

Bringing Balance to the Force: The Militarization of America's Police Force and its Consequences

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The current trend in the militarization of police can be traced back to the earliest times in our country. We are soon approaching a tipping point in which the combination of aggressive military tactics, wrongful deaths and injuries, and a lack of accountability will lead to an increase in civil unrest and animosity towards those who have sworn to uphold the law. In an ironic twist of fate, the military force, which law enforcement is trying to emulate, has made sharp adjustments in the way it operates due to the missions in Iraq and Afghanistan. It has adopted more police-like behavior in order to afford civilians the protections that, in many cases, are not given to American citizens.

This Comment will discuss the history of American policing and how it gradually became more militarized. It will then discuss the consequences of this hyper-militarization and how it affects not only civilians, but officers as well. Then the focus will shift to the problems with the military being used to handle domestic disturbances and how the military has adapted to its new role in a post-9/11 world. Finally, it will make recommendations to restore trust in the police force and allow them to safely and effectively accomplish their mission of upholding the law.

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INTRODUCTION	282
I. A LONG TIME AGO IN A GALAXY NOT SO FAR AWAY: COLONIAL POLICING AND THE BIRTH OF THE MODERN POLICE FORCE.....	284
A. <i>Crime, Social Unrest, and the Growth of Militarization</i> ..	286
B. <i>Policing and the War on Drugs</i>	288
C. <i>Policing and the War on Terror</i>	291
II. FEAR LEADS TO ANGER, ANGER LEADS TO HATE, HATE LEADS TO SUFFERING: MILITARIZATION AND ITS CONSEQUENCES	292
A. <i>The Civilian Casualties</i>	293
B. <i>The Officer Casualties</i>	294
C. <i>The “Us-versus-Them” Mentality and the Lack of Accountability</i>	296
III. THE EMPIRE STRIKES BACK: A HISTORY OF MILITARY POLICE ACTIONS	298
A. <i>Early Days of Military Police Actions</i>	299
B. <i>Military Policing in Iraq and Afghanistan and the Principle of Distinction</i>	302
IV. A NEW HOPE: HOW TO ADDRESS THE PROBLEMS OF MILITARIZATION AND RESTORE TRUST IN THE POLICE	305
A. <i>Police Training</i>	306
B. <i>Demilitarization</i>	307
C. <i>Accountability</i>	309
CONCLUSION.....	311

INTRODUCTION

Imagine you are a 7-year-old girl sleeping on a couch with your grandmother. All of a sudden, a flash-bang grenade wakes you from your sleep and a group of armed men kick in your front door. In the middle of all of the confusion, a shot rings out, you feel a sharp pain and look down, and you begin to see red seep through your favorite pajamas. What if those armed men were actually a police special response team executing a midnight raid on a home that would be part of a reality television show? This story may sound outlandish,

but this is exactly what happened to 7-year-old Aiyana Stanley-Jones in Detroit, Michigan, in May of 2010.¹

Imagine now that you are a 12-year-old boy, playing in a park with your toy gun. After taking out all of the imaginary bad guys, you put your toy gun in your waistband and take a seat at a nearby table. All of a sudden a car drives off of the street, across the park and comes to a screeching halt right in front of you. Two men exit the vehicle and yell something at you that you cannot quite make out. Before you can respond, a shot rings out, you feel a sharp pain and look down and you begin to see red seep through your favorite jacket. What if those two men in the car were police officers that were asked to investigate a suspicious character who may have a gun? This is not another outlandish story, this is what happened to 12-year-old Tamir Rice in Cleveland, Ohio, in November of 2014.² How is it that America's police force has shot and killed more people in March of 2015 than the United Kingdom did in the entire 20th century?³

In the town of Keene, New Hampshire, a town that has only seen two murders between 2009 and 2014, local police have acquired a Ballistic Engineered Armored Response Counter Attack Truck ("BearCat") from the Department of Defense.⁴ In Columbia, South Carolina, local police were able to obtain a Mine-Resistant Ambush Protected Vehicle ("MRAP") from the Department of Defense in order to protect the city streets.⁵ How does equipment suited for the battlefields of Iraq and Afghanistan end up on Main Street? What

¹ See Kate Abbey-Lambertz, *How A Police Officer Shot A Sleeping 7-Year-Old To Death*, HUFFINGTON POST (Sept. 17, 2014, 5:39 PM), http://www.huffingtonpost.com/2014/09/17/aiyana-stanley-jones-joseph-weekley-trial_n_5824684.html (last updated Oct. 2, 2014).

² See Sean Flynn, *The Tamir Rice Story: How to Make a Police Shooting Disappear*, GQ (July 14, 2016, 6:01 AM), <http://www.gq.com/story/tamir-rice-story>.

³ See Matt Agorist, *American Cops Just Killed More People in March than the UK Did in the Entire 20th Century*, FREE THOUGHT PROJECT (Apr. 6, 2015), <http://thefreethoughtproject.com/american-cops-killed-people-month-march-uk-entire-20th-century/>.

⁴ Aaron Cantú, *4 shocking examples of police militarization in America's small towns*, SALON (Mar. 28, 2014, 8:00 AM), http://www.salon.com/2014/03/28/4_shocking_examples_of_police_militarization_in_americas_small_towns_partner/.

⁵ *Id.*

happens when you place military-grade weapons designed to kill in the hands of those who are meant to serve and protect? What happens when keeping the peace becomes a war on the streets? What happens when the civilian is viewed as the enemy combatant?

This Comment will look at the history of America's police force and its gradual militarization. It will then analyze the effects of the militarization of America's police force and show how, in many ways, police have become more aggressive than actual military forces fighting in a warzone. Next, this Comment will explore the sordid history of the military's interaction with civilian protestors. It will analyze the changes the military has made to deal with the changing battlefield and show that, ironically, the military is becoming more like a police force. Finally, it will look at the training police receive and make recommendations for changes to training that will help restore balance to the police force.

I. A LONG TIME AGO IN A GALAXY NOT SO FAR AWAY: COLONIAL POLICING AND THE BIRTH OF THE MODERN POLICE FORCE

In order to understand how we reached a point where tanks are needed to patrol city streets, we must look at the history of how police have operated in America. Radley Balko notes in *Rise of the Warrior Cop* that sheriffs and constables in late eighteenth century colonial America served more of an administrative role, and it was up to the communities to deal with transgressors.⁶ As the country grew, law enforcement developed differently by region.⁷ In the Northeast, as towns became larger and more diverse, paid night patrols were organized to handle petty crimes, but were unable to handle some of the more violent and organized crime.⁸ In the South, the "slave patrol" became the standard.⁹ In the Western frontier, law enforcement was often accomplished by vigilante groups who would

⁶ RADLEY BALKO, *RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA'S POLICE FORCES* 27–28 (2013) (stating that in the precolonial era, crime was synonymous with sin and enforcement was determined by the prevailing traditions and religion of the community).

⁷ *See id.* at 28.

⁸ *See id.*

⁹ *See id.* Because of the homogenous nature of the citizens of the South and the fear of slave revolts, these patrols most closely resemble modern police. *See id.* They were armed, uniformed, and authorized to arrest, search, and detain

fill the void left by a lack of organized law enforcement and often-times would be no better than the criminals themselves.¹⁰

What would become the “modern police force” did not arrive in the United States until the mid-1800s with the first department in New York, followed by Boston and Philadelphia.¹¹ Ironically, at that time, police feared being thought of as an army so they patrolled without guns or uniforms.¹² Police officers were appointed by local politicians and required to live in the communities they patrolled.¹³ Their duties included everything from law enforcement to running the local soup kitchen.¹⁴ But because of the need for political connections to become a police officer and the lack of official training, law enforcement officers at the time were better known for their incompetence, brutality, and corruption than for their effectiveness in crime prevention or bringing criminals to justice.¹⁵

It was not until the early twentieth century when a series of reforms that focused on “professionalism” took hold and the police went from an incompetent, corrupt institution to the modern organization focused primarily on crime control that we know today.¹⁶ Unfortunately, as the emphasis on professionalism increased, the connection with the community began to erode.¹⁷ As departments began to eradicate the patronage system of the nineteenth century, the departments became more isolated and less accountable to the political leaders and the general public.¹⁸ As technological advances like radios and patrol cars became more available, individual officers had fewer interactions with the public they were sworn to protect and became, as Balko put it, a “faceless and intimidating presence.”¹⁹

slaves. *See id.* Eventually every colony in the South passed laws legitimizing these patrols, making them the primary means of law enforcement in the region. *See id.*

¹⁰ *See id.* at 29.

¹¹ *See id.* at 30.

¹² *See id.*

¹³ *See id.*

¹⁴ *See, e.g., id.*

¹⁵ *See id.* at 30–31 (noting how elected ward leaders would exert pressure on police commanders to selectively enforce the law in order to guarantee reelection).

