

DRAWING A LINE BETWEEN RAMBO & BARNEY FIFE:
OVERHAULING THE DEPARTMENT OF DEFENSE'S
EXCESS PROPERTY PROGRAM IN ORDER TO HALT THE
OVERMILITARIZATION OF AMERICA'S POLICE FORCES

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The Department of Defense's Excess Property Program, otherwise known as the 1033 program, provides local law enforcement agencies with excess military property at little to no cost. To go along with the 1033 program, the federal government also provides local law enforcement agencies with billions of dollars worth of funding. This funding gives local law enforcement agencies the monetary means to be able to use the military-grade equipment or buy new military-grade equipment they cannot get through the 1033 program. As a result of these 1033 programs, military-grade equipment may be misused. Specifically, law enforcement agencies may want to use their military-grade equipment because they have the equipment. Additionally, there is the "subtle" effect that if law enforcement officers dress like soldiers, they will think they're at war. This Note recommends stricter standards for the transfer of military weaponry to local law enforcement agencies.

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I. INTRODUCTION

In 2012, the quaint little town of Keene, New Hampshire, accepted a large grant for a Ballistic Engineered Armored Response Counter Attack Truck, or BearCat.¹ Pursuant to this grant, this 20,000 person town,² which has only had two murders since 2009, was given a tank intended to withstand improvised explosive device (“IED”) attacks.³ The city stated that the acquisition was for patrolling the town’s annual “Pumpkin Festival.”⁴ Similarly, in Warren, Ohio, a police force that has less than seventy officers received thirty M16s over the course of a couple years, despite the fact that a Department of Justice investigation turned up a pattern of excessive force and illegal searches.⁵

These two examples are all too common in America as a result of the Department of Defense’s Excess Property Program, referred to as the 1033 program and federal grant programs. The 1033 program provides local law enforcement agencies with excess military property at lit-

1. Aaron Cantú, *4 Shocking Examples of Police Militarization in America’s Small Towns*, SALON (Mar. 28, 2014, 7:00 AM), http://www.salon.com/2014/03/28/4_shocking_examples_of_police_militarization_in_americas_small_towns_partner/ [hereinafter *Salon*]; *Cops or Soldiers?*, THE ECONOMIST (Mar. 22, 2014) <http://www.economist.com/news/united-states/21599349-americas-police-have-become-too-militarised-cops-or-soldiers>.

2. *Keene, New Hampshire*, CITY-DATA.COM, <http://www.city-data.com/city/Keene-New-Hampshire.html> (last visited Oct. 16, 2015).

3. *Salon*, *supra* note 1; *Cops or Soldiers?*, *supra* note 1.

4. *Cops or Soldiers?*, *supra* note 1.

5. *Pentagon Program Allows Police Departments Censured for Civil Rights Violations to get Military Gear*, THE GUARDIAN (Sept. 22, 2014, 3:33 PM), <http://www.theguardian.com/world/2014/sep/22/pentagon-police-military-gear-civil-rights-justice-department>.

tle to no cost.⁶ In total, the Department of Defense has given local law enforcement agencies more than four billion dollars in armored vehicles, weapons, and other military-grade items since 2006.⁷ To go along with the 1033 program, the federal government also provides local law enforcement agencies with billions of dollars' worth of funding from the Department of Justice and Department of Homeland Security.⁸ This funding gives local law enforcement agencies the monetary means to be able to use the military-grade equipment or buy new military-grade equipment they cannot get through the 1033 program.⁹ The Department of Justice and Homeland Security has distributed more than thirty-four billion dollars in grants since September 11, 2001.¹⁰

The large amount of military-grade equipment that currently goes to local law enforcement agencies as a result of the 1033 program and federal grant programs is a problem because of the potential for this military-grade equipment to be misused. When police forces have high-grade military equipment around, they have a tendency to use it when unnecessary. Glenn Reynolds, a law professor at the University of Tennessee, believes that the surplus of military gear that has contributed to a blurring of the line between soldier and law enforcement officer.¹¹ According to Reynolds, there are two parts to this conundrum.¹² First, there is the "obvious problem" that, "[o]nce you've got a cool tool, you kind of want to use it . . . whether it's a pneumatic drill, a laser level or an armored fighting vehicle."¹³ Second, there is the more "subtle effect" that if you "[d]ress like a soldier . . . you think you're at war."¹⁴ The combination of these two parts leads to problems because local law enforcement agents are not "at war with the citizens they serve, or at least they're not supposed to be."¹⁵ Soldiers and local law enforcement agents are fundamentally different;¹⁶ there is a fundamental difference between Rambo and Barney Fife.

6. *About the 1033 Program*, DEF. LOGISTICS AGENCY, <http://www.dispositionsservices.dla.mil/leso/pages/default.aspx> (last visited Oct. 16, 2015).

7. *Id.*; Tami Abdollah & Eric Tucker, *Program That Gives Military Gear to Local Police Has Serious Flaw*, HUFFINGTON POST (Sept. 21, 2014, 7:41 AM), http://www.huffingtonpost.com/2014/09/21/police-military-gear_n_5856762.html; *Limit the Militarization of Police in America*, SILIVE.COM (Aug. 29, 2014, 11:04 AM), http://www.silive.com/opinion/index.ssf/2014/08/limit_the_militarization_of_po.html.

8. Radley Balko, *7 Ways The Obama Administration Has Accelerated Police Militarization*, HUFFINGTON POST (July 10, 2013, 3:57 PM), http://www.huffingtonpost.com/2013/07/10/obama-police-militarization_n_3566478.html.

9. *See id.*

10. Andrew Becker & G.W. Schulz, *Local Cops Ready for War With Homeland Security-Funded Military Weapons*, THE DAILY BEAST (Dec. 21, 2011, 4:45 AM), <http://www.thedailybeast.com/articles/2011/12/20/local-cops-ready-for-war-with-homeland-security-funded-military-weapons.html>.

11. Glenn Harlan Reynolds, *SWAT Overkill: The Danger of a Paramilitary Police Force*, POPULAR MECHANICS (Aug. 14, 2014, 5:55 AM), http://www.popularmechanics.com/military/a1077/paramilitary-police-force-ferguson/?click=main_sr.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *See id.*

The misuse of the 1033 program's military-grade equipment is all too common.¹⁷ For example, in 2006, police officers used the military-grade equipment to raid a nightclub in Louisiana as part of a routine liquor inspection.¹⁸ In 2010, heavily armed officers used the military-grade equipment to carry out a series of raids of barbershops in order to bust individuals for "barbering without a license."¹⁹ In 2011, weapons and gear attained through the 1033 program were used to raid a guitar factory for a violation of an obscure environmental law and then used to raid the home of a woman suspected of defrauding the federal student loans program.²⁰

These instances, along with many others, began to come under some scrutiny following the events surrounding the 2014 shooting of Michael Brown in Ferguson, Missouri.²¹ On national television, Americans saw police officers in military-esque camouflage uniforms, roaming the streets in military vehicles, and pointing military-grade weaponry at the same people they swore to serve and protect.²² Now, even long-time veteran police chiefs have expressed concern.²³ In January 2015, President Obama issued an Executive Order focused on ensuring that the agencies receiving military-grade equipment receive proper training²⁴ in response to a December 2014 investigation that concluded the federal programs had significant issues.²⁵ Unfortunately, however, the Executive Order did not make many specific changes; rather, it just appointed a committee, called the Working Group, to make changes.²⁶

17. See, e.g., Jeff Weiner, *Another Lawsuit Filed in 2010 Barbershop Raids*, ORLANDO SENTINEL (Aug. 27, 2013), http://articles.orlandosentinel.com/2013-08-27/news/os-barbershop-raids-lawsuits-sheriff-20130826_1-strictly-skillz-regional-program-administrator-state-licensing-agency.

18. Matt Apuzzo, *War Gear Flows to Police Departments*, N.Y. TIMES (June 8, 2014), <http://www.nytimes.com/2014/06/09/us/war-gear-flows-to-police-departments.html> [hereinafter *War Gear Flows to Police Departments*].

19. Weiner, *supra* note 17.

20. Balko, *supra* note 8.

21. Michael Brown was an unarmed black teenager who was shot and killed by Darren Wilson, a white police officer, in Ferguson, Missouri, a suburb of St. Louis. The shooting prompted protests that roiled the area for weeks. See *Tracking the Events in the Wake of Michael Brown's Shooting*, N.Y. TIMES, <http://www.nytimes.com/interactive/2014/11/09/us/10ferguson-michael-brown-shooting-grand-jury-darren-wilson.html> (last visited Oct. 16, 2015).

22. *Id.*; Jake Flanagan, *Drawing the Line Between Soldier and Cop*, N.Y. TIMES (Aug. 17, 2014, 1:52 PM), <http://op-talk.blogs.nytimes.com/2014/08/17/drawing-the-line-between-soldier-and-cop/>; see also Bob Unruh, *U.S. Suddenly Alarmed Over Militarization of Cops*, WORLD NEWS DAILY (Aug. 19, 2014, 8:25 PM), <http://www.wnd.com/2014/08/u-s-suddenly-alarmed-over-militarization-of-cops/>.

23. Elizabeth R. Beavers & Michael Shank, Op-Ed., *Get the Military Off of Main Street*, N.Y. TIMES (Aug. 14, 2014), <http://www.nytimes.com/2014/08/15/opinion/ferguson-shows-the-risks-of-militarized-policing.html?module=Search&mabReward=relbias%3Ar%2C%7b%22%22%3A%22RI%3A16%22%7d&r=0> ("Norman H. Stamper, the former police chief of Seattle, has written with regret about the military-style tactics employed during the protests against the 1999 World Trade Organization conference in Seattle; he now advocates 'an authentic partnership in policing the city,' involving rank-and-file officers, civilian employees and community representatives.").

24. Exec. Order No. 13688, 80 Fed. Reg. 3451 (Jan. 16, 2015) [hereinafter *Executive Order*].

25. See *Review: Federal Support for Local Law Enforcement Equipment Acquisition*, EXEC. OFFICE OF THE PRESIDENT (Dec. 2014), available at http://www.whitehouse.gov/sites/default/files/docs/federal_support_for_local_law_enforcement_equipment_acquisition.pdf.

