

WAR COMES HOME

The Excessive Militarization of American Policing

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EXECUTIVE SUMMARY

Across the country, heavily armed Special Weapons and Tactics (SWAT) teams are forcing their way into people's homes in the middle of the night, often deploying explosive devices such as flashbang grenades to temporarily blind and deafen residents, simply to serve a search warrant on the suspicion that someone may be in possession of a small amount of drugs. Neighborhoods are not war zones, and our police officers should not be treating us like wartime enemies. However, the ACLU encountered this type of story over and over when studying the militarization of state and local law enforcement agencies.

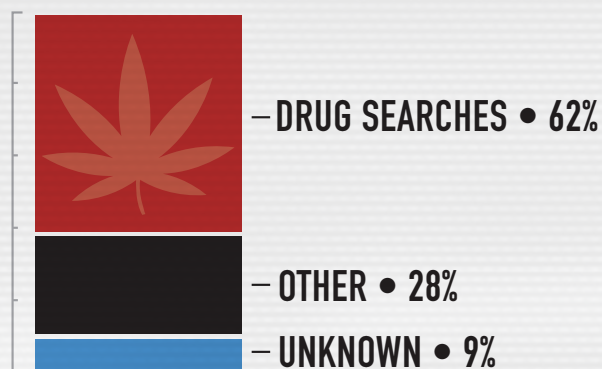
This investigation gave us data to corroborate a trend we have been noticing nationwide: American policing has become unnecessarily and dangerously militarized, in large part through federal programs that have armed state and local law enforcement agencies with the weapons and tactics of war, with almost no public discussion or oversight.¹ Using these federal funds, state and local law enforcement agencies have amassed military arsenals purportedly to wage the failed War on Drugs, the battlegrounds of which have disproportionately been in communities of color. But these arsenals are by no means free of cost for communities. Instead, the use of hyper-aggressive tools and tactics results in tragedy for civilians and police officers, escalates the risk of needless violence, destroys property, and undermines individual liberties.

This report provides a snapshot of the realities of paramilitary policing, building on a body of existing work demonstrating that police militarization is a pervasive problem. Analyzing both existing secondary source materials and primary source data uncovered through the ACLU's public records investigation, this report examines the use of SWAT teams by state and local law enforcement agencies and other aspects of militaristic policing.² As explained in the Methodology section, our statistical analysis included more than 800 SWAT deployments conducted by 20 law enforcement agencies during the years 2011-2012.³

SWAT was created to deal with emergency situations such as hostage, barricade and active shooter scenarios. Over time, however, law enforcement agencies have moved away from this original purpose and are increasingly using these paramilitary squads to search people's homes for drugs.

Aggressive enforcement of the War on Drugs has lost its public mandate, as 67 percent of Americans think the government should focus more on treatment than on policing and prosecuting drug users.⁴ This waning public support is warranted, as evidence continues to document how the War on Drugs has destroyed millions of lives, unfairly impacted communities of color, made drugs cheaper and more potent, caused countless deaths of innocent people caught up in drug war-related armed conflict, and failed to eliminate drug dependence and addiction. The routine use of heavily armed SWAT teams to search people's homes for drugs, therefore, means that law enforcement agencies across the country are using this hyper-aggressive form of domestic policing to fight a war that has waning public support and has harmed, much more than helped, communities.

Majority of SWAT Deployments for Drug Searches (2011-2012)



Source: Data provided by local law enforcement agencies for ACLU investigation.

SWAT raids are undoubtedly violent events: numerous (often 20 or more) officers armed with assault rifles and grenades approach a home, break down doors and windows (often causing property damage), and scream for the people inside to get on the floor (often pointing their guns at them). During the course of this investigation, the ACLU determined that SWAT deployments often and unnecessarily entailed the use of violent tactics and equipment, including Armored Personnel Carriers (APCs), and that the use of these tactics and equipment often increased the risk of property damage and bodily harm. Unnecessarily aggressive SWAT raids can have disastrous consequences, including injury and death. The ACLU also uncovered numerous instances in which SWAT teams deployed when there were children present (and some in which the SWAT team knew in advance that children would be present).

To scale back the militarization of police, it is important to document how law enforcement agencies have stockpiled their arsenals. Law enforcement agencies have become equipped to carry out these SWAT missions in part by federal programs such as the Department of Defense's 1033 Program, the Department of Homeland Security's grants to local law enforcement agencies, and the Department of Justice's Edward Byrne Memorial Justice Assistance Grant (JAG) Program, each of which is examined in this report.

De-escalating militarized policing will also require analysis of how the presence of these weapons and tactics has impacted policing culture. Our analysis shows that the militarization of American policing is evident in the training that police officers receive, which encourages them to adopt a "warrior" mentality and think of the people they are supposed to serve as enemies, as well as in the equipment they use, such as battering rams, flashbang grenades, and APCs. This shift in culture has been buoyed by the U.S. Supreme Court's weakening of the Fourth Amendment (which protects the right to privacy in one's home) through a series of decisions that have given the police increased authority to force their way into people's homes, often in drug cases.

Additionally, solving the problem of police militarization requires discussion of how SWAT teams should be



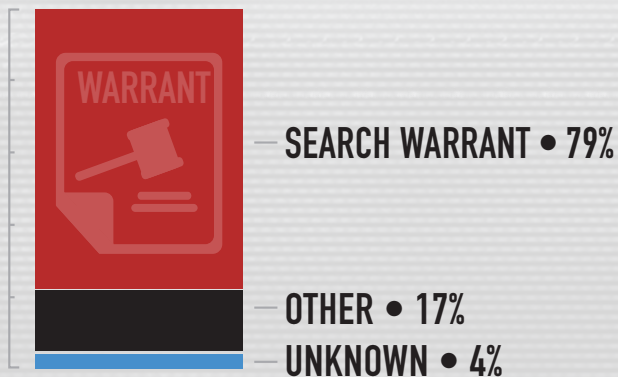
Photo: Keep Columbia Free via FIO/Sunshine request.
<http://www.youtube.com/watch?v=Ng6mfpZ2kR4>

In the ACLU's study, SWAT teams forced entry into a person's home using a battering ram or other breaching device in 65% of drug searches.

Militarization of policing encourages officers to adopt a "warrior" mentality and think of the people they are supposed to serve as enemies.

appropriately used and when their deployment is counterproductive and dangerous. Even though paramilitary policing in the form of SWAT teams was created to deal with emergency scenarios such as hostage or barricade situations, the use of SWAT to execute search warrants in drug investigations has become commonplace and made up the overwhelming majority of incidents the ACLU reviewed—79 percent of the incidents the ACLU studied involved the use of a SWAT team to search a person's home, and more than 60 percent of the cases involved searches for drugs. The use of a SWAT team to execute a search warrant essentially amounts to the use of paramilitary tactics to conduct domestic criminal investigations in searches of people's homes.

Majority of SWAT Deployments for Search Warrants (2011–2012)



Source: Data provided by local law enforcement agencies for ACLU investigation.

The use of SWAT teams to serve search warrants could perhaps be justified if there were reason to believe that these situations truly presented a genuine threat to officer safety, but that did not appear to be the case from the documents that the ACLU examined; of the incidents in which officers believed a weapon would be present, a weapon (typically a firearm such as a handgun but rarely an assault rifle) was actually found at the scene in only 35 percent of cases. Even when officers believed a weapon was likely to be present, that belief was often unsubstantiated. Unfortunately, reasonable standards for deploying SWAT teams appear to be virtually nonexistent. Further, given that almost half of American households

An estimated 500 law enforcement agencies have received Mine Resistant Ambush Protected (MRAP) vehicles built to withstand armor-piercing roadside bombs.

have guns, use of a SWAT team could almost always be justified if the “presence of a firearm” was the sole factor determining whether to deploy.⁵ However, because the use of SWAT increases the likelihood that the occupants will use weapons to defend themselves, which increases the risk of violence, presence of a weapon alone should not automatically result in a SWAT deployment.

These problems have been allowed to occur in the absence of public oversight. Data collection has been sparse and inadequate: among the law enforcement agencies studied, the ACLU found that data collecting and reporting in the context of SWAT was at best sporadic and at worst virtually nonexistent.

In addition, there is typically no single entity at the local, state, or federal level responsible for ensuring that SWAT is appropriately restrained and that policing does not become excessively militarized. Maryland passed a law in 2010 requiring local law enforcement agencies to submit regular reports on their use of SWAT, but that law will sunset this year. Utah passed a similar law this year, which looks promising, but much more oversight is needed.

Attorney General Eric H. Holder, Jr., has announced broad criminal justice reforms, including guidelines to curtail the use of mandatory minimum sentencing laws by federal prosecutors in certain drug cases and a \$4.75 million project funded by the federal government and designed to ease mistrust between local police departments and minority communities by collecting and studying data on searches, arrests, and case outcomes in order to help assess the impact of possible bias. These developments have real potential to reduce America’s excessive reliance on overly aggressive approaches to policing and punishing drug crimes, but there is a danger that these federally-funded efforts could be undermined by the federal government’s role in subsidizing the use of paramilitary weapons and tactics in localities, particularly in many communities of color. Without rethinking its role in militarizing local police departments, the federal government may end up sabotaging the very same reforms it is championing.

From our review of both primary and secondary source materials, we are able to present two sets of findings: one set of general findings based on our review of the existing

research, which our data supports, and one set of time-bound specific findings from our statistical analysis of the raw data we collected in connection with our investigation.

Our general findings, based on our review of existing research and supported by our data, are the following:

1. Policing—particularly through the use of paramilitary teams—in the United States today has become excessively militarized, mainly through federal programs that create incentives for state and local police to use unnecessarily aggressive weapons and tactics designed for the battlefield. For example, the ACLU documented a total of 15,054 items of battle uniforms or personal protective equipment received by 63 responding agencies during the relevant time period, and it is estimated that 500 law enforcement agencies have received Mine Resistant Ambush Protected (MRAP) vehicles built to withstand armor-piercing roadside bombs through the Department of Defense’s 1033 Program.⁶
2. The militarization of policing in the United States has occurred with almost no public oversight. Not a single law enforcement agency in this investigation provided records containing all of the information that the ACLU believes is necessary to undertake a thorough examination of police militarization. Some agencies provided records that were nearly totally lacking in important information. Agencies that monitor and provide oversight over the militarization of policing are virtually nonexistent.

Our more specific findings from the statistical analysis we conducted of time-bound raw data received in connection with this investigation are the following:

3. SWAT teams were often deployed—unnecessarily and aggressively—to execute search warrants in low-level drug investigations; deployments for hostage or barricade scenarios occurred in only a small number of incidents. The majority (79 percent) of SWAT deployments the ACLU studied were for the purpose of executing a search warrant, most commonly in drug investigations. Only a small handful of deployments (7 percent) were for hostage, barricade, or active shooter scenarios.

CASUALTY REPORT

LIMA, OHIO
JANUARY, 2008

SWAT Officers Kill 26-Year-Old Mother Holding Infant Son



Tarika Wilson wasn’t the suspect. She died when SWAT officers broke down her front door and opened fire into her home. Ms. Wilson was holding her 14-month-old son when she was shot. The baby was injured, but survived. The

SWAT team had been looking for Ms. Wilson’s boyfriend on suspicion of drug dealing when they raided Ms. Wilson’s rented house on the Southside of Lima, the only city with a significant African-American population in a region of farmland.

4. The use of paramilitary weapons and tactics primarily impacted people of color; when paramilitary tactics were used in drug searches, the primary targets were people of color, whereas when paramilitary tactics were used in hostage or barricade scenarios, the primary targets were white. Overall, 42 percent of people impacted by a SWAT deployment to execute a search warrant were Black and 12 percent were Latino. This means that of the people impacted by deployments for warrants, at least 54 percent were minorities. Of the deployments in which all the people impacted were minorities, 68 percent were in drug cases, and 61 percent of all the people impacted by SWAT raids in drug cases were minorities. In addition, the incidents we studied revealed stark, often extreme, racial disparities in the use of SWAT locally, especially in cases involving search warrants.

INCIDENT REPORT

HUNTINGTON, WEST VIRGINIA
OCTOBER 14, 2011

SWAT Team Throws Flashbang into Home of Pregnant Woman

Knowing there would likely be a pregnant woman inside, a SWAT team still opted to break down the door of a home and throw a flashbang grenade inside in order to execute a search warrant in a drug case. Once inside the home, SWAT officers found one man, one pregnant woman, and a four-year-old child. While this particular report contained no information about the race of the people impacted by the deployment, the majority of the Huntington SWAT deployments the ACLU studied were conducted in connection with drug investigations, and the majority of the people impacted were Black.

5. SWAT deployments often and unnecessarily entailed the use of violent tactics and equipment, including armored personnel carriers; use of violent tactics and equipment was shown to increase the risk of bodily harm and property damage. Of the incidents studied in which SWAT was deployed to search for drugs in a person's home, the SWAT teams either forced or probably forced entry into a person's home using a battering ram or other breaching device 65 percent of the time. For drug investigations, the SWAT teams studied were almost twice as likely to force entry into a person's home than not, and they were more than twice as likely to use forced entry in drug investigations than in other cases. In some instances, the use of violent tactics and equipment caused property damage, injury, and/or death.

Reform must be systemic; the problems of overly aggressive policing are cultural and cannot be solved by merely identifying a few “bad apples” or dismissing the problem as a few isolated incidents.

Reform must be systemic; the problems of overly aggressive policing are cultural and cannot be solved by merely identifying a few “bad apples” or dismissing the problem as a few isolated incidents.

To begin to solve the problem of overly militarized policing, reform must happen at all levels of government that have contributed to this trend.

The federal government should take the lead by reining in the programs that create incentives for local police to engage in excessively militarized tactics, especially in drug cases. The federal government holds the purse strings, and easing the flow of federal funds and military-grade equipment into states and localities would have a significant impact on the overuse of hyper-aggressive tactics and military-grade tools in local communities.

Additionally, state legislatures and municipalities should impose meaningful restraints on the use of SWAT. SWAT deployments should be limited to the kinds of scenarios for which these aggressive measures were originally intended: barricade, hostage, and active shooter situations. Rather than allow a SWAT deployment in any case that is deemed (for whatever reason the officers determine) to be “high risk,” the better practice would be for law enforcement agencies to have in place clear standards limiting SWAT deployments to scenarios that are truly “high risk.”

SWAT teams should never be deployed based solely on probable cause to believe drugs are present, even if they have a warrant to search a home. In addition, SWAT teams should not equate the suspected presence of drugs with a threat of violence. SWAT deployment for warrant service is appropriate only if the police can demonstrate, before deployment, that ordinary law enforcement officers cannot safely execute a warrant without facing an imminent threat of serious bodily harm. In making these determinations, it is important to take into consideration the fact that use of a SWAT team can escalate rather than ameliorate potential violence; law enforcement should take appropriate precautions to avoid the use of SWAT whenever possible. In addition, all SWAT deployments, regardless of the underlying purpose, should be proportional—not all situations call for a SWAT deployment consisting of 20 heavily armed officers in an APC, and partial deployments should be encouraged when appropriate.

Local police departments should develop their own internal policies calling for appropriate restraints on the use of SWAT and should avoid all training programs that encourage a “warrior” mindset.

Finally, the public has a right to know how law enforcement agencies are policing its communities and spending its tax dollars. The militarization of American policing has occurred with almost no oversight, and it is time to shine a bright light on the policies, practices, and weaponry that have turned too many of our neighborhoods into war zones.

METHODOLOGY

This report is intended to provide a snapshot of the militarization of policing, a little-understood phenomenon that has not been adequately studied. It includes analysis of both existing secondary source materials and primary source data uncovered through the ACLU’s public records investigation, which is described below.

On March 6, 2013, the ACLU sent public records requests to more than 260 law enforcement agencies in 25 states (we later added the District of Columbia and a number of cities in a 26th state).⁷ We asked the law enforcement agencies to produce all incident reports (or other records) documenting each time a SWAT team was deployed between 2011 and 2012⁸—with such incident reports breaking down SWAT deployments by suspected crime, requesting agency, and purpose for the deployment—as well as any post-deployment documents relating to the use of no-knock warrants in conjunction with the SWAT deployment or the use of force during the deployment, including documentation relating to any injuries/deaths at the scene of the SWAT operation. As of September 30, 2013, we had received 3,844 records in response to these requests.⁹

In order to analyze the information contained in these records, we first identified the type of document (e.g., SWAT incident report, training document, grant request, 1033 record, etc.). For each document type, we identified several individual data points to collect.

For each SWAT deployment, we considered the following:

- The number, race, ethnicity, and sex of people impacted
- The number of children present, if any
- The number of mentally ill civilians impacted, if any
- The number of officer deaths/injuries, if any
- Whether forcible entry was made
- Whether a flashbang grenade or other distraction device was used
- The purpose of the SWAT deployment (e.g., to execute a search warrant, in response to a barricade, hostage, or active shooter scenario, etc.)
- In search warrant cases, whether the warrant was a no-knock warrant
- Whether the deployment was in connection with a drug offense
- Whether weapons were believed to be present
- Whether weapons were found
- Whether drugs and/or other contraband were found
- Whether the deployment resulted in property damage

For weapons transfers and federal grants, we considered the following:

- The amount and type of equipment received
- The type of grant program being applied for
- The amount of funding requested/received
- Whether the justification provided for the grant was related to drugs or terrorism

Some SWAT incident reports specifically include some form of check box or tick box allowing for a simple yes-or-no answer to one or more of the above questions (e.g., the incident report indicated whether a distraction device was employed by expressly requiring law enforcement personnel to check a box indicating “Yes” or “No”). When reports include such boxes, it is straightforward to transform the information contained in the incident

reports received into a coherent categorical variable representing the various responses of law enforcement personnel to the above questions.

The vast majority of the incident reports considered, however, did not consistently and systematically document information in such an easily transcribable manner, instead communicating or expressing answers—if any at all—to the above questions in a textual narrative (often located at the end of the incident report). It is, of course, relatively more difficult to generate a categorical variable from purely narrative text, and, in particular, one must decide how to deal with narratives that are silent or ambiguous with respect to one or more of the questions posed above.

For these types of incident reports, the following coding procedure was employed: If the narrative affirmatively answers one of the preceding questions, then the relevant categorical variable is coded as “Yes” (e.g., if the narrative explicitly indicates that a flashbang grenade was used during the SWAT operation, then the “Was a Distraction Device Used” variable is coded as “Yes”). Likewise, if the narrative explicitly answers one of the above questions in the negative, then the relevant variable is coded as “No.” Further, if the narrative strongly suggests a positive answer to one of the preceding questions (e.g., with respect to the question of whether forcible entry was made, the incident report refers to extensive damage to the front door), then the variable is coded as “Likely Yes.” Importantly, if the narrative is silent or ambiguous with respect to one of the above questions, then the relevant variable is coded as “Likely No,” based on the theory that police officers are unlikely to affirmatively state in an incident report that a particular action was *not* undertaken. With respect to the use of a distraction device, for instance, police officers are unlikely, arguably, to expressly write down or indicate in the incident report that a distraction device was *not* used (when a distraction device was, in fact, not used at any point during the SWAT operation). It is simply too time-consuming or otherwise costly for police officers, in creating a post-deployment narrative, to mention all of the possible actions not undertaken during the SWAT operation; i.e., the narrative will contain mainly a description of what was done as opposed to what was not done. Finally, if the narrative is simply left blank—occurring with surprisingly high frequency in the

CASUALTY REPORT

FRAMINGHAM, MASSACHUSETTS
JANUARY, 2011

SWAT Officer Shoots Grandfather of Twelve



Eurie Stamp was in his pajamas, watching a baseball game, when SWAT officers forced a battering ram through his front door and threw a flashbang grenade inside. Stamp, a 68-year-old grandfather of twelve, followed the officers' shouted orders to

lie facedown on the floor with his arms above his head. He died in this position, when one of the officers' guns discharged. Stamp wasn't the suspect; the officers were looking for his girlfriend's son on suspicion of selling drugs. The suspect was arrested outside the home minutes before the raid. Even though the actual suspect didn't live in Stamp's home and was already in custody, the SWAT team still decided to carry out the raid. Framingham has since disbanded its SWAT team.

incident reports considered, then the relevant categorical variable is coded as “Unknown.” No inferences are drawn in this instance. In the discussion that follows, data that was captured as “Likely Yes” or “Likely No” is described as being “probably” or “probably not” true.

To ensure that certain results are not merely a function of a small number of observations, the analysis considers only those law enforcement agencies that produced more than 15 incident reports in response to the original public records requests, with the exception of the Bay County Sheriff's Office, which was included in the analysis for the purpose of greater geographic diversity. It is important to note that the data analysis in the report does not seek to make statistical estimates about the larger universe

of SWAT deployments nationwide. Rather, the analysis is descriptive in nature, providing a general picture of SWAT deployments for this small cross section of otherwise randomly chosen law enforcement agencies—the information contained in the documents received is not used to make more general, broader statements about the use and impact of SWAT nationwide.

Narrowing the set of local law enforcement agencies that we considered as described in the preceding paragraph, the total number of SWAT incidents analyzed is 818, and these SWAT incidents are distributed over 20 local law enforcement agencies located in the following 11 states: Arkansas, Connecticut, Florida, Georgia, Mississippi, North Carolina, Pennsylvania, Texas, Utah, Washington and West Virginia. The agencies were diverse in terms of type (including municipal police departments, county sheriff's offices, a police department covering multiple unincorporated areas, and a state patrol), size of population covered (ranging from 35,000 to 778,000), region (covering the Mid-Atlantic, Appalachian, Northeast, South, West, and Northwest regions of the United States, with the South most heavily represented), and racial composition (with Black percentage population ranging from two percent to 42 percent). The SWAT incidents considered span the following time period: July 20, 2010, to October 6, 2013, with the vast majority of incidents occurring in years 2011 and 2012.



Photo: Keep Columbia Free via FIO/Sunshine request.
<http://www.youtube.com/watch?v=Ng6mfpZ2kR4>

In the ACLU's study, SWAT teams were more than twice as likely to force entry into a person's home when searching for drugs than for other deployments.

For the most part, the data analysis consists of one- and two-way tabulations of the variables discussed above. Notably, the analysis treats missing values like other values, denoting missing or unknown values as "U." Rather than drop missing values from the calculations, missing values are explicitly recorded in the tabulations in order to highlight the substantial degree to which large sections of the incident reports received from the local law enforcement agencies are incomplete or simply left blank, with no explanation or additional reason given for the missing information.

Also, a significant component of the data analysis investigates racial disparities in the use and impact of SWAT deployments. To consider this issue, it is necessary to classify the "race" of a SWAT deployment in terms of the race of individuals impacted by SWAT operations (note that the challenge posed in doing so is that there may be multiple individuals of varying races impacted in a single SWAT deployment). This classification is accomplished in one of two distinct ways. Under the first approach, we create a variable called "Minority." Minority is defined here as referring only to Black or Latino individuals; our definition does not include other minority groups (e.g., Asian, Arab, and so forth). Any given SWAT incident is then described as "All White," meaning that all of those impacted by a given SWAT deployment were white; "All Minority," meaning that all of the individuals impacted by a given SWAT deployment were either Black or Latino; or "Mixed," meaning that the SWAT incident involved a mix of minority and non-minority individuals.

Under the second approach, we count the total number of individuals impacted by a given SWAT incident who were either white, Black, or Latino. That is, three numbers are calculated for each SWAT incident: (1) the total number of whites impacted by the SWAT operation, (2) the total number of Blacks impacted by the SWAT operation, and (3) the total number of Latinos impacted by the SWAT operation. Tabulations are then run, not with respect to the total number of individual SWAT incidents as above, but, rather, with respect to the total number of individuals impacted by SWAT operations. So, for example, when calculating the frequency of SWAT deployments by race in a given jurisdiction, under this second approach, we calculate the percentage of the total number of individuals

impacted by SWAT operations who are either white, Black, or Latino. In other words, the total number of Blacks impacted by SWAT operations in the jurisdiction is compared to the total number of individuals (of all races) impacted by SWAT operations.

Under the first approach, the relevant unit of measurement is the total number of SWAT *incidents*; under the second approach, the relevant unit is the total number of *individuals* impacted by SWAT operations. Note that these two measures may generate differing results insofar as the average number of individuals impacted per SWAT deployment varies by race. Suppose, for instance, that one SWAT deployment can be classified as “All White” and another as “All Minority.” Even though there is no racial disparity with respect to SWAT incidents in this example, there may still be a racial disparity with respect to the total number of individuals impacted by SWAT operations if the total number of individuals impacted in the “All Minority” SWAT incident is larger than the corresponding number of individuals impacted in the “All White” SWAT incident.

Racial disparities in SWAT impact *rates* (as opposed to the total number of individuals impacted by SWAT deployments) are also considered. By examining impact rates, it is possible to control for racial disparities in the underlying populations impacted by SWAT deployments. Rates are expressed in terms of individuals impacted by SWAT deployment per 100,000 individuals. In particular, to calculate the white, Black, or Latino SWAT impact rate in a given jurisdiction, the number of white, Black, or Latino individuals impacted by SWAT deployments is divided by the total white, Black, or Latino population in that jurisdiction; the corresponding ratio is then multiplied by 100,000 to obtain the impact rate per 100,000. In this report, the measure of racial disparity in a given jurisdiction in terms of SWAT deployments is calculated as the ratio of either the Black or Latino impact rate to the white impact rate. So, for example, a Black/white racial disparity measure (or ratio) of three implies that the rate at which Blacks are impacted by SWAT operations is three times the rate at which whites are impacted by SWAT operations. Likewise, a Latino/white racial disparity measure of three implies that the rate at which Latinos are impacted by SWAT operations is three times the rate at which whites are impacted by SWAT operations.

We also examined information pertaining to transfers of military equipment to 63 local law enforcement agencies located in the following eight states: Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, North Carolina, and Pennsylvania. The report provides totals by agency for different types of equipment, including bomb suits, night-vision goggles, drones, shock-cuffs, rifles, cell phone sniffers, facial recognition technology, forced-entry tools, biometric devices, utility trucks, APCs, helicopters, GPS devices, and personal protective armor.

Finally, we considered information pertaining to the type and amount of state and federal grant awards to 27 local law enforcement agencies located in the following 13 states: Arizona, Arkansas, Delaware, Florida, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, Pennsylvania, Texas, and Utah. Grants were coded to indicate whether the justification for a particular grant was drug-related (“Yes” or “No”) or terrorism-related (“Yes” or “No”). Agencies in our dataset received funding from the following grant programs, among others: Federal Department of Homeland Security Grant Programs, the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, the Department of Justice Community Oriented Policing Services (COPS) Grant Program, State Homeland Security Grant Programs, and National Drug Control Policy State and Local Initiatives.

INTRODUCTION



Photo: Keep Columbia Free via FIO/Sunshine request.
<http://www.youtube.com/watch?v=Ng6mfpZ2kR4>

Imagine that you are at home with your family, sleeping soundly in the early morning hours. You awaken suddenly to a loud explosion and the sound of glass shattering. A bright light blinds you and there is a terrible ringing in your ears. You cannot see anything, but through the ringing you hear the harrowing sound of your front door being broken down as your children begin to scream in the next room. As you come to your senses, you look outside your window and see what appears to be a tank in your driveway. Suddenly, people—you have no idea how many—break through your bedroom door. In the darkness, all you can see is that they are wearing black and carrying assault rifles, and their faces are masked. You hear people yelling at you and your partner to get on the floor and put your hands behind your back. Your children are still screaming in the next room and your dog is barking loudly. The people lead you, wearing whatever you wore to sleep that night, into the living room, pointing assault rifles at you the entire time. You are ordered to sit, and someone quickly handcuffs you to the chair. More people then bring your partner and your children into the living room at gunpoint. Your dog is still barking, and

one of the people shoots it, killing it instantly, in front of you and your children. They then proceed to ransack your home, breaking down doors and shattering windows. You can see that the explosion you heard earlier came from a grenade that now lies near your feet, scorch marks covering the floor from the blast. They hold you and your family at gunpoint for the next several hours, refusing to answer any questions about why they are there or what they are looking for. Once they have finally left, you find your home in shambles. Broken glass litters the floor, and doors are broken from where the police kicked holes in them. Your dog lies breathless in a pool of its own blood. Tables are overturned, papers are strewn about, and electronic equipment has been ripped from the walls and left on the floor. Your partner is desperately trying to calm your hysterical children.

