

Homeland Security and Police Militarization: a Way Forward

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The recognition of various critical infrastructure vulnerabilities has evolved in the United States over the last two decades. The expansion of the number of critical infrastructure sectors in Presidential Policy Directive 21 (PPD-21) in 2013 provides more focus on a wider continuum of vulnerabilities than past plans. These critical infrastructure sectors can ostensibly appear to be extremely focused, such as the Water and Wastewater Systems Sector, or be dynamic and very decentralized, such as the Emergency Services Sector. The geographically dispersed public safety entities that comprise the Emergency Services Sector can be found at the federal, state, local, tribal, and territorial levels of government. As a means of supporting the prevention, preparedness, response, and recovery responsibilities of these first responders, private security, medical care providers, and public works operations, various entities within the federal government have supported and collaborated with this sector's organizations to improve their functionality as a means of strengthening their collective capabilities. However, when examining some of the collaboration and support earmarked for strengthening the U.S. law enforcement community, it is difficult to avoid the critical review of some of the outcomes of this support. Particularly noteworthy is the increased criticism of the capability building initiatives to strengthen law enforcement efforts to improve its resilience and ability to respond to an escalating threat environment.

This criticism has particularly fixated on the law enforcement use of military-grade equipment and military-like tactics to prepare for and meet public safety threats. The use of such equipment and tactics can be traced to various recommendations. Some of these recommendations focused on some type of agency or system failure, while other recommendations are more prospective in nature. For example, recommendations from the Columbine Review Commission focused on law enforcement failures while the Sandy Hook Advisory Commission focused more on system failures. The recommendations of the 9/11 Commission Report offered recommendations on a much broader scale. These recommendations, based on failures in imagination, policy, capabilities, and management, may in part have served as an impetus for increasing law enforcement capabilities to deal with a change in the level of actual threats as well as to prepare for future, emerging threats. Support for these recommendations from various aspects of the federal government may have actually enhanced the capability building of law enforcement agencies that is inviting this criticism of their use of military-grade equipment and military-like tactics.

Background

The Emergency Services Sector is focused on providing critical, specialized services at times of need. Consistent with the mission of the sector to "save lives, protect property and the environment, assist communities impacted by disasters, and aid recovery

during emergencies,”¹ the capabilities to deliver these specialized services include SWAT teams, bomb disposal and canine services, fusion centers, and search and rescue teams. The Department of Homeland Security (DHS), recognizing the Emergency Services Sector is the most geographically distributed sector,² provides a myriad of support to develop and maintain these capabilities entrusted to state, local, tribal, and territorial (SLTT) law enforcement agencies that are generally utilized in response to an event or events. This support from DHS and other federal government entities does not supplant SLTT control, as these capabilities remain under the mission and direction of SLTT law enforcement agencies for public safety tasks as they deem appropriate.

The Emergency Services Sector-Specific Plan acknowledges diminishing government budgets may adversely impact the capacity of law enforcement entities to respond to events, threats, and attacks, inclusive of violent extremist and terrorist attacks. In enumerating these risks, the plan notes the increased targeting of emergency services personnel, specifically law enforcement. The plan further notes the continuum of attack methods law enforcement face, inclusive of improvised explosive devices (IED), vehicle-borne IEDs, weaponized agents and active shooters.³ The sector-specific plan recognizes these evolving threats are asymmetrical attacks. As represented in Joint

Vision 2020, the U.S. Department of Defense’s strategic vision published in 2000, asymmetrical attacks is a term used to discuss a military approach of an attacker targeting the vulnerable attributes of its opponent.⁴ Consistent with the use of this term in Joint Vision 2020, the law enforcement community recognizes the asymmetry of attacks by adversaries present a unique challenge and cause of concern for law enforcement agencies and the entire spectrum of the Emergency Services Sector. As a means of mitigating this risk, law enforcement agencies have evolved to counter this threat with the support of the Emergency Services Sector and its other partners.