26. *Executive Order*, *supra* note 24.

No. 2] DRAWING A LINE BETWEEN RAMBO & BARNEY FIFE 733

This Note emphasizes that the 1033 program and federal grant programs are the main contributors of the overmilitarization of American local law enforcement agencies. It is not intended to be a critique of police officers themselves, but rather a critique of bad policies that have created a troublesome military mindset among local law enforcement agencies. It recommends that measures be taken to insure that high-powered weaponry is not put in the hands of those who use it because it is at their disposal rather than because it is necessary to insure the safety of the community. The 1033 program should not just be slightly tweaked in response to the events like those that took place in Ferguson, Missouri; the program should undergo fundamental change in order to protect the general public the dangers of heavily militarized local law enforcement agencies.

Specifically, this Note recommends to the Working Group stricter standards for the transfer of military weaponry to local law enforcement agencies. To combat this potential danger, this Note recommends that the Working Group require that the amount of military equipment given to a local law enforcement agency be proportionate to the crime rate and crime statistics of their respective community. Additionally, this Note recommends measures that ensure accountability, transparency and additional training.

Part II of this Note details a brief background of the 1033 program, the process law enforcement agencies must go through to get equipment through the program, and details accurate updated statistics that show how breadth of the programs. Part III of this Note analyzes the many problems with the programs, the potential for harm that this program can cause, and Obama's January 2015 Executive Order. Lastly, Part IV of this Note sets forth a detailed and specific recommendation.

II. BACKGROUND

Taken at face value, the 1033 program and the pertinent federal grant programs make a certain degree of sense: military equipment that would otherwise be destroyed instead gets diverted to cash-strapped local law enforcement agencies. Unfortunately, though, the system that is currently set up leaves too much room for abuse and misuse; it has the potential to endanger the freedoms of the individuals the law enforcement agencies mean to protect. Before any changes can be made, though, the problem must be thoroughly understood.

This section first discusses the 1033 program, the federal grant programs, and the application process. Next, it discusses the ongoing debate over the impact of overmilitarization of police forces. Lastly, this section details some important statistics to give perspective to the breadth of the problems.

A. *The 1033 Program*

In 1990, Congress enacted the National Defense Authorization Act (“NDAA”) in response to the worsening drug crisis.²⁷ Section 1208 of the NDAA granted the Secretary of Defense the power to “transfer to Federal and State agencies personal property of the Department of Defense, including small arms and ammunition, that the Secretary determines is— (A) suitable for use by such agencies in counter-drug activities; and (B) excess to the needs of the Department of Defense.”²⁸ In 1996, Congress replaced Section 1208 with Section 1033.²⁹

Since 1997, the 1033 program has provided excess military equipment to local law enforcement agencies.³⁰ Congress believed that if police forces were going to combat the drug trade, they needed to be outfitted like warriors—warriors that could take on drug cartels.³¹ To this day, the 1033 program, which came from Subtitle C of the NDAA, “Counter-Drug Activities,”³² has tried to emphasize that what is put back into local and university law enforcement agencies is in large part for help with the drug war.³³ Consequently, the program gives preference to the applying local law enforcement agencies that indicate the transferred property will be used for “counter-drug or counter-terrorism activities.”³⁴

After September 11, 2001, the United States armed itself for two wars. Over the course of the next decade there was a ballooning amount of military equipment that was no longer used.³⁵ Today, the program provides a range of supplies—from tanks and grenade launchers to laptops and boots—to an assortment of different local law enforcement agencies, from university to local law enforcement agencies.³⁶ Since the program’s inception, over 8,000 law enforcement agencies,³⁷ in all 50

27. Taylor Wofford, *How America’s Police Became an Army: The 1033 Program*, NEWSWEEK (Aug. 13, 2014, 10:47 PM), <http://www.newsweek.com/how-americas-police-became-army-1033-program-264537>.

28. National Defense Authorization Act for Fiscal Years 1990 and 1991, Pub. L. No. 101-189, 103 Stat. 1352 (1989).

29. Wofford, *supra* note 27.

30. Rebecca Klein, *These Are The School Districts Around The Country With Military Supplies*, HUFFINGTON POST (Sept. 17, 2014, 5:59 PM), http://www.huffingtonpost.com/2014/09/17/school-military-supplies_n_5832484.html.

31. Christopher Ingraham, *The Pentagon Gave Nearly Half a Billion Dollars of Military Gear to Local Enforcement Last Year*, WASH. POST (Aug. 14, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/08/14/the-pentagon-gave-nearly-half-a-billion-dollars-of-military-gear-to-local-law-enforcement-last-year/>.

32. *Id.*; see also National Defense Authorization Act for Fiscal Year 1997, Pub. L. No. 104-201, §§ 1031-34, 110 Stat. 2637-40 (1996).

33. Matt Apuzzo, *What Military Gear Your Local Police Department Bought*, N.Y. TIMES (Aug. 19, 2014), http://www.nytimes.com/2014/08/20/upshot/data-on-transfer-of-military-gear-to-police-departments.html?_r=0&abt=0002&abg=1 [hereinafter *What Military Gear Your Local Police Department Bought*].

34. National Defense Authorization Act for Fiscal Year 1997 §1033.

35. *What Military Gear Your Local Police Department Bought*, *supra* note 33.

36. Klein, *supra* note 30.

37. *Participating in the 1033 Program*, DEF. LOGISTICS AGENCY, <http://www.dispositionservices.dla.mil/leso/Pages/jointheprogram.aspx> (last visited Oct. 16, 2015); *About the 1033 Program*, *supra* note 6.

states,³⁸ have enrolled in the 1033 program. In total, the Department of Defense has given local law enforcement agencies more than 5.1 billion dollars in armored vehicles, weapons, and other military-grade items since 2006.³⁹

Despite the fact that the Obama Administration declared the drug war a failure, since 2009 these programs have increased.⁴⁰ In fact, the agency that oversees the giveaways through the 1033 program have reported some of its most productive years in its history.⁴¹

B. Federal Funding

To go along with the 1033 program, the federal government also provides local and university law enforcement agencies with billions of dollars worth of funding from the Department of Justice and Department of Homeland Security.⁴² Local law enforcement agencies can use this funding to buy military-grade equipment from weapons manufacturers. There are several different kinds of grants that local law enforcement agencies can apply for.⁴³

First, there are Byrne Grants, which were first initiated in 1988.⁴⁴ Byrne Grants were named after Edward Byrne, a police officer who was killed by a drug dealer.⁴⁵ The grant can be used to create antidrug and antigang task forces.⁴⁶ Second, there are Community Oriented Policing Services Grants (“COPS” Grants) which were designed to help fund community policing, or the idea that “cops should be proactive, and consider themselves part of the communities they serve . . . [t]hey should know the names of school principals, be friendly with business owners, [and] attend neighborhood meetings.”⁴⁷ These grants, however, can and have been used for equipment like large grenade launchers instead of funding to attend neighborhood meetings.⁴⁸ Third, the Department of Homeland Security gives antiterror grants to police agencies.⁴⁹ These grants are designed to allow police agencies to purchase military gear for fighting terrorism.⁵⁰ No imminent threat is necessary to receive said grant.⁵¹

38. Beavers & Shank, *supra* note 23.

39. *About the 1033 Program*, *supra* note 6; Abdollah & Tucker, *supra* note 7; *Limit the Militarization of Police in America*, *supra* note 7.

40. Balko, *supra* note 8.

41. *Id.*

42. *Id.*

43. *Id.* (noting that there are Byrne Grants, COPS Grants, and DHS Anti-Terror Grants).

44. *Id.*

45. *Id.*

46. *Id.* (noting that “[a]s part of the 2009 American Recovery and Reinvestment Act, Obama infused the program with \$2 billion, by far the largest budget in its history.”).

47. *Id.*

48. *See id.*

49. *Id.*

50. *Id.*

51. *See id.*

These grants give local law enforcement agencies free reign to do what they wish with the funds.⁵² For example, the local police force in Fargo, North Dakota, a town that has averaged less than two homicides a year since 2005 and which has not had a single terrorism prosecution in the last ten years, has received over \$8 million in funding from the federal government.⁵³ This funding has allowed the Fargo Police Department to buy a long laundry list of military supplies, including dozens of assault rifles and a two hundred thousand dollar armed military truck with a rotating turret.⁵⁴

Despite the fact that the Bush Administration was starting to phase out Byrne and COPS grants, the Obama Administration halted that phase out.⁵⁵ In just his first year as President, Obama increased the COPS budget by nearly 250 percent.⁵⁶

C. Application Process

The 1033 program “does not push equipment onto local law enforcement agencies.”⁵⁷ Instead, “state agencies must apply in order to receive [these] extra materials.”⁵⁸ The Defense Logistics Agency, a branch of the Pentagon, reviews the applications for supplies.⁵⁹ The Law Enforcement Support Office (“LESO”) facilitates the program.⁶⁰ To participate in the 1033 program, a law enforcement agency must three criteria: (1) the agencies primary function has to be the enforcement of laws; (2) the agency’s officers have to be properly compensated; and (3) the agency’s officers have to have the powers to arrest and apprehend lawbreakers.⁶¹

If these three criteria are met, then the law enforcement agency can submit an “Application for Participation,” which is a one-page standardized form.⁶² On the application, the law enforcement agency must state their contact information, whether the agency currently has any equipment from the 1208 or 1033 program, and the number of compensated

52. Becker & Schulz, *supra* note 10 (“In Montgomery County, Texas, the sheriff’s department owns a \$300,000 pilotless surveillance drone, like those used to hunt down al Qaeda terrorists in the remote tribal regions of Pakistan and Afghanistan. In Augusta, Maine, with fewer than 20,000 people and where an officer hasn’t died from gunfire in the line of duty in more than 125 years, police bought eight \$1,500 tactical vests. Police in Des Moines, Iowa, bought two \$180,000 bomb-disarming robots, while an Arizona sheriff is now the proud owner of a surplus Army tank.”).