Unfortunately, this is not a scene from an action movie, and it did not happen during the course of a protracted battle in an overseas war. This is the militarization of our state and local police, and events like this are happening every day in homes throughout America.

Massive Military-Grade Weapons Caches in Arizona

The police department in Maricopa County, Arizona – led by the infamous Sheriff Joe Arpaio – has a .50 caliber machine gun that shoots bullets powerful enough to blast through the buildings on multiple city blocks. That’s not all: the department has stockpiled a combined total of 120 assault rifles, five armored vehicles, and ten helicopters. This arsenal was acquired mainly through the Department of Defense’s 1033 program, which transfers military-grade weaponry to state and local police departments, free of charge.

Maricopa County is not unique. According to our research, law enforcement agencies in Arizona have acquired a staggering cache of military weaponry, primarily through the 1033 program, including:

- 32 bomb suits
- 704 units of night vision equipment, e.g., night-vision goggles
- 1034 guns, of which 712 are rifles
- 42 forced entry tools, such as battering rams
- 830 units of surveillance and reconnaissance equipment
- 13,409 personal protective equipment (PPE) and/or uniforms
- 120 utility trucks
- 64 armored vehicles
- 4 GPS devices
- 17 helicopters
- 21,211 other types of military equipment

All 1033 equipment coming into Arizona goes through the Payson Police Department and makes its way to state and local law enforcement agencies. A two-year investigation by the Arizona Republic revealed that one local agency, the Pinal County Sheriff’s Office, doled out millions of dollars’ worth of military equipment to non-law enforcement agencies and planned to auction off some of its arsenal to raise revenue for itself.

A great deal of military-grade equipment in Arizona is ostensibly obtained for purposes of securing the U.S. border with Mexico, but the track record of federal grant programs suggests that this equipment may well be diverted to other activities, such as the investigations and warrants detailed elsewhere in this report. The bottom line is that Arizona law enforcement agencies at and well beyond the actual border have become unnecessarily and dangerously militarized. The Pinal County Sheriff’s office, for example, obtained 94 rifles, two armored vehicles, and three helicopters. The Coconino County Sheriff’s office obtained six armored vehicles, and the Mojave County Sheriff’s office has four helicopters. Arizona law enforcement, designed to serve and protect communities, is instead equipped to wage a war.

Arming border communities for battle gives the ACLU serious cause for concern. For more on why the militarization of the United States-Mexican border is dangerous and counter-productive, see ACLU, “Border Communities Under Siege: Border Patrol Agents Ride Roughshod Over Civil Rights.”

SWAT Raid Ends with Toddler in Medically-Induced Coma

After the Phonesavanh family's home in Wisconsin burned down, they drove their minivan to stay with relatives in a small town just outside of Atlanta, Georgia. On the back windshield, the family pasted six stick figures: a dad, a mom, three young girls, and one baby boy.

This van, containing several car seats, was parked in the driveway of the home where they were staying when, just before 3:00am on a night in May of 2014, a team of SWAT officers armed with assault rifles burst into the room where the family was sleeping. Some of the kids' toys were in the front yard, but the Habersham County and Cornelia police officers claimed they had no way of knowing children might be present. One of the officers threw a flashbang grenade into the room. It landed in Baby Bou Bou's crib.

“My three little girls are terrified of the police now. They don't want to go to sleep because they're afraid the cops will kill them or their family.”

—Alecia Phonesavanh

It took several hours before Alecia and Bounkahm, the baby's parents, were able to see their son. The 19-month-old had been taken to an intensive burn unit and placed into a medically induced coma. When the flashbang grenade exploded, it blew a hole in 19-month-old Bou Bou's face and chest. The chest wound was so deep it exposed his ribs. The blast covered Bou Bou's body in third degree burns. At the time of this report's publication, three weeks after the



The crib where Baby Bou Bou was sleeping, damaged by an exploding flashbang grenade.

“This is about race. You don't see SWAT teams going into a white collar community, throwing grenades into their homes.”

—Alecia Phonesavanh

raid, it was still unclear whether Baby Bou Bou would live. Bounkahm spent this Father's Day in the hospital with his son.

The SWAT team was executing a “no knock” warrant to search for someone who did not live in the home that was raided: Bounkahm's nephew, who was suspected of making a \$50 drug sale. “After breaking down the door, throwing my husband to the ground, and screaming at my children, the officers—armed with M16s—filed through the house like they were playing war,” said Alecia. The officers did not find any guns or drugs in the house and no arrests were made. Bounkahm's nephew was eventually arrested without



Bounkham Phonesavanh, nicknamed “Baby Bou Bou,” loves French fries, the theme song from *Frozen*, and playing with his three older sisters.

incident at another location, holding a small amount of drugs on him.

Bounkham, the baby’s father, was born in Laos during wartime. He remembers communist soldiers breaking down the door of his childhood home. “It felt like that,” he said. “This is America and you’re supposed to be safe here, but you’re not even safe around the cops.”

The Phonesavanh have three daughters who are now scared to go to bed at night. One night after the raid, their 8-year-old woke up in the middle of the night screaming, “No, don’t kill him! You’re hurting my brother! Don’t kill him.” Alecia and Bounkham used to tell their kids that if they were ever in trouble, they should go to the police for help. “My three little girls are terrified of the police now. They don’t want to go to sleep because they’re afraid the cops will kill them or their family,” Alecia said.

When asked about the prevalence of SWAT raids to fight the War on Drugs, Alecia told us, “This is all about race and class. You don’t see SWAT teams going into a white collar community, throwing grenades into their homes.”

Learn more at www.justiceforbabyboubou.com.



Bounkham and Alecia spent the three weeks following the raid at the hospital. At the time the report was published, their son was still in a medically-induced coma.

“After breaking down the door, throwing my husband to the ground, and screaming at my children, the officers—armed with M16s—filed through the house like they were playing war.”

—Alecia Phonesavanh

BACKGROUND

American policing has become unnecessarily and dangerously militarized.¹⁰ For decades, the federal government has equipped state and local law enforcement agencies with military weapons and vehicles, as well as military tactical training, for the (often explicit) purpose of waging the War on Drugs. Not all communities are equally impacted by this phenomenon; the disproportionate impact of the War on Drugs in communities of color has been well documented.¹¹ Police militarization can result in tragedy for both civilians and police officers, escalate the risks of needless violence, cause the destruction of personal property, and undermine civil liberties. Significantly, the militarization of American policing has been allowed to occur in the absence of public discourse or oversight.

The militarization of American policing has occurred as a direct result of federal programs that use equipment transfers and funding to encourage aggressive enforcement of the War on Drugs by state and local police agencies. One such program is the 1033 Program, launched in the 1990s during the heyday of the War on Drugs, which authorizes the U.S. Department of Defense to transfer military equipment to local law enforcement agencies.¹² This program, originally enacted as part of the 1989 National Defense Authorization Act, initially authorized the transfer of equipment that was “suitable for use by such agencies in counterdrug activities.”¹³ In 1996, Congress made the program permanent and expanded the program’s scope to require that preference be given to transfers made for the purpose of “counterdrug and counterterrorism activities.”¹⁴ There are few limitations or requirements imposed on agencies that participate in the 1033 Program.¹⁵ In addition, equipment transferred under the 1033 Program is free to receiving agencies, though they are required to pay for transport and maintenance. The federal government requires agencies that receive 1033 equipment to use it within one year of receipt,¹⁶ so there can be no doubt that participation in this program creates an incentive for law enforcement agencies to use military equipment.

“The detection and countering of the production, trafficking, and use of illegal drugs is a high-priority national security mission of the Department of Defense.”

—*Then Secretary of Defense Dick Cheney, 1989*¹⁷

It is inappropriate for the U.S. military to be actively supporting the domestic War on Drugs, which has destroyed millions of lives, unfairly impacted communities of color, made drugs cheaper and more potent, caused countless deaths of innocent people caught up in drug war-related armed conflict, and failed to eliminate drug dependence and addiction. Even if an argument could be made that providing local law enforcement with military equipment for counterdrug purposes ever made sense—which is dubious—there is no way to justify such policies today. Indeed, the U.S. Attorney General has suggested that the drug war has gone too far. Beginning in August 2013, Attorney General Eric H. Holder, Jr., announced plans to curtail the use of mandatory minimum sentencing laws by federal prosecutors in certain drug cases, agreed not to challenge state laws allowing the medicinal or recreational use of marijuana, and supported a move by the U.S. Sentencing Commission to reduce many drug sentences.

The DOJ plays an important role in the militarization of the police through programs such as the Edward Byrne Memorial Justice Assistance Grant (JAG) program. Established in 1988, the program, originally called the Edward Byrne Memorial State and Local Law Enforcement

Assistance Program, provides states and local units of government with funding to improve the functioning of their criminal justice system and to enforce drug laws. JAG funding can be used for any of the following purposes:

- Law enforcement
- Courts (prosecution and indigent defense)
- Crime prevention and education
- Corrections and community corrections
- Drug treatment and enforcement
- Program planning, evaluation, and technology
- Crime victim and witness programs

However, JAG grantees spend much more of their funding on law enforcement than on other program areas. Between April 2012 and March 2013, JAG grantees spent 64 percent of their JAG funding on law enforcement. In contrast, grantees spent 9 percent on courts, including both prosecution and indigent defense, and a mere 5 percent on drug treatment and 6 percent on crime prevention and education.¹⁸ Grantees use a portion of JAG funds allocated to law enforcement to purchase numerous types of weapons. In 2012-2013, state and local agencies used JAG funds to purchase hundreds of lethal and less-lethal weapons, tactical vests, and body armor.¹⁹

The militarization phenomenon has gained even greater zeal since the events of September 11, 2001, the creation of the Department of Homeland Security (DHS), and the declaration of the so-called “War on Terror.” Since the early 2000s, the infusion of DHS money and assistance to state and local law enforcement anti-terrorism work has led to even more police militarization and even greater military-law enforcement contact, and DHS grants have allowed police departments to stockpile specialized equipment in the name of anti-terror readiness.

The main source of DHS funding to state and local law enforcement is the Homeland Security Grant Program (HSGP) and its two main components, the State Homeland Security Program (SHSP) and the Urban Areas Security Initiative (UASI).²⁰ Both grant programs require recipients to dedicate at least 25 percent of grant funds to “terrorism

CASUALTY REPORT

TUCSON, ARIZONA
2011

SWAT Team Shoots Veteran 22 Times



Jose Guerena, a 26-year-old Iraq war veteran, returned home and crawled into bed after working the graveyard shift at the Asarco Mission mine. Around 9:30am, his wife became nervous when she heard strange noises and saw the

outline of a man standing outside her window. She woke Guerena, who asked his wife to hide in a closet with their 4-year-old son. Guerena picked up his rifle, with the safety on, and went to investigate. A SWAT team fired 71 shots at Guerena, 22 of which entered his body and killed him. Guerena died on his kitchen floor, without medical attention. The SWAT officers raided multiple homes in the neighborhood, and in another home they did find a small bag of marijuana. No drugs were found in the Guerenas' home.

prevention-related law enforcement activities,” though that phrase does not appear to be clearly defined.²¹ The stated justification for DHS grants to state and local law enforcement is to support efforts to protect against terrorism, but even the DHS acknowledges that it has a larger mission, which includes ordinary law enforcement activities. In 2010, the DHS announced a new “anticrime campaign,” which appears to have a minimal nexus to terrorism prevention.²²

By invoking the imagery of war, aggressively funding the enforcement of U.S. drug laws, and creating an over-

hyped fear of siege from within our borders, the federal government has justified and encouraged the militarization of local law enforcement. The ACLU found throughout the course of this investigation that the excessive militarism in policing, particularly through the use of paramilitary policing teams, escalates the risk of violence, threatens individual liberties, and unfairly impacts people of color. In addition, because use of unnecessarily aggressive techniques has a documented impact on public confidence in law enforcement, there is reason to be concerned that excessive militarization undermines public trust and community safety as well.

Interestingly, members of the law enforcement community are far from unified on the topic of police militarization.

INCIDENT REPORT

GWINNETT COUNTY, GEORGIA
JUNE 23, 2012

Full SWAT Team Deployed, Despite Presence of Children and Elderly

In a search for marijuana, a SWAT team raided a home at 6:00 in the morning. Despite the fact that the department had previously decided that a SWAT deployment was unnecessary in this case, officers used the fact that one of the people thought to be in the home had been convicted of weapon possession in 2005 in another state as the basis for concluding people inside the residence might be armed. Therefore, the department changed its mind and deemed a full SWAT deployment necessary, despite knowing that there were likely to be children and an elderly woman present in the home when they executed the warrant. There is no indication as to whether any guns or weapons were found after the home was raided. All but one of the people thought to be involved were Black.

Some fully embrace militarism in policing: “We trainers have spent the past decade trying to ingrain in our students the concept that the American police officer works a battlefield every day he patrols his sector.”²³ The most common rationale put forth to support the notion that the police in fact should be militarized is to protect life: “A warrior cop’s mission is to protect every life possible and to only use force when it’s necessary to accomplish that mission.”²⁴ Others suggest that policing has in fact not become militarized at all: “Advocates from every corner of the political compass have produced a mountain of disinformation about the ‘militarization’ of American law enforcement.”²⁵ Still others express concern that American policing has become too militarized; Salt Lake City police chief Chris Burbank recently stated, “We’re not the military. Nor should we look like an invading force coming in.”²⁶ Diane Goldstein, a retired lieutenant, agrees. Speaking of the drug war zeal of the 1980s, she stated that “[The] ever-increasing federalization of what traditionally had been a state and local law enforcement effort received massive funding as politicians, presidents and the Drug Czar increased the rhetoric of war.” Even the U.S. Department of Justice has questioned the wisdom of militarizing local police departments: “According to the U.S. Department of Justice, Bureau of Justice Statistics, Report on State and Local Law Enforcement Training Academies (BJS Report), the majority of police recruits receive their training in academies with a stress-based military orientation. This begs the question; is this military model—designed to prepare young recruits for combat—the appropriate mechanism for teaching our police trainees how to garner community trust and partner with citizens to solve crime and public order problems?”²⁷

One of the more dramatic examples of police militarization is the use of SWAT and other paramilitary teams to conduct ordinary law enforcement activities.²⁸ SWAT teams were created in the late 1960s as “quasi-militaristic” squads capable of addressing serious and violent situations that presented imminent threats such as riots, barricade and hostage scenarios, and active shooter or sniper situations.²⁹ The first SWAT team, at the Los Angeles Police Department, was developed in the wake of a series of emergency situations in which local police felt unable to respond as swiftly or as effectively as was necessary.³⁰ SWAT teams have since expanded in number, and are used with

Salt Lake City police chief Chris Burbank recently stated, “We’re not the military. Nor should we look like an invading force coming in.”

greater frequency and, increasingly, for purposes for which they were not originally intended—overwhelmingly to serve search warrants in drug investigations.

Of course, aggressive policing tactics extend well beyond the scope of this report, and examples of particularly aggressive policing, in which police officers appear more as an invading force than as protectors of a community, abound. Take Paragould, Arkansas, where at a December 2012 town hall meeting, Chief of Police Todd Stovall announced that police conducting routine patrols would “be in SWAT gear and have AR-15s around their neck.”³¹ He also asserted that the police would be stopping anyone they wanted to and that the fear of crime in Paragould gave his officers probable cause to stop anyone at any time, for any reason or no reason at all. Chief Stovall later issued a statement reassuring the residents of Paragould



It is not unusual for family pets to be shot unnecessarily.

Photo: Keep Columbia Free via FIO/Sunshine request
<http://www.youtube.com/watch?v=Ng6mfpZ2kR4>

that the police would not be violating their constitutional rights, but the fact that the Chief of Police felt comfortable announcing a plan for police officers on routine patrol to stop and question residents without justification while dressed in SWAT gear and carrying AR-15s is a foreboding sign. While unquestionably of grave concern, routine patrols using SWAT gear, stop-and-frisk,³² and other aggressive policing tactics are beyond the scope of this report. Another important area is the use of military surveillance equipment and other forms of intelligence gathering, which also falls outside the scope of this report.³³ Finally, the militarization of the U.S. border is a critically important issue; we touch on this in our discussion of the enormous caches of weapons Arizona law enforcement agencies have received through the 1033 Program, but the broader issue of border militarization is also outside the scope of this report.³⁴

This report builds on a body of existing work establishing that police militarization is indeed a problem. For example, Dr. Peter Kraska, Professor of Justice Studies at Eastern Kentucky University, has surveyed police departments across the country on their use of SWAT teams and estimates that the number of SWAT teams in small towns grew from 20 percent in the 1980s to 80 percent in the mid-2000s, and that as of the late 1990s, almost 90 percent of larger cities had them. He also estimates that the number of SWAT raids per year grew from 3,000 in the 1980s to 45,000 in the mid-2000s.³⁵ David Klinger and Jeff Rojek, both at the University of Missouri-St. Louis’s Department of Criminology and Criminal Justice, conducted a study using SWAT data from 1986 to 1998 and found that the overwhelming number of SWAT deployments studied were for the purpose of executing a warrant (34,271 for warrant service, in contrast to 7,384 for a barricaded suspect and 1,180 for hostage-taking cases).³⁶

Some scholars have proposed additional analytic frameworks for examining the militarization of policing. For example, Abigail R. Hall and Christopher J. Coyne, both in the Department of Economics of George Mason University, have developed a “political economy” of the militarization of policing.³⁷ In addition, Stephen M. Hill and Randall R. Berger, both professors in the Political Science Department at the University of Wisconsin-Eau Claire, place the issue within an international context,

arguing that the militarization of domestic policing is part of a broader “paramilitary policing juggernaut.”³⁸ Journalist Radley Balko discusses the issue of police militarization at length in his recent book “Rise of the Warrior Cop” and the topic has received considerable, if episodic, attention in the mainstream media.³⁹ Our analysis adds to this body of work by incorporating an analysis of raw data—actual SWAT incident reports collected from numerous law enforcement agencies across the country.

From our review of both primary and secondary source materials, we are able to present two types of findings: one set of general findings based on our review of the existing research, which our data supports, and one set of time-bound specific findings from our statistical analysis of the raw data we collected in connection with our investigation. As explained in more detail below, our more general findings are that policing in the United States has become excessively militarized and that this militarization has occurred with almost no transparency, accountability, or oversight. We also found, based on our analysis of the raw data we collected, that of the SWAT deployments studied, (1) the overwhelming majority were for the purpose of searching people’s homes for drugs, (2) troubling racial disparities existed, and (3) the use of violent tactics and equipment often resulted in property damage and/or bodily harm.

This report should not be read as an indictment of the police generally or of any individual police officers. It is also not an argument against the use of SWAT in appropriate circumstances—some scenarios undoubtedly merit an emergency response, and SWAT teams are often the best equipped to handle those scenarios. Finally, the report should not be understood to suggest that the incidents uncovered during the course of the ACLU’s investigation did not necessarily merit some form of law enforcement response—many did. Instead, we argue that American law enforcement can reverse the militarization trend in a way that promotes safe and effective policing strategies without undermining public confidence in law enforcement.

American law enforcement can reverse the militarization trend in a way that promotes safe and effective policing strategies without undermining public confidence in law enforcement.

DISCUSSION AND FINDINGS

Policing and Militarism

FINDING #1

Policing—particularly through the use of paramilitary teams—in the United States today has become excessively militarized, mainly through federal programs that create incentives for state and local police to use unnecessarily aggressive weapons and tactics designed for the battlefield.

Use of Military Equipment by SWAT Teams

It is clear from this investigation and other research⁴⁰ that American policing has become excessively militarized. We can see this in the use of military-style equipment—weapons and tactics designed for the battlefield—to conduct ordinary law enforcement activities. Police officers use these weapons routinely, across the United States, to force their way into the people’s homes, disrupting lives and destroying communities.

One such weapon is the battering ram—“a large and heavy piece of wood or other material that is used to hit and break through walls and doors”⁴¹—which is nearly always carried on deployments, and the primary tool used to breach doors and windows (though explosive breaching—the use of explosives to cut through doors—seems to be gaining popularity).

Another device often used by SWAT teams is the flashbang grenade (sometimes referred to generically as a “distraction device”), an explosive device that is used to

distract the occupants of a building while a SWAT team is attempting to secure the scene.⁴² Flashbang grenades produce an extremely bright flash of light that temporarily overstimulates the retina and causes temporary blindness (lasting 5 to 10 seconds). They also make a deafening noise that makes people feel disoriented and can cause a lingering ringing. Although they are generally considered to be nonlethal, they have been known to set homes on fire⁴³ and induce heart attacks,⁴⁴ both sometimes resulting in death. In 2010, 7-year-old Aiyana Stanley-Jones was killed when, just after midnight, a SWAT team threw a flashbang grenade through the window into the living room where she was asleep. The flashbang burned her blanket and a member of the SWAT team burst into the house, firing a single shot, which killed her.⁴⁵

Both battering rams and flashbang grenades can cause extensive property damage—half of the incidents the ACLU reviewed involved property damage such as damage to doors and/or windows (in another 30 percent of cases, it was impossible to know whether there was property damage in connection with a SWAT deployment, so the



Aiyana Stanley-Jones

Photo: Family of Aiyana Stanley-Jones

total may be higher). SWAT incident reports almost never included an estimate of the amount of damage, and none of the incident reports reviewed suggested that the owners or residents of a home damaged by use of a battering ram or flashbang grenade would be reimbursed for repairs.

When SWAT teams deploy, they typically wear combat helmets and “battle dress uniforms” (BDUs), fatigues designed for use by the U.S. Army throughout the 1980s and 1990s. The ACLU documented a total of 15,054 battle uniforms or other personal protective equipment received by 63 responding agencies during the relevant time period. The use of BDUs is another trend in the militarization of policing; as retired police officer Bill Donnelly stated in a letter to the editor in the *Washington Post*, “One tends to throw caution to the wind when wearing ‘commando-chic’ regalia, a bulletproof vest with the word ‘POLICE’ emblazoned on both sides, and when one is armed with high tech weaponry...Police agencies face tactical challenges that do require a specialized and technically proficient team approach, but fortunately these incidents are relatively infrequent even in the largest cities. It would appear that U.S. law enforcement, even in the smallest and safest communities, is suffering from a collective ‘inferiority complex’ that can be relieved only by military-style clothing and arsenals of formidable firepower.”⁴⁶

Another piece of equipment that seems to be gaining popularity among SWAT teams is the armored personnel carrier (APC). APCs were created to transport infantry and provide protection from shrapnel and small arms fire on the battlefield. One version popular with law enforcement agencies is the Ballistic Engineered Armored Response Counter Attack (BearCat) APC, but more modern APCs include the MRAP (Mine Resistant Ambush Protected) vehicle, which provides additional protection from improvised explosive devices (IEDs). In the battlefield, APCs are typically armed with machine guns mounted on top of the vehicle in a turret; when used domestically, the guns are removed and the vehicle is used primarily for protection by law enforcement responding to SWAT call-outs and emergencies. Thus, APCs are not typically armed when in use by domestic law enforcement; however, they appear threatening and observers do not necessarily have reason to know whether an APC is armed.

In 2013, the Department of Defense started giving away MRAPs through the 1033 Program. According to the Department of Defense, MRAPs are designed to protect occupants against armor-piercing roadside bombs.⁴⁷ In 2007, the United States spent \$50 billion to produce 27,000 MRAPs and deploy them to Iraq and Afghanistan.⁴⁸ No longer needed overseas, MRAPs have made their way into local communities. Because the ACLU launched this investigation in early 2013 and requested records only from 2011-2012, we did not ask the jurisdictions studied to send documentation of MRAP requests, so it is not possible to know from this investigation how many towns have acquired such vehicles through the 1033 Program. Media accounts put the number at around 500.⁴⁹ Dallas, Texas, has one.⁵⁰ So does Salinas, California,⁵¹ as well as the Utah Highway Patrol.⁵² And, perhaps most bizarrely, the Ohio State University Police has one—in order to provide “presence” on football game days.⁵³



Police in South Carolina pose with their Bearcat

Photo: Supplied by Lt. Chris Cowan

Military Training

The militarization of policing culture is also apparent in the training that tactical teams receive—SWAT team members are trained to think like soldiers. The ACLU asked hundreds of law enforcement agencies to submit copies of SWAT training materials. One response from the Farmington, Missouri, Special Response Team consisted of a piece written by Senior PoliceOne Contributor Chuck Remsberg for Killology Research Group. The piece summarizes a presentation given at a conference of the International Association of Law Enforcement Firearms Instructors and warns that “preparations for attacks on American schools that will bring rivers of blood and staggering body counts are well underway in Islamic

terrorist camps.” It further states that “police agencies aren’t used to this... We deal with acts of a criminal nature. This is an act of war, but because of our laws we can’t depend on the military to help us... [T]he U.S. in [sic] the one nation in the world where the military is not the first line of defense against domestic terrorist attack. By law, you the police officer are our Delta Force.” It provides “‘4 Ds’ for Thwarting Terrorists’ Plans to Massacre Our School Children” and concludes with an admonition to “Build the right mind-set in your troops.”⁵⁴

Even if there were merit to the argument that training SWAT teams to think like soldiers in the context of a school shooting would provide them with the skills that they need to respond effectively, it appears that training in how to develop a “warrior” mentality is pervasive and extends well beyond hostage situations and school shootings, seeping into officers’ everyday interactions with their communities. For example, the Cary, North Carolina, SWAT team provides a training session explicitly titled “Warrior Mindset/Chemical Munitions” for all Emergency Response Team personnel. A PowerPoint training presentation sent by the National Tactical Officers Association urges trainees to “Steel Your Battlemind” and defines “battlemind” as “a warrior’s inner strength to face fear and adversity during combat with courage. It is the will to persevere and win. It is resilience.” Neither of these training documents suggests that SWAT teams should constrain their soldier-like tactics to terrorism situations. Additionally, in the documents reviewed for this report, the majority of SWAT raids took place in the context of serving search warrants at people’s homes—not in response to school shootings or bombings.

Training programs like these impact how some SWAT officers view the people in their communities. For example, in one of the cases examined for this report, a SWAT team drove a BearCat APC into a neighborhood for the sole purpose of executing a warrant to search for drugs. Once the SWAT officers arrived at the home, they drove the APC to the residence, broke down the front and back doors, destroyed a glass table, deployed a distraction device, and pried a lock off a shed, all to find the house empty. One of the officers noted in his report that the house was “empty of suspects and civilians.” The distinction between “suspects” and “civilians” is telling. If police see suspects

INCIDENT REPORT

BURLINGTON, NORTH CAROLINA
NOVEMBER 13, 2012

SWAT Officers Shoots Dog During No-Knock Raid

At 6:00 in the morning, a SWAT officer shot a dog during a no-knock raid and search of a home. The suspect was a single Black male who was suspected of selling marijuana at his home. Solely on the basis of information provided by a confidential informant (which is often unreliable), the SWAT team believed that the man possessed firearms. No information was provided about what kind or how many firearms the man was believed to possess. The team deployed a distraction device and broke down the door, causing damage and surprise. They found two unarmed men inside, along with a dog that bit one of the officers. The officer was carrying a shotgun, against the team’s own policy. Using this shotgun, the officer shot the dog. Seventy percent of the people impacted by the Burlington SWAT deployments the ACLU studied were Black.

less as civilians and more as enemies, what effect does that have on police-suspect interactions?

Legality of Forced Entry Into People’s Homes

Generally speaking, the Fourth Amendment to the U.S. Constitution prohibits the police from entering a person’s home without a warrant. Historically, if the police had a warrant to search a person’s home, they were required by law to knock on the door, announce their presence, and wait for someone to answer.⁵⁵ When a person answered

the door, the police were required to show the warrant and were then entitled to demand entry to conduct a search.

