilitary units, the circumstances justifying the deployments, and the outcome of the deployments. The reports should also describe the use of no-knock warrants and explain the circumstances justifying their use. Finally, the reports should describe all officer-involved shootings, any attendant casualties and property damage, and the circumstances surrounding such occurrences.

Requiring law enforcement agencies to report this information to the state will give lawmakers a clearer picture of the militarization problem. The reports could be used to determine, for example, whether SWAT team deployments occur too frequently or without good cause, whether no-knock warrants are becoming standard practice, and whether SWAT teams cause more civilian casualties than the average police officer.

In addition to the reporting requirement, the legislation should require audiovisual recording of police activities when serving a warrant for which forced entry is necessary. Audiovisual recordings of officers serving warrants would be advantageous both to law enforcement agencies and to the public.<sup>189</sup> They could

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<sup>188</sup> Maryland passed a SWAT team reporting statute in the wake of a botched SWAT raid on the home of the Mayor of Berwyn Heights, Maryland during which the mayor's two dogs were shot. *See supra* note 153. The law, signed into effect in 2009, requires law enforcement agencies in the state that maintain SWAT teams to report "specific activation and deployment information." *Law Enforcement, GOVERNOR'S OFFICE OF CRIME CONTROL & PREVENTION*, <http://www.goccp.maryland.gov/msac/law-enforcement.php> (last visited July 31, 2014).

<sup>189</sup> *See OVERKILL*, *supra* note 114, at 42 (stating that "forced raids should be videotaped," which would "serve to clear up any doubts about whether or not police knocked and announced themselves or how long they waited between announcement and entry"). Civilians' recording of police conduct may also encourage transparency and accountability. *See* Dugald McConnell & Brian Todd, *Eyewitness to Miami Beach Shooting Alleges Police Misconduct*, CNN (June 14, 2011, 11:30 AM), <http://www.cnn.com/2011/CRIME/06/07/florida.shooting.witness/> (reporting that Narces Benoit, a witness to a police shooting who used his cell phone to record police officers firing into a suspect's vehicle, was spotted by police officers who then chased him back to his vehicle, handcuffed him, and destroyed his cellphone). When the officers approached Benoit's vehicle, they pointed their firearms at Benoit and one officer put a firearm to his girlfriend's head. *Id.* Benoit was able to remove the memory card from his cellphone, but said that others' cellphones were destroyed as well. *Id.* The suspect, Raymond

vindicate officers falsely accused of wrongdoing<sup>190</sup> in serving a warrant and confirm honest claims of police abuse made by civilians.<sup>191</sup> The recordings would also encourage best practices among police officers and discourage the violent, shoot-first tactics that come with the warrior mentality.<sup>192</sup> The increased transparency and accountability would also help to restore the public's trust in the police.

In the case of Jose Guereña, for example, the video, which was recorded by an officer near the driveway, painted a story far different from that told by the SWAT officers.<sup>193</sup> What the video did not show, however, was what the officers saw after breaking down Guereña's door. A helmet camera worn by the officers in the doorway could have captured what happened before they opened

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Herisse, was killed after being shot 16 times in a hail of 116 bullets. Julie Brown, *The Killing of Raymond Herisse: 116 Shots that Shook South Beach*, MIAMI HERALD (May 25, 2013), available at <http://www.miamiherald.com/2013/05/25/3417050/the-killing-of-raymond-herisse.html>. Four bystanders were also injured, and it was later determined that Herisse never fired his weapon as the officers initially claimed. *Id.* The witness videos contradicted claims by the officers that Herisse was traveling at a high rate of speed. *Id.* More than two years after the shooting, the criminal investigation remains open and none of the officers have been charged. *Exclusive: Victims Recall Being Shot by Cops on SoBe, Still Don't Know Why*, CBS MIAMI (June 24, 2013, 11:29 PM), <http://miami.cbslocal.com/2013/06/24/exclusive-victims-recall-being-shot-by-cops-on-sobe-still-dont-know-why/>.