53. *Id.*

54. *Id.*

55. See Balko, *supra* note 8.

56. *Id.*

57. *War Gear Flows to Police Departments*, *supra* note 18.

58. Klein, *supra* note 30.

59. Abdollah & Tucker, *supra* note 7.

60. *About the 1033 Program*, *supra* note 6.

61. *Participating in the 1033 Program*, *supra* note 37.

62. *Id.*

officers with arrest and apprehension authority.⁶³ Then, they can simply check a box if they are interested in weapons, tactical vehicles, aircraft, watercraft, or other controlled property.⁶⁴

Once the LESO application is approved, the agency is issued a Department of Defense Activity Address Code (“DODAAC”), which allows LESO to track any property that is distributed.⁶⁵ When it comes to small arms and some smaller dollar supplies, law enforcement agencies can merely browse online and pick out what they would like to receive.⁶⁶ For larger things, however, it takes a little more. For example, if a law enforcement agency wants an armored personnel carrier, they have to complete a one-page request form.⁶⁷

In the 2014 budget year, the Defense Logistics Agency denied only about twenty-five percent of requests.⁶⁸ Once equipment is given to a law enforcement agency, all the equipment is on indefinite loan.⁶⁹ The individual law enforcement agency is put in charge of accountability and responsibility of the equipment.⁷⁰ The only time they have to get LESO approval is if the law enforcement agency wants to transfer, turn in, or dispose of the property.⁷¹ Otherwise, they are given full control of the equipment.⁷²

No specific training is required before a law enforcement agency is issued the weaponry.⁷³ However, LESO does provide some relevant information in the form of “guides, slide-show presentations, video guides, and personalized over-the-phone instruction on an as-needed basis.”⁷⁴ Additionally, the local law enforcement agencies can email LESO and

63. *Law Enforcement Agency (LEA) Application for Participation*, DEF. LOGISTICS AGENCY, available at [http://www.dispositionsservices.dla.mil/leso/Documents/application\[1\].pdf](http://www.dispositionsservices.dla.mil/leso/Documents/application[1].pdf) (last visited Oct. 16, 2015).

64. *Id.*

65. *Participating in the 1033 Program*, *supra* note 37.

66. Ingraham, *supra* note 31; *see also Frequently Asked Questions*, DEF. LOGISTICS AGENCY, <http://www.dispositionsservices.dla.mil/leso/Pages/1033ProgramFAQs.aspx> (last visited Oct. 16, 2015); *The External Business Portal/RTD*, DEF. LOGISTICS AGENCY, <http://www.dispositionsservices.dla.mil/leso/Pages/PropertySearch.aspx> (last visited Oct. 16, 2015).

67. Ingraham, *supra* note 31; *see also Law Enforcement Agency (LEA) Armored Tactical Vehicle Request*, DEF. LOGISTICS AGENCY, available at <http://www.dispositionsservices.dla.mil/leso/Documents/LESO%20Forms/vehiclerequest.pdf> (last visited Oct. 16, 2015).

68. *Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies Before the S. Comm. on Homeland Sec. and Governmental Affairs*, 113th Cong. 2 (2014) (statement of Alan Estevez, Principal Deputy Under Secretary of Defense for Acquisition, Logistics and Technology), available at <http://www.hsgac.senate.gov/hearings/oversight-of-federal-programs-for-equipping-state-and-local-law-enforcement> (last visited Oct. 16, 2015).

69. Klein, *supra* note 30.

70. *Participating in the 1033 Program*, *supra* note 37.

71. *Id.*

72. *Id.* (noting that the only time a law enforcement agency needs approval is if the agency “[d]esires to [t]ransfer, [t]urn-in, or [d]ispose of the property.”).

73. *See LESO Program Training*, DEF. LOGISTICS TRAINING, <http://www.dispositionsservices.dla.mil/leso/Pages/Training.aspx> (last visited Oct. 16, 2015).

74. *Id.*

request a training session if they want any training.⁷⁵ If any equipment goes unclaimed, it is eventually destroyed.⁷⁶

D. The Debate Over the Impact of Overmilitarization of Police Forces

The magnitude of the potential problems that result from police forces wearing military-style uniforms and carrying military-grade weapons is debatable. Since the very beginning of this country's existence, however, there has been distaste for overpowering standing enforcement forces situated within the people. Samuel Adams, one of the founding fathers of the United States, once said "it is always dangerous to the liberties of the people to have an army stationed among them, over which they have no control."⁷⁷ This distaste for the idea was then reflected in the Constitution itself.⁷⁸ The Third Amendment states, "[n]o Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."⁷⁹ This Amendment was written because American colonists despised the British troops who had occupied their cities for years, but it also shows the disdain the Founding Fathers had for armies being set up within the country in order to police the people.⁸⁰

When the Third Amendment is looked at in combination with the Second Amendment, which guarantees the right of a citizen to bear arms and protect oneself,⁸¹ and the Tenth Amendment, which guarantees that any rights not specifically given to the federal government or to the state are reserved to the people,⁸² the Founding Fathers' fear and disdain for powerful standing police forces becomes even more evident.⁸³ It has been hypothesized by historians that these three Amendments together are a sign that the Founding Fathers would have scorned the current militarization of law enforcement agencies in this country.⁸⁴

The implications of a militarized police force on individual rights has been discussed and debated by many legal scholars, like law professor Glenn Reynolds, mentioned in the introduction. Another legal scholar, John Whitehead, believes that the rise of militarization of police forces is a sign of a loss of constitutional rights.⁸⁵ He believes that once

75. *Id.*

76. *War Gear Flows to Police Departments*, *supra* note 18.

77. STEPHEN P. HALBROOK, *THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT* 62 (1994).

78. *See* U.S. CONST. amend. III.

79. *Id.*

80. *The Third Amendment*, *REVOLUTIONARY WAR AND BEYOND*, <http://www.revolutionary-war-and-beyond.com/third-amendment.html> (last visited Oct. 16, 2015).

81. *See* U.S. CONST. amend II.

82. U.S. CONST. amend X.

83. *See* RADLEY BALKO, *RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA'S POLICE FORCES* (2013).

84. *See id.*

85. John W. Whitehead, *From Boston to Ferguson: Have We Reached a Tipping Point in the Police State?*, RUTHERFORD INST. (Aug. 14, 2014), https://www.rutherford.org/publications_resources/

acquired military-grade equipment is available to local law enforcement agencies, it is used under the rationale that “if we have it, we might as well use it.”⁸⁶ Furthermore, Whitehead believes that “[e]verything our founding fathers warned against—a standing army that would see American citizens as combatants—is now the new norm.”⁸⁷ As he puts it, “[t]he police state has arrived.”⁸⁸

According to another legal scholar, Roger Roots, police forces as they exist today are in conflict with the Constitution and erode Constitutional rights.⁸⁹ His argument, based partly on the idea that professional police officers and centralized police forces were unknown to the framers of the Constitution,⁹⁰ carries some weight. According to him, heavily armored law enforcement forces in mine-resistant vehicles with military-grade weapons impede the Constitutional freedoms that every citizen is guaranteed.⁹¹

According to Rosa Brooks, the threat to Constitutional freedoms doesn’t stop with just the increase in mine-resistant vehicles and military-grade weapons.⁹² Instead, the threats are even further exacerbated by the increase in military-style uniforms for local law enforcement agencies.⁹³ The combination of the increased use of military weapons, equipment, and even apparel has led “U.S. domestic policing . . . to look more and more like war.”⁹⁴ Frighteningly, all three of these elements are provided to local law enforcement agencies through the 1033 program, with the help of the related federal grant programs.⁹⁵

This idea has been adopted by many critics who caution that the use of military-style uniforms by local law enforcement agents might have a negative impact on the public’s perception of them as well as on how the agents view their role in the community.⁹⁶ The uniform worn by local law enforcement agents is one of the most significant signals to citizens of the position of authority of the agent, and when that signal is miscued there is more of a chance for abuse of power.⁹⁷ In fact, studies show that the more militaristic the uniform of the law enforcement agent, the more the

john_whiteheads_commentary/from_boston_to_ferguson_have_we_reached_a_tipping_point_in_the_police_.

86. *Id.*

87. *Id.*

88. *Id.*

89. See Roger Roots, *Are Cops Constitutional?*, 11 SETON HALL CONST. L.J. 685, 688 (2001).

90. *Id.* at 685.

91. *Id.* at 722–25.

92. Rosa Brooks, *The Trickle-Down War*, 32 YALE L. & POL’Y REV. 583, 591 (2014).

93. *Id.*

94. *Id.*

95. *Review: Federal Support for Local Law Enforcement Equipment Acquisition*, *supra* note 25.

96. See Karl W. Bickel, *BDUs and Community Policing?*, CMTY. POLICING DISPATCH (COPS, Washington, D.C.), Nov. 12, 2012, available at <http://cops.usdoj.gov/html/dispatch/11-2012/bdus-community-policing.asp> (citing Radley Balko, *A Decade After 9/11, Police Departments Are Increasingly Militarized*, HUFFINGTON POST (Sept. 12, 2011, 8:12 AM), www.huffingtonpost.com/2011/09/12/police-militarization-9-11-september-11_n_955508.html).

97. *Id.*

public looks at law enforcement agents as being “an occupying force” instead of “trusted community protectors.”⁹⁸ Perhaps, this is because the public associates the local law enforcement agents with the soldiers in news stories of military in war zones.⁹⁹ Additionally, research has shown that local law enforcement agents may also be influenced—both in their demeanor and actions—by their uniforms.¹⁰⁰ The combination of these two forces makes the 1033 program potentially even more dangerous when not properly monitored and operated.

