

NEIGHBORHOOD WATCH: INVADING THE COMMUNITY, EVADING CONSTITUTIONAL LIMITS

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INTRODUCTION

In 2010, 33-year-old David Flores had his car blocked by four men wearing blue jackets with emblems and skullcaps.¹ These men were not members of the police force; in fact two of the men were bakers, the third worked at a dry cleaner, and the last worked as an insurance salesman.² What they had in common, though, was their membership in the Shomrim, a Hasidic Neighborhood Watch group in Borough Park, New York.³ The Shomrim, who believed Flores had gratified himself in front of children, ordered him to halt.⁴ They had already been following

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¹ Corey Kilgannon, *In Protecting Hasidic Neighborhoods, Squads Patrol Without Guns or Badges*, N.Y. TIMES, Sept. 3, 2010, at A14, available at www.nytimes.com/2010/09/04/nyregion/04patrol.html.

² *Id.*

³ Oren Yaniv, *David Flores Acquitted of Attempted Murder Charge in Brawl with Shomrim Neighborhood Patrol Volunteers*, N.Y. DAILY NEWS, Nov. 27, 2013, <http://www.nydailynews.com/new-york/nyc-crime/man-acquitted-shomrim-brawl-article-1.1531138>.

⁴ Kilgannon, *supra* note 1; Yaniv, *supra* note 3.

Flores, suspecting that he had committed this same act a week earlier.⁵ Flores began shooting at these four ordinary looking men, who had no police uniforms, no police badges, and no guns, but who were surrounding him⁶ like threatening gang members. He managed to wound the four before being tackled.⁷ Other civilians who were also members of this self-designated patrol group arrived within minutes, roping off the area with yellow crime scene tape marked “shomrim.”⁸

During Flores’ trial on 16 charges, including attempted murder and assault, the defense painted a picture of private citizens who, instead of calling the police, swarmed around Flores like an angry mob and attempted to drag him outside of his car to attack him.⁹ The prosecutor asserted instead that the voluntary watch members only advanced when Flores pulled out a gun.¹⁰ After Flores spent several years in jail, the jury acquitted him of 15 charges, including attempted murder and assault for shooting at the four Shomrim members, though he was convicted for illegal possession of a gun.¹¹ Juror Niccole Person stated, “The Shomrim can’t decide if they’re going to be judge, jury and executioner in the middle of the street.”¹²

It is interesting to consider the public’s reactions to such an incident five years ago, prior to the Trayvon Martin shooting. Arguably these four men in Brooklyn were attempting to perform a civic duty by preventing a potential criminal from wreaking further havoc in a community filled with unsuspecting children. However, in light of the death of Trayvon Martin and the later acquittal of Neighborhood Watch member George Zimmerman, it is difficult to read a news story like this without pausing to question: why did these four civilians choose to enforce vigilante justice rather than call the police? What authority could two bakers, a dry cleaner, and an insurance salesman have to masquerade as cops and investigate in this way? This occurred in New York City in the 21st century, after all. It is hard to imagine that the 34,500 uniformed officers in the New York Police Department¹³ who are ready, willing, and able to do this police work are inadequate in comparison to these civilians.

This Comment contends that the Neighborhood Watch, though often touted as a positive community-based crime prevention tactic, can actually be a source of abuse given its inherent exclusionary bias, and becomes even riskier when combined with a dangerous mix of permissive Concealed Carry and Stand Your Ground laws. Without a profound reassessment of the merits of Neighborhood Watch, the various states that already have Stand Your Ground and liberal

⁵ Yaniv, *supra* note 3.

⁶ Kilgannon, *supra* note 1.

⁷ *Id.*

⁸ *Id.*

⁹ Yaniv, *supra* note 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* Unfortunately for Flores, his rap sheet that dated back to 1991 and included a 2006 conviction for felony burglary did not encourage leniency. For his gun possession conviction, Justice Dineen Riviezzo sentenced Flores to 12 years imprisonment, just three years shy of the maximum penalty. Oren Yaniv, *Brooklyn Man Who Shot Four Members of Shomrim Patrol Gets 12 Years in Jail on Gun Possession Charge*, N.Y. DAILY NEWS (Jan. 17, 2014), <http://www.nydailynews.com/new-york/brooklyn/brooklyn-man-12-years-gun-charge-article-1.1583124>.

