

The Rise of the American Police State

Contributing researchers:
Katherine Coleman (Project Coordinator)
James Parker Gochenour
Kathryn Lawryszek
Nina Chandnani

This final memorandum is submitted in fulfillment of the
Rutherford Institute-Virginia Themis Society Research Program

May 2010

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ABSTRACT

TITLE: The Rise of the American Police State

AUTHOR(S)/AFFILIATION(S): Katherine Coleman, James Parker Gochenour, Kathryn Lawryszek, Nina Chandnani, Rutherford Institute, Virginia Themis Society.

PURPOSE: To analyze the cultural, historical, and political contexts of the increasing militarization of the American police force and to articulate the role that the citizens and the media in defining their relationship with the police.

BACKGROUND: Since the middle of the twentieth century, the American police force has become increasingly centralized and militarized. This has been intensified by recent terrorist threats, which have fostered an environment that is more permissive of a powerful police force. This report probes the extent to which the authority of the police has been expanding, considering the technological, historical, and legal developments that have contributed to the enlargement of the police's power.

METHOD: Research, synthesis, and interpretation of relevant scientific and journalistic material, as well as recent studies completed by leading civil liberties organizations including the American Civil Liberties Union and the Cato Institute.

RESULTS: The growing militarization now threatens American liberty. This threat is evident from the increasing arsenal of weapons available to police units, the changing image of the police within communities, and the growing idea that the police can and should use any means necessary to maintain order. When viewed in a historical context, these patterns bear resemblance to those observed in the early stages of the world's past police states. The increasing militarization of the police poses a real threat to American civil liberties, especially First and Fourth Amendment freedoms. In the face of the threat of an increasingly powerful police force, the American populace, with the help of a vigilant media, must inform themselves about the issues at stake and ensure that the police protect the order but also the liberty in their communities.

Introduction

The American police force is not a branch of the military, nor is it a private security force for the reigning political faction. It is an aggregation of the countless local units that exist for a sole purpose: to serve and protect the citizens of each and every American community. In recent years, however, there has been an increasing militarization of the police. It has not occurred suddenly, in a single precinct; it cannot be traced back to a single leader or event- rather, the pattern is so subtle that most American citizens are hardly even aware of it. Little by little, police authority has

expanded, one weapon after another has been added to the police arsenal, and one exception after another has been made to the standards that have historically restrained police authority. When analyzed as a whole, this trend toward militarization is undeniable, and it is one that could have serious implications for American liberty if left unchecked.

Since America's founding, an understood division has existed between the military and the police, and it has been reflected in the law since at least the nineteenth century. In response to the escalating role of the military in enforcing civil order during the Reconstruction, Congress passed the Posse Comitatus Act of 1878. A *posse comitatus*, which translates to "power of the country," is a group of citizens mustered to keep order in times of civil unrest, and these types of gatherings date back to English common law. The "Mansfield doctrine," adopted in 1780 in England, formalized the tradition that the military should not participate in these *posse comitatus* groups, and if any soldiers did serve in them, they were to be considered citizens in that role. In the United States, however, this principle was abandoned in the years of unrest preceding the Civil War. Until the enactment of the Posse Comitatus Act, these ad hoc "posse comitatus" groups were permitted to contain military as well as civilian members, thereby allowing the military to take an active role in enforcing federal authority in the Southern states. The Posse Comitatus Act redefined this boundary and barred military involvement. It states in full, as amended to include the Air Force:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both. (18 U.S.C. 1385)

While Congress has since enacted several exceptions to this law, the principle of the law is clear: having witnessed the dangerous effects of allowing the role of the police to fuse with that of the military, Congress was making an effort to expressly prohibit this type of connection.¹

Today, however, this crucial separation between the military and the police has begun to dissolve. As Diane Weber of the Cato Institute writes:

What is clear—and disquieting—is that the lines that have traditionally separated the military mission from the police mission are getting badly blurred. Over the last 20 years Congress has

¹ Young, Stephen. "Features - The Posse Comitatus Act: A Resource Guide." *LLRX.com*. 17 Feb. 2003. Web. 17 Apr. 2010. <<http://www.llrx.com/node/876/print>>.

encouraged the U.S. military to supply intelligence, equipment, and training to civilian police. That encouragement has spawned a culture of paramilitarism in American police departments. By virtue of their training and specialized armament, state and local police officers are adopting the tactics and mindset of their military mentors. The problem is that the actions and values of the police officer are distinctly different from those of the warrior. The job of a police officer is to keep the peace, but not by just any means. Police officers are expected to apprehend suspected lawbreakers while adhering to constitutional procedures. They are expected to use minimum force and to deliver suspects to a court of law. The soldier, on the other hand, is an instrument of war. In boot camp, recruits are trained to inflict maximum damage on enemy personnel. Confusing the police function with the military function can have dangerous consequences.²

The assimilation of police and military roles is evident in the way that police weapons, uniforms, and attitudes have changed. The desire for maximum efficiency has trumped the preservation of a distinct delineation of the spheres of governmental force. Even the law itself has changed to reflect, and in fact enable, the militarization of the police. In 1981, Congress passed the Military Cooperation with Law Enforcement Officials Act, a piece of legislation which formalized the dependence of the police on military assistance. The act permitted the military to share equipment and facilities with police units, participate in police training, assist the police in narcotics operations, and share information with police units.³ While this law was intended to bolster the efficacy of police operations striving to achieve legitimate goals, it opened a dangerous potential for the police to assume a militaristic role domestically.

The mounting fears of terrorism after September 11th have only exacerbated the problem of overzealous governmental authority. Government officials and police officers have channeled the shift in public opinion that emphasizes “security” to justify more rigorous policing practices. They argue that enlarging security measures is patriotic, whereas dissent a dangerous activity that amalgamates a person or group with “the enemy.” For example, in December 2001, Attorney General John Ashcroft stated when addressing the Senate Judiciary Committee, “To those who scare peace-loving people with phantoms of lost liberty...your tactics only aid terrorists, for they erode our national unity and...give ammunition to America’s enemies.”⁴ This outlook opposes the

² Weber, Diane C. *Warrior Cops: The Ominous Growth of Paramilitarism in American Police Departments*. Working paper. Cato Institute, 26 Aug. 1999. Web. 16 Apr. 2010. <<http://www.cato.org/pubs/briefs/bp50.pdf>>, 2-3.

³ *Ibid*, 4.

⁴ Bovard, James. “Free-Speech Zone” *The American Conservative*. 15 Dec. 2003. Web. 16 Apr. 2010. <<http://www.amconmag.com/article/2003/dec/15/00012/>>.

attitude of the Constitution was itself: that dissent is not only legally protected, but a patriotic behavior that contributes to the country's vitality and freedom.

A close analysis of the changing role of the American police reveals evocative parallels with past political regimes from around the world, illustrating the timelessness and universality of the temptation for a police force to assume increasingly more military power as the political climate permits. The historical outcomes of these police states, however, are all too similar; civil liberties disappear and the citizenry lives in fear of the police. While America has not seen a transformation to this extent yet, past precedents linger as an unequivocal reminder of the dangers that lurk when the distinction between the police and the military erodes. It is imperative for American citizens to bear the past in mind and remain the guardians of their own freedoms. With the help of a persistent, candid, and free media, the citizens have the power to defend their constitutional rights. In the face of an increasing likelihood of a police state, the American public can and should advocate a police force that fulfills its stated role as protector of the citizens- no more, no less.

The Emerging American Police State: Friend or Foe Behind the Badge and Uniform?

In an essay, novelist and journalist George Orwell once noted, "The atom bombs are piling up in the factories, the police are prowling through the cities, the lies are streaming from the loudspeakers, but the earth is still going round the sun."⁵ This statement encapsulates what observers saw in America's Steel City on a momentous late September weekend in 2009.

On September 25, 2009 amidst a G-20 Summit, bullhorns bellowed through downtown Pittsburgh:

By order of the city of Pittsburgh the chief of police, I hereby declare this to be an unlawful assembly. I order all those assembled, to immediately disperse. You must leave the immediate vicinity. If you remain in this immediate vicinity, you will be in violation with the Pennsylvania crimes code. No matter what your purpose is, you must leave. If you do not disperse you may be arrested and/or subject to other police action. Other police action may include: actual physical

⁵ "George Orwell - Some Thoughts on the Common Toad - Essay." *George Orwell - Complete Works, Biography, Quotes, Essays*. 01 Jan. 2003. Web. 12 Jan. 2010. <http://www.george-orwell.org/Some_Thoughts_on_the_Common_Toad/0.html>.

removal, the use of riot control agents, and/or less lethal munitions which could cause risk of injury to those who remain.⁶

Solid black figures marched among the ominous voices that bawled through the streets of Pittsburgh, beating cadence on their ballistic shields with their batons driving back and dispersing the innocent protestors who rallied to present their social concerns at the summit. Plumes of white smoke rose from the cityscape as the Long Range Acoustic Device (LRAD) mounted on a Pittsburgh police truck emitted an unbearable sound, unintentionally wreaking collateral damage on the citizens of Pittsburgh. Protestors weaved through the labyrinth of barricades as tear gas and pepper spray canisters enveloped their signs and injurious rubber bullets pelted their assembly.

This hostile and ominous milieu reflected an age-old Valley of Elah matchup. However, today's events are threatening personal liberties and unveiling new-age weaponry to America and the world. With these developments, America grows one step closer to an ill-fated, full-blown Orwellian future of totalitarianism and despotism. As domestic enemies of the Constitution surface, they present to a docile public a false sense of security with their new-age weaponry and transformed image. In upcoming generations, if this development persists, indoctrination could run rampant through society forcibly inculcating the philosophy of a militarized police system as increased surveillance further contributes to the erosion of the populace's privacy in a democratic society. Alas, these internal threats have evolved into equipped militias from a group of mediators whose mantra was to "serve and protect" the liberties and lives of humans, not to serve and destroy them.

As much as politicians and the mainstream media have drummed up the importance of national security and the prevention of another 9-11-like attack, they have neglected the notion of a fast-approaching police state. The American people remain complacent, disengaged from the discussion of the transforming façade of America's police force. Today, the political agenda appears to foster the militarization of parliamentary units via the growing centralized power of an increasingly powerful federal government; however, most people remain blind to this possibility

⁶ Ehret, Christian. "G-20 Extra- Resistance Project Demonstration Dispersed." *JURIST - Legal News and Research*. University of Pittsburgh School of Law, 25 Sept. 2009. Web. 27 Apr. 2010.
<<http://jurist.law.pitt.edu/dataline/2009/09/g-20-resistance-project-demonstration.php>>.

instead of actively working to halt an unnecessary, looming threat. General awareness constitutes the first step toward precipitating change with respect to this issue. In order to spread mainstream awareness, politicians need to lead the effort to disseminate this discussion among the American people. It remains up to the citizenry to muster the audacity and wisdom to prevent this grave future, even if they must sacrifice some perceived security to safeguard their freedoms and the notion “that all men are created equal and that they are endowed by their Creator with certain unalienable rights.”

Equipping In a Militarized Nature: Reforming One Parliamentary Unit at a Time

The days of Andy Griffith are over and a new and sinister age is emerging in which eliminating all resistance is second nature to the American police force. Phalanxes of Darth Vader-like figures bolster this image, striding through the streets of towns and cities throughout America, restricting and restraining human activity and the freedoms of assembly and protest. Since the dawn of the American police, there has been a steady drift in their attitudes and conduct so that the scales of freedom and security are tipping and the image of an officer with a buzz cut and an assault rifle is a familiar one. Ron Paul, 2008 presidential candidate and Texas congressman, once stated, “The principal tool for sustaining a police state, even the most militant, is always economic control and punishment by denying disobedient citizens such things as jobs or places to live, and by levying fines and imprisonment.”⁷ Americans are currently witnessing a change in times. Trust was once vested in all of the Barneys and Andys, whereas trust has now eroded as the nation’s nineteen thousand law enforcement agencies are becoming independent and excessively commanding. This has led to the police jeopardizing and fallaciously securing our well-being and freedoms.

There has certainly been a change in the times, and as Paul Craig Roberts, former Assistant Secretary of the Treasury and associate editor of *The Wall Street Journal*, espouses in his 2007 article “The Empire Turns its Guns on the Citizenry”: “In recent years American police forces have called out SWAT teams 40,000 or more times annually. Last year did you read in your

⁷ Paul, Ron. "Is America a Police State?" *Speeches and Statements*. U.S. House of Representatives, 27 June 2002. Web. 15 Jan. 2010. <<http://www.house.gov/paul/congrec/congrec2002/cr062702.htm>>.

newspaper or hear on TV news of 110 hostage or terrorist events each day?"⁸ The array of military weapons available to the police is equally alarming: "Today 17,000 local police forces are equipped with such military equipment as Blackhawk helicopters, machine guns, grenade launchers, battering rams, explosives, chemical sprays, body armor, night vision, rappelling gear and armored vehicles. Some have tanks."⁹ This comment, especially from a high-ranking public official, reveals the chilling and frightening idea that America is becoming a militarized police state where the citizenry is subject to weapons that were originally intended for use on the nation's enemies.

After the tragic attacks on American soil in early September of 2001, gun-toting police have become a critical part of parliamentary units under the supervision of the federal government. The arsenal that police units have amassed to assemble this ominous and mighty force that patrols the streets has grown each day, equipping the police with the most renowned equipment available. Nonetheless, in the past, the police force was not nearly as potent and domineering as it is today.

Beginning in the late 1800s, police forces across the nation, including the Texas rangers, obtained the first multi-shot pistol introduced by Samuel Colt. W.V. Adams patented the handcuff, an ubiquitous tool today, in 1862.¹⁰ In the 1930s, the police force began the widespread use of the two-way radio and the automobile in addition to lime laboratories and teletypes.¹¹ By the 1960s, in the midst of a conflict during which the nation was torn between invading Vietnam or remaining neutral, widespread riots led the police to develop riot control weapons and methods including the Taser. Subsequently, between 1978 and 1991, the cost of police protection increased from \$11 billion to \$31.8 billion.¹²

Charles Whitman's deadly rampage, which claimed forty-five victims in Austin, Texas in 1966, also raised eyebrows among police in America, resulting in a proliferation of Special Weapons and Tactics teams. The initial objective of these teams was to manage and subdue hostile

⁸ Roberts, Paul C. "The Empire Turns Its Guns on the Citizenry." *Alex Jones' Prison Planet.com*. 24 Jan. 2007. Web. 17 Jan. 2010. <http://www.prisonplanet.com/articles/january2007/240107_b_Empire.htm>.

⁹ *Ibid.*

¹⁰ Bellis, Mary. "Forensic Science Timeline." *Inventors*. 17 Jan. 2010. Web. 17 Jan. 2010. <http://inventors.about.com/od/fstartinventions/a/forensic_5.htm>.

¹¹ *Ibid.*

¹² (In adjusted dollars.) Davey, Joseph Dillon. *The New Social Contract: America's Journey from Welfare State to Police State*. Westport, Conn.: Praeger, 1995. Print.

situations that the average police officer would not be able to resolve. These units possess tactical training and deadly equipment, which enable them to kill and defend to a great extent. Their role varies depending on the situation but frequently involves mitigating hostage crises and serving search and arrest warrants. SWAT teams first began serving warrants to the public in December 1969 when a shootout arose from incomppliance by the Black Panther Party.¹³ SWAT teams now carry self-proclaimed “non-lethal” weapons like most police departments, but they also carry lethal weapons, which have caused the deaths of many innocent civilians. The collaborative efforts of SWAT and Hostage Rescue teams were responsible for the wrongful death of the wife of a fugitive at Ruby Ridge, Idaho in 1992.¹⁴ Also, a group of citizens died in a religious complex near Waco, Texas in 1993 when the FBI accidentally set off tear gas canisters in the building, causing the structure to catch fire.¹⁵

These raids, which have resulted in nothing short of calamity, should be viewed in conjunction with raids spurred by the “War on Drugs.” As a result of the “War on Drugs” and escalating crime, approximately forty thousand “no-knock raids” are carried out each year by these equipped units.¹⁶ During these raids, police teams barge doors down using battering rams or even explosives. According to constitutional lawyer John Whitehead’s book, *The Change Manifesto*, a drug raid in March of 2005 in Hawaii resulted in egregious civil liberties violations. Both Sharon and William McCulley were mistaken for suspects of marijuana possession, and after the police burst into their home, Sharon was forced to the ground and handcuffed with a gun held to her head, all in the company of her grandchildren. Regrettably, when William McCulley was overtaken, his implanted device for chiropractic use malfunctioned, resulting in trauma and convulsions due to extreme stress.¹⁷ This unfortunate and grievous event was caused by a breakdown in SWAT communication, as they had mistakenly entered the wrong home. Subsequently, the SWAT team

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Whitehead, John W. "Police Overkill." *The Change Manifesto: Join the Block by Block Movement to Remake America*. Naperville, Ill.: Source, 2008. 42-66. Print.

¹⁷ *Ibid.*

entered one more innocent household before locating and obtaining the marijuana.¹⁸ After experiencing or learning of these invasions into homes of the innocent, many people perceive these intrusions as miniature domestic terrorist attacks. However, what should stand out in all of this is that SWAT teams are now frequently called upon to carry out conventional police work.

Proponents of strengthening the police force and its corresponding technologies include the Everest Career Education Network. This website in particular includes a posted article entitled "Today's Police Have Non-Lethal Weapons to Help Keep the Peace." Author Allen Ury claims that the police have in fact retreated from the philosophy of "kill or be killed" to an age of non-lethal weapons, which he claims are "less-than-lethal" and give police flexibility.¹⁹ This claim is shortsighted, though, since these self-proclaimed "non-lethal" weapons have in fact resulted in more confrontations involving weapons, which increases the risk of lethal incidents. There have been many instances in which these "non-lethal" or "compliance" weapons have resulted in fatalities or serious injury.

"Stun guns" have in the past pushed the idea of "non-lethal" too far. By 1985, police in every state had used the TASER (Thomas A. Swift for Electric Rifle).²⁰ The Taser is known to deliver a fifty thousand volt, five-second shock which stuns the victim, The Taser delivers to its victims a five-second, fifty thousand volt shock that stuns the victim, disabling him for several minutes with incapacitating muscle cramps.²¹ The shock is delivered via two small darts with wires attached that pierce both the clothing and skin of the victim.²² The force of the Taser is disconcerting; from ten meters away, the Taser can penetrate two inches of clothes and even body armor.²³ One example that calls into question Taser use as an alternative to "lethal" weapons occurred in mid-August of 2006 when a resident of Woonsocket, Rhode Island died after being

¹⁸ *Ibid.*

¹⁹ Ury, Allen. "Today's Police Have 'Non-Lethal' Weapons to Help Keep the Peace." *Everest Latest News and Events*. 08 July 2009. Web. 01 Mar. 2010. <<http://news.everest.edu/post/2009/07/police-have-non-lethal-weapons>>.

²⁰ Bellis, Mary. "Forensic Science Timeline." *Inventors*. 17 Jan. 2010. Web. 17 Jan. 2010. <http://inventors.about.com/od/fstartinventions/a/forensic_5.htm>.

²¹ *Ibid.*

²² *Ibid.*

²³ "How Does A Stun Gun Work? Self Defense Weapons." *Self Defense Products | Stun Guns, Pepper Spray, Mace, TASERS*. 20 Mar. 2010. Web. 20 Mar. 2010. <http://www.womenonguard.com/how_work.htm>.

stunned with a Taser while in police custody.²⁴ Following this unfortunate event, the ACLU requested that all area departments that purchased Tasers impose a suspension of their use until the issue had been resolved and the ACLU had sufficient time to analyze the weapon's policies and uses.²⁵

During a forum held by 2004 Presidential candidate, John Kerry, police officers Tasered Andrew Meyer, a twenty-one-year-old University of Florida student, for refusing to stop asking Senator Kerry questions about the Skull and Bones secret society and the process of impeaching President Bush. After his allotted time was up, police dragged the student from the microphone as he resisted, crying out and pleading for aid. He bellowed, "Don't Tase me, bro," just before being shocked.²⁶ After being shocked, Meyer was led from the room yelling, "What did I do?"²⁷ This incident resulted in his arrest for resisting an officer and disturbing the peace, but was it just another abuse of power by the police force?

"Drive Stun" is a term used for the feature of the Taser that fires electricity directly into a suspect via physical contact. We know this to be a painful use of force, as this technique was used on Meyer. The Taser has generated much controversy in the state of New Jersey, as well as in many other states. In 2009, the attorney general of New Jersey allowed police units to use this type of weaponry when the suspect has a weapon, poses a serious threat, or refuses to be taken into custody.²⁸ Prior to this ruling, Maplewood police shot a thirty-one year old schizophrenic man armed with a knife, as there was no Taser legislation yet in New Jersey.²⁹ Willingboro police nearly killed a fifteen-year-old who purportedly attacked the police with scissors.³⁰ In light of these cases,

²⁴ "In Wake of Death, ACLU of Rhode Island Calls For Moratorium on Police "Stun Gun" Use." *American Civil Liberties Union*. 21 Aug. 2006. Web. 05 Mar. 2010. <http://www.aclu.org/racial-justice_prisoners-rights_drug-law-reform_immigrants-rights/wake-death-aclu-rhode-island-calls>.

²⁵ *Ibid.*

²⁶ Associated Press. "Student Tasered at Kerry Forum - Crime & Courts- Msnbc.com." *Breaking News, Weather, Business, Health, Entertainment, Sports, Politics, Travel, Science, Technology, Local, US & World News- Msnbc.com*. MSNBC, 18s Sept. 2007. Web. 15 Mar. 2010. <<http://www.msnbc.msn.com/id/20835952/>>.

²⁷ *Ibid.*

²⁸ Colimore, Edward. "N.J. Approves Police Use of Stun Guns | Philadelphia Inquirer | 11/24/2009." *Philly.com: Philadelphia Local News, Sports, Jobs, Cars, Homes*. Inquirer, 24 Nov. 2009. Web. 18 Feb. 2010. <http://www.philly.com/philly/news/local/20091124_N_J_approves_police_use_of_stun_guns.html>.

²⁹ *Ibid.*

³⁰ *Ibid.*

some legislators argue that these “non-lethal weapons save lives and prevent the use of deadly handguns. Nonetheless, the fact that Tasers may indeed save lives in some instances does not necessitate that Tasers are a panacea for all matters of insecurity.