Although the “knock-and-announce” rule still exists, today police executing a search warrant need not follow the rule if they have “reasonable suspicion” that the circumstances present a threat of physical violence or that evidence would be destroyed if advance notice were given.⁵⁶ Further, if they believe in advance of executing the search warrant that either of these circumstances will exist, they can obtain a “no-knock warrant,” which allows them to enter a person’s home without knocking. In either case, the police are permitted to force their way into a person’s home. As a consequence, even though the police are not allowed to barge their way into a person’s home simply because they believe drugs are present,⁵⁷ given that any time they have reasonable suspicion that knocking and announcing their presence would “inhibit the investigation of the crime by ... allowing the destruction of evidence,”⁵⁸ the reality is that drug cases often provide police with vast discretion to use forced entry into a person’s home to execute a search warrant. Even when a court finds that the police have violated the knock-and-announce rule, the Supreme Court has held that the prosecution can still use the evidence seized as a result of a subsequent search at trial, significantly diluting the knock-and-announce requirement’s value as a deterrent to police overreach.⁵⁹

While search warrants authorize the police to search a given place for a particular item or items, they rarely delineate the tactics the police may use in executing the warrant (other than no-knock warrants, which, as explained above, authorize the police to enter without knocking or announcing their presence, and sometimes specifically authorize use of a night-time search). And though the Supreme Court has held as a general matter that the method of police entry into a home is a factor to be considered in assessing the reasonableness (and, hence, constitutionality) of the search,⁶⁰ there is no *per se* prohibition on the use of any particular method. Therefore, the fact that the police obtained a warrant in a given case does little to constrain their broad discretion to decide whether to deploy a SWAT team, break down a door with a battering ram, deploy a distraction device, etc.

In sum, while courts can at times provide recourse to violations of Fourth Amendment rights, by and large they

do not offer robust protection from police use of aggressive equipment and tactics to execute search warrants in people’s homes.

Federal Incentives to Militarize Policing

The Department of Defense operates the 1033 Program through the Defense Logistics Agency’s (DLA) Law Enforcement Support Office (LESO), whose motto is “from warfighter to crimefighter.” According to LESO, the program has transferred \$4.3 billion worth of property through the 1033 Program.⁶¹ Today, the 1033 Program includes more than 17,000 federal and state law enforcement agencies from all U.S. states and territories. The amount of military equipment being used by local and state police agencies has increased dramatically—the value of property transferred through the program went from \$1 million in 1990 to \$324 million in 1995 and to nearly \$450 million in 2013.⁶²

The 1033 statute authorizes the Department of Defense to transfer property that is “excess to the needs of the Department,”⁶³ which can include new equipment; in fact, 36 percent of the property transferred pursuant the program is brand new.⁶⁴ Thus, it appears that DLA can simply purchase property from an equipment or weapons manufacturer and transfer it to a local law enforcement agency free of charge. Given that more than a third of property transferred under the program is in fact new, it appears that this practice happens with some regularity.

A statistical analysis of the transfer of equipment under the 1033 Program is beyond the scope of this report, but we uncovered numerous examples of transfers that give cause for concern. For example, during the years covered by the investigation, the North Little Rock, Arkansas, police obtained at least 34 automatic and semi-automatic rifles, two MARCbots (robots designed for use in Afghanistan that are capable of being armed), several ground troop helmets, and a Mamba tactical vehicle.⁶⁵ The Arkansas state coordinator found that the LESO application for participation and the state memorandum of agreement were outdated, in addition to many weapons being unaccounted for in the inventory. Despite this, the coordinator signed off on a form that said all the inventory



forms were accurate. Bay County, Florida, received several military-style rifles, a forklift, and several utility trucks. The same county also has on inventory numerous M-16s, M-14s, sniper rifles, submachine guns, and ballistic shields, though it is not clear from the records whether Bay County obtained those items through the 1033 Program, from another federal source, or otherwise. Gwinnett County, Georgia, received nearly 60 military-style rifles, as well as numerous combat vests and Kevlar helmets.

In addition, agencies are permitted to transfer equipment obtained through the 1033 Program between each other. The ACLU uncovered numerous examples of state and local law enforcement agencies transferring equipment that they had obtained through the 1033 Program. There do not appear to be any limitations on or oversight of this practice.

As the saying goes, if all you have is a hammer, everything looks like a nail.⁶⁶ Likewise, if the federal government gives the police a huge cache of military-style weaponry, they are highly likely to use it, even if they do not really need to. Gwinnett County, Georgia, for example, received at least 57 semi-automatic rifles, mostly M-16s and M-14s, through the 1033 Program during the relevant time period. A third of Gwinnett County's SWAT deployments were for drug investigations; in half of them, the SWAT team broke down the door to get inside, and there was no record in any of the reports that weapons were found. In several of these cases, damage resulted to people's homes; in one case, the SWAT team deployed tear gas into a home in order to serve an arrest warrant, knowing there were people inside who were not subjects of the warrant. It is not possible to prove definitively that the weapons procured through the 1033 Program incentivized these deployments in Gwinnett. However, it is reasonable to infer that the program—the very purpose of which is to equip local police officers to use military equipment in drug investigations—has

increased the likelihood that local police departments, not just in Gwinnett County but across the country, will deploy military weapons and tactics in drug investigations when possible.

Mission Creep

It is clear that local law enforcement agencies use DHS funds ostensibly obtained for the purpose of fighting terrorism to conduct ordinary law enforcement activities. In New Hampshire, for example, three police departments—in Concord, Keene, and Manchester (cities that are separated from each other by approximately 30 miles)—each used DHS grants to fund the purchase of an armored BearCat (the amount of grants received by these agencies ranged from \$215,000 to \$286,000). Justifications offered for these grants included prevention, protection, response, and recovery activities pertaining to weapons of mass destruction and the threat of terrorism. The Keene, New Hampshire, police department, for example, stated in its application for DHS grant funding to purchase an APC that “[t]he terrorism threat is far reaching and often unforeseen. Terrorist’s [sic] goals, regardless of affiliation,

“Our application talked about the danger of domestic terrorism, but that’s just something you put in the grant application to get the money. What red-blooded American cop isn’t going to be excited about getting a toy like this? That’s what it comes down to.”

—Keene, N.H. City Councilmember

usually encompass the creation of fear among the public, convincing the public that their Government is powerless to stop the terrorists, and get immediate publicity for their cause.” The application goes on to cite Keene’s annual pumpkin festival as a potential terrorism target in need of protection with an APC.⁶⁷

Not even Keene city officials believed that the city actually needed the BearCat to thwart terrorism. To explain why the police included the word “terrorism” on their application for federal funding for this purchase, a city councilmember said, “Our application talked about the danger of domestic terrorism, but that’s just something you put in the grant application to get the money. What red-blooded American cop isn’t going to be excited about getting a toy like this? That’s what it comes down to.”⁶⁸

The police chief in San Diego, California, expressed the same sentiment when asked about his agency’s decision to purchase an armored personnel carrier: “If we had to take on a terrorist group, we could do that,” said William Lansdowne, the police chief in San Diego and a member of the board of the Major Cities Chiefs Association. Though his force used federal grants to buy one of those fancy armored vehicles—complete with automatic-gun portals—he said the apparatus was more useful for traditional crime-busting than counter-terrorism.”⁶⁹

It is equally clear that the DOJ’s Byrne JAG funding is being used to conduct unnecessarily aggressive activities in drug cases. Approximately 21 percent of all law enforcement JAG funds go to task forces, the majority of which are drug task forces, which routinely employ paramilitary tactics in drug investigations.⁷⁰ Byrne JAG drug task forces have been widely criticized for incentivizing unnecessarily aggressive, often militarized, tactics—particularly in communities of color.⁷¹ As of 2011, 585 multi-jurisdictional task forces were funded through the JAG program.⁷² JAG funds often support drug task forces by paying for the salaries or overtime hours of task force officers as well as for vehicles and equipment; in 2012-2013, more than 680,000 law enforcement overtime hours were paid for using JAG funds.⁷³

According to documents uncovered by the ACLU, local law enforcement agencies often received substantial funding

from the DHS and DOJ during the time period studied. The city of Austin, Texas, for example, received \$2.2 million in federal grant funding from August 2010 through January 2012. Fort Worth, Texas, received \$1.2 million in 2011 and 2012 combined. Similarly, since August 2013, the Salt Lake City Police Department has received almost \$2 million in federal grant awards. However, awards are not limited to large cities. In Montana, the Helena Police Department received \$733,000 in DHS grants, and the Montana Department of Justice received more than \$1 million in DHS grants. Likewise, Gastonia, North Carolina, has received more than \$180,000 in federal funding since 2009, while the Bay County, Florida, Sheriff’s Department has received approximately \$360,000 in federal funding since late 2011. In 2011, the Raleigh Police Department received \$120,000 as part of the 2011 State Homeland Security Program.

A 2004 classified memo all but confirms the blurring of the lines between the drug war and the U.S. military by calling the Drug Enforcement Agency (DEA) The “Other” Warfighter and stating that the War on Drugs “has all the risks, excitement, and dangers of conventional warfare.”⁷⁴

Simply put, American policing has become excessively militarized.

Lack of Transparency and Oversight

FINDING #2

The militarization of policing in the United States has occurred with almost no public oversight.

Limitations of Data Collection on SWAT Use

Data concerning the prevalence of SWAT is difficult to collect.⁷⁵ The ACLU filed public records requests with more than 255 law enforcement agencies during the course of this investigation. One hundred and fourteen of the agencies denied the ACLU's request, either in full or in part. Even if the ACLU had received and examined responsive documents from all 255 law enforcement agencies that received public records requests, this would represent only a sliver of the more than 17,000 law enforcement agencies that exist throughout the United States, and thus would shine only a dim light on the extent of police militarization throughout the country.

The agencies that refused to comply with our requests offered various justifications for the refusals, including the following:

- The requested documents contained trade secrets.
- Concerns about jeopardizing law enforcement effectiveness.
- The requested documents did not constitute “public records.”
- The request was “overbroad and voluminous.”
- The costs associated with producing the documents were simply prohibitive.

It strains credibility to believe that the information contained in SWAT incident reports contains “trade secrets.” A trade secret is a commercially valuable plan, formula, process, or device. It is “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.”⁷⁶ A police report is not a “commercially valuable plan.” Furthermore, most law enforcement agencies contacted did in fact provide some records, belying the notion that the records requested did not constitute “public records,” that there were legitimate concerns about law enforcement effectiveness, or that the request was “overbroad and voluminous.” These are simply excuses to avoid complying with the ACLU's request. In fact, the public should not even have to resort to public records requests to obtain information about policing practices—this information should be readily available.

The records that were produced revealed an extremely troubling trend: that data collecting and reporting in the context of SWAT was at best sporadic and at worst virtually nonexistent. Not a single law enforcement agency in this investigation provided records containing all of the information that the ACLU believes is necessary to undertake a thorough examination of police militarization. Some agencies (e.g., Tupelo, Mississippi) provided records that were nearly totally lacking in important information. Others (e.g., Salt Lake City, Utah) provided records that were quite lengthy, though still incomplete and extremely difficult to analyze because of their lack of organization. Others (e.g., Fort Worth, Texas) provide fairly comprehensive information, though often in narrative form, making statistical analysis difficult. This variation has two immediate results: (1) any analysis of the data will necessarily have to contend with a large number of

Data collecting and reporting in the context of SWAT was at best sporadic and at worst virtually nonexistent.

unknowns (as demonstrated above) and (2) it makes systematic, thorough, and uniform collection of SWAT data, at any level of government, impossible.

Lack of State and Local Oversight

There is almost no oversight of SWAT at the state or local level. Maryland is the exception—in 2009, Maryland enacted a law requiring law enforcement agencies that maintain a SWAT team to report, semi-annually, specific activation and deployment information.⁷⁷ The law required the Police Training Commission, in consultation with the Governor’s Office of Crime Control and Prevention, to develop a standardized format for each agency to use in reporting data.⁷⁸ It also provided that if a law enforcement

agency failed to comply with the reporting provisions, the fact of noncompliance by that particular agency would be reported to the state legislature.⁷⁹ Utah enacted a similar bill this year.⁸⁰

The Maryland law did not come out of nowhere. The year before, the Prince George’s County Sheriff’s SWAT team had raided the home of Cheye Calvo, the mayor of a small Prince George’s County municipality. The county police department then held Calvo and his family at gunpoint for hours and killed his two dogs, on the basis of a misguided investigation in which Calvo and his wife were wrongly suspected of being involved in a marijuana transaction.⁸¹ Calvo responded by drafting legislation, securing bill sponsors, attracting media, organizing grass-roots support, coordinating with other SWAT victims, knocking on doors, and personally appealing to the governor to sign the new law (over the objection of law enforcement), all a testament to the concerted efforts that must be taken to bring about SWAT reform. Although in the end the law did not contain everything he wanted, Calvo hoped that the law would bring change. He testified before the state legislature: “This bill is an important first step that doesn’t restrict [police] use [of SWAT teams]. It merely brings transparency. Hopefully, it will ensure that the people who fund and authorize these SWAT teams have the information they need to set good public policy.”⁸²

The Maryland law resulted in some fairly robust reporting on SWAT use by local law enforcement. The Governor’s Office of Crime Control and Prevention was able to collect, aggregate, analyze, and report on this data annually for the years 2010–2012, and more reports should be forthcoming.⁸³ Highlighting the importance of thorough documentation and transparency, these reports, which are available to the public, demonstrated that in Maryland, SWAT deployments are used principally for search warrants, focus on nonviolent felonies and misdemeanors, and typically result in forced entries, regardless of whether the warrant is standard or no-knock. Unfortunately, the story seems to end there, at least in Maryland. The state legislature has not used the information contained in the reports to enact any meaningful policy reform, as Calvo had hoped, and the law is scheduled to sunset this year, with no indication that it will be extended (though both the Prince George’s police and the Prince George’s Sheriff’s

INCIDENT REPORT

BAY COUNTY, FLORIDA
JANUARY 6, 2011

SWAT Team Shatters Windows for to Search for Marijuana

Officers had no reason to believe that the man they suspected of selling marijuana out of his home was armed. Yet, they still classified their investigation as “high risk” to justify deploying a SWAT team. Instead of knocking and demanding to search the premises, the SWAT team burst into the man’s home, igniting a flashbang grenade, shattering a window, and breaking down the man’s front door. The suspect was not inside the home at the time of the raid, but a different man, a woman, and an infant were, none of whom were suspects in the investigation. The suspect was found in the backyard. No guns or weapons were found.

office will continue to provide the data required by the law as a condition of a lawsuit Calvo brought after the raid). Calvo has expressed disappointment that elected officials have not used the data to mandate reforms. Putting aside the limitations of Maryland’s law, it should not take an incident like the raid on the Calvos’ home to get this kind of oversight.

At the local level, among the agencies that submitted documents pertaining to their policies and procedures to the ACLU, most had some form of after-action reporting or internal review procedures in place that varied in terms of the amount of oversight provided. For example, in Cary, North Carolina, all specialty assignments, including the SWAT team, are required to conduct an annual review containing a statement of purpose for the specialty assignment, evaluation of the initial conditions that required implementation of the specialized assignment, and justification for the continuation of the specialized assignment. In Huntington, West Virginia, the Office of Professional Standards is required to present findings regarding all incidents to the chief of police in an annual report. Many other SWAT teams are subject to similar internal oversight.

However, as discussed above, the after-action reports we received were, for the most part, woefully incomplete, raising serious questions about their utility for internal review of SWAT deployment practices. Furthermore, the records indicated that internal reviews mostly pertain to proper weapons use and training and not to evaluating important civil rights implications of SWAT use. In addition, purely internal oversight is insufficient to guard against excessive, aggressive, and disproportionate use of SWAT. Greater oversight is needed.

Lack of Federal Oversight

In addition to insufficient state oversight, there is no federal agency mandated to collect information related to local law enforcement use of SWAT. The Bureau of Justice Statistics (BJS), housed within the Department of Justice’s Office of Justice Programs, collects and publishes information pertaining to state prison systems, court administration,

crime, victimization, justice employment information (e.g., the number of people employed by various criminal justice agencies), and information pertaining to justice systems on tribal lands.⁸⁴ It collects and publishes some information pertaining to law enforcement administration, but mostly in the areas of training, coroner activities, crime laboratories, and a slew of other categories that do not pertain directly to the militarization of policing. While BJS does collect information on some policing activity, such as hate crimes, it does not collect information pertaining to incidents of SWAT deployment, uses of military weapons or tactics in connection with such deployments, or the underlying purposes of such deployments.⁸⁵ Taking responsibility for collecting, maintaining, and analyzing information pertaining to the use of SWAT teams throughout the country would present certain challenges for BJS, but if local agencies improved their own record keeping on the use of SWAT—potentially aided by BJS through development of a data collection tool—BJS would enhance its ability to compile, aggregate, and analyze data collected and provided by local agencies.

Oversight of the federal programs that incentivize militarized policing is also needed.

Oversight of the 1033 Program exists, but there are gaps.⁸⁶ The only significant responsibilities placed on participating law enforcement agencies are that they not sell equipment obtained through the program and that they maintain accurate inventories of transferred equipment.

The state coordinator is required to approve or disapprove applications for participation, but there appear to be only two criteria that must be satisfied in order for a request to be approved: (1) that the agency intends to use the equipment for a “law enforcement purpose” (counterdrug and counterterrorism efforts are emphasized by law); and (2) that the transfer would result in a “fair and equitable distribution” of property based on current inventory. The Memorandum of Agreement (MOA) also provides that as a general matter, “no more than one of any item per officer will be allocated.”⁸⁷ Most of the state coordinator’s other responsibilities are administrative in nature (e.g., ensuring that LESO has current and accurate points of contact, that only authorized agency requests are submitted

to LESO, that participating agencies update their account information annually, etc.).

There is a biannual Program Compliance Review using a checklist.⁸⁸ The compliance review is not rigorous, however, and simply requires the state coordinator to certify that appointed personnel are proficient with DLA websites, that participating agencies are in fact eligible (the sole eligibility requirement is that the agency is a law enforcement agency), that the agency has in place proper records management and retention processes and inventory control, that there is a compliance review process in place, that there are steps in place to ensure that 1033 property is not sold, whether an agency has sold 1033 property or received property for the sole purpose of selling it, and that property transferred complies with the MOA.

The state coordinator is also required to state what steps are taken to ensure that participating agencies do not requisition unnecessary or excessive amounts of property. However, the ACLU did not uncover any records pursuant to its investigation to suggest that any of the agencies studied had a single request for equipment denied by the state coordinator during the two years studied.

States or agencies can be suspended for failure to conduct a required inventory, but there are no consequences for overly aggressive use of equipment.

LESO conducts an annual briefing for law enforcement personnel in each state.⁸⁹ This briefing includes information on technical support and training available to agencies via the LESO program. One person from each state is required to attend. The briefing does not appear to address the importance of exercising restraint in the acquisition and use of military equipment by local law enforcement agencies.

There appears to be no requirement that the Department of Defense make any certification to Congress regarding the performance or impact of the program.

There is virtually no oversight over DHS support to state and local law enforcement through the Homeland Security Grant Program.⁹⁰ In 2013, DHS distributed nearly a billion dollars to state and local law enforcement agencies through the HSGP to “enhance the ability of states, territories, and Federally recognized tribes to prevent,

protect against, respond to, and recover from potential terrorist acts and other hazards,”⁹¹ but as discussed above, this money was often spent on ordinary law enforcement activities. Oklahoma Senator Tom Coburn conducted an investigation into DHS funding to state and local law enforcement agencies in 2012. Senator Coburn concluded, on the basis of information contained in DHS reports, briefings with the DHS Office of the Inspector General, and project data and spending plans from 29 urban areas, that “taxpayer money spent on homeland security grant programs has not always been spent in ways obviously linked to terrorism or preparedness” and that “[DHS] has done very little oversight of the program, allowing cities to spend the money on almost anything they want, as long as it has broad ties to terror prevention.”⁹²

There is also minimal oversight over expenditures of DOJ funds. The Bureau of Justice Assistance conducts some oversight over JAG funds, and has been strengthening its oversight in recent months, particularly with regard to potential use of JAG funds to subsidize racially biased marijuana possession arrests. However, there is virtually no oversight over weapons expenditures or use of paramilitary tactics in drug investigations.

There does not appear to be much, if any, local oversight of law enforcement agency receipt of equipment transfers under the 1033 Program or grants from the DHS or DOJ. None of the documents the ACLU reviewed relating to policies and procedures contained any provisions regarding internal oversight of such transfers and grants. The ACLU is also not aware of any formal procedures that have been imposed at the local level requiring public oversight of requests for equipment transfers or grants, though some municipalities have held ad hoc hearings when their local law enforcement agencies have proposed a transfer or grant that may be controversial.⁹³ The public has a right to know what weapons and tactics are being used to police it and how its tax dollars are being spent.

The Purpose of SWAT

FINDING #3

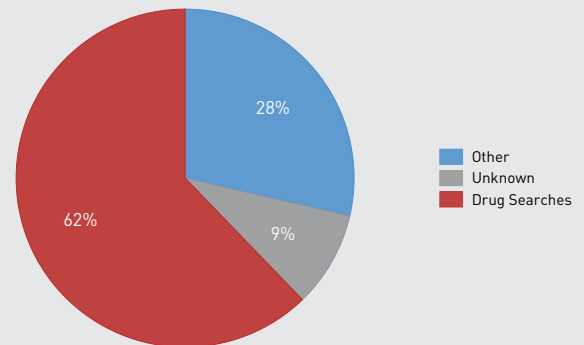
SWAT teams were often deployed—unnecessarily and aggressively—to execute search warrants in low-level drug investigations; deployments for hostage or barricade scenarios occurred in only a small number of incidents.

Use of SWAT to Search for Drugs

Even though paramilitary policing in the form of SWAT teams was created to deal with emergency scenarios such as hostage or barricade situations, the use of SWAT to execute search warrants in drug investigations has become commonplace and made up the majority of incidents the ACLU reviewed. When the police are executing a search warrant, there has been no formal accusation of a crime; rather, the police are simply acting on the basis of probable cause to believe that drugs will be present. There is no criminal case, no formal suspects, and often little if any proof that a crime has been committed; it is simply an investigation. Thus, the use of a SWAT team to execute a search warrant essentially amounts to the use of paramilitary tactics to conduct domestic drug investigations in people's homes.

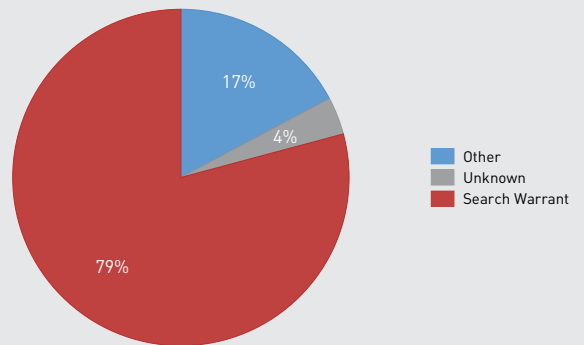
The majority (79 percent) of SWAT deployments the ACLU studied were for the purpose of executing a search warrant, most commonly in drug investigations. Only a small handful of deployments (7 percent) were for hostage, barricade, or active shooter scenarios. The remaining deployments were for other purposes such as protecting visiting dignitaries, capturing fleeing suspects, and responding to emergencies. Our investigation found that in the majority of deployments the police did not face genuine threats to their safety and security.

FIGURE 1
Majority of SWAT Deployments for Drug Searches (2011-2012)



Source: Data provided by local law enforcement agencies for ACLU investigation.

FIGURE 2
Majority of SWAT Deployments for Search Warrant (2011-2012)



Source: Data provided by local law enforcement agencies for ACLU investigation.

Further, often the quantity of drugs found did not seem to justify a SWAT deployment. For example, the Allentown SWAT team was deployed to search someone's house for drugs. They executed the warrant at 6:00 a.m., knowing children were likely to be present. When gathering intelligence the day before, the team did not see any weapons. Nonetheless, the team deployed a distraction device, broke the door down with a battering ram, and entered the residence to find three adults and three children asleep in the home. The team found no weapons and what the report described as a "small amount of marijuana."

This finding supports Kraska's earlier research. Kraska found, based on his survey data, that 80 percent of deployments during the time period he studied were for the purpose of executing a search warrant, not to deal with situations for which SWAT teams were created, such as hostage, sniper, or terrorist situations.⁹⁴ He concluded on the basis of his research that "[SWAT teams have] changed

from being a periphery and strictly reactive component of police departments to a proactive force actively engaged in fighting the drug war.”⁹⁵ Based on our statistical analysis, we agree with this conclusion.

Lack of Standards

Most police departments have in place standards that allow for SWAT deployment in cases involving hostage, barricade, active shooter, or other emergency scenarios, or in “high-risk” warrant scenarios. But what constitutes a “high-risk” scenario depends largely on the subjective beliefs of the officers involved. This lack of clear and legitimate standards for deploying SWAT may result in the excessive and unnecessary use of SWAT deployments in drug cases.

One reason for thinking that serving a warrant may be “high risk” would be the presence of a person who is armed and dangerous. More often than not, we found that SWAT records contained no information to explain why the officers believed a particular scenario was “high risk.” Even in incidents in which the police believe an armed person would be present, very often there was insufficient information to know what formed the officer’s belief; often, the SWAT team was called out based on an officer’s subjective belief that a person involved was “known to carry weapons” or “had been found to carry weapons in the past.” SWAT officers seemed to make no effort whatsoever

More often than not, we found that SWAT records contained no information to explain why the officers believed a particular scenario was “high risk.”

to distinguish between weapons that were lawfully owned versus those that a suspect was thought to possess illegally.

In nearly every deployment involving a barricade, hostage, or active shooter, the SWAT report provided specific facts that gave the SWAT team reason to believe there was an armed and often dangerous suspect. For example, the Concord, North Carolina, SWAT team was called out to a barricade situation involving a man who had barricaded himself in his home, was making explosives, and was considered mentally unstable. All of this information was provided to police by a member of the man’s family. The man had previously been arrested for making bombs and was known by family members to possess a large number of firearms. The team safely took the man into custody and seized at least four firearms, large amounts of ammunition, several axes and hatches, and bomb-making materials that had to be detonated by the bomb squad.

In contrast, incident reports for search warrant executions, especially in drug investigations, often contained no information about why the SWAT team was being sent in, other than to note that the warrant was “high risk,” or else provided otherwise unsubstantiated information such as “suspect is believed to be armed.” In case after case that the ACLU examined, when a SWAT team was deployed to search a person’s home for drugs, officers determined that a person was “likely to be armed” on the basis of suspected but unfounded gang affiliations, past weapons convictions, or some other factor that did not truly indicate a basis for believing that the person in question was likely to be armed at the moment of the SWAT deployment. Of course, a reasonable belief that weapons are present should not by itself justify a SWAT deployment. Given that almost half of American households have guns, use of a SWAT team could almost always be justified if this were the sole factor.⁹⁶ However, because the use of SWAT increases the likelihood that the occupants will use weapons to defend themselves, which increases the risk of violence and thus of harm to both law enforcement and civilians, presence of a weapon alone should not automatically result in a SWAT deployment.

Some agencies have checklists or matrices that they employ to determine whether a situation is “high risk.” In using these lists, officers check off various risk factors that

they believe to be present and, presumably on the basis of the risk factors present, calculate a risk score. SWAT deployment is considered (and sometimes mandated) on the basis of whether the risk level meets a predetermined threshold. Unfortunately, though, having such mechanisms in place does not obviate the problem of unnecessarily aggressive SWAT deployments because using an internal checklist or matrix does not eliminate subjectivity. In one case, the officer completing the threat matrix, and perhaps knowing that the woman who was the subject of the warrant had no serious criminal history, included the histories of other people (not even confined to other people at the residence) in calculating the threat score. This elevated the score to the level needed to justify a SWAT deployment. In addition, whether a person is likely to be armed is often considered a risk factor, but as discussed above, making that determination is highly subjective.

Some of the threat matrices examined in connection with this investigation contained factors and counting procedures that were themselves problematic. For example, the Concord, North Carolina, threat matrix considers “religious extremist” to be a risk factor. In addition to possibly violating the First Amendment,⁹⁷ predicting risk on the basis of religious ideology is ineffective for two reasons: (1) there is no simple link between the adoption of an ideology and violent action; and (2) it is exceedingly difficult to craft a coherent model of the kinds of ideologies or beliefs that could be expected to lead to violence.⁹⁸ Other jurisdictions that use a matrix often consider the fact that the deployment is part of a drug investigation as having a high point value, but simply having drugs in one’s home should not be considered a high-risk factor justifying a paramilitary search. Without consistency, clarity, meaningful metrics, and the use of appropriate risk factors, these matrices seem to cause more problems than they resolve.

In addition, the ACLU did not uncover any policies or practices encouraging partial responses. It appeared that deployments almost always involved a complete deployment, including numerous officers armed with assault rifles, battering rams, and distraction devices. Many deployments—to the extent they were justified at all—would seem to have warranted a much less aggressive

response, including perhaps fewer officers and less military weaponry.