E. Militarized Police Forces and the Courts

Critics of the 1033 program and the aforementioned federal grant programs have indicated that the public does not have a true feel for the potential problems of the program because they do not have a true picture of the amount of post-9/11 challenges of policing practices in the United States.¹⁰¹ In many regards, this is a result of the state secrets privilege,¹⁰² which allows the government to block the release of information, in civil litigation, if the information would reveal secrets that are damaging to U.S. national security interests.¹⁰³ The government is able to keep cases from moving forward in the courts by merely claiming that there is a government secret involved.¹⁰⁴ Today, this is becoming more and more common as national security programs grow.¹⁰⁵

In criminal cases, the government can do something similar using the Classified Information Procedure Act (“CIPA”), which allows that government to “delete specified items of classified information from documents to be made available to the defendant through discovery . . . , to substitute a summary of the information for such classified documents, or to substitute a statement admitting the relevant facts that classified in-

98. *Id.*

99. *See id.*

100. *Id.*

101. Brooks, *supra* note 92, at 589–91.

102. *See, e.g.*, Erin E. Bohannon, *Breaking the Silence: A Challenge to Executive Use of the State Secrets Privilege to Dismiss Claims of CIA Torture in Mohamed v. Jeppesen Dataplan, Inc.*, 65 U. MIAMI L. REV. 621 (2010); Geoffrey R. Stone, *Secrecy and Self-Governance*, 56 N.Y.L. SCH. L. REV. 81 (2012); D.A. Jeremy Telman, *Intolerable Abuses: Rendition for Torture and the State Secrets Privilege*, 63 ALA. L. REV. 429 (2012); *100 Days: End the Abuse of the State Secrets Privilege*, CTR. FOR CONST. RIGHTS (Apr. 10, 2014), available at https://www.ccrjustice.org/sites/default/files/assets/files/CCR_Post_Election_Statement.pdf.

103. *See* TODD GARVEY & EDWARD C. LIU, CONG. RESEARCH SERV., R41741, THE STATE SECRETS PRIVILEGE: PREVENTING THE DISCLOSURE OF SENSITIVE NATIONAL SECURITY INFORMATION DURING CIVIL LITIGATION (2011).

104. Laura K. Donohue, *The Shadow of State Secrets*, 159 U. PA. L. REV. 77, 87–88 (2010) (noting the state secrets privilege has increasingly been invoked by private litigants in cases relating to “breach of contract, patent disputes, trade secrets, fraud, and employment termination . . . [w]rongful death, personal injury, and negligence.”).

105. Brooks, *supra* note 92, at 592 (“The expansive war on terror has led to increased entangling of the government and the private sectors; the government has relied on private companies to provide a range of support services; the government’s desire to access information such as private Internet records has led to complex and generally secret new relationships between the military, the intelligence community, and private companies.”).

formation would tend to prove.”¹⁰⁶ This hinders cases because the parties cannot look at any documents, sometimes imperative to making a case, that are deemed to fall under CIPA.¹⁰⁷ Just like in civil cases, this is becoming a larger and larger problem as national security programs expand.¹⁰⁸

Notwithstanding these protection privileges, there are still cases that show that the militarization of local law enforcement forces is infringing on individual rights. In *Avina v. United States*, the Avina family brought action under the Federal Torts Claim Act against agents from the Drug Administration Agency (“DEA”) after DEA agents mistakenly raided their house.¹⁰⁹ The DEA agents raided the wrong house because they mistook the license plate of Mr. Avina for that of a suspected drug trafficker.¹¹⁰ When they arrived inside the home, they pointed their guns at two children, ages eleven and fourteen.¹¹¹ The Avinas’ complaint alleged assault and battery and intentional infliction of emotional distress.¹¹²

The Justice Department argued that the lawsuit should be dismissed because the agents’ actions were not unreasonable.¹¹³ On appeal, the court used a reasonableness standard and decided that the agents acted reasonably when entering the home, but that there was genuine issue of material fact as to whether agents acted reasonably in the use of force against the daughters.¹¹⁴ The case was remanded.¹¹⁵

To go along with cases like *Avina v. United States*, in which police agencies have been given more leeway in regards to force, there have also been cases that show that the government’s interest in building up local law enforcement agencies in order to stop terrorism is taking precedent over fundamental constitutional rights. For example, in *Holder v. Humanitarian Law Project*,¹¹⁶ the Court held that the prevention of terrorism constituted a compelling government interest and therefore the government could restrict First Amendment rights if the speech interferes with government terrorism prevention efforts.¹¹⁷

This was the first and only time that a restriction on political speech under the First Amendment has passed the *Brandenburg v. Ohio* test,¹¹⁸ which held that the government cannot punish inflammatory speech un-

106. 18 U.S.C. App. 3 § 4 (2012); Brooks, *supra* note 92, at 593.

107. See Brooks, *supra* note 92, at 593–94.

108. *Id.*

109. *Avina v. United States*, 681 F.3d 1127, 1128 (9th Cir. 2012).

110. *Id.* at 1128–29.

111. *Id.* at 1129.

112. *Id.* at 1130.

113. *Id.* at 1128.

114. *Id.* at 1131–32.

115. *Id.* at 1134.

116. 561 U.S. 1 (2010).

117. *Id.* at 36–39.

118. David Cole, *The First Amendment’s Borders: The Place of Holder v. Humanitarian Law Project in First Amendment Doctrine*, 6 HARV. L. & POL’Y REV. 147, 149, 157–58 (2012). See also EUGENE VOLOKH, *THE FIRST AMENDMENT AND RELATED STATUTES: PROBLEMS, CASES AND POLICY ARGUMENTS* 260 (4th ed. 2011).

less that speech is directed to inciting, and is likely to incite “imminent lawless action.”¹¹⁹ The *Holder* decision has led many legal scholars to question how far the preservation of government terrorism prevention efforts may be allowed to impede constitutional rights.¹²⁰ Moreover, the *Holder* decision is even scarier when considering the 1033 program and the aforementioned federal grant programs.

F. Statistics

Unfortunately, it is hard to determine how much tactical gear a single police department receives because the federal government only releases aggregate totals for each county.¹²¹ The Defense Department had been loath to release detailed data for the 1033 program, particularly in regards to the amount of weapons and tactical equipment received by individual departments.¹²² The general consensus reason is a fear that criminals could gain an advantage if they were provided a detailed listing of the response capabilities of each individual law enforcement agency.¹²³ In May of 2014, however, the New York Times received data down to the county level.¹²⁴

1. New York Times Data

According to the raw data that The New York Times released, the property that has been distributed is extremely varied. Anything from tanks and sniper rifles to computers and socks.¹²⁵ Regardless of the item, though, the raw numbers are daunting.¹²⁶ In the words of The New York Times, since President Obama has taken office, the federal government has transferred to local law enforcement agencies, “tens of thousands of machine guns; nearly 200,000 ammunition magazines; thousands of pieces of camouflage and night-vision equipment; and hundreds of silencers, armored cars and aircraft.”¹²⁷

When the numbers from a longer period of time are analyzed, though, the program is even larger. For example, law enforcement agen-

119. *Brandenburg v. Ohio*, 395 U.S. 444, 447–49 (1969).

120. See, e.g., Wadie E. Said, *Humanitarian Law Project and the Supreme Court's Construction of Terrorism*, 2011 BYU L. REV. 1455.

121. Abdollah & Tucker, *supra* note 7.

122. Shawn Musgrave, *We Have Over Half the Country's Agency-by-Agency 1033 Data*, MUCKROCK NEWS (Sept. 4, 2014), <https://www.muckrock.com/news/archives/2014/sep/04/we-have-over-half-countrys-agency-agency-1033-data>.

123. *Id.* (“Criminals, whether drug traffickers or terrorists, could gain an advantage if they were provided a snapshot of the response capabilities of each individual law enforcement agency,” wrote Larry Childers of the Alabama Department of Economic and Community Affairs in response to the request [for 1033 records].”).

124. *Id.*

125. See *Military-Surplus-Gear*, GITHUB, <https://github.com/TheUpshot/Military-Surplus-Gear> (last visited Oct. 16, 2015).

126. See, e.g., *What Military Gear Your Local Police Department Bought*, *supra* note 33; *Military-Surplus-Gear*, *supra* note 125; Musgrave, *supra* note 122.

127. *What Military Gear Your Local Police Department Bought*, *supra* note 33.

cies in thirty-eight states have received silencers; silencers which soldiers use in order to muffle gunfire during sniper attacks.¹²⁸ In total, within the last ten years, around 80,000 assault rifles, 200 grenade launchers, and 12,000 bayonets.¹²⁹ Strikingly, the most popular items requested were mine-resistant, ambush-protected vehicles.¹³⁰

This oversaturation of military equipment expands beyond local law enforcement agencies to school districts and public universities. For example, the Pinellas County School District in Pinellas County, Florida, is one of twenty districts around the country with a public safety department that is in possession of former military weapons.¹³¹ In fact, the Pinellas County School District has almost two dozen M16 rifles.¹³² In San Diego, the San Diego Unified School District has even received a mine-resistant vehicle.¹³³

To combat the controversy surrounding the need for such a vehicle, or lack thereof, the San Diego school district has claimed that they will in fact fill the mine-resistant vehicle with teddy bears and emergency supplies.¹³⁴ Some police forces have even ventured to say that this firepower is necessary because “it is a conversation starter” at community events.¹³⁵ Some police forces have said that they need a mine-resistant vehicle to protect against a possible attack by veterans returning from war.¹³⁶ Oxford County, Maine, requested mine-resistant vehicles because Maine’s western foothills face an “unimaginable threat from terrorist activities.”¹³⁷

When it comes to public universities, at least sixty-three have M16 rifles, at least six have mine-resistant vehicles, and two have grenade launchers.¹³⁸ Currently, over one hundred campus police departments have obtained weapons through the 1033 program, including Emory, Purdue, University of California, Berkeley, and the entire University of Texas system.¹³⁹ Unfortunately, many of these campus police departments have had problems with use of force over the last decade.¹⁴⁰

128. *War Gear Flows to Police Departments*, *supra* note 18 (noting that in one such county, Walsh County, North Dakota, the Sheriff could not explain why the county had a need for silencers).

129. Kayode Kendall, *Is the Government Ready To Re-Evaluate the Pentagon’s 1033 Program?*, BLUE NATION REV. (Sept. 9, 2014), <http://bluenationreview.com/government-ready-something-pentagons-1033-program>.