In 1982, pepper spray (oleoresin capsicum or OC) was developed for use by the postal service to prevent attacks by dogs and other animals. Pepper spray is a mixture synthesized from capsaicin, a bitter compound found in hot peppers, that produces a burning sensation upon contact with the skin.³¹ Pepper spray comes in an aerosol canister, which both citizens and police units can easily utilize. The mixture is potent: “Just one milligram (.00003 ounces) of pure capsaicin is enough to cause blisters to form on your skin”.³² However, OC is typically mixed with water and oil bases and can be shot in a jet mist or even a fog, making it less potent than pure OC.³³ This mixture has extraordinarily painful effects on victims that usually force them into compliance and submission. In 1987, The FBI declared pepper spray to be its “official chemical agent while corruption was witnessed within the powers of the federal government”.³⁴ Thomas Ward, an FBI agent, later pleaded guilty to accepting a \$57,500 bribe from a pepper spray company.³⁵ Essentially, this bribe has helped to proliferate the use of pepper spray in most every police unit across the country.

Some studies have argued that pepper spray is in fact safe to be used on the citizenry. However, some instances in which pepper spray was used have even resulted in death. In fact, as of 1994 there have been sixty-three documented deaths involving pepper spray.³⁶ Only two of these sixty-three deaths were directly related to pepper spray, as other complications were present in the other cases of death, according to the U.S. Department of Justice. Drug use, positional

³¹ Gibson, Arthur. "Chili Peppers." *CHILI PEPPERS--SOME LIKE IT HOT*. UCLA, 19 Jan. 2010. Web. 19 Jan. 2010. <<http://www.botgard.ucla.edu/html/botanytextbooks/economicbotany/Capsicum/index.html>>.

³² Wilkes, Caitlin. "How Pepper Spray Works." 02 December 2009. HowStuffWorks.com. <<http://home.howstuffworks.com/home-improvement/household-safety/security/pepper-spray.htm>> 20 March 2010.

³³ *Ibid.*

³⁴ Allen, Terry. "Chemical Cops: Tear Gas And Pepper Spray Can Be Deadly." *Common Dreams / News & Views*. 09 Mar. 2000. Web. 01 Mar. 2010. <<http://www.commondreams.org/views/030900-103.htm>>.

³⁵ *Ibid.*

³⁶ U.S. Department of Justice. "The Effectiveness and Safety of Pepper Spray." (2003): 1-19. *National Institute of Justice*. Web. 02 Feb. 2010. <<http://www.ncjrs.gov/pdffiles1/nij/195739.pdf>>.

asphyxiation, asthma, diseases, or a conglomeration of these factors in conjunction with the exposure to pepper spray contributed to the deaths.³⁷

In light of these complications, a company known as Pepper Ball Technologies has designed a new generation of less lethal weapons for the police force. The company has developed a paint ball-like weapon that shoots pepper balls derived from capsaicin. The ball travels at three hundred feet per second, at a rate of 12 shots per second. However, these new and innovative specifications only give the chemicals more force as they attack the victim's throat, nose, and eyes, causing confusion and pain.³⁸

OC spray is highly concentrated, which makes it about three hundred times as strong as jalapeño peppers and five times as strong as commercially available pepper-spray blends.³⁹ Sprays with this degree of heat have resulted in irritation and a burning impression on victims, crippling them so that the police can move in and execute their mission to detain the suspect. It has been reported that if left untreated the burning can last between forty-five and sixty minutes and cause temporary blindness for about a half an hour.⁴⁰ From all this it should be clear that pepper spray is not only a very potent tool in the arsenal of the American police force, but also a universal term that incites fear and submission in those who are threatened by it.

In November and December of 1999 pepper spray, in addition to bean bags and rubber bullets, was used on protesters outside of the Seattle branch of the World Trade Organization.⁴¹ The atmosphere in Seattle mirrored the actions of police at the G-20 Summit in Pittsburgh a decade later in September, 2009. Looters and protestors pervaded the area, and in the resulting unrest, a heavily armored officer kicked a man in the groin and shot the man in the chest point-blank with a beanbag gun. For the police force of Seattle, pepper spray was the primary weapon chosen from their riot control tactics. Peter Cassidy, a police tactics researcher, claimed, "It was interesting that

³⁷ *Ibid.*

³⁸ "PepperBall Technologies Incorporated | About PepperBall." *PepperBall Technologies Incorporated | Home*. 2 Feb. 2010. Web. 2 Feb. 2010. <http://www.pepperball.com/about_us.html>.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ DeMause, Neil. "Pepper Spray Gets in Their Eyes." *Fairness & Accuracy In Reporting (FAIR)*. 01 Apr. 2000. Web. 10 Mar. 2010. <<http://www.fair.org/index.php?page=1029>>.

you saw the National Guard and the police side-by-side doing the same jobs, wearing almost exactly the same uniforms...The problem was, the cops were trained by the federal government to believe they needed to approach this as a military operation”.⁴²

A more technologically advanced weapon in the toolkit of the American police force is the Long Range Acoustic Device, or LRAD, which has garnered attention as a powerful tool used by a number of national military forces.⁴³ The American Technology Corporation developed the LRAD, a forty-five-pound device, after the attack on the U.S.S. Cole in 2000. The device has a range of three hundred meters (three city blocks, or roughly nine hundred and eighty feet).⁴⁴ Before the unveiling of the LRAD to the public in 2009, the efficacy of the LRAD for non-military defense purposes had been proven; the device was used against the pirates who attacked the cruise ship *Seabourn Spirit* off the coast of Somalia in 2005. The LRAD was used to cripple the attackers, who were armed with machine guns and rocket-propelled grenades, and deter their plan to overcome the *Seabourn Spirit*. The LRAD was unveiled to the citizenry of the United States as a domestic weapon in late September at the 2009 G-20 Summit.

The sound waves emitted from the LRAD device are of a high frequency; therefore, they have a short wavelength. Essentially, the higher the pitch, the faster the sound will move the structures in the ear, a phenomenon which can trigger pain responses.⁴⁵ To compare the LRAD to everyday sounds, a normal conversation measures sixty decibels and a lawn mower registers at ninety.⁴⁶ The LRAD is usually operated at a volume of 120 decibels, while the threshold of pain is about 130, depending on the person's tolerance level.⁴⁷ However, the LRAD's maximum volume override is 146 decibels, a level that can seriously impair the hearing of its victims.

This notion of high-pitched weaponry has not gone unnoticed in the medical community. Various medial associations have remarked on the potential damage that the LRAD device can

⁴² *Ibid.*

⁴³ "Future Weapons Gallery." *Discovery Channel*. Web. 09 May 2010.
<http://dsc.discovery.com/fansites/futureweapons/photo/photo_07.html>.

⁴⁴ Wilson, Tracy V. "How LRAD Works." 03 March 2006. *HowStuffWorks.com*.
<<http://science.howstuffworks.com/lrad.htm>> 10 March 2010.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

inflict. The National Institute on Deafness and Other Communication Disorders has claimed that any sound over ninety decibels can damage a person's hearing.⁴⁸ Thus, the LRAD is a very controversial weapon. Like tear gas, it has the ability to harm citizens who are not suspected of criminal activity, but are in the wrong place at the wrong time.

Another prevalent non-lethal device is the vehicle-mounted active denial system (V-MADS). This technology uses electromagnetic energy to prevent combatants from progressing forward and attacking. The V-MADS was developed by the U.S. Air Force Research Laboratory and the Department of Defense's Joint Non-lethal Weapons Directorate.⁴⁹ This technology is primarily used to protect the military from short-range fire.⁵⁰ However, the effectiveness of these devices decreases if the target is wearing thick clothing or utilizing metallic shields. Additionally, thick fog and certain atmospheric conditions inhibit full realization of the device's power.⁵¹

The V-MADS, rather than sending out unbearable sound, emits a narrow beam of electromagnetic energy with a frequency of ninety-five GHz per millimeter towards the "enemy." This wave travels at the speed of light and penetrates 1/64th inch into the skin, which results in a strenuous burning feeling that does not cease until the beam is cut off or the target moves out of range.⁵² In just two seconds, the skin is heated to 130 degrees Fahrenheit. According to the Air Force, one would need to be subjected to the beam for 250 seconds before it would burn the skin. On the contrary, there is evidence that suggests that the device may be hazardous to the well-being and health of humans. According to a *Health Physics* study, two watts per square centimeter of exposure to a V-MADS energy beam has been shown to damage the corneas of rhesus monkeys, which suggests the same might prove true for humans as well.⁵³ This dangerous technology is the future of the American police force's weaponry as it falls under the "non-lethal" category. In the

⁴⁸ *Ibid.*

⁴⁹ Pike, John. "Vehicle-Mounted Active Denial System (V-MADS)." *Military*. Global Security, 11 Mar. 2010. Web. 11 Mar. 2010. <<http://www.globalsecurity.org/military/systems/ground/v-mads.htm>>.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

future, the military will fuel developments of V-MADS and others similar weapons, with the intent to position them on planes and ships.

Now, police in the United States are even in possession of weapons that have the ability to shoot around corners. One such firearm, the "Israeli Corner Shot Weapon," uses a video monitor to track targets from around corners. This allows police officers to shoot safely at targets from a ninety-degree angle while tracking them on the projector screen.⁵⁴ SWAT teams all across the country are hopeful about the advancements and new possibilities that this weapon brings. Captain Mike Shearer of Akron, Ohio stated that this new weapon allows the police to "[e]xpose a weapon, expose a lethal threat, without exposing any part of your body...So it's looks like a very nice weapon."⁵⁵

Other weapons that have appeared in the arsenal of police units across the country are metal and wooden batons, riot guns, flash-bang and smoke grenades, and sedative darts. The water cannon is another potent weapon that the police force has used, including on protesters during the Civil Rights Movement. The average water cannon has the ability to knock a person down from approximately one hundred yards away.⁵⁶ Furthermore, some countries have gone as far as to dye the water and lace it with tear gas in order to wreak havoc on its victims. Police units in India have been known to dye the water, thus making it easier for law enforcement to recognize and target protestors as they flee the scene.⁵⁷

In the past, water cannons have drawn their water from large natural bodies of water, fire hydrants, or even fire engines. Currently, however, water cannons are powered by kinetic pumps, which use a rotor propeller to shoot the water outward while simultaneously pressurizing it. A device called the deluge gun, which can be controlled remotely by a single person, allows greater control and precision for the cannon's target.⁵⁸ These advancements demonstrate that over the

⁵⁴ Weinberger, Sharon. "U.S. Police Get Weapons That Shoot Around Corners | Danger Room | Wired.com." *Wired News*. 14 Dec. 2007. Web. 13 Jan. 2010. <<http://www.wired.com/dangerroom/2007/12/us-police-get-g/>>.

⁵⁵ *Ibid.*

⁵⁶ Lamb, Robert. "How does a water cannon work?." 30 July 2008. HowStuffWorks.com. <<http://science.howstuffworks.com/water-cannon.htm>> 14 March 2010.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

course of time, the water cannon has slowly been perfected—increasing both its accuracy and its effectiveness in reducing disorder and hostility among rioters and protestors.

The police have used tear gas in a variety of situations- both on crowds of mature and passionate protestors and on restless college students. As recently as early March of 2010, the police used tear gas on University of Maryland students after their basketball team defeated Duke. The crowd took to the streets, ripped down traffic signs, and shook a bus on U.S. Route 1. Mounted police fired tear gas and sand bags to disperse the crowd, resulting in eventual bloodshed.⁵⁹

Similarly, during the April 2010 “Springfest,” an annual party held off-campus at James Madison University in Harrisonburg, Virginia, the festivities spiraled out of control and the police eventually utilized various riot control practices. Officers from six police agencies responded to the apparent disruption and altercation took place between them and several of the eight thousand partiers.⁶⁰ After pepper spray and tear gas were deployed, the partiers dispersed. Once the gas and haze settled, over thirty arrests had been made.⁶¹ This event left the University’s president, Linwood Rose, stating that the riot was an embarrassment to the university and a discredit to its reputation.⁶² While tear gas was used sparingly in this occurrence, it has been used heavily in other similar situations. Tear gas, like the LRAD, can be very hazardous and harmful to innocent civilians, and wind can carry tear gas away from the intended center of action, putting innocent bystanders in harm’s way. The weapons and instruments mentioned above are only a few examples of the tools that occupy the arsenals of the police units across the country. Many of the new and advanced instruments remain concealed from the general public.

The “Robocop” watchdogs of our time have taken extraordinary measures to generate fear, whereas in the past they strived to provide a sense of security, trust, and comfort. The rapidity with

⁵⁹ "Tear Gas, Police Horses Deployed as MD Fans Riot after Beating Duke | Kens5.com | San Antonio News, Weather, Sports, Traffic, Entertainment, Video and Photos." *Kens5.com | San Antonio News, Local News, Breaking News, Weather*. CBS News, 04 Mar. 2010. Web. 10 Mar. 2010. <<http://www.kens5.com/sports/Tear-gas-police-horses-deployed-as-MD-fans-riot-after-beating-Duke-86337257.html>>.

⁶⁰ Fink, Eric. "Police Speak Out About JMU Party Breakup - NBC29." *NBC29 - Home*. NBC, 11 Apr. 2010. Web. 15 Apr. 2010. <<http://www.nbc29.com/Global/story.asp?S=12290340>>.

⁶¹ *Ibid.*

⁶² *Ibid.*

which these advancements have taken place is shocking. Based on the amount of progression and the level of equipping of police units, this transformation will continue, unless something can be done to put it in check.

While American police have elicited fear with their weaponry, their dark uniforms also present a menacing image to the public and imply their authority to enforce social control. The police uniform thus represents primary element of the image of the parliamentary units. The well-known buzz cut and dark militarized guise evoke a sense of panic in those who expect protection. As the police are developing into well-equipped dark figures, they are likewise exerting more force. Although our country has a history of police brutality reaching back to the civil rights movements, the problem garnered new levels of attention in the early 1990s with the case of Rodney King and members of the Los Angeles Police Department. Now, however, excessive police brutality and raids are seen frequently all across the country.

Extensive force toward unarmed, nonthreatening citizens is sadly not uncommon. One notable instance reported by the ACLU involved two men, Lyndon Stark, 48, and Kevin Pruiksma, 27, who, within a two-week period in December of 1996, died under the supervision of Palm Beach County sheriff's deputies.⁶³ Another appalling event occurred in January of 1997 when a low speed car chase concluded with the fatal shooting of an unarmed man, Kurt DeSilva, 34, by a Rhode Island police officer following the suspicion that he was driving a stolen vehicle.⁶⁴ These two instances offer only a glimpse of the police brutality, abuses of power, and unwarranted intrusions throughout the country. Regretfully, this trend is only expected to continue as the power of the police force expands.

As the police force has slowly been their attitude and their arsenal, their uniforms have also changed noticeably. In the past, police uniforms did not resemble military attire. Now, uniforms consist of dark clothing and heavy armor, and have an overall storm trooper-like aura. Essentially, uniforms have transformed to reflect the changing demands placed on the officers within different

⁶³ "Fighting Police Abuse: A Community Action Manual." *American Civil Liberties Union*. ACLU, 01 Dec. 1997. Web. 03 Jan. 2010. <http://www.aclu.org/racial-justice_prisoners-rights_drug-law-reform_immigrants-rights/fighting-police-abuse-community-ac#gather>.

⁶⁴ *Ibid.*

social environments. According to “The History of the Police Uniform” by Amanda Bennett, before the inception of a public police force, cities employed “watchmen,” who were usually only identifiable by a badge and their plain clothes, to maintain peace. In 1829, London established its first organized police force and in 1853, the U.S. police departments formed, also instituting dress codes.⁶⁵

The British police chose dark blue for their uniforms since the military wore red and white, resulting in a militarized yet patriotic guise. The U.S. police followed suit and chose the same colors. Originally, the police uniform in America consisted of a dark navy wool coat with flashy buttons, a top hat, and a cane, a style commonly referred to as the famous “Bobbies.”⁶⁶ By the 1950s, the American police uniform consisted of blue pants, a blue shirt, and a flat cap with a visor, which created little disturbance in communities as the police were considered a friend to the public.⁶⁷ Now, police uniforms present an immediate, unmistakable image of power and dominance, and these effects have essentially led to increased social control.

The uniforms, however, vary depending on unit and function. SWAT teams and other tactic teams wear body armor, helmets, ballistic shields, full-face visors, and SAV gloves (gloves consisting of hard metal). In 1972, the National Institute of Justice funded a project to develop lightweight body armor.⁶⁸ Now, this armor has been manufactured in dark colors with the word “police” boldly printed on the uniform to alert the public of their presence. This particular brand of armor, which is made from Kevlar, has been estimated to have saved more than two thousand police officers’ lives.⁶⁹

Around the world, uniforms vary due to climate and location. Similarly, this trend also applies to military personnel. For example, a unit in a jungle area would dress in green shades, a unit in a snow-covered area would wear white uniforms, and one in a desert region would choose

⁶⁵ Bennett, Amanda. “The History of the Police Uniform | EHow.com.” *EHow | How To Do Just About Everything! | How To Videos & Articles*. 09 Sept. 2009. Web. 3 Jan. 2010. <http://www.ehow.com/about_5475574_history-police-uniform.html>.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ Bellis.

⁶⁹ *Ibid.*

light-toned tan colors. In the concrete jungle, police officers strive to blend into their urban surroundings. However, some may argue that they use dark colors to daunt and control the citizenry. This argument is strengthened by the actions of the New York Police Department during a string of riots in the 1960s. After the riots, the police department replaced the dark blue uniforms with a shade of blue considered friendly and pacifistic. However, after the attacks on the World Trade Center in 2001, the police department returned to the dark blue colors, since they were proactively trying to thwart terrorism.⁷⁰

There have been several social and psychological studies about police uniforms and their effects on society. Now, the public instantly notices and recognizes the presence of a police officer. Aside from its use as nighttime camouflage, the dark uniform can be perceived as an attempt to affect the subconscious impressions of the citizenry. The public is hardwired to associate black and dark colors with aggression and evil, while white is associated with peace and good.⁷¹ Negative images, along with apprehension and fretfulness, are generated in citizens' minds when they see the black-colored uniforms on the streets and in their neighborhoods. Richard R. Johnson of the University of Cincinnati conducted a study on the relationship between police uniform colors and the public's reactions. Johnson states that different colors represent different moods. Red suggests emergency lights; blue suggests security and comfort, and black is associated with power and strength. The 2006 study was performed in a shopping mall in a Midwest community of 120,000 people.⁷² Participants viewed 8x10-inch photos of police uniforms of various types: light blue shirt/navy blue pants, white shirt/black pants, black shirt/black pants, and khaki shirt/khaki pants. They graded the different uniforms on a one to five scale in areas of good/bad, nice/mean, warm/cold, gentle/forceful, friendly/unfriendly, passive/aggressive and honest/corrupt.⁷³ The four

⁷⁰ Petrocelli, Joseph. "Honey, Does This Uniform Make Me Look Mean?" *Police & Law Enforcement - Officer.com Police News, Forums, Links and More for Police Officers, Law Enforcement, Corrections, Sheriffs and More*. Officer.com, 15 Nov. 2006. Web. 01 Apr. 2010. <[http://www.officer.com/web/online/Editorial-and-Features/Honey-Does-This-Uniform-Make-Me-Look-Mean/19\\$33519](http://www.officer.com/web/online/Editorial-and-Features/Honey-Does-This-Uniform-Make-Me-Look-Mean/19$33519)>.

⁷¹ Johnson, Richard. "The Psychological Influence of the Police Uniform." *Psychological Influence*. Web. 02 Feb. 2010. <<http://www.perfectionuniformsstore.com/UMSS/Assets/SS0/TemplateSet3/PsychologicalInfluence.pdf>>.

⁷² Johnson, Richard R. *Police Uniform Color and Citizen Impression Formation*. 2nd ed. Vol. 20. Boston: Springer Boston, 2005. 58-66. Print.

⁷³ *Ibid.*

sets of uniforms represented the uniforms of different areas in the United States: light blue shirt and navy pants (from Chicago), white shirt and black pants (from Cincinnati), black shirt and black pants (from New York City, Miami, and Atlanta), and the khaki shirt and pants (from Las Vegas). Based on the study, people preferred the light blue shirt and the navy blue pants of all of the categories. This uniform reflects many of the police uniforms of the 1950s. However, the most common modern-day uniform was least preferred and received the worst perception, as it was perceived as mean, cold, bad, forceful, aggressive, unfriendly, and corrupt.⁷⁴ In effect, the uniform has a huge amount of power and is what distinguishes a police officer from a citizen. The uniform is fundamentally what makes the citizenry fear, yet respect, the police units.

In general, police have continued to abuse their power during the twentieth century. In November of 2003, police conducted a drug raid at Stratford High School in Goose Creek, S.C., during which they commanded students as young as fourteen to lie down on their stomachs or sides in hallways during the search. Police stormed the school in a military fashion, waving their guns as canine units searched for weapons and drugs.⁷⁵ After such an unforeseen and unnecessary action, the students' families won a class action lawsuit against the school district, resulting in a 1.6 million-dollar settlement for psychological and medical damages.⁷⁶ As one parent, Latonia Simmons, told WCSC, a CBS affiliate: "I was just upset knowing they had guns put to their head[s] and a K9 was barking at them and about to bite somebody. It was awful."⁷⁷

Before we can eradicate incidents like this one, law enforcement will need to learn to place some trust in citizens. Additionally, in order for the transformation to be successful, citizens will need to place a certain amount of trust in the police. The unwarranted and irrational actions of the police, along with their new image and weaponry, have become a concern for citizens across the

⁷⁴ *Ibid.*

⁷⁵ Hancock, David. "Drug Raid At S.C. High School - CBS News." *Breaking News Headlines: Business, Entertainment & World News - CBS News*. CBS News, 07 Nov. 2003. Web. 15 Feb. 2010.
<<http://www.cbsnews.com/stories/2003/11/07/national/main582492.shtml>>.

⁷⁶ "Berkeley County School District and Goose Creek Police Department Stratford High School Drug Sweep Class Action Settlement." *Lawsuits & Legal News, Settlements, Verdicts, Legal Issues, Labor Laws, Class Action Lawsuits*. 06 Apr. 2006. Web. 20 Feb. 2010.
<http://www.lawyersandsettlements.com/case/drug_sweep_settlement.html>.

⁷⁷ *Ibid.*

nation. For the most part, twentieth century police have transitioned from protectors and friends to threatening guards who will do anything to propagate “security.”

An Upsurge In Surveillance: The Dwindling Idea of an Open Society in America

Signs of an American police state parallel those signaling the fast-approaching surveillance state. Since the late 19th century, surveillance has been increasing and undergoing revolutionary advancements in the U.S. In the 1850s, San Francisco became the first city to use systematic photography for criminal identification. Today, the average American is now caught on tape more than two hundred times a day, according to a 2007 *Newsweek* article.⁷⁸ The low-key technology that the police force set out to use in the late 1850s transformed into a much greater system of surveillance. Now, it is commonplace to see cameras along boulevards, on traffic lights, in department stores, at the ATM, and even in public restrooms.⁷⁹ As the surveillance grows and becomes a more powerful instrument of the state, it enables the police force and higher governmental powers to know every move within one’s day-to-day routine. In addition to the use of surveillance technologies by the police, federal agencies have further explored other technologies ranging from biometrics, RFID, infrared, and text message and internet monitoring.