¹⁶ *See id.* at 31–32.

¹⁷ *See id.* at 34.

¹⁸ *See id.*

¹⁹ *Id.*

A. *Crime, Social Unrest, and the Growth of Militarization*

Eventually, early police transitioned from an untrained, incompetent force with strong ties to the community that it served, to a much more professional, albeit isolated, force focused on crime fighting.²⁰ While that is a brief history of early American policing, it still does not answer how our police force went from not wanting to carry firearms in the mid-1800s to today, where departments think that owning a tank is perfectly reasonable.²¹ This section will look at how factors such as increased criminal violence, social unrest, illegal drugs, politics, and terrorism have changed the way modern police interact with civilians in the twenty-first century.

Early policing, while effective in most situations, always seemed to have trouble when dealing with more violent and organized crime.²² One of the earliest examples of police militarization stems from the passage of the Volstead Act in 1919, better known as Prohibition.²³ The passage of this law led to an increase in criminal violence as gangs and bootleggers began to arm themselves with deadlier weapons.²⁴ In response, law enforcement also felt the need increase that fire power, and the ensuing arms race led to heavily armed police forces.²⁵ But it was not until 1965 that police took the first major step towards militarization.²⁶

In the summer of 1965, what started out as a perfectly normal “Driving Under the Influence” stop erupted into one of the worst riots in American history.²⁷ In the midst of racial tension between the Los Angeles Police Department (“LAPD”) and local minority communities, Officer Lee Minkus attempted to arrest Marquette Frye for suspicion of driving while intoxicated and driving without a license.²⁸ Things quickly escalated when Frye’s family arrived at

²⁰ See *id.* at 31–32, 34.

²¹ See *id.* at 30. See also Cantú, *supra* note 4.

²² See BALKO, *supra* note 6, at 28.

²³ See, e.g., *id.* at 32–33; see also U.S. CONST. amend. XVIII, § 1.

²⁴ See BALKO, *supra* note 6, at 32–33.

²⁵ *Id.* at 33.

²⁶ See *id.* at 53.

²⁷ See *id.* at 51; see also DARYL F. GATES, CHIEF: MY LIFE IN THE L.A.P.D. 88–104 (1992) (providing a description of the Watts narrative and events leading up to the riots).

²⁸ See BALKO, *supra* note 6, at 51.

the scene and a physical altercation with the police occurred.²⁹ The ensuing arrests led to what is known as the Watts Riots, and in the six days following the arrest, those riots cost the city of Los Angeles over \$40 million and left more than 1,000 people injured and thirty-four dead.³⁰ It was riots like the Watts Riots and those that followed in Detroit, Baltimore, and Newark that shocked Middle America.³¹ The images of such violence and lawlessness instilled a fear that would later be used to usher in new policies that gave police more power, authority, and permission to use force.³²

On the ground, police dealing with the riots felt completely overwhelmed.³³ Rioters were taking up sniper positions in buildings, using Molotov cocktails, and applying guerilla tactics.³⁴ Noting the similarity to the tactics used by the enemy combatants in Vietnam, the chief of the Los Angeles police force, Daryl Gates, looked to the military for help.³⁵ The training and tactics he learned would lead to the development of America's first Special Weapons and Tactics ("SWAT") team.³⁶

While the riots may have made big cities seem dangerous to the average American, it did not take long before those living in suburbs began to feel threatened. In August of 1966, in an all too familiar scenario, a lone gunman barricaded himself in a clock tower and opened fire on students and civilians on the campus of the University of Texas at Austin.³⁷ Armed with multiple rifles, handguns, and a shotgun, Charles Whitman was able to take the lives of thirteen people and wound over thirty more.³⁸ Police were again left out-

²⁹ *Id.*

³⁰ *Id.* at 52.

³¹ *Id.* at 53.

³² *Id.*

³³ See GATES, *supra* note 27, at 107–14 (discussing how Gates' experience in Watts led to him becoming an expert in dealing with riots. This in turn led to the study of anti-guerilla tactics from the military, and the formation of an anti-sniper team which would eventually be known as SWAT.).

³⁴ *Id.*

³⁵ *Id.*

³⁶ See BALKO, *supra* note 6, at 53.

³⁷ See *id.* at 56–57.

³⁸ *Id.* at 57. Oddly enough, after Whitman was killed, he left a note asking for doctors to study his brain to see if they can find out where his overly aggressive behavior came from. See *id.* at 58. Doctors found that he had developed a brain

gunned and unable to respond to the threat, thus reinforcing the desire of citizens and police forces to have specialized units to deal with these kinds of situations.³⁹ It was events like these that brought the fear of crime home to the American population; violent crime was no longer an inner city issue, but instead could happen to anyone, anywhere, at any time.

It was this sentiment that led to the general acceptance of these SWAT teams by police forces around the country.⁴⁰ Police forces began actively training with the military and stockpiling arms, such as helicopters, sniper rifles, and armored vehicles.⁴¹ This was not met without resistance; in fact, many people argued that the police were supposed to be a civil force, pointing to the Third Amendment to support the claim that military-style policing violated the Amendment's intent.⁴² In the end, the general sense of increased crime and chaos allowed for the acceptance of this more aggressive type of policing.⁴³ While the riots and threats of lawlessness grew remote as time passed, the militaristic nature of the police force persisted.⁴⁴

B. Policing and the War on Drugs

In June 1971, President Nixon declared a "war on drugs."⁴⁵ The idea was that by using the metaphor of war, it would galvanize the public into action to address this social problem.⁴⁶ In order to gain public support, Nixon and his crime team launched a public relations campaign to scare the public about crime by tying crime to heroin.⁴⁷ This campaign included everything from planting media stories, to

tumor that affected his amygdala, the part of the brain responsible for fear and anger. *See id.* at 58.

³⁹ *See id.* at 57.

⁴⁰ *Id.* at 63.

⁴¹ *Id.*

⁴² GATES, *supra* note 27, at 115 (noting that even police leadership initially disapproved of SWAT's quasi-militaristic tactics). *See also* U.S. CONST. amend. III ("No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.").

⁴³ *See* BALKO, *supra* note 6, at 64.

⁴⁴ *Id.*

⁴⁵ American Judicature Society, *It is time to end the war on drugs*, 93 JUDICATURE 1 (2009) [hereinafter *Judicature*].

⁴⁶ *See id.*

⁴⁷ *See* BALKO, *supra* note 6, at 103–104.

recalling ambassadors from countries known to produce heroin, to holding high-level strategy sessions for the media to attend.⁴⁸ Nixon even went so far as to declare narcotics to be “public enemy number one in the United States.”⁴⁹ With the success of this campaign, Nixon was able to pass a series of crime-related bills that would authorize measures such as preventative detention, extensive wiretapping, and even the “no-knock” raid.⁵⁰ It was Nixon’s rhetoric that shaped America’s current drug policy.⁵¹

The war on drugs has both a foreign and domestic component. Military advisors were sent all over Latin America to deal with drug cartels in places like Bolivia, Peru, and Colombia.⁵² This even escalated to an all-out invasion of Panama in 1989 to oust General Manuel Antonio Noriega.⁵³ With all this military action occurring on the foreign front, the question became, “how are the domestic police holding up their end of the fight?” With the passage of the Military Cooperation with Law Enforcement Act in 1981,⁵⁴ soldiers and police not only trained together, but jointly conducted paramilitary operations.⁵⁵ This included using U2 spy planes to search for drug fields and conducting helicopter raids on civilians suspected of growing marijuana—raids that were better suited for the hamlets of Vietnam than the hills of California.⁵⁶ In the decades following the start of the war on drugs, there has been an increase in the routine use of military tactics when arresting nonviolent offenders, resulting in (1) dangerous military equipment used in situations where it is not needed; (2) “no-knock” raids that not only result in property

⁴⁸ *Id.*

⁴⁹ *Judicature*, *supra* note 45, at 1 (internal quotation marks removed).

⁵⁰ *See* BALKO, *supra* note 6, at 102.

⁵¹ *See* *Judicature*, *supra* note 45, at 1.

⁵² *See* Harry L. Marsh, *Law Enforcement, the Military, and the War on Drugs: Is the Military Involvement in the War on Drugs Ethical?*, 10 AM. J. POLICE 61, 65 (1991).

⁵³ *Id.* While the United States justified the invasion as a response to Noriega’s declaration of war on the United States and the killing of a U.S. military officer, President Bush did speak of the importance of bringing Noriega to the U.S. to stand trial for his drug trafficking activities. *Id.*

⁵⁴ *See generally* Military Cooperation with Law Enforcement Officials Act of 1981, Pub. L. No. 97-86, § 905, 95 Stat. 1115 (codified as Military Support for Law Enforcement Agencies, 10 U.S.C. §§ 371–83 (1998)).