¹³ *Frequently Asked Questions*, NYPD, http://www.nyc.gov/html/nypd/html/faq/faq_police.shtml (last visited Apr. 12, 2015).

Concealed Carry laws can expect similar incidents to the one described in the opening story as well as reruns of the Trayvon Martin tragedy.

Part I focuses on Neighborhood Watch as a form of community organization and an aspect of community policing. It also explores some of the underlying biases of Neighborhood Watch that can transform such groups into inherently dangerous and virtually lawless gangs. It includes current examples of Neighborhood Watch organizations, including both contexts where they have done a great deal of good work, as well as contexts where there have been problems. Part II discusses the negative implications of Neighborhood Watch groups that function as quasi-police. With vigilantism an arising problem among these groups, the lack of constitutional safeguards to protect unsuspecting victims is astounding. Part III analyzes how the added factors of Stand Your Ground and weak Concealed Carry laws can combine to create potentially violent results. Part IV, the conclusion, proposes some regulatory responses to this problem based on communities' decisions around their future favored structure of Neighborhood Watch. If these groups return to their original "watch and report" form, then registering the group as a whole could eliminate many of these issues. However, if these groups continue to act like quasi-police, then further safeguards must be employed, including: properly vetting Neighborhood Watch captains prior to their assuming the leadership position; police training members about how to lawfully look for and respond to suspicious activity; and applying the same constitutional safeguards that are afforded to citizens against the police. However, this Comment argues that such solutions may ultimately be insufficient to tackle the underlying issue that Neighborhood Watch groups are dangerous by nature.

I. NEIGHBORHOOD WATCH AS AN ASPECT OF COMMUNITY POLICING

a. The Origins of Neighborhood Watch

Some researchers trace the Neighborhood Watch's origins to the rise of "community policing" in the 1980s.¹⁴ "Prior to and during this era, many police departments and officers "subscribed to the 'warrior model' of the detached, aloof crime-fighter who daily battles the hostile enemy—the public."¹⁵ This model created a poor perception of police in many communities. In an attempt to foster cooperation between police and community members, and to improve the image of police within communities, police departments began abandoning this warrior model in favor of a more cooperative one.¹⁶ Thus, the "us" versus "them" mentality of

¹⁴ Sharon Finegan, *Watching the Watchers: The Growing Privatization of Criminal Law Enforcement and the Need for Limits on Neighborhood Watch Associations*, 8 U. MASS. L. REV. 88, 101 (2013). Trevor Bennett, author and researcher of neighbor watch programs in both the US and the UK, however, traces their origins to the 1960s, as one of a number of collective responses to crime control. TREVOR BENNETT, *EVALUATING NEIGHBORHOOD WATCH* 9 (1990); see Katy Holloway, Trevor Bennett, & David P. Farrington, *Does Neighborhood Watch Reduce Crime?* CRIME PREVENTION RESEARCH REV. 3 (2008) (revised 2013). In fact, as the National Sheriff's Association sought funding in 1972 in order to take Neighborhood Watch programs to a national level, it is very likely that this system of crime prevention may have begun long before even the 1960's. *About National Neighborhood Watch*, NATIONAL NEIGHBORHOOD WATCH, <http://www.nnw.org/about-national-neighborhood-watch> (last visited Apr. 12, 2015).

¹⁵ Bret D. Asbury, *Anti-Snitching Norms and Community Loyalty*, 89 OR. L. REV. 1257, 1307 (2011).

¹⁶ See James Forman, Jr., *Community Policing and Youth as Assets*, 95 J. CRIM. L. & CRIMINOLOGY 1, 4-6 (2004).

the police evolved into the current partnership and stakeholder paradigm.¹⁷

Though the community-policing model has come to define a variety of cooperative police efforts, this new approach to policing employs two main tactics: first, it requires the police to meet regularly with citizens in order to collaboratively “define neighborhood crime problems and set police priorities.”¹⁸ This collaboration involves a variety of local organizations such as neighborhood groups, property owners, and businesses.¹⁹ Second, citizens take responsibility in helping to address the problems they identified.²⁰ This tactic largely takes the form of “Neighborhood Watches.”²¹ Thus, a Neighborhood Watch program generally consists of private citizens who engage in detecting and preventing crime through surveillance of their own neighborhoods.²² The general assumption underlying most Watch programs is ‘opportunity reduction:’ reducing opportunities for crime through observation and reporting of suspicious activities to the police.²³ Typically there is a block captain who supervises and organizes the Watch group for a certain geographical area, a block coordinator who supervises the Watch for all such areas in the community, and a coordinator who acts as liaison between the Watch group and the police department.²⁴ Although this is the general organizational scheme, Watch groups vary in terms of whether they originate with local law enforcement or with the citizens of the neighborhood, the strength or absence of connections to law enforcement, and amount or lack of formal training and supervision by law enforcement.²⁵