Accuracy of Assessing Threats

One way to evaluate the reliability of a SWAT officer’s unsubstantiated beliefs concerning the threat danger and likely presence of weapons is to measure the likelihood that an officer’s subjective belief in the presence of weapons resulted in the SWAT team actually finding weapons at the scene. We found in the course of our investigation that the SWAT team found weapons (the overwhelming majority of which were firearms such as handguns, but rarely assault rifles) in just over one-third of the incidents in which they predicted finding them, which suggests the police are not particularly good at accurately forecasting the presence of weapons. Furthermore, if SWAT were being used for the limited purposes for which it was created, we would expect them to find weapons in nearly all of the incidents studied.

TABLE 1
Weapons Predicted v Weapons Found

| Weapons Believed To Be Present | Weapons Located | | |
|--------------------------------|-----------------|-----|---------|
| | Yes | No | Unknown |
| Yes | 35% | 32% | 33% |
| No | 13% | 43% | 44% |

No-knock warrants were used (or probably used) in about 60 percent of the incidents in which SWAT teams were searching for drugs, even though many resulted in the SWAT team finding no drugs or small quantities of drugs. For example, the Burlington County, North Carolina, SWAT team was deployed to search for drugs in a person’s home. Upon executing the warrant, all that was found was drug paraphernalia (such as a pipe) and a residue amount of cocaine (presumably the residue found in the pipe). Given that the ostensible purpose of forcing entry into a home is to prevent the destruction of “evidence” (i.e., the presumed purpose of the no-knock being issued in this case), this result is troubling. One would expect to

see a much higher rate of SWAT deployments resulting in the seizure of large amounts of drugs. Of course, as with the presence of weapons, the mere fact that there might be drug evidence that residents could, in theory, attempt to destroy upon the police knocking and announcing themselves, should not justify the use of militaristic SWAT teams forcing themselves into homes as if they are sweeping enemy territory in a war zone.

TABLE 2
Drugs Predicted v Drugs Found

| SWAT Deployed for a Drug Offense | Contraband Located | | |
|----------------------------------|--------------------|-----|---------|
| | Yes | No | Unknown |
| Yes | 35% | 36% | 29% |
| No | 11% | 27% | 62% |

Of the cases we studied, in 36 percent of SWAT deployments for drug searches, and possibly in as many as 65 percent of such deployments, no contraband of any sort was found. When also considering that the mere presence of contraband should not be enough, by itself, to justify SWAT, this seems to suggest strongly that SWAT is overused.

Some Appropriate Uses of SWAT

The ACLU came across some incidents during the course of the investigation that appeared on the face of the records to demonstrate appropriate use of, and restraint in deploying, SWAT. In one such incident, an officer was asked by a neighboring agency to deploy a SWAT team. The officer went to the scene to investigate, and what he saw concerned him. In his report, he noted that officers from other agencies were involved in breaking down all the doors and windows of a person’s residence. He asked if there was a warrant and was told there was none. When requested to deploy tear gas, he responded that his team does not simply deploy gas but rather conducts a careful evaluation to ensure that if gas is deployed, proper procedures are followed. The officer declined to assist

the neighboring agency without a warrant being issued, and said that if a warrant were produced, he would then consider the request. The officer called his superior and apprised him of the situation, and the superior concurred with the decision to hold off. The chief of police eventually got involved, and he also concurred with the decision to hold off. Eventually a warrant was secured. On the basis of the warrant, and with the knowledge that a woman was in the residence, possibly being held against her will, the team decided to deploy. This demonstrates a hesitation to engage in activity that was possibly unconstitutional, restraint in the use of SWAT, insistence on following proper procedure, and professionalism in keeping superiors apprised of the situation.

Another example demonstrating restraint in the use of SWAT occurred in Hialeah, Florida, in July 2013. A man had set his apartment on fire, killed six building residents, and taken another two residents hostage. The chief of police tried to negotiate with the man for several hours before eventually calling in the SWAT team. He later told reporters that “[i]t was a very difficult decision because I not only have [sic] the lives of the two hostages that we want to rescue, but I have in my hands the lives of the six police officers that I’m sending in to confront this man.”⁹⁹ The hostages survived, though the man did not. Exercising restraint in deploying a SWAT team honors individual liberties and maximizes public safety. If restraint was warranted in this case, it is difficult to justify the routine deployment of SWAT teams to serve search warrants in drug investigations in which no clear threat is presented.

If paramilitary tactics were limited to scenarios like these, there would be much less cause for concern. Unfortunately, these instances are the exception, not the norm.

Race and SWAT

FINDING #4

The use of paramilitary weapons and tactics primarily impacted people of color; when paramilitary tactics were used in drug searches, the primary targets were people of color, whereas when paramilitary tactics were used in hostage or barricade scenarios, the primary targets were white.

Race, SWAT, and Drugs

It is widely known that policing tactics across the country often unfairly target communities of color—the recent controversies surrounding stop-and-frisk programs in numerous cities across the country document the ineffective and unfair racial disparities associated with the practice.¹⁰⁰ According to the incident reports studied in the course of this investigation, the use of paramilitary tactics appears to be no different.

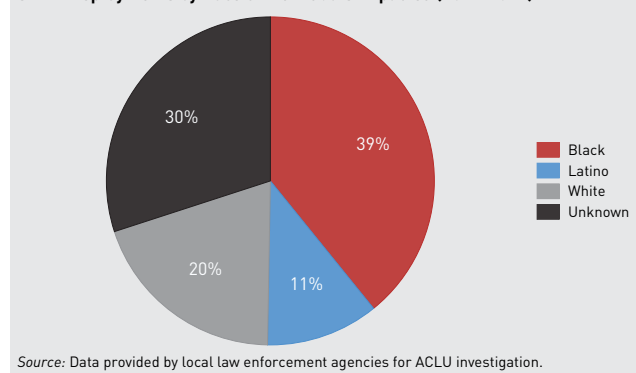
Unfortunately, many of the SWAT teams we looked at either do not record race information or record it unsystematically (in more than one-third of the incidents studied, the race of the people impacted was not clear from the incident report).¹⁰¹ According to the records that did contain race information, SWAT team deployment primarily impacted people of color.

In looking at race data, we examined two variables: the race of the people impacted by each deployment and the race of the overall number of people impacted by SWAT raids in a given area during the studied time period. So the unit of measurement in the data presented in this section is either “number of deployments impacting people of a certain race” or “race of individual people impacted.”

Where race was known, deployments that impacted people of color (the majority being Black) constituted 28 percent of the total, whereas deployments that impacted white people constituted 31 percent of the total. A small percentage (6 percent) impacted a mix of white people and people of color.

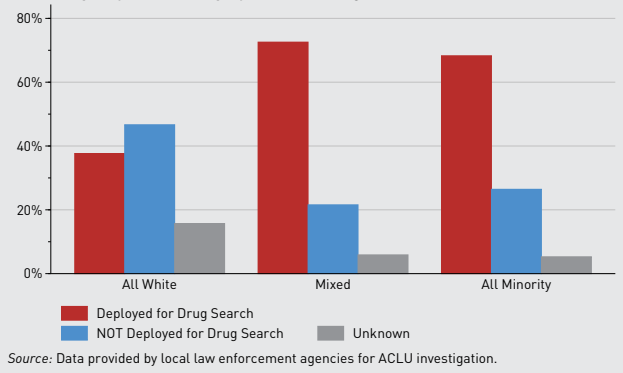
Breaking this down further into actual numbers of people impacted by SWAT deployments shows that of all the incidents studied where the number and race of the people impacted were known, 39 percent were Black, 11 percent were Latino, 20 were white, and race was unknown for the rest of the people impacted. This means that even though there were more deployments that impacted only white people or a mix of white people and minorities, many more people of color were impacted. This may relate to the fact that white people were more likely to be impacted by deployments involving hostage, barricade, or active shooter scenarios, which most often involve domestic disputes impacting small numbers of people, whereas people of color were more likely to be impacted by deployments involving drug investigations, which often impact large groups of people and families.

FIGURE 3
SWAT Deployments by Race of Individuals Impacted (2011-2012)



Of the deployments in which race was known, there was a significant racial difference in whether the deployment was conducted in a drug case.¹⁰² Of the deployments that impacted minorities (Black and Latino), 68 percent were for drug searches, whereas of deployments that impacted white people, only 38 percent were for drug searches. Of the deployments that impacted a mix of white people and minorities, 73 percent were for drug investigations.

FIGURE 4
Racial Disparity in SWAT Deployments for Drug Searches (2011-2012)



Sixty-one percent of all the people impacted by SWAT raids in drug cases were minorities.

Racial Differences in Use of SWAT for Search Warrants

The numbers become even more troubling when examining the racial breakdowns for search warrants. Of the deployments in which all of the people impacted were minorities, the deployment was for the purpose of executing a search warrant in 80 percent of cases, and where the

people impacted were a mix of white people and minorities, the deployment was for the purpose of executing a search warrant in 84 percent of cases. In contrast, when all of the people impacted were white, the purpose was to execute a search warrant in 65 percent of cases.

When the number of people impacted by a deployment was known, 42 percent of people impacted by a SWAT deployment to execute a search warrant were Black and 12 percent were Latino. So overall, of the people impacted by deployments for warrants, 54 percent were minorities. In contrast, nearly half of the people impacted by deployments involving hostage, barricade, or active shooter scenarios were white, whereas only 22 percent were minorities (the rest were people who were known to have been impacted by hostage, barricade, or active shooter scenarios but whose race was not known, so the difference could be even greater).

In addition, when the data was examined by agency (and with local population taken into consideration), racial disparities in SWAT deployments were extreme. As shown in the table and graph below, in every agency, Blacks were disproportionately more likely to be impacted by a SWAT raid than whites, sometimes substantially so. For example,

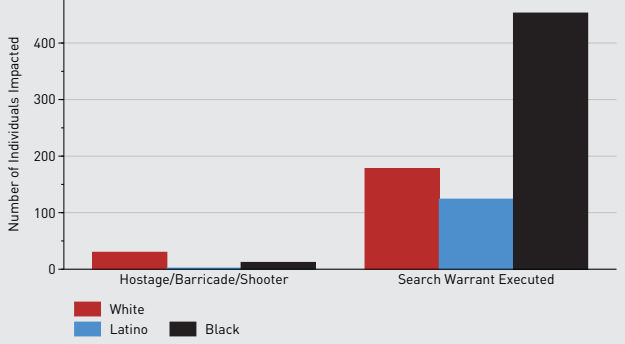
TABLE 3
SWAT Impact Rates by Agency (2011-2012)

| Law Enforcement Agency | SWAT Impact Rates per 100,000 | | | | |
|-------------------------------|-------------------------------|--------|-------|------------------------------------|-----------------------------------|
| | White | Latino | Black | Times More Likely Latinos Impacted | Times More Likely Blacks Impacted |
| Allentown, PA, Police | 12 | 348 | 281 | 29.09 | 23.51 |
| Bay County, FL, Sheriff | 6 | 0 | 39 | 0.00 | 6.56 |
| Burlington, NC, Police | 9 | 0 | 414 | 0.00 | 47.05 |
| Caldwell County, NC, Sheriff | 54 | 0 | 215 | 0.00 | 4.01 |
| Chatham County, NC, Sheriff | 74 | 0 | 1,146 | 0.00 | 15.51 |
| Concord, NC, Police | 44 | 92 | 485 | 2.09 | 11.06 |
| Fort Worth, TX, Police | 12 | 11 | 154 | 0.90 | 12.86 |
| Gwinnett County, CA, Sheriff | 1 | 1 | 7 | 0.53 | 5.49 |
| Huntington, WV, Police | 11 | 0 | 415 | 0.00 | 37.12 |
| Little Rock, AR, Police | 3 | 26 | 40 | 9.29 | 14.13 |
| North Little Rock, AR, Police | 6 | 0 | 200 | 0.00 | 34.54 |
| Ogden, UT, Police | 8 | 85 | 300 | 11.16 | 39.55 |
| Salt Lake City, UT, Police | 5 | 25 | 36 | 4.93 | 7.33 |
| Spokane County, WA, Sheriff | 57 | 14 | 588 | 0.25 | 10.35 |
| Unified, UT, Police | 3 | 13 | 26 | 5.18 | 10.26 |
| Wilson County, NC, Sheriff | 16 | 0 | 98 | 0.00 | 6.02 |

Source: Data provided by local law enforcement agencies for ACLU investigation.
NOTE: Agencies that do not record data on race/ethnicity are excluded.

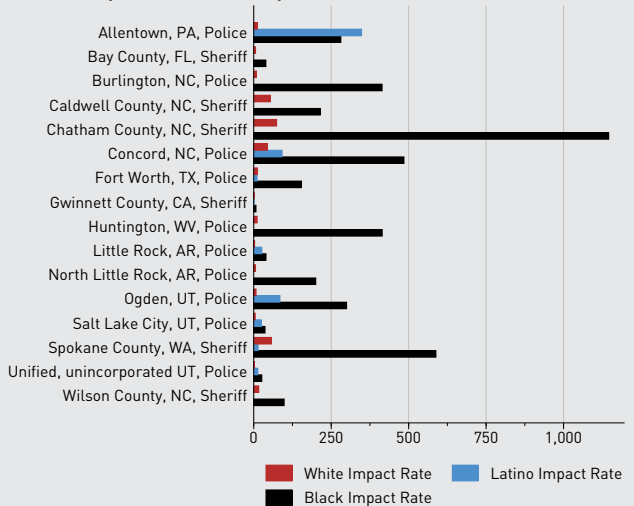
in Allentown, Pennsylvania, Blacks were nearly 24 times more likely to be impacted by a SWAT raid than whites were, and in Huntington, West Virginia, Blacks were 37 times more likely. Further, in Ogden, Utah, Blacks were 40 times more likely to be impacted by a SWAT raid than whites were.

FIGURE 5
Racial Disparity in SWAT Deployment by Type (2011-2012)



Source: Data provided by local law enforcement agencies for ACLU investigation.

FIGURE 6
Racial Disparities in SWAT Impact Rates (2011-2012)



NOTE: Agencies that do not record data on race/ethnicity are excluded.
Source: Data provided by local law enforcement agencies for ACLU investigation.

It is well established that the War on Drugs has been waged primarily and unfairly on people of color—from being disproportionately targeted for low-level drug arrests to serving longer prison sentences for the same drug crimes. Our findings add the unfair and disproportionate use of paramilitary home raids to this shameful list of racially biased drug enforcement.

Use of Violent Tactics and Equipment

FINDING #5

SWAT deployments often and unnecessarily entailed the use of violent tactics and equipment, including APCs; use of violent tactics and equipment was shown to increase the risk of bodily harm and property damage.

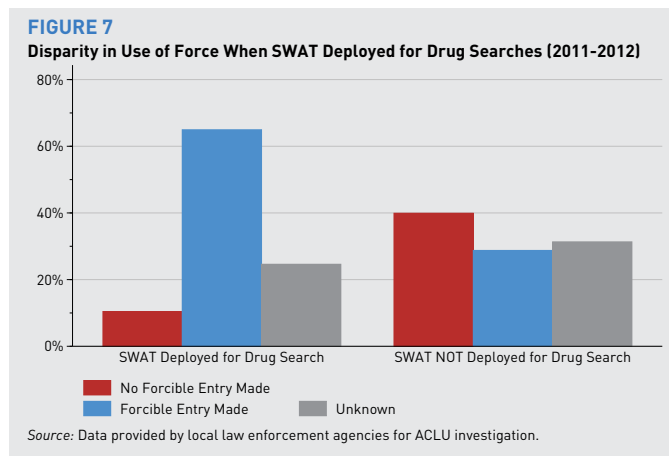
Use of Violent Tactics to Force Entry

Of the incidents studied in which SWAT was deployed to search for drugs in a person’s home, the SWAT teams either forced (or probably forced) entry into a person’s home using a battering ram or other breaching device 65 percent of the time. This means that for drug investigations, the SWAT teams studied were almost twice as likely to force entry into a person’s home than not, and they were more than twice as likely to use forced entry in drug investigations than in other cases.

Forcing entry into a person’s home did not necessarily result in the discovery of weapons, drugs, or other contraband. Drugs or other contraband were either found or probably found in only a quarter of the deployments in which the SWAT team forced entry. In 54 percent of deployments in which the SWAT team forced entry into a person’s home using a battering ram or other breaching device, the SWAT team either did not or probably did not find any weapons. For example, the New Haven, Connecticut, SWAT team deployed at 11:00 p.m. to execute a search warrant. The team broke down the front door, deployed a distraction device, and detained two people inside the home, but it did not find any weapons or contraband. Given the relatively small amount of drugs and

weapons found during the course of these deployments, it is difficult to justify the forcible entry into private homes.

The SWAT teams studied were much more likely to force entry in drug search cases than in other scenarios. When SWAT was deployed to search a home for drugs, the squad forced entry in more than 60 percent of incidents. In contrast, when SWAT was deployed for a reason other than searching a home for drugs, the squad forced entry in fewer than 40 percent of cases.



Very little information was discernable regarding the use of flashbang grenades, but in the cases in which information was available, we discovered that of the incidents in which SWAT teams were searching people's homes for drugs, they were 14 times more likely to use a flashbang grenade, and they were three times more likely to use a flashbang grenade in drug investigations than in other cases.

Use of Armored Personnel Carriers During SWAT Raids

It was nearly impossible to track the use of BearCats and other APCs by SWAT teams. On the face of the documents examined, some law enforcement agencies (e.g., New Haven, Connecticut; Allentown, Pennsylvania; Unified Police Department, Utah) appear to deploy a BearCat almost routinely. Others (e.g., Gwinnett County, Georgia) do not appear to use an APC at all, though it is not clear whether that is because they do not have one or because they have one but do not use it (or even whether they use it

routinely but do not record that fact). Still others (e.g., Bay County, Florida) seem to make selective use of APCs. In addition, some agencies used APCs that go by other names, and it is not always possible to know whether an APC is being referenced in an incident report.

From our review of the incident reports and discussions with members of law enforcement, we conclude that the use of BearCats or other APCs was rarely necessary for the types of deployments in which they were used based on two observations: (1) the numerous incidents in which an APC was deployed but not used for any obvious purpose; and (2) the numerous incidents in which the SWAT team was able to accomplish its objective without the use of an APC.

There were numerous incidents in which a BearCat was deployed but not put to any obvious use during the course of the deployment. For example, SWAT officers in Allentown, Pennsylvania, were deployed to search someone's home for drugs. They deployed at 6:45 a.m., with both a BearCat and an emergency van, knowing that a toddler was likely to be present. They broke down the door, entered the home, and handcuffed one man, while a woman tried to comfort her child, who was presumably upset by the commotion. There is no indication that the officers made any use of the BearCat, other than for transport. The ACLU uncovered numerous incidents such as this, when there was some attendant danger, perhaps, but this does not justify using an armored military vehicle directly in front of someone's home in the middle of a residential neighborhood.

There were several incidents in which a SWAT team was able to accomplish its objective without use of an APC.¹⁰³ For example, in the Concord, North Carolina, case described above involving a man who had barricaded himself, suffered from mental illness, and was suspected of making bombs, the SWAT team was able to convince the man to surrender, and there was no indication on the face of the document that a BearCat was used. In another incident, the Allentown SWAT team was called out to deal with an armed robbery investigation. No BearCat was deployed, and the suspects surrendered without incident. SWAT teams consist of heavily armed, highly professional tactical officers trained to handle extremely high-risk scenarios. Such officers have proven themselves

to be effective when they are deployed to handle high-risk situations without the use of an APC.

While officer safety is sometimes a concern during the execution of a search warrant in which SWAT is deployed, it is not a concern in all such deployments. Importantly, there are effective alternatives to use of APCs, such as making ordinary police vehicles built for domestic law enforcement (as opposed to combat), bullet-proof.

Use of an APC can also *endanger*, not protect, both officers and civilians, and can increase the risk of property damage. In one case we examined, the SWAT team was deployed to handle a dangerous barricade scenario in which officers knew that a man was armed with a firearm. The team deployed with a BearCat. At one point, the man disappeared from view and exited the home through the garage; he started walking toward officers who were not aware of his presence because they were watching the front door. The officers should have been able to provide cover, but the BearCat literally obstructed their view of the garage. Eventually the man surrendered, but the situation could have had tragic results.

Use of a BearCat or other APC can also increase the risk of property damage. In one case, a SWAT team used a BearCat to break down a front gate. In another, a SWAT team used a BearCat to break through the front door of a man known



It is not unusual for people to mistake a SWAT deployment in the middle of the night for an armed burglary, and both civilians and police have been killed in resulting shootouts.

Photo: Keep Columbia Free via FIO/Sunshine request
<http://www.youtube.com/watch?v=Ng6mfpZ2kR4>

to suffer from paranoid schizophrenia, after already forcing entry through multiple other sites and shattering a sliding glass door.

Consequences of Using Violent Tactics

Using aggressive tactics in drug raids can have disastrous consequences. In the deployments the ACLU examined, seven civilian deaths occurred in connection with deployment, two of which appeared to be the result of suicide (in at least one of these cases, the suspect stated that he was willing to come outside but then shot himself upon learning that the SWAT team was waiting for him). In the incidents we examined, 46 civilians were injured in the course of a deployment, often as the result of a use of force by a member of the SWAT team.¹⁰⁴

Examples of the tragic results of SWAT officer-involved shootings are widely available. For example, earlier this year, the Albuquerque Police Department sent a heavily armed unit to confront James Boyd, a homeless man who was “camping illegally” in the Sandia Foothills. The encounter ended with officers shooting and killing him. Though it did not involve the search of a home, this example fits the militarization pattern for a number of reasons. First, the police approached Boyd in full SWAT gear simply because he was illegally camping in an Open Space area in the foothills outside of Albuquerque. Second, the officers purposefully escalated the conflict to the point where the use of lethal force was inevitable. The action that set it all off was the deployment of a flashbang grenade. Finally, the weapon that killed Boyd appears to have been an assault rifle or some other high-powered weapon (ironically, the SWAT officers fired live ammunition alongside beanbag rounds). Again, this demonstrates the alarming tendency of paramilitary policing to *escalate*, rather than *ameliorate*, the risk of violence.¹⁰⁵

Although no SWAT officers were killed in any of the deployments that the ACLU examined, deaths to officers have indeed resulted from the use of paramilitary policing tactics. Take the case of Henry McGee, who was asleep with his pregnant girlfriend when the police forced their way into his home at dawn to look for a marijuana grow

operation. Believing his home was being burglarized, McGee drew a firearm and shot and killed an officer. He was initially charged with capital murder, but the grand jury refused to indict him. Investigators found a few marijuana plants in the home.¹⁰⁶ Thus, although some police officers often argue that excessively militarized weapons and tactics are needed to prevent violence, these wartime tools and tactics often have the opposite effect of *escalating* the risk of violence.

Use of Violent Tactics With Children Present

During the course of this investigation, we noted another troubling trend: the deployment of SWAT when children were present or without sufficient intelligence to know whether children would be present. As documented above, a SWAT deployment can involve significant levels of violence, including breaking down doors, shattering windows, and the detonation of explosive devices. In addition, SWAT officers also typically deploy wearing “BDUs” (battle dress uniforms), carry large semi-automatic rifles, which they sometimes point at people during deployment, and often use force, throwing people onto the floor and handcuffing them. Experiencing violent events can have serious and long-term impacts, particularly on children.¹⁰⁷

Determining the number of SWAT deployments in which children were present was challenging because many reports did not indicate whether children were present. While some agencies specifically documented the presence and number of children through use of a check box or other data collection mechanism, others mentioned the presence of children only in passing, in the narrative portion of the report. In reviewing the documents, we noted when the presence (and, where possible, the number) of children was documented. We also drew inferences about incidents in which children were almost certainly not present (for example, reports involving hostage-taking related to domestic violence were almost always careful to note the presence of children, such that we inferred the absence of children when a report of a domestic hostage-taking did not mention them). In the rest of the cases, we made what inferences we could to determine

when children were probably not present and counted the remaining incidents as unknown. Using this methodology, we determined that of the 818 deployments studied, 14 percent involved the presence of children and 13 percent did not. Thirty-eight percent probably did not involve the presence of children and 35 percent were unknown. This evaluation is necessarily unscientific because the reports provided simply did not provide enough information to draw a conclusion about the presence of children. In addition, SWAT teams should be more deliberate and precise in documenting the presence of children in order to avoid subjecting children to SWAT deployments whenever possible.

RECOMMENDATIONS

The militarization of policing is one example of how contemporary policing in America is failing to deliver on its primary objective of protecting and serving communities. The culture of policing in America needs to evolve beyond the failed War on Drugs, and the police should stop perceiving the people who live in the communities they patrol—including those the police suspect of criminal activity—as enemies.

This type of reform must be achieved systemically and include a transformation in police culture; the problems of overly aggressive policing cannot be solved by disciplining a few officers or dismissing the problem as a few isolated incidents. These recommendations are aimed at ensuring that law enforcement responses minimize harm to civilians and property and maximize as oppose to jeopardize the safety of everyone involved.

The federal government should take the lead by reining in programs that incentivize local police to engage in excessively militarized tactics, especially in drug cases. The federal government holds the purse strings, and restricting the flow of federal funds and military-grade equipment into states and localities, and/or conditioning funds on the appropriate use and training with regards to such equipment, would significantly reduce the overuse of hyper-aggressive tactics and military-grade tools in local communities.

Additionally, state legislatures and municipalities should impose meaningful restraints on the use of SWAT. SWAT deployments should be limited to the kinds of scenarios for which these aggressive measures were originally intended – barricade, hostage, and active shooter situations. Rather than allowing for a SWAT deployment in any case that is deemed (for whatever reason the officers determine) to be “high risk,” the better practice would be for law enforcement agencies to have in place clear standards limiting SWAT deployments to scenarios that are truly “high risk.”

SWAT teams should never be deployed based solely on probable cause to believe drugs are present, even if they have a warrant to search a home. In addition, SWAT teams should not equate the suspected presence of drugs with a threat of violence. SWAT deployment for warrant service is appropriate only if the police can demonstrate, before deployment, that ordinary law enforcement officers cannot safely execute a warrant without facing an imminent threat of serious bodily harm. In making these determinations it is important to take into consideration the fact that use of a SWAT team can escalate rather than ameliorate potential violence; law enforcement should take appropriate precautions to avoid the use of SWAT whenever possible. In addition, all SWAT deployments, regardless of the underlying purpose, should be proportional—not all situations call for a SWAT deployment consisting of 20 heavily armed officers in an APC, and partial deployments should be encouraged when appropriate.

Local police departments should develop their own internal policies calling for restraint and should avoid all training programs that encourage a “warrior” mindset.

Finally, the public has a right to know how the police are spending its tax dollars. The militarization of American policing has occurred with almost no oversight, and greater documentation, transparency, and accountability are urgently needed.

A requirement that SWAT officers wear body cameras would create a public record of SWAT deployments and serve as a check against unnecessarily aggressive tactics. The ACLU generally takes a dim view of the proliferation of surveillance cameras in American life, but body cameras are different because of their potential to serve as a check on police overreach. Any policy requiring SWAT officers to wear body cameras should have in place rigorous safeguards regarding data retention, use, access, and disclosure.¹⁰⁸

To further advance these principles, the ACLU makes the following specific recommendations.

To State Governments

1. States should enact laws encouraging the restrained and appropriate use of SWAT teams and similar tactical teams. Tactical deployments should be limited to scenarios in which there is a likelihood that the situation for which the SWAT team is being deployed presents an imminent threat to the lives of civilians and/or police personnel. When SWAT is deployed for warrant service, the basis for believing such a likelihood exists should have to be established explicitly and approved by a supervisor or other high-ranking official before the deployment.
2. States should remedy the problem created by the Supreme Court's decision in *Hudson v. Michigan* by enacting laws requiring that evidence obtained in violation of the traditional rule that requires that the police knock and announce their presence should be excluded from any subsequent legal proceedings.
3. States should enact laws requiring transparency and oversight of state and local law enforcement use of SWAT teams.
 - States should require local law enforcement agencies that maintain a SWAT team to use a standardized form to record specific data related to SWAT deployments. These forms should be used to generate quarterly reports.
 - States should require every state or local law enforcement agency that maintains a SWAT team to submit a quarterly report to the legislature that contains the number of times the SWAT team was activated or deployed, as well as the following for each activation/deployment: the address of the location of activation/deployment; the reason for each activation/deployment; the specific factors establishing compliance with the applicable deployment standard; whether forcible entry or a breach was conducted and, if so, the equipment used in forcing the entry or conducting the breach and for what purpose; whether a distraction device was used and, if so, what type and for what purpose; whether an APC was used and, if so, for what purpose; the race, sex, and age of each individual

encountered during the deployment, whether as a suspect or bystander; whether any civilians, officers, or domestic animals sustained any injury or death; and a list of any controlled substances, weapons, contraband, or evidence of crime found on the premises or any individuals.