⁵⁵ *See* BALKO, *supra* note 6, at 147–48.

⁵⁶ *Id.*

damage, but also injury and the death of innocent parties; and (3) challenges to the meaning of the Fourth Amendment and the protection it offers citizens.⁵⁷

While this war does very little with respect to treatment of drug addiction, it did succeed in overwhelming the prison system, leading to racial profiling and increasing the polarization of police–community relations—especially among minorities.⁵⁸ Ironically, the harder the police cracked down on drug dealers, the more the violence increased.⁵⁹ As established black markets were upset by crackdowns, new players would try to fill the void and power struggles would ensue.⁶⁰ These turf wars would go on to claim the lives of not only criminals, but also police and countless civilians.⁶¹

By the 1990s, these paramilitary tactics expanded beyond just drug raids.⁶² Normal investigations ended up turning into multiday standoffs, resulting in the wrongful deaths of citizens not involved in the drug trade.⁶³ Missteps like Ruby Ridge, Waco, and even Cuban immigrant Elián González increasingly caused the public to start questioning the tactics used by civilian law enforcement.⁶⁴ That

⁵⁷ Ronald Goldfarb, *Review of Rise of the Warrior Cop: The Militarization of America's Police Forces*, 28 WASH. LAW. 42, 42–43 (2013) (reviewing BALKO, *supra* note 6).

⁵⁸ See *Judicature*, *supra* note 45, at 1 (noting the effects of congressional legislation that resulted in mandatory minimum sentences for crack possession while those who possessed powder cocaine were often able to avoid prison altogether); *but see* Fair Sentencing Act of 2010, Pub. L. No. 111-220, § 2, 124 Stat. 2372 (amending the Controlled Substances Act and the Controlled Substances Import and Export Act by reducing the disparity between crack cocaine and power cocaine).

⁵⁹ See BALKO, *supra* note 6, at 97 (describing this as a “self-perpetuating, self-escalating feedback loop created by the modern drug war.”).

⁶⁰ See *id.* at 97.

⁶¹ *Id.*

⁶² See *id.* at 200.

⁶³ *Id.*

⁶⁴ See *id.* at 200–01 (the Ruby Ridge incident started with the illegal sale of sawed-off shotguns and ended with the U.S. Marshalls, local police, F.B.I., and the A.T.F. killing a fourteen-year-old boy, both of his parents, and the family dog); *id.* at 201–02 (in Waco, TX, A.T.F. agents conducted an unnecessary six-week long raid that resulted in the death of seventy-six adults and twenty-six children); *id.* at 204 (I.N.S. led a SWAT team into a civilian home in order to forcibly remove González from his relatives and return him to his father in Cuba).

is, until one of the darkest days in American history, September 11th, 2001.⁶⁵

C. Policing and the War on Terror

“[E]very American is a soldier, and every citizen is in this fight” were the words used by President Bush following the attacks on 9/11.⁶⁶ This threat of terrorism allowed for police departments across the country to justify requests for bigger arsenals and more equipment; even small towns needed a SWAT team.⁶⁷ As American soldiers geared up to fight terrorism abroad, the constant and ubiquitous threat of another terrorist attack on American soil blurred the lines between the military and the increasingly militarized domestic police forces.⁶⁸ Police departments patrolled the streets in armored vehicles and increased the frequency of predawn military-style raids on civilian homes—all in the name of counterterrorism efforts.⁶⁹

The reorganization of state agencies under the newly-formed Department of Homeland Security (“DHS”) gave local police departments access to immense budgets.⁷⁰ By 2007, “eighty percent of U.S. towns with a population between twenty-five thousand and fifty thousand people maintained a SWAT team.”⁷¹ Equipment such as grenade launchers, which in the 1960s required permission from the Department of Defense to use,⁷² are today collecting dust in at

⁶⁵ Cynthia A. Brown, *Divided Loyalties: Ethical Challenges for America's Law Enforcement in Post 9/11 America*, 43 CASE W. RES. J. INT'L L. 651, 658 (2011).

⁶⁶ Elisabeth Bumiller, *A Nation Challenged: The President; Bush Announces a Crackdown on Visa Violators*, N.Y. TIMES (Oct. 30, 2001), <http://www.nytimes.com/2001/10/30/us/a-nation-challenged-the-president-bush-announces-a-crackdown-on-visa-violators.html> (internal quotation marks removed).

⁶⁷ See BALKO, *supra* note 6, at 242.

⁶⁸ See Brown, *supra* note 65, at 661.

⁶⁹ See *id.* at 672–73.

⁷⁰ Cadman Robb Kiker III, *From Mayberry to Ferguson: The Militarization of American Policing Equipment, Culture, and Mission*, 71 WASH. & LEE L. REV. ONLINE 282, 287–88 (2015).

⁷¹ *Id.* at 288.

⁷² See, e.g., John Payne, *How Police Became a Standing Army*, AM. CONSERVATIVE (Jan. 2, 2014), <http://www.theamericanconservative.com/articles/how-police-became-a-standing-army/> (noting Los Angeles Chief of Police Daryl Gates asked Los Angeles Mayor Sam Yorty “to request permission from the Department of Defense to fire a grenade into” the headquarters of the Black Panthers.).

least two university police departments.⁷³ The “1033 Program,” as codified in 10 U.S.C. § 2576(a),⁷⁴ authorized the Secretary of Defense to provide “material support to authorized federal and state law enforcement agencies by transferring articles suitable for counter-drug and counter-terrorism activities.”⁷⁵ This gave police unprecedented access to military-grade equipment—everything from computers and first-aid kits to assault rifles and aircraft—to fight a “war” against American civilians.⁷⁶ But when police wage “war” on American soil against American civilians, mistakes are bound to occur.

II. FEAR LEADS TO ANGER, ANGER LEADS TO HATE, HATE LEADS TO SUFFERING: MILITARIZATION AND ITS CONSEQUENCES

There are very few people who would argue that there is *never* a need for police to have access to certain military equipment, training, and tactics.⁷⁷ Situations involving hostages or an active shooter, such as the University of Texas at Austin incident, are examples of when a SWAT team may be the best option.⁷⁸ Unfortunately, these legitimate uses of SWAT teams are few and far between.⁷⁹ In 1995, more than 75% of all SWAT team deployments were to serve drug warrants.⁸⁰ In fact, the Saint Louis County, Missouri Police Department stated that it was “their standard procedure to use a SWAT

⁷³ See Tyler Kingkade & Alexandra Svokos, *Campus Police Are Stocking Up On Military-Grade Weapons*, HUFFINGTON POST (Sept. 15, 2015, 5:47 PM), http://www.huffingtonpost.com/2014/09/15/campus-police-weapons_n_5823310.html (noting that at least sixty-three college campuses have obtained M-16s, fourteen received M-14s, and at least six campuses have mine resistant vehicles provided by the Department of Defense).

⁷⁴ See generally 10 U.S.C. § 2576(a) (2012); see also Nathan James & Daniel H. Else, *The “Militarization” of Law Enforcement and the Department of Defense’s “1033 Program”*, CRS INSIGHTS (Dec. 2, 2014), <https://www.fas.org/sgp/crs/natsec/IN10138.pdf>.

⁷⁵ See James & Else, *supra* note 74.

⁷⁶ *Id.*

⁷⁷ See BALKO, *supra* note 6, at 230.

⁷⁸ See *id.* at 56–58.

⁷⁹ See Kiker, *supra* note 70, at 289 (citing an ACLU report that states that SWAT teams were deployed for active shooter or hostage situations only seven percent of the time).

⁸⁰ BALKO, *supra* note 6, at 175. At that time over 45% of all SWAT teams trained with active-duty military personnel. See *id.*

team to serve *any* felony warrant.”⁸¹ Often times, SWAT deployments such as these end with disastrous results.⁸²

A. *The Civilian Casualties*

In 1971, based on a tip that they would find a multimillion-dollar Phencyclidine (“PCP”) lab, local police and federal law enforcement officials conducted a raid on the Dickerson Ranch.⁸³ The only problem was that Dirk Dickerson and his girlfriend, Judy Arnold, were not drug kingpins; instead, they were hippies making a living off woodworking and carpentry.⁸⁴ Nineteen law enforcement officials conducted this raid using helicopters and assault rifles.⁸⁵ Sadly, when Dickerson attempted to run from these unknown attackers, he was shot and killed.⁸⁶ Dickerson was unarmed, but the officer who shot him thought Dickerson shot another law enforcement official who actually tripped getting out of the helicopter.⁸⁷

Again in 1985, when the LAPD first attempted to deploy an armored vehicle modified with a battering ram to aid in a raid on a suspected crack house, the results were less than stellar.⁸⁸ The founder of the SWAT team, Gates, ordered the vehicle to ram a hole in the side of the target home.⁸⁹ After destroying the side of the house, the only thing they found were two women and three children eating ice cream.⁹⁰ To add insult to the damage, when the armored vehicle was backing out of the driveway, it lost control on a patch of ice and hit a parked car.⁹¹

⁸¹ Kiker, *supra* note 70, at 289.