While they take a variety of forms, most Neighborhood Watch organizations, at their basic level, share the positive goals of ensuring the safety of community members, uniting the neighborhood, and increasing quality of life in the community. As the Manual for USAonWatch professes:

Neighborhood Watch is homeland security at the most local level. It is an opportunity to volunteer and work towards increasing the safety and security of our homes and our homeland. Neighborhood Watch empowers citizens and communities to become active in emergency preparedness, as well as the fight against crime and community disasters . . . Neighborhood Watch groups are

¹⁷ Matthew J. Parlow, *The Great Recession and Its Implications For Community Policing*, 28 GA. ST. U. L. REV. 1193, 1198 (2011).

¹⁸ Forman, Jr., *supra* note 17, at 7.

¹⁹ Parlow, *supra* note 18, at 1199. James Forman, Jr., author of *Community Policing and Youth as Assets*, identifies four major functions for this collaboration: “(1) [I]t allows neighborhood residents to express their concerns and needs; (2) it gives police a forum to educate citizens about neighborhood crime issues; (3) it allows citizens to state complaints about the police themselves; and (4) it gives police a chance to report back on what actions they have taken and what successes (or not) they have had.” Forman, Jr., *supra* note 17, at 7–8.

²⁰ Forman, Jr., *supra* note 17, at 8.

²¹ Sharon Finegan, *Watching the Watchers: The Growing Privatization of Criminal Law Enforcement and the Need for Limits on Neighborhood*, 8 U. MASS. L. REV. 88, 102 (2013).

²² *Id.* at 91.

²³ TREVOR BENNETT, EVALUATING THE NEIGHBORHOOD WATCH 31 (1990).

²⁴ Finegan, *supra* note 22, at 103–04.

²⁵ *Id.* at 103.

now incorporating activities that not only address crime prevention issues, but which also restore pride and unity to a neighborhood. It is not uncommon to see Neighborhood Watch groups participating in neighborhood cleanups and other activities which impact the quality of life for community residents.²⁶

These are the positive unifying goals that many Watch groups espouse. Despite the inherent dangers of such community crime-prevention groups, discussed later in this article, Neighborhood Watches are often inspired by virtue. However, given the proliferation of Watch groups, the fact that none are regulated, many are armed, and all are inspired by a keep-out-the-bad-guy mentality that is unconstrained by the Fourth Amendment, it becomes virtually impossible to distinguish those groups that are founded for a malicious purpose from those with virtuous intent but unintended malicious consequences.²⁷

b. Neighborhoods and Community Organization – The Inherent Biases

In order to demonstrate the inherent bias that Neighborhood Watch groups can have, it is necessary to first explore its driving theory: the strengthening of community. “Community” is generally seen as a positive organization technique that relies on the voluntary association of different individuals to maintain internal cohesion.²⁸ When envisioning an ideal community, often the first image to appear is the ideal neighborhood. However, there is an important distinction between the two terms: “neighborhoods” are defined by a particular spatial restriction, and are specifically limited or confined to a geographic area, whereas communities are not limited to a locale or territory, but instead emphasize solidarity and social support independent of any proximity between individuals.²⁹ While neighborhoods *may* facilitate the common values that naturally exist within a community, the social solidarity of “community” does not necessarily

²⁶ See *Neighborhood Watch Manual*, USAONWATCH – NATIONAL NEIGHBORHOOD WATCH PROGRAM, 1–2, https://www.bja.gov/Publications/NSA_NW_Manual.pdf (last visited May 8, 2015) (providing the general history behind Neighborhood Watch and illustrating the common goals of most Watch groups). USAonWatch (now known as the National Neighborhood Watch Program) was funded by the National Sheriffs’ Association. *USAonWatch Program*, NAT’L SHERIFFS’ ASS’N, <http://www.sheriffs.org/content/national-neighborhood-watch-program> (last visited Mar. 31, 2014).