- States should ensure that there is an agency responsible for overseeing and monitoring SWAT activity, and for implementing necessary reforms, including developing a process for addressing civilian complaints regarding SWAT tactics.

To City and County Governments and Law Enforcement Agencies

4. As an immediate step, law enforcement agencies should adopt internal deployment standards as a matter of local policy. Tactical deployments should be limited to scenarios in which there is a likelihood that the situation for which the SWAT team is being deployed presents an imminent threat to the lives of civilians and/or police personnel. When SWAT is deployed for warrant service, the basis for believing such a likelihood exists should have to be established explicitly and approved by a supervisor or other high-ranking official before the deployment.
5. Law enforcement agencies should adopt local policies requiring the implementation of the following best practices in the use of SWAT teams:
 - Each deployment should be pre-approved by a supervisor or other high-ranking official.
 - Each deployment should be preceded by a written planning process that documents the specific need for the deployment, describes how the operation is to be conducted, and states whether children, pregnant women, and/or elderly people are likely to be present (except in emergency scenarios in which engaging in such a process would endanger the lives or well-being of civilians or police personnel).
 - All SWAT deployments should include a trained crisis negotiator.

- SWAT officers should wear “on-officer recording systems” (so-called “body cameras”) during deployments, and police departments should have in place rigorous safeguards regarding the retention, use, access, and disclosure of data captured by such systems.
 - All deployments should be proportional to the need; a full deployment consisting of numerous heavily armed officers in an APC is often excessive. Many scenarios do not necessitate the use of a SWAT team at all, and partial deployments involving the minimal amount of military equipment necessary should be encouraged.
 - For each SWAT deployment, a post-deployment record should be made that documents the following, in a manner that allows for the data to be easily compiled and analyzed:
 - The purpose of the deployment
 - The specific reason for believing that the situation for which the SWAT team was being deployed presented an imminent threat to the lives or safety of civilians and/or police personnel.
 - Whether forcible entry or a breach was conducted and, if so, the equipment used and for what purpose
 - Whether a distraction device was used and, if so, what type and for what purpose
 - Whether an APC was used and, if so, for what purpose
 - The race, sex, and age of each individual encountered during the deployment, whether as a suspect or bystander
 - Whether any civilians, officers, or domestic animals sustained any injury or death
 - A list of any controlled substances, weapons, contraband, or evidence of crime that is found on the premises or any individuals
 - A brief narrative statement describing any unusual circumstances or important data elements not captured in the list above.
 - Law enforcement agencies should provide training programs for all SWAT teams that do not promote an overly aggressive or “warrior” mentality.
- 6.** Local and county governments should ensure that there is an agency responsible for ensuring that its police are not excessively militarized, which could include civilian review boards. Such responsibilities should include the following:
- Approving/disapproving all (a) requests for the receipt of weapons and vehicles under the 1033 Program; (b) requests for grant funding from the federal government that will be used to purchase military-style weapons and vehicles; and (c) proposals to purchase military-style weapons and vehicles from vendors
 - Developing a process for addressing civilian complaints regarding SWAT tactics, including a system for submitting complaints, conducting hearings, and providing for individual remedies
 - Making appropriate recommendations for agency-wide reforms
 - Considering, on an annual basis, whether continued maintenance of a SWAT team is appropriate and, if not, to recommending the dissolution of the agency’s SWAT team.

To Congress

- 7.** Congress should condition state and local law enforcement agencies’ receipt of federal funds on an agreement not to use the funds to purchase automatic or semi-automatic rifles or APCs. This condition should be applied to grants made through the Department of Homeland Security’s Homeland Security Grant Program, the Department of Justice’s Byrne JAG grant program, and all other funding streams through which money is transferred from the federal government to state and law enforcement agencies.

8. With respect to the 1033 Program, 10 U.S.C. 2576a(a) (1), Congress should prohibit the transfer of automatic and semi-automatic weapons and APCs; remove the words “counter-drug” each time they appear in the statute; and require the Secretary of Defense to submit to Congress an annual written certification that each agency that participates in the 1033 Program has provided documentation accounting for all equipment transferred to the agency and prohibiting additional transfers to any agency for which the Secretary cannot provide such certification.

To the Administration

9. The Department of Justice’s Bureau of Justice Statistics (BJS) should work with representatives of local law enforcement to develop a data collection tool to assess the militarization of policing, by monitoring the use of SWAT teams as well as the receipt and purchase of military weapons and tactics. Once the tool is developed, BJS should collect, compile, and analyze the available data on the use of military weapons and tactics, including SWAT deployments by state and local law enforcement agencies annually.
10. The Department of Defense should promulgate regulations pursuant to 10 U.S.C. 2576a(a)(1) clarifying that automatic and semi-automatic weapons and APCs are not suitable for use by state and local law enforcement agencies for the purpose of equipment transfers under the 1033 Program.
11. The Department of Defense should make the following changes to the 1033 Program, either by promulgating regulations or through the MOA that it enters into with local law enforcement agencies:
- Require specific, individualized justification to receive 1033 equipment
 - Impose reasonable limitations on the number of weapons and vehicles local law enforcement agencies should be entitled to receive under the program
- End the requirement that 1033 equipment be used within one year
 - Require that new applications for equipment under the 1033 Program take into account a law enforcement agency’s existing inventory
 - Require that agencies receiving 1033 equipment through interagency transfer comply with the same application and reporting requirements as agencies that receive 1033 equipment directly from DLA
 - Develop a clear compliance review process that addresses both proper inventory management and documentation of each use of 1033 equipment.
12. The Department of Homeland Security should impose meaningful conditions on the receipt of funds to local law enforcement agencies. In order to receive funds, local law enforcement agencies should have to agree to the following:
- Not to use the funds to purchase automatic or semi-automatic rifles or APCs
 - To certify to DHS that agencies receiving funds have not in fact used equipment purchased with DHS money except in actual high-risk scenarios
 - To require agencies receiving DHS funds to make a record of each equipment purchase made using DHS funds, which should be made available to the public.
13. The Department of Justice should improve oversight of the Byrne JAG program by providing guidance to grantees on the importance of exercising restraint when using paramilitary weapons and tactics and tracking the race, ethnicity, sex, and age of all people impacted by the use of paramilitary weapons and tactics purchased using Byrne JAG funds.

CONCLUSION

As public support for the War on Drugs reaches its lowest ever, it is important that we start to not only roll back battle plans but encourage law enforcement agencies to stop overusing the wartime tools and tactics that have fought these battles.

American policing has become excessively militarized through the use of weapons and tactics designed for the battlefield. Militarization unfairly impacts people of color and undermines individual liberties, and it has been allowed to happen in the absence of any meaningful public discussion.

It is generally accepted that public perception of the legitimacy of law enforcement turns on how the police treat people when exercising their regulatory authority, and people are more likely to obey the law when they perceive law enforcement authorities as legitimate.¹⁰⁹ There is some evidence that people perceive police militarization as threatening, which suggests that police militarization itself could undermine public safety.¹¹⁰ More research should be done on this topic.

There is also a “large and persistent racial gap” in confidence in policing.¹¹¹ Because police militarization tends to be concentrated in communities of color, it threatens to undermine public confidence more dramatically in those communities, where such confidence in law enforcement is already strained. More research should be done in this area as well.

As previously mentioned, Attorney General Eric H. Holder, Jr., has announced broad reforms, including guidelines to curtail the use of mandatory minimum sentencing laws by federal prosecutors in certain drug cases and a \$4.75 million project funded by the federal government and designed to ease mistrust between local police departments and minority communities by collecting and studying data on searches, arrests, and case outcomes in order to help assess the impact of possible bias. These developments have real potential to reduce America’s

excessive reliance on overly aggressive approaches to policing and punishing drug crimes, but there is a danger that these federally-funded efforts could be undermined by the federal government’s role in subsidizing the use of paramilitary weapons and tactics in localities, particularly in many communities of color. Without rethinking its role in militarizing local police departments, the federal government may end up sabotaging the very same reforms it is championing.

The use of paramilitary weapons and tactics to conduct ordinary law enforcement—especially to wage the failed War on Drugs and most aggressively in communities of color—has no place in contemporary society. It is not too late to change course—through greater transparency, more oversight, policies that encourage restraint, and limitations on federal incentives, we can foster a policing culture that honors its mission to protect and serve, not to wage war.

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APPENDICES

APPENDIX A

Public Records Request letter sent from the ACLU to law enforcement agencies

NAME
TITLE
AGENCY
OFFICE
ADDRESS 1
ADDRESS 2

DATE

Re: Public Records Request / SWAT Teams and Cutting-Edge Weapons and Technology

To Whom It May Concern:

This letter is a request under the _____ by the American Civil Liberties Union of _____. This request seeks records regarding your Special Weapons and Tactics (SWAT) teams, as well as your acquisition and use of cutting-edge technology.

Records Requested

A. Special Weapons and Tactics (SWAT) Teams

Please provide copies of the following created, updated, or edited, records from January 1, 2011, to the present:

1. All incident reports or other records documenting each time a SWAT team was deployed. All reports showing breakdowns of SWAT team deployments by crime, requesting agency, or purpose for the raid (i.e. to serve a warrant, arrest someone, diffuse a hostage crisis, etc.) and all post-deployment documentation, including:
 - a. All documents relating to the number of no-knock warrants applied for, and the number of no-knock warrants granted, denied, or modified, in conjunction with a SWAT team deployment;
 - b. All documents relating to uses of force by all SWAT teams and all incident reports documenting all injuries incurred by anyone at the scene of a SWAT team operation.
2. All procedures, regulations, or guidelines relating to SWAT teams, including the protocols and legal standards that must be met before SWAT team deployment.
3. All documents relating to the structure or mission of SWAT teams, including chain of command and the selection of team personnel, as well as the ranks, salaries, and lengths of service of team personnel.

4. All documents or training materials used to instruct SWAT teams in any aspect of their operation, including information about any training, including but not limited to, with military units and other outside agencies and private contractors, when and where training sessions took place, and who conducted them.
5. All records relating to the procurement, maintenance or deployment of SWAT team weapons and other equipment, including guns, vehicles, personal protective equipment and uniforms, surveillance and reconnaissance equipment, less than lethal devices, apparatuses and systems for augmented detainee restraint (also known as shock-cuffs), forced entry tools, facial recognition technology, Cellebrite or other mobile forensics units, biometric technology, cell phone sniffers, and deep packet sniffers, including how it is stored, and who has access to it.
6. All written mutual aid agreements or memoranda of understanding with federal, state and local agencies, including any branch of the military and private entities concerning SWAT teams.
7. All records relating to funding sources and grants your SWAT team applied for, and whether or not the application was successful; and
8. All internal or external audits of SWAT team performance or records of cost effectiveness.

B. Cutting Edge Weapons and Technology

Please provide copies of the following created, updated, or edited, records from January 1, 2011, to the present:

1. The number of Mobile Forensic Data Extraction devices, GPS tracking devices, biometric technology, cell phone sniffers, deep packet sniffers, unmanned aerial vehicles (sometimes called “drones”), apparatuses and systems for augmented detainee restraint (also known as shock-cuffs), Cellebrite or other mobile forensics units, and devices capable of facial or behavioral recognition currently owned, leased, or borrowed or proposed for purchase or acquisition by your agency and the unit or division of your agency given primary use of each device.
2. All practices, procedures, and trainings governing use of all such devices.
3. All policies relating to the maintenance and retention of information obtained through such devices, including but not limited to, policies detailing how records of such information are kept, databases in which they are placed, limitations on who may access the records and for what purposes, circumstances under which they are deleted, and circumstances under which they may be shared with other government agencies or nongovernmental entities.

4. The legal standard or level of suspicion (e.g. probable cause, reasonable suspicion, relevance) the agency requires or proffers prior to using such devices.
5. All applications submitted by your Department for equipment through the Department of Defense's "1033" program¹ (either directly to the Department of Defense or to your state's administering agency), including whether the application was granted, denied, or granted in part (and if so, how).
6. All "1033" program inventories created and maintained pursuant to the May 22, 2012, moratorium (see <https://www.dispositionservices.dla.mil/rtd03/leso/index.shtml>).
7. All applications submitted by your Department for funding through the Department of Homeland Security's Homeland Security Grant Program or Urban Area Security Initiative program (including applications submitted to your state's administering agency), including whether the application was granted, denied, or granted in part (and if so, how).

Because this request is on a matter of public concern and because it is made on behalf of a non-profit organization, we request a fee waiver. If, however, such a waiver is denied, we will reimburse you for the reasonable cost of copying. Please inform us in advance if the cost will be greater than . Please send us documents in electronic form if at all possible.

According to , a custodian of public records shall comply with a request within days after receipt. Thank you for your prompt attention to this matter. Please furnish all applicable records to . If you have questions, please contact me at (phone number/email address).

Sincerely,

¹ Section 1033 of the National Defense Authorization Act for Fiscal Year 1997, codified at 10 U.S.C. § 2576a, permits the Secretary of Defense to transfer excess Department of Defense supplies and equipment to state and local law enforcement agencies. has entered into an agreement with the Defense Logistics Agency, which governs the transfer of military property to for use in civilian policing.

Appendix B

Agreement Between the Defense Logistics Agency and the State of _____

AGREEMENT BETWEEN
THE DEFENSE LOGISTICS AGENCY
AND
THE STATE OF _____

PURPOSE:

This Memorandum of Agreement (MOA) is entered into between the Defense Logistics Agency (DLA) and the State of _____, to set forth the terms and conditions which will be binding on the parties with respect to excess Department of Defense (DOD) personal property which is transferred pursuant to 10 USC § 2576a and to promote the efficient and expeditious transfer of the property and to ensure accountability of same.

AUTHORITY:

The Secretary of Defense is authorized by 10 USC § 2576a to transfer to Federal and State Agencies, personal property that is excess to the needs of the DOD and that the Secretary determines is suitable to be used by such agencies in law enforcement activities, with emphasis on counter-drug/counter-terrorism activities, under such terms prescribed by the Secretary. The authorities granted to the Secretary of Defense have been delegated to the DLA in determining whether property is suitable for use by agencies in law enforcement activities. DLA defines law enforcement activities as activities performed by government agencies whose primary function is the enforcement of applicable Federal, State, and local laws and whose compensated law enforcement officers have powers of arrest and apprehension.

TERMS AND CONDITIONS:

The DOD, through the DLA, has final authority to determine the type, quantity, and location of excess DOD personal property suitable for law enforcement activities, if any, which will be transferred to the State. This agreement creates no entitlement in the State to receive excess DOD personal property. Property available under this agreement is for the current use of authorized program participants; it will not be requested nor issued for speculative use/possible future use with the exception of authorized Transitional Distribution Points (TDPs) and/or Customer Reserve Stock (CRSs), which are required to utilize property within one year or schedule its return to the nearest Defense Reutilization Marketing Office (DRMO). Property will not be obtained for the purpose of sale, lease, rent, exchange, barter, to secure a loan, or to otherwise supplement normal Law Enforcement Agency (LEA) or State/local governmental entities budgets. All requests for property will be based on bona fide law enforcement requirements. Requests for property for the purpose of cannibalization will be considered for approval on a case by case basis. A memorandum must be submitted to the Director of the Law

Enforcement Support Office (LESO) requesting approval. Any transportation, repair, maintenance, insurance, disposal, or other expenses associated with this excess DOD personal property is the sole responsibility of the State/LEA.

The State will establish and submit to the DLA, a State Plan of Operation, developed in accordance with Federal and State law and conforming to the provisions of this MOA. This State Plan of Operation will detail organizational and operational authority including staffing and facilities. It will also address procedures for making determinations of LEA eligibility, allocation and equitable distribution of material, accountability and responsibility concerning excess DOD personal property, training and education, Operational Effectiveness Reviews (OERs), and procedures for turn-in, transfer, and disposal. Property obtained under this MOA must be placed into use within one (1) year of receipt and utilized for a minimum of one (1) year, unless the condition of the property renders it unusable. Only in special circumstances will property be obtained and held for the minimum time frames and then sold, bartered, exchanged, or traded. Approval will be considered on a case by case basis. A memorandum must be submitted to the Director of LESO requesting approval. Property will not physically move until the approval process is complete. If property is not put into use by the recipient within one (1) year, the State/LEA must contact the DLA LESO to coordinate the return of the property to the nearest DRMO for proper disposition. Once the DLA LESO is notified and a DRMO is identified, property must be returned within thirty (30) days. The State/LEA will bear the burden of returning the property to the nearest DRMO. Under no circumstances will property be sold or otherwise transferred to non-U.S. persons or exported.

Only the Governor appointed State Coordinator identified at the end of this document is authorized to enter into this Agreement on behalf of the State. An Appointment Letter from the State Coordinator, authorizing the State Point of Contact (POC) signature authority or to act on the behalf of the State Coordinator must be on file with the DLA LESO in order to actively participate in the program. The State Coordinator is required to sponsor LEAs that want to actively participate in the program and the State Coordinator must screen all LEAs requests for excess DOD personal property. The State Coordinator will validate that all approved requests for property are legitimate and for law enforcement purposes. In so doing, the State Coordinator assumes the responsibility to maintain records ensuring LEA accountability for all excess DOD personal property received through the 1033 Program for his/her state. In conjunction with each request, the State Coordinator will furnish a detailed justification for the property. Property received through the 1033 Program can only be distributed to an authorized LEA for whom the initial request was made and justification was provided, unless the property was requested for a TDP or from CRS.

The DOD has authorized the transfer and use of excess Federal property to the State/LEA and as such reserves the right to recall any and all property issued through the 1033 or 1208 Programs. As stipulated in Federal regulation, title may be conditionally granted to the State/LEA upon receipt of the property, however approval will be considered on a case by case basis. A memorandum must be submitted to the Director of LESO requesting approval before the disposal, sale, auction, trade-in, salvage or transfer of any 1033 or 1208 property can occur. Property will not physically move until the approval process is complete. Costs of shipping or repossession of the excess DOD personal property by the U.S. Government will be borne by the

LEA. To the extent permitted by law, the State Coordinator/LEA shall indemnify and hold the U.S. Government harmless from any and all actions, claims, debts, demands, judgments, liabilities, cost, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property and injuries, illness or disabilities to or death of any and all persons whatsoever, including members of the general public, or to the property of any legal or political entity including states, local and interstate bodies, in any manner caused by or contributed to by the State/LEA, its agents, servants, employees, or any person subject to its control while in, upon or about the sale site and/or the site on which the property is located, or while the property is in the possession of, used by or subject to the control of the State/LEA, its agents, servants, or employees after the property has been removed from U.S. Government control. The State will maintain or assure that the LEA maintains adequate insurance to cover damages or injuries to persons or property relating to the use of the property. Self-insurance by the State/LEA is considered acceptable. The U.S. Government assumes no liability for damages or injuries to any person(s) or property arising from the use of the property.

All excess DOD personal property will be managed utilizing property accounting records. These records will be concise, accurate, and be able to provide timely and relevant information. Records will be maintained in accordance with the DLA Record Management Procedures and Records (DLA Directive (DLAD) 5025.30 - See Appendix).

The DLA LESO will conduct an OER for all Federal Agencies, States, and U.S. Territories enrolled in the 1033 Program every two (2) years. If a Federal Agency, State, or U.S. Territory fails an OER, the DLA LESO will temporarily suspend their operations. If a Federal Agency, State, or U.S. Territory fails to correct identified deficiencies the DLA LESO will permanently suspend their operations. The Federal Agency, State, or U.S. Territory will bear all expenses related to the turn-in to the nearest DRMO, the transfer to an approved Federal Agency, State, or U.S. Territory or the disposal of all excess DOD personal property.

All property missing, lost, stolen, damaged, or destroyed must be reported to the DLA LESO. Excess DOD personal property with a Demilitarization Code of C, D, E, F, or G must be reported to the DLA LESO within twenty-four (24) hours. Excess DOD personal property with a Demilitarization Code of A, B, or Q must be reported to the DLA LESO within seven (7) days. Extensions will be granted on a case by case basis.

In the event of a domestic disaster, accountability of excess DOD personal property must be conducted by every Federal Agency, State, and U.S. Territory within the effected area. Excess DOD personal property with a Demilitarization Code of C, D, E, F, or G must be reported to the DLA LESO within seven (7) days. Excess DOD personal property with a Demilitarization Code of A, B, or Q must be reported to the DLA LESO within thirty (30) days. Extensions will be granted on a case by case basis.

All aircraft (fixed wing and rotary wing), Flight Safety Critical Aircraft Parts (FSCAP), Demilitarization required Munitions List Items (MLI), Commerce Control List Items (CCLI) may be transferred to the State for its use in law enforcement activities. The State Plan of Operation must ensure that all LEAs and all subsequent users are aware of and agree to

provide all required controls in accordance with applicable laws and regulations for these items. Additionally, the following conditions apply:

A. LEAs may transfer aircraft and FSCAP with other authorized LEAs, provided the aircraft and components are maintained in accordance with applicable airworthiness standards and procedures for maintenance and repair and provided further that the LEAs perpetuate repair and maintenance documentation. The LEA must request the transfer of aircraft and FSCAP through the State Coordinator, who in turn must request approval from the LESO. Aircraft and FSCAP will not physically move until the approval process is complete. All costs related to the transfer of aircraft and FSCAP will be borne by the State/LEA.

B. LEAs may transfer FSCAP and MLI items requiring demilitarization (Demilitarization Codes C, D, E, and F) to another authorized LEA within their State or they must be turned-in to the nearest DRMO when no longer required for law enforcement use. The LEA must request the transfer or turn-in of FSCAP and MLI items through the State Coordinator, who in turn must request approval from the LESO. Aircraft and FSCAP will not physically move until the approval process is complete. All costs related to the transfer or turn-in of FSCAP and MLI items will be borne by the State/LEA.

C. LEAs enrolled in the 1208 Program can sell, trade or barter aircraft and aircraft parts issued on or before September 30, 1996. LEAs that received aircraft or aircraft parts after September 30, 1996 have the following options: retain the aircraft or aircraft parts, transfer them to another LEA or turn them in to the nearest DRMO. The LEA must request to sell, trade, barter, transfer or turn-in aircraft and aircraft parts through the State Coordinator, who in turn must request approval from the LESO. Aircraft and aircraft parts will not physically move until the approval process is complete. All costs related to the sell, trade, barter, transfer or turn-in will be borne by the State/LEA.

LEAs may transfer weapons provided through the 1033 or 1208 Program to an authorized LEA within their State, to an authorized LEA in another participating State, or they must turn-in their weapons to the U.S. Army Tank-Automotive and Armaments Command (TACOM) when no longer required for law enforcement use. The LEA must request the transfer or turn-in of weapons through the State Coordinator, who in turn must request approval from the LESO. Weapons will not physically move until the approval process is complete. All costs related to the transfer or turn-in of weapons will be borne by the State/LEA.

When the State Coordinator/LEAs no longer require MLI/CCLI (Demilitarization B and Q), the State Coordinator/LEA must transfer the equipment to another authorized LEA or turn-in to the nearest DRMO. The State Plan of Operation must reflect these two options. The LEA must request the transfer or turn-in to the nearest DRMO through the State Coordinator, who in turn must request approval from LESO. MLI/CCLI (Demilitarization Codes B and Q) property will not physically move until the approval process is complete. All costs related to transfer, turn-in, or disposal of property will be borne by the State/LEA.

Except where indicated in this MOA, the State/LEAs may transfer, turn-in to the nearest DRMO, or dispose of other types of property (Demilitarization Code A items) in accordance with applicable Federal, State, and local laws when it is determined that the State/LEA no longer requires the property for law enforcement use. The LEA must request the transfer, turn-in to the nearest DRMO, or disposal through the State Coordinator, who in turn must request approval from LESO. Demilitarization Code A property will not physically move until the approval process is complete. All costs related to transfer, turn-in, or disposal of property will be borne by the State/LEA.

By signing this MOA or accepting excess DOD personal property under this MOA, the State pledges that it and each LEA agrees to comply with applicable provisions of the following national policies prohibiting discrimination:

- A. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) as implemented by DOD regulations 32 CR Part 195.
- B. On the basis of age, in the Age Discrimination Act of 1975 (42 USC 6101, et seq) as implemented by Department of Health and Human Services regulations in 45 CFR Part 90.
- C. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, P.L. 93-516 (29 U.S.C. 794), as implemented by Department of Justice regulations in 28 CFR Part 41 and DOD regulations at 32 CFR Part 56.

These elements are considered the minimum essential ingredients for establishment of a satisfactory business agreement between the State and the DOD. The State Plan of Operation is subject to Federal review and will require DLA LESO approval prior to any subsequent transfer of excess DOD personal property.

THE DLA LESO SHALL:

- 1. Maintain an accessible website that will provide timely and accurate guidance, information, and links for all individuals who work or have an interest in the 1033 Program.
- 2. Receive and approve/disapprove applications for participation by a State in the 1033 Program.
 - A. Receive and approve/disapprove applications for an approved State to conduct a TDP. Approved States will receive an Authorization Letter from DLA LESO.
 - B. Receive and approve/disapprove applications for an approved State to conduct a CRS. Approved States will receive an Authorization Letter from DLA LESO.
 - C. Maintain a current and accurate approved/disapproved list of all State Coordinators and all State POCs.

3. Receive and approve/disapprove applications for participation by a LEA in the 1033 Program.
 - A. LEAs must be certified by their State Coordinator as having powers of arrest and apprehension.
4. Provide a comprehensive overview of the 1033 Program to all State Coordinators prior to or within thirty (30) days of their assumption of their duties.
 - A. Encourage and assist State Coordinators and LEAs in the use of electronic screening of the Defense Reutilization and Marketing Service (DRMS) world-wide inventory and the procedures to search for, identify, and request property.
 - B. Encourage and assist State Coordinators and LEAs with scheduling formalized instruction from the DLA/LESO and/or DRMS.
5. Upon receipt of a valid Request for property through LESO Automation, ensure equitable distribution and proper identification of the property.
 - A. Identify High Profile (Weapons/Night Vision Devices (NVDs), Aircraft/Watercraft, High Mobility Multi-Purpose Wheeled Vehicles (HMMWVs)/Armored Personnel Carriers (APCs)), High Value (Acquisition Cost of \$20,000 or more) and/or High Awareness (Demilitarization required, MLI, CCLI, FSCAP) property, and then issue-free of charge-to the State Coordinator or designee for further transfer to an authorized LEA. All transportation costs will be borne by the State/LEA.
 - B. Provide the State Coordinator/LEAs with the available flight historical records and related documentation to FSCAP components. This documentation will be available for inspection by LEAs prior to transfer. The documentation will be sufficient to be accepted by a Federal Aviation Administration (FAA) authorized repair facility for evaluation and possible determination for use on an aircraft. DOD makes no representation as to the property's conformance to FAA requirements. The LEA must subject the assets to safety inspection, repair, and/or overhaul by a competent manufacturer or other entity such as those certified by the FAA prior to placing into use. The property that is provided to the State Coordinator/LEA may not meet FAA design standards, and/or may have been operated outside the limitations required by the Federal Aviation Regulations.
6. Maintain all records in accordance with the DLA Record Management Procedures and Records (DLAD 5025.30 - See Appendix). All files records, with the exception of consumable items, will be retained for five (5) fiscal years (Example: October 1, 2007 to September 30, 2008 constitutes a fiscal year).
 - A. All excess DOD personal property records of consumable items will have their files maintained in an active status for (1) year, then placed in an inactive status for (1) year, then may be destroyed.

B. All excess DOD personal property records that are more than five (5) fiscal years old may be purged with the exception of Demilitarization Code B through Q excess DOD personal property, property deemed "sensitive to theft", and property deemed "high dollar". The DLA LESO defines "high dollar" as excess DOD personal property that has an Acquisition Value of more than \$20,000.

C. All excess DOD personal property with a Demilitarization Code A will have their files maintained in an active status for two (2) years, then placed in an inactive status for three (3) additional years, then may be destroyed.