A Path to a More Militarized Approach to Policing

Law enforcement agencies and the U.S. law enforcement community in general have long accepted the need to be armed with firearms due to the prevalent gun culture in the United States. Law enforcement agencies have often been trying to match the threat of weapons in the hands of criminals. This was even evident in the early 20th century when officers struggled to match and overcome the firepower attributed to the violence associated with criminal syndicates operating in the Prohibition and Great Depression

¹ Department of Homeland Security, *Emergency Services Sector-Specific Plan: An Annex to the NIPP 2013* (Washington, DC: U.S. Department of Homeland Security, 2015), 26.

² Department of Homeland Security, *Emergency Services Sector-Specific Plan*, 3.

³ Department of Homeland Security, *Emergency Services Sector-Specific Plan*, 8-9.

⁴ Department of Defense, *Joint Vision 2020 – America’s Military: Preparing for Tomorrow* (Washington, DC: U.S. Department of Defense, 2000), 4-5.

eras.⁵ In fact, police officers traditionally carried six-shot revolvers well into the 1980's, while criminals were routinely carrying semi-automatic handguns.

While the need to carry superior firepower to address a better-armed adversary is not new to law enforcement or the military, the tactics of the criminal element have also changed in America. The Columbine High School mass shooting event in 1999 may have underscored this change in adversarial tactics, but the subsequent findings of the Columbine Review Commission released in 2001 accentuated the public's expectation for the police response in such active shooter situations. The Commission particularly criticized law enforcement's response to the shootings, noting responding officers made "no efforts" to "engage, contain or capture the perpetrators" during their 46-minute assault inside Columbine High.⁶ The law enforcement response did not consist of responding officers entering the building quickly to stop the killings, but instead focused on securing the perimeter of the school. The first recommendation by the blue-ribbon panel established by the governor of Colorado was for police personnel to make the stopping of any type of armed assault their highest priority. The recommendation established:

Law enforcement policy and training should emphasize that the highest priority of law enforcement officers, after arriving at the scene of a crisis,

is to stop any ongoing assault. All law enforcement officers who may be first responders at a crisis, and all school resource officers (SROs) should be trained in concepts and skills of rapid emergency deployment, whether or not assigned as members of standing or reserve special weapons and tactics (SWAT) teams and should have immediately available all weapons and protective equipment that might be required in a pursuit of active armed perpetrators.⁷

Other efforts to arm police and better prepare for stopping ongoing assaults also have their genesis in changes in adversarial tactics as well as changes in the public's expectations for public safety responses. Recent video recordings of law enforcement officers not meeting public expectations when responding and reacting to deadly attacks are drivers for these expectations. For example, some video surveillance and on-body recorder footage of officers outside Marjory Stoneman Douglas High School in Parkland, Florida and inside the Mandalay Bay Hotel in Las Vegas, Nevada provide a vantage point to still observe problematic levels of expertise and rapidity.

The first "notable trend and emerging issue" in the Emergency Services Sector-Specific Plan acknowledges the public's increasing expectations for expertise and "rapid response capabilities" to be deployed to all-

⁵ Radley Balko, *Rise of the Warrior Cop: The Militarization of America's Police Forces* (New York, NY: Public Affairs), 33.

⁶ Honorable William H. Erickson, Chairman, *The Report of Governor Bill Owens' – Columbine Review*

Commission (Denver, CO: State of Colorado, May 2001), 7.

