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## EQUIP POLICE MORE LIKE BATMAN AND LESS LIKE G.I. JOE

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### INTRODUCTION

In any Batman comic book, the caped crusader will use at least three of his gadgets from his utility belt – his “batarangs,”<sup>1</sup> the bat grapple or even his knockout gas pellets. But what if the Dark Knight armed himself with an M-4 (or its AR-15 civilian equivalent) assault rifle? How would that change the way Batman not only thwarts the Joker’s latest sinister plan, but also—and maybe more importantly—how Batman would see the world? Would he continue to see the people of Gotham as recalcitrant and gritty citizens, but worthy of protection? Or might he begin to view them as targets in his crosshairs?

Unfortunately, we do not live in a world with superheroes. The thin line between chaos and civilization is not protected by men and women in capes, but rather, by men and women in blue. However, like Batman, these officers are equipped with a range of tools and weapons. And, these police officers—like Philip Brailsford, for example, who shot and killed unarmed Daniel Shaver in a hotel hallway with an assault

1. “Batarangs” are weapons thrown like boomerangs, in the shape of a bat (of course).

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rifle moments after he pleaded “[P]lease, do not shoot me”—are strongly influenced by the weapons they wield.<sup>2</sup>

Officer Brailsford was tried and acquitted for the death of Daniel Shaver, despite the incident being filmed by an officer’s body camera.<sup>3</sup> The detective that investigated the shooting noted that while some of Mr. Shaver’s movements were consistent with someone reaching for a weapon, it also appeared that he was just trying to pull up loose-fitting basketball shorts that had fallen down as he was ordered to crawl toward the officers. However, the detective also noted that he did not see anything that would have prevented Officer Brailsford from handcuffing Mr. Shaver as he was lying on the floor.

Perhaps the most troubling piece of evidence—one that was not allowed to be introduced at trial, likely because it was deemed overly prejudicial—was the phrase Officer Brailsford had etched into his AR-15 police-issued assault rifle: “you’re fucked.”<sup>4</sup> Many have reported on this grotesque addition to the officer’s rifle, but what is often missed is *where* the words were etched: on the ejection port cover. This meant that the words could not be viewed from examining the weapon fully assembled—only after the weapon had been fired and the brass expelled would the ejection port open and the prophetic words be displayed. Officer Brailsford did fire his weapon that day—five times, in fact—into Daniel Shaver.

However, the purpose of the present study is not to re-litigate Officer Brailsford’s case, or any case of police violence.

2. “Mesa Police shooting: Daniel Shaver seen crawling, begging in disturbing video,” *CBS News*, Dec. 8, 2017. <https://www.cbsnews.com/news/mesa-police-shooting-daniel-shaver-seen-crawling-begging-in-disturbing-video>.

3. *Ibid.*

4. Jeffery Robinson, “‘You’re Fucked’: The Acquittal of Officer Brailsford and the Crisis of Police Impunity,” *ACLU Blog*, Dec. 12, 2017. <https://www.aclu.org/blog/criminal-law-reform/reforming-police-practices/youre-fucked-acquittal-officer-brailsford-and>.

Rather, it is to examine a selection of military equipment that is commonly used by police departments and to evaluate the utility of that equipment for the mission of policing. Next, it will explore the effect of deploying military grade equipment on the profession of policing. And finally, the paper will conclude with recommendations about how to ensure police officers have the tools they need to be safe and to keep their communities secure without blurring the line between crime-fighter and war-fighter.

## THE MISSION OF POLICING

The very concept of a police mission carried out by a publicly funded entity is a relatively new historical development, and the mission that American society has expected law enforcement to carry out has changed since its inception.<sup>5</sup> The most recent articulation of the policing mission originates from a 1955 contest to devise a motto for the LAPD police academy. The winning entry, “To Protect and to Serve,” formally became the department’s credo after a 1963 city ordinance. Now ubiquitous across departments, the mantra has been expanded into a four-paragraph code of ethics, that includes the following other important duties: “to serve mankind;” to protect the innocent;” and “to respect the Constitutional rights of all men to liberty, equality and justice.” The creed also requires officers to swear “never to emplo[y] unnecessary force or violence” and to “never accep[t] gratuities.”<sup>6</sup>

The police officer’s creed thus contrasts sharply with that of the soldier (emphasis added):

I am an American Soldier. **I am a warrior** and a member of a team. I serve the people of the United States, and live the Army Values. I will always place the mission first. I will never accept defeat. I will never quit. I will never leave a fallen comrade. I am disciplined, physically and mentally tough, trained and proficient in my **warrior tasks and drills**. I always maintain my arms, my equipment and myself. I am an expert and I am a professional. **I stand ready to deploy, engage, and destroy, the enemies of the United States of America in close combat.** I am a guardian of freedom and the American way of life. I am an American Soldier.<sup>7</sup>

Readily apparent is the distinction in imagery and tone. The soldier is a warrior who engages and destroys enemies in close combat. The law enforcement officer serves, protects

and respects citizens’ rights while avoiding the use of egregious force. To be certain, the two professions and their respective missions overlap. Police must use potentially lethal force when the situation warrants it. Indeed, protecting the innocent against the violent may well entail using force. Similarly, military personnel often engage in police work.<sup>8</sup> But the law enforcement creed requires lethality strictly as a last resort. Likewise, policing is an ancillary duty for a soldier. The prioritization of deadly force is imperative to understanding these different functions.

In order to determine whether or not a given weapon is appropriate for law enforcement application, its functional descriptions must be analyzed in the context of the unique police mission. After all, Americans would never tolerate a plumber that used dynamite to dislodge a clog, nor should they allow officers to utilize weapons of war in routine policing missions. And thus while police should perhaps mirror the soldier’s oath to “place the mission first,” they must also remember that the mission in question is “to *protect* and to *serve*.”