D. All excess DOD personal property with a Demilitarization Code B through Q will have their files maintained through the life cycle of the property. If an item is approved for turn-in, transfer, or disposal, then the file will move to an inactive status and will be maintained for an additional three (3) fiscal years, then may be destroyed.

7. Maintain LESO Automation to approve/disapprove transfer, turn-in, and disposal requests from a State/LEA.

A. Assist State Coordinators with request procedures.

B. Assist State Coordinators/LEAs with transfer, turn-in, and disposal procedures.

8. Provide Reconciliation Reports through the Law Enforcement Equipment Database System (LEEDS) so that State Coordinators and DLA LESO can conduct monthly reconciliations of property records.

9. Validate the accountability of all High Profile (Weapons/NVDs, Aircraft/Watercraft, HMMWVs/APCs), High Value (Acquisition Cost of \$20,000 or more) and/or High Awareness (Demilitarization required, MLI, CCLI, FSCAP) property annually with the State Coordinator.

10. Validate the accountability of all High Profile (Weapons/NVDs, Aircraft/Watercraft, HMMWVs/APCs), High Value (Acquisition Cost of \$20,000 or more) and/or High Awareness (Demilitarization required, MLI, CCLI, FSCAP) property with the State Coordinator following a domestic disaster within the timeframes established in this MOA.

11. Conduct an OER of each State participating in the program, at a minimum, every two (2) years or as needed. OER results will be provided electronically and in hard copy within thirty (30) days.

A. If a State fails an OER, they will be verbally notified by DLA LESO that their operations have been suspended. The OER results will be provided within fourteen (14) days.

B. The State Coordinator will have twenty-one (21) days to draft a Corrective Action Plan for approval/disapproval by the DLA LESO. The State Coordinator has ninety (90) days to implement an approved Corrective Action Plan. At, or before the end of the

ninety (90) day Corrective Action Plan, the State Coordinator should schedule a second OER with the DLA LESO. Failure to properly execute the Corrective Action Plan and receive a Mission Capable grade on a second OER may result in termination from the 1033 Program.

C. If a State is terminated from the 1033 Program, the State/LEA will bear all expenses related to the turn-in to the nearest DRMO, the transfer to an approved Federal Agency, State, or U.S. Territory or the disposal of all excess DOD personal property.

12. Suspend or terminate a State from the 1033 Program if a State Coordinator or a LEA materially fails to comply with any term of this MOA, any Federal statute or regulation, any assurance provided in a State Plan of Operation or application, or a State MOA with a LEA.

A. Temporarily Suspend Operations-Pending Review (TSO-PR): withhold approval of excess DOD property or release of property under previously approved requests, transfers, turn-ins, or disposals pending administrative or legal review by the DLA LESO or appropriate Federal or State agency and/or LEAs.

B. Temporarily Suspend Operations-Pending Deficiency Corrections (TSO-PD): withhold approval of excess DOD property or release of property under previously approved requests, transfers, turn-ins, or disposals pending correction of administrative or legal deficiencies identified by the DLA LESO or appropriate Federal or State agency and/or LEAs.

C. Suspend Operations (SO): withhold approval of excess DOD property or release of property under previously approved requests, transfers, turn-ins, or disposals until major deficiencies are corrected and personnel changes are effected as recommended following administrative or legal review/action by the DLA LESO or appropriate Federal or State agency and/or LEAs.

D. Terminate Operations (TO): at the expense of the State/LEA(s) require the State Coordinator and/or identified LEA(s) to transfer, turn-in, or dispose of all property previously received through the 1033 or 1208 Program. DLA LESO will provide oversight.

THE STATE SHALL:

1. Access the DLA LESO website on a weekly basis for timely and accurate guidance, information, and links concerning the 1033 Program and ensure that all relevant information is passed on to participating LEAs.
2. Create a comprehensive State Plan of Operation, forward to the DLA LESO for approval/disapproval, and implement to conduct operations in accordance with the regulations of the 1033 Program. Maintain the approved MOA and State Plan of Operation on file.

- A. If operating as a TDP, create a comprehensive TDP Plan of Operation, forward to the DLA LESO for approval/disapproval, and implement to conduct operations in accordance with regulations of the 1033 Program. Maintain TDP Authorization Letter and TDP Plan of Operation on file.
 - B. If operating as a CRS, create a comprehensive CRS Plan of Operation, forward to the DLA LESO for approval/disapproval, and implement to conduct operations in accordance with regulations of the 1033 Program. Maintain CRS Authorization Letter and CRS Plan of Operation on file.
 - C. Ensure the DLA LESO has a current and accurate listing of the State Coordinator and State POC Listing. Allow a maximum of four (4) screeners. The screeners must be full-time and/or part-time, sworn and/or non-sworn officers, per LEA performing this duty. The screeners must be named in a "Data Sheet", provided and approved by the State Coordinator, and approved by the DLA LESO and in the LEEDS/LEA File. Notify DLA LESO immediately upon notification of change of Governor or State Coordinator.
 - D. Enter into written agreement with each LEA, via the State Plan of Operation, to assure they fully comply with the terms, conditions, and limitations applicable to property transferred pursuant to this agreement. The State Plan of Operation must be signed by the Chief Law Enforcement Officer of the respective LEA.
3. Receive and approve/disapprove applications for participation by a LEA in the 1033 Program.
- A. The State Coordinator will only certify LEAs that have powers of arrest and apprehension.
4. Provide a comprehensive overview of the 1033 Program to all LEAs once they are approved.
- A. Encourage and assist LEAs in the use of electronic screening of DRMS world-wide inventory and the procedures to search for, identify, and request property.
 - B. Encourage and assist LEAs with scheduling formalized instruction from the State Coordinator, DLA LESO and/or DRMS.
5. Create requests or upon receipt of a valid Request for property from a LEA, ensure equitable distribution within the State and properly identify all property. Properly justify all requests and ensure identification of TDP, CRS or LEA.
- A. Ensure LEAs are aware that High Profile (Weapons/NVDs, Aircraft/Watercraft, HMMWVs/APCs), High Value (Acquisition Cost of \$20,000 or more) and/or High Awareness (Demilitarization required, MLI, CCLI, FSCAP) property is identified by DLA LESO and is subject to additional controls.
 - B. Request from the DLA LESO all available flight historical records and related documentation to FSCAP components. This documentation will be available for

inspection by LEAs prior to transfer. The documentation will be sufficient to be accepted by a FAA authorized repair facility for evaluation and possible determination for use on an aircraft. DOD makes no representation as to the property's conformance to FAA requirements. The LEA must subject the assets to safety inspection, repair, and/or overhaul by a competent manufacturer or other entity such as those certified by the FAA prior to placing into use. The property that is provided to the State Coordinator/LEA may not meet FAA design standards, and/or may have been operated outside the limitations required by the Federal Aviation Regulations.

C. If a State/LEA request is approved, the State Coordinator or a designee will receipt for property-free of charge-for a TDP (if approved), CRS (if approved), or further transfer to an authorized LEA. All transportation costs will be borne by the State/LEA.

D. The State Coordinator will bear responsibility for the allocation, receipt, transfer, turn-in, and disposal of all excess DOD property received through the 1033 Program (TDP, CRS, or LEA).

6. Maintain all records in accordance with the DLA Record Management Procedures and Records (DLAD 5025.30 - See Appendix). All files records, with the exception of consumable items, will be retained for five (5) fiscal years (October 1, 2007 to September 30, 2008 constitutes a fiscal year). These records must provide an audit trail for all excess DOD property from receipt "cradle" to transfer, turn-in, or disposal "grave". These documents include, but are not limited to the following: DRMS Form 103 (Screener Tally Sheet) optional for TDPs, with all justifications or printouts of automated requests, DD Form 1348 (Disposal Turn-In Document (DTID)), all requests for transfer, turn-in, or disposal, approved Bureau of Alcohol, Tobacco, and Firearms (ATF) Form 5, ATF Form 10, Certificate of Aircraft Registration (AC Form 8050-3), Aircraft Registration Application (AC 8050-1) and any pertinent documentation associated with the 1033 Program.

A. All excess DOD personal property records of consumable items will have their files maintained in an active status for (1) year, then placed in an inactive status for (1) year, then may be destroyed.

B. All excess DOD personal property records that are more than five (5) fiscal years old may be purged with the exception of Demilitarization Code B through Q excess DOD personal property, property deemed "sensitive to theft", and property deemed "high dollar". The DLA LESO defines "high dollar" as excess DOD personal property that has an Acquisition Value of more than \$20,000.

C. All excess DOD personal property with a Demilitarization Code A will have their files maintained in an active status for two (2) years, then placed in an inactive status for three (3) additional years, then may be destroyed.

D. All excess DOD personal property with a Demilitarization Code B through Q will have their files maintained through the life cycle of the property. If an item is approved

for turn-in, transfer, or disposal, then the file will move to an inactive status and will be maintained for an additional three (3) fiscal years, then may be destroyed.

E. The records must also satisfy any and all pertinent requirements under applicable Federal statutes and regulations for the 1033 Program and for this property.

7. Maintain access to LESO Automation to approve/disapprove transfer, turn-in, and disposal requests from an LEA or to generate these requests at the State level and forward, all approvals to the DLA LESO for action.

A. Assist the LEAs with request procedures.

B. Assist the LEAs with transfer, turn-in, and disposal procedures.

8. Review Reconciliation Reports through LEEDS and conduct monthly reconciliations of property records.

9. Validate the accountability of all High Profile (Weapons/NVDs, Aircraft/Watercraft, HMMWVs/APCs), High Value (Acquisition Cost of \$20,000 or more) and/or High Awareness (Demilitarization required, MLI, CCLI, FSCAP) property annually with each LEA by having them conduct and certify a physical inventory. All inventories will be maintained on file indefinitely.

10. Validate the accountability of all High Profile (Weapons/NVDs, Aircraft/Watercraft, HMMWVs/APCs), High Value (Acquisition Cost of \$20,000 or more) and/or High Awareness (Demilitarization required, MLI, CCLI, FSCAP) property with each LEA following a domestic disaster within the timeframes established in this MOA by having them conduct and certify a physical inventory. All inventories will be maintained on file indefinitely.

11. Conduct an OER of LEAs participating in the program in order to ensure accountability, responsibility, and program compliance.

12. Suspend or terminate a LEA from the 1033 Program if a LEA materially fails to comply with any term of this MOA, any Federal statute or regulation, any assurance provided in a State Plan of Operation or application, or a State MOA with an LEA. Report all LEA terminations to the DLA LESO immediately upon termination.

NOTICES:

Any notices, communications or correspondence related to this agreement shall be provided by the United States Postal Service, express service, or facsimile to the cognizant DLA office. The DLA LESO, may, from time to time, propose modifications or amendments to the provisions of this MOA. In such cases, reasonable opportunity will, insofar as practicable, be afforded the State Coordinator to conform changes affecting their operations.

TERMINATION:

This MOA may be terminated by either party, provided the other party receives thirty (30) days notice, in writing, or as otherwise stipulated by Public Law.

The undersigned State Coordinator hereby agrees to comply with all provisions set forth herein and acknowledges that any violation of the terms and conditions of this MOA may be grounds for immediate termination and possible legal consequences, to include pursuit of criminal prosecution if so warranted.

IN WITNESS THEREOF, the parties hereto have executed this agreement as of the last date written below.

Type/Print State Coordinator Name

State Coordinator Signature

Date (MM/DD/YYYY)

Type/Print DLA/LESO Representative Name

DLA/LESO Representative Signature

Date (MM/DD/YYYY)

Attachment

Appendix C

Examples of SWAT incident reports and weapons transfers received in connection with the ACLU's investigation

Examples include:

- A Concord, North Carolina, threat matrix, showing that a person's religious views is a factor in determining whether SWAT should be deployed in that city
- A SWAT incident report from El Paso, Texas, describing a SWAT raid in which the squad used a Bearcat APC to break through the door of a man known to suffer from mental illness, after already forcing entry through multiple other sites and shattering a sliding glass door, then beat and tased the obviously-confused man
- Documentation of receipt by the Keene, New Hampshire, Police Department of the purchase of a Lenco Bearcat APC, using homeland security funds
- A SWAT incident report from New Haven, Connecticut, describing a nighttime SWAT raid in which the squad arrived at the home in a Bearcat APC, broke down the front door with a battering ram, deployed a distraction device inside the home, and detained two people inside a home, but did not report finding any weapons or evidence
- Documentation of receipt by the North Little Rock, Arkansas, Police Department of two Marcbots (robots capable of being armed) and a Mamba tactical vehicle
- A training document from the National Tactical Officer's Association showing that officers are being trained to have a soldier mentality

Concord Police Department
Threat Matrix Assessment for SOT Activation for Warrant Service

Warrant Type and Location
75 Kerr St NW Concord NC

Date: 06-21-2012

Investigator Responsible:
Detective Kelly Seagraves

Supervisor Approval:

Tactical Commander Approval:

Location Factor Points

Multiple persons present X
Armed Counter Surveillance
Chemicals /Lab
Children on site X
Counter Surveillance
Dogs X
Vicious Dogs
Fortifications
Geographic Barriers
Possible Booby Traps
Security screens
Burglar bars
Use of Undercover Personnel
Video/Audio counter surveillance

General Risk Factors

Drug / Alcohol Abuse / Use X
Hate Group
Gang Association X
Terrorist
Suicidal
Mentally Unstable
Military Experience
Police Experience
Militia
Religious extremist

Weapon Factors

Assault Weapons
Explosives
Fully Automatic Weapons
Pistol
Revolver
Rifle
Shotgun
Edged Weapon / Instrument

Suspect Criminal History

Homicide
ADW
ADW On Officer
Resist Obstruct Delay X
Firearms X
Robbery
Sexual Assault
Probation / Parole X
Drugs X

Operation Risk Level

Level I (Low) 0-20
Level II (Moderate) 21-39
Level III (High) 40 +

Total Points Assessed _____
Risk Level Assessed _____



**EL PASO POLICE DEPARTMENT
SUPERVISOR'S DAILY LOG**

| | | |
|----------------------------------|--|--------|
| Name: Sgt. Gabriel Peralta #1923 | Date: 02-14-12 | Page 2 |
| Division: O.S.S.D | Type of Incident: Forced Entry | |
| Section: SWAT | If other, please specify: Use of Force - Taser and LLBB Use of Force- Hard Empty Hand | |

Date of Incident: 02-14-12 Time of Incident: 0015 Address of occurrence: 3022 Dublin

Involved Employee Name 1: Abascal, Victor ID # 1: 2231
 Involved Employee Name 2: Guerra, Alex ID # 2: 2078
 Peralta, Gabe ID# 3: 1923

Citizen's Complaint: Yes No Case Number: 12-044/225

Subject or Citizen's Name: [REDACTED]
 Address: [REDACTED]
 Phone: [REDACTED]

Brief explanation of events:
 SWAT Team members responded to the listed address reference to a barricaded subject with a weapon call. Operators were provided information from Command Post that the listed subject was a mental health patient diagnosed with paranoid schizophrenia. After failed negotiations and deployment of chemical agents, operators were able to restrict the movement of subject [REDACTED] to the garage area. Operators made make forced entry through multiple entry sites, the front door was pushed inward into the house using the BearCat push bar. The sliding glass door was shattered using two less lethal rounds.

Operators designated an arrest team, less lethal and lethal team to confront subject [REDACTED]. After several loud verbal commands to surrender and to visably show his hands to officers [REDACTED] refused to comply. Officer Guerra deployed two less leathal bean bag rounds, one to subjects left upper thigh and left upper bicep. Officers did not get the desired results, due to subject still refusing to show his hands. Officer Abascal followed up with a Taser cartridge deployment, which struck [REDACTED] in the middle back area.

This temporarily impaired [REDACTED] so officers could affect an arrest. [REDACTED] refused to comply and actively resisted officer from placing handcuffs on him. While officers were attempting to place [REDACTED] hands behind him, Sgt.Peralta struck [REDACTED] in the face with a closed fist. Sgt. Peralta received the desired results because [REDACTED] immediately stopped resisting and provided officers his hands. [REDACTED] was subsequently taken into custody and released to patrol officers. Patrol officers obtained a medical release from Del Sol Hospital and was later booked into EPCDF. Lt. Ransom and Sgt. Law were advised on tactics used to subdue [REDACTED].

**It should be noted that complete details of damage to the residence is documented in the After Action Report created by Sgt. Mark Fernandez. Taser No# X00-055316 was taken to IAD and memory log down loaded.

CC: Risk Management

Attachments: None Enclosed

List below:

Use of Force Template - Taser

Use of Force Template - Less Lethal Bean Bag

Supervisor Taser Use Report

Event Call Card - Event #P2012079596 & #P2012079759

8- Photographs of [REDACTED] injuries

54-Photographs of damages to residence

Copy of After Action Report

Comments:

Shift Commander: Lt. David Ranson

Date: 2/14/2012

Division Commander's Use Only:

Counseling

Training

Entered into Personnel File

Complaint Requires Additional Follow-Up

Initiate PID

Complaint Resolved

Approved

Forward to:

Comments:

Division Commander: _____

Date: _____

EPPD 36-15-123 REV 07/2006

035242



City of Keene

Police Department 400 Marlboro Street New Hampshire 03431

PRESS RELEASE

Keene Police Department Special Mission Rescue Vehicle Acquisition

November 20th, 2012

On Friday, November 16th, 2012, members of the Keene Police Department and the City's Fleet Services took possession of the Department's Special Mission Rescue Vehicle from Lenco Industries. Lenco provided training on the vehicle and its equipment prior to release of the vehicle.

On that date the vehicle was dropped off with a private contractor to have a police radio installed. This is the only additional piece of equipment needed that the vehicle did not come built and equipped with.

Upon completion of the radio installation on Tuesday, November 20th, 2012, the vehicle was driven to the Keene Police Department and placed into service.

Training on the vehicle and its on-board equipment and capabilities will be ongoing. This vehicle was purchased through Department of Homeland Security and the New Hampshire Department of Safety – Grants management unit grant funding upon approval of the City Council.

Information concerning any incident may be provided anonymously via email on our website at:

<http://www.ci.keene.nh.us/departments/police/anonymous-crime-tips>

045225

**NH Department of Safety - Grants Management Unit
FY 2010 Homeland Security Grant Application**

Please address all points in sequence. The NH State Strategy is approved to support the preparedness, prevention, protection and recovery needs of NH's PRIMARY First Responders (see http://www.nh.gov/safety/divisions/homeland/2009/eye_summary.html). Responses should include all jurisdictions participating in the applications. Responses to each Section should be labeled; however do not exceed page limits for each Section. Please use the standard Times New Roman font, 12 pt. with 1" margins.

SECTION I: STRATEGY

(Maximum of 3 pages- use the letter for information pertaining to each Key item)

Describe your problem and solution in three pages or less. This narrative should include the following:

A. The acquisition of a **Specialized Mission CBRNE/WMD Rescue Vehicle** will help to guard against a terrorist or CBRNE/WMD incident as the vehicle is capable of deflecting blast fragmentation behind a wall of shielding, thereby protecting support and/or rescue personnel. This ability allows specialized personnel to respond to or enter into an area and effectively diffuse or render harmless any terrorist or CBRNE/WMD situation thus limiting a potential mass casualty incident.

The vehicle will be equipped with the latest in Radiation Detection and Explosive Gas Detection equipment to further enhance the safety and capabilities of the mission personnel. The vehicle will be equipped with a radio system that will meet APCO (Association of Public Safety Communications Officials) Project 25 specifications, assuring the interoperability between law enforcement and fire agencies throughout the State of New Hampshire. The system capable of integrating with future system designs.

B. The terrorism threat is far reaching and often unforeseen. Terrorist's goals, regardless of affiliation, usually encompass the creation of fear among the public, convincing the public that their Government is powerless to stop the terrorists, and get immediate publicity for their cause. Keene currently hosts several large public functions to include: an annual Pumpkin Festival, which draws upwards of 70,000 patrons to the City, the Clarence DeMar Marathon which has been held for the last 33 years and is an official qualifying race for the US Olympic Time trials as well as an official qualifying race for the Boston Marathon. This race brings in runners and spectators from all over the United States. Keene State College, part of the university system of New Hampshire, is located in the downtown area of the City of Keene and brings 6000 students to its environs daily. There are other city events that draw large crowds and all are susceptible to terrorist attacks. It is known that the use of Radiological Dispersion Devices by terrorists is much more likely than the use of a nuclear device. Cheshire County currently does not have a transport vehicle capable of protecting personnel in a critical incident or measure such radiation. The closest Specialized Mission Vehicle is well over 1 hour away and this does not include the time it takes to mobilize and prepare the personnel necessary to drive it to Cheshire County.

Highways passing through Keene, Routes 9 and 101, provide the major east/west corridor for trucking from Interstate 91 in Vermont to the Concord, Manchester, Nashua and the seacoast. Many of these trucks carry hazardous materials and are subject to terrorism, natural disasters and motor vehicle accidents.

045240

SPECIAL WEAPON AND TACTICS

AFTER ACTION REPORT

| | | |
|-----------------------------------|----------------------|--------------------|
| Case Number: 13-7061 | District: 6 | |
| Date of Operation: 02/15/2013 | Time Initiated: 1054 | Time Secured: 1116 |
| Location of Operation: [REDACTED] | | |

TYPE OF OPERATION

| | | | |
|---|--|---------------------------------------|--------------------------------|
| <input type="checkbox"/> Arrest Warrant | <input checked="" type="checkbox"/> Search Warrant | <input type="checkbox"/> Vehicle Stop | <input type="checkbox"/> Other |
|---|--|---------------------------------------|--------------------------------|

REPORT

Explain Activity (Route, Point of entry, Tools used , Activity upon gaining entry)

Members of the New Haven Police Shooting Task Force secured a search warrant for [REDACTED] NHPD SWAT was briefed at 710 Sherman PKWY along with NHPD investigators. NHPD SWAT travelled to this target location utilizing the Bearcat. NHPD SWAT deployed from the vehicle in front of the residence. The front common door was breached utilizing a one man battering ram. Two subjects were detained within the residence. NHPD SWAT secured the location until relieved by New Haven Patrol and investigators.

Subjects located on scene (Arrested, Detained, Interviewed):

- 1 Males
- 1 Female
- 1 Infant Male

Diversion used (Distraction device, Other):
Distraction device deployed within residence

Damage to property (Front door, broken windows, equipment):

First floor front interior door

CITY OF NEW HAVEN
DEPARTMENT OF POLICE SERVICES

Injuries: (LEO, Subjects):
No reported injuries during execution.

Weapons Located (Firearms, Other):

Evidence Located:

Prepared By: Officer D. Acosta Jr.

Reviewed By: _____
SWAT Commander

Approved By: _____
OIC

This Document has been prepared by the New Haven Police Department
FOR LAW ENFORCEMENT USE ONLY



**ARKANSAS 1033 PROGRAM
OPERATIONAL EFFECTIVENESS REVIEW**



AGENCY INFORMATION

LAW ENFORCEMENT AGENCY (LEA): North Little Rock Police Department

DATE OF VISIT: 11/2/2011

LEA POINT OF CONTACT: John Breckon, Lieutenant

LEA ID: AR18787

STATE LESO REPRESENTATIVE: Tim Hicks, Arkansas LESO Manager

NEXT OER DUE: 2016

LESO FOLDER CONTENTS

| FOLDER ITEM | YES | NO | N/A | COMMENTS |
|--|-----|----|-----|--|
| LESO APPROVAL LETTER | X | | | Needs to be updated. |
| LAW ENFORCEMENT AGENCY (LEA) APPLICATION | X | | | Needs to be updated. |
| ARKANSAS STATE OPERATION PLAN (SIGNED PAGE 13) | X | | | Needs to be updated. |
| DD FORM 103 | | | X | |
| DD FORM 1348 RECEIPT | X | | | |
| DD FORM 1348 TURN IN | | | X | |
| DISPOSAL DOCUMENTATION | | | X | |
| TRANSFER DOCUMENTATION | X | | | |
| ATF FORM 10 (REQUIRED AFTER ACQUISITION) | | X | | No copies on file at the State LESO Office |
| ATF FORM 5 (REQUIRED AFTER TRANSFER) | | | X | |
| AC FORM 8050-1, CERTIFICATE OF AIRCRAFT REGISTRATION | | | X | |
| INVENTORY SUMMARY | X | | | Some items are no longer accounted for. |

PHYSICAL INVENTORY CHECK & RECONCILIATION

| PROPERTY | LEEDS | ON HAND | EXPLANATION OF DIFFERENCE |
|----------------|-------|---------|---------------------------|
| AIRCRAFT | 0 | 0 | N/A |
| APC | 0 | 0 | N/A |
| WEAPONS | 24 | 24 | N/A |
| OTHER VEHICLES | 1 | 1 | N/A |
| HMMWVS | 0 | 0 | N/A |
| WATERCRAFT | 0 | 0 | N/A |

VISIT OVERVIEW

I met with Lieutenant John Breckon at approximately 10:00 hours at the North Little Rock Police Department. I visually inspected (1), Rifle, 5.56 Millimeter, Serial Number 4791495. The remaining weapons are stored in a secure room and issued for officer use. Lt Breckon had a log available reflecting the weapon serial number and the individual whom it is issued to. Each weapon in the inventory has a metal tag attached for accountability and a photograph is attached as an example. Lt. Breckon maintains files for all 1033 Program actions to include a weapons folder, equipment folder, vehicle folder, and application folder. A review was conducted of the equipment listed on inventory and several items obtained during the 1990s are unaccounted for. The procedure for property adjustment was explained and Lt. Breckon was given the necessary forms to complete the request. Also noted was the fact the LESO Application for Participation is outdated along with the State Memorandum of Agreement. Those forms were also provided during the visit. Lt. Breckon took me to the city garage where the department's latest acquisition is being repaired and updated. The Mamba Tactical Wheeled Vehicle, DTID H9DEB112816796, was inspected and photographed from the front and the driver's side (front); no data plate could be located. (Photographs are attached.) The department is in need of a repair/maintenance manual. Ms. Madden, LESO Vehicle Lead, was contacted and she stated no manuals are available through them, to contact the manufacturer. Overall had a great visit and expect no issues in regards to accountability of 1033 Program equipment or of accompanying paperwork.

<- 030613 ->

PRaise: Accountability of items is a major concern to Lt. Breckon, understands responsibilities associated with the 1033 program.

AREAS OF CONCERN: No real deficiencies were noted, accountability of equipment is high.

RECOMMENDATIONS: Update Application Forms and submit a Property Adjustment Request Form.

FOLLOW UP ACTIONS: None scheduled at this time.

CONCLUSION: The compliance review results were found to be: SATISFACTORY UNSATISFACTORY

Timothy F. Hicks, Law Enforcement Support Office (LESO) Manager

NAME & TITLE

SIGNATURE

<- 030614 ->

Not yet in service - Robots 2

DLA Disposition Services Law Enforcement Support Office
Transfer Request

CLEAR

Date of the Request: 2/12/13

| | | | |
|---|------------|--|------------|
| Releasing Agency: Little Rock Police Dept | ID: 2YTGUC | Receiving Agency: North Little Rock PD | ID: 2YT107 |
| Address: 700 West Markham | | Address: 200 W. PERSHING BLVD | |
| City, State, Zip: Little Rock, AR 72201 | | City, State, Zip: NORTH LITTLE ROCK, AR 72114 | |
| Phone: 501-371-4622 | | Phone: 501-812-5101 | |
| Releasing Agency Signature: <i>[Signature]</i> #11817 | | Receiving Agency Signature: <i>[Signature]</i> 1021 | |
| The below is N/A if the transfer is within the same State or Federal Agency | | | |
| State Coordinator/Federal Approval: YES <input checked="" type="radio"/> NO <input type="radio"/> | | State Coordinator/Federal Approval: YES <input type="radio"/> NO <input type="radio"/> | |
| Printed Name: <i>[Signature]</i> | | Printed Name: _____ | |
| Signature: <i>[Signature]</i> | | Signature: _____ | |

The State Coordinator or Federal Chief Executive Official must approve the transfer request. The property may not physically move until the LEA receives approval from the LESO. This form must be signed by the Releasing LEA and State Coordinator or Federal Chief Executive Official as well as the Receiving LEA and State Coordinator or Federal Chief Executive Official (only if the property is being transferred to another State or Federal Agency).