⁷ Erickson, *The Report of Governor Bill Owens' – Columbine Review Commission*, x.

hazard incidents.⁸ The Columbine shooting, considered an all-hazard incident especially because of the planned use of fire, IEDs, and firearms, is also considered a statistical outlier for U.S. active shooter incidents in the sense that the event was perpetrated by two shooters. A Federal Bureau of Investigation (FBI) Report (2014) that studied all 160 active shooter incidents in the U.S. between 2000 and 2013 included only two incidents involving more than one shooter.⁹

One of the four failures noted in the 9/11 Commission Report was the failure to imagine the broad-scale type of attacks that could possibly occur. While it is obviously important for a myriad of reasons to consider all active shooter events in all venues as noted by the 2014 FBI report, attention cannot be paid only to single-actor active shooter incidents in schools as a means of illustrating the need to build capacity to sustain the law enforcement component of the Emergency Services Sector. Significant global evidence yields a rationale for U.S. law enforcement to contemplate and operationalize the use of military-grade equipment and military-like tactics to address the public's increasing expectations for incident-specific expertise and rapid response capabilities to be deployed to all-hazard incidents

Global Threats: Local Lessons

Violent assaults with firearms and terror attacks are not relegated to just the United States or just on schools. However, the attacks on schools are abounding. Data gleaned from the University of Maryland – Global Terrorism Database, reflecting a 40-year analysis of terror attacks in schools and universities, represents a sharp increase in attacks commencing in 2004.¹⁰ This is the year of the Beslan School attack in Russia where 331 individuals were killed after armed Islamic groups took over 1,000 hostages, including 777 children.¹¹ One decade after the Beslan attack, six gunmen entered a government school in Peshawar, Pakistan in 2014 and killed 141 individuals, almost exclusively schoolchildren.¹² Common between the Beslan and Peshawar attacks was the number of attackers; each event exceeded one attacker. This attribute of these attacks shatters the prevalent perception in America of the lethality of the lone wolf active shooter. The attackers in both cases also had military training and used explosives in their attacks. These commonalities are all worthy of recognition as global trends that U.S. law enforcement agencies must incorporate in their planning and training. These commonalities are particularly noteworthy because they represent the emergence of Hybrid Targeted

⁸ Department of Homeland Security, *Emergency Services Sector-Specific Plan*, 7.

⁹ Pete J. Blair and Katherine W. Schweit, *A Study of Active Shooter Incidents, 2000 – 2013*, (Washington, DC: Texas State University and Federal Bureau of Investigation, U.S. Department of Justice, 2014), 7.

¹⁰ "National Consortium for the Study of Terrorism and Responses to Terrorism: A Center of Excellence of the U.S. Department of Homeland Security,"

(College Park, MD: University of Maryland, 2017.), <http://www.start.umd.edu/gtd/>.

¹¹ UNICEF Media Centre, "August 31, 2006: Beslan – Two Years On," https://web.archive.org/web/20090404112922/http://www.unicef.org/russia/media_4875.html.

¹² Shamaa Khalil, "Pakistan Taliban: Peshawar School Attack leaves 141 dead," *BBC News*, December 16, 2014, <http://www.bbc.com/news/world-asia-30491435>.

Violence (HTV), the intentional use of force to a specifically identified population to cause physical injury or death using multifaceted conventional weapons and tactics.¹³ Furthermore, the armed assailants in each case can be classified as Militarized Maneuver Terrorists (MMTs). The characteristics of MMTs generally include multiple, highly-trained individuals who are well-armed and capable of carrying out well-planned and coordinated attacks.¹⁴

The University of Maryland data, containing the attributes of the Beslan and Peshawar attacks, is consistent with the United Nations report, "Education Under Attack 2010." This report revealed a pattern of systematic attacks on teachers, pupils, schools and universities across the globe.¹⁵ This pattern is important to consider in the United States for a number of reasons. A primary consideration is the vulnerability of the education setting. Contributing to this vulnerability is not just the age of the many young people who attend the 132,000 public and private K-12 schools in the United States, but the number of persons in the schools every day. The National Center for Education Statistics (NCES) reported the projected September 2017 attendance at U.S. public