While surveillance has become a hindrance to the rights of the citizenry, some argue that it can, in some limited circumstances, be beneficial. The police force claims that the implementation of a wide range of surveillance technologies will in turn result in a safer America. In a 1994 interview, the tenth Director of the Federal Bureau of Investigation, Louis Freeh, stated, “The American people must be willing to give up a degree of personal privacy in exchange for safety and security.”⁸⁰ To some extent, technology can provide a sense of security, but a line should still be drawn. However, other pros come from the use of surveillance technology. Lately, during times of pandemic influenza, airports have used infrared technology to detect people with above average

⁷⁸ Bennett, Jessica. "Smile! You're on Hidden Camera | Print Article | Newsweek.com." [Newsweek - National News, World News, Health, Technology, Entertainment and more... | Newsweek.com](http://www.newsweek.com/id/71506/output/print). 20 Nov. 2007. 14 Mar. 2009
<<http://www.newsweek.com/id/71506/output/print>>.

⁷⁹ *Ibid.*

⁸⁰ Markoff, John. "A Push for Surveillance Software - The New York Times." [The New York Times - Breaking News, World News & Multimedia](http://query.nytimes.com/gst/fullpage.html?res=940DE5DD143AF93BA15751C0A962958260&sec=technology&pon=&pagewanted=all). 28 Feb. 1994. 16 Mar. 2009
<<http://query.nytimes.com/gst/fullpage.html?res=940DE5DD143AF93BA15751C0A962958260&sec=technology&pon=&pagewanted=all>>.

temperatures in an effort to determine which individuals might be infected. As technology continues to progress, it is important not to use it against the people, but for the good of the people- for both their liberties and their well-being.

Police across America have utilized dashboard cameras, unique pieces of technology that have evolved since the development of radar in 1948. Over the years these cameras were used increasingly to photograph license plates. The Mobile Plate Hunter 900 is a type of license plate reader that demonstrates the high-tech capabilities of the police. ELSAG, the company that developed the Mobile Plate Hunter 900, describes it as “a \$20,000 piece of equipment...consisting of two cameras mounted on top of a police cruiser to fit in light bars or can stand alone and can record up to 900 license plates an hour on vehicles driving at highway speeds.”⁸¹ This license plate reader is currently used by over four hundred agencies across thirty U.S. states.⁸² The plate reader can have some difficulty reading plates from certain angles, but for the most part, the reader can chart and estimated eighty-five to ninety percent of the plates that pass by. ELSAG further explains, “The snapshot recorded is taken in order to catch fugitives, so the numbers are matched with a computerized list from the National Crime Information Center, alerting the officer within milliseconds of capture if there is a match.”⁸³ The plate reader therefore determines if the car’s registered owner has a suspended or a revoked license, if the car has been reported stolen, or even if the car’s owner has a criminal record.

More broadly, this technology helps police to investigate crimes and capture fugitives involved in sexual predation, kidnapping, and gang and racketeering charges. Springdale, Cincinnati Police Chief Mike Laage claimed that the plate reader is the best technology available. Between 2004 and 2007 in Springdale, the scanner helped the police recover ninety-five stolen cars valued at \$740,000 and contributed to 111 arrests.⁸⁴ Essentially, this new camera has the potential to catch a

⁸¹ “ANPR | Mobile PLate Hunter 900.” *ALPR | License Plate Reader | LPR | License Plate Recognition | ELSAG*. 13 Jan. 2010. Web. 13 Jan. 2010. <<http://www.elsag.com/mobile.htm>>.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ MacRonin. “Plate Reader Draws Objections of ACLU | Privacy Digest.” *Privacy Digest | News That Can Impact Your Privacy*. 31 July 2007. Web. 01 Mar. 2010. <<http://www.privacydigest.com/2007/07/31/plate%20reader%20draws%20objections%20aclu>>.

glimpse of a citizen's life every time he drives pass a scanner- potentially eroding privacy one mile at a time. Approximately forty law enforcement agencies in the Washington, D.C. metro area alone are deploying License Plate Recognition (LPR) systems this year. There is a rising fear among some civil liberty agencies, including the ACLU and some politicians in these areas, that abuse will occur and privacy will diminish as a compilation of movement records will be archived. In addition, there is some concern that the device is only used as a "revenue generator" for the state.⁸⁵

Police forces have implemented surveillance cameras at a higher frequency in the major cities such as New York, Los Angeles, Philadelphia, and Washington D.C. In the near future, Philadelphia is hoping to link surveillance cameras at universities and private businesses and route the feed back to the police stations for observation. In 2003, Chicago installed a few "blue-light" cameras in order to deter gang activity. Now, they are taking measures to deploy these cameras, which cost \$200-\$1000 each, in hidden areas. Police Superintendent Jody Weis is claiming "to take it to an entirely different level" by installing more complex and hidden cameras within the next three to five years, expanding surveillance in Chicago at a rapid rate.⁸⁶

Newark, New Jersey, Albany County, New York, and Ann Arbor, Michigan also added cameras in 2009 using federal stimulus funds from the Obama administration, according to a *USA TODAY* report.⁸⁷ This notion of using federal stimulus funds for surveillance implies that it is legitimate for taxpayers to fund the government's infractions of freedoms and civil liberties. Nonetheless, plate readers and cameras are currently used to help not only the police, but also the public in times of anxiety and need. Metro Police in Louisville have used license plate readers during crowded events, such as the Kentucky Derby, to aid in finding stolen cars and in AMBER Alert child searches.⁸⁸

⁸⁵ *Ibid.*

⁸⁶ Carpente, John. "Chicago Police Plan Covert Surveillance Camera Upgrade - Chicago Tribune." *Featured Articles From The Chicago Tribune*. 10 Mar. 2010. Web. 25 Mar. 2010. <http://articles.chicagotribune.com/2010-03-10/news/ct-x-c-blue-light-cameras-0310-20100310_1_camera-network-chicago-police-covert>.

⁸⁷ Hughes, Trevor. "Police Partner with License Plate Readers - USATODAY.com." *News, Travel, Weather, Entertainment, Sports, Technology, U.S. & World - USATODAY.com*. 04 Mar. 2004. Web. 21 Mar. 2010. <http://www.usatoday.com/news/nation/2010-03-03-license-plate-cameras_N.htm>.

⁸⁸ *Ibid.*

In addition to the aid of surveillance cameras, satellites, and biometrics, police are also pursuing an even more advanced form of surveillance. In December of 2009, *TPM Muckraker* reported, "Police [have] the capabilities to determine in real time the location of a Sprint cell phone user. Sprint has reported that the eight million incidents indicate all cell phones...have been under [a] considerable amount of surveillance, and remain under supervision."⁸⁹ Thus, even a citizen's private communication is scrutinized by the federal government and the police. It would seem that no facet of life is safe from this infiltration.

The National I.D Card, a certificate carried in the wallets of the citizens, would only increase the control that the government possesses to monitor the lives of citizens. The police force in America would in turn be allowed an intimate glimpse of an individual's background just by reading his or her driver's license. Proposed after the tragic attacks on American soil in 2001, the Real ID Act would ensure the initiation of the National ID card. Members of Congress who oppose the act, including Ron Paul, have referred to it as a "Trojan horse." While a National ID card might seem like a unique and effective way to safeguard Americans from terrorism and other domestic dangers, it actually forces Americans to rescind their privacy and a bit of their freedom. The card would allow driver's licenses to include personal data and biometric information. Biometric information can include a DNA profile, iris scan, fingerprints, or even a Radio Frequency Identification (RFID) chip, which would enable the government to know where a person is located at all times. Along with the National ID card, the act would establish huge databases of personal files including biometric information. National ID cards have already been enacted in some European countries as well as Thailand, Hong Kong, and Singapore.

In 1999 Congress revised the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to remove a provision that authorized the use of Social Security numbers on driver's

⁸⁹ Elliott, Justin. "Police Tapped Sprint Customer GPS Data 8 Million Times In A Year | TPM Muckraker." *Home | TPM Muckraker*. 04 Dec. 2009. Web. 17 Apr. 2010.
<http://tpmmuckraker.talkingpointsmemo.com/2009/12/revelation_8_million_gps_searches_on_sprint_by_law.php>.

licenses.⁹⁰ In order to prevent such an enactment from encroaching on citizens' privacy, Congress will need to repeat the past and repeal such invasive legislation while urging constituents to stand up for their rights and voice their opinions. While social security numbers have raised debate in the past, Senators Charles Schumer (D-N.Y.) and Lindsey Graham (R-S.C.) are espousing the need for National ID cards, one of the four pillars proposed to mend the nation's "badly broken" immigration system, which also includes border security, a legalization process for present aliens, and admittance for temporary workers.⁹¹

The bipartisan legislation Senators Sumner and Graham are cosponsoring would require citizens and the estimated eleven million aliens in the U.S. to possess a card equivalent to a biometric Social Security card, which would include eye scans and fingerprints. The two senators claim that there will be no government databases to house private information and that the cards themselves will contain no confidential information such as medical records and would not include tracking devices.⁹² Jim Hoffman of the Cato Institute claimed, "This move would result in gun control, cost at least 100 billion dollars and would impede on the liberties of each and every citizen that owned [a card]." The plan proposed by Charles Schumer and Lindsey Graham "would allow employers to swipe the potential worker's card to check the identity and condition of the person, and if they refuse to swipe the card would result in fines and, if it persists, prison sentences."⁹³

Judge Andrew Napolitano, author of *Lies the Government Told You* and Fox News analyst, stated on Fox News, "The Police go from not being able to see the social security card of each citizen...to [being able to] see their National ID card which entail[s] health care, legal, financial, and biometric information as well as where each person has been." He further proclaimed that the power of police would grow through the use of the National ID card. The police would be able to

⁹⁰ "EPIC - National ID and the REAL ID Act." Electronic Privacy Information Center. 09 May 2010. Web. 09 May 2010. <<http://epic.org/privacy/id-cards/>>.

⁹¹ *Ibid.*

⁹² "FOXNews.com - ID Card for Workers at Center of Immigration Plan." *Breaking News | Latest News | Current News - FOXNews.com*. Wall Street Journal, 09 Mar. 2010. Web. 11 Mar. 2010. <<http://www.foxnews.com/politics/2010/03/08/id-card-workers-center-immigration-plan/>>.

⁹³ Kenny, Jack. "Senators Push Biometric ID Card." *The New American*. 19 Mar. 2010. Web. 09 May 2010. <<http://www.thenewamerican.com/index.php/usnews/politics/3164-senators-push-biometric-id-card>>.

know your previous locations as well as much of your biographical information.⁹⁴ While a National ID card raises constitutional issues, it also carries religious implications pertaining to the “end times.” Some critics of the card feel the RFID chip may relate to Revelations 13:16-17 in the Bible, which reads:

And he causeth all, both small and great, rich and poor, free and bond, to receive a mark in their right hand, or in their foreheads: And that no man might buy or sell, save he that had the mark, or the name of the beast, or the number of his name.⁹⁵

However, while the National ID card has many religious and social implications, numerous politicians and high-ranking public officials such as Tom Ridge, Secretary of the Department of Homeland Security, and Newt Gingrich, former Speaker of the House, have promised that there will not be an initiation of a National ID card. Presently, however, there is a revamped interest in a progressive movement to initiate just such an impediment to the liberties of each American. It will be up to Americans and the representatives that still value the ideas of freedom once introduced 230 years ago to prevent such an injury to liberty from assuming a place in the wallets of every citizen. This implementation will only degrade privacy and make citizens even more vulnerable to any unwarranted force of police units.

Biometrics, the physical and behavioral traits that would be integrated into National ID cards, are becoming essential tools for parliamentary units across the country as well as federal agencies. By the 1990s, computers were integral to mapping crime patterns and amassing DNA evidence.⁹⁶ According to *Homeland Security Newswire*:

In the mid-1990s the FBI's main data center expected to process 62,500 fingerprints every day, a figure which has [now] more than doubled. The FBI processed a record of 145,000 prints in one day in 2008 in hope to eventually reach 200,000 with a database of 56 million prints.⁹⁷

⁹⁴ "Are National ID Cards Un-American - FOXNews.com." *Breaking News | Latest News | Current News - FOXNews.com*. Fox News, 12 Mar. 2010. Web. 17 Apr. 2010. <<http://www.foxnews.com/search-results/m/29787437/are-national-id-cards-un-american.htm>>.

⁹⁵ Monahan, Torin. "Publications: RFID." *Public Surveillance*. Vanderbilt University, 01 Jan. 2006. Web. 10 May 2010. <<http://www.publicsurveillance.com/rfid2.html>>.

⁹⁶ "The World's Largest Biometrics Database Is Being Built in West Virginia." *Homeland Security Newswire*. HSNW, 06 Nov. 2009. Web. 02 Mar. 2010. <<http://homelandsecuritynewswire.com/world%E2%80%99s-largest-biometrics-database-being-built-west-virginia?page=0,0http://homelandsecuritynewswire.com/world%E2%80%99s-largest-biometrics-database-being-built-west-virginia?page=0,0>>.

⁹⁷ *Ibid*.

This particular center in West Virginia receives approximately fifteen thousand new prints each day from the military alone, resulting in high levels of biometric businesses across the state.⁹⁸ By amassing both domestic and military prints, the FBI is essentially forming an international database. According to the government, the print collection is designed to provide “safety to the people” while catching criminals and allowing the people’s prints to be linked to their criminal records.⁹⁹ One might wonder how so many fingerprints are transmitted to such a massive database. The Quick Capture Platform, a portable workstation and a miniature satellite dish, electronically scans fingerprints and sends them directly to the secluded underground database. According to Roy Bowler, the developer of the system, the database can find a match in two minutes. Like the growing use of surveillance and monitoring technologies, biometric collection was prompted by the September 11th attacks. As a result of the Patriot Act, fingerprinting of Guantanamo Bay prisoners was authorized by President Bush in order to exchange data with other countries.¹⁰⁰

Biometric information will not only be a source of information about the American people, but also about criminal suspects and terrorists of other countries. This method of collecting biometric information is certainly an indication of a change of the times, from the days when local police would demonstrate the fingerprint ink-rolling technique to preschoolers to today’s advanced and speedy process of the new fingerprinting system. During the 1970s, technological advancements and computerization empowered the police force. During this period, both fingerprint readers and night vision technology were further researched and investigated. In reality, fingerprinting can be even more extensive than the collection by the FBI mentioned above. In 2004, Virginia, Louisiana, and Texas required the collection of DNA samples from arrestees for part of the booking process before conviction. Unfortunately, this tactic allowed personal genetic

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

information to become public and impeded upon the idea that suspects are “innocent until proven guilty.”¹⁰¹

Thirty states require DNA collection following a felony conviction. The contentious Proposition 69, which passed in California in November 2004, now allows police units to take DNA samples from individuals arrested for felony crimes.¹⁰² DNA evidence and collection is very useful in trials as well; in fact, DNA is the only evidence that is admissible without a Daubert hearing, during which a judge determines the admissibility of scientific evidence in court. DNA is often a key to the case; however, in some instances, DNA has not been perfectly reliable. The O.J. Simpson case resulted in a multitude of inconclusive lab results and questionable evidence, even though DNA was matched between the victim and the suspect. Essentially, biometrics, whether physical or behavioral, are characteristics unique to each individual. That uniqueness and distinction should be protected, not invaded, by both the parliamentary units and the empowering government. If biometrics is used to defend against terrorism, it is imperative that the citizens’ information be protected and cared for because they have the right to privacy.

Although surveillance does not directly contribute to the use of force, it has helped to create a culture of over-policing. Such a pervasive use of supervision has resulted in religious and constitutional infringements while allowing for growing government that could lead to the formation of a police state. Privacy fades as America succumbs to the technologies of the federal government the police force. The government and police units are able to predict almost every move of the citizens in their day-to-day routines. Essentially, the police’s shadow has been cast upon America, and to describe their actions and techniques as oversight is a gross understatement.

Fusion Centers: Terrorism Prevention Patronized by the Public Sector

Fusion centers, which integrate police and government intelligence, have assumed a growing role in today’s society and are spurring the parliamentary units to collect, analyze, and disseminate

¹⁰¹ Ballve, Marcelo. "DNA Fingerprinting Trend Threatens Genetic Privacy." *Alex Jones' Infowars: There's a War on for Your Mind!* Pacific News Service, 14 July 2004. Web. 17 Apr. 2010. <http://www.infowars.com/print/ps/dna_fingerprinting.htm>.

¹⁰² "Proposition 69 (DNA) - Bureau of Forensic Services (BFS) - California Dept. of Justice - Office of the Attorney General." *Office of the Attorney General - Edmund G. Brown Jr., Attorney General*. 02 Apr. 2010. Web. 02 Apr. 2010. <<http://ag.ca.gov/bfs/prop69.php>>.

information at an exponential rate in order to combat terrorism and crime. Unfortunately, fusion centers propagate suspicion and view all members of society as potential suspects and offenders. While the public sector also contributes to this suspicion, fusion centers represent another step towards decreased privacy and the construction of an American police state. They enable citizens of all occupations, and police officers in particular, to collect information and distribute it to a fusion center. As of April 2009, there were seventy fusion centers in the United States collecting and sharing information among law enforcement agencies. Michael German, ACLU Policy Counsel and former FBI Agent, called fusion centers “overzealous police intelligence activities” that truly mine the lives of Americans for latent threats, of which the American populace may not be suspicious.¹⁰³

America witnessed the power of fusion centers during the G-20 Summit riots in Pittsburgh when, according to *The New York Times*, a forty-one-year-old social worker and anarchist was arrested for "hindering apprehension or prosecution, criminal use of a communication facility and possession of instruments of crime." Elliot Madison had used social networking equipment, police scanners, computers, and Twitter to disseminate information about police movements to the protestors.¹⁰⁴ Madison's arrest was contentious since he arguably did nothing illegal. Twitter, in addition to text messaging, has become an essential and valued tool to alert fellow protestors about police activity. Madison and other protestors have been arrested after the police were tipped off by other agencies such as the Bureau's Cryptographic and Electronic Analysis Unit (CEAU). The CEAU is an organization that is able to investigate public computer networks, other organizations and distressed members of the public, the FBI, the Department of Homeland Security, and state and local police. With access to such a volume of information, fusion centers have grown radically between the fiscal years of 2004 and 2008 with the help of more than \$327 million in taxpayer-provided funding.¹⁰⁵ Janet Napolitano, Department of Homeland Security Secretary,

¹⁰³ Fusion Center Declares Nation's Oldest Universities Possible Terrorist Threat." *American Civil Liberties Union*. ACLU, 06 Apr. 2009. Web. 07 Apr. 2010. <<http://www.aclu.org/technology-and-liberty/fusion-center-declares-nation-s-oldest-universities-possible-terrorist-threat>>.

¹⁰⁴ Burghardt, Tom. "Police State Prepares for Civil War." *Pacific Free Press - Hard Truths for Hard Times - Progressive Opinion, Dissident News*. 11 Oct. 2009. Web. 03 Mar. 2010. <<http://www.pacificfreepress.com/news/1/4867-poice-state-prepares-for-civil-war.html>>.

¹⁰⁵ *Ibid.*

stated, "In the world we live in today, it's critical for federal, state, local and tribal entities to know what the others are doing so each can operate effectively and efficiently."¹⁰⁶

Missouri Governor Jay Nixon stated, "Fusion centers represent the honing of these protective efforts, while strongly protecting individual rights and civil liberties. They are a vital part of keeping our nation strong, safe and free."¹⁰⁷ Fusion centers would be a practical means if the ideas expressed by Governor Nixon were upheld. But, as Caroline Fredrickson, Director of the ACLU Washington Legislative Office, warned, fusion centers have the potential to be privacy nightmares.¹⁰⁸ The ACLU has monitored certain police departments and their relationships with fusion centers and found some procedures and processes to be overly invasive, including the right of the Virginia Fusion Center to be excluded from state open government laws.¹⁰⁹ In addition, the guidelines for the fusion center in Massachusetts state that undercover police officers can attend public meetings to collect intelligence even when there is no reasonable suspicion of illegal activity.¹¹⁰

Intelligence agencies and instruments of the federal government are also making it easier to gather, analyze, and distribute information. The Director of National Intelligence issued standards for the suspicious activity reports that the LAPD and other departments would generate, thus making it easier for state and local non-criminal (yet suspicious) activities to be reported to fusion centers and information-sharing partners. In addition, Georgia passed legislature that would denote all foreign driver's license applicants and allow the state's Crime Information Center access to their personal information, according to an ACLU report.¹¹¹ The report further states that extreme measures have been taken by Virginia fusion centers and that the state believes that its colleges and universities are "nodes for radicalization," which should be monitored. In March of 2009, a

¹⁰⁶ "Napolitano Addresses Fusion Center Conference." *Government Technology: State & Local Government News Articles*. 12 May 2009. Web. 17 Apr. 2010. <<http://www.govtech.com/gt/626249>>.

¹⁰⁷ "Fusion Centers and Intelligence Sharing." *IT.OJP.GOV Home*. 30 Mar. 2010. Web. 30 Mar. 2010. <<http://www.it.ojp.gov/default.aspx?area=nationalInitiatives&page=1181>>.

¹⁰⁸ ACLU Says Fusion Centers Remain Problematic." *American Civil Liberties Union*. ACLU, 17 Apr. 2008. Web. 23 Mar. 2010. <<http://www.aclu.org/national-security-technology-and-liberty/aclu-says-fusion-centers-remain-problematic>>.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

Virginia fusion center published a “terrorism threat assessment” that named the diverse areas surrounding military bases and “historically black colleges” in Virginia as possible threats to homeland security.¹¹²

The fusion center’s allegations, if accepted, could be used to justify further inspection of suspicious activity, ultimately resulting in further violations of citizens’ privacy. Former F.B.I. agent and ACLU policy counsel Michael German told *The Washington Post*:

The changes occurring around the American police force and their ways of data collection could lead to police officers turning into spies on behalf of the federal government...If police officers no longer see themselves as engaged in protecting their communities from criminals and instead as domestic intelligence agents working on behalf of the CIA, they will be encouraged to collect more information.¹¹³

As a result of the attacks on the Pentagon and the current elevated national threat level, the Virginia fusion center is working in conjunction with the Virginia State Police and the Virginia Department of Emergency Management to deter criminal and terrorist activity. A common theme seen at fusion centers across the country is the goal of preventing terrorism and heightened criminal activity while including partnerships with military personnel, law enforcement, and homeland security professionals.¹¹⁴ Overall, though, fusion centers across the country are taking many liberties with their surveillance measures.

