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EXPLOSIVE DYNAMIC ENTRY

THE INCREASING MILITARIZATION OF THE POLICE MAKES CITIZENS INTO ENEMIES

At 6 a.m., on Friday, May 16, 2003, 57-year-old Alberta Spruill was in her residence, Apartment 6F at 310 W. 143rd Street in the Harlem section of New York City, preparing to leave for work. Spruill, a quiet, church-going woman, was a municipal worker, employed at the Division of Citywide Administrative Services. She had been a city employee for 29 years, and each weekday would take the bus to her job. To her, that Friday morning must have seemed like the beginning of just another ordinary day. She mercifully did not know that she would never again head for work, that she had in fact but two hours to live because she was soon to be killed by the police even though she was an innocent citizen.

Ten minutes later a dozen heavily armed police—six officers from the Emergency Service Unit and six regular patrol officers—burst unannounced into her residence. They had a search warrant issued solely on the basis of erroneous information supplied by an unreliable anonymous informer who falsely claimed that illegal guns and drugs were stored at Spruill's residence, that he had seen armed individuals there on three occasions, and that there were dogs inside. First the officers suddenly broke down the front door with a battering ram. Then they heaved a stun grenade into the apartment where it exploded with a blinding white flash, a deafening bang, and a thunderous concussion. Then they stormed in and handcuffed Spruill, placing her face down on the floor. She was coughing and screaming. Spruill, who suffered from high blood pressure, then began having difficulty breathing. An ambulance for Spruill was dispatched at 6:32 a.m. When Spruill arrived at Harlem Hospital at 8 a.m., she was pronounced dead. She had suffered a fatal heart attack.

The medical examiner performed an autopsy and announced that Spruill suffered "sudden death following a police raid" as a result of shock and fear caused by the stun grenade explosion and the stress of being handcuffed. The medical examiner also officially classified Spruill's death a homicide—a death caused by another person's actions. "She really was scared to death," a New York newspaper wrote the day after the medical examiner's announcement.

Alberta Spruill's tragic death is a dramatic example of the evil consequences that result from an extremely ominous development in American policing—the increasing militarization of this country's police. Militarizing the police "can lead to dangerous... consequences—such as unnecessary shootings and killings," Diane Cecilia Weber, a criminal justice expert authority, observed four years ago. The killing of Spruill is powerful confirmation of Ms. Weber's observation.

"Militarization," according to sociologist Timothy J. Dunn, author of a 1996 book on the militarizing of American law enforcement agencies, "refers to the use of military rhetoric and ideology, as well as military tactics, strategy, technology, equipment, and forces." The leading scholarly paper on the militarization of American law enforcement is Diane Cecilia Weber's *Warrior Cops: The Ominous Growth of Paramilitarism in American Police Departments* (1999). The two most alarming side effects of this militarization of the police, we learn from Ms. Weber's study, are: (1) "state and local police officers are increasingly emulating the war-fighting tactics of

soldiers," and (2) "a culture of paramilitarism... currently pervades many... police departments."

Ms. Weber gives numerous examples of how "state and local police departments are increasingly accepting the military as the model for their behavior," and "increasingly emulating the tactics of the armed forces in their everyday activities." Police are now using more and more military equipment. "Between 1995 and 1997 the Department of Defense gave police departments 1.2 million pieces of military hardware," including armored personnel carriers, grenade launchers, submachine guns, and explosive devices. SWAT teams resembling the military's special forces have proliferated, organized like military units with "a commander, a tactical team leader, a scout, a rear guard, a sniper, a spotter, a gas man, and paramedics."



(Recently some

SWAT teams have been given more euphemistic designations, e.g., Emergency Response Team, Special Response Team, Special Emergency Response Team, Tactical Response Team, Emergency Services Unit, and Strategic Operations Group.) "[A]bout half of SWAT members get their training from active-duty military personnel, some of them from the Navy SEALs or Army Rangers." Equipped with military-style weapons such as submachine guns with laser sights and sound suppressors, members of police SWAT teams dress in such a way that they are difficult to distinguish from combat soldiers. SWAT police wear black or dark battle dress uniforms, or military or camouflage fatigues; they have metal or Kevlar helmets; they wear masks or hoods; they have protective goggles over their eyes; they wear full body armor; Nomex gloves cover their hands; they often carry a bunker (a large bullet-proof shield with a small window through which the officer looks); and they are shod in laced combat boots. Originally designed to deal with hijackings, hostage-takings, and other emergency situations, SWAT teams are increasingly involved in routine policing duties; "today," according

to Ms. Weber, "these special forces are deployed three-quarters of the time in 'warrant work,' i.e., executing arrest and search warrants, usually in drug cases. "The SWAT modus operandi—the quick, violent, military-style confrontation... has become normalized in police departments" across America. This explains why three criminologists, in their authoritative treatise on police lawlessness, *Forces of Deviance: Understanding the Dark Side of Policing* (1998), caustically comment that for American police today "[t]he training orientation often resembles preparation for being dropped behind enemy lines on a combat mission."