elementary and secondary schools would be 50.7 million students and student attendance at private elementary and secondary schools would be 5.2 million students. Approximately 3.6 million teachers are employed at these public and private schools. NCES data indicated 20.4 million students would attend U.S. colleges and universities in September 2017.¹⁶ IPEDS (Integrated Postsecondary Education Data System) data published in February 2017 indicates American colleges and universities employ approximately four million employees.¹⁷ When considering that the U.S. Census Bureau estimated 326 million people were living in the United States in September 2017,¹⁸ the approximately 84 million people who either attended or are employed at elementary, secondary, and post-secondary institutions comprise more than 25% of the U.S. population. This is a significant vulnerability that underscores the capability building needs promoted in the Emergency Services Sector-Specific Plan to strengthen law enforcement efforts to improve its resilience and ability to respond to an escalating threat environment.

The 9/11 Commission Report noted a failure in numerous capabilities to thwart the

¹³ Tracy L. Frazzano and G. Matthew Snyder, "Hybrid Targeted Violence: Challenging Conventional 'Active Shooter' Response Strategies," *Homeland Security Affairs*, 10, no. 3 (February 2014): 1-2.

¹⁴ Craig Alan Broyles, "Militarized Maneuver Terrorism," abstract, U.S. Army Command and General Staff College, 2015-06: 1.

¹⁵ Brendan O'Malley, *Education Under Attack, 2010: A Global Study on Targeted Political and Military Violence Against Education Staff, Students, Teachers, Union and Government Officials, Aid Workers and Institutions* (Paris, France: UNESCO, 2010), 61.

¹⁶ National Center for Education Statistics, "Fast Facts," U.S. Department of Education, <https://nces.ed.gov/fastfacts/display.asp?id=372>.

¹⁷ Scott A. Ginder, Janice E. Kelly-Reid, and Farrah B. Mann (2017). *Enrollment and Employees in Postsecondary Institutions, Fall 2015; and Financial Statistics and Academic Libraries, Fiscal Year 2015: First Look (Provisional Data)* (NCES 2017-024), (Washington, DC: U.S. Department of Education, National Center for Education Statistics), <http://nces.ed.gov/pubsearch>.

¹⁸ U.S. Census Bureau, <https://www.census.gov/topics/population.html>.

attacks. The Report noted the “narrow and unimaginative menu of options for action...” offered to minimize the threats presented in the years prior to the attacks.¹⁹ The Report also notes that government agencies are often passive in identifying and fixing glaring vulnerabilities.²⁰ Law enforcement entities fully understand the escalating threat environments in the U.S. today have complexities that are compounded by restraints that other countries do not need to factor into their response to attacks. This is accentuated when considering the responses to both the Beslan and Peshewar attacks were led by their respective country’s military forces. If those attacks occurred in the United States, agencies comprising the U.S. Emergency Services Sector would have led the response to the attacks. This is because the United States law enforcement community does not have the benefit of having the United States military take over its response to criminals or terrorists who attack on U.S. soil. This doctrine underscores the need for the law enforcement community to both imagine the scope of attacks it can face and to develop the capabilities to handle such attacks.

Military Response v. Response by a Militarized Police Force

Outside of the United States, numerous countries utilize their military forces for a myriad of tasks and responsibilities traditionally handled in the U.S. by local,

regional, or state law enforcement agencies. Traveling abroad and passing through marine ports, airports, or train stations in other countries reinforces this reality. However, longstanding laws in the U.S. prohibit the military from taking on domestic law enforcement or security roles absent executive branch authorization in limited scenarios. Consistent with the 9/11 Commission Report noting the inertia of government agencies in identifying and fixing glaring vulnerabilities, it is important to consider how the U.S. adopted the prohibition against its military taking on domestic law enforcement roles.