Oversight and protection of actual information is imperative, but so is the manner in which information is obtained. The idea of clandestine fusion centers, conglomerates of military, local, state, and federal agencies, monitoring and sharing information with each other, should be unequivocally opposed by citizens in hopes of preserving privacies and liberties alike. Unfortunately, due to the looming threat and fear of terrorism, it is unlikely that these fusion centers will be eliminated. Without precautionary measures, a working system of checks and balances and

¹¹² "Fusion Center Declares Nation’s Oldest Universities Possible Terrorist Threat." *American Civil Liberties Union*. ACLU, 06 Apr. 2009. Web. 07 Apr. 2010. <<http://www.aclu.org/technology-and-liberty/fusion-center-declares-nation-s-oldest-universities-possible-terrorist-threat>>.

¹¹³ Burghardt, Tom. "COINTELPRO and Domestic Spying." *GlobalResearch.ca - Centre for Research on Globalization*. 21 Aug. 2008. Web. 17 Apr. 2010. <<http://www.globalresearch.ca/index.php?context=va&aid=9900>>.

¹¹⁴ "Virginia Fusion Center." *Virginia State Police*. 02 Apr. 2010. Web. 02 Apr. 2010. <<http://www.vsp.state.va.us/FusionCenter/index.shtm>>.

diligent care of the private information obtained via fusion centers, there will certainly be a loss of American freedoms, even though many citizens are completely unaware of these centers.

The Impending Age: False Protection of Liberty in the Name of National Security

Americans are currently spectators to the fast-paced theater of a militarized police force. Images of menacingly equipped figures patrolling the streets of America reflect the militarized persona that resonates in their minds. With each passing day, we grow one step closer to a militarized police state, within which the people's constitutional rights are eradicated. As Ron Paul lamented, "The seeds of future tyranny have been sown as we take another step closer to becoming a police state."¹¹⁵

Tyranny was the way of life during America's colonial era. The idea of a sovereign master under illegitimate rule produced much apprehension and fear in the citizenry. During this time, the most brilliant minds in the colonies codified a system of checks and balances in the most precious document ever written in the history of America. The Constitution established a republic in order to find a balance between tyranny and anarchy, soundly rejecting tyranny.¹¹⁶ Throughout American history, men and women have fought passionately against enemies of the Constitution and countries that embraced the principles of fascism, communism, and socialism, which the Constitution so strongly denounces. Now, over two centuries later, we find America on the edge of a slippery slope, dangerously flirting with these principles and the rise of a full-blown police state. Each bit of freedom that Americans sacrifice to the government to ensure their common security adds weight to the scales, eventually bringing America to a tipping point after which all freedoms will be in the hands of the federal government.

Most Americans are losing sight of this critical and developing issue as the government continues to amass power. Thomas Jefferson once stated, "When governments fear the people

¹¹⁵ Paul, Ron. "It Can't Happen Here." *Texas Straight Talk*. U.S. House of Representatives, 20 Dec. 2004. Web. 30 Dec. 2009. <<http://www.house.gov/paul/tst/tst2004/tst122004.htm>>.

¹¹⁶ Skousen, W. Cleon. *The Five Thousand Year Leap: 28 Great Ideas That Changed the World*. Franklin, TN: American Documents, L.L.C., 2009. Print.

there is liberty. When the people fear the government there is tyranny."¹¹⁷ On the late September weekend in 2009, when Elliot Madison and other innocent protestors were stripped of their freedoms in Pittsburgh, the reality of the American police state was unveiled; the technology and arsenal of the American police force was witnessed in living rooms across America. Since the terrorist attacks on American soil in 2001, the government and parliamentary units, have crafted a hostile milieu with the proliferation of surveillance techniques and technology, information sharing centers, and weaponry. In order to awaken the citizenry from their passive and uniformed slumber, the politicians must lead the effort to reinvigorate liberty and freedom within America.

In the coming years, Americans will need to look past what the police force might proclaim or declare and scrutinize the interaction between the police force and the central government. With watchful eyes and vigilance, the people and their representatives may yet prevent the germination of these "seeds of tyranny" and regain the freedoms Americans cherish. Without the public's engagement, though, the unconstitutional actions of the parliamentary units and the government will continue and they will damage the liberties and freedoms of Americans for generations to come.

The Rule of Law Cleft Asunder: the Historical Police State and Its Ramifications

The Police State: a Definition

The police institution has evolved "as an emanation of sovereignty [and]...the basis of the practical authority of the state."¹¹⁸ It is from this vantage point that the function of the police of every state can be examined- as a physical and symbolic representation of the state's promise to protect its polity as a foremost priority.¹¹⁹ Indeed, there are times when the character of that representation is entirely the result of the decisions the police make, autonomous of the state, and the state implicitly agrees to this relationship when it establishes a police force. It is the

¹¹⁷ "Thomas Jefferson - Quotations." *Independent American Party Home*. 01 Apr. 2010. Web. 01 Apr. 2010. <<http://www.usiap.org/Legacy/Quotes/ThomasJefferson.html>>.

¹¹⁸ Bowden, Tom. "Guarding the State: The Police Response to Crisis Politics in Europe." *British Journal of Law and Society* 5.1 (1978): 69-88. *JSTOR*. Web. 16 Jan. 2010. <<http://www.jstor.org/stable/1409848>>. 74

¹¹⁹ *Ibid*, 72.

circumscription of this role, which can be drastically enlarged during political crisis, that determines the extent of the police's discretionary power.

In fact, there is a fundamental fallacy inherent in failing to circumscribe the power of the police, as not doing so allows for the unfettered imposition of "order." That term, however, is defined by the police force itself, undermining and thus "discrediting the very rule of law that they are struggling to defend."¹²⁰ In general, "most police forces are more concerned with maintaining order" than enforcing the letter of the law alone.¹²¹ Therefore, if a police force determines that its definition of order requires the sundering of the state's formal legal constraints and the state gives it leave to pursue the implementation of this definition, the police will inevitably impinge upon the liberty of the citizenry, subverting the sole purpose of the state: to act as a guarantor of such liberty.

The state must deal daily with the inexorable conflict between order and legality, historically fraught with tension, and this is particularly true with respect to the police as a political institution.

Tom Bowden explains:

The germ of political excess lives within all police forces because of the tension between order and legality, because of the discretionary powers of the police, because the police view order as their prime objective, and because as both real and symbolic representatives of the power and authority of the state the police have also been granted the means to exert force on behalf of the state in the court of first instance - the street. It is in such ways that policing and governing become inextricably linked.¹²²

As the police are, for all intents and purposes, "both real and symbolic representatives" of the state, they must enforce a definition of order that conforms to that held by the state.¹²³ This should only be a definition with provisions for the perpetuation of the natural rights of life, liberty, and property. Only then can it truly serve as the backbone of the bond between a democratic state and its citizens, a bond born of the civic necessity to impose a degree of order on society that is commensurate with the need for such an imposition but is never disproportionate, as this would imperil the populace. Thus, the preservation of a definition of order conforming to these standards is vital to the survival of democracy. When a redefinition of order is foisted upon democratic regimes, excising the

¹²⁰ *Ibid.*, 71.

¹²¹ *Ibid.*

¹²² *Ibid.*, 72.

¹²³ *Ibid.*

provisions for natural rights that separate democratic states from their authoritarian counterparts, the very dire and very real possibility of a police state rears its ugly head.

The distinction between non-partisan and political police is the line in the sand that differentiates a healthy, open state from a police state. In general, the former polices in accordance with the state's legislated prescriptions, while the latter drastically deviates from this norm, looks "for subjective error,"¹²⁴ and utilizes "extra-legal methods to detect or fabricate crimes of thought."¹²⁵ In short, appropriately restrained, well-meaning police forces comply with the maxim "to serve and protect," whereas political police forces serve some supra-legal purpose. Such political forces are frightening not only because they enforce the law, but also because they enforce authoritative claims above and beyond the law they are nominally constituted to uphold- claims that all too often serve as the sinister bulwark of an autocratic state.

Moreover, such a bulwark is none too difficult to erect. An aggrandizement of the powers of the state facilitated by the police is politically economical.¹²⁶ This expansion occurs on the periphery, beyond the line of sight to which the public is accustomed to gaze, due to the traditional role of the police as putative protectors. Thus, police militarization is wont to go unnoticed.

When the state, in whatever form it exists, becomes the master of the police in place of the letter of the law, the police are presented with "a simple and effective rationale for excess," pursuing with ardor not the enforcement of the law, but the enactment of the state's will to whatever end it seeks.¹²⁷ Perhaps no reminder is needed of the bestial malevolence that such an unchecked state's will can manifest through the actions of the police. The example of the Nazi *Schutzstaffel* (SS), the personal police force of Adolf Hitler, was crystallized in the chilling words of one of the Nazi Ministers of Police, Hermann Göring: "If the Catholic Christian is convinced that the Pope is infallible in all religious and ethical matters, so we National Socialists declare with the same ardent

¹²⁴ *Ibid*, 73.

¹²⁵ *Ibid*.

¹²⁶ Bowden, Tom. *Beyond the Limits of the Law: a Comparative Study of the Police in Crisis Politics*. Harmondsworth, Eng.: Penguin, 1978. Print. 41

¹²⁷ *Ibid*, 42.

conviction that for us too the Führer is absolutely infallible in all political and other matters.”¹²⁸ When the state conflates its own might with absolute right, abrogating the rule of law in the process and thus the standard to which the police apparatus is structured to be loyal, that apparatus becomes a creature of the state, subservient to its every whim, no matter how arbitrary. In consequence, this event is the logical precursor to that type of regime which society knows and rightly fears to be a police state.

Political Police and the State in Crisis: Some Concrete Examples

I. Autocratic Examples

The Oprichniki, the private police force dedicated to the service of Tsar Ivan IV (“the Terrible”) of Russia (1530 – 1584), are an enduring example of the havoc wreaked by police states. By means of their fervent dedication to the preservation and expansion of his rule through all sectors of Russian society, Ivan “attempted to destroy all internal opposition to his rule and so firmly establish both a personal autocracy and a centralized state.”¹²⁹ The Oprichniki, taking their name from the Muscovite region of Oprichnina that Ivan designated as his personal domain, were given free rein to subjugate the region’s nobles and the populace as a whole to Ivan’s authority. They did so with gusto, primarily through the sacking of towns: “The estates of the victims and the villages of the peasants were confiscated by the state and often plundered or simply burned.”¹³⁰ Not only property was decimated, though. When some of the town of Novgorod’s inhabitants expressed secessionist sentiments, the Oprichniki killed sixty thousand of the town’s men, women, and children. The uniform alone of the officers inspired fear: “A dog’s head was attached to the hooves of their horses apparently to symbolize the fact that the task of the Oprichniki was to eat up the enemies of the state.”¹³¹ These are the consequences of vesting the police power solely in an entity, the intentions of which may be mercurial and thusly unfettered by any kind of respect for the rule of law, rather than channeling the police power through a circumscribed set of laws.

¹²⁸ *Ibid.*

¹²⁹ Bowden, *Beyond the Limits of the Law: a Comparative Study of the Police in Crisis Politics*, 51.

¹³⁰ *Ibid.*, 52.

¹³¹ *Ibid.*, 52.

The circumstances under which this possibility most frequently manifests itself are usually those that typify a state in crisis. Indeed, in such instances, all that can be ascertained with respect to the maintenance of the rule of law is that there is a virtual lack of certainty as to whether the state will maintain it or not: "There is no guarantee of the continuance of a benign police tradition or longevity of an open and moderately policed society, just as there is no inevitability that governments experiencing internal disorder will choose, at the outset, the least coercive of responses."¹³² Such is the intrinsic nature of the monopoly on power the people grant to the state.

Besides the obvious attractiveness of a personal police force to ruthlessly ambitious leaders like Ivan IV, crises of one sort or another have often served as triggers or pretexts for such centralization of state power. The milieu of post-revolutionary France provides a good example of the exploitation of civil unrest. According to Professor Isser Woloch of Columbia University, a "group of moderate republican legislators who, tiring of factionalism and of the threat of resurgent Jacobin radicalism, engineered the coup that brought Napoleon to power."¹³³ Napoleon, assuming powers that were dictatorial in all but name with the crisis of resurgent radicalism as a pretext, proceeded to consolidate a personalized police force. Fouché, perhaps the Napoleon's most infamous Police Minister, often employed preventive detention in order to preempt popular dissent in exactly the same manner that France's old monarchy had done prior to the French Revolution. Despite the provision in France's Napoleonic constitution for a senatorial commission to reign in such imperial excess, very few of the prisoners were freed.¹³⁴ Fouché stated that he "felt that [he] alone should be the judge of the state of internal politics," expressing the dangerous sense of self-entitlement that lead policemen like himself to espouse the "simple and effective rationale for excess" that serves as the specious justification for such despotic practices as the imprisonment of political dissidents.¹³⁵

¹³² Bowden, "Guarding the State: The Police Response to Crisis Politics in Europe," 72.

¹³³ Bernstein, Richard. "How Staunch Republicans Became a Dictator's Pals." *The New York Times*. The New York Times Company, 28 Feb. 2001. Web. 27 Mar. 2010. <<http://www.nytimes.com/2001/02/28/books/books-of-the-times-how-staunch-republicans-became-a-dictator-s-pals.html?pagewanted=1>>.

¹³⁴ *Ibid.*

¹³⁵ Bowden, *Beyond the Limits of the Law: a Comparative Study of the Police in Crisis Politics*, 55-6.

Similarly, the Voluntary Organization for the Repression of Anti-Fascism (OVRA), the personal police force of Benito Mussolini, the autocratic, fascist *Duce* (“leader”) of Italy from 1943-1945, was founded on the basis of crisis. The “crisis” was patently fraudulent: during 1925 and 1926, Mussolini survived four assassination attempts, each of which was actually orchestrated by Mussolini himself to serve as an excuse for the institution of an overtly personal police force.¹³⁶

The SS, too, is yet another disturbing example of the creation of a personal police force rationalized by crisis- that of the economically and politically bankrupt German republic in its death throes. From 1926 to 1940, the force increased dramatically from 300 to 432,000 members.¹³⁷ This was the force that would attempt to carry out the “final solution”- the genocide of European in Jews- which Bowden calls “the ultimate in police action beyond the limits of the law.”¹³⁸ Indeed, “the whole Nazi experiment...was begun and consolidated through the weapon of the personalized police commanded by [Heinrich] Himmler but serving the autocrat and his ‘will.’”¹³⁹ The pages of history are riddled with such police-enacted atrocities as this monstrous “experiment” at the behest of the state.

II. Historical Politicization and Militarization of Police in the United States

A. Foundations of the Federal Liaison with the Police

There are myriad examples of personal police serving as the right arm of autocratic regimes. Yet democratic states, too, must be monitored for autocratic pretensions, and the United States is no exception to this rule. John Edgar Hoover, first director of the United States’ Federal Bureau of Investigation, fervently sought to uphold the political status quo in the U.S. during the “Red Scare” of the 1950’s, alleging that “[t]he acts of the subversive, particularly the ‘dyed-in-the-wool’ Communist, call for increased vigilance. The security of our country has suffered because too many

¹³⁶ *Ibid.*, 60.

¹³⁷ *Ibid.*, 63.

¹³⁸ *Ibid.*, 64.

¹³⁹ *Ibid.*

of our people were ‘hoodwinked’ by the propaganda which claimed that the Communist Party was a political party like the Democratic or Republican Party.”¹⁴⁰

Hoover was willing to employ all manners of disconcerting, ominous tactics. For example, Hoover crafted the Truman administration’s loyalty-security program, an undertaking of such magnitude that it swelled the FBI’s ranks from 3,559 in 1946 to 7,029 in 1952. This program caused thousands of government workers to lose their jobs without ever knowing who had informed on them or even of what they were being accused.¹⁴¹ Moreover, the FBI made the content of these supposedly “confidential” loyalty review hearings accessible to congressional committees such as the sinisterly named “House Committee on Un-American Activities,” and state and local police forces willingly contributed information as well.¹⁴² A similar FBI operation, the “Responsibilities Program,” disseminated anonymous documentation of the supposed Communist leanings of lawyers, teachers, and other individuals, frequently causing them to be fired, and often without further investigation.¹⁴³

The means by which such evidence of Communist ties was compiled were decidedly unconstitutional, acquired by hook or by crook: illegal wiretapping, illicit opening of mail, and burglary.¹⁴⁴ The case of the National Lawyers’ Guild, one of the only bar associations willing to shoulder the risk of defending clients accused of Communist affiliation, is illustrative: it was burgled at least fourteen times by the FBI between 1947 and 1951.¹⁴⁵ The FBI would then proceed to share its unlawfully acquired information with prosecuting attorneys, notifying them of the defense’s legal strategy in advance of the trial.¹⁴⁶

In 1956, Hoover instituted the FBI’s Counter Intelligence Program (COINTELPRO), which was unequivocally a potent organ of his quest to ossify the political status quo, as

¹⁴⁰ Hoover, John E. "Foreword." *The FBI Story: a Report to the People*. New York: Random House, 1956. Print. xiii.

¹⁴¹ Schrecker, Ellen. *Many Are the Crimes: McCarthyism in America*. Boston: Little, Brown, 1998. Print. 211.

¹⁴² Schrecker, Ellen. *The Age of McCarthyism: a Brief History with Documents*. New York: Palgrave, 2002. Print. 65.

¹⁴³ Schrecker, *Many Are the Crimes: McCarthyism in America*, 212.

¹⁴⁴ Theoharis, Athan G., and John Stuart. Cox. *The Boss: J. Edgar Hoover and the Great American Inquisition*. Philadelphia: Temple UP, 1988. Print. 312.

¹⁴⁵ Schrecker, *Many Are the Crimes: McCarthyism in America*, 225.

¹⁴⁶ *Ibid*, 226-7.

COINTELPRO was essentially charged with the mission of “protecting national security, preventing violence, and maintaining the existing social and political order.”¹⁴⁷ According to the Senate’s Church Committee, “COINTELPRO began...because of frustration with Supreme Court rulings limiting the Government's power to proceed overtly against dissident groups.”¹⁴⁸ Not only were 85% of its operations directed at the suppression of Communist¹⁴⁹ and Socialist activity¹⁵⁰, but also at the National Association for the Advancement of Colored People, the Council on Racial Equality, and members of the Southern Christian Leadership Conference such as Martin Luther King, Jr.,¹⁵¹ among other groups associated with the non-violent civil rights movement; the women’s rights movement¹⁵²; a variety of groups considered integral to the so-called “New Left,” such as the aforementioned National Lawyers’ Guild, nearly all groups opposing the Vietnam War, and sometimes even individual protestors not associated with any group in particular.¹⁵³

Hoover’s own words serve at as a self-indictment:

In the United States, the subversive is a lawbreaker when he violates the law of the land, not because he disagrees with the party in power. And anyone who violates the law commits a criminal act even if the motives of the lawbreaker are self-servingly claimed to be political. If we ever permit political motives to justify lawbreaking, we shall develop political tyrannies in this country as similar instances have developed tyrannies in other countries.¹⁵⁴

The boundless irony and hypocrisy inherent in this statement is exacerbated by its prefiguration of the “political tyrannies” that the FBI perpetrated upon the American people during the McCarthy era and the political turmoil of the 1960s in addition to those it encouraged at the state level during a time of political crisis. Bowden explains that “...the object was not to seize power and establish a new socio-economic, political and moral order,” as was the case in many of the aforementioned European examples of political crisis resulting in the militarization of the police, “but to preserve an

¹⁴⁷ United States. Cong. Senate. Select Committee to Study Governmental Operations. *Church Committee Reports: Book III: Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans*. 94th Cong., 2nd sess. S. Rept. International Rights. Paul Wolf, 2002. Web. 4 Apr. 2010. <<http://www.icdc.com/~paulwolf/cointelpro/churchfinalreportIIIa.htm>>.

¹⁴⁸ *Ibid.*

¹⁴⁹ Jeffreys-Jones, Rhodri. *The FBI: a History*. New Haven: Yale UP, 2007. Print. 189.

¹⁵⁰ *Ibid.*

¹⁵¹ United States. Cong. Senate. Select Committee to Study Governmental Operations.

¹⁵² United States. Federal Bureau of Investigation. *COINTELPRO - New Left (1968-1972)*. By John E. Hoover. Paul Wolf, 2002. Web. 4 Apr. 2010. <<http://www.icdc.com/~paulwolf/cointelpro/newleft.htm>>.

¹⁵³ United States. Cong. Senate. Select Committee to Study Governmental Operations.

¹⁵⁴ Hoover, xiii.

existing one by guaranteeing the maintenance of the *status quo*.”¹⁵⁵ With that supra-legal object in mind, like the aforementioned European regimes, the U.S. government set about eroding the rule of law by means of the police power.

B. The Liaison Wreaks Havoc

This turbid, furtive political milieu encouraged liaisons between the national and the state governments to jointly quell the rocking of the political boat, making the police of the 1950s-1970s decidedly more militant than had previously been their wont. Their dalliances with strong-arm tactics were frequent indeed. Chicago’s Red Squad, the subversive unit of Chicago’s police intelligence division, had been carrying out its mission to undermine the efforts of “radical elements”¹⁵⁶ since the Red Scare of the 1920s, illegally tailing, wiretapping, bugging¹⁵⁷, and stealing files from dissident groups of every stripe in the city.¹⁵⁸ It compiled thousands of dossiers on Chicago citizens and organizations, such as the League of Women Voters and Jewish War Veterans, willfully ignoring any expectation members of these groups had of privacy.

The Red Squad continued its actions with the surreptitious collusion of the U.S. government during the 1960s and 1970s. A former chief of the CIA’s Problems Analysis Branch, George O’Toole, holds that

The Red Squad was in daily contact with the army’s 113th Military Intelligence Group during the late 1960s and early 1970s, passing along intelligence reports and receiving a variety of technical assistance. The 113th also provided money, tear-gas bombs, MACE, and electronic surveillance equipment to the Legion of Justice thugs whom the Chicago Red Squad turned loose on local anti-war groups.¹⁵⁹

In the wake of the April 27, 1968, peace march on a Chicago civic center, army intelligence officers aided members of Chicago’s subversive unit in looking over arrestees in the central district lockup of the Chicago Police Department. They were supposedly in search of “soldiers absent without leave and known Communists and Communist sympathizers.”¹⁶⁰ The guilty verdict issued during

¹⁵⁵ Bowden, *Beyond the Limits of the Law: a Comparative Study of the Police in Crisis Politics*, 67.

¹⁵⁶ Kusch, Frank. *Battleground Chicago: the Police and the 1968 Democratic National Convention*. Westport, Conn.: Praeger, 2004. Print. 51.