## QUERY OF WEAPONS AND TOOLS

Under the Department of Defense’s 1033 program, almost \$5 billion worth of equipment has been transferred to local police.<sup>9</sup> Most of this equipment is benign and can range from cold-weather mittens to used laptops.<sup>10</sup> However, the Pentagon has also allowed police to acquire war-making equipment,<sup>11</sup> as the program also distributed military-grade firearms and weapons accessories (such as night-vision goggles, weapons add-ons and binoculars) in large quantities.<sup>12</sup> Specifically, since 2006, police departments have procured over 435 armored vehicles, 533 military aircraft and 93,763 machine guns, according to an investigation by the *New York Times* that was published in 2014.<sup>13</sup>

One of the criticisms of police militarization is that police departments’ growing use of these military weapons contributes to a concomitant uptick in police violence. Indeed,

8. Arthur Rizer, “Asking Our Soldiers to Do Police Work: Why It Can Lead to Disaster,” *The Atlantic*, Jan. 17, 2012. <https://www.theatlantic.com/national/archive/2012/01/asking-our-soldiers-to-do-police-work-why-it-can-lead-to-disaster/251380>.

9. Niall McCarthy, “Chart: Pentagon Donations to Police Are Skyrocketing,” *Forbes*, Aug. 15, 2014. <https://www.forbes.com/sites/niallmccarthy/2014/08/15/chart-pentagon-donations-to-police-are-skyrocketing/#7018016849fc>.

10. Jason Leopold, “Mittens, Not M4s: What Ferguson Police Really Got from the Pentagon’s 1033 Program,” *Vice News*, Aug. 26, 2014. <https://news.vice.com/article/mittens-not-m4s-what-ferguson-police-really-got-from-the-pentagons-1033-program>.

11. Adam Andrzejewski and Thomas W. Smith, “The Militarization of Local Police Departments,” OpenTheBooks.com, May 2016. [https://www.openthebooks.com/assets/1/7/OTB\\_SnapshotReport\\_MilitarizationPoliceDepts.pdf](https://www.openthebooks.com/assets/1/7/OTB_SnapshotReport_MilitarizationPoliceDepts.pdf).

12. Steven Rich, “Department of Defense 1033 Program data,” February 2016. <https://github.com/washingtonpost/data-1033-program>.

13. Matt Apuzzo, “War Gear Flows to Police Departments,” *New York Times*, June 8, 2014. [http://www.nytimes.com/2014/06/09/us/war-gear-flows-to-police-departments.html?\\_r=1](http://www.nytimes.com/2014/06/09/us/war-gear-flows-to-police-departments.html?_r=1).

5. Seth W. Stoughton, “Principled Policing: Warrior Cops and Guardian Officers,” *Wake Forest Law Review* 51 (2016), pp. 611-77. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2830642](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2830642).

6. “Law Enforcement Oath of Honor,” International Association of Chiefs of Police. [http://www.theiacp.org/Portals/0/pdfs/Essential\\_Leadership\\_Handouts.pdf](http://www.theiacp.org/Portals/0/pdfs/Essential_Leadership_Handouts.pdf).

7. “Soldier’s Creed,” U.S. Army. <https://www.army.mil/values/soldiers.html>.

recent research supports such an assertion.<sup>14</sup> The mechanisms by which military gear induces greater police violence are complicated, but one explanation is Maslow's "Law of the Instrument," which holds that access to a certain tool increases the probability that tool will be used for any given problem, even when other tools may be more appropriate.<sup>15</sup> Moreover, because military weapons are specifically designed to create mass casualties—when police who have acquired these weapons are violent, they are more proficient at it.

Examining every piece of military equipment being utilized by the police would be tedious and unfeasible. Instead, the focus here will be a survey of military uniforms, armored vehicles, and the all-famous M16 and its lineage. In so doing, we will first examine the equipment's history and capabilities and then explore the reasons they are unsuitable for routine policing.

## Camouflage

One of the most recognizable pictures of the police response in Ferguson, Missouri is of an officer sitting on top of an armored vehicle armed with a long-scoped assault rifle.<sup>16</sup> While most critics focused on the weapon, most missed the subtleties of the gear—specifically, his camouflage uniform, or his "cammies" in military parlance. Police officers around the United States have begun wearing camouflaged uniforms, which if not for the police patches attached, are easily mistaken for armed service members. From a review of pictures of militarized police, it appears that the woodland green U.S. Marine Corps Marine Pattern (MARPAT) camouflage has become a favorite.<sup>17</sup> In fact, not easily seen by the naked eye, are tiny prints of the Marine Corps symbol on their uniforms: the eagle, globe and anchor. This means police officers are quite literally *masquerading* as Marines while policing.<sup>18</sup>

Aside from the obvious issues associated with misidentification, perhaps a less obvious question is what reason police in a crowd-control setting would have to wear camouflage

designed for woodland terrain. After all, the entire purpose of camouflage is to blend in with the environment, making it harder for the enemy to spot and engage the target. For most of our history, police uniforms were designed with the exact opposite purpose. Officers wanted to be spotted for two reasons: first, to discourage illegal activity<sup>19</sup> and second, so that the public can easily identify them to seek help.<sup>20</sup> This is precisely why the British officer (or Bobby) wears the famous domed helmet and neon green jackets and why European (and some American) police cars are easy to spot.<sup>21</sup>

Moreover, these types of camouflage make police less safe and are bad for the police mission. After all, if it were necessary to hide from urban threats, the proper camouflage would be black, gray and dirty white, which would blend in with asphalt, concrete, and other urban buildings. Indeed, Batman's "uniform" has always been either grey or black to serve that very purpose. A long-standing compromise has been what is commonly referred to by the profession as "LAPD Blue," a dark blue that helps conceal the officer at night but still gives him or her the professional appearance of an officer of the law and not a soldier—an all-purpose police camouflage, if you will.<sup>22</sup>

However, the question remains as to why so much military camouflage is being worn by police in the first place. The most obvious answer is that because most of our recent military conflicts have required desert camouflage, our government unloaded the woodland pattern to police departments, despite the uniform being useless or counterproductive in urban settings. Another, and more disturbing reason, for the proliferation of military uniforms among police departments is the primal fear it instills in the public.

Indeed, it was in large part for this reason that, in 1878, the United States passed the Posse Comitatus Act, which specifically ensures that military cannot be used for law enforcement missions.<sup>23</sup> A central rationale for this law was to help heal the wounds inflicted by the civil war, when the Union

14. See, e.g., Casey Delehanty et al., "Militarization and police violence: The case of the 1033 program," *Research and Politics* 4:2 (2017), pp. 1-7. <http://journals.sagepub.com/doi/pdf/10.1177/2053168017712885>; and Peter B. Kraska, "Militarization and Policing—Its Relevance to 21st Century Police," *Policing: A Journal of Policy and Practice* 1:4 (2007), pp. 1-13. <https://pdfs.semanticscholar.org/2657/7f5e9da75768007ae43f66cf254065c17e74.pdf>.