⁸² *See, e.g., id.* at 290–91.

⁸³ *See* BALKO, *supra* note 6, at 107.

⁸⁴ *Id.*

⁸⁵ *See id.* at 107–08.

⁸⁶ *See id.* at 111. Judy Anderson would later report that the officers did not identify themselves as law enforcement until well after Dickerson was shot and she was being transported from the scene. *Id.*

⁸⁷ *Id.* at 113. When asked why they did not try to shoot the fleeing victim in the arm or leg, federal agent Ed McReedy replied, “[t]he idea of shooting to wound is bush league.” *Id.* (internal quotation marks removed).

⁸⁸ *See id.* at 155.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

Courts have recently begun to notice the misuse of SWAT teams.⁹² The United States Court of Appeals for the Eleventh Circuit initially ruled in *Berry v. Leslie* that police using SWAT tactics to perform a regulatory raid on a barber shop violated the Fourth Amendment.⁹³ Similarly, the United States Court of Appeals for the Fifth Circuit allowed a civil rights claim to continue based on a Louisiana Police SWAT raid of a nightclub performed under the guise of a regulatory inspection.⁹⁴ On the other hand, in some jurisdictions, justice may be harder to find.⁹⁵ The SWAT team that raided the wrong house and shot and killed 7-year-old Aiyana Stanley-Jones was cleared of any wrongdoing.⁹⁶ The prosecutor dropped the charges, with the sole explanation being that his decision was in the “best interests of justice.”⁹⁷ A SWAT team member in Georgia was also cleared of any wrongdoing after executing a “no-knock” warrant in which the team threw a flash bang grenade into a home, where it landed and exploded inside of a baby’s crib with the baby inside.⁹⁸

B. *The Officer Casualties*

While officer safety is often given as a reason to justify the use of such tactics, the officers themselves are not always immune from the consequences of their overly aggressive actions. In *Ker v. State of California*, Justice Brennan’s dissent cited the English common law tradition of the “Castle Doctrine.”⁹⁹ He noted a case in which a defendant, charged with killing an officer of the crown, was acquit-

⁹² See, e.g., Kiker, *supra* note 70, at 289.

⁹³ 767 F.3d 1144, 1154 (11th Cir. 2014), *vacated and reh’g en banc granted sub nom.*, *Berry v. Orange County*, 771 F.3d 1316 (11th Cir. 2014).

⁹⁴ *Club Retro v. Hilton*, 568 F.3d 181, 195 (5th Cir. 2009).

⁹⁵ See, e.g., Abbey-Lambertz, *supra* note 1.

⁹⁶ See Kiker, *supra* note 70, at 290–91.

⁹⁷ Crimesider Staff, *Final charge dropped against Detroit cop in fatal raid*, CBS NEWS (Jan. 30, 2015, 4:13 PM), <http://www.cbsnews.com/news/aiyana-stanley-jones-case-final-charge-dropped-against-detroit-cop-in-fatal-raid/> (internal quotation marks removed).

⁹⁸ See Kiker, *supra* note 70, at 291. After being cleared of any wrongdoing, the county rescinded an initial offer to pay for the child’s medical expenses. See *id.*

⁹⁹ 374 U.S. 23, 47–48 (1963) (quoting *Semayne’s Case*, 77 Eng. Rep. 194, 195 (1603)).

ted because the officer, who failed to announce himself while attempting to serve a warrant, was mistaken for an intruder.¹⁰⁰ This opinion showed a particularly keen sense of foresight—predicting both the rash of wrong home raids and the ensuing officer casualties inflicted by civilians who thought they were defending themselves from criminal intruders.¹⁰¹

The dangers of such raids can be seen in places like Texas, where an early morning “no-knock” raid resulted in the death of one officer and the wounding of another when the suspect opened fire on police who he believed were intruders.¹⁰² While the police were given information that the home was used to distribute drugs, evidence subsequently gathered at the scene showed no actual drugs were present on the premises.¹⁰³ A Texas grand jury later refused to indict the suspect, accepting that he did in fact believe the police were criminals trying to break into his home.¹⁰⁴ In Maryland, a police officer was shot by a fellow officer while setting up a hydraulic ram in preparation for a “no-knock” entry.¹⁰⁵ The suspect surprised the officers when he unknowingly opened the front door; officers immediately opened fire, shooting the suspect in the face and fellow officer Patrick Murphy—who was crouched in the doorway setting up the ram—in the back of the head.¹⁰⁶ These are not isolated incidents; police officers have been killed during pre-dawn, “no-knock” raids in New York, Florida, and California as well.¹⁰⁷ Even on the occasions when evidence of a crime is actually found, the evidence rarely justifies the amount of force used to obtain it.¹⁰⁸

In the age of cell phones and video recordings, police also have to worry about another issue: retaliation. The recent shootings of

¹⁰⁰ *Id.*

¹⁰¹ See BALKO, *supra* note 6, at 47.

¹⁰² See Radley Balko, *No drugs found in raid that claimed the life of Texas police officer*, WASH. POST (May 16, 2014), <https://www.washingtonpost.com/news/the-watch/wp/2014/05/16/no-drugs-found-in-raid-that-claimed-the-life-of-texas-police-officer/>.

¹⁰³ See *id.*

¹⁰⁴ See Kiker, *supra* note 70, at 291.

¹⁰⁵ See BALKO, *supra* note 6, at 171.

¹⁰⁶ *Id.*

¹⁰⁷ See, e.g., *id.* at 171–73.

¹⁰⁸ *Id.*

Alton Sterling¹⁰⁹ and Philando Castile¹¹⁰ by police officers and the accompanying videos have angered minority communities nationwide and caused horrific incidents. In July 2016, Micah Johnson gunned down five Dallas police officers, claiming it was in retaliation to the recent police shootings of both Sterling and Castile.¹¹¹ Later that month, Gavin Long took the life of three more police officers after voicing his frustration over the death of Sterling and Castile.¹¹² These retaliatory actions stemming from frustration over police shootings reinforces the “us-versus-them” mentality.¹¹³

C. The “Us-versus-Them” Mentality and the Lack of Accountability

The job of a modern police officer is not easy. On the one hand, police officers are tasked with protecting civilians and upholding the law; on the other, they are tasked with fighting a war. Be it a war on crime, drugs, or even terror, the rhetoric of war can affect the way law enforcement officials choose to protect civilians.¹¹⁴ They must choose between upholding the Constitution—which guarantees certain rights to civilians—and answering the call to war.¹¹⁵ The idea

¹⁰⁹ Alton Sterling was shot and killed by police during a confrontation that was caught on video. See Richard Fausset, Richard Pérez-Peña, & Campbell Robertson, *Alton Sterling Shooting in Baton Rouge Prompts Justice Dept. Investigation*, N.Y. TIMES (July 6, 2016), <http://www.nytimes.com/2016/07/06/us/alton-sterling-baton-rouge-shooting.html>. While Sterling was armed, the video shows that he did not have the gun in his hand, yet was pinned by two officers. See *id.*

¹¹⁰ Philando Castile was shot and killed by police while attempting to reach for his identification during a routine traffic stop. See Elliott C. McLaughlin, *Woman streams aftermath of fatal officer-involved shooting*, CNN (July 8, 2016, 4:57 AM), <http://www.cnn.com/2016/07/07/us/falcon-heights-shooting-minnesota/>. His fiancé live streamed his death over the internet. See *id.*

¹¹¹ See Manny Fernandez, Richard Pérez-Peña, & Jonah Engel Bromwich, *Five Dallas Officers Were Killed as Payback, Police Chief Says*, N.Y. TIMES (July 8, 2016), <http://www.nytimes.com/2016/07/09/us/dallas-police-shooting.html>.

¹¹² See Steve Visser, *Baton Rouge shooting: 3 officers dead; shooter was Missouri man, sources say*, CNN (July 18, 2016, 7:15 PM), <http://www.cnn.com/2016/07/17/us/baton-route-police-shooting/>.

¹¹³ See Nancy Marion, *Police Academy Training: Are We Teaching Recruits What They Need to Know?*, 21 POLICING INT’L J. POLICE STRATEGY & MGMT. 54, 72 (1998).

¹¹⁴ See Brown, *supra* note 65, at 674.