The tradition of local law enforcement acting on its own, as a measure to prevent the need of national militia intervention, was generally adopted from England during the early years of our nation’s forming. However, the U.S. has struggled at times as it balanced its fear of militias handling domestic matters against the need to protect citizens and civil servants. In 1787, Alexander Hamilton argued in the Federalist Papers that the use of armed forces for domestic law enforcement was authorized explicitly under the Necessary and Proper Clause of the Constitution.²¹ Shortly thereafter, the U.S. military was utilized to suppress the Whiskey Rebellion of 1791-1794.²²

This historical disdain for the involvement of our military in civilian affairs informally persisted for almost a century until it was

¹⁹ Kean, Thomas H., and Lee Hamilton, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (Washington, DC: National Commission on Terrorist Attacks upon the United States, 2004): 350.

²⁰ Kean and Hamilton, *The 9/11 Commission Report*, 352.

²¹ The Federalist No. 28 at 179-80 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

²² Gene Healy, “Deployed in the U.S.A.: The Creeping Militarization of the Homefront,” *503 Cato Policy Analysis* 3, (2003): 17.

codified in the 19th century Posse Comitatus Act (18 U.S.C. § 1385). The Act forbids the use of the Army (or Air Force by amendment in 1956 and the Navy and Marine Corps by 1974 judicial interpretation) to execute civil law “...except in cases and under circumstances expressly authorized by the Constitution or Act of Congress...”²³

As context is often an appropriate lens through which to observe and understand societal behavior, the enactment of the Posse Comitatus Act almost 100 years after Hamilton’s Federalist viewpoint can best be understood by examining the events of the time that energized its legislative intent. The enactment of the law was the result of a backlash by Southern legislators who believed that during Reconstruction and the military occupation of the defeated States of the Confederacy after the Civil War, Federal troops had improperly influenced the outcome of the controversial Presidential Election of 1876 resulting in the election of Republican Rutherford B. Hayes.²⁴ Historians have indicated that the Act was also used by southern officials to prevent Federal troops from protecting the rights of Black citizens.²⁵

The Posse Comitatus Act is often associated with the Insurrection Act of 1807.²⁶ This law set forth the powers of the President of the United States to deploy military troops domestically to quell lawlessness,

insurrection, and rebellion. However, the distinctions between the role of a military and the role of law enforcement are often the centerpiece of discussions about the Posse Comitatus Act and related laws. The role of law enforcement often focuses on the keeping of the peace, enforcing the law, and being “duty bound to protect the rights of civilians.”²⁷ Conversely, the primary mission of the military is to protect the homeland by destroying the enemy. Supportive of this military mission, the Soldier’s Creed states, in part, “I stand ready to deploy, engage, and destroy the enemy of the United States of America in close combat.”²⁸ Cognizant of this mission and warfighter credo, Lawrence Korb, a former Assistant Secretary of Defense acknowledged that the Armed Forces are “trained to vaporize, not Mirandize.”²⁹

Despite these clear role distinctions between the U.S. military and law enforcement, the Department of Defense (DOD) has increasingly provided support to civilian law enforcement in a number of areas. Primarily this support is divided into three main categories:

- Military support to civil authorities;
- DOD cooperation with civilian law enforcement officials;

²³ 18 U.S.C. Section 1385 (2000).

²⁴ Walter E. Lorence, “The Constitutionality of the Posse Comitatus Act,” *Kansas City Law Review* 8, no. U. (1940):164, 169.

²⁵ Gary Felicetti and John Loce, “The Posse Comitatus Act: Setting the Record Straight on 124 Years of Mischief and Misunderstanding Before Anymore Damage is Done,” *Military Law Review* 175 Rev. (2005): 86, 90.

²⁶ 10 U.S.C. Section 251-332.

²⁷ 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 (2016): 467, 492.

²⁸ Soldier’s Creed, U.S. Army, <http://www.army.mil/values/soldiers.html>.

²⁹ Healy, “Deployed in the U.S.A.,” 7.

- Military assistance for civil disturbances³⁰

As terrorist and public safety events continue to evolve in the U.S., DOD support of the law enforcement role and direct operations may also evolve. In the shadow of events like 9/11 and Hurricane Katrina, research reveals passionate calls are made to reevaluate the military's role in responding to such disasters.