¹⁵⁷ *Ibid*, 27.

¹⁵⁸ *Ibid*, 128.

¹⁵⁹ Kusch, 130.

¹⁶⁰ *Ibid*.

the trial of the “Chicago Seven,” a group of protestors charged with conspiracy and incitement to riot, among other things, during the 1968 Democratic National Convention held in Chicago was ultimately reversed due to the fact that the FBI had bugged the defense attorneys’ offices, infringing on the defendants’ rights to due process of law.¹⁶¹

One attempt to make sense of the 1968 Democratic National Convention’s civil liberties morass was hazarded by the Chicago Study Team in the form of the Walker Report to the National Commission on the Causes and Prevention of Violence, a commission headed by Milton Eisenhower that President Lyndon B. Johnson created after the Robert Kennedy’s assassination. The report condemned the action against protestors and the press during the convention as a “police riot,” basing its conclusions on over 12,000 photographs, 20,000 pages of witness statements, 3,437 individual accounts, and 180 hours of television footage. The report alleged that the police had vented their anger on “persons who had broken no law, disobeyed no order, made no threat. These included peaceful demonstrators, onlookers, and large numbers of residents who were simply passing through or happened to live in the areas where confrontations were occurring.” Moreover, Chicago’s then-Mayor, Richard J. Daley, had galvanized this response by exhorting the police force to “shoot to kill arsonists and shoot to maim looters,” and the lack of censure of the police’s actions during the aforementioned April 27th peace march condoned the use of such police violence during the convention. This allowance blatantly disregarded the citizens’ rights to free speech and assembly.¹⁶²

Nor did the police spare the press, violating the freedom of the press as well: according to the report, the police had unofficially circulated the plan to pursue the reporters lest they disseminate unflattering pictures and articles.¹⁶³ Indeed, sixty of the three hundred reporters assigned to cover Chicago “were involved in incidents resulting in injury to themselves, damage to their equipment, or their arrest,” and “[s]ixty-three newsmen were physically attacked by police; in

¹⁶¹ *Ibid*, 134.

¹⁶² Kusch, 120.

¹⁶³ *Ibid*, 147.

13 of these instances, photographic or recording equipment was intentionally damaged.”¹⁶⁴ Still, in the words of Frank Kusch:

The story from that week, however, did not come from the living rooms and the kitchen tables of America but from media images and government reports – results shaped largely by police officers unable or unwilling to cope with the scrutiny necessary in a functioning democracy. Their attacks on the press set in motion a journalistic backlash – a profession that responded to mace and nightsticks with typewriters and television reports.¹⁶⁵

Thus, in the end, repression was not so prevalent that the press could not have the final word, and impinging on the right to freedom of the press turned out to be, naturally, a public relations disaster for the Chicago police.

C. The Democratic Convention of 1968: Implications for the Militarization of the Police in Democratic Regimes

The specter of autocracy is thus possessed of a looming omnipresence even within the confines of democracy. Aided and abetted in their destruction of civil liberties by the pervasive power of federal organs such as the FBI and military intelligence, the Chicago police were transformed into a militant vanguard of the status quo at the urging of their mayor. Mayor Daley, after reproaching the force for its lack of mettle in dealing with the April 1968 riots that followed the assassination of Martin Luther King, Jr., incited them to employ more violent methods. As described by the Walker Report: "The effect on the police became apparent several weeks later when they attacked demonstrators, bystanders and media representatives at a civic-center peace march."¹⁶⁶

The behavior of the Chicago police during the 1968 Democratic National Convention is thus a case study in the behavior of political regimes in crisis generally. When their zeal for the preservation of civil liberties or lack thereof is put to the test, what the regime considers most important will be what emerges intact from the fracas. If the emergent element is the unconditional upholding of civil liberties in the face of vehement political dissent, then the freedom of the citizenry

¹⁶⁴ "Walker Commission on Chicago Democratic Convention and the Chicago Police." Northern Illinois University. Web. 05 Apr. 2010. <<http://www3.niu.edu/~td0raf1/1960s/Walker%20Commission%201968.htm>>.

¹⁶⁵ Kusch, 155-6.

¹⁶⁶ "Nation: CHICAGO EXAMINED: ANATOMY OF A POLICE RIOT." TIME.com. *Time*. Web. 05 Apr. 2010. <<http://www.time.com/time/magazine/article/0,9171,844633,00.html>>.

is assured for the time being. If, however, the emergent element is the unconditional upholding of the status quo (as in the case of the U.S. government's aim during the 1968 National Convention) or the reinforcement of some revolutionary agenda espoused by the regime that contravenes civil liberties, then the freedom of the citizenry is imperiled.

As aforementioned, the police are one of the most proximate and most capable extensions of state power available to execute the state's will, and such was the case in Chicago, where they readily served as the most effective means for upholding the political status quo, encroaching upon the freedoms enshrined in the U.S. Bill of Rights. The transgression upon cherished civil liberties committed during the convention was an outgrowth of the collusion between the federal and city governments to ensure the perpetuation of the political status quo instead of to uphold the rights of the people. As such, the use of the police power in this instance was personal and political, and the oft-vaunted motto "to serve and protect" was discarded in order to effect the unjust enforcement of the agenda of the regime in power. In doing so, as *Time* put it in an article written some time after the incident, the acting police officers "all too often shed their own humanity."¹⁶⁷

III. The Reluctant Acceptance of the FBI Despite Democratic Compunctions

A. Origins of the FBI and its Tendency to Excess

The example of 1968 raises the question as to what exactly Americans were thinking when they allowed for the creation of the FBI. Fear of the personalization and politicization of the police was the very reason for the tardiness of the FBI's development as a federal entity in American history. As Athan G. Theoharis puts it,

The lateness of the Bureau's creation stemmed from two beliefs commanding widespread support: first, that state and local governments were responsible for law enforcement (the Constitution having reserved such responsibilities to the states) and, second, that by allowing executive branch officials to target their critics (whether in Congress or the general public), a centralized secret police force could contain dissent and thereby undermine a constitutional system of countervailing power."¹⁶⁸

In part, this prevailing characterization of a then-theoretical FBI was influenced by a 1906 incident in which the Attorney General of the Department of Justice used Secret Service agents to

¹⁶⁷ *Ibid.*

¹⁶⁸ Mazower, Mark. *The Policing of Politics in the Twentieth Century: Historical Perspectives*. Providence, R.I.: Berghahn, 1997. Print. 191.

assist in a land fraud-related investigation that lead to the indictment of two members of Congress, since the Department of Justice had no investigative division at the time. In light of the fact that such investigators could be used to indict them to serve political ends rather than to conform to the rule and letter of the law, various prominent members of Congress compared the use of the Secret Service for this purpose to the function of the secret police of Czarist Russia. Nevertheless, citing the need for an investigative division of the Department of Justice, Attorney General Charles Bonaparte crafted a special investigative unit within the department in 1908.¹⁶⁹

Not long after the FBI's inception, the intermittent politicization of the police in times of crisis in the U.S. became the norm. For example, in the radicalized atmosphere in the wake of World War I and the Bolshevik Revolution, the FBI ensured that local and state officials received information on the activities of radical political organizations and trade unions, as these officials could proceed to prosecute their members under state anarchist and syndicalist laws, whereas the Bureau could not legally prosecute radicals during peacetime.¹⁷⁰ Later on, under the aegis of President Franklin Delano Roosevelt's August 24, 1936 oral request that the FBI investigate fascist and communist activity in the U.S., J. Edgar Hoover would create the FBI's National Academy, a program by means of which FBI officials zeroed in on singularly promising police officers and sheriffs, enrolled them in the National Academy, and "thereafter cultivated Academy graduates to continue co-operating with the FBI."¹⁷¹

Broadly construing what organizations ought to be deemed fascistic or communistic in nature, Hoover collected information on what Chicago red squad head Lieutenant Joseph Healey described as "any organization that could create problems for the city or the country" from local and state police, many of which had had red squads similar in nature to the aforementioned Chicago unit since the late nineteenth century. In fact, by 1960, "virtually every urban police department had a red squad unit and the number of police officers engaged in such surveillance numbered

¹⁶⁹ *Ibid*, 191-2.

¹⁷⁰ *Ibid*, 193.

¹⁷¹ *Ibid*, 198-99.

approximately 300,000.”¹⁷² The sheer volume of information collected in this indirect manner as well as through direct federal channels by the FBI and the manipulation of this information as a tool to sway public opinion “underscores the FBI officials’ underlying conservative purpose,” or in other words, their devotion to upholding the political status quo, even to the point of trampling on the Bill of Rights.¹⁷³

It would seem that there was little to be done with such information, as it often did not explicitly implicate the individual it referred to as a criminal and it was often illegally obtained besides. So, with the preservation of the status quo in mind, the FBI promulgated the frequently illegally culled information through an “educational campaign,” leaking “derogatory personal and political information to carefully screened conservative editors and columnists”¹⁷⁴ as well as to governors, who used it to purge the staff of state agencies in addition to “public or semi-public organizations” in general in a manner similar to that of the aforementioned loyalty-security program of the Truman administration.¹⁷⁵

B. The Inefficacy of a Public Backlash

It was not in response to these excesses that the citizenry took umbrage, but rather to those of the Nixon administration in the guise of Watergate that they finally sought to restrain the bureaucratic, civil liberty-devouring behemoth that was the FBI. Constituting a blatant use of the FBI as a political police force, Watergate led to Nixon’s resignation as well as more demanding amendments to the Freedom of Information Act in 1974 and the placement of more stringent restrictions on FBI investigations by Attorney General Edward Levi in 1976.¹⁷⁶

Nevertheless, during President Ronald Reagan’s administration, the restrictions on FBI investigations were rescinded and the FBI undertook the surveillance of the Committee in Solidarity with the People of El Salvador (CISPES) in the 1980s. This surveillance had decidedly political motives, as the organization frequently criticized Reagan’s Central American policy, making them a

¹⁷² *Ibid*, 199.

¹⁷³ *Ibid*, 201.

¹⁷⁴ *Ibid*, 203.

¹⁷⁵ *Ibid*, 205

¹⁷⁶ *Ibid*, 208.

target for the FBI's politicized surveillance tactics.¹⁷⁷ The Freedom of Information Act exposed this illicit activity, but the future of the political nature of the FBI's methodology, and therefore the extent to which it personalizes and politicizes state and local police, remains uncertain.¹⁷⁸ Theoharis explains:

...while the FBI's recent political policing is relatively more restrained, FBI investigations are still not confined to law enforcement. Hesitant to endorse legislation spelling out the parameters of FBI investigations, Congress and the U.S. public have come to accept the need for some political policing (the new perceived threat is terrorism by Islamic fundamentalists). What has changed is the insistence upon the periodic oversight of FBI operations by the Congress and responsible officials in the executive branch.¹⁷⁹

As such, the FBI can be perennially construed as a means of maximizing the personalization and politicization of the state and local police, especially during times of crisis (the turbulent 1960s, the various Red Scares, etc.). Yet the public can demand its rights. How reliable it will be in this respect is questionable, however. As Mark Mazower phrases it:

Despite the tiny size of the American Communist Party in the 1950s, the FBI grew as never before. Bureaucratic empire-building, personal ambition and ideology explain at least as much and perhaps more than the existence of actual threats. That is why in the absence of public concern the security services are unlikely to shrink in the near future.¹⁸⁰

Conclusion

In our own day and age, one need not look far for crises that have and could continue to lead to equivalent and perhaps even direr consequences. Theoharis, when he wrote in 1997, presciently observed that one such modern crisis could be “the new perceived threat” of “terrorism by Islamic fundamentalists.” Such crises have historically only too often preceded the malignant growth of a police state, whether it be a cancer in the tumor-riddled polity of an already ailing state, or a new devilry to bewitch the state and citizenry of an otherwise democratic state. Even then, however, the ruthless drive of a few politically powerful individuals, as was the case with J. Edgar Hoover and any and all of the aforementioned European autocrats, can exacerbate the problem and sometimes even be an important factor in its cause, independent of crises.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*, 209.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*, 254.

One can indeed act in the meantime to avoid falling prey to this political aberration, the most monstrous in that it pits society's protectors against their own charges, the people. If one can draw any lesson from the historical record imparted herein, it should be that in fine, no regime, no matter how democratic, is immune to the wiles and guiles of the police state. So the people, for their own protection, must be wary, and would do well to remember Juvenal's timeless query: *Quis custodiet ipsos custodes* ("who will guard the guards themselves")?¹⁸¹ If they can reply, "We will," then they are doing all they can to preserve their state, their people, and all hope for posterity.

Rights at Risk: The Rising Threat to Civil Liberties from an Increasingly Militarized Police

As has been previously articulated, a free society is marked by a fair police force and a police state by a police force that serves a political machine.¹⁸² A fair police force is one that not only protects its citizens physically, but does so with a constant respect for each citizen's civil liberties. In this way, a police force is vitally different from a military unit: the military unit strives to destroy an enemy by virtually any means available. A police force, by contrast, must adhere to socially, legally, and (in America) constitutionally prescribed standards that respect each individual's rights, even when his or her exercise of those rights may inconvenience the police, offend certain people, or, by presuming innocence, allow a guilty person to be exonerated of a crime. Such risks are inherent to a society that chooses to grant universal protections of basic rights to its citizens.

The necessity of preserving American civil liberties has been articulated since the earliest days of the country's founding and must remain a priority regardless of changes in the country's political, military, or social climate. Samuel Adams wrote that "[i]t will bring an everlasting mark of infamy on the present generation, enlightened as it is, if we should suffer [the liberties of our country] to be wrested from us by violence without a struggle, or to be cheated out of them by the

¹⁸¹ "Juvenal VI." *The Latin Library*. Web. 11 May 2010. <<http://www.thelatinlibrary.com/juvenal/6.shtml>>

¹⁸² See page 44.

artifices of false and designing men."¹⁸³ Unfortunately, many Americans have recently experienced such “artifices” at the hands of their local police, particularly infringing upon their rights to free speech and assembly and freedom from unreasonable searches and seizures. These infringements have resulted in an alarming pattern of threatened civil liberties, and this pattern must be recognized and arrested in order for America to persist as a free society and not one bearing chilling resemblance to the police states of the past.

Free Speech: Free For Some, Costly for Others

First Amendment of the U.S. Constitution:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

Free speech is one of the most quintessentially “American” values, but an increasingly aggressive police force, fueled in part by post-September 11th fears of terrorism, is transforming the country’s climate into one that is suspicious of dissenters. A combination of congressional and local legislation, administrative policies, and practices of blatant intimidation by the police have contributed to a steady increase in the challenges that face citizens who wish to exercise their free speech rights publicly. A trend toward intense regulation and policing of dissenters has emerged, and not only are these restrictions destructive to the free flow of ideas in our society, many of them are unconstitutional under the First and Fourteenth Amendments.

Silencing by Statute: The USA PATRIOT Act

The USA PATRIOT Act (H.R. 3162), passed in the wave of fear following the September 11th terrorist attacks, contains clauses that criminalize certain types of speech. It epitomizes the new culture of suppressing dissent that has come to characterize post-September 11th ideas about the place of civil liberties in the American legal system. The language of the act permits the government to prosecute speech that would formerly be understood to be protected under the First Amendment. Section 805, which prohibits citizens from providing “material support” to terrorists, has already given rise to lawsuits against citizens who did not have any intentions to aid terrorists. In 2004, a

¹⁸³ "Civil Liberties Favorite Quotes." Peace Network of the Ozarks. Web. 16 Apr. 2010.
<http://www.ozarkpeace.net/civil_liberties_favorite_quotes.htm>.

computer science student was prosecuted for being the webmaster of a website that authorities argued gave “material support” to terrorists, but he was not convicted.¹⁸⁴ Still, these lawsuits elucidate the formidable new strategies the government is now employing in an attempt to restrict free speech in the name of counterterrorism.

New Media and Police Censorship

The rise of new media technologies has created new opportunities for free expression, but the police are finding creative ways to curtail these types of speech. For example, now that many cell phones contain video cameras, ordinary citizens have the opportunity to record police activities- public ones- that may be unconstitutional. These videos, if widely distributed, can be a powerful form of speech because they expose police activities to the public and require the officers involved to justify any questionable behavior. Fearing this type of scrutiny, the police have begun to seek legal justification for prohibiting such videos from being created.

Massachusetts police, for instance, have invoked a state surveillance law to charge citizen video-makers criminally for their actions.¹⁸⁵ Because the state surveillance law requires “two-party” consent, most kinds of public filming can be construed as illegal. Similar laws exist in California, Florida, Illinois, Michigan, and Pennsylvania. The law was enacted to protect private citizens from invasive surveillance, but the police have exploited it to curtail free speech that tarnishes their public image.¹⁸⁶ Police claim that this regulation gives them legal justification to prohibit filming by citizens such as Jeffrey Manzelli, a journalist who recorded the police intimidating protesters at a rally and was arrested and charged under the law.¹⁸⁷ Now that police have a legal tool for preventing their public interactions from being recorded, journalists and other citizens cannot record public interactions with the police without fear of arrest and prosecution- a severe infringement on the kinds of free speech they can express.

¹⁸⁴ Boghosian, Heidi, and Abby Scher. "First Amendment Blues: Police Tactics Suppress Free Speech." *PublicEye.org*. Political Research Associates, Winter 2007. Web. 16 Apr. 2010. <<http://www.publiceye.org/magazine/v22n4/freespeech.html>>, 2.

¹⁸⁵ Tencer, Daniel. "Massachusetts Cops Can Arrest You for Making Them Famous." *The Raw Story: Investigative News and Politics*. Raw Story Media, Inc., 12 Jan. 2010. Web. 16 Apr. 2010. <<http://rawstory.com/2010/01/mass-recording-cop-jail/>>.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid*

The incident mentioned above was far from isolated. In October 2007, Simon Glick, a Boston lawyer, observed police arresting a young person with what he believed to be an unwarranted amount of force. When he attempted to record the arrest using his cell phone, he was arrested himself, and was afterward charged with “illegal electronic surveillance.”¹⁸⁸ In a similar incident in December 2008, Jon Sumacz, in an attempt to document the police forcefully breaking up a party, was also charged with illegal surveillance.¹⁸⁹ In all of these cases, the “crime” committed was not resisting the police or even creating a disturbance; the arrestees merely recorded instances that, if legitimate, should not have caused the police to fear disciplinary repercussions or a media backlash. It is only when illegitimate behavior is exposed that these records become a threat.

What is most alarming about this rise in surveillance arrests, perhaps, is not the arrests themselves, but the courts’ reaction to them. In 2001, the Massachusetts Supreme Court refused to overturn a 1998 conviction of a man who recorded a police encounter.¹⁹⁰ This decision provided judicial support for the police’s behavior and tacitly granted them permission to continue their ban on documenting police behavior. Thereafter, police have enjoyed the protection of court precedent for their policies, and the courts are the only arena in which the issue could be contended. In states with strict surveillance laws, journalists’ free speech is censored before they even make reports, because the surveillance law prevents them from collecting information that could portray the police negatively. Even if the journalists successfully contest the charges and they are later dropped, the existence of such laws will intimidate concerned citizens and discourage them from attempting to record controversial encounters, which are arguably the encounters that most warrant being recorded. The courts have implied that it is constitutionally acceptable to legislate what types of public activities can be reported: this is certainly a serious threat to citizens’ First Amendment rights.

Criminalizing Dissent

¹⁸⁸ *Ibid*

¹⁸⁹ *Ibid*

¹⁹⁰ *Ibid*

Protests, one of the oldest and most “American” forms of expressing free speech, are being increasingly targeted by police for intimidation and unconstitutional censorship and the police have not hesitated to use violence in some cases to physically restrict protesters’ speech. Miles Swanson, for example, claims that he was physically accosted at a protest at the Free Trade Agreement of the Americas meeting in Miami in November 2003:

Three of the cops had jumped out of the white nondescript van and attacked me. They were all wearing ski masks and dressed as anarchist black bloc protesters. I threw up my hands and offered no resistance. They punched me and I fell to the ground and attempted to protect myself. They kept punching me, kicking me, and then they dragged me into the back of the van. They took me to a small windowless room in the police station where they proceeded to interrogate me about my political affiliations, schooling, and friends. They never took off their ski masks.¹⁹¹

There are several key facts that stand out from Swanson’s story. First, the police were disguised as protestors, which obscured their identity as police officers. This deception made it unclear with whom Swanson was dealing and precluded his informed cooperation with the police. Second, he was physically attacked even though he had not used any physical force himself against the police. Third, the police, still clad in masks, questioned him not only about his behavior at the protest, but about his political and social affiliations. It is clear that he was specifically targeted at the protest for his assumed ideology and associations. This incident is one of several “snatch squad” cases in which individuals are singled out based on their “perceived political ideology” and removed from protests. It is not clear why these unconstitutional tactics have escaped a public outcry, but Heidi Boghosian and Abby Scher suggest that it is because there is no formal sanction for them. There is no law that allows or justifies the snatches; instead, it simply happens, and has not yet been halted by concerned citizens.¹⁹²

American citizens ostensibly have the freedom of speech, but it is clear that certain people’s speech is freer than that of others. Those who promote ideas that conflict with an established government position are investigated as potential terrorists. For example, in 2002, the FBI investigated the Thomas Merton Center, an organization that advocates social justice and anti-war policies. The cause for suspicion: the group “holds daily leaflet distribution activities in downtown

¹⁹¹ Boghosian, 1.

¹⁹² *Ibid*, 2.

Pittsburgh and is currently focused on its opposition to the potential war with Iraq. According to these leaflets, Iraq does not possess weapons of mass destruction.” The FBI followed TMC closely as they prepared to host an event to raise awareness about Islam. The FBI memo describing the group’s activities did not mention violence from the group or any other reason for suspicion except advocating a dissenting idea. A group with similar motives, United For Peace and Justice, secured a place in an FBI counterterrorism file for advocating nonviolent protests at Democratic and Republican National Conventions.¹⁹³ People for the Ethical Treatment of Animals, which has no criminal record and certainly no terrorist record, was labeled a “DT [domestic terrorist] target” with “DT objectives” in a 2004 FBI email.¹⁹⁴ Groups that advocate controversial positions are not only singled out as targets of scrupulous surveillance, they are categorized as domestic terrorists based solely on their political ideas in an attempt to legitimize this extra scrutiny.

“Free Speech Zones”

While the right to exercise free speech presumably exists on any piece of American soil, police and government authorities have begun to claim that they can confine protestors (and supporters, in some cases) to designated “free speech zones” or “protest zones.” Not only do these specified zones keep protestors at a distance from event sites, but they are also a powerful way of artificially controlling the way an event appears in the media. The police can position the zones anywhere they desire, which is often a great distance from an event site.