¹¹⁵ See *id.*

of the officers fighting a “just war” makes the transition from “Officer Friendly” to “Officer Rambo” not only possible, but much more likely.¹¹⁶ This can be seen in how the priorities of certain departments or SWAT teams shift from protecting the innocent to catching the criminal.¹¹⁷ In Waco, Texas, authorities could have easily captured David Koresh on his daily jog and avoided any unnecessary casualties.¹¹⁸ Instead, they planned for an attack on a heavily-fortified compound and conducted a six-week siege that ended with the death of more than seventy-five people.¹¹⁹

From an early point in their careers, law enforcement officers are taught an “Us-versus-Them” mentality.¹²⁰ They are taught that everyone is a suspect and just about anyone can kill you within a moment’s notice.¹²¹ While there may be some truth to this theory, often times it can lead to mistakes with disastrous consequences.¹²²

For example, in September 2014, Levar Edward Jones was stopped by South Carolina state trooper Sean Groubert for a seatbelt violation.¹²³ When Groubert asked for Jones’ license, Jones reached into his vehicle to retrieve it.¹²⁴ It was at this point, under the impression that Jones was reaching for a weapon, that the trooper opened fire.¹²⁵ Luckily for Jones, not only did he survive the incident, but it was captured on video on the trooper’s dash cam.¹²⁶ The same cannot be said for Philando Castile, whose death was live-streamed over the internet when he was fatally shot by police while allegedly reaching for his identification card during a traffic stop.¹²⁷ Then there was Johnathan Ferrell, a young man who was shot ten

¹¹⁶ *See id.*

¹¹⁷ *See, e.g.,* BALKO, *supra* note 6, at 201 (describing how FBI snipers in the Ruby Ridge altercation were told to shoot on sight).

¹¹⁸ *See id.*

¹¹⁹ *See id.* at 201–202.

¹²⁰ *See* Marion, *supra* note 113, at 72.

¹²¹ *See id.*

¹²² *See, e.g.,* David Zucchini, *South Carolina trooper charged in shooting of unarmed man*, L.A. TIMES (Sept. 25, 2014, 11:20 AM), <http://www.latimes.com/nation/nationnow/la-na-nn-south-carolina-trooper-shooting-20140925-story.html>.

¹²³ *See id.*

¹²⁴ *See id.*

¹²⁵ *See id.*

¹²⁶ *See id.*

¹²⁷ *See* McLaughlin, *supra* note 110.

times by a North Carolina police officer after he was looking for help following a car accident.¹²⁸ The officer, of course, claimed self-defense.¹²⁹ Deven Guilford, a 17-year-old, was shot seven times by a Michigan police officer following an altercation that stemmed from Guilford flashing his high beams at a passing police car because the car's head lights were blinding oncoming traffic.¹³⁰ When the officer stopped Guilford, an argument ensued when Guilford refused to produce his license.¹³¹ Guilford was dragged from his car, thrown to the ground, tased, and eventually shot to death.¹³²

While some of these incidents have resulted in criminal charges against the officer, far too many—including Guilford's—have resulted in no criminal liability.¹³³ In fact, from 2004 to 2011, of the 2,718 justified homicides by law enforcement, only forty-one officers were charged with either murder or manslaughter.¹³⁴ As an increasing number of these incidents are captured on video and police officers fail to be held accountable, the mistrust and fear of police will only worsen.

III. THE EMPIRE STRIKES BACK: A HISTORY OF MILITARY POLICE ACTIONS

Since the birth of this nation, people have always been cautious about allowing the military to perform police actions.¹³⁵ The fear

¹²⁸ See Elisha Fieldstadt, *Trial Begins for Randall Kerrick, Officer Who Shot Jonathan A. Ferrell After Car Accident*, NBC NEWS (July 20, 2015, 4:13 PM), <http://www.nbcnews.com/news/us-news/trial-begins-officer-randal-kerrick-who-shot-jonathan-ferrell-after-n395206>.

¹²⁹ See *id.*

¹³⁰ See David Shortell, *Michigan teen's family files federal lawsuit over fatal traffic-stop shooting*, CNN (Oct. 16, 2015, 8:32 PM), <http://www.cnn.com/2015/10/16/us/michigan-sheriffs-sergeant-teen-shooting-lawsuit/>.

¹³¹ See *id.*

¹³² See *id.* The officer would later go on to say that he feared that Guilford would use his phone to call for reinforcements from a local “sovereign citizen or militia movement.” See *id.* (internal quotation marks removed).

¹³³ See Matt Mencarini & Rachel Greco, *No charges in police shooting of Deven Guilford*, LANSING ST. J. (June 18, 2015, 4:52 PM), <http://www.lansingstatejournal.com/story/news/local/2015/06/16/press-conference-eaton-guilford/28801761/>.

¹³⁴ Zusha Elinson & Joe Palazzolo, *Police Rarely Criminally Charged for On-Duty Shootings*, WALL ST. J. (Nov. 24, 2014, 7:22 PM), http://www.wsj.com/articles/police-rarely-criminally-charged-for-on-duty-shootings-1416874955_

¹³⁵ See Kiker, *supra* note 70, at 291–93.

stemmed from British soldiers enforcing the Crown's laws with little to no accountability.¹³⁶ The fear was so great that it was even expressed in the Third Amendment of the Constitution,¹³⁷ the Insurrection Act,¹³⁸ and the Posse Comitatus Act ("PCA").¹³⁹ As Cynthia Brown points out:

The objectives of military forces are directed toward the capture or destruction of assets, and any level of force necessary to achieve the objectives is authorized. Police, on the other hand, enforce laws and keep the peace applying the minimal force necessary, bound by law to ensure civil liberties and protect life.¹⁴⁰

This section argues that, while police forces are becoming more militaristic, the military has become much more cautious in its application of force and in turn has become much more police-like.

A. Early Days of Military Police Actions

Whenever the military gets involved in civilian matters, the results are often unpredictable.¹⁴¹ Because of the nature of their training, often times the mission objectives come before the rights of civilians.¹⁴² For example, in the summer of 1932, American World War I veterans set up camp outside of the White House.¹⁴³ They were protesting the fact that the government withheld bonuses it promised to pay them for their service in the war.¹⁴⁴ This "Bonus March" would soon end in tragedy.¹⁴⁵ After an altercation with local

¹³⁶ See *id.* at 292–93.

¹³⁷ See generally U.S. CONST. amend. III.

¹³⁸ See generally 10 U.S.C. §§ 331–35 (2012).

¹³⁹ See Kiker, *supra* note 70, at 291–92. See generally 18 U.S.C. § 1385 (2012).

¹⁴⁰ Brown, *supra* note 65, at 670.

¹⁴¹ Marsh, *supra* note 52, at 63.

¹⁴² See Brown, *supra* note 65, at 670.

¹⁴³ See BALKO, *supra* note 6, at 37.

¹⁴⁴ See *id.* at 37.

¹⁴⁵ See *id.* See generally *The Bonus March (May-July, 1932)*, AM. EXPERIENCE, <http://www.pbs.org/wgbh/amex/macarthur/peopleevents/pandeAMEX89.html> (last visited Oct. 30, 2016).

police, President Hoover requested assistance from the Army.¹⁴⁶ Two regiments under the command of General Douglas MacArthur, Major George S. Patton, and Major Dwight Eisenhower proceeded to attack their fellow veterans with tanks, tear gas, and bayonets.¹⁴⁷ As the protesters scattered and Hoover ordered a retreat, MacArthur refused to stand down and chased the protesters back to their camp and burned it to the ground.¹⁴⁸ At a later press conference, MacArthur showed no remorse, referring to the protestors as a “mob” and explaining that his actions prevented an insurrection.¹⁴⁹

In 1935, the U.S. Army made its *Basic Field Manual* available to the public.¹⁵⁰ In the section dealing with handling domestic disturbances, it recommended such tactics as firing into the crowd rather than over their heads, and even included instructions on how to effectively use chemical warfare, artillery, machine guns, mortars, grenades, tanks, and planes against civilians.¹⁵¹ Other manuals referred to democracy with contempt, relating it to “demagogism” and “anarchy.”¹⁵² The Army published what amounted to an instruction manual on how to wage war against America.¹⁵³ What is more shocking are the views of General Patton, arguably one of America’s greatest war heroes.¹⁵⁴ Not only did he think that habeas corpus was a hindrance, he recommended shooting captured rioters instead of turning them over to police for fear that they may be released on a technicality.¹⁵⁵ He wrote: “If it is necessary to use machine guns, aim at their feet. If you must fire, DO A GOOD JOB. A few casualties become martyrs; a large number become an object lesson.”¹⁵⁶

However, the use of the military to enforce domestic laws has not always resulted in tragedy. Following the 1954 Supreme Court

¹⁴⁶ See BALKO, *supra* note 6, at 37.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 39.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 38.