15. See, e.g., A.H. Maslow, *The Psychology of Science: A Reconnaissance* (Harper and Row, 1966).

16. Paul Burkhardt, "On #Ferguson: Why Police & Military Should Be Different," The Long Way Home Blog, Sept. 26, 2014. <https://blog.prodigalpaul.com/2014/09/26/on-ferguson-why-police-military-should-be-different-quote>.

17. Nedra Pickler, "The Obama administration just took a huge step toward demilitarizing US police forces," *Business Insider*, May 18, 2015. <http://uk.businessinsider.com/obama-announces-new-rules-to-reverse-militarization-of-local-police-2015-5?IR=T>.

18. "About Our Official USMC Issue Digital MARPAT Utility Uniforms (MCCUU)," Military Gear HQ, 2010. <http://www.militarygearhq.com/marpat.shtml>.

19. On the policing continuum, this is called maintaining a "physical presence."

20. National Institute of Justice, "Police Use of Force: The Use-of-Force Continuum," U.S. Dept. of Justice, Aug. 4, 2009. <https://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/Pages/continuum.aspx>.

21. Tom Utley, "The policeman's helmet may be impractical - but it still works," *The Telegraph*, April 6, 2002. <https://www.telegraph.co.uk/comment/personal-view/3574991/The-policemans-helmet-may-be-impractical-but-it-still-works.html>. See also, Sandra Galo, "British police officers requested in Mallorca," *Euro Weekly News*, March 26, 2016. <https://www.euroweeklynews.com/news/on-euro-weekly-news/mallorca/137742-british-police-officers-requested-in-mallorca>.

22. Michael T. Jarvis, "LAPD blue: Is dark wool another reason cops feel the heat?" *Los Angeles Times*, Jan. 9, 2000. <http://articles.latimes.com/2000/jan/09/magazine/tm-56962>.

23. 18 U.S.C. § 1385, original at 20 Stat. 152.

Army occupied the South for 12 years.<sup>24</sup> A civilian population cannot heal if it is occupied by the enemy. Yet, today many police uniforms look like military battledress. Indeed, most civilians cannot tell the difference, which shatters the spirit of the Posse Comitatus Act and causes communities to feel occupied and oppressed.

## Armored Vehicles

Another aspect of police militarization has been the influx of armored vehicles. What was once a boutique item reserved only for large police departments and Special Weapons and Tactics Teams (SWAT) has now become commonplace in small and medium-sized departments.

Not only do these vehicles give the appearance of an occupying force (indeed many of them are still painted desert tan and went straight from war to a police motor pool), they have very little utility for the police mission and often act instead merely as a drain on precious resources.<sup>25</sup> For instance, the Mine Resistant Ambush Protected vehicle (MRAP) was designed to withstand blasts from military grade enemy mines and the devastating IEDs troops face in Iraq and Afghanistan.<sup>26</sup> While attacks against police using mines are tragically not uncommon in other countries, in the United States it thankfully does not happen.<sup>27</sup>

1.

Moreover, the engine of the MRAP and many other military vehicles was designed to burn jet fuel (Jet Propellant-8), which is not easily accessible to local departments. And, while it can burn commercial grade diesel as an alternative fuel source this does not overcome the painfully low 5.8 miles to the gallon the vehicle gets.<sup>28</sup> All of this is to say that many of these vehicles have become very expensive toys for police. While the 1033 program allowed departments to obtain these vehicles at bargain basement prices, it did not give a fuel budget or pay for the parts and mechanics when the vehicles need to be repaired. The result is that the federal government is incentivizing departments to make irresponsible fiscal decisions.

## Assault Rifles

Perhaps the most provocative piece of military equipment that has become common in police departments is the assault rifle.<sup>29</sup> Just over two decades ago, the harrowing North Hollywood shootout marked a pivotal moment in police history, as “two armor-clad figures standing calmly outside a bank were spewing machine gun fire at a swarm of police officers shooting back with pistols from behind car doors and trees.”<sup>30</sup> Indeed, many in law enforcement today point to the event as an example of what happens when police lack the necessary equipment. Undoubtedly, police departments—particularly those in dense, urban areas—should have access to weapons appropriate for these kinds of rare but nevertheless bloody battles. But the tendency for departments across the country to purchase large quantities of these weapons and for officers to routinely use them in instances where they could use a more practical weapon, pose serious potential harms to the mission of policing.

In practice, any conversation about these weapons must begin with a review of terminology. Three of the most popular assault rifles used in law enforcement contexts are the AR-15, the M-4 and the M-16. With respect to this topic, commentators often use these terms interchangeably. However, although they may share the same family tree, they are not the same weapons.

The AR-10, which was designed in the 1950s to replace the aging World War II arsenal for the conflict in Korea, is the “grandfather” of all of these weapons.<sup>31</sup> That weapon eventually became the M-16 and entered service in 1964. Although the M-16 is the longest serving rifle in service, it has a checkered history. Shortly after becoming the primary American rifle in the Vietnam conflict, combat troops complained of its tendency to jam in the middle of a firefight.<sup>32</sup> This “failure to extract” problem caused a spent cartridge case to remain lodged in the chamber after a bullet exited the muzzle and likely cost many soldiers their lives.

24. Arthur Rizer, “Trading Police for Soldiers: Has the Posse Comitatus Act Helped Militarize Our Police and Set the Stage for More Fergusons?”, *Nevada Law Journal* 16:2 (2016), pp. 467-514. <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1668&context=nlj>.

25. Apuzzo. [http://www.nytimes.com/2014/06/09/us/war-gear-flows-to-police-departments.html?\\_r=1](http://www.nytimes.com/2014/06/09/us/war-gear-flows-to-police-departments.html?_r=1).

26. Alex Rogers, “The MRAP: Brilliant Buy, or Billions Wasted?”, *TIME Magazine*, Oct. 2, 2012. <http://nation.time.com/2012/10/02/the-mrap-brilliant-buy-or-billions-wasted>.

27. “Indonesia Police Say Policeman Killed in Papua Mine Attack,” *US News & World Report*, Nov. 15, 2017. <https://www.usnews.com/news/business/articles/2017-11-14/indonesia-police-say-1-officer-killed-in-papua-mine-attack>.