"[T]he last several decades," journalist Tom Baxter notes, "[have] brought not only military equipment but a military mindset into the realm of domestic law enforcement." Ms. Weber's treatise provides numerous examples of how police militarization has "spawned a culture of paramilitarism in American law enforcement," and has resulted in too many "state and local police officers adopting the... mindset of their military mentors." When law enforcement officials develop a "military mindset," when they begin to view themselves as "warrior police," individual rights are seriously jeopardized. It means "an organizational culture that [leads police] to escalate situations upward rather than de-escalating." As Ms. Weber explains: "The problem is that the mindset of the soldier is not appropriate for the civilian police officer. Police officers confront not an 'enemy' but individuals who are protected by the Bill of Rights... 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 protections. 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. If [police] have a mindset that the goal is to take out a citizen, it will happen... Blending military and civilian law enforcement is dangerous because the mindset of the police officer is not—and should not be—that of a warrior. The job of the police is to apprehend a suspect—nearly always a fellow American citizen—while adhering to constitutional procedures... A soldier, however, is an instrument of war, and war is the use of unrestrained force against an *enemy*... often by inflicting maximum damage... [A] soldier with a machine gun doesn't worry about *Miranda* rights."

The changes in actual police practices resulting from militarization are observable in almost every aspect of police work, but it is probably in regard to search and seizure practices that these changes are most strikingly obvious. A good example involves the methods used to effect entry into residences to execute search warrants. Over the course of the last three decades such entries more and more have come to resemble military commando operations. It is now a standard practice throughout this land for SWAT teams or other large squads of heavily armed police serving search or arrest warrants to smash front doors with battering rams and rush in with guns drawn, barking out orders and forcing everyone inside to "prone out" and submit to handcuffing in the back—all without first giving the occupants notice of the police presence or an opportunity to open the door. The police-created euphemism for this increasingly common form of no-knock entry into residences is

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"dynamic entry." Furthermore, over the last two decades the militarized police units carrying out dynamic entries have increasingly resorted to the use of explosive devices when making such entries. It is now a not uncommon practice for police effecting no-knock entry to detonate stun grenades in residences after they have broken open a door or window but prior to their actually entering the premises. This, of course, is exactly what happened in Alberta Spruill's case. She was a victim of what might be called "explosive dynamic entry."

Stun grenades were introduced into the arsenal of American police agencies, and deployed for the first time, by Los Angeles, California police in 1982. Although there can be no doubt that the police tactic of using stun grenades to serve warrants on residences has been steadily increasing, or that the grenades are now used for this purpose by police throughout the United States, it is difficult to obtain reliable statistical information on the matter. (This is unsurprising. Although the government collects and disseminates gigabytes of statistics on crimes or acts of violence committed by citizens against other citizens, or by citizens against police, there are hardly any official statistics on crimes or acts of violence committed against citizens by police. Crime statistics do not, for example, tell us how many people are shot or clubbed or Maced by police, or suffer injuries while being arrested or while in police custody, or are subjected to a chokehold or fingerhold, or bitten by a police dog.) A 1987 California Supreme Court decision discloses that in 1985 the

published in the *Naval Law Review* in 1998. "The public should be aware that the use of a nonlethal weapon always raises the possibility of serious injury, death, or destruction of property."

Alberta Spruill was not the first but, at a minimum, the fourth person slain by American police using stun grenades to execute a search warrant. On Dec. 13, 1984, Los Angeles police killed a woman who died of injuries resulting from the explosion of several stun grenades thrown into the room of her residence where she was watching television, and on Jan. 25, 1989 an elderly couple in Minneapolis, Minnesota died in bed of smoke inhalation after police threw a stun grenade through a window in their residence, starting a fire.

From 1987 through May 2003 there have been at least 27 reported appellate court decisions—15 in the federal courts, 12 in the state courts—involving police detonation of one or more stun grenades to serve a warrant in 19 states and the District of Columbia. In all but two of these cases the stun grenades were deployed by state or local police rather than federal agents. All the cases involved search warrants for drugs, or for drugs and firearms. In five of the 27 cases the explosion inflicted a nonfatal injury on one of the occupants, and in four other cases it caused property damage. In six of the 27 cases more than one stun grenade was detonated. The time of the explosive dynamic entry is given in 15 of the 27 cases. In only four of these cases did the entry occur between 8:30 a.m. and 8:30 p.m. In 11 of the 15 cases the entry occurred either late at night or very early in the morning. In six cases the entry occurred between 10 p.m. and 3:25 a.m., and in the remaining five cases the entry was between 6:09 a.m. and 7 a.m.