Despite historically allowing minor exceptions to the Posse Comitatus Act over the years, Congress has reaffirmed its determination to maintain the principle of the Posse Comitatus law. This places the onus of protecting civilians squarely on the shoulders of law enforcement and public safety professionals. Presidential Policy Directive 21 (PPD-21) and the law enforcement capacity building efforts noted in the Emergency Services Sector-Specific Plan, in support of PPD-21, fully recognize the law enforcement community having the sole responsibility to respond to all-hazard incidents with expertise and rapid response capabilities. However, acceptance of this responsibility invokes a quagmire: Does legal restrictions on using the military in domestic law enforcement roles prevent law enforcement personnel from using military technology, equipment, and tactics to protect the communities and citizens they are empowered to serve?

The 9/11 Commission opined the 9/11 attacks revealed failures in management as well as failures in policy. Law enforcement

leaders will replicate these failures again if they do not address the quagmire presented by the legal restrictions limiting military responses for traditional domestic law enforcement roles. This attempt to meet the recommendations of the 9/11 Commission Report (as well as the findings of panels such as the Columbine Review Commission) and not replicate past tragic failures leads law enforcement executives to consider the challenges of entering the homeland security era of policing.

The Homeland Security Era of Policing

Over the past three decades numerous foreign terror plots, domestic terror attacks, school shootings, and other mass casualty events have unfolded in the United States or directly impacted the United States from abroad that have justifiably spawned the basis of a new era in policing. The physical manifestation of these changes in law enforcement agencies and the operations of their personnel can lead persons to conclude that these agencies are engaging in or are experiencing mission creep. This term generally implies an organization or project is expanding beyond its original goals or intent.³¹ When examining the mission of U.S. law enforcement agencies, one can reasonably conclude the adoption of military-like tactics of police officers to deal with potential aggressive/active shooters or the adoption of a homeland security approach to its operations certainly support the argument that the law enforcement community is experiencing mission creep at some levels. However, an argument can also

³⁰ Department of Defense: Directive 3025.15, Military Assistance to Civil Authorities 17 (1997).

³¹ Allen Lomax, "Reorganizing the Federal Government to Meet Today's Challenges," *The Public Manager* (Winter 2012): 59.

be made that the evolving mission of law enforcement entities is the product of a Hobson's choice: *If the police do not prepare to assert authority, establish command and control, and aggressively move forward to achieve its law enforcement objectives to stop assaultive, lethal attacks, then who will?*

In the years since 9/11 and the publication of the 9/11 Commission Report, there are unfortunately numerous examples to cite that reflect law enforcement leaders successfully taking steps to act in a manner to avoid the failures in management and the failures in policy discussed in the Report. Consider for a moment the thirty-day span in the summer of 2016 when U.S. law enforcement agencies made decisions to utilize tactics and equipment consistent with military operations to stop two individuals. These individuals were utilizing aggressive, deadly force to arguably commit hate crimes against certain population segments in two major cities: Orlando and Dallas. In the first event, on June 12, 2016, Omar Mateen killed 49 people and wounded 53 others inside a self-identified gay nightclub in Orlando, Florida. Police officers utilized a military-grade vehicle to breach a hole in the wall of the nightclub so 14 SWAT officers could enter the structure and engage the mass shooter who was holding hostages, thus ending the siege.³² In the second event, on July 7, 2016, Army reservist and war veteran Micah Xavier Johnson ambushed a group of police officers

in Dallas, Texas and fired semi-automatic weapons, killing five officers and injuring numerous other officers and civilians. When police negotiations failed to convince Johnson to end his attacks and he verbalized his intent to kill more officers, police utilized a remote-controlled bomb disposal robot to deliver and detonate an explosive charge to the area occupied by Johnson, killing him and ending his murderous assault.³³ *If the police responding to these two events did not have military-like equipment and training, who would have responded to handle these matters? How long would it have taken for teams of geographically dispersed, trained personnel to respond to the scene of these events and how many additional individuals would have died in the intervening timeframe? Would these responding personnel be from some branch of the military? Who can and would authorize such a use of military personnel for domestic operations?*