28. “MRAP Vehicles: Tactics, Techniques, and Procedures,” U.S. Army, September 2008. [https://www.globalsecurity.org/military/library/report/call/call\\_08-30.pdf](https://www.globalsecurity.org/military/library/report/call/call_08-30.pdf).

29. A standard definition for an assault rifle is a weapon that has “select fire capabilities,” which means that it can switch from semiautomatic to fully automatic modes. However, since rifles available to civilians typically do not have fully automatic modes, it is more accurate to describe an assault rifle as one that is commonly used in and was designed for the context of war. See, e.g., Jeff Daniels, “Definition of what’s actually an ‘assault weapon’ is a highly contentious issue,” *CNBC*, Feb. 21, 2018. <https://www.cnbc.com/2018/02/21/definition-of-whats-an-assault-weapon-is-a-very-contentious-issue.html>.

30. Doug Smith and Kate Mather, “20 years ago, a dramatic North Hollywood shootout changed the course of the LAPD and policing at large,” *Los Angeles Times*, Feb. 28, 2017. <http://www.latimes.com/local/lanow/la-me-ln-north-hollywood-shootout-revisited-20170223-htmlstory.html>.

31. A common misconception is that AR stand for assault rifle. In fact, it is short for ArmaLite, the weapon’s manufacturer.

32. C.J. Chivers, “How Reliable Is the M-16 Rifle?”, *New York Times*, Nov. 2, 2009. <https://atwar.blogs.nytimes.com/2009/11/02/how-reliable-is-the-m-16-rifle>.



The flaw led to the development of the M16A1, which greatly reduced reliability problems.<sup>33</sup> The A1 was modified again to create the M16A2, which could fire the 5.56×45mm NATO (M855/SS109) round.<sup>34</sup> In addition, a new adjustable rear sight was added, which allowed the rear sight to be dialed in for range settings between 300 and 800 meters without the need of a tool.<sup>35</sup> Additional improvements included a thicker barrel in front of the front sight post, which helped to resist bending in the field and allowed a longer period of sustained fire without overheating.<sup>36</sup>

One point of consistent criticism against the M-16 and its lineage, however, has been its stopping power,<sup>37</sup> as the weapon was designed to shoot a small round at a high velocity. This was partly so soldiers could carry more of the smaller, lighter round. But it was also because, in the art of war, the mission is not necessarily to kill the enemy. For this reason, a round traveling at a high velocity was designed to incapacitate its victim because a wounded enemy is often better than a dead one. This point warrants reiterating. Somewhat counterintuitively, combat rifles are well-suited for the context of war because they achieve this objective. Wars are often won through attrition of resources (i.e., though reductions in supplies, vehicles and bodies to fight). Successful strategies ensure that the enemy runs out of resources first. When an enemy soldier is killed, his or her body is recovered—but not until after the battle. When an enemy is merely wounded, however, a medic will be dispatched to assist and other soldiers will be occupied with removing him or her from the killing field. This serves as a tactical distraction, aiding the other side in the heat of battle. Then, if the soldier successfully makes it to the rear, medical staff and their resources will attend to the soldier for recovery. Perhaps the most distressing rationale is that, if the soldier goes home, his or her wounded presence will be a constant reminder to their community of the cost of war—in effect sapping the population’s appetite and will for the conflict—a harsh lesson the United States learned during the Vietnam conflict. That this class of weapon and its capabilities were developed for specific battlefield concerns casts considerable doubt on the idea that it should be an ordinary weapon for a beat cop.

Today, the M-4 has become a standard weapon for the military and is the preferred assault rifle used by police. It was designed for close quarter fighting and quickly became the

“go-to” weapon for U.S. Special Operations personnel. A variant of the M-16A2, both weapons primarily fire in three-round burst and semiautomatic modes, but the M-4 has a shorter barrel, which lowers its velocity by 200 feet per second and reduces its range.<sup>38</sup>

The M-4 has a rate of fire of 700-950 rounds per minute and a maximum range of 3,600 meters.<sup>39</sup> It has a maximum effective range, however, of around 500 meters (1,640 feet), which means that a trained shooter could, with iron sights only, hit a human-sized target at a distance of almost five football fields.<sup>40</sup> With a scope, the maximum effective range can increase up to 2,800 meters depending on its magnification. In addition, with a muzzle velocity of 2,970 feet per second, the 5.56×45mm round that is fired by the M-4 has significant penetration power. This means that a single round can—and has—gone through multiple people and walls.

Because of the sickening school shootings that have occurred around the United States using the weapon,<sup>41</sup> the AR-15 has come to the attention of the public at large. It too has similar capabilities to the M-16 rifles, however, its biggest difference is that fully automatic and three-round burst versions are not available. Also, the AR-15 shoots the .223 round, which is roughly the civilian equivalent of the 5.56×45mm NATO round.

When one overlays the capabilities of these weapons with the police mission, the deficiencies for routine deployment are obvious. For example, in May 2015, Justin Way, a recovering alcoholic, lost his job and fell hard off the wagon. Lying in bed with a knife, he threatened to kill himself, which caused his girlfriend to call the non-emergency police number to seek help.<sup>42</sup> Officers arrived shortly thereafter armed with M-4 rifles. Minutes later, Justin Way was dead. The question of whether this was a “good shoot” will not be litigated here because it is outside the scope of this conversation and cannot be answered without more information. But from the reported facts, it does appear to be a legitimate use of force—a tragic, but all too common, “suicide by cop” situation. However, this story is not to suggest evidence of police brutality, but rather is an illustration of why the M-4 is a flawed weapon for the police mission.

33. Robert Bruce, “M14 vs. M16 in Vietnam,” *Small Arms Review* 5:7 (April 2002). <http://www.smallarmsreview.com/display.article.cfm?idarticles=2434>.

34. Arthur D. Osborne, “Analysis of M16A2 Rifle Characteristics and Recommended Improvements,” U. S. Army Research Institute for the Behavioral and Social Sciences, February 1986. <http://www.dtic.mil/dtic/tr/fulltext/u2/a168577.pdf>.

35. Martin R. Mason, “AR Platform Firearms & Calibers,” Lulu.com, March 21, 2015.

36. Ibid.

37. C.J. Chivers, “How Reliable Is the M-16 Rifle?”, *New York Times*, Nov. 2, 2009. <https://atwar.blogs.nytimes.com/2009/11/02/how-reliable-is-the-m-16-rifle>.