Theodore Roosevelt once said that “[t]o announce that there must be no criticism of the president, or that we are to stand by the president right or wrong, is not only unpatriotic and servile, but is morally treasonable to the American public.”¹⁹⁵ In recent years, however, the White House staff has worked hard to ensure presidential critics face serious difficulties communicating their discontent. “Free speech zones” appeared widely when President George W. Bush was in office; Secret Service officers would regularly travel to travel destinations in advance to arrange the creation of the “free speech zones” with local police. For example, during a 2002 Labor Day visit that

¹⁹³ *History Repeated: The Dangers of Domestic Spying by Federal Law Enforcement*. American Civil Liberties Union, 29 May 2007. Web. <http://www.aclu.org/images/asset_upload_file893_29902.pdf>, 13.

¹⁹⁴ *Ibid*, 14.

¹⁹⁵ “Civil Liberties Favorite Quotes.”

President Bush made to the Pittsburgh area, police told a sixty-five-year-old retiree named Bill Neel that if he wanted to protest, he would need to do so within a fenced-in baseball field a third of a mile from the site. Those with signs criticizing President Bush were removed from the President's vicinity, while supportive demonstrators were allowed to stay on the streets, within close proximity of the President.¹⁹⁶ An uninformed visitor would have been struck by the overwhelming uniformity of support for the President in Pittsburgh due to the authorities' calculating efforts.

Neel was arrested for refusing to relocate to the baseball field. In his testimony, the arresting officer, Detective John Ianacchione, explained that a protest group had applied for and received a permit to demonstrate at the baseball field. When asked whether all other unaffiliated protesters who happened to be present must join the preapproved protest at the baseball field, Ianacchione answered, "Well, it was my understanding if they were exhibiting themselves as a protester, they were to go in that area." This "understanding" came from directions from his supervisors and the Secret Service. Neel's lawyer argued that the protesters that day were singled out to be redirected to the field based on their perceived political views, and that nothing that Neel had done constituted "disorderly conduct." The magistrate presiding over the case agreed, and the charges were dropped, but a certain amount of irrevocable damage had already been done: Neel had been arrested and detained for the whole time President Bush was present, eliminating his right to communicate his views during that event.¹⁹⁷ Retrospective support is valuable, but it does not replace the need for speech to be protected at the site of an event where it can be heard.

This case is illustrative of a wider trend that has been reaffirmed by countless other instances of the police corralling those whose opinions they found threatening. When President Bush visited the St. Louis area in January 2003, a similar situation unfolded. 150 protesters were kept at a distance from the President, and according to Denise Lieberman of the ACLU of Eastern Missouri, their protest efforts were rendered futile:

¹⁹⁶ Bovard, James. "Free-Speech Zone." *The American Conservative*. 15 Dec. 2003. Web. 16 Apr. 2010. <<http://www.amconmag.com/article/2003/dec/15/00012/>>.

¹⁹⁷ "Pennsylvania v. Neel (Transcript, Oct. 31 2002)." 22 Nov. 2003. Web. 16 Apr. 2010. <<http://homepage.ntlworld.com/jksonc/docs/neel-2002-10-31.html>>.

No one could see them from the street. In addition, the media were not allowed to talk to them. The police would not allow any media inside the protest area and wouldn't allow any of the protesters out of the protest zone to talk to the media.¹⁹⁸

Without any visibility to the public or the media, no protest could hope to communicate its message.

When protesters refuse to conform to prescribed areas, the police are quick to retaliate with the utmost force available under the law. During one visit by President Bush to Columbia, South Carolina, the police demarcated a “free speech zone” half a mile from the site of the President’s speech. President Bush’s opponents were confined to this specific area. Hundreds of supporters, however, were permitted to assemble in the immediate vicinity of the President. One protester, Brett Bursey, refused to demonstrate in the “free speech zone” and instead positioned himself among the supporters, carrying a sign protesting the war in Iraq. The police arrested Bursey for trespassing, even though many other citizens were standing in the exact same location and Bursey attempted to cooperate with police requests. He reported that as he moved farther from the site of the speech, “[t]he problem was, the restricted area kept moving. It was wherever I happened to be standing.” When Bursey asked a police officer at the scene if the nature of his message was the cause of the trouble, the officer said, “Yes, sir, it’s the content of your sign that’s the problem.”¹⁹⁹ The police officer sent a clear message to Bursey and all of the other citizens in the community: the local authorities would actively censor speech based on its political content, and if citizens objected, they would be deemed criminals.

Bursey’s trespassing charge was later dropped due to a technicality, but the U.S. Justice Department, represented by U.S. Attorney Strom Thurmond, Jr., charged Bursey instead under a law prohibiting “entering a restricted area around the President of the United States.” It is difficult to comprehend why a sole individual would be found in violation of this law while surrounded by hundreds of his fellow citizens. However, as a lone dissident, Bursey was an irresistible target for government officials to make an example of to future dissenters. Because the violation was a “petty offense,” Bursey did not receive a jury trial by local community members. Instead, he was subjected to a bureaucratic nightmare: his attorney, after much resistance from White House

¹⁹⁸ Bovard.

¹⁹⁹ *Ibid.*

personnel, successfully secured subpoenas for limited access to relevant Secret Service documents.²⁰⁰ In September, Bursey was convicted for trespassing and fined \$500. The Fourth U.S. Circuit Court of Appeals upheld the decision, and the U.S. Supreme Court declined to grant him certiorari, leaving him no remaining course of legal redress.²⁰¹ The government successfully punished Bursey for his attempt to speak his mind and be heard, an example that might intimidate future protesters hoping to shield themselves under the First Amendment.

Ward Reilly of Baton Rouge, Louisiana gave a similar account of his interaction with police during a 2004 visit to the city by President Bush. Reilly was instructed to protest within a thirty-five-foot fenced-in square. When he asked a police officer why other citizens were instead allowed to stand along the side of the street, the officer reportedly answered, "Because they are pro-Bush, and they don't have signs."²⁰² The officer did not even pretend that Reilly and the other protesters had not been deliberately singled out based on their political views.

"Free speech zones" appeared again in full force at the 2004 National Conventions. At the Democratic National Convention in Boston, protesters were forced to demonstrate within a fenced-in area outside the convention center. While the protesters did not have a right to a "captive audience," a principle of First Amendment doctrine that has developed to clarify the scope of the amendment's protection, the containment within a fence went beyond removing a captive audience. Some argue that the existence of a "free speech zone" still allowed the protesters to convey their message because media members could cover the protest at that site. Still, according to the protesters, the fence placed them outside the clear sight of those attending the convention, prohibiting them from communicating their message to those present, including the delegates about to cast votes with significant political implications.²⁰³ Proximity to an event site has been a decisive factor in protest lawsuits in the past; at the 2000 Democratic National Convention, a federal court

²⁰⁰ *Ibid.*

²⁰¹ "United States v. Brett Bursey." *Center for Constitutional Rights*. Web. 16 Apr. 2010. <<http://ccrjustice.org/ourcases/past-cases/united-states-v.-brett-bursey>>.

²⁰² Reilly, Ward. "Free Speech Zones In the USA?" *The Baltimore Chronicle*. 27 May 2004. Web. 16 Apr. 2010. <<http://baltimorechronicle.com/052704FreeSpeechZones.shtml>>.

²⁰³ Hilden, Julie. "The Constitutionality of Police-imposed 'free-speech Zones'" *CNN.com*. Cable News Network, 04 Aug. 2004. Web. 16 Apr. 2010. <<http://www.cnn.com/2004/LAW/08/04/hilden.freepspeech/index.html>>.

allowed a “free speech zone” to be set, but required that it be moved close enough to be “within sight and sound” of the convention attendees.²⁰⁴ For protesters, the ability to reach their targeted audience is a paramount requirement, and one that many “free speech zones” deliberately inhibit.

As FindLaw columnist Julie Hilden points out, segregating citizens based on their political ideologies is an “impediment to dialogue.”²⁰⁵ Because a physical barrier was placed between those who supported the Democratic leaders and those who came to protest against them, the opportunity for the two groups to engage in discussion was seriously limited. Unless a meaningful dialogue was expected to occur between the chain links of a stationary fence, citizens were compelled to engage only with those who already shared similar views. As Hilden notes, “preaching to the converted is hardly a way to win new converts.”²⁰⁶ The serious manipulation of the protesters’ location and available audience via “free speech zones,” such as the one in Boston, have severe implications for the ability of citizens to freely engage in the exchange of ideas at significant political events.

The pattern of restricting protests to “free speech zones” has become impossible to ignore, and the ACLU has partnered with other groups to sue the Secret Service for allegedly unconstitutional constraint of protesters at presidential appearances across America (including in Arizona, California, Connecticut, Michigan, New Jersey, New Mexico, and Texas).²⁰⁷ The ACLU filed a lawsuit on behalf of four large political groups in 2003: Association of Community Organizations for Reform Now (ACORN), United for Peace and Justice (UPFJ), USAction, and National Organization for Women (NOW). According to Witold Walczak, one of the ACLU attorneys working on the massive lawsuit, “There is nothing more American than raising your voice in protest, and there is nothing more un-American than a government that attempts to hit the mute

²⁰⁴ Klein, Rick. “Convention Plan Puts Protesters Blocks Away - The Boston Globe.” *Boston.com*. The Boston Globe, 20 Feb. 2004. Web. 16 Apr. 2010.

<http://www.boston.com/news/nation/articles/2004/02/20/convention_plan_puts_protesters_blocks_away/>.

²⁰⁵ Hilden.

²⁰⁶ *Ibid*.

²⁰⁷ Bovard.

button when it doesn't like what it hears."²⁰⁸ As the ACLU team points out, displaying an antagonistic message as part of a protest does not necessarily make a person a security threat; rather, a genuine terrorist could carry a supportive sign or no sign, and enjoy undisturbed participation in a presidential event.²⁰⁹ The results of the case have been mixed: one of the first cases to reach the courts, *ACORN v. Secret Service*, was dismissed in federal court after the Secret Service conceded that it could not use "out of sight, out of earshot protest zones" to relegate protesters.²¹⁰ This admission is a promising one, but unfortunately not one that necessarily guarantees a welcoming climate for future protesters.

One 2007 case connected with the ACLU's battle against the Secret Service, *Rank v. Jenkins*, uncovered a document that provided dispositive evidence that the White House administration discriminates against protesters based on their political speech. The ACLU obtained a version of the *Presidential Advance Manual*, riddled with redacted passages, but clearly confirming their suspicions that a discriminatory policy had been officially sanctioned.²¹¹ Below is an excerpt dictating the appropriate way for Secret Service officers to handle protesters at a presidential event:

Preparing for Demonstrators

There are several ways the advance person can prepare a site to minimize demonstrators. First, as always, work with the Secret Service and have them ask the local police department to designate a protest area where demonstrators can be placed, preferably not in view of the event site or motorcade route.

The formation of "rally squads" is a common way to prepare for demonstrators by countering their message. This tactic involves utilizing small groups of volunteers to spread favorable messages using large hand held signs, placards, or perhaps a long sheet banner, and placing them in strategic areas around the site.

These squads should be instructed always to look for demonstrators. The rally squad's task is to use their signs and banners as shields between the demonstrators and the main press platform. If the

²⁰⁸ *Secret Service Ordered Local Police to Restrict Anti-Bush Protesters at Rallies, ACLU Charges in Unprecedented Nationwide Lawsuit*. American Civil Liberties Union. 23 Sept. 2003. Web. 16 Apr. 2010. <<http://www.aclu.org/free-speech/secret-service-ordered-local-police-restrict-anti-bush-protesters-rallies-aclu-charges-u>>.

²⁰⁹ *Ibid.*

²¹⁰ *ACLU Files Lawsuit on Behalf of Protesters Arrested at Bush Rally in Pennsylvania*. American Civil Liberties Union. 9 Dec. 2004. Web. 16 Apr. 2010. <<http://www.aclu.org/free-speech/aclu-files-lawsuit-behalf-protesters-arrested-bush-rally-pennsylvania>>.

²¹¹ "Silenced." American Civil Liberties Union. 27 June 2007. Web. 16 Apr. 2010. <<http://www.aclu.org/free-speech/silenced>>.

demonstrators are yelling, rally squads can begin and lead supportive chants to drown out the protestors (USA!, USA!, USA!). As a last resort, security should remove the demonstrators from the event site...

Handling Demonstrators

Once a group of demonstrators has been identified, the Advance person must decide what action to take. If it is determined that the media will not see or hear them and that they pose no potential disruption to the event, they can be ignored. On the other hand, if the group is carrying signs, trying to shout down the President, or has potential to cause some greater disruption to the event, action needs to be taken immediately to minimize the demonstrator's [*sic*] effect.

Before reacting to demonstrators, the Advance person should inform the rest of the Advance Team, the Tour Director, and the Press Advance Director of the situation. Be prepared to give the number of demonstrators, location(s), a description, and their issue/organization. If the demonstrators appear to be a security threat notify the Secret Service immediately. If demonstrators appear likely to cause only a political disruption, it is the Advance person's responsibility to take appropriate action. Rally squads should be dispatched to surround and drown out demonstrators immediately.

Remember - avoid physical contact with demonstrators! Most often, the demonstrators want a physical confrontation. Do not fall into their trap! Also, do not do anything or say anything that might result in the physical harm to the demonstrators. Before taking action, the Advance person must decide if the solution would cause more negative publicity than if the demonstrators were simply left alone.²¹²

The message of the policy is clear. The Secret Service, though ostensibly confined to ensuring the President's physical safety at all events, plays an active political role, carefully manipulating each event to ensure the most favorable public appearance and media coverage, even at the expense of the rights of citizens to exercise free speech. While the Secret Service's admission that this policy discriminates against certain protesters is one step toward ensuring a fair arena for open political discourse, the powerful opposition to public dissent, made manifest by the establishment of "free speech zones," is deeply rooted in policies written and condoned by the American government.

The Supreme Court has condemned discrimination against specific classes of demonstrators when a "public forum" is in place. In the 1983 case, *Perry Education Association v. Perry Local Educators' Association*, Justice Byron White wrote in the majority opinion:

In a public forum, by definition, all parties have a constitutional right of access and the State must demonstrate compelling reasons for restricting access to a single class of speakers, a single

²¹² Office of Presidential Advance. "Presidential Advance Manual." American Civil Liberties Union, Oct. 2002. Web. 16 Apr. 2010. <http://www.aclu.org/pdfs/freespeech/presidential_advance_manual.pdf>.

viewpoint, or a single subject. When speakers and subjects are similarly situated, the State may not pick and choose.²¹³

He cites previous cases in which the Court “found the distinction between classes of speech violative of the Equal Protection Clause. The key to those decisions, however, was the presence of a public forum.”²¹⁴ This idea of a public forum is crucial to the way in which “free speech zones” can be evaluated. The Equal Protection Clause of the Fourteenth Amendment reads in part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.²¹⁵

If, in a public forum, the police restrict the speech of a class or classes of people based on the content of their speech, then they directly violate the Equal Protection Clause, and the restriction is unconstitutional.

Indirect Attacks

Perhaps the most frightening way in which free speech rights are being increasingly abridged is intimidation- the quiet killer of free speech. The police have found numerous methods of intimidating protesters so that the act of dissent becomes too much of an inconvenience for many to bear. For example, the FBI issues subpoenas for activists, an action that rightly causes them to fear legal repercussions, even fabricated ones. In one case, Drake University was issued a subpoena for its National Lawyers Guild member records relating to a planned protest. The Guild challenged the subpoena and successfully had it dismissed under the protections of the First Amendment.²¹⁶ A less expert body of dissenters, however, may have retreated from such a legal challenge rather than take the risk of fighting the request.

In addition to intimidation by legal threats, protesters can also be physically intimidated by harsh local laws designed to maximize the inconvenience of protesting. Denver, for example, has a law that prohibits “cite and release” of protesters, meaning that protesters must be arrested instead

²¹³ "PERRY ED. ASSN. v. PERRY LOCAL EDUCATORS' ASSN., 460 U.S. 37 (1983)." *FindLaw*. Web. 16 Apr. 2010. <<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=460&invol=37>>.

²¹⁴ *Ibid*.

²¹⁵ "U.S. Constitution: Fourteenth Amendment." *FindLaw*. Web. 16 Apr. 2010. <<http://caselaw.lp.findlaw.com/data/constitution/amendment14/>>.

²¹⁶ "PERRY ED. ASSN. v. PERRY LOCAL EDUCATORS' ASSN., 460 U.S. 37 (1983)."

of receiving summons to appear in court at a later date. This policy has resulted in huge numbers of arrests: in one Columbus Day protest, eighty-three protesters were arrested and detained overnight even though they had posted bond.²¹⁷ These actions send a clear message to their communities that if people want to protest, they must accept the fact that they are likely to spend the night in jail, treated like dangerous criminals instead of political or social dissenters. The experience is transformed from a patriotic one to a criminal one, surely discouraging all but the most extreme dissidents.

Even if protesters engage the authorities in the battle for their First Amendment rights, they may miss the chance to assert them when it really counts because of bureaucratic delays. The police fully comprehend the quagmire of the legal system, and they can use it as a powerful tool for stifling dissent by ostensibly legal means. This threat requires protesters to make plans far in advance in case legal challenges arise, which adds an extra logistical hurdle. Lawyers, such as Thomas Cincotta of Kurtz & Peckham, have acknowledged the detrimental effects of these delays in the past:

...[F]ederal judges have expressed concern over the legality of restrictive protest zones but claimed it was too late for them to do anything about it. We have to seek relief sooner...But how do you ask a court to enjoin a protest zone that hasn't even been put in place? We must make the case that these restrictive plans are in place now, despite the government's refusal to disclose them to us.²¹⁸

This type of anticipatory legal battle is a complex and challenging one that is difficult for protest groups to win. Protesters can make every effort to gain early legal protection, but it is difficult to prove free speech rights have been violated before the violation itself takes place.

Local governments control the timeline and procedures for obtaining permits to protest legally. Because of this, they often allot only a narrow window of time within which permits can be requested before an event.²¹⁹ As Heidi Boghosian and Abby Scher explain, “an incommunicative police force violates laws in their mistreatment of demonstrators, secure that any redress will come long after the event. For citizens’ free expression, the damage will be done.”²²⁰ If a permit is denied

²¹⁷ Boghosian, 7.

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

²²⁰ *Ibid.*, 7-8.

during this short period of time, lawyers may not be able to seek a legal remedy in time for the actual event. Because of this, local governments can essentially deny a permit knowing that the delays of the legal system are on their side.

The 2009 G-20 Summit, held September 24th and 25th in Pittsburgh, Pennsylvania, brought the challenges of planning legal protests into sharp focus. Pittsburgh relished the opportunity to host the high-profile meeting of prominent dignitaries and the Pittsburgh G-20 Partnership (a coalition co-chaired by the city's mayor) strived "to assure a welcoming, clean and green event and showcase Pittsburgh's economic, environmental and quality of life transformation."²²¹ As plans for the Summit unfolded, it became clear that protests would be an obstacle to the "welcoming" environment that the city desired. City authorities, concerned that the protests would cast a negative light over the event, used their regulatory authority over the permitting process to filter the groups they would allow to protest. A small number of well-known groups with political ties received permits to demonstrate near the event. Two other groups, Codepink and Three Rivers Climate Convergence, requested to protest in the same area, but their applications were denied. As Witold Walczak, the Legal Director for the ACLU of Pennsylvania, wryly noted, "The rich and the powerful were welcome in Pittsburgh, but those with edgier critical messages were not."²²² The City clearly granted the permits arbitrarily in accordance with a manifestly political agenda; a few token groups received the city's sanction to demonstrate so that Pittsburgh appeared willing to allow protesters to be a part of its political dialogue. By contrast, however, these selective approvals proved exactly the opposite: that free speech was not a universally protected right, but a reward doled out to choice groups as a political party favor.

The city could not defend its discrimination in issuing the permits, and a federal judge required Pittsburgh to grant permits to Codepink and Three Rivers Climate Convergence as well because there was simply no reason that they should have been denied. The City acquiesced, but it

²²¹ "About the Partnership." *The Pittsburgh G-20 Partnership - Pittsburgh Welcomes the World*. Web. 16 Apr. 2010. <<https://www.pittsburghg20.org/Partners.aspx>>.

²²² Walczak, Witold. "Pittsburgh's Police State: Giving the First Amendment a Beating at the G-20." *JURIST - Legal News and Research*. University of Pittsburgh School of Law, 6 Oct. 2009. Web. 17 Apr. 2010. <<http://jurist.law.pitt.edu/forumy/2009/10/pittsburghs-police-state-giving-first.php>>.

turned to other indirect strategies for denying their right to protest, employing its police force to carry out censorship where regulatory efforts had failed. Knowing that a successful protest requires certain essential materials and support, the police made every effort to deprive the Codepink and Three Rivers Climate Convergence protesters of these things. The police obstructed the groups' food and educational buses with their vehicles, which prevented them from reaching the protest site at all. Invoking a regulation against camping, the City barred any protesters from staying on site at night to guard their tents, art, and printed materials, which they were allowed to leave overnight. When the protesters returned in the morning, all the property had disappeared. A city representative confirmed that its Public Works department had removed Three Rivers Climate Convergence's property that night. Without this important equipment, the planned protest activities were essentially crushed. The experience of protesters at the G-20 Summit reveals the ugly truth that authorities will use every power available to them, whether it is regulatory authority, police intimidation, or sheer deception, in order to stop a protest they deem undesirable.

Criminalizing the Public

The police continually defend their increasing regulation of free speech by appealing to the need for security, but this is a severe mischaracterization of the role free speech plays in a democratic society. Protesting is a fundamentally peaceful activity that seeks to engage others in meaningful discussion through speech, not violence. Treating protesters like criminals or terrorists is unjustified and antithetical to the values that the American government was founded to protect. According to a lawyer observing the "free speech zones" enforced at the 2008 National Conventions, "In a free society, a security zone that corrals all dissenting voices and treats us all like criminals cannot substitute for true law enforcement...responding to specific articulable facts that amount to reasonable suspicion that a crime is being committed."²²³ The precarious presumption that those expressing opposing views are criminals is resulting in the drastic restriction of free speech by the government and local police, a dangerous sign of the faltering protections afforded to civil liberties in our society.

²²³ Boghosian, 7.

