

20. Stopping Police Militarization

Congress should

- amend 10 U.S.C. § 2576a to stop transfers to local law enforcement agencies of any military equipment listed on either the Department of State Munitions Control List or the Department of Commerce Control List—so-called “controlled property”—and repossess all currently distributed controlled property;
- failing that, ensure that any currently and subsequently distributed controlled property is subject to extensive reporting requirements and randomized audits;
- mandate that the use of controlled property against misdemeanors or “Part II index crimes” (as described in the Uniform Crime Reports)—that is, nonviolent, less-serious crimes, including drug use, possession, and cultivation—requires a secondary report listing the articulable reasons for believing the specific situation posed a particular threat; and
- require law enforcement agencies with a track record of using extreme force against Part II index crimes, including and especially drug possession and use, to be subject to further investigation, discipline, and controlled property repossession.

The “1033” program was created as part of the National Defense Authorization Act (NDAA) for fiscal year 1997. In 1990, the first incarnation, then known as “1208,” allowed the Department of Defense to transfer to local law enforcement agencies (LEAs) property that was “excess to the needs of the Department,” including armored vehicles and small arms, to be used by LEAs in counter-drug activities. The 1997 NDAA changed

the designation to “1033” and expanded the permitted uses to broadly include “law enforcement activities.” In 1990, the department transferred \$1 million worth of gear; in 2013, it was \$450 million.

The bulk of the gear is not dangerous—including office furniture, computers, and personal protective equipment. But the program also transfers high-powered military gear—so-called “controlled property”—that has few justified uses in domestic law enforcement. Congress should end the profligate transfer of such excessive military gear. However, if controlled property is to be transferred, Congress should ensure that LEAs use it rarely and responsibly.

Controlled property includes such things as armored vehicles and troop carriers, high-caliber firearms, and grenade launchers. Although such items can improve officer safety—officers who approach a crime scene in an armored carrier are marginally safer than those using other modes of transportation—it is now clear that the costs outweigh the benefits. During a period of significant decline in violent crime, the number of violent Special Weapons and Tactics (SWAT) raids has skyrocketed.

In 1980, when the violent crime rate was approximately 63 percent higher than it is now, there were on average three SWAT raids per day nationwide; now there are about 120. Shockingly, the vast majority of those SWAT raids are undertaken merely to execute search warrants, 60 percent of the time for drugs. According to the American Civil Liberties Union, only 7 percent of SWAT deployments were for hostage situations or barricaded shooters, the original purpose for creating SWAT teams. In short, each day, local police are violently raiding homes approximately 120 times, mostly for nonviolent offenses. In the process, they destroy property, often kill pets, sometimes injure or kill innocent people, and generally create an unhealthy atmosphere of fear and distrust.

These raids occur because federal transfers have given LEAs the necessary equipment and because there is little to no accountability for misusing that equipment. Ending police abuse of controlled property will require seemingly drastic steps to ensure that LEAs do not persist in believing that “if we have it, we might as well use it.” A federal fix to this problem must focus on both stopping the transfer of controlled property and repossessing the property already distributed.

There are currently over 600 Mine-Resistant Ambush Protected vehicles in the hands of LEAs, as well as hundreds of grenade launchers and tens of thousands of high-powered assault rifles. Overall, there are approximately 460,000 pieces of controlled property in the hands of local law enforce-

ment. No serious attempt at reforming police militarization can commence until that gear is removed from their possession and its distribution is reassessed. Watertown, Connecticut (population 22,514), does not need a Mine-Resistant Ambush Protected vehicle, nor does Bloomington, Georgia (population 2,713), need four grenade launchers.

If Congress decides to continue distributing controlled property and to leave distributed property in the possession of LEAs, however, Congress must ensure that it is used responsibly and justifiably. After all, a rarely used armored troop carrier gathering dust in a police department parking lot should be seen as a good thing—it speaks to a safe and well-policed community. Rather than “if we have it, we might as well use it,” LEAs should be encouraged to adopt a “we have it and hope we never use it” philosophy.

By requiring extensive reporting on the use of distributed controlled property, Congress can help ensure that SWAT teams are used rarely and only in exceptional circumstances. Reporting requirements should include when the equipment was used, which suspected crimes or crowd-control situations it was used against, whether shots were fired, whether suspects allegedly brandished a weapon, whether any person or animal was killed or injured in the process, whether forced entry was used, whether a warrant was served under either no-knock or knock-and-announce circumstances, whether any children or elderly individuals were on the premises, whether the possible presence of children or the elderly was investigated, and a copy of the warrant (if used) explaining the probable cause for the action. Moreover, audits of LEA compliance should be periodically and randomly carried out. Consistently noncompliant LEAs should be immediately stripped of their property.

Finally, using SWAT teams to address nonviolent crimes, such as drug use, possession, and distribution, should be strongly discouraged. Nonviolent crimes—generally described as “Part II index crimes” in the Federal Bureau of Investigation’s Uniform Crime Reports—almost never deserve a violent response. Exceptional circumstances, such as a suspected drug producer with an arsenal and a history of violent crime, might justify a militarized response; but such a justification should never be presumed. LEAs should be required to report specific and particularized facts that require the use of controlled property to address a nonviolent crime. Consistent violation of these requirements should result in investigation, discipline, and property repossession.

The Obama administration recently took a special interest in the problem of police militarization. In May 2015, the president’s Law Enforcement

Equipment Working Group issued recommendations that later became policy. Many of those new policies are similar to those in this chapter: establishing a list of prohibited property that cannot be acquired by LEAs (e.g., tracked armored vehicles, bayonets, grenade launchers, and large caliber weapons and ammunition); establishing a list of controlled property that LEAs can acquire if they provide additional information, certifications, and assurances (e.g., wheeled armored or tactical vehicles, specialized firearms and ammunition, explosives and pyrotechnics, and riot equipment); and increased federal oversight and compliance.

The administration's policy changes were laudable, but they are also less permanent than a statute passed by Congress. Moreover, the administration did not go far enough to ensure that dangerous military equipment isn't used against nonviolent crime, particularly drug crimes. Working groups and oversight committees are a step in the right direction, but they are no substitute for significant statutory changes. America's police forces have become too militarized, and it will take strong and unapologetic action from Congress to fully fix the problem.

Suggested Readings

- American Civil Liberties Union. *War Comes Home: The Excessive Militarization of American Policing*. New York: American Civil Liberties Union Foundation, June 2014.
- Balko, Radley. "Overkill: The Rise of Paramilitary Raids in America." Cato Institute White Paper, July 17, 2006.
- . *Rise of the Warrior Cop*. New York: Public Affairs, 2013.
- Rezvani, Arezou, Jessica Pupovac, David Eads, and Tyler Fisher. "MRAPs and Bayonets: What We Know about the Pentagon's 1033 Program." NPR.org, September 2, 2014.

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