The factual scenarios of these cases show how rashly and recklessly police sometimes act in using stun grenades for purposes of dynamic entry. They throw exploding stun grenades through doorways and windows into living rooms, bedrooms, kitchens, and basements. They throw exploding stun grenades into rooms without first checking to see who is in the room or who is present in the residence. They throw exploding stun grenades into rooms or residences where they know or should know innocent women, children, and babies are present. They throw stun grenades which explode on or near people and inflict physical injuries. They throw exploding stun grenades into bedrooms where small children are present. They throw exploding stun grenades which land in baby strollers from which a baby had been removed a few minutes earlier. They throw exploding stun grenades which burn furniture, rugs, and floors, and which start fires.

The 27 appellate decisions indicate that, while courts sometimes do express concern about police use of exploding devices to serve warrants, legal attacks on the validity of explosive dynamic entry raids are likely to be unsuccessful. Nineteen of the cases involved appeals from criminal convictions, and only in one instance did the court reverse a conviction on grounds the entry violated the Fourth Amendment. Seven of the 27 cases involved civil actions for damages in behalf of persons subjected to an explosive dynamic entry; in not a single instance did the appellate court uphold or enter a monetary judgment in favor of a plaintiff. Such is the moribund condition of judicial protection of Fourth Amendment rights in an era of law and order judges, public apathy about constitutional criminal procedure protections, martial rhetoric about the war on crime and drugs, and police agencies imbued with a military mentality and equipped with military accoutrements and appurtenances.

It is not the purpose of this article to argue that police should never at any time use stun grenades. There may be exceptional, extraordinary circumstances involving terrorists, hostage-taking, barricaded suspects, or violent mentally deranged people where deployment of stun grenades is appropriate. The threat to liberty lies not in the infrequent use of these weapons on certain special occasions, but in the growing likelihood that use of these explosive devices may be routinized and become a standard and permanent aspect of normal police practices such as the serving of warrants. Explosive dynamic entry, a Gestapo-like tactic, must not and cannot be allowed to become, in the words of Diane Cecilia Weber, "a part of everyday law enforcement in a free society." Otherwise there will be more Alberta Spruills.

"Democracy," Winston Churchill once wrote, "means that if the door bell rings in the early hours, it is likely to be the milkman." America, however, appears to be moving into a warrior police regime where there is no ring of the door bell, and it is not the milkman who is at the door early in the morning; it is a squad of bomb-tossing policemen who think, act and look like military commandos, whose motto has become: "To Serve and Protect. Bombs Away!"

At the end of the on-line version of this article is an Appendix, based on information contained in court decisions and news media reports, listing and summarizing 39 of the hundreds of incidents since 1984 in which police have deployed stun grenades to serve warrants.

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"SHE REALLY WAS SCARED TO DEATH."

Los Angeles police deployed stun grenades on 25 occasions, and following Alberta Spruill's killing New York City police announced that while executing search warrants in the late 1990's the Emergency Service Unit used stun grenades 50 to 75 times a year, 66 times in 2000, 129 times in 2001, and 152 times in 2002. Between Jan. 1 and May 16, 2003 it used stun grenades to serve warrants 85 times. It seems indisputable that during the past 20 years police have effected hundreds, perhaps even thousands, of explosive dynamic entries all over the country and that during the past five years there have been more such entries than in all previous years.

A stun grenade, unlike the traditional grenade, the purpose of which is to kill or wound, is designed to stun and distract by producing a temporarily blinding light and a temporarily deafening concussion, but without the propulsion or dispersion of shrapnel. A stun grenade produces a sensory overload with a loud bang and a brilliant flash which disorients and confuses persons nearby. It also produces smoke. Stun grenades carry a warning label that misuse can cause physical injury or death.

To downplay the sinister police-state implications of their growing use of these explosive devices, police refuse to call them stun grenades, preferring to use euphemisms such as "flash bangs," "distractor devices," "diversionary devices," "cylindrical pyrotechnical devices," or even "a type of firecracker." In 2000, however, a federal court of appeals, vigorously expressed its disdain for both these linguistic affectations and the increasing police use of stun grenades, remarking that "police cannot automatically throw bombs into the drug dealers' houses, even if the bomb goes by the euphemism 'flash bang device.'"

Stun grenades are regarded as nonlethal weapons, but they are inherently dangerous and can, as the killing of Alberta Spruill proves, cause death. "The term 'nonlethal' refers to the goal which is to avoid fatalities," Lt. Col. James C. Duncan writes in an article

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