¹⁵⁵ See BALKO, *supra* note 6, at 38.

¹⁵⁶ George S. Patton, *Federal Troops in Domestic Disturbances*, THE PATTON SOCIETY (1932), <http://www.pattonhq.com/textfiles/federal.html> (last visited Oct. 30, 2016).

decision in *Brown v. Board of Education*, public schools were ordered to be integrated.¹⁵⁷ When it came time to integrate Central High School in Little Rock, Arkansas in 1957, then-Governor Orval Faubus vehemently objected.¹⁵⁸ He went so far as to mobilize the National Guard to prevent the first African-American students from entering the school.¹⁵⁹ President Dwight Eisenhower refused to send federal troops at first, perhaps as a result of the “Bonus March” and the fear of what military troops might do to the protestors.¹⁶⁰ Instead, he met with Faubus face-to-face and tried to convince the governor to comply.¹⁶¹ After several failed attempts, President Eisenhower mobilized the U.S. Army 101st Airborne Division and simultaneously federalized the Arkansas National Guard.¹⁶² By the end of September 1957, the so-called “Little Rock Nine” entered Central High School as the first African-American students to attend the prestigious institution.¹⁶³ The military units remained until the end of the school year to protect those students.¹⁶⁴

While the military’s actions following *Brown v. Board of Education* could be viewed as a bright spot in military–civilian interactions, military confrontations with protestors are typically more tragic. On April 30th, 1970, amid promises to end the Vietnam War, President Nixon announced that he would be invading Cambodia, thus expanding the war.¹⁶⁵ Protest immediately sprung up on campuses across the country.¹⁶⁶

Following a violent confrontation between protestors and local police on May 1st, Kent, Ohio Mayor Leroy Satrom and Governor James Rhodes activated the Ohio National Guard.¹⁶⁷ By May 4th,

¹⁵⁷ 347 U.S. 483, 495–96 (1954); BALKO, *supra* note 6, at 40.

¹⁵⁸ BALKO, *supra* note 6, at 40.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 41.

¹⁶¹ *Id.* at 40.

¹⁶² See *Little Rock Central High School Integration: Background*, CIV. RTS. DIGITAL LIBR., http://crdl.usg.edu/events/little_rock_integration/?Welcome (last visited Oct. 30, 2016).

¹⁶³ See *id.*

¹⁶⁴ BALKO, *supra* note 6 at 41.

¹⁶⁵ See Jerry M. Lewis & Thomas R. Hensley, *The May 4 Shootings at Kent State University: The Search for Historical Accuracy*, 34 OHIO COUNS. FOR SOC. STUD. REV. 1, 1–2 (1998).

¹⁶⁶ *Id.* at 2.

¹⁶⁷ *Id.*

3,000 demonstrators were face-to-face with 100 armed Ohio National Guard members.¹⁶⁸ When the order came down to disperse the crowd, the soldiers readied their weapons and fired tear gas into the crowd.¹⁶⁹ The soldiers advanced to disperse the crowd and for some reason, as they were returning to the main protest area, almost thirty of the soldiers began to fire their weapons into the crowd.¹⁷⁰ At the end of the day, four Kent State University students were killed and another nine students were injured.¹⁷¹ The soldiers claimed self-defense and that the demonstrators were advancing on their position, but all of the victims were shot at distances between sixty and 750 feet away.¹⁷²

B. Military Policing in Iraq and Afghanistan and the Principle of Distinction

There is an old adage that “all is fair in love and war.”¹⁷³ While that may be true for love, war has rules. The International Law of Armed Conflict (“LOAC”) and the Geneva Conventions are just a few laws that regulate how militaries are allowed to conduct war.¹⁷⁴ While it is incumbent on the soldier to avoid unnecessary civilian casualties, enemy combatants must make an effort to distinguish themselves from the civilian population.¹⁷⁵ In a traditional war, that is normally the case; opposing sides wearing different uniforms fighting force on force in open fields.¹⁷⁶ Unfortunately, that is not

¹⁶⁸ *Id.* at 2–3.

¹⁶⁹ *Id.* at 3.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.* at 4.

¹⁷³ See Jill Kokemuller, *Origin of “All Is Fair in Love and War”*, DEMAND MEDIA, <http://classroom.synonym.com/origin-all-fair-love-war-9976.html> (last visited Nov. 1, 2016) (attributing the origins of the quote to John Lyly’s novel, “Euphues: The Anatomy of Wit,” which was published in 1579).

¹⁷⁴ See Laurie R. Blank, *Taking Distinction to the Next Level: Accountability for Fighters’ Failure to Distinguish Themselves from Civilians*, 46 VAL. U.L. REV. 765, 765 (2012). See also *War and International Humanitarian Law*, INT’L COMMITTEE RED CROSS (Sept. 23, 2011), <http://www.icrc.org/eng/war-and-law/overview-war-and-law.htm>.

¹⁷⁵ See Blank, *supra* note 174, at 765–66.

¹⁷⁶ See *id.* at 765 (noting how modern warfare has diluted the effectiveness of the distinction between fighter and civilian during armed conflict). See generally *id.* at 769–74.

how the enemy combatants in modern warfare—as seen in Iraq and Afghanistan—have chosen to fight.¹⁷⁷ All too often, they attack from apartment buildings, mosques, or crowded markets, sometimes with firearms, sometimes with improvised explosive devices (“IEDs”), and even the occasional suicide attack.¹⁷⁸ With the military under heightened scrutiny for its use of force on civilians, and soldiers increasingly tasked with policing duties, the United States has had to change its strategy for fighting these wars.¹⁷⁹

Once major combat operations in Baghdad, Iraq ended in May of 2003, the U.S. military found itself in the difficult position of being in an area still hostile to occupying forces but tasked with performing normal policing duties.¹⁸⁰ Fred Abrahams argues that being in such a situation does not absolve the military from using force in a restrained, proportionate, and discriminate matter, and most importantly, only when strictly required.¹⁸¹ Unfortunately, this was not always the case, especially in early 2003.¹⁸² Abrahams writes about the three categories of excessive violence that occurred in Baghdad: (1) military raids; (2) soldiers responding indiscriminately when under attack; and (3) killing at checkpoints for failure to stop.¹⁸³

Soldiers would conduct raids on homes looking for weapons or members of armed groups, similar to the “no-knock” raids performed by American police forces.¹⁸⁴ Often times, when the soldiers encountered armed resistance from civilians who thought they were acting in self-defense, the soldiers would react by not only killing the family members, but also sometimes neighbors or random passers-by who would get caught in the crossfire.¹⁸⁵ Soldiers would sometimes come under direct attack while out on patrol, usually starting with an IED attack.¹⁸⁶ While the actual threat was real, soldiers often responded by firing their weapons without identifying

¹⁷⁷ See generally *id.* at 774–77.

¹⁷⁸ See *id.*

¹⁷⁹ See Fred Abrahams, *Current Issues in Occupation Law: 2003 Civilian Deaths in Baghdad*, 81 INT’L L. STUD. 201, 208–209 (2006).

¹⁸⁰ See *id.* at 201.

¹⁸¹ *Id.* at 201–202.

¹⁸² *Id.*

¹⁸³ See *id.* at 203.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

the enemy position and risking the lives of nearby civilians.¹⁸⁷ At military checkpoints, drivers were often confused by conflicting instructions and the existing language barrier, resulting in the possibility of being shot.¹⁸⁸

At this point, the similarities between police tactics and those of the military should be clear. The 7-year-old who died in a “no-knock” raid in Detroit¹⁸⁹ could have easily been in Baghdad. Indiscriminate firing of a weapon when you believe you are being attacked sounds very similar to when Dirk Dickerson was shot during the botched drug raid.¹⁹⁰ We should not forget Mr. Jones, who was shot multiple times while attempting to comply with the police officer’s confusing order.¹⁹¹

Back in Baghdad, leadership began to realize what the problem was.¹⁹² Not only did troops fail to receive adequate training on civilian policing, they lacked proper support, equipment, and translators to communicate with the civilians.¹⁹³ As one soldier put it, he was being “asked to go from killing the enemy to protecting and interacting, and back to killing again.”¹⁹⁴ In order to deal with this new environment, special instructors were brought in to help them more quickly adapt to the ever-changing battlefield.¹⁹⁵ Forces focused on winning the “hearts and minds” of the Iraqi civilians by focusing on their safety and protection from insurgents instead of solely the soldiers’ personal safety.¹⁹⁶ Iraqi police began to accompany soldiers on raids and conduct raids themselves while policing duties were slowly handed off to Iraqi forces.¹⁹⁷

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ See Abbey-Lambertz, *supra* note 1.

¹⁹⁰ See, e.g., BALKO, *supra* note 6, at 113.