Additional Comments:

| | Item Name | NSN/Serial # | File # | DTID | Requisition Number | DEMIL CODE | QTY TO TRANSFER |
|---|---------------------------------|---------------|----------|----------------|--------------------|------------|-----------------|
| FOR LARGE QUANTITY INVENTORIES, A SPREADSHEET MAY BE CREATED AND SUBMITTED WITH THIS TEMPLATE | | | | | | | |
| 1 | Marcbot / Robot Exp. <i>old</i> | 1385015744707 | 23390429 | W90Y2523263006 | 2YTGUC23390429 | D | 1 |
| 2 | Marcbot / Robot Exp. <i>old</i> | 1385015744707 | 23390430 | W90Y2523263007 | 2YTGUC23390430 | D | 1 |
| 3 | | | | | | | |
| 4 | | | | | | | |
| 5 | | | | | | | |

LESO USE ONLY:

Adjustment Approved: YES NO Completed in LEEDS: YES NO

LESO OFFICIAL: _____ DATE: _____

Reason if Disapproved: _____

Version March 31, 2012

<- 030622 ->


C5 - RTD Program

Enclosure 8 - Letter of Authorization to Remove Property

Date: 10-13-2011

To: DRMO
DLA DISPOSITION SERVICES SITE
SIERRA ARMY DEPOT

From: LESO HEADQUARTERS
74 WASHINGTON AVE
BATTLE CREEK, MI

I, CASANDRA MADDEN the undersigned, hereby authorize
(PRINT NAME)
Susanville Towing to remove the below listed requisitions on my behalf.
(PRINT NAME)
Extent of Authority: To remove property.
SIGNATURE OF CUSTOMER: 
LIST ITEM(S) by Requisition/DTID Number:
ONLY ONE OF THE MAMBA ARMORED VEHICLES:
NS-33
Lt John Breckon
501-351-6686
501-812-5101
North Little Rock Police Department
North Little Rock Arkansas

The provisions of this publication apply to all Remaining Government personnel at impacted, non-impacted and non-competed sites. This publication may be mandatory or advisory to the MEO, as stipulated in or modified by the Performance Work Statement.

1033 Program Transfer Request



Date of the Request: _____

| | | | |
|--|------------|---|------------|
| Releasing Agency: LESO HEADQUARTERS | ID: | Receiving Agency: NORTH LITTLE ROCK PD | ID: |
| Address: 74 N. WASHINGTON AVE | | Address: 200 W. PERSHING BLVD | |
| City, State, Zip: BATTLE CREEK, MI | | City, State, Zip: NORTH LITTLE ROCK, AR | |
| Phone: 1-800-532-9945 | | Phone: -501-812-5101 | |
| Releasing Agency Signature: | | Receiving Agency Signature: | |
| <i>The below is N/A if the transfer is within the same State or Federal Agency</i> | | | |
| State Coordinator/Federal Approval: YES NO | | State Coordinator/Federal Approval: YES NO N/A | |
| Printed Name: CASANDRA MADDER | | Printed Name: L. J. | |
| Signature: | | Signature: | |

The State Coordinator or Federal Chief Executive Official must review and approve the transfer request. The property may not physically move until the LEA receives approval from the LESO. This form must be signed by the Releasing LEA and State Coordinator or Federal Chief Executive Official as well as the Receiving LEA and State Coordinator or Federal Chief Executive Official (only if the property is being transferred to another State or Federal Agency).

| | Item Name | NSN/Serial # | File # | DTID | Requisition Number | QTY | DEMIL Code |
|---|--------------------------|---------------|--------|------|--------------------|-----|------------|
| 1 | MAMBA TACT I CAL WHEELED | 235SDSCOMBTV2 | | | | 1 | D |
| 2 | | | | | | | |
| 3 | | | | | | | |
| 4 | | | | | | | |
| 5 | | | | | | | |
| 6 | | | | | | | |

LESO Use Only

Transfer approved by LESO: YES NO

Transfer complete in LEEDS: YES NO

The Transfer was not approved due to the following: _____

LESO Coordinator: _____ Date: _____

<- 030628 ->

TACTICAL MINDSET

*Not proud of taking a life
but realize satisfaction from
performing a task learned
through repetition and rehearsal.*

"Pride"

"teamwork"

"faith in teammates"

FEAR = EXILIRATING
NOT COWARDICE

PRACTICE - TRAINING - REPETITION
OVERCOMES FEAR

ACTION - REACTION - COUNTERACTION
WIN

Always Evolving
to scenario

over changing

Action can begin with officers
or suspects

SUSPECT THINKING RESIST
DOESN'T EXPECT OUR
COUNTERACTION

FBI Studies interviewing
predators indicated they
look for weaker targets in
suspects as well as officers

neat, "professional" squared away
in command
"ALPHA DCG"

DOMINATE THE SITUATION
PREVAIL

OODA Loop
Observe Orient Decide Act

TALK – FIGHT- SHOOT - LEAVE

“STEEL YOUR BATTLEMIND”



WHAT IS BATTLEMIND?

- A WARRIORS INNER STRENGTH TO FACE FEAR AND ADVERSITY DURING COMBAT WITH COURAGE. IT IS THE WILL TO PERSEVERE AND WIN. IT IS RESILIENCE.

- **EXPECT SUCCESS**

- OBSTACLES AND SETBACKS ARE PART OF LIFE

Appendix D

Fact Sheet: Responses on Excess Property Program



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221

JAN 14 2014

The Honorable Henry Johnson
U.S. House of Representatives
Washington, DC 20515

Dear Representative Johnson:

This letter is in response to your inquiry requesting additional information on military-grade equipment to civilian police through the Defense Logistics Agency (DLA) Law Enforcement Support Office (LESO) program. Attached is a Fact Sheet with responses to your questions.

If you have any additional questions regarding this issue or need further details, please contact Mr. Robert Wimple, Director, DLA Legislative Affairs at (703) 767-5264 or robert.wimple@dla.mil.

Sincerely and Very Respectfully,

A handwritten signature in black ink, appearing to read "Mark Harnitchek", is written over a horizontal line.

MARK HARNITCHEK
Vice Admiral, USN
Director

Attachment
As stated

FACT SHEET

SUBJECT: Responses on Excess Property Program for Representative Henry Johnson

DISCUSSION:

• ***In regards to your question, are new, used or both types of property transferred through the 1033 program? What percentage of new property is being transferred to law enforcement agencies? What percentage of the property is used?***

○ Both new and used property is issued through the 1033 program. Approximately 36% of the property issued is new and 64% is used

• ***What percentage of this property is military-grade weapons as opposed to non-military grade weapons?***

○ All weapons issued through the 1033 program are military grade.

• ***What does DLA do with the property not transferred to state and local law enforcement agencies?***

○ Excess DOD property is offered for reuse based on a priority cycle and the military services have the first priority before law enforcement agencies. If the property is not reutilized by those programs, it is offered to federal civil agencies and then to eligible state or local government recipients.

• ***Is there a Department of Defense budget line item associated with the 1033 Program? If so, what was that budget line for FY2011 and FY2012?***

○ Yes, FY2011 budget was \$2.1M and FY2012 budget was \$2.6M.

• ***According to various reports, DLA instituted a Moratorium on Weapons transactions in May of 2012. Is this or any other moratorium of the transfer of property or weapons in place?***

○ No, the moratorium was lifted in October 2013 based on a phased approach. States will be allowed to requisition weapons only if they are in good standing with LESO, receive all weapons into the LESO property accounting system, and provide photos of all weapons.

• ***How does DLA define the word "weapon" for the purposes of this moratorium?***

○ A weapon is defined as a firearm. The federal law that established the program uses the term "small arms" to define the kinds of firearms the Law Enforcement Support Office

can allocate to eligible law enforcement agencies. Small arms are considered those firearms that are .50 caliber and smaller.

- *What was the reason (s) for this moratorium? What is the scope of the moratorium (i.e., the entire country or certain jurisdiction?) Do you expect the moratorium to expire? If so, when?*

- The suspension was enacted to ensure mandatory inventories of all issued firearms were verified as required by the DLA Memorandum of Agreement with the State. The moratorium applied to all states that requisitioned property.

- *Does the moratorium apply to interagency transfers (i.e., transfers between state and local law enforcement agencies) or just to DLA transfers?*

- Weapons could be transferred between law enforcement agencies that were enrolled in the LESO Program when approved by the state coordinator and LESO.

- *What current federal statutes and regulations are recipients of unused military goods distributed through the 1033 program required to comply with in order to receive and maintain military property? Are there any specific regulations that apply to military weapons that are transferred under the program?*

- 10 USC 2576a states that the Secretary of Defense may transfer to Federal and State agencies personal property of the Department of Defense, including small arms and ammunition, that the Secretary determines is suitable for use by agencies in law enforcement activities, including counter-drug and counter-terrorism activities and is excess to the needs of the Department of Defense. The DLA Memorandum of Agreement outlines annual inventory and other requirements for weapons.

- *A September 14, 2012, article in USA Today (available at: <http://usatoday30.usatoday.com/news/nation/story/2012/09/14/ariz-sheriff-ordered-to-return-military-goods/57781594/1>) suggested that DLA was going to undertake a new rulemaking related to the 1033 program before the moratorium will be lifted. Is this correct? If the rulemaking has not occurred can you provide a citation to the new regulation? If not, what is the current status of the rulemaking?*

- The issues that led to the weapons moratorium led to changes in the DLA Memorandum of Agreement between the LESO and the States. Those revised Memorandum of Agreements are currently out for signature with the States. A copy of the agreement is provided.

- *According to the LESO website, the 1033 program required a biannual compliance review in which the law Enforcement Support program staff must “visit each state coordinator and assist him or her in ensuring that property accountability records are properly maintained, minimizing the potential for fraud, waste and abuse.” Is there any specific form, standard, or rubric used?*

- Yes. I have included a checklist that is used for compliance reviews.

- ***What criteria is used by the State Coordinator and LESO to approve or reject LEA requests for equipment? Does DLA have any performance metrics in terms of monitoring the recipients of equipment transferred through the 1033 program?***

- Governor-appointed state coordinators screen and recommend law enforcement agencies for participation. Requisitions for property are first approved by the state coordinator and then submitted to LESO with a justification that includes a brief description of law enforcement use. The LESO staff reviews each requisition, looking at such factors as the number of officers and the type and quantity of property requested, before items are approved. DLA monitors compliance with program requirements. Bi-annual compliance checks are conducted utilizing a checklist and the DLA Memorandum of Agreement outlines accountability, general terms and condition of the program and other requirements.

RECOMMENDATION: None

Appendix E

DLA Performance Review Checklist

Date: Click here to enter a date.

MEMORANDUM FOR THE STATE OF TENNESSEE 1033 PROGRAM STATE COORDINATOR

SUBJECT: Program Compliance Review (PCR) Checklist

I. LESO will Verify:

- *1. Is the State Coordinator appointed, in writing, by the current Governor of the State? Choose an item.
 - 1a. Appointment letter effective date: 7/9/12
- *2. Is the State Coordinator appointment letter on-file with the Law Enforcement Support Office (LESO)? Choose an item.
- *3. Has the current State Coordinator signed the current Defense Logistics Agency (DLA) Memorandum of Agreement (MOA)? Choose an item.
 - 3a. MOA date: 12/18/13
- 4. If applicable, are State Points of Contact (SPOCs) appointed, in writing, by the current Governor appointed State Coordinator? Choose an item.
 - 4a. Is SPOC appointment letter (s) on-file with the LESO? Choose an item.
- 5. Has the State Coordinator delegated his/her authority to anyone other than a SPOC? Choose an item.
 - 5a. Is delegation of authority letter (s) on-file with the LESO? Choose an item.

Comments: Click here to enter text.

II. Website Knowledge:

- 1. Appointed personnel performing the duties with the State 1033 Program, are proficient and knowledgeable when utilizing the following DLA websites:
 - 1a. AMPS Website: <https://amps.dla.mil> Choose an item.
 - 1b. RTD Website: <https://business.dla.mil/landing/index.jsp> Choose an item.
 - 1c. DLA Disposition Services Website: <https://www.dispositionservices.dla.mil/index.shtml> Choose an item.
 - 1d. LESO Website: <https://www.dispositionservices.dla.mil/rtd03/leso/> Choose an item.

Comments: Click here to enter text.

III. Eligibility Requirements:

- 1. Are Applications for Participation submitted by Law Enforcement Agencies (LEA) with arrest and apprehension authority signed by the Chief Executive Official (CEO), then forwarded to the State Coordinator? Choose an item.
- 2. Does the State Coordinator and/or SPOC (s) verify that the LEA is authorized to participate in the 1033 Program? Choose an item.
- 3. Are State Coordinator-approved Applications for Participation forwarded to the LESO for approval? Choose an item.

Comments: Click here to enter text.

IV. Records Management:

- *1. Is there a current State Plan of Operation on file for the State? Choose an item.
 - 1a. State Plan of Operation effective date: Click here to enter a date.
- *2. Does the State Coordinator keep current copy of the State Plan of Operation, signed by the LEA CEO in LEA file? Choose an item.
- 3. Does each LEA keep current copy of the State Plan of Operation, signed by their CEO on file? Choose an item.
- 4. Does the State Plan of Operation address the following areas:
 - 5a. Purpose Choose an item.
 - 5b. Authority Choose an item.
 - 5c. Terms and Conditions:
 - LEA Eligibility Criteria Choose an item.
 - How to enroll in the 1033 Program Choose an item.
 - LEA Screener Criteria Choose an item.
 - Identification/Acquisition of Property Choose an item.
 - Transportation of Property Choose an item.
 - Storage of Property Choose an item.
 - Distribution of Property Choose an item.
 - Security of Property Choose an item.
 - Accountability of Property Choose an item.
 - Establish an Inactive File Choose an item.
 - Utilization of Property Choose an item.
 - State internal compliance reviews Choose an item.
 - Transfer of property Choose an item.
 - Disposal of property Choose an item.
 - Turn-in of property Choose an item.
 - 5d. DEMIL Property requirements Choose an item.
 - 5e. Training opportunities Choose an item.
 - 5f. State responsibilities in the 1033 Program Choose an item.
 - 5g. LEA responsibilities in the 1033 Program Choose an item.
 - 5h. Suspension and/or Termination Criteria Choose an item.
 - 5i. Signature requirements (ie. LEA CEO/State Coordinator/SPOC) Choose an item.
- *5. Transfers of high visibility property are approved by the DLA LESO. Choose an item.

Comments: Click here to enter text.

V. Records Retention:

- 1. Are the following documents on-file with the State Coordinators Office and/or LEA?
 - 1a. DLA Form 103s (aka Manual Requisitions) Choose an item.
 - 1b. DD Form 1348-1A (for all 1033 Program property currently on the LEA inventory) Choose an item.
 - 1c. DD Form 1348-1A (for all turn-ins) Choose an item.
 - 1d. DD Form 1348-1A (for all transfers) Choose an item.
 - 1e. Transfer documentation Choose an item.

- 1f. Turn-in documentation Choose an item.
- 1g. Inventory adjustment documentation for authorized property Choose an item.
- 1h. ATFE Form 10 Choose an item.
- 1i. ATFE Form 5 Choose an item.
- 1j. FAA Certificate of Aircraft Registration (Form 8050-1) Choose an item.
- 1k. Exception to policy memorandums (if applicable) Choose an item.
- 1l. Other documentation as applicable [justification forms, Memorandum for Record (s), etc] Choose an item.

Comments: [Click here to enter text.](#)

VI. Property and Inventory Control:

- 1. Is 1033 Program property properly stored in a controlled storage area with limited access? Choose an item.
- 2. Have all reports of missing, lost, stolen, damaged or destroyed 1033 Program property been reported to the appropriate State Coordinators Office? Choose an item.
- 3. Have all reports of missing, lost, stolen, damaged or destroyed 1033 Program property been reported to the appropriate Local/State/Federal Officials and the LESO? Note: If the property is DEMIL Coded B, C, D, E, F, G or Q3 you have (24) Hours for notification. If your property is DEMIL Code A, or Q (with an Integrity Code of 6) you have within (7) days to report. Choose an item.
- 4. In determining State Coordinator’s recommendation for approval of LEA request, is consideration given to the needs and resources of its LEAs (i.e. size of LEA, mission requirement and like property on hand)? NOTE: LESO personnel must conduct a random search of records. Choose an item.
- 5. Are annual reconciliations of property receipts being conducted? Choose an item.
- 6. Has the State submitted the previous Fiscal Year’s certified inventory to the LESO? Choose an item.
- 6a. Date submitted: [Click here to enter a date.](#)
- *7. Are photographs of Front, Side and Data Plates provided to the LESO for Aircraft, Watercraft and Tactical Vehicles? Choose an item.
- *8. Are photographs of Weapons Data Plates provided to the LESO? Choose an item.

Comments: *No issues to report.*

VII. Transitional Distribution Point (TDP):

- *1. Is there an authorization document from DLA, on hand, authorizing your State to operate as a TDP? Choose an item.
- 2. Are TDP property requests earmarked for a specific LEA identifying them as the end user? Choose an item.
- 3. Is 1033 property identified and stored separate from other categories of property such as 1122 and State Agencies for Surplus Property (SASP)? Choose an item.
- 4. Does the State Coordinator and/or SPOC understand that transfers Choose an item.

of 1033 Program property from the TDP to LEAs within his/her State still need to be processed via the LESO prior to physical movement of property?

Comments: [Click here to enter text.](#)

VIII. Compliance and Utilization Reviews:

*1. Is there a State-level 1033 Program Compliance Review process in-place, that ensures that 5% of State LEAs are inspected within the 2-year reporting period since the last PCR? Choose an item.

(Current MOA-2009 states that “The State shall: Conduct an OER of LEAs participating in the program in order to ensure accountability, responsibility, and program compliance.” Therefore, until new MOA is signed and effective, the “PASS/FAIL” criteria is based on proof that the State Coordinator/SPOC has an internal review process in place that ensures accountability, responsibility and program compliance of LEAs within their State.)

2. Does the State Coordinator follow through with LEAs to rectify cases on non-compliance found on State Level PCRs? Choose an item.

3. Does the State Coordinator provide documentation to the DLA LESO in cases of non-compliant LEAs? Choose an item.

4. What steps are taken to resolve cases of non-compliance to the terms and conditions of the 1033 Program?

[Click here to enter text.](#)

Comments: [Click here to enter text.](#)

IX. Non-Utilized 1033 Program Property:

1. Are current procedures in place for LEAs to identify and report serviceable property when no longer needed? Choose an item.

2. What steps does the State Coordinator take to ensure LEAs do not requisition unnecessary or excessive amounts of property?

[Click here to enter text.](#)

3. What steps does the State Coordinator take to ensure 1033 Program property is not sold?

[Click here to enter text.](#)

4. Has there been an incident, since the last conducted PCR, where an LEA has sold property received under the 1033 Program or received 1033 Program property for the sole purpose of selling it? Choose an item.

4a. If yes, provide detail and supporting documentation of the outcome (who, what, when, where, how much).

N/A

Comments: [Click here to enter text.](#)

X. Compliance to LESO MOA:

1. Is all property transferred consistent with requirements of the DLA MOA? Choose an item.

- | | |
|--|-----------------|
| 2. Is the State Coordinator’s Office aware that they must ensure that the LEA maintains adequate insurance to cover damages or injuries to persons or property relating to the use of the property. (Self-insurance by the State/LEA is acceptable) | Choose an item. |
| 3. Is the State Coordinators Office aware that property available under the MOA is for the current use of authorized program participants; it will not be requested nor issued for speculative use? | Choose an item. |
| 4. Is the State Coordinators Office aware that property will not be obtained for the purpose of sale, lease, loan rent, exchange, barter, to secure a loan, or to otherwise supplement normal Law Enforcement Agency (LEA) or State/Local governmental entity budgets? | Choose an item. |
| 5. Is the State Coordinator Office aware that any transportation, repair, maintenance, insurance, disposal or other expenses associated with the excess Department of Defense (DOD) personal property is the sole responsibility of the State/LEA? | Choose an item. |
| 6. Is the State Coordinators Office aware that all property obtained under the MOA must be placed into use within one (1) year of receipt and utilized for a minimum of one (1) year, unless the condition of the property renders it unusable? | Choose an item. |
| 7. Is the State Coordinators Office aware approval of any variation to the above standard for property no longer needed by an LEA must be approved by the LESO through the State Coordinators Office? | Choose an item. |
| 8. Is the State Coordinator’s Office aware that the DOD has authorized the transfer and use of excess DoD property to the State/LEA and as such reserves the right to recall any and all property issued at the state or LEA expense? | Choose an item. |
| 9. Is the State Coordinators Office aware that excess DEMIL A & Q (with Integrity Code of 6) property will transfer title to the State/LEA after receipt, placement into use and utilization for a minimum of one (1) year? | Choose an item. |
| 10. Is the State Coordinators Office aware that to the extent permitted by law, the State Coordinator/LEA shall indemnify and hold the U.S. Government harmless from any and all actions, claims, debts, demands, judgments, liabilities, cost, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property and injuries, illness or disabilities to or death of any and all persons whatsoever, including members of the general public, or to the property of any legal or political entity including states, local and interstate bodies, in any manner caused by or contributed to by the State/LEA, its agents, servants, employees, or any person subject to its control while in, upon or about the sale site and/or the site on which the property is located, or while the property is in the possession of, used by or subject to the control of the State/LEA, its agents, servants, or employees after the property has been removed from U.S. Government control. The U.S. Government assumes no liability for damages or injuries to any person(s) or property arising from the use of the property. | Choose an item. |
- Comments: [Click here to enter text.](#)

XI. Conclusion:

XII. Areas of concern:

XIII. Areas of Recommendation:

Click here to enter text.

XIV. Areas of Praise:

XV. PCR Inventory Results:

| STATE OF TENNESSEE 1033 PROGRAM PROPERTY | | | | | | |
|---|--------------|-----------------------|-------------------------------|---|---------------|------------|
| | STATE TOTALS | *REQUIRED SAMPLE SIZE | TOTAL REVIEWED DURING PCR | | TOTAL ON-HAND | % ACCURACY |
| WEAPONS | | | *ITEMS PHYSICALLY INVENTORIED | *ITEMS REVIEWED VIA APPROVED CUSTODY CARD | | |
| AIRCRAFT | | | *ITEMS PHYSICALLY INVENTORIED | *ITEMS REVIEWED VIA APPROVED CUSTODY CARD | | |
| WATERCRAFT | | | *ITEMS PHYSICALLY INVENTORIED | *ITEMS REVIEWED VIA APPROVED CUSTODY CARD | | |
| TACTICAL VEHICLES | | | *ITEMS PHYSICALLY INVENTORIED | *ITEMS REVIEWED VIA APPROVED CUSTODY CARD | | |
| GENERAL PROPERTY | | | *ITEMS PHYSICALLY INVENTORIED | *ITEMS REVIEWED VIA APPROVED CUSTODY CARD | | |
| TOTALS | | | | | | |
| **OVERALL STATE INVENTORY ACCURACY RATE (%): | | | | | | |

* The DLA LESO PCR Team is required to physically inventory or obtain a copy of an acceptable custody card for 100% of the 1033 Program Weapons, Aircraft, Watercraft and Tactical Vehicles, as appearing on the accountable record, for each LEA that has been selected for review during the PCR. The LEA must provide the DLA LESO PCR Team a copy of any custody card (s) used, at the time of the site visit, and must maintain the custody card (s) on-file as part of substantiating records. An acceptable version of a custody card must contain the following elements: 1) LEA name, 2) Name of individual responsible for physical custody of item, 3) Item nomenclature (Name), 4) Serial number of item (if applicable), 5) QTY of item (if more than one), 6) Printed name of individual responsible for physical custody of item 7)

Signature of individual responsible for physical custody of the item and 8) Date.

**Overall State Inventory Accuracy Rate (%) is determined by adding required Weapons (A), Aircraft (B), Watercraft (C), Tactical Vehicles (D) and General Property (E) at LEAs selected for review during the PCR, and dividing by the actual # of the property that was physically inventoried (X) or verified via an approved custody card (Y) during the course of the PCR

| | |
|---|---|
| $\frac{A + B + C + D + E}{(X \text{ or } Y)}$ | = Overall State Inventory Accuracy Rate (%) |
|---|---|

XVI. PCR Training provided to the State:

PCR Training Date:

| <u># of Agencies Trained</u> | <u># of Officers Trained</u> | <u># of State Coordinator/SPOC trained</u> | <u># of DLA Disposition Services Field Representatives Trained</u> |
|------------------------------|------------------------------|--|--|
| Click here to enter text. | Click here to enter text. | Click here to enter text. | Click here to enter text. |

Thank you for the hospitality and professionalism shown to us during our visit. As always, we at the LESO stand ready to support and serve. If you have any questions or concerns, please feel free to contact us at 1-800-532-9946 or via email at DRMSLESO@dla.mil.

XVII. Program Compliance Review Team:

X _____
Deborah Smith

X _____
Dan Arnold

Dates of Program Compliance Review: Click here to enter a date. to Click here to enter a date.

Appendix F

(U) DEA - The "Other" Warfighter

FROM: [REDACTED]
DEA Account Manager (S112)
Run Date: 04/20/2004

(U//FOUO) When you think about our top national security threats, chances are that terrorism and military conflict come quickly to mind - and for good reason. But how many of us list illegal narcotics among the top threats to our society? Our national leadership recognized the seriousness this problem poses and declared a war on drugs two decades ago. This "war" has all the risks, excitement, and dangers of conventional warfare, and the stakes are equally high.

(U//FOUO) We are all aware that the Drug Enforcement Administration (DEA) is leading our nation's counternarcotics (CN) efforts. But many are not aware that from the start NSA has been at the forefront of Intelligence Community (IC) support to this seemingly unconventional DOD mission. The novel collection and analysis techniques NSA developed and refined against these criminal hard targets have not only resulted in major successes in the war on drugs, but they have also proven invaluable to other critical SIGINT missions, particularly counterterrorism, sometimes blurring the lines between the two missions.

(C) DEA has close relationships with foreign government counterparts and vetted foreign partners. The results of this team approach regularly make the headlines in the form of major drug busts and arrests. Less known is the critical supporting role that NSA continues to play in key DEA operations to disrupt the flow of narcotics to our country and thwart other, related crimes. DEA, however, recognizes the unique access and sole source information NSA provides and coordinates major cases with the S2F/ICN Product Line.

(C) As a result, both agencies enjoy a vibrant two-way information sharing relationship that enhances their common mission. Processes have been carefully established to exchange lead (foreign intelligence) information while protecting NSA equities. The Customer Relationships Directorate (S1), the Data Acquisition Directorate (S3), and MRSOC work with the S2F/ICN office as an integrated team to realize these mission successes.

(S//SI) One of those successes: Based on SCS (US-966L) intercept, S2F/ICN issued an OPS IMMEDIATE report on 30 March 2004 on the exact whereabouts of Colombian narcotics trafficker Gonzalo Hinojosa, an evasive and brutal international fugitive wanted for murder, drug trafficking, and money laundering. S2F had the foresight to include a tearline to share the actionable intelligence with Panamanian partners. With a short window for action, NSA's [REDACTED] worked through the Joint Interagency Task Force (JITF) - South to immediately forward the information to DEA/Panama. DEA/Panama in turn alerted the Panamanian authorities who quickly located and apprehended Hinojosa, without knowing the information came from NSA SIGINT. As Chief [REDACTED] noted, this is an excellent example of "outcome-oriented collaboration."

(U//FOUO) To learn more about NSA support to the "other" warfighter, DEA, visit the International Crime and Narcotics (S2F) [website](#).