Fourth Amendment: Cracks in the “Castle”

4th Amendment to the U.S. Constitution:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The Fourth Amendment, at its inception, was not written as an abstract safeguard against an indeterminate, unrealized threat in the minds of Enlightenment-era academics; rather, it was a direct response to the real abuses by British soldiers that the Founders had witnessed in the years directly preceding the American Revolution. British officers had justified sweeping, groundless searches of unspecified people and objects under general warrants called writs of assistance. Writs of assistance carried almost limitless authority to search anywhere based on even the slightest suspicion. Furthermore, once written, the writs were valid until six months after the current monarch’s death, and they bound all the king’s subjects to cooperate with the search effort. There was a history in England of the use of these writs to collect information on people suspected of sedition in particular, and the Founders recognized the necessity of protecting the citizens from the authority of their own police force. Although the writs provided a concrete historical precedent for the Framers, they revised the Fourth Amendment with a scope wide enough to include all “unreasonable” searches (including those with warrants), thereby universalizing the text to preserve the spirit of the amendment, regardless of how legal procedures and policies might evolve.²²⁴ Because of this, the original text of the Fourth Amendment still directly applies to the searches that police officers are carrying out now, more than two hundred years later. The protections of the Fourth Amendment continue to be a vital part of guaranteeing the other rights enumerated in the Constitution because the police are a society’s first enforcing authority and their behavior must be controlled in order for any of the other protections to be possible.

The Fourth Amendment, which guarantees citizens the right “to be secure...against unreasonable searches and seizures,” is all that stands between citizens and the potential abuses of

²²⁴ Josephson, Mark. "Fourth Amendment. Must Police Knock and Announce Themselves before Kicking in the Door of a House?" *The Journal of Criminal Law and Criminology* 86.4 (1996): 1229-264. *JSTOR*. Northwestern University. Web. <16 Apr. 2010. <http://www.jstor.org/stable/1144058>>, 1230-1231.

an overzealous police force. For this reason, it is one of the most sacred provisions of the Bill of Rights. In recent years, however, the police have appealed to the public desire for safety and tested the boundaries of the amendment. The text of the amendment, which includes such nebulous phrases as “unreasonable searches” and “probable cause,” has spawned endless lawsuits and put intense pressure upon the Supreme Court to interpret the Fourth Amendment decisively. The court has met this appeal with apprehension, and despite attempts to clarify the scope of the law, has not succeeded in eliminating any substantial amount of gray area in its interpretation. The police have taken advantage of this gray area for their own purposes; many recent cases show a rising trend in excessive or completely unjustified searches and seizures that violate the core ideas of the Fourth Amendment.

One major way in which the police have slowly eroded Fourth Amendment protections against “unreasonable searches and seizures” is by simple carelessness in performing background research on suspects or double checking the validity of their “probable cause.” This carelessness creates the illusion of honest error, but the ramifications of these errors are severe. What is often attributed to “good faith” police error often results in destruction of property, violation of privacy, or even loss of life. What is worse, police are not always held accountable for these mistakes by the courts, which has established a culture that is permissive of negligence, even when that negligence causes harm to innocent citizens.

The digitization of police data collection has dramatically increased the instances of police error since the mistakes can be attributed to misinformation from a computer system instead of a specific person. For example, in the 2009 case *Herring v. U.S.*, Bennie Dean Herring was arrested because of erroneous information in a government database. The arresting officers, who could not produce a warrant, acted on this misinformation nonetheless, and Herring was indicted based on their search.²²⁵ The Supreme Court upheld the search. Justice Ginsburg, in her dissent, expressed concern that “by restricting suppression to bookkeeping errors that are deliberate or reckless, the

²²⁵ Ngo, Melissa. "Update: Supreme Court Upholds Search Arising From Error In Police Database." *Privacy Lives*. 15 Jan. 2009. Web. 16 Apr. 2010. <<http://www.privacylives.com/update-supreme-court-upholds-search-arising-from-error-in-police-database/2009/01/15/>>.

majority leaves Herring, and others like him, with no remedy for violations of their constitutional rights.”²²⁶ Chief Justice Roberts on the other hand, focusing on the “deterrent effect” of excluding such searches and not the preservation of personal civil liberties, wrote in the majority opinion:

...we conclude that when police mistakes are the result of negligence such as that described here, rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not “pay its way.”²²⁷

According to this interpretation by the Supreme Court, negligence by the police in verifying their information should not be punished, because it will not have a deterrent effect in future investigations. However, this tolerance of negligence is already making a serious impact on police policies around the country. One reason Ginsburg cited for the increasing likelihood of database errors is the rising number of databases to which local police have access. She cites the National Crime Information Center, terrorist watch lists, the federal employee eligibility system, and commercial databases in this arsenal of information.²²⁸ These databases can contain incorrect or outdated information, but the police can still justify using them as a basis for arrests. These vast and often flawed databases distance individual police officers from the sources of their information, which dilutes the standards of personal accountability to which the police were once held.

Slippery Searches under the PATRIOT Act

In addition to curtailing free speech, the PATRIOT Act authorizes intrusions into citizens’ private lives that would have outraged the nation’s founding fathers. The act provides statutory authority for warrantless searches, which is fundamentally contradictory to both the letter and spirit of the Fourth Amendment. Information that was once unquestionably private is now available to the government during investigations. Such information can include what books a person has borrowed or purchased or topics they have browsed on library computers.²²⁹ Under the PATRIOT Act, it is now easier for the government to use National Security Letters to gain information without a warrant.²³⁰ The FBI can access phone, internet, and bank records without court approval, and once

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ *Ibid.*

²²⁹ *Ibid.*

²³⁰ Boghosian, 2.

this information has been obtained, it remains in the FBI's database, even if the person is never tried for terrorism. This authorization of warrantless information-gathering is entirely at odds with the principles of the Fourth Amendment, which protects citizens against such unjustified searches. The courts are the authority that determines whether a search is justified, and by sidestepping the need for court approval for information searches, the PATRIOT Act disregards this protection.

No-Knock Raids

Nothing conjures the nightmarish image of a militaristic police state faster than no-knock raids on the homes of innocent citizens. However, standards such as the "knock-and-announce rule" are meant to prevent those types of invasions from becoming a reality in our society. The "knock-and-announce rule" has long governed the way in which police should behave and was a requirement recognized even before the Fourth Amendment existed. Under this rule, the police must announce themselves when entering a residence and allow those inside enough time to give the police permission to enter.²³¹ One function of the rule is to protect citizens' activities other than those included in the warrant, and another is to reduce instances of police mistakenly entering the wrong homes. More practically, by giving citizens the opportunity to grant police entry, the rule minimizes unnecessary damage to homes caused by forced entry.²³² The knock-and-announce rule is intended to allow for a peaceable exchange of information (maintaining the assumption that the person in question is innocent until proven guilty) before violence or conflict ensues. No-knock raids take for granted a fundamental trust in, and respect for, the individual American citizen- a trust that has become lost as citizens are increasingly treated by the police as if they were guilty criminals.

Blackstone's "Castle doctrine," or the idea that a person's house is "his castle of defense and asylum," is at the heart of the American understanding of privacy rights in one's home.²³³ The rule has a longstanding common law precedent dating back to at least 1603 (noted by the Court of King's Bench in *Semayne's Case*) and was codified by statutes in ten states before the ratification

²³¹ Josephson, 1239-1240.

²³² *Ibid*, 1233-1234.

²³³ "WILSON v. ARKANSAS, ___ U.S. ___ (1995)." *FindLaw*. Web. 16 Apr. 2010.
<<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=514&page=927>>.

of the Constitution.²³⁴ Forty-three states and the federal government still acknowledge the knock-and-announce rule, and thirty-three states and Washington, D.C. specifically require prior notice to be given before police enter a home. Nine of the states who do not specifically require notice leave the decision in each case to the courts.²³⁵ The knock-and-announce rule is therefore deeply rooted not only in police custom, but also in American law and the way in which our society interprets the Fourth Amendment and its limits on police searches.

Contemporary Criticisms

It has been argued that “[t]he key problem with using a purely historical analysis of the Fourth Amendment is that society and law enforcement have changed substantially since 1791.”²³⁶ Today’s courts must balance constitutional precedent with the implications of changing technology. For example, in 1985, *Tennessee v. Garner* forced the Court to reconsider the use of lethal force by police officers executing a search warrant. As Mark Josephson notes, “[T]he increased sophistication of weaponry noted by the *Garner* court also has implications for the execution of search warrants. Officers at common law did not have to serve warrants on suspects armed with automatic weapons. Many people, particularly in the law enforcement community, argue that the knock-and-announce rule is an anachronism in light of current dangers.”²³⁷ These concerns for officer safety are understandable. However, in many cases, the very astonishment created by a no-knock raid has catalyzed the violence that has resulted in the injuries and deaths of both police officers and citizens. As Radley Balko of *Reason* magazine notes, by employing no-knock raids, “you’re creating a violent situation, not diffusing it.”²³⁸

Examples of no-knock raids that have turned deadly are abundant, but one case in particular serves to illustrate the needless violence that so often ensues when they are performed. In one notorious case in Atlanta, Kathryn Johnston, an elderly woman of at least eighty years, was gunned down inside her own home, having committed no crime whatsoever. Ironically, she had recently

²³⁴ Josephson, 1235-1237.

²³⁵ *Ibid.*, 1239.

²³⁶ *Ibid.*, 1254.

²³⁷ *Ibid.*, 1255.

²³⁸ Jonsson, Patrik. "After Atlanta Raid Tragedy, New Scrutiny of Police Tactics." *CSMonitor.com*. The Christian Science Monitor, 29 Nov. 2006. Web. 16 Apr. 2010. <<http://www.csmonitor.com/2006/1129/p03s03-ussc.html>>.

purchased a gun, new locks, and burglar bars for her home to protect herself from the increasing violence in her neighborhood. Local police officers, searching for a drug dealer, sprung into Ms. Johnston's home unannounced, and fearing for her life, she began to shoot at them. She injured three officers, but suffered greater injury herself: she did not survive the raid.²³⁹ Unfortunately, the tragedy is one of many like it. According to Peter Kraska, a criminologist at Eastern Kentucky University, more than fifty thousand no-knock raids were conducted in 2005; by comparison, this is a dramatic increase from roughly three thousand in 1981. The Cato Institute estimates that at least forty citizens have been needlessly killed during no-knock raids since the early 1980s.²⁴⁰ The staggering increase in the number of no-knock raids in the last three decades shows that the practice is only becoming more prevalent.

The Supreme Court, while cognizant of the civil liberty violations that accompany many no-knock raids, has yet to fully condemn them. In 1995, *Wilson v. Arkansas* presented the Court with an opportunity to rule against no-knock raids, but the Court instead legitimized them by allowing that no-knock raids, in certain cases, might be "reasonable."²⁴¹ The three recognized exceptions to the knock-and-announce rule, arising from *Wilson* are "(1) apprehension of peril, (2) useless gesture, and (3) destruction of evidence."²⁴² The *Wilson* decision became the new standard by which to gauge the reasonableness of no-knock raids. Unsurprisingly, police units have continued to perform no-knock raids, and police officers can now appeal to one of these three exceptions in defense.

In the 2006 case *Hudson vs. Michigan*, the court ruled that evidence obtained during a raid that did not meet the standards for reasonable announcement must not necessarily be suppressed under the "exclusionary rule." The exclusionary rule, which renders evidence gathered unconstitutionally inadmissible in court, has developed as one of the major tools for enforcing police compliance with the Fourth Amendment. The majority opinion, authored by Justice Antonin

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*

²⁴¹ "WILSON v. ARKANSAS, ___ U.S. ___ (1995)."

²⁴² Josephson, 1239-1240.

Scalia, based its decision on the reasoning that the knock-and-announce rule is a common law, not constitutional, rule. But, in a concurring opinion, Justice Anthony Kennedy wrote the following:

[T]he knock-and-announce requirement protects rights and expectations linked to ancient principles in our constitutional order... The Court's decision should not be interpreted as suggesting that violations of the requirement are trivial or beyond the law's concern... [T]he continued operation of the exclusionary rule, as settled and defined by our precedents, is not in doubt.

Justice Kennedy's opinion stresses that, although the exclusionary rule should not be applied in *Hudson*, it is a vital legal protection for civil liberties, and the increasing pattern of rights violations in no-knock raids is a "grave concern."²⁴³

Members of the nation's highest court have articulated the danger of no-knock raids, but disagree about how the issue should be addressed. Some scholars, such as Justice Scalia, look to the civil courts rather than the exclusionary rule for a remedy in cases of overzealous police searches. Still, as Radley Balko argues, a strong consideration of all the factors, both stated and unstated, must be considered when delineating how American civil liberties can and should be protected:

...[P]reserving the idea that American citizens are entitled to some dignity is about more than ruling out whatever wasn't specifically mentioned by the founding fathers. The idea that everybody is entitled to the presumption of innocence isn't mentioned anywhere in the Constitution either, but this concept underlies a range of customs and common law practices (most of which are also absent from the text of the Constitution) that have long been recognized as part of individual liberty. Presuming innocence doesn't mean everybody is innocent; it means authorities must err on the side of your rights as an American citizen.²⁴⁴

This view is aligned with the Ninth Amendment, which states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."²⁴⁵ The absence of precise articulation of a right's limits in the text of the Constitution does not per se mean it should *not* be protected; rather, its protection will just involve more complex examination by the courts. The courts will continue to face the challenge of applying time-tested rules to the unprecedented situations created as the country moves forward into a new generation

²⁴³ Balko, Radley. "Hard Knocks With No-Knock." *Reason.com*. Reason Magazine, 20 June 2006. Web. 16 Apr. 2010. <<http://reason.com/archives/2006/06/20/hard-knocks-with-no-knock>>.

²⁴⁴ *Ibid.*

²⁴⁵ Rossi, C. T. "The No-Knock State." *LewRockwell.com*. 17 June 2006. Web. 16 Apr. 2010. <<http://www.lewrockwell.com/rossi/rossi12.html>>.

filled with technologies and customs unforeseen by the Founders. They must use their judicial power to defend private citizens against a rising wave of civil liberties assaults.

Civil Liberties and the Next Generation: Police Searches and America's Children

America's children are learning that it is acceptable for the police to violate their civil rights at school, the very place where they should be learning to stand up for those rights. News stories of the police using excessive force to intimidate schoolchildren into following rules are becoming increasingly frequent. A generation ago, the idea of stationing police in schools would have been considered ludicrous, but now many schools incorporate the police into their disciplinary strategy. Not only does this create a culture of fear in schools, but it has also caused numerous situations in which the police have unjustifiably violated the civil liberties of children, a troubling sign of changing norms of acceptability.

The NYPD, for example, contains a group of police officers and "School Safety Officers" (SSOs) that constitute a special task force in New York City schools called the School Safety Division. According to the ACLU, about two hundred armed police officers and more than five thousand civilian NYPD employees are a part of this division. This makes the School Safety Division the fifth largest police force in the country- larger than that of Washington, D.C. and those of many other large cities.²⁴⁶

Five middle and high school students filed a class action law suit against the NYPD because they claimed they were abused physically by SSOs and wrongfully arrested. One of the students, a thirteen-year-old girl named Daija who attended school in the Bronx, alleged that she was confronted by two adults outside of her school. When she refused to go inside the school with them (because she did not know them), they handcuffed her and pushed her to the ground. The SSOs did not file any charges against her, but she did require medical attention.²⁴⁷ After the encounter, Daija said:

²⁴⁶ "NYCLU, ACLU File Class Action Lawsuit Against NYPD Over Excessive Force, Wrongful Arrests in New York City's Schools." *New York Civil Liberties Union (NYCLU) - American Civil Liberties Union of New York State*. 20 Jan. 2010. Web. 16 Apr. 2010. <<http://www.nyclu.org/news/nyclu-aclu-file-class-action-lawsuit-against-nypd-over-excessive-force-wrongful-arrests-new-yor>>.

²⁴⁷ *Ibid.*

I feel unsafe at school. I'm afraid that the School Safety Officers could attack me again for no reason. I just want the school year to be over so I can be a normal kid again. I shouldn't have to be scared of school.²⁴⁸

Ironically, the officials who are intended to keep children safe at school are among those who the children now fear the most.

One major problem with the using police officers to assist with discipline in schools is that the line between criminality and general bad behavior becomes dangerously blurred. Offenses that have traditionally resulted in reprimand, detention, or other minor punishments are now leading to the arrests of children. For example, the lawyers working on the case against the NYPD argue that the police are involved with minor behavioral infractions, such as disrespect, lateness, and cell phone use.²⁴⁹ While these types of delinquency are traditionally punishable by school officials, they are far from criminal.

The SSOs are frightening to many observers because of their nearly unlimited power: they are not bound by the authority of school administrators.²⁵⁰ It is also difficult for parents to seek recourse when they feel their children have been unfairly treated by SSOs; often, the officers in question are transferred to other schools rather than dismissed.²⁵¹ According to the Civilian Complaint Review Board, the NYPD processes about 1,200 complaints a year regarding SSOs. These SSOs, who are meant to ensure safety in public schools, are instead creating a culture of apprehension in the schools. More is at stake than the physical safety of the children; in fact, the children's conception of the way their society delineates and enforces its standards is at risk. In New York, the next generation of America's youth is learning that unless they cooperate, not just with the laws but also with a predetermined pattern of behavior, they must answer to the police.

Halting the Runaway Train

The pattern of increasing infringements upon citizens' civil liberties by the police is one that cannot be ignored. While no isolated incident taken alone is enough to suggest that America is progressing toward a police state, the examples given show that the incidents are anything but

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

isolated. The examples are puzzle pieces; they fit together to tell a story that has become familiar to historians. If left unchecked, threats to citizen's civil liberties will create a new culture in which the police, controlled by the politically dominant faction, have almost limitless power to control the citizens. Whether preventing protesters from exercising free speech in public or bursting into private homes unannounced without reasonable cause, the police, if allowed, can seriously violate the rights of citizens to live freely, independently, and without fear. These rights are an essential part of the type of society that the Founders strived to build, and the type of society that citizens must be vigilant to preserve.

The Media and the Police

As has been shown, tension indisputably exists between citizens and the police, but the relationship shared by the media and police still remains undefined at this point. Naturally, police surveillance and widely-held concerns that their nature is overly aggressive nature bring the question of how local police forces are displayed in the media to the forefront. After all, the media plays a strong role in forming the nationally accepted opinion, especially in controversial cases such as this, where people may not be able to rely solely upon their own discretion.

In many cases, the media acts as an instrument for communication and the determination of public opinion. The question is where and why the issue of police misconduct fits into this facet of publicity. The answer lies not in the matter of whether or not the media exposes police brutality, but how. According to *New York Magazine*, "politicians and others can try to take nuanced positions, but the media [doesn't] have much use for nuance;" they tend to represent public opinion on police brutality as black and white.²⁵² However, there exist no shades of gray, and so "by the time those positions are distilled into newspaper form, they usually boil down to this: [politicians] sympathetic to cops are 'tough on crime,' which equals good; those sympathetic to victims are 'soft on crime,'

²⁵² Michael Tomasky. "Divided We Stand." *New York Magazine* -- NYC Guide to Restaurants, Fashion, Nightlife, Shopping, Politics, Movies. Web. 22 Apr. 2010.

i.e., bad.”²⁵³ It is apparent, therefore, that the media is entrusted not necessarily to deliver the truth, but instead the truth that can be most reasonably derived from the facts available.

This does not simply apply to the written word; websites with videos clearly follow the same principle. For example, *New York Magazine* posted a video depicting police violence against citizens, and stated that the clip “speaks for itself” before concluding that the video did indeed exhibit instances of police misconduct.²⁵⁴ The media, at least in this case, presented data and used it as evidence to support the theory that police brutality is a reality of which we need to be conscious

Hence, it is necessary to understand that the media, when reporting news, is meant to draw a conclusion based wholly on fact. If this is true, then there is reason to believe that a crucial factor, that is, human rationale or intuition, is left out of the equation. The media may base an opinion on an unflattering fact without considering the reasoning behind the use of force by the police; the police, on the other hand, may have a rationale but not necessarily the right to use force. This remains the classic bone of contention between the media and the police and instantly generates tension-charged politics.

Politics Between the Police and Conventional Media

The police and the media share an “intimate,”²⁵⁵ albeit strained, relationship and are permanently “engaged in a configuring dance, each learning from the other.”²⁵⁶ It is also important to note that although in theory they are supposed to learn from each other, at this time in society, “the media are more shapers than shaped.”²⁵⁷ For many citizens, personal contact and interaction with the police is often minimal, and it appears that “in the absence of close contact and interactions with the police, mediated experience seems to trump personal experience, especially when the media are dramatic, engaging, and produced and disseminated for profit.”²⁵⁸ This causes one to wonder if

²⁵³ *Ibid.*

²⁵⁴ Rovzar, Chris. "Police Brutality, Pepper Spray at New School Shown on Video -- Daily Intel." *New York Magazine*. <http://nymag.com/daily/intel/2009/04/police_brutality_pepper_spray.html>. Web. 22 Apr. 2010.

²⁵⁵ Lovell, Jarret. *Good Cop, Bad Cop: Mass Media and the Cycle of Police Reform*. Monsey, New York: Willow Tree, 2003. Foreword.

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*

various forms of media are simply conditioned to churn out products of sensationalism that will garner as large a group of viewers or readers as possible.

On the other hand, one cannot help but recognize the desire to probe and investigate the inner workings of the police system. Albert J. Reiss once said that the police “aim to penetrate whilst avoiding being penetrated” and are rumored to “seek to guard their secrets.”²⁵⁹ If this statement is accurate, many citizens should be ill at ease. A vocal media that exposes and permeates society with as many truths as possible is a blessing, and not simply an “unreality industry” that focuses solely on profit maximization.²⁶⁰ Simply put, if the police are allowed to employ whatever measures are deemed necessary to prevent crime, then these same measures should be scrutinized by the watchful, untiring gaze of the media. According to Bob Herbert, a columnist for *The New York Times*, “Police work, like statistics, isn’t always black and white,” and the media must constantly investigate incidents to expose any lingering illegitimacy behind the actions taken by policemen.²⁶¹ Not only do reporters and journalists deliver news in order to inform the populace, they also introduce subjects that are worthy of thorough attention and analysis.

For example, in regards to the “random” stop-and-frisk method of the police, Bob Herbert commented that “rather than a legitimate crime-fighting tool, these stops are a despicable, racially oriented tool of harassment.”²⁶² This conclusion is aided by the presence of statistics and other information that the media unearths in order to inform readers. According to Herbert, “an overwhelming 84 percent of the stops in the first three-quarters of 2009 were of black or Hispanic New Yorkers.”²⁶³ If not for Herbert and other committed reporters, this subject might not have ever surfaced for discussion at all. Herein lies the role of the media.

Overall, we should wonder what has happened to the image of the hardworking, law-abiding policeman. Is the local traffic cop not affronted by the insinuation that he practices discrimination? Many citizens, however, do vouch for the everyday policeman:

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*

²⁶¹ Herbert, Bob. “Jim Crow Policing.” *The New York Times*. 1 Feb. 2010. Web. 22 Apr. 2010. <<http://www.nytimes.com/2010/02/02/opinion/02herbert.html>>.