The idea of individual law enforcement agencies consciously or unconsciously engaging in debatable mission creep within a myriad of their enforcement, public safety, and adopted homeland security roles probably exists in some locales. However, today's law enforcement community is under active pressure from advisory panels, government entities, and the courts to utilize weapons and adopt tactics in its response to certain situations. Examples of such pressure

³² Gal Tziperman Lotan, "Orlando Mass Shooting: Timeline of Events," *Orlando Sentinel*, June 13, 2016, <http://www.orlandosentinel.com/news/pulse-orlando-nightclub-shooting/os-pulse-shooting-tick-tock-20160613-story.html>.

³³ Joel Achenbach, William Wan, Mark Berman, and Moriah Balingit, "Five Dallas Police Officers Were

Killed by a Lone Attacker, Authorities Say," *The Washington Post*, July 8, 2016, https://www.washingtonpost.com/news/morning-mix/wp/2016/07/08/like-a-little-war-snipers-shoot-11-police-officers-during-dallas-protest-march-killing-five/?utm_term=.900f54bec9c7

include the need to be responsive to the recommendations of the 9/11 Commission Report, Columbine Review Commission, Final Report of the Sandy Hook Advisory Commission, civil litigation decisions, and the collaborative efforts to achieve the Emergency Services Sector-Specific Plan's goals to improve resilience and preparedness. What can compound this pressure to be responsive to recommendations and goals, and sometimes confound the casual observer, is the concurrent criticism of the law enforcement community when it procures equipment and training in military-like tactics to protect the citizenry they serve. Various components of the federal government help facilitate these efforts. For example, the *1033 Program* facilitated by the U.S. Department of Defense allows law enforcement agencies to procure material support (e.g., equipment, vehicles, etc.) for their operations.³⁴ The program, first authorized pre-9/11 for use in counter drug enforcement operations, was eventually amended to include counter-terrorism efforts. The U.S. Department of Justice's Bureau of Justice Assistance, in response to public concerns for the law enforcement use of federally-acquired equipment and vehicles, appropriately convened a working group in 2015 to examine the various types of justifications used for a range of equipment transferred to SLTT law enforcement agencies.³⁵ This type of governance ultimately led to appropriate controls being placed on equipment and

vehicle transfers to non-federal law enforcement agencies.

Despite the implementation of various controls to appropriately manage equipment procurement efforts, external observers to such controls often view law enforcement procurements through a lens that ostensibly illuminates either obsolete roles or more traditional views of law enforcement agencies. This presents a quagmire for all interested parties because the role of law enforcement has been continuously evolving and many law enforcement agencies have sensed a compelling need to adopt a homeland security focus while staying in their traditionally observed structures. This has skewed how some people view the current appearance of post-9/11 policing efforts and demonstrates a need for how police executives need to manage their communities' homeland security tasks and citizens' reasonable expectations.

A Path Forward: Balancing Efforts to Improve Law Enforcement's Evolving Homeland Security Mission

When the guidance of the 9/11 Commission Report is placed into the appropriate law enforcement context (beyond the events leading up to the September 2001 terrorist attacks), the law enforcement community's reasonable approaches and views towards its homeland security tasks are properly supported by the Report's recommendations to avoid future failures. As noted in the 9/11 Commission Report, the Commission believed "...the 9/11 attacks revealed four

³⁴ 10 U.S.C. §2576a.