²⁷ The Vigilante Grannies and Oregon’s Glock Block, both discussed later in this comment, are two examples of Neighborhood Watch-like groups that have been created for a more aggressive purpose. See generally, *Vigilante Grannies’ Aim to Crack Down on Crime*, WCNC.COM (Aug. 3, 2011, 6:37 AM), www.wcnc.com/news/crime/Vigilante-grannies-aim-to-crack-down-on-crime-126647963.html; Cheryl K. Chumley, *Glock block: Pistol-packing Oregon neighborhood fights crime wave*, THE WASH. TIMES, June 18, 2013, www.washingtontimes.com/news/2013/jun/18/glock-block-pistol-packing-oregon-neighborhood-fig/. It is unclear just how many of these types of vigilante groups exist, because, as explained below, no public or private entity is currently tracking Neighborhood Watch statistics.

²⁸ See Patrick D. Donnelly & Charles E. Kimble, *An Evaluation of the Effects of Neighborhood Mobilization on Community Problems*, 2008 J. PREVENTION & INTERVENTION COMMUNITY 61, 68 (2008); Yi-Fu Tuan, *Community, Society, and the Individual*, 92 THE GEOGRAPHICAL REV. 307, 307–08 (2002) (discussing the different connotations behind the terms community, society, and individual). The term “community” invokes a warm and friendly feeling because it involves the cooperation of its members through effective and open communication. *Id.*

²⁹ David S. Kirk & John H. Laub, *Neighborhood Change and Crime in the Modern Metropolis*, 39 CRIME & JUST. 441, 446 (2010).

occur out of a “neighborhood’s” spatial proximity.³⁰ Thus, it appears the goal of most neighborhoods is to foster a true community, where members of the neighborhood share the same values and cooperate in some way to promote cohesion and solidarity, as is true of communities.

One of the most common community organization techniques is the neighborhood association.³¹ Most neighborhood associations, while varying in size and focus, share the same primary goal: to improve the quality of life in a specific and limited geographical area by creating a sense of community.³² Neighborhood associations accomplish this goal through a variety of techniques, such as organizing social and recreational activities, relaying information about what occurs in the neighborhood to its members, acting as liaison between the local government and the neighborhood, and promoting an overall positive quality of life.³³

As much as the concept of community and neighborhood association are positive notions, there is an insidious danger posed by these concepts—there is an inherently exclusionist undertone that is necessary for defining any community. If the ideal community creates and provides for an “us,” who is “them”? There must be a boundary dividing “us” from “them” because if there were no distinctions, no boundaries, and no exclusions, then there would be no “us.” Everyone would be part of an undifferentiated whole.

In social terms, evidence suggests that almost all racial and ethnic groups prefer to live in areas with people who are predominately the same race and identity as themselves.³⁴ However, regardless of people’s preferences for racial homogeneity, economically disadvantaged neighborhoods are still considered undesirable because they are linked to higher rates of unemployment, criminal activity, and poverty.³⁵ As Black and Latino minorities largely populate these disadvantaged areas, the result becomes a resistance to having these groups integrated into a neighborhood.³⁶

³⁰ *Id.*

³¹ See Donnelly & Kimble, *supra* note 29, at 63. Donnelly and Kimble use the community of Five Oaks in Ohio to illustrate how neighborhood associations function to address particular community issues, primarily crime in this instance.

³² See *id.*

³³ *Id.* The underlying principle behind these tactics is the promotion of social order within the neighborhood, thus combating crime becomes central to the purpose of the neighborhood association. See *id.* at 66 (discussing how the Five Oaks neighborhood targeted crime and drug-related problems to prevent further flight of the middle class). The concept of neighborhood disorder is derived from the “broken windows” theory, the idea that minor forms of public disorder lead to crime of a more serious degree and the general decay of a neighborhood. Robert J. Sampson & Stephen W. Raudenbush, *Seeing Disorder: Neighborhood Stigma and the Social Construction of “Broken Windows”*, 67 SOC. PSYCHOL. Q. 319 (2004). Proponents of this theory believe that even seemingly minor problems such as graffiti, public intoxication, and abandoned cars provide indicators that residents are indifferent to what occurs in the neighborhood, thus attracting opportunistic criminals. *Id.*

³⁴ Camille Zubrinsky Charles, *Neighborhood Racial-Composition Preferences: Evidence From a Multiethnic Metropolis*, 47 SOC. PROBLEMS 383, 384 (2000); see David R. Harris, “Property Values Drop When Blacks Move in, Because...”: *Racial and Socioeconomic Determinants of Neighborhood Desirability*, 64 AM. SOC. REV. 461, 462 (1999) (“[N]eighborhood preferences are directly related to the proportion of residents who are black.”).