130. *Id.*

131. Klein, *supra* note 30.

132. *Id.*

133. *Id.*

134. *Id.*

135. *War Gear Flows to Police Departments*, *supra* note 18.

136. *Id.* (“You have a lot of people who are coming out of the military that have the ability and knowledge to build I.E.D.’s and to defeat law enforcement techniques,” Sgt. Dan Downing of the Morgan County Sheriff’s Department told the local Fox affiliate . . .”).

137. *Id.*

138. *The Equipment 117 Colleges Have Acquired From the Dept. of Defense*, CHRON. OF HIGHER EDUC. (Sept. 11, 2014), <http://chronicle.com/article/Table-The-Equipment-117/148753>.

139. Hannah K. Gold, *The Pentagon Is Giving Grenade Launchers to Campus Police*, VICE (Sept. 5, 2014), <http://www.vice.com/read/the-pentagon-is-giving-grenade-launchers-to-campus-police-904>; see also Tyler Kingkade & Alexandra Svokos, *Campus Police Are Stocking Up On Military-Grade*

Universities can also apply for grants, the same ones made available to local law enforcement agencies.¹⁴¹ For example, in 2012, the University of California, Berkeley, tried to use a grant by an eight-ton armored truck, but later decided not to purchase it, and in 2013 The Ohio State University purchased a mine-resistant ambush protected (“MRAP”) vehicle.¹⁴²

2. *American Civil Liberties Union Study*

In August of 2014, the American Civil Liberties Union (“ACLU”)’s Center for Justice released data from a yearlong investigation into policing in the United States.¹⁴³ The ACLU concluded that policing in the United States has become excessively militarized.¹⁴⁴ Additionally, the investigation concluded that this militarization has occurred with little or no oversight.¹⁴⁵ For example, the ACLU studied 800 police raids in which the police used paramilitary equipment and of those 800 raids, just under eighty percent of them were for ordinary law enforcement purposes, like serving search warrants to individual’s homes.¹⁴⁶ Of those 800, only about fifty-six of them were for what the ACLU considered to be genuine emergencies, such as a barricade or hostage situation.¹⁴⁷

The ACLU concluded that these ex-military weapons and equipment “escalate[d] the risk of violence and threatens public safety.”¹⁴⁸ As Jesselyn McCurdy, senior legislative counsel for the ACLU, stated, “[w]ith local law enforcement, their mission is to solve crimes after they’ve happened, and to ensure that people’s constitutional rights are protected in the process.”¹⁴⁹ The military, on the other hand, “has a mission where they are fighting an enemy. When you use military tactics in the context of law enforcement, the missions don’t match, and that’s when you see trouble with the overmilitarization of police.”¹⁵⁰

Weapons, HUFFINGTON POST (Sept. 16, 2014, 4:59 PM), http://www.huffingtonpost.com/2014/09/15/campus-police-weapons_n_5823310.html.

140. See, e.g., Jason Cherkis, *UC Davis Police Pepper-Spray Seated Students In Occupy Dispute*, HUFFINGTON POST (Nov. 20, 2011, 7:22 PM), http://www.huffingtonpost.com/2011/11/19/uc-davis-police-pepper-spray-students_n_1102728.html; Kingkade & Svokos, *supra* note 139.

141. Gold, *supra* note 139.

142. *Id.*

143. *War Comes Home: The Excessive Militarization of American Policing*, AM. C. L. UNION (June 2014), https://www.aclu.org/sites/default/files/field_document/jus14-warcomeshome-text-rell.pdf.

144. *Id.* at 2.

145. *Id.* at 27–30.

146. *Id.* at 3, 5.

147. *Id.* at 2, 5.

148. Kara Dansky, *Police Militarization Is Out of Control, and There’s No Oversight*, N.Y. TIMES (Aug. 15, 2014, 1:06 PM), <http://www.nytimes.com/roomfordebate/2014/08/14/are-police-forces-excessively-armed/police-militarization-is-out-of-control-and-theres-no-oversight>.

149. Becker & Schulz, *supra* note 10.

150. *Id.*

While the military-grade weapons provided to local law enforcement agencies are theoretically only to fight the drug war, protect against terrorism, and for “worst-case scenarios,”¹⁵¹ the existence of this amount of force is excessive and changes must be made. After the events surrounding the death of unarmed black teenager Michael Brown in Ferguson, Missouri, in August of 2014, this voice for change became louder than ever.¹⁵² Public opinion of the programs must be addressed so that trust can be rebuilt between law enforcers and local communities.

III. ANALYSIS

Before anything can be changed, all the issues must be evaluated and the potential benefits must be weighed against the harms. There are three major problems with the current federal programs: (1) too few restrictions, (2) too little accountability, and (3) too little training. Immediate change is necessary.

A. *Necessity for a Change*

The concern about the potential danger of overmilitarization of local law enforcement through the 1033 program and federal grant programs is now widespread. As noted in the introduction, even long-time veteran police chiefs have expressed concern.¹⁵³ Despite their position as leaders of some of America’s biggest police forces, they back the idea that the militarization of police forces should not be the first response to outburst of violence.¹⁵⁴

Interestingly, the push for change of the 1033 program is not a new phenomenon. In fact, in June 2012, the Pentagon “asked all participating law enforcement agencies to provide a comprehensive account of each piece of equipment from the [1033] program.¹⁵⁵ Pointing to multiple reports alleging that different agencies have abused the program, the Pentagon said it would stop further transfers until agencies complied with the request.¹⁵⁶ Now, however, the program is active again in full force.¹⁵⁷

Renowned legal scholar Radley Balko believes the problems with the 1033 program and the federal grant programs are even more common than the public realizes.¹⁵⁸ He argues that the programs that came

151. Klein, *supra* note 30.

152. *See, e.g., id.*

153. Beavers & Shank, *supra* note 23.

154. *Id.*

155. *See Pentagon Suspends Program That Gives Military Weapons to Cops*, HUFFINGTON POST (June 11, 2012, 10:32 AM), http://www.huffingtonpost.com/2012/06/11/pentagon-suspends-weapons-program-cops-military_n_1585328.html.

156. *Id.*

157. Shawn Musgrave et al., *The Pentagon Finally Details its Weapons-for-Cops Giveaway*, THE MARSHALL PROJECT (Dec. 3, 2014, 7:35 PM), <https://www.themarshallproject.org/2014/12/03/the-pentagon-finally-details-its-weapons-for-cops-giveaway>.

158. Reynolds, *supra* note 11.

from the “war on drugs” are the root cause of police abuse.¹⁵⁹ Balko argues SWAT teams, or other police forces that use military-grade weaponry, have no power to de-escalate a situation before using force.¹⁶⁰ In other words, there is a direct correlation between police abuse and militarization and between militarization and the violation of individuals’ constitutional rights.¹⁶¹

Some opponents to the 1033 program have pointed to the misuses of much less lethal weapons, like Tasers or pepper spray, in order to emphasize the potential harm of too much militarization.¹⁶² As pointed out by groups like Texas Appleseed, however, one of twenty organizations that have sent letters to government leaders pleading that they stop the 1033 program for schools, the problem is much more complex and serious.¹⁶³ “[A]rming . . . police with military-grade weapons and gear creates the potential to contribute to climates [that are] . . . hostile.”¹⁶⁴ This is an issue that stands alone, apart from other weaponry issues and must be handled immediately.

The line between police officers and military personnel is starting to fade together, and that is not how the dual-system was designed.¹⁶⁵ Soldiers are intended to accomplish objectives by looking outwards and attacking enemies, killing people, and breaking things.¹⁶⁶ Police, on the other hand, are supposed to look inward in order to protect citizens from crime by using the most minimum level of force necessary.¹⁶⁷ Unfortunately, today, police are looking and acting more like soldiers than cops, with potentially negative consequences.¹⁶⁸

B. Proposed Changes

After the events in Ferguson, Missouri, in 2014, the public outrage translated into bill proposals in Congress. In September 2014, Representative Hank C. Johnson, a Democrat from Georgia, and Raúl Labrador, a Republican from Idaho, introduced a bill to curb the 1033 handouts.¹⁶⁹ Specifically, the bill, referred to as the Stop Militarizing Law

159. RADLEY BALKO, *OVERKILL: THE RISE OF PARAMILITARY POLICE RAIDS IN AMERICA* 4 (2006), available at http://object.cato.org/sites/cato.org/files/pubs/pdf/balko_whitepaper_2006.pdf.

160. *Id.* at 18.

161. *See id.*

162. Klein, *supra* note 30 (“Knowing that even much less lethal weapons like Tasers and pepper spray have been egregiously misused in Texas, we were extremely concerned they have been actively requesting M16s and assault rifles -- weaponry we don't believe is appropriate for a school setting,” said Brennan Griffin, a spokesman for Texas Appleseed, one of over 20 organizations that sent the letter to government leaders.”).

163. *Id.*

164. *Id.*

165. *See* Reynolds, *supra* note 11.

166. *Id.*

167. *Id.*

168. *Id.*

169. Mike Lillis, *Obama Orders Review of Police Militarization*, THE HILL (Jan. 16, 2015, 4:37 PM), <http://thehill.com/homenews/administration/229816-obama-orders-review-of-police-militarization>; *see also* Beavers & Shank, *supra* note 23.