38. “M16 Rifle vs. M4 Carbine,” Diffen, 2012. [https://www.diffen.com/difference/M16\\_Rifle\\_vs\\_M4\\_Carbine](https://www.diffen.com/difference/M16_Rifle_vs_M4_Carbine).

39. “Maximum range” refers to the distance a bullet can travel and still be deadly.

40. “M16/M4 Service Rifle Familiarization,” U.S. Marine Corps. <http://www.trngcmd.marines.mil/Portals/207/Docs/FMTBE/Student%20Materials/FMST/108.pdf>.

41. Tim Dickinson, “All-American Killer: How the AR-15 Became Mass Shooters’ Weapon of Choice,” *Rolling Stone*, Feb. 22, 2018. <https://www.rollingstone.com/politics/features/how-the-ar-15-became-mass-shooters-weapon-of-choice-w451452>.

42. Gina Tron, “Man Threatens Suicide, Police Kill Him,” *The Daily Beast*, May 28, 2015. <https://www.thedailybeast.com/man-threatens-suicide-police-kill-him>.

The M-4 is a two-handed weapon system, which means that once officers enter a room with it in hand, they are physically prevented from accessing any other tools in their utility belt. This severely limits their options for a given scenario. One common retort to this observation is that typically, when an officer is armed with an assault rifle, it is attached to his or her body with a sling that hangs over the shoulder and neck and thus they are able to drop the weapon and access their other tools, if necessary. However, this is impractical and dangerous in practice. For starters, a dangling weapon is a far too easy target for a perpetrator to grab and discharge. At the very least, they would likely use it as leverage in a physical altercation. In fact, it is precisely for this reason that the “Sam Browne” police belt (not incidentally dubbed a “suicide strap” by officers), fell out of favor with law enforcement.<sup>43</sup> This is also why officers will almost certainly wear a clip-on tie if they are required to wear one at all. Put simply, the on-the-ground reality is that when an officer is armed with a two-handed weapon system, too often he or she has no option but to use *lethal* force in situations where *any* force would suffice.

The Daniel Shaver shooting sadly confirms this point. Although the investigating detective concluded that he did not see anything that would have prevented Officer Brailsford from handcuffing Mr. Shaver, in reality, there *was* an obstacle. Officer Brailsford would have had to either unsling his weapon and lay it down, give the weapon to his partner or let it dangle next to him while he un-holstered his handcuffs. In this way, the use of a two-handed weapon system designed for the military promotes lethal force as a first option, which is inappropriate for policing.

Moreover, the penetration power of the round (capable of penetrating a 1/8” steel plate at 600 meters) and the distance it will travel when fired (3,000 feet per second) means that if an officer misses—or even if he hits—his target, the round can travel further than intended and seriously harm or kill innocent bystanders. After all, a bullet designed to travel through brick walls, car doors and certainly drywall can hardly distinguish between friend or foe, nor will it stop after rattling through only one body.

Such capabilities require comparison with the requirements for the legal use of deadly force by the police established by the United States Supreme Court in *Tennessee v. Garner*.<sup>44</sup> There, the Court held that an officer is not permitted to use deadly force unless the “officer has probable cause to believe

that the suspect poses a significant threat of death or serious physical injury to the officer or others.”<sup>45</sup> In light of this, the M-4 is a poor choice to assist an officer in daily encounters with citizens, given that such encounters would likely not require a weapon with a sustained rate of fire, a round that is known for its tendency to wound and not kill, has accuracy up to half a mile and that physically limits the officer’s ability to utilize all other, non-lethal tools.<sup>46</sup> While it is the case that in the scenario of a barricaded, heavily-armed active shooter, a tactical team armed with M-4s may be reasonable, this is a relatively rare occurrence when compared to the other, more common scenarios in which police find themselves. That departments across the country have procured tens of thousands of these rifles in less than a decade, leaves little question as to why the M-4 and its sister rifles are being used in inappropriate scenarios.<sup>47</sup> The bottom line, however, is that while the M-4 is an effective weapon for a soldier in combat, it is a particularly clumsy weapon for a police officer to use in a closed room at short range.

## EFFECT OF MILITARY EQUIPMENT ON POLICING

On November 24, 2015, the St. Louis County Prosecutor, Robert McCulloch, called a news conference to announce the grand jury’s decision in the case against Officer Darren Wilson for the fatal shooting of Michael Brown.<sup>48</sup> While the nation held its breath awaiting the decision, local and state law enforcement “deployed” around Ferguson. Governor Jay Nixon had already declared a state of emergency, and Ferguson Mayor, James Knowles, warned authorities to “prepare for the worst.”<sup>49</sup> Before the announcement of the verdict, St. Louis Police Chief, Sam Dotson, stated of his force’s readiness, “[w]e’ve had three months to prepare [ . . . ] Our intelligence is good. Our tactics are good.”<sup>50</sup>

What is shocking about this statement is not its veracity, but rather how reminiscent it is of a commander’s rallying war cry before a final attack.

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45. *Ibid.*

46. It should be noted that, in policing, when an officer determines that deadly force is needed, he or she always shoots to kill and never to wound. This is precisely because an attempt to wound could be used later in a court case to argue that deadly force was not necessary and because wounded perpetrators can still be dangerous.

47. The M-16A2 is the top firearm acquired through the 1033 Program, selling more than 67,000 rifles for nearly \$30 million.

48. Eyder Peralta and Krishnadev Calamur, “Ferguson Documents: How The Grand Jury Reached A Decision,” NPR, Nov. 25, 2014. <https://www.npr.org/sections/thetwo-way/2014/11/25/366507379/ferguson-docs-how-the-grand-jury-reached-a-decision>.

49. Jamelle Bouie, “Prepare for the Worst: Missouri’s Governor Smears the Residents of Ferguson and Misunderstands the Cause of Last Summer’s Chaos,” *Slate*, Nov. 19, 2014. [http://www.slate.com/articles/news\\_and\\_politics/politics/2014/11/ferguson\\_state\\_of\\_emergency\\_gov\\_jay\\_nixon\\_expects\\_unrest\\_and\\_chaos\\_after.html](http://www.slate.com/articles/news_and_politics/politics/2014/11/ferguson_state_of_emergency_gov_jay_nixon_expects_unrest_and_chaos_after.html).