³⁵ Harris, *supra* note 35, at 463.

³⁶ There is a larger debate about whether the true impetus behind the desire to keep these groups out of the neighborhood stems from racist notions that they bring the issues of poverty to the neighborhood or whether the aversion to poverty in a neighborhood unintentionally targets these groups. Regardless, the effect is the same: an aversion to

The exclusionist perspective does not stop with race; people also choose neighborhoods by avoiding neighbors of a low socioeconomic status, which is associated with social problems.³⁷ Therefore, all ethnic groups tend to consider people with low incomes, low educational attainment, and unstable employment situations as undesirable neighbors due to their perceived divergence from mainstream values.³⁸ The preservationist theory creates an association between the problems of the neighborhood—population turnover, softening of the real estate market, for example—with the particular residents that represent the “outsiders” to the local community.³⁹ This is an “us” defined in part by blaming the problems “we” are experiencing, or might experience, on “them.” Despite several characteristics that make a group undesirable, of all the outsider groups Black people tend to be the most undesirable and White populated areas are most often associated with high quality neighborhoods.⁴⁰

As an inherent exclusionist agenda underlies many Neighborhood Watch organizations, the crucial legal and sociological issue is how these groups characterize what is “suspicious,” who the “outsider” is, and who is the source of the problems in the neighborhood.⁴¹ Racial bias and unconstitutional animus seem deeply rooted in those issues. A recent study introduced an additional layer of racial bias that can have strong implications for Black children, with regard to neighborhood-coordinated crime prevention tactics. As this study shows, not only are young Black boys seen as less innocent, and therefore more culpable for their actions in the criminal justice system than boys of other races, but Black boys are also seen as older than their peers of other races.⁴² This misperception of Black boys disadvantages them, because it denies them the benefit of the societal assumption of childlike innocence that their peers from other races enjoy.⁴³ As a result, an unfamiliar young Black boy walking down the street in a largely White-populated neighborhood is automatically perceived as more suspicious, less innocent, and more grown up than his White counterpart would appear in the very same neighborhood doing the very same activities.

With the underlying purpose of maintaining social order within the neighborhood, and the dubious conception of minority groups and residents of low socioeconomic status as the

having minorities enter and reside in neighborhoods. Charles, *supra* note 35, at 383.

³⁷ Harris, *supra* note 35, at 463.

³⁸ *Id.*

³⁹ Wesley G. Skogan, *Community Organizations and Crime*, 10 CRIME & JUST. 39, 47 (1988).

⁴⁰ Charles, *supra* note 35, at 382, 386.

⁴¹ On June 18, 2013, the Washington Times reported a new citizens’ watchdog group in Oregon called the “Block” comprised of community members who have obtained concealed carry permits to fend off the rising crime including lawn ornament theft and vandalism. See Chumley, *supra* note 27. On December 2, 2010, The Baltimore Sun reported the arrest of a member of the Shomrim, an Orthodox Jewish citizen patrol group, who was charged with assault, reckless endangerment, and false imprisonment for allegedly striking a fifteen-year-old African American boy and telling him, “You don’t belong here.” Justin Fenton, *Member of Jewish Patrol Group Accused of Striking Teen in City*, THE BALTIMORE SUN (Dec. 2, 2010), http://articles.baltimoresun.com/2010-12-02/news/bs-md-ci-shomrim-member-arrest-20101201_1_nathan-willner-shomrim-patrol-group. www.washingtontimes.com/news/2013/jul/31/kkk-missouri-trying-recruit-neighborhood-watch-mem/ (“Neighborhood Watch: You can sleep tonight knowing the Klan is awake!”).

⁴² Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY AND SOC. PSYCHOL. 526, 539–40 (2014).