²⁶² *Ibid.*

²⁶³ *Ibid.*

Honorable and conscientious police work is performed every day by countless demand and patrol personnel throughout America. I have witnessed their work time and time again: I have seen police apply patience and good judgment to avoid violent conflict; and I have seen them endure racial and ethnic abuse with equanimity rather than add to tension.²⁶⁴

If policemen are on the receiving end of occupational discrimination as Edwin J. Delattre claims, surely they are not contributors to the perpetration of discrimination in a society already riddled with so many other problems that require their vigilance.

So just what *do* policemen have to say in the face of the unforgiving scrutiny of the media? How do they defend their honor and shield themselves from the criticism that rains down on them? The truth is, there is no easy way for the local police officer to explain away any brutality committed on his part, even if his records are exemplary and indicate no previous incidents of foul play. The challenge is highlighted in the case of Richard Murphy, a policeman who was christened “The Shooter” after his contribution to the death of Amadou Diallo, a “22-year-old middle-class Guinean with the gentle smile, a devout Muslim who planned to enroll in college” who “died from wounds to his chest, left side, left back, right arm, and legs that caused ruptures of the aor-ta [*sic*], spinal cord, lungs, liver, spleen, kidney, and intestines.”²⁶⁵ Murphy, according to Sheila Weller’s *New York Magazine* article, had been an “exemplary” officer up to this incident. In fact, he had made fifty-five felony arrests with no Civilian Complaint Review Board citations- “a significant measure of the manner- and attitude- in which he approached his work.”²⁶⁶ Murphy’s dealings in the past had echoed this very professionalism, as he had (like ninety percent of his colleagues) never even discharged his weapon. According to Steve Brandow, his partner at the 115th Precinct in Queens, Murphy had even shown “tremendous restraint” in a situation in which “most other officers probably would have fired and been justified by department guidelines for doing so.” Despite this record, though, many people were quick to condemn Murphy and subject him to much criticism.

Eric Adams, a spokesman for a black police officers’ group, said that Murphy and his colleagues were being forced to assume scapegoat status; he felt that they were being vilified by

²⁶⁴ Delattre, Edwin. *Character and Cops: Ethics in Policing*. Washington, D.C.: AEI Press, 2002. Print. 4.

²⁶⁵ Weller, Sheila. “The Shooter.” *New York Magazine*. 13 Dec. 1999. Web. 11 May 2010.
<<http://nymag.com/nymetro/news/crimelaw/features/1671/>>.

²⁶⁶ *Ibid.*

citizens who quickly and rashly concluded that the shooting incident was simply another case of escalating and inappropriate police brutality. Hence, not only do the police have to battle this widely-held, unflattering opinion, but they have to defend themselves more vigorously because “their high visibility, coupled with their incredible political authority, renders them perfect candidates for public accountability.”²⁶⁷ By virtue of their profession and publicly understood duties, police officers are made accountable whether or not they are aware of it. It is crucial for the police to maintain a professional demeanor since the media always has its eye trained on police activity; it is a “very attractive subject for reality-based television programs (news and otherwise).”²⁶⁸ The police are thus plagued by the constant concern that the media might enjoy the privilege of fabricating a negative story simply for the sake of generating hype.

While this may create the impression that perhaps the police are the victims in this scenario, further exploration of past incidents reveals that in many cases police officials find ways to deceive the media. Just like regular citizens, the police should be considered normal, sometimes flawed human beings who are capable of mistakes and corruption. For example, Michael Dowd, a policeman stationed in East New York, snorted cocaine off the dashboard of his police car, and the Internal Affairs Divisions of the NYPD turned a blind eye both to his case and to many other similar cases of misconduct within the police force. It seems as though the regulatory role that the media embraces is not just natural, but also needed as well. With cases like these, the media is not so much overly critical or harsh as it is necessary and helpful in exposing fraudulent conduct on the part of those who are meant to be the civilians’ ultimate protectors.

Even if one were to argue that it is useless for the media to regulate or intervene in a situation where details are murky, in other situations, the media can identify possible conflicts and hence fulfill a successful watchdog role. This is clearly demonstrated in the case of Abner Louima, a Haitian security guard who worked in Brooklyn and was sexually assaulted, beaten and

²⁶⁷Lovell, 9.

²⁶⁸*Ibid*, 19.

sodomized by patrol officer Justin Volpe.²⁶⁹ Louima had done nothing to trigger this kind of treatment except try to intervene in a fight between two women. In such cases, exposure of extreme cruelty and abuse is absolutely necessary, and various forms of the media assisted in this particular task. In fact, Mike McAlary, a *New York Daily News* journalist, won a 1998 Pulitzer Prize for his commentary on the brutalization of Louima. The media did not just spread awareness and perform its regulatory function, but it also helped to bring Abner Louima justice when Volpe was later charged with torture and abuse. Underlying tints of racism were duly exposed and punished: “this time, the thin blue line provided no shelter” and “justice was done.”²⁷⁰ The outcome of this case clearly asserts that the police themselves are not above the law.²⁷¹ To enforce this principle, the media should reserve its right to regulate and push for more power in the relationship it shares with the police.

So far it has been established that a close relationship between the police and the media exists, and that this close relationship is needed for oversight of covert, wrongful actions taken by officials. A crime remains a crime no matter who commits it and thus it is unlawful for policemen to evade the penalty that is due for a criminal act. Even though Richard Murphy, in the aforementioned case, was a well-respected and professional policeman, the truth remains that he shot an innocent man. Unfortunately, the media was unable to unearth as many details as the public would have liked, but the most important thing to note is that if we can identify even one instance of needless and unauthorized force, then police brutality is a reality and a legitimate concern that is applicable to all policemen.

The Media-Citizen Relationship: Making “Public Journalism” Public Journalism

Conventional media has been fighting a losing battle against censorship for the past two decades. Numerous media advocacy organizations like Fairness and Accuracy in Reporting (FAIR), Project Censored and the Center for Media Democracy have been trying, in vain, to keep the spirit

²⁶⁹ "The Smoking Gun: The Abner Louima Torture Case." *The Smoking Gun: Public Documents, Mug Shots*. Web. 18 Apr. 2010. <<http://www.thesmokinggun.com/torture/torture.html>>.

²⁷⁰ Horowitz, Craig. "An Officer and an Atrocity." *New York Magazine*. 25 Oct. 1999. Web. 11 May 2010. <<http://nymag.com/nymetro/news/crimelaw/features/1265/>>.

²⁷¹ *Ibid.*

of democracy that is so central to modern media.²⁷² Censorship works as a distancing mechanism- isolating the civilian from the heart of the matter- and can have dangerous repercussions if an issue as grave as police misbehavior falls prey. It has even been argued by many people, including Raymond Williams, a Welsh academic, novelist, and critic, that the media should in fact completely terminate all affiliation with the state and private ownership and instead encourage mass participation by the public. Public journalism needs to be journalism not just for the public, but by and of the public, in order to preserve the democratic ideals that the media claims to incorporate in all its dealings with the citizenry. Since it may not be possible to remove completely all of the restraints on the media and their practices, we should instead endeavor to limit the repercussions that these restraints have on the pursuit of justice and the protection of civil liberties.

Due to the recent propagation of the internet, recent civic journalism has faced much competition from the blog. Initial attempts to inject civic journalism's ideals into the mass media have had mixed results, often drawing criticism or outright resistance because of the clash between the proactive, engaged civic journalist approach and journalism's traditional standards of objectivity and distance. Civic journalism seeks to use the news media to encourage participation and debate among the public, but blogs are interested in bringing public participation and debate into the everyday practice of journalism.²⁷³

The blog is the result of the expanding "public sphere" within which civic journalism operates. This "public sphere," a term coined by Jurgen Habermas, is "a discursive space in which individuals and groups congregate to discuss matters of mutual interest and, where possible, to reach a common judgment."²⁷⁴ Due to the fact that the public sphere is compromised if the mainstream media becomes censored, both blogs and websites present themselves as attractive alternatives that disseminate news and support a liberal, open forum for tackling of all types of issues, including police misconduct.

²⁷² Phillips, Peter. Roth, Andrew. *Censored 2008: The Top 25 Censored Stories*. New York. Seven Stories Press, 2007. Print. 234.

²⁷³ Tremayne, Mark. *Blogging, Citizenship and the Future of the Media*. New York: Routledge, 2007. Print. 225.

²⁷⁴ Hauser, Gerard A. "Vernacular Dialogue and the Rhetoricity of Public Opinion." *Communication Monographs* 65.2 (1998): 83-107. Educational Resources Information Center. Web. 10 May 2010.

Liberation Technology Fights Police Brutality

“It appears that some officers took the law into their own hands when they thought no one was watching,”²⁷⁵ stated Kweisi Mfume, former NAACP president. Additionally, aggravated national police forces in many countries have launched efforts to silence the media. Amidst the battle for power that rages between the media and the police, the citizen is violently jostled in his relations with both sides and is constantly faced with confusion as to which force is most likely to procure the truth as well as demonstrate morality and justice. Hence, it is now time for the citizen, an innocent bystander in the skirmish between the media and the police, to adopt the media once more as his sown. Fortunately, leaps and bounds are being made in this direction. The citizen has found ways to embrace various forms of media in order to control his own knowledge. This is highly beneficial, and should become more clearly so as various media shortcomings are exposed. In fact, it has been argued that “[t]he real scandal in the media...is laziness and bad news judgment. Our failure is what we miss, what we fail to cover, what we let slip by.”²⁷⁶ In situations like this, the citizen assumes a larger role in spreading awareness than was previously the case, particularly because of all the various modes of media that are available in this day and age. Independent journalists and organizations that delve deeply into cases of police misconduct and hunt for the real news are being celebrated more and more today for their exposure of incidents of police brutality.²⁷⁷ More importantly, as the average citizen becomes savvier and possesses more advanced modes of communication, he takes the reins into his own hands and facilitates the job of the media in spreading awareness of police misconduct and other crucial matters involving justice and civil liberties.

According to Michael Norton, “the internet has provided us all with an opportunity to make our views known.”²⁷⁸ Political blogging, which informs fellow citizens of the latest news via internet applications and, more specifically, through web-logs, has become an activity deeply

²⁷⁵Delattre, 236.

²⁷⁶*Ibid.*

²⁷⁷*Ibid.*

²⁷⁸ Norton, Michael. *365 Ways to Change the World: How to Make a Difference--One Day at a Time*. New York: Free, 2007. Print. 59.

entrenched in the daily routine of many Americans. This is the one of the most preferred ways in which to keep democracy alive, utilizing the right of freedom of expression. In short, citizen-generated media has taken a stronghold in a highly advanced technological era.

Hypothetically, the blogger is limited by nothing but his own imagination, and this is what separates blogging from the conventional media which, to some extent, is monitored. Blogging is “a new kind of immediate, unfiltered history, often based on raw feeds emanating directly from the source.”²⁷⁹ Bloggers do not skirt issues or restrain their opinions when making blog entries, especially not when the issue is one as severe as police misconduct. Blogs allow citizens to pick apart issues of concern; they “can be used to subvert hierarchy and become calls to action about local problems that might otherwise go unnoticed.”²⁸⁰ Perhaps if citizens had been more involved in the Diallo or Louima cases, more details would have been exposed, and more progress and justice could have been generated by those tragedies.

Police brutality, although it may never come to a standstill, could be more constrained if there were more online discussion and coverage. Due to the rapidity with which information can be disseminated across the web, even the smallest scandal “is capable of being blown into a global story.”²⁸¹ Unlike the conventional media, which must often deal in direct conflict with various police and governmental agencies, members of the blogging community are unafraid to speak out due the anonymity with which they can write. Journalists and news reporters risk their jobs and put their careers in jeopardy when they expose police misconduct. By contrast, bloggers have a true freedom of expression. It is for this reason that governments tend to be suspicious of and hostile toward blogs.

Bloggers may offer their opinion without “fear of retribution.”²⁸² Speaking up against police brutality constitutes a right that citizens possess, but often do not know how to exercise. It is here that the more unconventional forms of media shine. In fact, blogging has become such a useful

²⁷⁹ Hall, Scott. *The Blog Ahead: How Citizen-Generated Media is Radically Tilting the Communications Balance*. New York: Garden City, 2006. 37.

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.*

²⁸² *Ibid.*

medium for communication that recently a group called “Reporters Without Borders” published an e-book called *Handbook for Bloggers and Cyber Dissidents*.²⁸³ Blogging is one of the people’s defenses against a police force that tries to quell the spirit of democracy. For example, when an Egyptian blogger was arrested at a Cairo protest, he told *Time* magazine in 2006 that he had been well aware of the risks involved but had developed a taste for freedom of speech and would not give it up so easily.²⁸⁴ Police brutality and unfair arrests by the police have met their nemesis in the everyday blogger, as blogging “embodies the democratic principles of open access and freedom of speech, but also the potential to raise political awareness and transform political values.”²⁸⁵ While traditional media and newspapers are vigorously monitored, blogs are not. Not only do blogs open traditionally closed societies, they also bring new participants into the media and widen the public discourse in “established democracies like the United States,” in addition to “consolidating democracies like South Korea (one of the most Internet-intensive countries in the world.)”²⁸⁶

Besides blogs, sites like YouTube, which engage the public using digital cameras, have emerged and proven to be highly effective at spreading awareness about incidents of police misconduct. They present new a new tool with which to expose authoritarian abuse.²⁸⁷ According to author Larry Diamond, “[i]ncidents of police brutality have been filmed on cell phone cameras and posted to YouTube and other sites, where bloggers then drew public attention to them.”²⁸⁸ This is not just happening in America. In one notorious incident in Malaysia, the Prime Minister was pressured into speaking on behalf of police officers who had been publicly documented forcing a young woman to do squats while naked.²⁸⁹ Thus, this kind of pressure from the citizens can effectively publicize injustices suffered by citizens that would have otherwise remained undisclosed.

Blogs and websites are the world’s new, self-appointed methods for meting out justice where it is needed. They help to spread awareness, establish connections, and foster

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.*

²⁸⁶ Diamond, Larry J. *The Spirit of Democracy: The Struggle to Build Free Societies Throughout the World*. New York: Henry Holt, 2009. Print. 342

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*

²⁸⁹ *Ibid.*

communications. After discussing so many examples of police brutality, it seems as though this kind of proactive journalism should be encouraged and applauded. Bloggers manage to produce results through a simple yet highly effective means that, as described earlier, has several advantages over conventional forms of media in spreading awareness about a topic as controversial as police misconduct.

Technology as Watchdog

The United States is a technologically advanced country. Citizens must take advantage of these new tools of liberation, like blogs and YouTube, and fight for their own freedom against the parallel tools for the suppression of dissent, which are developing equally fast. One of the strongest solutions is to ensure that authoritarian states and even companies like Yahoo and Microsoft do not censor information that is released on the Internet or shared among citizens.²⁹⁰ One example of the kind of liberation that follows a lapse in censorship that generated much controversy can be observed in China. Google decided to defy the Chinese government by ceasing the censorship of search results- its own subtle yet powerful way of placing the ball in the people's court- and civilians there are arguably better off as a result.²⁹¹ If countries around the world are truly making headway in exploring new methods for keeping tabs on its protectors and leaders, is it not likely that the United States will gain from doing so as well?

All the reports of police misconduct in the media are proof that methods to "police the police" are required and, in fact, underway. According to *New York Times* writer Virginia Heffernan, "[i]f you see something, don't say something. Flip open your cameraphone, take the video and upload it to YouTube."²⁹² A counter-surveillance movement has taken root with the advent of the technological age; citizens are intent on exposing incidents of police brutality, hundreds of which can be viewed on YouTube.

²⁹⁰ *Ibid.*

²⁹¹ "Google Stops Censoring Search Results in China." *BBC News*. Web. 18 Apr. 2010. <<http://news.bbc.co.uk/2/hi/business/8581393.stm>>.

²⁹² Heffernan, Virginia. "Policing the Police." *The Medium: The Way We Watch Now. The New York Times*, 10 Nov. 2006. Web. 11 May 2010. <<http://themedium.blogs.nytimes.com/2006/11/10/policing-the-police/?scp=1&sq=If%20you%20see%20something,%20don%E2%80%99t%20say%20something,%20Flip%20open%20your%20cameraphone,%20take%20the%20video%20and%20upload%20it%20to%20YouTube.%20virginia%20heffernan&st=cse>>.

Aside from YouTube, people are becoming more aware of cases of real police misconduct and they are not just dismissing or ignoring abuses by their “protectors” anymore. In 1991, Carol Lipson, an American citizen, wrote to the editor of *The New York Times*. She had witnessed a purse-snatcher being put face-first inside a metal mesh can and beaten methodically by police officers instead of just being led away as the normal police procedure would have dictated. Lipson wrote:

Memories of my own past came alive: I was back in a Nazi concentration camp, getting blows from a powerful SS woman over my head and body. With the images of my painful past, I had forgotten the present -- that I was in the United States of America, the good country, where I felt safe and protected, or so I thought till that moment.²⁹³

Lipson also mentioned that “[s]ome bystanders were still talking about the incident, joking and laughing. They had not considered it a case of police brutality.”²⁹⁴ Unfortunately, the truth is that many citizens remain unaware of police brutality because it has not fully penetrated the collective conscience as a possible problem in society.

Thankfully, as more people like Lipson see these terrible instances of police misconduct unfold before their eyes, whether on YouTube or on the streets, this opinion is slowly changing to that of the majority. A prime example of this is explored in *A Blogger's Manifesto: Free Speech and Censorship in the Age of the Internet*:

In November 2006, a clip showing the arrest of Cardenas, a 24-year old alleged gang member in Los Angeles, was posted on YouTube. It was graphic evidence indeed. Two officers can be seen holding him down on a Hollywood street. One punches him several times in the face before they are able to handcuff him. The tape clocked up 155 views in the first three weeks and the conduct of the officers was subject to investigation both by the LAPD and the FBI.²⁹⁵

We are in the information age, and with this comes both its pros and cons. Either way, awareness among citizens is on the rise. Self-education is the direct solution to impede police misconduct simply because in past cases, as has been discussed, the more publicity an unjust incident receives, the more likely it is that someone will be held accountable and punishment will follow. Violence and

²⁹³ Lipson, Carol. "Only Tough Penalties Can Halt Police Brutality - Incident in Miami Beach. *The New York Times*. 05 Apr. 1991. Web. 11 May 2010. <<http://www.nytimes.com/1991/04/05/opinion/l-only-tough-penalties-can-halt-police-brutality-incident-in-miami-beach-754091.html?pagewanted=1>>.

²⁹⁴ *Ibid.*

²⁹⁵ Ringmar, Erik. *A Blogger's Manifesto: Free Speech and Censorship in the Age of the Internet*. London: Anthem Press, 2007. Print. 100.

civil rights infringements should not be ignored, which is precisely why sharing information widely, like in the case of Lipson, is most effective.

The sad truth remains that instead of placing blind trust in the nation's protectors, the citizens must always be on the lookout for harsh, unwarranted treatment by the authorities. While the occasional abuse of power may be a nonnegotiable trademark of the authorities in America today, the ways in which one can react are decided by the individual citizens and by society, and these can change in order to adapt to a progressively more intimidating, militarized police force. People may struggle to come to terms with police misconduct, but if taking measures of extreme caution could potentially diminish the escalating power of the police, then it is well worth being a little wary of the nation's "boys in blue."

Conclusion

The threat of an unchecked militarized police force is one that transcends city boundaries, historical eras, and presidential administrations. The widespread authority that the police can exert has a siren-like lure to which no government or political party is immune. On July 2nd, 2008, during a campaign visit to Colorado Springs, President-to-be Barack Obama made the following statement:

We cannot continue to rely on our military in order to achieve the national security objectives we've set. We've got to have a civilian national security force that's just as powerful, just as strong, just as well-funded.²⁹⁶

The idea of a "civilian national security force" is fundamentally different from the localized citizen units that have historically constituted the American police force. By contrast, a "powerful," "strong," and "well-funded" centralized police force is a much more dangerous one, and historically, it is the mark of a country that is careening toward a police state.

Citizens must be wary of any governmental entity that erodes their civil liberties. The increasingly antiterrorism-oriented police units have begun to regard dissenting citizens, or even innocent and unsuspecting citizens, as the "enemy" in domestic "war zones." The government has appropriated a martial vocabulary and frame of reference for the domestic sphere; for example,

²⁹⁶ Farah, Joseph. "Obama's 'civilian National Security Force'" *Between the Lines*. World Net Daily, 15 July 2008. Web. 17 Apr. 2010. <<http://www.wnd.com/index.php/index.php?pageId=69601>>.

Attorney General Janet Reno made the following statement in a 1994 speech to members of the Department of Defense and the Department of Justice: “So let me welcome you to the kind of war our police fight every day. And let me challenge you to turn your skills that served us so well in the Cold War to helping us with the war we’re now fighting daily in the streets of our towns and cities across the Nation.”²⁹⁷ Given that the forcible goals of the military and the police are irreconcilably different, comparing police and military objectives is not only inappropriate, but alarming.

Given the blurred boundary between military and police behavior, it is unfortunately not surprising that numerous unnecessary casualties are occurring and that infringements on civil liberties, which are more difficult to quantify, are also becoming frequent. The promise of security is a powerful political tool that appeals to the human desire to feel safe, but this “security” has a steep price. The iconic statement by Benjamin Franklin still rings true: “Those who would give up Essential Liberty to purchase a little Temporary Safety, deserve neither Liberty nor Safety.”²⁹⁸ The safety gained by challenging an increasingly authoritative police force is of a different kind; citizens in a free society enjoy safeguarded personal liberties such as free speech and the freedom from unreasonable search and seizure, which are rights that Americans have long respected and labored to protect.

The militarization of the police does not occur instantaneously, but is the cumulative result of each military tool amassed, each protester silenced based on his political views, or each wrongful search that goes unchallenged. Each of these individual expressions of authority is an opportunity, however, for the citizens to regain control of their communities. At their core, police units are deeply rooted within communities, and communities can voice approval or indignation and set the standards of appropriateness for their police forces. By carefully watching for “mission creep,” as Diane Weber calls it, citizens and the media can reestablish the importance of the police as the

²⁹⁷ Weber, p. 10.

²⁹⁸ “Those Who Would Give up Essential Liberty for a Little Temporary Safety and Deserve Neither: Benjamin Franklin.” *Friends of the American Revolution*. Web. 17 Apr. 2010.
<<http://21stcenturycicero.wordpress.com/tyranny/those-who-would-give-up-essential-liberty-for-a-little-temporary-safety-and-deserve-neither/>>.

protector of the citizenry.²⁹⁹ Most importantly, citizens must understand and assert the civil liberties guaranteed to them by the Constitution. It is only with this vigilance that they can combat the emergence of an American police state.

²⁹⁹ Weber, p. 11.