³⁵ Bureau of Justice Assistance: *Standards for State, Local, and Tribal Law Enforcement Agencies for the*

Acquisition of Controlled Equipment with Federal Resources (Washington, DC: U.S. Department of Justice, 2015).

kinds of failures: in imagination, policy, capabilities, and management.”³⁶ These failures, provided in the Report as summative findings, have applicability as a framework for approaching law enforcement’s role in performing homeland security tasks, fulfilling its role as a collaborative stakeholder in the Emergency Services Sector-Specific Plan, and improving its legal responsiveness to an increasing number of violent episodes of aggressive deadly force. This roadmap forward, which needs to be explicit, must consider how law enforcement agencies avoid:

Failure in Imagination – The law enforcement community needs to contemplate the wide range of incidents and conditions it may need to respond to in varying degrees. Maintaining situational awareness (Goal #2 of the Emergency Services Sector-Specific Plan) simply is not enough for executives of law enforcement agencies. The need to understand the dynamism of threats and vulnerabilities (e.g., Orlando and Dallas attacks) in their areas of responsibility, as well as in surrounding regions, contributes to supporting investment justifications for the appropriate acquisition of equipment and tools of the trade, training and relevant tactics, and the development of a sustained state of readiness.

Failure in Policy – The demands placed on law enforcement agencies continue to be great. Agencies need to clearly define their mission and set forth appropriate goals and standing operating procedures to guide the efforts of their officers. The citizenry needs to be informed of this mission and the conforming

goals so they have reasonable expectations for the outcomes of law enforcement operations. Law enforcement executives need to ensure that policy guidance derived from best practices is provided to assure law enforcement officers have appropriate guidelines to follow when employing various tactics and utilizing approved departmental equipment.

Failure in Capabilities – Procuring the appropriate equipment and training is a necessity for ensuring a law enforcement agency has the appropriate capabilities to meet its demands and anticipated demands. This includes the type of firearms officers and specialized units are equipped with, how the agency trains its personnel, and how these capabilities are assessed and justified on a continuous basis.

Failure in Management – The leadership of law enforcement agencies and the law enforcement community in general must develop best practices for how agencies assess and fulfill their evolving mission requirements and responsibilities. This pertains not only to compliance matters, but also to maintaining their oversight function of how agencies in the overall community are perceived by the general public and how the privacy, civil rights, and civil liberties afforded to all citizens are maintained.

Conclusion

The complexities of the militarization of police are multi-faceted. The historical evolution of policing suggests that the law enforcement community has been militarizing for a considerable amount of

³⁶ Kean and Hamilton, *The 9/11 Commission Report*, 339.

time for a myriad of reasons. These reasons for militarizing encompass increases in firepower by the criminal element, mandated responsiveness to specific criminal acts or events, preparing for anticipated threats, fulfilling community expectations and demands, as well as following advisory panel recommendations and court edicts. A number of rationales and events have been posited as to why police militarization efforts have continued to exist or have accelerated over the years. Public awareness needs to be accelerated so all stakeholders understand the capability building goals of various strategic plans (e.g., Emergency Services Sector-Specific Plan) and the necessity for the shifting roles of contemporary law enforcement officers. These evolving roles require officer training in advanced tactics and weapons to better prepare the officers to be versatile first responders in their communities and, consistent with their increasing homeland security tasks, a local and regional force multiplier in the defense of the U.S. homeland. However, the U.S. law enforcement community must prioritize and market its commitment to Constitutional liberties and serving the public's best interests. This might be best accomplished if the law enforcement community does not allow all of its duties and responsibilities to become subordinate to performing its evolving homeland security tasks and its needed state of readiness for responding to all-hazard incidents such as active armed perpetrators. Further research could inform whether the development and utilization of a conceptual framework, based upon the recognition of systemic failures articulated in the 9/11 Commission Report, would be appropriate to effectively and efficiently

ensure the law enforcement community: actively considers the plethora of threats it may prospectively face (imagination); ensures its policies appropriately define its mission and goals (policy); reviews how its personnel are trained, equipped, and assessed (capabilities); and reflects on how best practices are developed, implemented, and evaluated (management).