50. Jamelle Bouie, “Prepare for the Worst: Missouri’s Governor Smears the Residents of Ferguson and Misunderstands the Cause of Last Summer’s Chaos,” *Slate*, Nov. 19, 2014. [http://www.slate.com/articles/news\\_and\\_politics/politics/2014/11/ferguson\\_state\\_of\\_emergency\\_gov\\_jay\\_nixon\\_expects\\_unrest\\_and\\_chaos\\_after.html](http://www.slate.com/articles/news_and_politics/politics/2014/11/ferguson_state_of_emergency_gov_jay_nixon_expects_unrest_and_chaos_after.html).

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43. A “Sam Browne” strap crosses the body and is attached to a soldier’s or police officer’s belt. It was invented by Sam Browne, a 19<sup>th</sup> century British Army officer who lost his arm and could not draw his sword because he could not steady the scabbard with a second hand. The strap was designed to hold the scabbard steady. See, e.g., Rebecca Stone, “Sam Browne and beyond: A look at duty belts,” *PoliceOne*, July 20, 2005. <https://www.policeone.com/police-products/duty-gear/articles/117535-Sam-Browne-and-beyond-A-look-at-duty-belts>.

44. 471 U.S. 1 (1985).

Indeed, in the case of the Justin Way shooting, police spoke similarly afterward. Detective Mike Smith, who drafted the incident report, told Way's parents that their son was shot when he refused to put down the knife because, "[t]hat's what we do." Belligerent statements like these demonstrate the central problem of police militarization: namely, the blurring of lines between the police mission to "protect and serve" and the soldier's to "engage and destroy."<sup>51</sup> Irrespective of training, if police officers "are dressed like soldiers, armed like soldiers, and trained" in military tactics, there is a real probability that officers will also "act like soldiers."<sup>52</sup>

Moreover, after the Way incident, a departmental spokesperson responding to a question about the use of assault rifles, stated that the deployment of M-4s was apt "if the deputies [felt] that that is the appropriate weapons system to use." Here, the use of the term "weapons system" is significant, as it demonstrates the extent to which police have come to think of themselves in militaristic terms. After all, police do have weapons, but their mission is to use them *defensively*—as tools. Weapons systems, on the other hand are used *offensively*—as equipment designed to engage and destroy targets in the context of war. Such a choice of language after a young man lost his life both assumes that a "weapon" is necessary in every situation that officers face and also situates citizens as "targets" to be dealt with strategically using weapon system A or weapon system B. Perhaps even more importantly, it demonstrates the mission creep of policing to soldiering and proves that when you give people hammers, they will see nails everywhere.<sup>53</sup> Likewise, to an officer using "weapons systems," everything will look like a target.

Fear surrounding the increasing militarization of the police is not merely hyperbolic; not only has the nation witnessed warlike tactics from our police, this type of phenomenon has been tested in a clinical setting. In 1971, professor and psychologist Philip Zimbardo conducted his (in)famous Stanford prison experiment.<sup>54</sup> There, he placed subjects into two roles—guard or prisoner—with the goal of determining whether the subjects would act in line with their own personality or in accordance with the assigned roles based on their expectations of them. Despite the fact that participants were fully aware that this was an observed experiment, almost all of the students began to act in line with their assigned roles.<sup>55</sup> "Guards" quickly became authoritarian and, in some cases, performed psychological torture on prisoners

to include a "wide array of humiliations and punishments" and "many began to show signs of mental and emotional distress."<sup>56</sup> Because of these shocking results, the experiment was ended early. However, it stands as clinical evidence that role and responsibility are central to defining behavior. Accordingly, as police become equipped like the military and their role moves from policing to soldiering, it is not surprising that their actions follow suit.

Although police militarization was largely anecdotal before 2014,<sup>57</sup> the events of Ferguson, Missouri allowed Americans to see some of this "role playing" firsthand, as the public witnessed a small-town police force—equipped with military grade weaponry—deploy against the public they were sworn to protect and serve.<sup>58</sup> Given the complicated facts and sensitive racial issues surrounding the shooting of Michael Brown, it is unsurprising that the community responded forcefully (albeit, at times, illegally).

All of this leads to the natural question as to whether the protests and riots in Ferguson would have been amplified to such a crescendo if the community had been confronted with officers in black and white patrol cars and blue uniforms, rather than by an "army" sent to quell them in armored vehicles and camouflage fatigues.

In fact, recent research confirms that the explosion of available military weapons in local police departments is associated with increased violent interactions between officers and civilians. A 2017 study analyzed all counties from four states and found that "more-militarized law enforcement agencies were associated with more civilians killed each year by police," and this was the case even after controlling for other factors such as household income, overall and black population, violent-crime levels, drug use and reverse causality (i.e., whether the increase in violence causes the militarization, or vice versa).<sup>59</sup> The study concludes that: "[w]hen a county goes from receiving no military equipment to \$2,539,767 worth (the largest figure that went to one agency in our data), more than twice as many civilians are likely to die in that county the following year."<sup>60</sup>

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56. Ibid.

57. See Radley Balko, *Rise Of The Warrior Cop: The Militarization Of America's Police Forces* (Public Affairs, 2013), pp. 241-60.

58. See e.g., Justin Glawe, "Michael Brown's Hometown Is Under Occupation," *The Daily Beast*, Aug. 12, 2014. <http://www.thedailybeast.com/articles/2014/08/12/michael-brown-s-hometown-is-under-occupation.html>.

59. Casey Delehanty et al., "Militarization and police violence: The case of the 1033 program," *Research & Politics* 4:2 (April 2017), pp. 1-7. <https://doi.org/10.1177/205316801712885>.

60. Ryan Welch and Jack Mewhirter, "Does military equipment lead police officers to be more violent? We did the research," *The Washington Post*, June 20, 2017. [https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/30/does-military-equipment-lead-police-officers-to-be-more-violent-we-did-the-research/?utm\\_term=.703790150d18](https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/30/does-military-equipment-lead-police-officers-to-be-more-violent-we-did-the-research/?utm_term=.703790150d18).

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51. Tron. <https://www.thedailybeast.com/man-threatens-suicide-police-kill-him>.