Enforcement Act, would have established some restrictions, made strides towards a more transparent program, and even barred the transfer of certain equipment, like high-caliber weapons, grenade launchers, and certain armored vehicles.¹⁷⁰ Moreover, the bill tried to compel detailed tracking of all equipment in an effort to make sure that it is not sold or misplaced.¹⁷¹ The bill did not make much headway, though, and died in the House.¹⁷²

Thomas Coburn, a Republican from Oklahoma, then introduced another bill in the Senate.¹⁷³ Senate bill 2904 was also called the Stop Militarizing Law Enforcement Act, but was more radical.¹⁷⁴ In addition to targeting the 1033 program, Senator Coburn's bill addressed the Department of Homeland Security's grant programs.¹⁷⁵ Some believed that because Senator Coburn was retiring soon, and therefore would not have to succumb to as many political pressures, he would have been the perfect person to lead a charge to "demilitarize America."¹⁷⁶ Just like Congressman Johnson's bill, however, Congressman Coburn's bill did not make much headway.¹⁷⁷

In addition to these two proposed bills, Carl Levin, Chairman of the Senate Armed Services Committee Chairman, stated that the Senate had plans to review the 1033 program.¹⁷⁸ Additionally, Senator Rand Paul and Senator Patrick Leahy have been critical of the military type response in Ferguson.¹⁷⁹ Senator Leahy stated, "[e]quipping police officers with the tools of war does nothing to repair a torn community."¹⁸⁰ Nonetheless, even though lawmakers from both sides have stated that they "condemn" the program, it is not clear how much support there actually is for an overhaul of the program.¹⁸¹

170. H.R. 5478, 113th Cong. § 3(f) (2014), available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hr5478ih/pdf/BILLS-113hr5478ih.pdf>.

171. *Id.* § 3(d).

172. H.R. 5478 (113th): *Stop Militarizing Law Enforcement Act*, GOV'T TRACK, <https://www.govtrack.us/congress/bills/113/hr5478> (last visited Oct. 16, 2015).

173. S. 2904 (113th): *Stop Militarization Law Enforcement Act*, GOV'T TRACK, <https://www.govtrack.us/congress/bills/113/s2904> (last visited Oct. 16, 2015).

174. See S. 2904, 113th Cong. (2014), available at <http://www.gpo.gov/fdsys/pkg/BILLS-113s2904is/pdf/BILLS-113s2904is.pdf> (last visited Oct. 16, 2015).

175. See *id.* § 3.

176. Michael Shank, *Post-Election Ferguson: Bipartisan Congress to Demilitarize Police*, HUFFINGTON POST (Dec. 21, 2014, 5:59 AM), http://www.huffingtonpost.com/michael-shank/post-election-ferguson-bi_b_6022368.html.

177. Lillis, *supra* note 169; S. 2904 (113th): *Stop Militarization Law Enforcement Act*, *supra* note 173.

178. Burgess Everett, *Senate Eyes Arming of Police*, POLITICO (Aug. 15, 2014, 3:56 PM), <http://www.politico.com/story/2014/08/ferguson-militarizing-police-lawmakers-110062.html?hp=14>.

179. *Id.*

180. *Id.*

181. Reginald Augustus, *Police Militarization: Is It Out of Control?*, LEGIS. & POL'Y BRIEF (Aug. 25, 2014), <http://www.legislationandpolicy.com/1437/police-militarization-control>.

C. *White House Review & President Obama's Executive Order*

In August of 2014, President Obama ordered his staff to perform a review.¹⁸² The review focused on evaluating whether the federal programs that supply the weapons to local police agencies provide the law enforcement agencies with equipment “appropriate to the needs of their communities,” whether the federal programs ensured that these agencies were “properly trained to employ the equipment they obtain[ed],” and whether the programs “encourage [local law enforcement agencies] to adopt organizational and operational practices and standards that prevent misuse/abuse.”¹⁸³

In December of 2014, the White House released a report that detailed the findings of the review.¹⁸⁴ The review concluded that these federal programs, “significantly expanded over decades across multiple federal agencies without . . . a commensurate growth in the infrastructure required to standardize procedures governing the flow of equipment from the federal government to [local law enforcement agencies].”¹⁸⁵ Additionally, “training has not been institutionalized, specifically with respect to civil rights and civil liberties protections, or the safe use of equipment received through the federal government.”¹⁸⁶ Finally, the report emphasized a “lack of consistency in how federal programs are structured, implemented and audited, and informed.”¹⁸⁷

Part of the report by the White House recommended \$263 million for resources, including body cameras and training, that could be used to help limit the use of military equipment by local law enforcement agencies.¹⁸⁸ Additionally, the White House recommended that local law enforcement agencies receiving military-grade equipment receive more training.¹⁸⁹ Lastly, the report recommended that civilian officials approve applications for military-grade equipment by local law enforcement agencies.¹⁹⁰

This report was met with some praise for its initial steps in the right direction. For example, Senator Claire McCaskill, of Missouri, applauded this report and its recommendation for the expansion of body cameras.¹⁹¹

182. Ryan J. Reilly, *White House Report: 'Lack of Consistency' In Law Enforcement Equipment Programs*, HUFFINGTON POST (Dec. 1, 2014, 1:59 PM), http://www.huffingtonpost.com/2014/12/01/ferguson-white-house_n_6249422.html.

183. *Review: Federal Support for Local Law Enforcement Equipment Acquisition*, *supra* note 25.

184. *Id.*

185. *Id.* at 2.

186. *Id.*

187. *Id.* at 3.

188. Russell Berman, *Obama's Cautious First Step Toward Demilitarizing the Police*, THE ATLANTIC (Dec. 1, 2014), <http://www.theatlantic.com/politics/archive/2014/12/obamas-cautious-first-step-toward-demilitarizing-the-police/383305>.

189. *Review: Federal Support for Local Law Enforcement Equipment Acquisition*, *supra* note 25, at 4, 6; *see also* Berman, *supra* note 188.

190. *Review: Federal Support for Local Law Enforcement Equipment Acquisition*, *supra* note 25, at 6; *see also* Berman, *supra* note 188.

191. Berman, *supra* note 188.

Representative Hank Johnson also praised the report, but emphasized that more change was necessary and his legislation would “go even further to sever the link between the military and the police.”¹⁹²

In January 2015, President Obama signed into action an Executive Order focused on ensuring that the agencies receiving military-grade equipment receive proper training.¹⁹³ In response to the findings of the report, President Obama created a Law Enforcement Equipment Working Group (“Working Group”) to identify actions that can be taken to improve the system.¹⁹⁴ Specifically, the Working Group will:

[P]rovid[e] [local law enforcement agencies] with controlled equipment that is *appropriate* to the needs of their community; ensur[e] that [local law enforcement agencies] are properly trained to employ the controlled equipment they acquire; ensur[e] that [local law enforcement agencies] adopt organizational and operational practices and standards that prevent the misuse or abuse of controlled equipment; and ensur[e] [local law enforcement agencies] compliance with civil rights requirements resulting from receipt of Federal financial assistance.¹⁹⁵

The Executive Order established that the Working Group will be co-chaired by the Attorney General, the Secretary of Defense, and Secretary of Homeland Security.¹⁹⁶ The specifics of what exactly the Working Group will do, however, are not clear.¹⁹⁷ All that is known is that the Working Group is charged with the job of exploring what specific changes need to be made.¹⁹⁸ It is important that the Working Group understand and address the problems. This Executive Order was a step in the right direction, but it was not the fundamental overhaul that is necessary. The Working Group must address the problems of the 1033 program and the aforementioned federal grant programs. As it stands now, there are three major problems.

D. Problem #1: Too Few Restrictions

A large problem with the 1033 program is that there are very few restrictions on who receives the gear through the system or what kind of gear a local law enforcement agency is allowed to receive.¹⁹⁹ Obama’s January 2015 Executive Order spoke about installing new restrictions to ensure that some change is made.²⁰⁰ Unfortunately, however, Obama left

192. *Id.*

193. *Executive Order*, *supra* note 24.

194. *Id.*

195. *Id.* (emphasis added).

196. *Id.*

197. *See id.* at 3452.

198. *See id.*

199. *See, e.g.,* Abdollah & Tucker, *supra* note 7 (“A Pentagon program that distributes military surplus gear to local law enforcement allows even departments that the Justice Department has censured for civil rights violations to apply for and get lethal weaponry.”).

200. *Executive Order*, *supra* note 24, at 3451.

the specifics to the Working Group.²⁰¹ It is important that the Working Group put into place new regulations to remedy the lack of regulations in place.

First, the 1033 program allows departments that the Justice Department has censured for civil rights violations to apply for and get lethal weaponry.²⁰² In Obama's 2015 Executive Order, he stated that he wanted to "ensur[e] [local law enforcement agencies] compl[y] with civil rights requirements resulting from receipt of Federal financial assistance."²⁰³ He did not, however, go as far as to mandate that any local law enforcement agency that is under investigation of violations is prohibited from participation in the 1033 program of the aforementioned federal grant programs.²⁰⁴

Over the past five years, the Justice Department has opened civil rights investigations into the practices of over twenty police departments.²⁰⁵ These investigations sometimes result in consent decrees that mandate reform, but do not result in prohibiting participation in the 1033 program or the relevant grant programs.²⁰⁶ In fact, the Los Angeles Police Department was allowed to receive over 1500 M16 assault rifles despite the fact that the department was under the watch of a federal monitor and had been accused of poor practices, demonstrated by government records.²⁰⁷

Second, there are too few restrictions on what kind of weaponry a city receives. As mentioned in the introduction, a mostly peaceful town of 20,000, like Keene, New Hampshire, can receive a vehicle meant to withstand IED attacks.²⁰⁸ This excessive equipment has too much potential to lead to the use of excessive force.

E. Problem #2: Too Little Accountability

Second, in addition to few restrictions, the 1033 program mandates very little accountability for the gear received. There is very little tracking of what the military gear is used for or when it is used.²⁰⁹ In Maricopa County, Arizona, for example, the small Sheriff's office, reported at one time that nine firearms that came to them from the 1033 program were

201. *See id.*

202. Abdollah & Tucker, *supra* note 7.

203. *Executive Order*, *supra* note 24, at 3451.

204. *See id.* at 3452.

205. *See* Sari Horwitz, *Justice Department Launches Broad Investigation of Baltimore Police*, WASH. POST (May 8, 2015), https://www.washingtonpost.com/world/national-security/justice-department-launches-federal-investigation-of-baltimore-police/2015/05/08/559e714c-f58b-11e4-bcc4-e8141e5eb0e9_story.html.

206. Abdollah & Trucker, *supra* note 7.

207. *Id.*

208. *Salon*, *supra* note 1; *see also Cops or Soldiers?*, *supra* note 1; *Keene, New Hampshire*, *supra* note 2.