¹⁹¹ See Zucchini, *supra* note 122.

¹⁹² See Abrahams, *supra* note 179, at 208.

¹⁹³ See *id.*

¹⁹⁴ *Id.* at 209.

¹⁹⁵ *Id.* at 210.

¹⁹⁶ See THOMAS HENRIKSEN, WHAM: WINNING HEARTS AND MINDS IN AFGHANISTAN AND ELSEWHERE 31 (Joint Special Operations University Press 2012).

¹⁹⁷ See Abrahams, *supra* note 179, at 203, 212.

While there were many civilian casualties in Iraq, the problems in Afghanistan were far worse.¹⁹⁸ The nature of the Taliban fighters made it difficult to distinguish them from normal civilians.¹⁹⁹ In fact, it was part of their strategy to attack from civilian locations in hopes that coalition forces would either not return fire or return fire and risk killing innocent civilians.²⁰⁰ In order to combat this problem, special Rules of Engagement were developed for Afghanistan.²⁰¹ These rules focused on proving “hostile act” and “hostile intent” in order to identify enemy combatants.²⁰² While the definition of “hostile act” is straightforward,²⁰³ “hostile intent” required some manifestation of evidence that the suspected enemy combatant was preparing for an attack, such as maneuvering a weapon into launch position, or preparing to lay mines.²⁰⁴ Even attacking in self-defense needed a showing of either a hostile act or intent as opposed to a subjective belief.²⁰⁵

IV. A NEW HOPE: HOW TO ADDRESS THE PROBLEMS OF MILITARIZATION AND RESTORE TRUST IN THE POLICE

“The first step in solving a problem is to recognize that it does exist.”²⁰⁶ Between 2003 and 2013, British officers fired their guns fifty-one times; in a ten-year period, Canada had only twelve fatal police shootings; and Japan has not had a police shooting since 2012.²⁰⁷ In contrast, from January to July of 2015, there were more

¹⁹⁸ See Blank, *supra* note 174, at 775–76. (noting that, while Iraqi insurgents would sometimes dress as civilians to attack U.S. forces, the Taliban would endanger civilians by engaging U.S. troops from civilian homes and farms).

¹⁹⁹ See *id.*

²⁰⁰ See *id.* at 776–77.

²⁰¹ See *id.* at 778–81.

²⁰² See *id.* at 780.

²⁰³ See *id.* (defining “hostile act” as an attack or other use of force against the United States, its forces, property, etc.).

²⁰⁴ See *id.*

²⁰⁵ See *id.* at 779.

²⁰⁶ Zig Ziglar Quotes, BRAINYQUOTE, <http://www.brainyquote.com/quotes/quotes/z/zigziglar617848.html> (last visited Nov. 1, 2016).

²⁰⁷ See Catherine Taibi, *The Fairly Obvious Reason Police In Other Countries Kill Fewer People Than American Police Do*, HUFFINGTON POST (July 2, 2015, 9:55 AM), http://www.huffingtonpost.com/2015/07/02/police-countries-guns-fatal-shootings_n_7709638.html.

than 400 fatalities caused by police gunshots in the United States.²⁰⁸ In 2013, the violent crime rate dropped to its lowest point since 1978; however, in 2013, police killed 461 felony suspects—the highest total in twenty years.²⁰⁹ There should be no reason that American police kill more civilians in one month than an entire country does in 100 years.²¹⁰ Thus, in order to address this problem, the focus should be on initial police screening and training, demilitarization of police forces, and accountability.

A. Police Training

Officer Timothy Loehmann, the police officer who shot 12-year-old Tamir Rice, resigned from a previous job as a police officer when he was found “emotionally unstable and unfit for duty, especially in his handling of firearms.”²¹¹ When Officer David Eric Casebolt assaulted a young girl outside of a pool party in Texas, his justification for his actions was that he was addressing two previous calls that day and the stress caused “his emotions to get the better of him.”²¹² While being a police officer is a stressful and dangerous job that can negatively affect the individual, having someone with known emotional problems or an inability to handle stressful situations while on duty is just a disaster waiting to happen.

On the training front, there needs to be an end to the “Us-versus-Them” mentality. Such a philosophy is one that is instilled in young

²⁰⁸ *Id.*

²⁰⁹ See Bonnie Kristian, *FBI: Violent crime is down, but police killing civilians is up*, THE WEEK (Nov. 13, 2014), <http://theweek.com/speedreads/441954/fbi-violent-crime-down-but-police-killing-civilians>. Kristian notes that the data on police killings is incomplete as it only captures self-reported felony suspects. *See id.* Some estimates place the number as high as 1,700 civilians killed. *See id.* *See also* Ian Simpson, *Violent U.S. crime drops again, reaches 1970s level: FBI*, REUTERS (Nov. 10, 2014, 2:43 PM), <http://www.reuters.com/article/us-usa-crime-fbi-idUSKCN0IU1UM20141110>.

²¹⁰ See Agorist, *supra* note 3.

²¹¹ Alex Johnson, *Officer Who Killed Tamir Rice Found Unfit in Previous Police Job*, NBC NEWS (Dec. 4, 2014, 10:33 AM), <http://www.nbcnews.com/news/us-news/officer-who-killed-tamir-rice-found-unfit-previous-police-job-n261111>.

²¹² Manny Fernandez, *Texas Officer Was Under Stress When He Arrived at the Pool Party, Lawyer Says*, N.Y. TIMES (Jun. 10, 2015), http://www.nytimes.com/2015/06/11/us/texas-officer-was-under-stress-when-he-arrived-at-pool-party-lawyer-says.html?_r=0 (internal quotation marks removed).

police officers as early as the police academy.²¹³ That philosophy only leads to a lack of trust between civilians and police.²¹⁴ Furthermore, a greater emphasis should be placed on de-escalation training.²¹⁵ The aggressive policing tactics of making arrests and issuing citations for minor infractions runs countercurrent to the concurrent goals of arresting major criminals and fostering trust within the community.²¹⁶ Police academy training can vary by state, with hours of training ranging from 120 hours to nearly 1,000 hours.²¹⁷ On average, police receive far less training in de-escalation than they do in handling firearms and defensive training.²¹⁸

When it comes to weapon training, the focus should be placed on non-lethal weapons, such as batons and Tasers, as opposed to firearms. In Oklahoma, a reserve deputy shot and killed—by accident—a suspect who was handcuffed and on the ground.²¹⁹ The deputy claimed in defense that he was trying to reach for his stun gun instead of his handgun and was confused in the moment.²²⁰ One cannot help but think that if he were more familiar with his stun gun instead of his handgun, the suspect would still be alive.

B. Demilitarization

Another step in restoring relations between police and the community is to demilitarize the police force. Armored vehicles, grenade launchers, and heavily armed SWAT teams are not needed in every city. The data speaks clearly to the fact that a vast majority of

²¹³ Marion, *supra* note 113, at 72.

²¹⁴ Timothy Williams, *Long Taught to Use Force, Police Warily Learn to De-escalate*, N.Y. TIMES (June 27, 2015), <http://www.nytimes.com/2015/06/28/us/long-taught-to-use-force-police-warily-learn-to-de-escalate.html>.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ John Connolly, *Rethinking Police Training*, THE POLICE CHIEF, <http://iac-pmag.wp.matrixdev.net/rethinking-police-training/> (last visited Nov. 2, 2016).

²¹⁸ Williams, *supra* note 214 (describing average police training time to include fifty-eight hours of firearms training, forty-nine hours of defensive tactical training, and only eight hours of de-escalation training).

²¹⁹ John Bacon & William M. Welch, *Tulsa reserve deputy charged with manslaughter*, USA TODAY (Apr. 13, 2015, 5:12 PM), <http://www.usatoday.com/story/news/nation/2015/04/13/oklahoma-shooting-video/25702233/>.

²²⁰ *Id.*

SWAT deployments are not for riot control or active shooter situations, but rather to serve warrants.²²¹ This has become so apparent that in Arkansas, a SWAT team was activated to patrol a small town and ask people for identification; refusal to show a form of identification potentially resulted with a charge of obstruction.²²²

In the 1970s, bucking the trend of militarization, the head of the D.C. Metro Police, Jerry Wilson, decided to focus on community engagement instead of aggressive policing.²²³ Wilson used technology to increase response time to civilian complaints, not to increase firepower.²²⁴ He refused to use “no-knock” raids and looked to hire police officers from within the community.²²⁵ As a result, the crime rate in D.C. dropped significantly as the national crime rate continued to increase.²²⁶

After a series of botched raids and questionable shootings by police, city officials in San Diego completely revamped their police operations to address the rising discontent in the community.²²⁷ Community leaders opened a hotline for civilians to report police abuse, kept in close contact with local minority and civil rights leaders, and set up a telethon for community members to have on-air conversations with them.²²⁸ When California erupted in protest after the Rodney King verdict, San Diego police were dispatched to the neighborhoods as a show of support, not a show of force.²²⁹ Imagine how differently the recent protests in Ferguson, Missouri²³⁰ or Baltimore, Maryland²³¹ would have been if the police were there to support the protests, rather than to stop them.

