

CHAPTER 6

STOPPING POLICE MILITARIZATION

Reforming the 1033 Program

Congress should

- stop transfers to local law enforcement agencies (LEAs) 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”;
- repossess from LEAs all currently distributed controlled property;
- ensure that any distributed controlled property is subject to extensive reporting requirements and randomized audits (noncompliant departments should have their property repossessed);
- 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 and possession—requires a secondary report listing the articulable reasons for believing the specific situation posed a particular threat. Drug possession, cultivation, and distribution should not be presumed to constitute dangerous situations; and
- require LEAs 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.

Started in 1990 (as the 1208 program), the 1033 program authorizes the Department of Defense to transfer to LEAs property that is “excess to the needs of the Department.” 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 must primarily focus on ending the profligate transfer of such excessive military gear. If controlled property is to be transferred, however, 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. While

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 have outweighed the benefits. During a period of rapidly declining violent crime, the number of violent Special Weapons and Tactics (SWAT) raids has skyrocketed.

In 1980, when the violent crime rate was approximately 40 percent higher than it is now, there was an average of three SWAT raids per day; now there are about 120. Shockingly, the vast majority of those SWAT raids are merely to execute search warrants, 60 percent of the time for drugs. According to the American Civil Liberties Union (ACLU), 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 ap-

proximately 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 “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 (MRAPs) 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 enforcement. No serious attempt at reforming police militarization can commence until this gear is removed from their possession and its distribution is reassessed. Watertown, Connecticut (pop. 22,514), does not need a MRAP, nor does Bloomington, Georgia (pop. 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 adopt a “if we have it, we might as well use it” attitude, LEAs should be encouraged to have a “we have it, and I 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 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. 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 FBI’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.

America’s police forces have become too militarized, and it will take strong and unapologetic action from Congress to fix the problem.

SUGGESTED READINGS

Radley Balko, “Overkill: The Rise of Paramilitary Raids in America,” Cato Institute White Paper, 2006, <http://www.cato.org/publications/white-paper/overkill-rise-paramilitary-police-raids-america>.

Radley Balko, *Rise of the Warrior Cop* (New York: Public Affairs, 2013).

“War Comes Home: The Excessive Militarization of American Policing,” American Civil

Liberties Union, 2014, <https://www.aclu.org/war-comes-home-excessive-militarization-american-policing>.

www.npr.org/2014/09/02/342494225/mraps-and-bayonets-what-we-know-about-the-pentagons-1033-program.

Arezou Rezvani et al., "MRAPs and Bayonets: What We Know About the Pentagon's 1033 Program," NPR.org, September 2, 2014, <http://www.npr.org/2014/09/02/342494225/mraps-and-bayonets-what-we-know-about-the-pentagons-1033-program>.

"Botched Paramilitary Police Raids," Cato Institute interactive map, <http://www.cato.org/raid-map>.

Prepared by Trevor Burrus