209. *See, e.g., Cops or Soldiers?*, *supra* note 1 (noting most police departments are "cagey" about disclosing information related to 1033-armed SWAT team operations).

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missing.²¹⁰ Moreover, the local law enforcement agencies are not required to communicate to the locality how and when the equipment is being used.²¹¹

The lack of accountability extends to the federal grant programs as well. Some local law enforcement agencies have very fungible budgets, which is dangerous because of the lack of control over how federally funded grants are actually spent.²¹² For example, as discussed above, so-called COPS Grants, which were designed to facilitate community policing, have been used since the 1990s to start SWAT teams and purchase weapons.²¹³

This lack of accountability is frightening because of the amount of money on the line. For example, for an average Mine-Resistant Ambush Protected Vehicle, the maintenance costs reach up to \$30,000 for the \$700,000 piece of equipment.²¹⁴ Some critics have said there are holes in the programs' accounting so big that equipment has been sold on eBay or given away to friends.²¹⁵ According to some sources, the value of the military-grade weapons from the 1033 program that have gone unaccounted for have totaled in the millions of dollars.²¹⁶

F. Problem #3: Too Little Training

Third, the 1033 program and the aforementioned federal grant programs do not require training. This is a huge problem. In Obama's January 2015 Executive Order, Obama stated that he wants to "ensur[e] that [local law enforcement agencies] are properly trained to employ the controlled equipment they acquire."²¹⁷ No specifics, however, were established.²¹⁸ Rather, the specifics were left up to the Working Group to decide.²¹⁹ Leaving the specifics up to the Working Group is a problem because it is unpredictable what specific changes will be made.

210. Megan Cassidy, *MCSO Missing Nine Weapons from Pentagon's 1033 Program*, AZCENTRAL (Aug. 27, 2014, 7:44 AM), <http://www.azcentral.com/story/news/local/phoenix/2014/08/26/mcso-weapons-pentagon-suspension-1033/14659089>.

211. See *Frequently Asked Questions*, *supra* note 66.

212. See, e.g., Balko, *supra* note 8.

213. *Id.* ("A 2001 report by the Madison Capital Times found that many Wisconsin police agencies that received COPS grants in the 1990s had in fact used them to start SWAT teams. When presented with these findings, one criminologist was aghast, telling the paper, 'Community policing initiatives and stockpiling weapons and grenade launchers are totally incompatible.'").

214. Shank, *supra* note 176.

215. *Id.*; see, e.g., *AP IMPACT: Little Restraint In Military Giveaways*, NAT'L PUB. RADIO (July 31, 2013, 7:32 PM), <http://www.npr.org/templates/story/story.php?storyId=207340981>.

216. Shank, *supra* note 176.

217. *Executive Order*, *supra* note 24, at 3451.

218. See *id.*

219. *Id.* at 3452.

IV. RECOMMENDATION

Over the last few decades, American policing has become too militarized.²²⁰ Public universities are patrolling their campuses with grenade launchers,²²¹ small towns are using military armored vehicles—built to withstand IEDs—to secure their Pumpkin Festivals,²²² and local police enforcement agencies are using military-grade weapons to hand out tickets for minor barbering offenses.²²³ Moreover, this militarization has been accelerated over the last decade because the country armed itself for two wars with weapons that are now being handed over to local law enforcement agencies.²²⁴

Unfortunately, there are many critical problems with the 1033 program that heighten the chances of detrimental results. For example, the program allows departments that the Justice Department has censored for civil rights violations to apply for and get lethal military-grade weaponry.²²⁵ Now, things are out of hand. Police forces have too much force at their disposal, and they are demonstrating a tendency to use it in instances when it is completely unnecessary.²²⁶ In order for this to be squelched, and the potential for harm to be minimized, something more must be done.

Even with the White House's report in December 2014²²⁷ and President Obama's Executive order in January 2015,²²⁸ there is still more to be done. \$263 million for body cameras²²⁹ is a step in the right direction, but body cameras just help sort matters out after the fact. Proactive measures must be taken to ensure that law enforcement agencies are not misusing military-grade equipment in the first place.

President Obama's Executive Order put the Working Group in charge of addressing whether the equipment is properly used by police, addressing whether police have proper training, adopting standards for what type of equipment police agencies can obtain from the military, ensuring "compliance with civil rights requirements," and "planning the creation of a database that includes information about controlled equip-

220. See Abigail R. Hall & Christopher J. Coyne, *The Militarization of U.S. Domestic Policing*, INDEP. REV., Spring 2013, at 485, 486.

221. Gold, *supra* note 139; see *supra* note 208 and accompanying text.

222. *Cops or Soldiers?*, *supra* note 1.

223. Weiner, *supra* note 17.

224. See Hall & Coyne, *supra* note 220, at 489.

225. Abdollah & Tucker, *supra* note 7.

226. See, e.g., Weiner, *supra* note 17 (noting that "[t]he Orange County Sheriff's Office and a state licensing agency now face a second federal civil rights lawsuit in connection with a series of raid-style operations at minority-owned barbershops in 2010.").

227. *Review: Federal Support for Local Law Enforcement Equipment Acquisition*, *supra* note 25.

228. *Executive Order*, *supra* note 24.

229. David Hudson, *Building Trust Between Communities and Local Police*, WHITE HOUSE BLOG (Dec. 1, 2014, 8:25 PM), <https://www.whitehouse.gov/blog/2014/12/01/building-trust-between-communities-and-local-police>.

ment purchased or acquired.”²³⁰ In order to do all of this effectively, the Working Group must consider the following recommendations.

A. Elimination is Not the Answer

Some legal scholars, including Balko, believe that the “Pentagon Giveaways,” through programs like 1033 and federal grants, should be eliminated.²³¹ Balko argues that Congress provides the defense budget for the purpose of defending Americans from foreign threats, and for that purpose only.²³² Therefore, it is “perverse to then use that [surplus military] equipment against American citizens as part of the government’s war on domestic drug offenders.”²³³ This view, however, fails to take into account the obvious benefits these programs offer to local law enforcement agencies.

As stated in Obama’s January 2015 Executive Order, these programs help local law enforcement agencies “carry out their critical missions to keep . . . people safe.”²³⁴ According to the White House Report, even though 78,000 pieces of high-powered weapons and tactical vehicles have been sent to local departments in the last year, and nearly half a million pieces since Obama took office, almost ninety-six percent of the equipment transferred under the 1033 program has been “fairly routine” items like office furniture, computers, basic firearms, and protective gear.²³⁵ In fact, most of the \$5.1 billion that has been given out to police forces throughout the course of the program has actually been nontactical gear such as sleeping bags and filing cabinets.²³⁶ For example, the Los Angeles Schools Police Department has received over \$700,000 worth of nonweapon supplies through the 1033 program.²³⁷ Moreover, it is important to note, that even some of the nonroutine gear, such as bullet-proof vests, can help save lives and keep agents safe as they protect the community.

These items are instrumental to helping local law enforcement agencies, some of which may struggle financially, to perform their basic functions and protect the public. If the 1033 program is facilitated correctly, it has the potential to provide public good for years into the future. However, if the program continues to operate with a lack of restrictions, lack of accountability, and lack of transparency, there is potential that the harm will outweigh the good. Therefore, despite its fundamental faults and failures, the program has its benefits and repeal of the program is not the answer.

230. *Executive Order*, *supra* note 24, at 3451–52.

231. BALKO, *supra* note 159, at 40.

232. *Id.*

233. *Id.*

234. *Executive Order*, *supra* note 24.

235. *Review: Federal Support for Local Law Enforcement Equipment Acquisition*, *supra* note 25, at 3, 7.

236. Abdollah & Tucker, *supra* note 7.

237. Klein, *supra* note 30.

B. More Definition - 1033 Resources Must Reflect Crime Statistics

Instead of eliminating the 1033 program and the aforementioned grant programs, they should be organized so that there is highly scrutinized control of distribution and regulation of resources. In order to do this, this Note recommends that only the amount of munitions necessary to protect the citizens of their specific community are distributed to local law enforcement agencies. As the Police Chief of Warren, Ohio, said, “the public reasonably expects their police department to be armed with a level that at least matches what they might be coming up against.”²³⁸

Obama’s January 2015 Executive Order tried to change the 1033 program to make sure that local law enforcement agencies only get the equipment they need.²³⁹ Unfortunately, however, the order merely charged the Working Group with the mission of “providing [local law enforcement agencies] with controlled equipment that is *appropriate* to the needs of their community.”²⁴⁰ This broad statement is not enough; specific measures must be taken to ensure that resources given to a police department are proportionate to the crime rate/statistics of the respective community.

This Note recommends that a formula be instituted that determines how much military-grade weaponry a specific local law enforcement agency can receive. The formula should only take into account violent crimes of a nature that would require the grade of weaponry and military gear requested. Moreover, the formula should use a consistent database of crime statistics to determine the level of violent criminal activity in an agency’s jurisdiction over a set number of years.²⁴¹

For example, the FBI’s Uniform Crime Reporting (“UCR”) Statistics collects statistics of violent crimes, defined as “murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault,” and places the statistics into a user-friendly table format so that users can see the amount of violent crime in a specific city, state, or county in a given year.²⁴² The formula would then allow for local law enforcement agencies to determine the number and type of military-grade weapon that can then be dispersed through the 1033 program or financed through federal grants looking at predetermined cutoff points of violent crimes per 100,000 residents. ((Number of Crimes/Population) x 100,000 = Crime Rate Per 100,000).

The city of Keene, New Hampshire, mentioned in Part I, recently accepted a large grant for a Ballistic Engineered Armored Response Counter Attack Truck, or BearCat.²⁴³ Pursuant to this grant, this small

238. Abdollah & Tucker, *supra* note 7.

239. See *Executive Order*, *supra* note 24.

240. *Id.* (emphasis added).

241. See *Welcome to a New Way to Access UCR Statistics*, UNIF. CRIME REPORTING STATS., <http://www.ucrdatatool.gov> (last visited Oct. 16, 2015).