²²¹ See BALKO, *supra* note 6, at 175.

²²² See Kiker, *supra* note 70, at 290.

²²³ See BALKO, *supra* note 6, at 97–101.

²²⁴ *Id.* at 98.

²²⁵ *Id.* at 98, 101.

²²⁶ *Id.* at 100.

²²⁷ See *id.* at 161–63.

²²⁸ *Id.* at 162.

²²⁹ *Id.* at 163 (noting that San Diego still enjoys one of the lowest crime rates for a major city).

²³⁰ See Yamiche Alcindor, *Overnight in Ferguson: More protest, some arrests*, USA TODAY (Aug. 11, 2015, 4:44 PM), <http://www.usatoday.com/story/news/nation/2015/08/10/ferguson-protest-shooting/31397841/>.

²³¹ See Polly Mosendz, *Protest in Baltimore After Mistrial for Officer in Freddie Gray Case*, NEWSWEEK (Dec. 16, 2015, 9:56 PM), <http://www.newsweek.com>

C. Accountability

Being able to hold the police accountable for their actions is integral to repairing the lack of trust towards the police. Accountability was one of the main reasons why the Founders wanted a separate police force instead of the military.²³² Proponents of police body cameras advocate for video technology in order to protect both the police officer and the civilian from frivolous claims.²³³ We also need better, proactive community oversight of police, so as to help curb police misconduct.²³⁴ Finally, if there are charges to be levied against an officer, a special prosecutor can mitigate the perceived conflict of interest between the state and local law enforcement.²³⁵

Digital videos are commonplace now and there is an increasing body of data showing evidence of police brutality.²³⁶ After seeing incidents like those that happened with Eric Garner,²³⁷ John Crawford,²³⁸ and Walter Scott,²³⁹ it is easy to see why the need for an

m/protests-erupt-baltimore-after-mistrial-declared-officer-charged-connection-406228.

²³² See Kiker, *supra* note 70, at 292–93.

²³³ See Dru S. Letourneau, *Police Body Cameras: Implementation with Caution, Forethought, and Policy*, 50 U. RICH. L. REV. 439, 448–51 (2015).

²³⁴ See Kevin King, *Effectively Implementing Civilian Oversight Boards to Ensure Police Accountability and Strengthen Police-Community Relations*, 12 HASTINGS RACE & POVERTY L.J. 91, 95 (2015).

²³⁵ See Editorial Board, *Police abuse cases need special prosecutors*, WASH. POST (Dec. 6, 2014), https://www.washingtonpost.com/opinions/police-abuse-cases-need-special-prosecutors/2014/12/06/fcf57e28-7cd6-11e4-b821-503cc7efed9e_story.html.

²³⁶ See, e.g., Fernandez, *supra* note 212 (video recording of officer's actions captured on a cellphone camera).

²³⁷ See, e.g., Melanie Eversley, *NYPD sergeant charged in Eric Garner case*, USA TODAY (Jan. 9, 2016, 5:57 PM), <http://www.usatoday.com/story/news/2016/01/08/nypd-sergeant-charged-eric-garner-case/78532476/> (describing Garner's death from a police administered chokehold during an arrest for alleged sale of illegal cigarettes).

²³⁸ See, e.g., Radley Balko, *Mass shooting hysteria and the death of John Crawford*, WASH. POST (Sept. 25, 2014), <https://www.washingtonpost.com/news/the-watch/wp/2014/09/25/mass-shooting-hysteria-and-the-death-of-john-crawford/> (describing the shooting and killing of Crawford by police after he purchased an air rifle from a local Wal-Mart. Police were under the impression that the gun was real but did not assess whether this was true or not before opening fire).

²³⁹ See, e.g., Mark Berman, *South Carolina police officer in Walter Scott shooting indicted on murder charge*, WASH. POST (June 8, 2015), <https://www.washingtonpost.com/news/energy-environment/wp/2015/06/08/south-carolina-police-officer-in-walter-scott-shooting-indicted-on-murder-charge/>.

objective observer is necessary. Body cameras are generally believed to increase oversight, transparency, and community relations.²⁴⁰

Civilian complaints about police misconduct are not always suited for criminal or civil proceedings.²⁴¹ There needs to be an investigative body outside of the police department because, in many cases, internal investigations do not bear any fruit.²⁴² For complaints of this nature, civilian oversight boards can be the most appropriate place to hear these complaints.²⁴³ Similarly, such an oversight board can be used to keep tabs on police activity. In Maryland, the legislature passed a bill that required the state police departments to periodically submit a report on the number of times a SWAT team was deployed and for what reason.²⁴⁴ These measures will add an element of transparency to the system and allow for an adequate place to voice grievances similar to the strategies applied in San Diego in the early 1990s.²⁴⁵

Finally, in a case where a police officer is charged with a crime, the state needs to appoint a special prosecutor. In a normal case, prosecutors and police officers work together to ensure justice is achieved.²⁴⁶ Unfortunately, when a prosecutor has to indict a police officer, there are often accusations of a conflict of interest.²⁴⁷ When the average indictment rate in federal cases is near 100%, but the indictment rate of police officers involved in a shooting is closer to 1.5%, the idea that there is a conflict of interest seems highly plausible.²⁴⁸ One suggestion is to create an independent “Special Prosecutor’s Office” within each Office of the Attorney General, with the

washingtonpost.com/news/post-nation/wp/2015/06/08/police-officer-who-shot-walter-scott-indicted-for-murder/ (describing the shooting and killing of Scott by police during a routine traffic stop as he fled the scene. The video of the murder was recorded on a cell phone and the officer was indicted).

²⁴⁰ See Letourneau, *supra* note 233, at 445–46.

²⁴¹ See King, *supra* note 234, at 95.

²⁴² See *id.* at 95–96.

²⁴³ See *id.* at 96.

²⁴⁴ See BALKO, *supra* note 6, at 318–19.

²⁴⁵ *Id.* at 161–63.

²⁴⁶ See Editorial Board, *supra* note 235.

²⁴⁷ *Id.*

²⁴⁸ See Josh Voorhees, *Darren Wilson Is Not an Outlier: Why cops are almost never indicted for shooting someone in the line of duty*, SLATE (Dec. 2, 2014, 5:19

sole mission of investigating police or public official misconduct.²⁴⁹ This would create an extra layer of insulation between the state and local law enforcement.²⁵⁰ While there is no guarantee that a special prosecutor will fix the indictment rate, it will at least be a step closer to removing the taint of prejudice in favor of the officer.²⁵¹

CONCLUSION

Over the years, civilian law enforcement has experienced a slow progression towards increased militarization. In an attempt to meet the national call to arms for wars on crime, drugs, and terror, police forces have felt obliged to adopt the aggressive tactics of the military in the daily enforcement of laws.²⁵² With ready access to military-grade equipment, the need to justify their necessity has led departments to use these weapons of war in the most mundane law enforcement circumstances.²⁵³ In doing so, many police departments have damaged their relationships with the communities they are sworn to protect, resulting in resentment towards the police.²⁵⁴ In an interesting juxtaposition, while police departments have found themselves becoming more militaristic, the military has found itself acting more as police officers and peacekeepers than soldiers.²⁵⁵ While addressing the issues with the military is outside of the scope of this Comment, it is interesting to note how quickly soldiers adapted to their new dual mission as peacekeepers.²⁵⁶ In order for police to re-adapt to the role they play in society, they must focus on better training, demilitarization, and accountability for their actions. Without these steps, the balance to the force will never be restored.

PM), http://www.slate.com/articles/news_and_politics/politics/2014/12/darren_wilson_no_true_bill_why_cops_are_almost_never_indicted_for_shooting.html.

²⁴⁹ See Joshua Deahl, *Police Killings Call for New Kind of Prosecutor*, BLOOMBERGVIEW (Dec. 4, 2014, 4:55 PM), <http://www.bloombergview.com/articles/2014-12-04/police-killings-call-for-new-kind-of-prosecutor>.

²⁵⁰ See *id.*

²⁵¹ See Editorial Board, *supra* note 235.

²⁵² See *supra* Part I.

²⁵³ *Id.*

²⁵⁴ See *supra* Part II.

²⁵⁵ See BALKO, *supra* note 6, at 175; Abrahams, *supra* note 179, at 208.

²⁵⁶ See Abrahams, *supra* note 179, at 203, 208.