52. Arthur Rizer and Joseph Hartman, "How the War on Terror Has Militarized the Police," *The Atlantic*, Nov. 7, 2011. <https://www.theatlantic.com/national/archive/2011/11/how-the-war-on-terror-has-militarized-the-police/248047>.

53. See Maslow.

54. Martyn Shuttleworth, "Stanford Prison Experiment," Explorable, June 22, 2008. <https://explorable.com/stanford-prison-experiment>.

55. Ibid.

## HOW TO RETURN TO “SUPERHERO STYLE” POLICING

Policing has always been a “damned-if-you-do, damned-if-you-don’t” profession. It is largely a thankless job and on a daily basis officers around the country are yelled at, shot at and protested against by those who simply do not understand the difficulties of the job.<sup>61</sup> Yet, even with all these strains, police are heroes who perform an almost impossible job with very little resources, which merely exacerbates the issues herein described. For this reason, we must ensure that police have a clear mission and are properly equipped to behave like the public servant heroes we expect them to be, rather than the soldiers we expect the military to be.

### Create sound policy for resource sharing

Much to the chagrin of many officers and to the delight of many activists, on the heels of the Ferguson unrest, former President Barack Obama issued an executive order that restricted sales of certain classes of military equipment from the Pentagon’s 1033 program.<sup>62</sup> President Trump and his Attorney General, Jeff Sessions, capitalized on this perceived slight to law enforcement and have sworn to bring back the program.<sup>63</sup> Yet, a more critical look at President Obama’s order reveals that the reform was weak and inadequate to have any real effect on policy.

The order prevented departments from using federal dollars through an equitable sharing program<sup>64</sup> to procure seven categories of military equipment: tracked armored vehicles (but wheeled vehicles like the MRAP were excluded); weaponized aircraft; firearms and ammunition of .50 caliber or higher (a bullet designed to stop lightly armored military vehicles); grenade launchers; camouflage uniforms and bayonets that are used as regular knives and not affixed to rifles.<sup>65</sup> However, departments are still allowed to acquire these items—a weaponized aircraft for instance—as long as equitable sharing proceeds were not used. In the end, the 1033 reforms did little to stymie the flow of military equipment to local police departments. In fact, the year after Presi-

dent Obama signed his order, the total value of equipment distributed through 1033 actually increased.<sup>66</sup>

However, even if Obama’s executive order had compromised the military readiness of American police—which it manifestly did not—the question remains why police need to be military ready in the first place.<sup>67</sup>

Policing is a dangerous job and it is more than reasonable that officers should have the equipment they need to carry out the job safely. And, at times, larger cities can feel like a war zone due to local violence or terror threats. But when Granite City, Illinois—a city with a population not yet 30,000—acquires 25 M-16s and other fully-automatic assault rifles and an armored vehicle, we need to examine what we are asking of our police. Accordingly, the President needs to move past campaign rhetoric and toward a 1033 policy that shares federal resources with local police departments but not at the expense of the blue and green line between the professions and their missions.

### Promote responsible hiring

One of the officers involved in the Justin Way shooting had posted on Facebook: “Most people respect the badge. Everyone respects the gun.”<sup>68</sup> That mentality, itself, needs to be policed. The best way to do that is through more comprehensive hiring strategies.

A lot has been said over the years about the lack of minorities and females in the ranks of America’s police forces.<sup>69</sup> Less has been said, however, about other types of diversity—for example, that which would give police more and different ways of looking at peaceful protests and violent riots alike.

One significant area in which increased diversity should pay dividends is in the intelligence of police officers. Some police departments currently cap “acceptable” general intelligence test scores to reduce turnover, fearing smarter candidates will quickly become bored with day-to-day policing.<sup>70</sup> An unintended consequence of this hiring practice, however, is that it also limits the “emotional intelligence” of the applicant pool — the applicants’ ability to perceive, use, manage

61. Arthur Rizer, “Yet One More Unimportant Article about Colin Kaepernick,” *Huffington Post*, Sept. 20, 2016. <https://www.huffingtonpost.com/entry/57e18d1fe4b00267764fb36d?timestamp=1474401315049>.

62. Arezou Rezvani et al., “MRAPs And Bayonets: What We Know About The Pentagon’s 1033 Program,” *NPR*, Sept. 2, 2014. <https://www.npr.org/2014/09/02/342494225/mrap-and-bayonets-what-we-know-about-the-pentagons-1033-program>.

63. Sadie Gurman, “Trump clears way for local police to obtain military gear,” *Associated Press*, Aug. 28, 2017. <https://apnews.com/f6896860cb5d4eccbcb-d49665ca0ed9b>.

64. An equitable sharing program is one in which local law enforcement share proceeds of civil asset forfeiture with federal authorities See, e.g., Dick M. Carpenter et al., “Policing for Profit: The Abuse of Civil Asset Forfeiture,” 2<sup>nd</sup> ed., Institute for Justice, 2015. <http://ij.org/report/policing-for-profit/federal-equitable-sharing>.

65. “Ban on Purchasing Certain Equipment with Equitable Sharing Funds,” U.S. Dept. of Justice, May 18, 2015. <https://www.justice.gov/sites/default/files/criminal-afmls/legacy/2015/05/21/05-18-15-wire.pdf>.

66. Seth Kershner, “If You Thought Obama Was Giving Less Military Gear to Local Police Departments, You Were Wrong,” *In These Times*, Sept. 16, 2016. [http://inthesetimes.com/features/obama\\_police\\_military\\_equipment\\_ban.html](http://inthesetimes.com/features/obama_police_military_equipment_ban.html).

67. Arthur Rizer and Jon Haggerty, “To Protect and Serve or To Search and Destroy?” *US News & World Report*, Aug. 3, 2017. <https://www.usnews.com/opinion/op-ed/articles/2017-08-03/trump-is-calling-for-more-than-rough-cops-he-wants-soldiers>.

68. Tron. <https://www.thedailybeast.com/man-threatens-suicide-police-kill-him>.

69. Christina Asquith, “Why Aren’t U.S. Police Departments Recruiting More Women?” *The Atlantic*, Aug. 30, 2016. <https://www.theatlantic.com/politics/archive/2016/08/police-departments-women-officers/497963>.