ENDNOTES

1. Police militarization has been defined as “the process whereby civilian police increasingly draw from, and pattern themselves around, the tenets of militarism and the military model.” Peter Kraska, *Militarization and Policing—Its Relevance to 21st Century Police*, Policing (2007) 1 (4) 1-13 (Jan. 1, 2007).
2. Other manifestations of the militarization of policing, such as routine patrols using SWAT gear, militarization of the U.S. border, and the use of military surveillance equipment and other forms of intelligence gathering—while unquestionably of grave concern—are beyond the scope of this report.
3. Because the analysis examined SWAT deployments conducted by a small subset of law enforcement agencies over a limited number of years, the analysis itself does not allow us to make more general conclusions about the use of SWAT nationally or over time. However, as explained throughout the report, the specific findings we make regarding the SWAT deployments studied support the existing research on the militarization of policing generally.
4. Pew Research Center for the People & the Press, “America’s New Drug Policy Landscape: On Drug Policy, Gov’t Should Focus More On...,” April 1, 2014, available at <http://www.people-press.org/2014/04/02/americas-new-drug-policy-landscape/4-2-14-1/> (last visited April 25, 2014).
5. According to a recent Gallup poll, 47 percent of adult Americans report that they have a gun in their house or elsewhere on their property. Gallup Politics, “Self-Reported Gun Ownership in U.S. Is Highest Since 1993,” Oct. 26, 2011, available at <http://www.gallup.com/poll/150353/self-reported-gun-ownership-highest-1993.aspx> (last visited May 2, 2014).
6. Nick Gillespie, “Police in Columbia, South Carolina and 499 Other Cities Get ‘Free’ Tanks,” *Reason.com*, November 18, 2013, available at <http://reason.com/blog/2013/11/18/police-in-columbia-south-carolina-and-49> (last visited March 21, 2014).
7. Individual ACLU affiliates had the option to participate in the investigation and selected the law enforcement agencies with which to file records requests. A copy of the public records request filed with the agencies is attached as Appendix A.
8. Some agencies elected to provide SWAT incident reports for 2012 only.
9. There is no way to know definitively whether responding law enforcement agencies turned over all of the documents the ACLU requested. In addition, although we continued to receive documents throughout 2013 and into 2014, we did not review any documents received after September 30, 2013. All of the documents the ACLU received in connection with this investigation can be made available upon request.
10. Kraska (2007), 1.
11. See generally, American Civil Liberties Union, “The War on Marijuana in Black and White” (June 2013), available at <https://www.aclu.org/files/assets/1114413-mj-report-rfs-rel1.pdf> (last visited April 3, 2014); Michelle Alexander, *The New Jim Crow* (New York: New Press 2010). Racial disparities exist at each decision point in the criminal justice system. See The Sentencing Project, “Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers,” 2 (2008), available at http://www.sentencingproject.org/doc/publications/rd_reducingracialdisparity.pdf. Thirty-eight percent of prison and jail inmates are Black, compared to their 13 percent share of the overall population. Latinos constitute 19 percent of the prison and jail population compared to their 15 percent share of the population. A Black male born in 2001 has a 32 percent chance of spending time in prison at some point in his life, a Latino male has a 17 percent chance, and a white male has a six percent chance. See *id.*
12. See 10 U.S.C. § 2576a.
13. See National Law Enforcement and Corrections Technology Center, *Federal Property and Equipment Manual: Federal Sources of Personal Property for Law Enforcement*, 2 (Revised 2002), available at <http://info.publicintelligence.net/FederalProperty-Manual.pdf> (last visited March 17, 2014).
14. See *supra*, note 14 at 3.
15. One limitation, which the ACLU supports, is a prohibition on the sale of equipment obtained through the 1033 Program.
16. Agreement Between the Defense Logistics Agency and the State of ____ (MOA), 3. The MOA is standard across states and is attached as Appendix B.
17. Joint Chiefs of Staff 1993: I 1, quoted in Christopher M. Schnaubelt, “Can the Military’s Effectiveness in the Drug War Be Measured?” *Cato Journal*, Vol. 14, No. 2 (Fall 1994), available at <http://object.cato.org/sites/cato.org/files/serials/files/cato-journal/1994/11/cj14n2-5.pdf> (last visited April 24, 2014).
18. Bureau of Justice Assistance, “Grant Activity Report: Justice Assistance Grant (JAG) Program, April 2012-March 2013,” p. 2, available at https://www.bja.gov/Publications/JAG_LE_Grant_Activity_03-13.pdf (last visited April 3, 2013).
19. *Supra* note 18 at 4.
20. U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties, *Civil Rights/Civil Liberties Impact Assessment: DHS Support to the National Network of Fusion Centers*, 6 (March 1, 2013), available at https://www.dhs.gov/sites/default/files/publications/DHS%20Support%20to%20National%20Network_0.pdf (last visited March 17, 2014).
21. U.S. Department of Homeland Security, *FY 2013 Homeland Security Grant Program* (FY 2013 HSGP Fact Sheet), 1 (2013), available at http://www.fema.gov/media-library-data/8d-0439562c89644a68954505a49cbc77/FY_2013_Homeland+Security+Grant+Program_Fact_Sheet_+Final.pdf (last visited March 17, 2014).
22. U.S. Department of Homeland Security, “Next Steps: Supporting Community-Based Efforts to Reduce Violent Crime,” *U.S. Department of Homeland Security*, available at http://www.dhs.gov/xlibrary/assets/fact_sheet_reduce_violent_crime_080310.

- pdf (last visited March 22, 2014). This problem is not theoretical; DHS provides numerous sources of support to state and local law enforcement agencies for reasons that are entirely unrelated to terrorism prevention. Indeed, DHS operates a nationwide law enforcement network called the Homeland Security Information Network, which was created to assist state and local enforcement agencies conduct their ordinary work related to investigating allegations of gun, drug, and gang offenses; the notion that DHS support to local law enforcement is purely for the purpose of terrorism prevention is a myth. See, e.g., “Homeland Security Information Network—Law Enforcement Mission,” *Homeland Security*, available at <http://www.dhs.gov/homeland-security-information-network-law-enforcement-mission> (last visited April 24, 2014).
23. Sgt. Glenn French, “Police militarization and an argument in favor of black helicopters,” *PoliceOne*, Aug. 12, 2013, available at <http://www.policeone.com/SWAT/articles/6385683-Police-militarization-An-argument-for-black-helicopters/> (last visited March 19, 2014).
 24. Jack E. Hoban and Bruce J. Gourlie, “The Ethical Warrior,” *PoliceOne*, Aug. 12, 2013, <http://www.policeone.com/Officer-Safety/articles/6383533-Police-militarization-and-the-Ethical-Warrior/> (last visited March 19, 2014).
 25. Doug Deaton, “Police militarization and one cop’s humble opinion,” *PoliceOne*, Aug. 15, 2013, <http://www.policeone.com/Officer-Safety/articles/6390637-Police-militarization-and-one-cops-humble-opinion/> (last visited March 19, 2014).
 26. Jay Evensen, “‘Militarization’ of local police nationwide worries Salt Lake Chief Chris Burbank,” *Deseret News*, July 10, 2013, available at <http://perspectivesonthenews.blogs.deseretnews.com/2013/07/10/militarization-of-local-police-nationwide-worries-salt-lake-city-chief-chris-burbank/>, (last visited March 19, 2014).
 27. Karl Bickel, “Recruit Training: Are We Preparing Officers for a Community Oriented Department?” *E-newsletter of the COPS Office*, Vol. 6, Issue 6 (June 2013), archived version available at http://webcache.googleusercontent.com/search?q=cache:http://cops.usdoj.gov/html/dispatch/06-2013/preparing_officers_for_a_community_oriented_department.asp.
 28. SWAT teams go by many names, including Search and Response Team (SRT), Emergency Response Team (ERT), and Special Emergency Response Team (SERT). There is no real difference between these police units—they all use weapons that are not available to regular patrol officers and are trained to use tactics designed for extremely high-risk and emergency scenarios. For purposes of consistency and clarity, we will use the term “SWAT” throughout this report.
 29. Daryl Gates, *Chief: My Life in the LAPD* (New York: Bantam, 1992), p. 131. For an excellent summary of the creation and evolution of SWAT, see Radley Balko, *Rise of the Warrior Cop* (New York: PublicAffairs, 2013).
 30. These included the 1965 Watts rebellion, Charles Whitman’s shooting spree at the University of Texas at Austin, and a barricade scenario that left several police officers dead.
 31. Rob Deal, “Police Armed With AR-15s Roam the Streets of an Arkansas City Stopping and Asking for Citizens’ ID,” *Republican Party of Benton County Blog*, December 18, 2012, available at <http://bentoncountygop.org/blog/?p=154> (last visited March 18, 2014).
 32. “Stop and frisk” has been defined as “a crime-prevention tactic that allows a police officer to stop a person based on ‘reasonable suspicion’ of criminal activity and frisk based on reasonable suspicion that the person is armed and dangerous, [which] has been a contentious police practice since first approved by the Supreme Court in 1968.” See David R. Rudovsky and Lawrence Rosenthal, “Debate: The Constitutionality of Stop-and-Frisk in New York City,” 162 U. Pa. L. Rev. Online 117, 117 (2013). Its legality and efficacy have both been questioned, and its detrimental impact on communities of color has been well documented. See, e.g., Brett G. Stoudt, Michelle Fine, and Madeline Fox, “Growing Up Policed in the Age of Aggressive Policing Policies,” *New York Law School Review* 56 (2011/2012): 1331-1370.
 33. For more information about the government’s use of illegal domestic spying tactics, see the ACLU’s *Spy Files: the ACLU’s Campaign to Stop Illegal Spying*, available at <https://www.aclu.org/spy-files> (last visited April 21, 2014).
 34. For more information about border militarization, see the ACLU’s *Border Communities Under Siege: Border Patrol Agents Ride Roughshod Over Civil Rights*, available at <https://www.aclu.org/border-communities-under-siege-border-patrol-agents-ride-roughshod-over-civil-rights> (last visited April 21, 2014).
 35. Kraska (2007), p. 6.
 36. David Klinger and Jeff Rojek, “Multi-Method Study of Special Weapons and Tactics Teams,” p. 7 (an unpublished study of the U.S. Department of Justice) (2008), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/223855.pdf> (last visited April 24, 2014).
 37. Abigail R. Hall and Christopher J. Coyne, “The Militarization of U.S. Domestic Policing,” *George Mason University Department of Economics Working Paper No. 12-50* (August 2, 2012) (“[D]uring the past four decades domestic policing in the U.S. has become increasingly militarized. That is, domestic law enforcement has taken on the characteristics of the armed forces by engaging in military-like training, acquiring military weapons and utilizing military tactics in everyday operations.”).
 38. David Klinger and Jeff Rojek, “A Paramilitary Policing Juggernaut,” *Social Justice*, 1043-1578 (March 22, 2009).
 39. Balko (2013). See also Jon Fasman, “Cops or Soldiers,” *The Economist*, March 22, 2014, available at <http://www.economist.com/news/united-states/21599349-americas-police-have-become-too-militarised-cops-or-soldiers> (last visited April 25, 2014).
 40. See, e.g., Kraska (2007).
 41. Merriam-Webster, <http://www.merriam-webster.com/dictionary/battering%20ram> (last visited March 19, 2014).
 42. There are other kinds of distraction devices such as “tactical balls,” which wobble and spin when rolled or tossed into a room, but flashbang grenades seem to be the most well known. For the most part, the incident reports the ACLU studied tended to use either the words “flashbang” or “distraction device” to refer to these weapons.
 43. See Virginia Hennessey, “Monterey County agrees to pay \$2.6 million in ‘flash-bang’ death of Greenfield man,” *The Monterey Herald*, Aug. 19, 2013, available at http://www.montereyherald.com/localnews/ci_23897554/monterey-county-agrees-pay-2-6-million-flash (last visited March 19, 2014).
 44. Shailla K. Dewan, “City to Pay \$1.6 Million in Fatal, Mistaken Raid,” *New York Times*, Oct. 29, 2003, available at <http://www>.

- nytimes.com/2003/10/29/nyregion/city-to-pay-1.6-million-in-fatal-mistaken-raid.html (last visited March 19, 2014).
45. Charlie LeDuff, "What Killed Aiyana Stanley-Jones?" *Mother Jones*, November/December 2010 Issue, available at <http://www.motherjones.com/politics/2010/11/aiyana-stanley-jones-detroit>, (last visited March 19, 2014).
 46. Bill Donnelly, "SWAT-ing at Flies," *New York Times*, Op-Ed; p. A20; Letters to the Editor (July 18, 1997).
 47. American Forces Press Service, "Military Sealift Command to Deliver Largest MRAP Shipment," *U.S. Department of Defense: News*, Dec. 14, 2007, available at <http://www.defense.gov/news/newsarticle.aspx?id=48416> (last visited March 21, 2014).
 48. David Zucchino, "From MRAP to scrap: U.S. military chops up \$1 million vehicles," *Los Angeles Times*, Dec. 27, 2013, available at <http://articles.latimes.com/2013/dec/27/world/la-fg-afghanistan-armor-20131227> (last visited March 21, 2014).
 49. Nick Gillespie, "Police in Columbia, South Carolina and 499 Other Cities Get 'Free' Tanks," *Reason.com*, Nov. 18, 2013, <http://reason.com/blog/2013/11/18/police-in-columbia-south-carolina-and-49> (last visited March 21, 2014).
 50. Tom Benning, "Dallas County sheriff acquires 'a beast' to handle the bad guys," *Dallas News*, Oct. 18, 2013, available at <http://www.dallasnews.com/news/metro/20131018-dallas-county-sheriff-acquires-a-beast-to-handle-the-bad-guys.ece> (last visited March 21, 2014).
 51. Alex Greig, "California police department gets \$650,000 37,000lb armored military truck," *UK Daily Mail, MailOnline*, Dec. 21, 2013, <http://www.dailymail.co.uk/news/article-2527699/California-police-department-gets-650-000-37-000lb-armored-military-truck.html> (last visited March 21, 2014).
 52. Nate Carlisi, "Blankets to armored vehicles: Military gives it, Utah police take it," *Salt Lake Tribune*, Jan. 19, 2014, available at <http://www.sltrib.com/sltrib/news/57358599-78/police-program-utah-1033.html.csp> (last visited March 21, 2014).
 53. Molly Bloom, "Ohio State University Police Get IED-Resistant Military Vehicle for Use on Football Game Days," *NPR State Impact: Eye on Education*, Sept. 30, 2013, available at <http://stateimpact.npr.org/ohio/2013/09/30/ohio-state-university-police-get-ied-resistant-military-vehicle-for-use-on-football-game-days/> (last visited March 21, 2014).
 54. Some examples of SWAT incident reports and weapons transfers received in connection with the ACLU's investigation are included as Appendix C.
 55. See *Wilson v. Arkansas*, 514 U.S. 927, 931-933 (1995).
 56. See *Hudson v. Michigan*, 547 U.S. 586, 589-90 (2006).
 57. See *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997).
 58. *Id.*
 59. *Hudson*, 547 U.S. at 591, 599. State courts can offer greater protection under law than is provided under federal law. See, e.g., *Berumen v. State*, 182 P.3d 635 (Alaska Ct. App. 2008) (officers serving search warrant knocked on door but failed to announce who they were before entering residence, violating state's knock-and-announce rule; exclusionary rule applied under state law). In addition, people who are harmed by SWAT team officers could sue the SWAT team and police department for violating their Fourth Amendment rights. In reality, though, it is difficult to prevail in such lawsuits because courts often find that even if officers violate a person's constitutional rights, if the officers "reasonably" believed that their conduct was lawful, they are immune from liability (referred to in the law as having "qualified immunity"). *Saucier v. Katz*, 533 U.S. 194, 202 (2001). See, e.g., *Whittier v. Kobayashi*, 581 F.3d 1304 (11th Cir. 2009) (SWAT officer who killed a man in his home during a SWAT raid was entitled to qualified immunity because "a reasonable officer could have had a reasonable suspicion that knocking and announcing his presence would have been dangerous under the circumstances facing the SWAT team.")).
 60. See *Wilson v. Arkansas*, 514 U.S. 927, 934 (1995). See also *United States v. Keszthelyi*, 308 F.3d 557, 569 (6th Cir. 2002) (quoting *Stack v. Killian*, 96 F.3d 159, 162 (6th Cir. 1996); *Ramage v. Louisville/Jefferson County Metro Gov't*, No. 08cv338, 2010 WL 2624128, at *5, 2010 U.S. Dist. LEXIS 63688, at *13 (W.D.Ky. June 25, 2010) (evaluating whether the decision to use a SWAT team was reasonable under the circumstances); *Solis v. City of Columbus*, 319 F.Supp.2d 797, 809 (S.D. Ohio 2004) ("[S]omething more than probable cause is required in order for a hyper-intrusive search to be reasonable [and] something more than usual care in the execution of such a search is constitutionally required").
 61. Defense Logistics Agency, Disposition Services, "Law Enforcement Support Office (LESO): Providing Support to America's Law Enforcement Community Since 1997," available at <https://www.dispositionsservices.dla.mil/rtd03/leso/>, Jan. 23, 2014 (last visited March 17, 2014).
 62. See *supra*, note 14 at 4; *supra* note 61.
 63. 10 U.S.C. § 2576a(a)(1)(B).
 64. Defense Logistics Agency, "Fact Sheet: Responses on Excess Property Program for Representative Henry Johnson," sent in response to an inquiry from Representative Johnson requesting additional information on military-grade equipment to civilian police, Jan. 14, 2014. Attached as Appendix D.
 65. The Mamba is a type of MRAP designed for use by the South African National Defense Force. See, e.g., http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=6254:fact-file-mamba-apcmap&catid=79:-fact-files&Itemid=159.
 66. Abraham H. Maslow (1966). *The Psychology of Science*, p. 15.
 67. The Keene Police Department's application for a BearCat APC is one of the documents included in Appendix C.
 68. Callum Borchers, "Armored truck maker in middle of debate on dollars and safety," *Boston Globe: Business*, Jan. 4, 2013, available at <http://www.bostonglobe.com/business/2013/01/04/pittsfield-company-selling-bulletproof-security-sparks-debate-over-cost/2DAQ3GHM8b4eNdeXcL2NqJ/story.html> (last visited April 4, 2014).
 69. Al Baker, "When the Police Go Military," *New York Times*, Dec. 3, 2011, available at <http://www.nytimes.com/2011/12/04/sunday-review/have-american-police-become-militarized.html?pagewanted=all> (last visited April 21, 2014).
 70. *Supra* note 18 at 6.
 71. See, e.g., Michelle Alexander, "Obama's Drug War," *The Nation*, Dec. 9, 2010, available at <http://www.thenation.com/article/156997/obamas-drug-war> (last visited April 3, 2014) ("The Byrne grant program, originally devised by the Reagan administration to encourage state and local law enforcement agencies to join the drug war, has poured millions of dollars into drug task forces around the country that are notorious for racial profiling,

- including highway drug interdiction programs and neighborhood ‘stop and frisk’ programs. These programs have successfully ushered millions of poor folks of color into a permanent undercaste—largely for engaging in the same types of minor drug crimes that go ignored in middle-class white communities and on college campuses.”)
72. National Criminal Justice Association, “SAA Taskforce Performance Measures: A Look at Metrics Used to Evaluate MJTFs,” *National Criminal Justice Association*, available at <http://www.ncja.org/sites/default/files/documents/Taskforce-Performance-Measures.pdf> (last visited April 3, 2014).
 73. *Supra* note 18 at 10.
 74. A copy of this memo is attached as Appendix F.
 75. This finding is consistent with previous attempts to examine the prevalence and impact of SWAT using raw data such as incident reports. Klinger and Rojek (2008) attempted to collect standardized after-action reports from SWAT teams and characterized law enforcement participation in the study as “dismal.” See Klinger and Rojek, *supra* note 36 at 2.
 76. *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983), cited in FOIA Advocates, “FOIA Exemptions,” available at <http://www.foiadvocates.com/exemptions.html> (last visited April 21, 2014).
 77. See Maryland Public Safety Article § 3-507(e)(2).
 78. *Id.*
 79. *Id.*
 80. S.B. 185, “Law Enforcement Transparency,” (2014), available at <http://le.utah.gov/~2014/bills/sbillenr/SB0185.pdf> (last visited April 3, 2014).
 81. Aaron C. Davis, “Police Raid Berwyn Heights’ Mayor’s Home, Kill His 2 Dogs,” *Washington Post*, July 31, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/30/AR2008073003299.html> (last visited March 17, 2014).
 82. Rosalind S. Helderman, “Bill Calls for More Scrutiny of SWAT Teams by Police,” *Washington Post*, Feb. 5, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/story/2009/02/05/ST2009020500034.html> (last visited March 17, 2014).
 83. Maryland Governor’s Office of Crime Control and Prevention, *Law Enforcement: SB 447—SWAT Team Reporting*, available at <http://www.goccp.maryland.gov/msac/law-enforcement.php> (last visited March 17, 2014).
 84. Office of Justice Programs, *Bureau of Justice Statistics*, <http://www.bjs.gov/>, March 5, 2014 (last visited March 17, 2014).
 85. The other federal agency responsible for some criminal justice-related data collection is the Federal Bureau of Investigation (FBI). The FBI, through the Uniform Crime Reports, collects and publishes information pertaining to crime rates, law enforcement officers killed or assaulted, and hate crime statistics. The ACLU does not recommend designating the FBI as the federal agency with primary responsibility for collecting, maintaining, and evaluating information pertaining to the militarization of policing because BJS is the more appropriate federal agency for taking on this responsibility.
 86. The process for acquiring equipment through the 1033 Program is fairly straightforward. States enter into a Memorandum of Agreement (MOA) with DLA. A law enforcement agency interested in participating in the program simply completes an application and submits it to the state coordinator, who approves it and sends it to LESO. From there, the process for acquiring excess property is simple. A local agency may search the DLA website, which functions as a sort of catalogue, and submit an online request for the equipment it seeks. The state coordinator approves or disapproves the request and forwards approved requests to LESO. From here, the request is sent to Military Standard Requisitioning and Issue Procedures (MILSTRIP) for final approval.
 87. MOA, 11. This minimal limitation would seem to allow for the transfer of an extraordinary amount of equipment. If every officer in every participating agency is allowed to have one of every type of item available, including rifles, robots, and APCs, this is not a meaningful limitation at all.
 88. A copy of this checklist is attached as Appendix E.
 89. MOA, 10.
 90. As part of an ongoing effort to document the costs of securing the homeland, the Center for Investigative Reporting did a comprehensive investigation into states’ receipt and distribution of DHS and other federal agency grant dollars in 2011 as part of its “America’s War Within” series. To the best of the ACLU’s knowledge, this is the most comprehensive collection of data (from 2009, however) on federal handouts to state and local law enforcement agencies. The Center for Investigative Journalism, “Price of Peril: Homeland Security Spending by State,” <http://cironline.org/sites/default/files/legacy/files/homelandsecurity/priceofperil.html> (last visited March 21, 2014).
 91. *Supra* note 21 at 1.
 92. Senator Tom Coburn, *Safety at Any Price: Assessing the Impact of Homeland Security Spending in U.S. Cities*, 4, 5 (Dec. 2012), available at http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=b86fdaeb-86ff-4d19-a112-415ec85a9b6 (last visited March 17, 2014).
 93. The town of Keene, New Hampshire, held a hearing when its local police department sought a grant from DHS to purchase a BearCat. See “Free Keene: BEARCAT Hearing Promises Controversy,” *NewHampshire.com*, Aug. 12, 2013, available at <http://www.newhampshire.com/apps/pbcs.dll/article?AID=/20130812/AGGREGATION/130819787/0/newhampshire01> (last visited March 21, 2014).
 94. Kraska (2007) at 6-7.
 95. *Id.* at 7.
 96. Forty-seven percent of adult Americans report that they have a gun in their house or elsewhere on their property. Gallup Politics, “Self-Reported Gun Ownership in U.S. Is Highest Since 1993,” Oct. 26, 2011, available at <http://www.gallup.com/poll/150353/self-reported-gun-ownership-highest-1993.aspx>.
 97. The U.S. Constitution prohibits government entities from targeting people based on their race, religion, or any other constitutionally protected status.
 98. Gabe Rottman, “Radically Wrong: The Right to Think Dangerous Thoughts,” *ACLU Blog of Rights*, March 1, 2013, available at <https://www.aclu.org/blog/national-security-technology-and-liberty/radically-wrong-right-think-dangerous-thoughts> (last visited April 3, 2014).
 99. Enrique Flor and David Ovalle, “Hialeah police chief details tense moments of hostage rescue,” *Miami Herald*, July 31, 2013, available at <http://www.miamiherald.com/2013/07/28/v-fullstory/3528358/hialeah-police-chief-details-tense.html> (last visited

- March 20, 2014).
100. See, e.g., New York Civil Liberties Union, “Stop and Frisk Data,” *Racial Justice*, <http://www.nyclu.org/content/stop-and-frisk-data> (last visited April 4, 2014); *Bailey v. City of Philadelphia*, “Plaintiff’s Fourth Report to Court and Monitor on Stop and Frisk Practices, C.A. No. 10-5952 (E.D.Pa.) (filed Dec. 3, 2013), available at http://www.aclupa.org/download_file/view_inline/1529/198/ (last visited April 4, 2014).
 101. Some incident reports did not contain any information as to how many people were in a residence at the time of a deployment. This impedes analysis of the impact of SWAT on the lives of the people inside homes that are raided.
 102. This is despite the fact that white people and minorities use and sell drugs at roughly the same rates. See, e.g., Drug Policy Alliance, “Race and the Drug War,” <http://www.drugpolicy.org/race-and-drug-war> (last visited April 4, 2014) (“Although rates of drug use and selling are comparable across racial lines, people of color are far more likely to be stopped, searched, arrested, prosecuted, convicted and incarcerated for drug law violations than are whites”).
 103. As noted, many of the incident reports studied were ambiguous on the subject of whether a BearCat was used, so it is impossible to know this definitively. Nonetheless, based on our review of the documents, we think a reasonable inference can be drawn that no BearCat was used in a number of cases in which SWAT accomplished its objective.
 104. In examining the SWAT incident reports, the ACLU assumed that records were made of injuries often enough that the absence of a notation regarding civilian injury likely meant that no civilian injury occurred during the deployment. In addition, some police departments file use of force reports separately from SWAT incident reports, so it is possible that the SWAT deployments studied resulted in deaths and/or injuries that were not recorded in the SWAT incident report. For both of these reasons, the actual number of civilian injuries and/or deaths could be higher.
 105. A chilling video of the shooting is available here: http://www.huffingtonpost.com/2014/03/24/james-boyd-killed-by-cops_n_5021117.html. The ACLU of New Mexico is calling on the mayor to change the training and culture within the Albuquerque Police Department so incidents like this one are not repeated. See “Action Alert: Ask ABQ Mayor Berry to Reform APD,” *American Civil Liberties Union of New Mexico*, March 27, 2014, available at <https://www.aclu-nm.org/action-alert-ask-abq-mayor-berry-to-reform-apd/2014/03/> (last visited April 24, 2014).
 106. See George Chidi, “Texas grand jury refuses murder indictment on man who killed deputy on (sic) no-knock raid,” *The Raw Story*, Feb. 8, 2014, available at <http://www.rawstory.com/rs/2014/02/08/texas-grand-jury-refuses-murder-indictment-on-man-who-killed-deputy-on-no-knock-raid/> (last visited March 19, 2014).
 107. See generally, Early Childhood Matters, “Community Violence and Young Children: Making Space for Hope” (November 2012), available at <http://bernardvanleer.org/Community-violence-and-young-children-making-space-for-hope> (last visited April 21, 2014).
 108. Specific recommendations for how to implement such safeguards are set forth in an article by ACLU Senior Policy Analyst Jay Stanley, “Police Body-Mounted Cameras: With Right Policies in Place, a Win for All” (Oct. 2013), available at https://www.aclu.org/files/assets/police_body-mounted_cameras.pdf (last visited April 4, 2014).
 109. See generally, Jason Sunshine and Tom R. Tyler, “The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing,” *Law & Science Review*, Vol. 37, Number 3 (2003).
 110. Emily Ekins, “58 [sic] Percent Say Police Departments Using Drones, Military Weapons Goes Too Far, 60 percent of Tea Partiers Agree,” *Reason-Rupe Poll*, Dec. 17, 2013, available at <http://reason.com/poll/2013/12/17/56-percent-say-police-departments-usin2> (last visited April 21, 2014).
 111. Tom R. Tyler and Albert A. Pearsall, III, “The Paradox of American Policing: Performance Without Legitimacy,” *A Newsletter of the COPS Office*, Vol. 3, Issue 7 (July 2010), available at http://cops.usdoj.gov/html/dispatch/July_2010/AmericanPolicing.asp (last visited April 4, 2014).



During a “no knock” SWAT raid, an officer threw a flashbang grenade into the room where the Phonesavanh family was sleeping. It landed, and exploded, inside Baby Bou Bou’s crib.

Officers were searching for a relative suspected of selling a small amount of drugs. Neither the suspect nor any drugs were found in the home. At the time this report was published—three weeks after the raid—Baby Bou Bou was still in a medically-induced coma.