<sup>190</sup> RISE OF THE WARRIOR COP, *supra* note 109, at 323. Lisha Michelle Weaver accused a police officer in Spanish Fort, Alabama of rape. *Dash cam clears Ala. officer accused of rape*, POLICEONE.COM (Sept. 18, 2012), <http://www.policeone.com/police-products/investigation/cameras/articles/5984040-Dash-cam-clears-Ala-officer-accused-of-rape/>. Weaver claimed that, after the officer arrested her, he pulled over during the drive to the station and raped her. *Id.* But the dash camera video showed the officer driving straight to the station, stopping only for traffic lights. *Id.* The officer was cleared of any wrongdoing, and Weaver was charged with filing a false report. *Id.*

<sup>191</sup> Askia Sabur was found not guilty on charges of aggravated assault, disarming a police officer, and resisting arrest. Lauren DiSanto & Rosemary Connors, *Man Beaten by Police Cleared of Wrongdoing*, NBC PHILADELPHIA, <http://www.nbcphiladelphia.com/news/local/Man-Beat-by-Police-Cleared-of-Wrongdoing-191880261.html> (last updated Feb. 19, 2013, 7:17 PM). The police officers claimed that Sabur was standing in front of the door of a restaurant, and when they asked him to move he struck one of the officers. *Id.* But a cellphone video shot by a witness showed the officers tackling Sabur and beating him for at least two and a half minutes with a baton as he shouted "I didn't do nothing wrong." *Id.* It took the jury less than an hour to find Sabur innocent. *Id.*

<sup>192</sup> RISE OF THE WARRIOR COP, *supra* note 109, at 323.

<sup>193</sup> See Radley Balko, *Jose Guereña's Family Sues Pima County over SWAT Raid Killing*, HUFFINGTON POST, [http://www.huffingtonpost.com/2011/08/17/jose-guereña-pima-county-lawsuit\\_n\\_926454.html](http://www.huffingtonpost.com/2011/08/17/jose-guereña-pima-county-lawsuit_n_926454.html) (last updated Aug. 17, 2011, 6:12 AM) (stating that the video of the SWAT raid on Guereña's home raised more questions about the officers' account of the raid).

fire down the hallway. The video would have dispelled much of the controversy surrounding Guereña's death and would have been a crucial piece of evidence in the investigation that followed.

### 3. Local

At the local level, the primary goal should be to change the warrior mentality to a public servant mentality. This could be accomplished by eliminating any military training currently conducted by police departments and discontinuing the use of military weapons, equipment, and uniforms.

Discontinuing the use of military training will be especially effective in combating the warrior mentality.<sup>194</sup> Police officers would no longer be trained to use excessively violent and aggressive tactics against an enemy. Ending police officers' use of military weapons, equipment, and uniforms would further erode the warrior mentality. Removing military paraphernalia from police departments will discourage officers from "accept[ing] the military as a model for their behavior"<sup>195</sup> and "adopting the tactics and mindset"<sup>196</sup> of the military.

## V. CONCLUSION

Across the United States, police departments are engaged in an arms race fueled by the federal government. DHS grants and military equipment giveaways are transforming the American police force. Police departments have armored vehicles, grenade launchers, heavy machine guns, ballistic helmets, and tactical vests. Armed with the tools of war and instilled with a warrior

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<sup>194</sup> Military training has become more effective at teaching men to kill. See DAVE GROSSMAN, ON KILLING: THE PSYCHOLOGICAL COST OF LEARNING TO KILL IN WAR AND SOCIETY 252 (2009)(discussing how the United States Army decreased the percentage of soldiers who did not fire their weapons in combat from about eighty percent in World War II to only five percent in Vietnam). The United States Army was able to achieve this by focusing on psychological training that overcame the innate resistance that people have to killing another human being. *Id.* at 252-53. Two of the methods used were desensitization and conditioning. *Id.* at 253. In desensitization, people are trained to think of the enemy as different from themselves, as less than human, or even as animals. *Id.* at 254. Conditioning is possibly the most important aspect of military training, and develops "reflexive 'quick shoot' ability." *Id.* at 253-54. This is achieved by using realistic pop-up targets as the "conditioned stimulus," and the immediate shooting of the target as the "target behavior." *Id.* at 256. The result of conditioning is to make killing a reflex. With the methods and results of military training in mind, it is easy to see how military training creates the warrior mentality and why eliminating military training of police officers is essential to changing the warrior mentality.

<sup>195</sup> WEBER, *supra* note 101, at 1.

<sup>196</sup> *Id.* at 2.

mentality, police officers now bear little resemblance to what they once were. Our Founding Fathers would undoubtedly struggle to differentiate between today's "peace officers" and American soldiers.

The militarization of police and the prevalence of violent police raids undercut the American tradition of civil law enforcement and the ancient principle that the home should be protected as a place of refuge. Addressing the grave threat to liberty posed by militarization will require more than legal reform. As Judge Learned Hand declared: "Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it[.]"<sup>197</sup>

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<sup>197</sup> Ray Jenkins, *Learned Hand and the Spirit of Liberty*, THE BALTIMORE SUN (May 18, 1994), available at [http://articles.baltimoresun.com/1994-05-18/news/1994138163\\_1\\_learned-hand-speech-quoted](http://articles.baltimoresun.com/1994-05-18/news/1994138163_1_learned-hand-speech-quoted).