242. *Id.*

243. *Salon*, *supra* note 1; *Cops or soldiers?*, *supra* note 1.

town was given a tank intended to withstand IED attacks.²⁴⁴ The city stated that the acquisition was to be used to patrol the town's "Pumpkin Festival" as well as other "dangerous situations."²⁴⁵ According to the FBI's UCR statistic, between 2009 and 2012 (the database is only available up to 2012), the city had a pretty consistent population of around 23,000 people and only had 210 violent crimes per year.²⁴⁶

Keene's violent crime rate per 100,000 from 2009 to 2012 is 913.04. $(210/23,000) \times 100,000$). If the predetermined cut-off point for a tank were 1,000 violent crimes per 100,000 over that time period, then the city would be denied. However, the line might be 500 violent crimes per 100,000 for a grenade launcher or high-caliber machine gun.

On the other hand, Canton, Ohio, had a population of about 74,000 from 2009 to 2012.²⁴⁷ Over that time period the city has experienced 3,876 violent crimes. Therefore, their total crime rate per 100,000 over that time period is 5,238. $(3,876/74,000) \times 100,000$). If the cutoff for a tank were 1,000, the local law enforcement agency would make the cut.

Despite the fact that these calculations are general in nature, they demonstrate the mechanics. Consistency is imperative. If a consistent formula is applied to applications for grants and 1033 munitions, the militarization of police forces can be controlled. A formula will help ensure consistency as well as help with the next part of this Note's recommendation—accountability and transparency.

C. Addition of Accountability & Transparency

This Note recommends that accountability and transparency is the emphasis of any change made to the 1033 program or Federal grant programs. This is not a new idea. Both Radley Balko and Glenn Reynolds believe that accountability and transparency are part of the answer to the overmilitarization of America's local law enforcement agencies.²⁴⁸ For example, they both believe in the idea that police raids should be videotaped.²⁴⁹ The use of body cameras and camcorders to videotape police raids are just the tip of the iceberg.

In regards to transparency, Balko believes that, "[p]olice departments should track warrants from the time they're applied for to the time they're executed, in a database that's accessible to civilian review boards, defense attorneys, judges, and in some cases, the media."²⁵⁰ Moreover,

244. *Salon*, *supra* note 1.

245. *Cops or soldiers?*, *supra* note 1.

246. *Single Agency Reported Crime*, UNIF. CRIME REPORTING STATS., <http://www.ucrdata tool.gov/Search/Crime/Local/RunCrimeJurisbyJuris.cfm> (last visited Oct. 16, 2015). I looked up Keene, New Hampshire, by picking the state in the dropdown menu and then selecting the size of the city, 10,000 through 24,999.

247. *Id.* I looked up Canton, Ohio by picking the state in the dropdown menu and then selecting the size of the city, 50,000 through 99,999.

248. Reynolds, *supra* note 11.

249. *Id.*; BALKO, *supra* note 159, at 42.

250. BALKO, *supra* note 159, at 42.

“[l]ocal police departments that receive federal funding should also be required to keep records on and report incidents of officer shootings and use of excessive force to an independent federal agency such as the National Institute for Justice or the Office of the Inspector General.”²⁵¹

This Note first recommends that the entire application process be public information that is easily accessible by the local residents. As soon as the application is completed and submitted, the residents of the locality should be put on notice, through a public newspaper or other equitable means, and then updated throughout the process. This transparency will allow the locality’s residents to track the amount of military-grade equipment that is flowing into it and peacefully protest, or pursue the proper means to stop the application, if they believe the new military-grade equipment is unnecessary.

Second, a locality should be updated on a relatively routine basis about when the military-grade equipment is being used and what it is being used for in their community. If the locality’s residents are updated consistently, they can try to stop the use if the use is inappropriate.

Third, just as localities should be updated on a relatively routine basis about when the military-grade equipment is being used and for what it is being used, so too should the Working Group be notified about when the equipment is being used and for what it is being used. It is inappropriate for the 1033 program or the aforementioned grant programs to turn over military-grade equipment to a local law enforcement agency and then stop keeping track of it. Extremely dangerous weaponry is being handed over, and it should be monitored carefully.

Fourth, local law enforcement agencies should be disciplined for using excessive military-grade weapons when it is unnecessary and unreasonable. This discipline can be anything from a fine, suspension, or disciplinary note—it does not matter. What is important is that there is some form of discipline that discourages police officers from using military-grade equipment just because it is available.

Fifth, local law enforcement agencies should not be able to receive equipment through the 1033 program or through federal grant programs if they have been censured by the Justice Department for civil rights violations weaponry.²⁵² Additionally, local law enforcement agencies should not be able to receive equipment if the Justice Department has found any instances of excessive force or illegal searches until the problem has been remedied. Thereby, towns like Warren, Ohio, mentioned in the introduction, would not receive a surplus of M16s despite the fact that a Department of Justice investigation turned up a pattern of excessive force and illegal searches.²⁵³

251. *Id.*

252. Abdollah & Tucker, *supra* note 7.

253. *Id.*

D. More Training

To go along with highly regulated distribution, more accountability, and more transparency, there also needs to be more training for local law enforcement agents using military-grade weaponry. Today, every police force requires different training depending on the jurisdiction and state.²⁵⁴ However, no additional training is required to participate in the 1033 program or any of the federal grant programs mentioned above.²⁵⁵ This is not appropriate.

Even common sense says that the larger and more dangerous the weapon, the more training that should be required. In the United States military, this intuition is reflected.²⁵⁶ In the military basic training soldiers are only trained on a couple of the beginner weapons.²⁵⁷ Only after additional training can a soldier move on to other weapons.²⁵⁸

This Note recommends that training regiments are increased and required. Specifically, the training should be proportionate to the kind of weapon that is distributed through the 1033 program or purchased using a government grant. A tank, for example, would require more training than a high-caliber machine gun. These standards have to be predetermined and followed strictly. Regardless, though, the training requirements set forth by the military can be looked to for guidance. The training requirements can be in the form of applicable training hour requirements, like 200 hours by the local law enforcement agencies' staff in the following year, or can be the required attendance at a specific training course offered by the federal government or a private entity.

For example, if Keene, New Hampshire, had their application denied for a tank because of their crime statistics, they obviously would not be required to do additional training. Canton, Ohio, on the other hand, would have to do additional training for their tank. As mentioned above, they may be required to participate in a specific training course or be required to complete a certain number of hours of applicable training in the following year. It is imperative that the requirement is set before the Canton Police Department applies and that it is strictly followed.

Penalties for not following the required training procedures could be revocation of the military-grade weapons or expulsion from the program in the future. Hopefully, the additional training of the local law enforcement agencies will help them identify when the use of their military-grade equipment is necessary and appropriate. The training could help

254. *Training/Academy Life*, DISCOVERPOLICING.ORG, http://discoverpolicing.org/what_does_take/?fa=training_academy_life (last visited Oct. 16, 2015).

255. See *Frequently Asked Questions*, *supra* note 66; see also Augustus, *supra* note 181 (“In addition, training has not been required by the government in many instances where police departments have received military equipment.”).

256. See *Discovering the Weapons Used in Basic*, MILITARY.COM, <http://www.military.com/join-armed-forces/discovering-the-weapons-used-in-basic.html> (last visited Oct. 16, 2015).

257. See *id.*

258. See *id.*

discourage the use of the military-grade equipment merely because it is at their disposal.

V. CONCLUSION

The roles of soldiers and local law enforcement agents are fundamentally different; it is the difference between Rambo and Bernie Fife. When the lines between the two blur or merge, problems arise. Unfortunately, as discussed in this Note, the 1033 program and the discussed federal grant programs have contributed to the unmonitored militarization of local law enforcement agencies and the blurring of the line between soldiers and local law enforcement agents.

The idea of having a 1033 program and the pertinent federal grant programs makes sense. Through the programs, the equipment is used to help local law enforcement agencies instead of being destroyed. Therefore, this Note does not recommend that the programs be abandoned. Unfortunately, though, the programs, as they are currently set up, leave too much room for abuse and misuse; the equipment from the programs have been used to impede the freedoms of the individuals the law enforcement agencies have sworn to protect. Therefore, this Note recommends some fundamental changes.

The 1033 program and the federal grant programs were put into place to help fight the drug war and combat terrorism, but the programs should be regulated so that the equipment received by the local law enforcement agencies cannot be used to impede constitutional rights. Samuel Adams once said that a standing force, no matter how necessary it may seem at sometimes, “is always dangerous to the Liberties of the People.”²⁵⁹ Further, “[s]uch a Power should be watch[e]d with a jealous Eye.”²⁶⁰

As stated by law professor Glenn Reynolds, the problems with the surplus of military gear is a result of two parts: (1) once a local law enforcement agent has the military-grade weapons, they want to use them, and (2) once the local law enforcement agent is dressed and armed like a soldier, they begin to think like and act like a soldier at war instead of a law enforcement agent enforcing the law and protecting the local citizens.²⁶¹ There are dozens of examples of the misuse and abuse that results from this conundrum, as discussed in this Note.²⁶²

To remedy the problem, this Note proposes that strict standards for the transfer of military weaponry to police departments are implemented. First, the 1033 program should require the amount of military equipment given to a police department be proportionate to the crime statis-

259. Letter from Samuel Adams to James Warren, Massachusetts Militia General (1776), available at <http://www.samuel-adams-heritage.com/documents/samuel-adams-to-james-warren-1776.html>.

260. *Id.*

261. See Reynolds, *supra* note 11.

262. See *supra* Parts II–III.

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tics of the respective community. This will ensure that a small peaceful town like Keene, New Hampshire, does not receive military vehicles meant to withstand IEDs. Additionally, there should be more accountability, transparency, and training.

It is very smart for local law enforcement agencies to prepare for the worst. However, local law enforcement agencies cannot be allowed to prepare by militarizing their agency. If they are allowed to accumulate a limitless amount of military equipment, there is too much potential for the agency may be too quick to use that military-grade equipment in a situation they mistakenly identify as the “worst.” Obama’s January 2015 Executive Order was a step in the right direction, but more must be done in order to rebuild trust between law enforcers and local communities. The homes of American citizens are homes, not battlegrounds—they should be treated as such.