70. *Jordan v. City of New London*, No. 99-9188 (2d. Cir. Aug. 23, 2000); See also “Court OKs Barring High IQs for Cops,” *ABC News*, Sept. 8, 2000. <http://abcnews.go.com/US/court-oks-barring-high-iqs-cops/story?id=95836>.



and understand their emotions and the emotions of those around them. Indeed, recent research has shown that general and emotional intelligence are more strongly correlated than previously thought.<sup>71</sup>

Research has also shown that those with lower emotional intelligence scores are more likely to bully and be violent.<sup>72</sup> By limiting the general intelligence of the applicant pool, then, police departments are also limiting their emotional intelligence, which increases the likelihood that applicants will be bullies. And it is not hard to imagine that a bully and an assault rifle is a dangerous combination. The military equipment, attire and weaponry only give these bullies more implements to strike fear into their captive audience—in this case, the very public they are charged to protect and serve.

The fact that police departments have acquired so much military-grade weaponry and other equipment only makes their high-aggression responses more dangerous. That police want to be issued militaristic weapons and use them is only a symptom of officers thinking in militaristic terms. In order to change this beyond the reforms mentioned above, the way these officers think must change and that starts with hiring officers that demonstrate higher order thinking and reactions.

### Increase professionalization opportunities

Policing is a profession and it should be treated that way. In the military, advancement in rank requires mandatory professional development and this is true from the first level of non-commissioned officer (sergeant in the Army) to generals and admirals attending the War College.

In policing, senior leaders often do not have any more professional development than a freshly minted rookie officer out of the academy. While ad hoc professional development is certainly present, the majority of police training is dedicated to technical training (shooting practice) and learning how to use new equipment. Very little time is focused on the profession *as a profession*.

A new emphasis on professional development and education would go a long way to ensure that people use their equipment responsibly as tools rather than as “weapons systems.” A study conducted by Michigan State University found that college-educated officers had a lower propensity for vio-

lence. In Florida, a report found that 75 percent of all disciplinary actions were leveled at officers who only have a high school diploma. In no way is this meant to suggest that college degrees will solve the problems of officers being armed like soldiers, but rather, that a more professional and educated police force will be more mature in the way it thinks about violence and in the way it uses the tools at its disposal.

Moreover, precious police resources that are not wrapped up in salaries and overhead should go to developing the professional body of the force, not to pay for jet fuel for an unnecessary armored vehicle that sits in the motor pool until the next town parade.

### CONCLUSION

Right outside our nation’s capital in Prince George’s County, Officer Mujahid Ramzziddin was killed on February 21, 2018 while trying to help a woman in a domestic violence situation. She was in the process of leaving her husband, and the night before had asked the officer to park his marked cruiser in front of her house.<sup>73</sup> When Officer Ramzziddin saw her outside removing her belongings, he stood next to her, guarding her—protecting her, as requested. The estranged husband ambushed the officer and killed him with a shotgun. Officer Ramzziddin is a hero, a man who put his life above another’s, making the ultimate sacrifice to fulfill his oath to protect and to serve.

Tragically, stories like Officer Ramzziddin’s occur all too often in the United States. Officers must be equipped to face their unique mission—but what that mission is precisely and how it differs from a soldier’s must be clear. It is obvious that a SWAT team member will need different equipment than an officer responding to a call about a suicidal man, but too often, those lines are blurred. And although the police mission sometimes requires the blunt force of the dispassionate hammer, law enforcement professionals are peace officers—not soldiers—and thus they should be equipped for the enormous and diverse set of roles they play in their communities. After all, they serve as members of dangerous SWAT teams, investigate suspects, help lost children find their way home, comfort victims of crimes, and even protect the civil rights of the accused. They are social workers, peace keepers, and law enforcement officers all wrapped up into one. Indeed, as Sir Robert Peel, who was instrumental in helping create modern policing, mused: “the police are the people and the people are the police.”<sup>74</sup>

71. Aron K. Barbey et al., “Distributed Neural System for Emotional Intelligence Revealed by Lesion Mapping,” *Social Cognitive & Affective Neuroscience* 9 (2012), pp. 265-72. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3980800>.

72. Chantelle Schokman et al., “Emotional Intelligence, Victimization, Bullying Behaviors and Attitudes,” *Learning and Individual Differences* Volume 36 (2014), pp. 194-200. This study reinforces previous studies’ findings that emotional intelligence “not only has significant associations with bullying and victimization but is also a significant independent predictor of the propensity for peer victimization and problematic behaviors” (p.197).

73. Lynh Bui et al., “Prince George’s County officer killed trying to aid woman in domestic disturbance, county says,” *The Washington Post*, Feb. 21, 2018. [https://www.washingtonpost.com/local/public-safety/prince-georges-county-officer-killed-trying-to-aid-woman-in-domestic-disturbance-county-says/2018/02/21/634474e2-171e-11e8-b681-2d4d462a1921\\_story.html?utm\\_term=.b0b8d539e390](https://www.washingtonpost.com/local/public-safety/prince-georges-county-officer-killed-trying-to-aid-woman-in-domestic-disturbance-county-says/2018/02/21/634474e2-171e-11e8-b681-2d4d462a1921_story.html?utm_term=.b0b8d539e390).

74. “Police Reform: Power to the People,” *The Economist*, Dec. 2, 2010. <https://www.economist.com/node/17633210>.

While critics of police militarization often point to the costs of militarization for civilians, it is important to note that it has not been in the interests of officers, either. To give an officer an M-4 and expect him or her to use it as their primary weapon, limits the menu of response options in a given situation. Peace officers rarely need camouflage, assault rifles and armored vehicles. In fact, those things can make it more difficult for them to do their jobs effectively. What police do need to face the challenges going forward are better, more emotionally and intellectually equipped colleagues, better training and professional development opportunities, and a more efficacious and responsible policy with respect to resource sharing between the military and police. As Jeremy Travis, former president of the John Jay College of Criminal Justice and now Senior Vice President of Criminal Justice at the Laura and John Arnold Foundation has aptly said: “of all governmental functions, the policing function is arguably the most visible, the most immediate, the most intimately involved with the well-being of individuals and the health of communities.”<sup>75</sup> Indeed, police officers are heroes, but treating and equipping them like soldiers merely limits their success.

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75. Jeremy Travis, “Policing in Transition,” *International Perspectives on Crime, Justice and Public Order*, June 21, 1998. <https://nij.gov/about/director/Pages/travis-budapest.aspx>.