⁴³ *Id.* at 540.

source of social ills, it is not surprising that neighborhood associations equate the increase in undesirable groups within the community as causing any increase in crime. Crime, in particular, tends to undermine neighborhood members' confidence that there are locally shared norms between residents and "outsiders."⁴⁴ Crime therefore performs a unique unifying function within a neighborhood: like-minded individuals unite to define and monitor acceptable and unacceptable behavior and to run out the crime-creating undesirables.⁴⁵ The "them" is defined as those who perpetrate crime against "us." The goal remains to protect the inside by insulating it from the outside, and the use of exclusionary tactics is a common way to meet that goal.

Crime-prevention efforts produce the Neighborhood Watch in order to police this "us/them" boundary. The gated community is one of the more visible manifestations of use of exclusionary tactics as a way to promote social order in neighborhoods. Gated communities are primarily "residential areas with restricted access designed to privatize normally public spaces" and protect private space.⁴⁶ With a history that dates back as early as the settlement of Jamestown in the United States, estimates of residents living in gated communities as of 1997 range from four million to eight million.⁴⁷ The "security zone" type of community most visibly manifests this ideal of protecting the sanctity of those within by guarding and keeping strangers out. The use of physical gates, security guards, canine patrols, surveillance cameras, and escorts all reflect a fear of crime that is associated with strangers who are physically and socially outsiders.⁴⁸ Ironically, the specter of neighborhood crime tends to create more fear in communities that are arguably safer than average, such as those that are gated. Indeed, research has shown that some of the people most fearful of crime live in the "areas with the lowest rates of crime."⁴⁹ Even more revealing is the fact that neighborhoods that have the lowest rate of crime are often the areas most involved in organized crime prevention activities, such as patrolling the neighborhoods.⁵⁰

⁴⁴ Werner J. Einstadter, *Citizen Patrols: Prevention or Control?*, 21/22 CRIME & SOC. JUST. 201, 202 (1984).

⁴⁵ Skogan, *supra* note 40, at 44, 47. That said, in heterogeneous areas, "preservationists [often] unite against 'bad elements' of their own community and their organizations," making crime a unifying force within, and not across, community groups. *Id.* at 46.

⁴⁶ Edward J. Drew & Jeffrey M. McGuigan, *Prevention of Crime: An Overview of Gated Communities and Neighborhood Watch*, INT'L FOUND. FOR PROT. OFFICERS, www.ifpo.org/resources/articles-and-reports/crime-prevention-physical-security-training-and-risk-management/prevention-of-crime-an-overview-of-gated-com (last visited Dec. 26, 2013).

⁴⁷ Setha M. Low, *The Edge and the Center: Gated Communities and the Discourse of Urban Fear*, 103 AM. ANTHROPOLOGIST 45, 46 (2001). Three identified types of gated communities include "lifestyle communities" (i.e. retirement homes and leisure communities), "elite communities" (i.e. communities based on status such as that of the rich and famous), and "security zone communities" (i.e. fortified communities driven by the fear of crime). Drew & McGuigan, *supra* note 46.

⁴⁸ See Low, *supra* note 47.

⁴⁹ Einstadter, *supra* note 45, at 201.

⁵⁰ *Id.* at 202. It is important to note that research on participation levels in community crime prevention has come to somewhat different conclusions. The general consensus is that people who are older, married, have a higher degree of education, and are better situated in their socioeconomic status are more likely to participate in community voluntary organizations. Ji Hyon Kang, *Participation in the Community Social Control, the Neighborhood Watch Groups: Individual- and Neighborhood- Related Factors*, 61 CRIME & DELINQUENCY 188, 189 (2015). However, empirical research also demonstrates that the demand for community organizations related to crime prevention "may be greater in

Thus, “community” at the neighborhood level is often built upon the underlying notion that outsiders and strangers are bad for the neighborhood because they are perceived as the source of crime. “Protecting” the neighborhood’s community then becomes an exclusionary tactic that has an anti-minority, anti-poverty, and anti-“other” dimension. Specifically, efforts to defend the neighborhood on a collective level take the form of citizen patrols, whistle campaigns, and Neighborhood or Block Watches that attempt to exclude the outsider and report suspicious activity.⁵¹ Given the “us” versus “them” impetus behind these collective actions, it is not surprising that they often cause the problems outlined in the next sections.

c. Current Active Watch-Type Programs Remain Unmeasured

Whether individual Watch groups are created for virtuous or malicious purposes, the fact remains that these groups exist in extraordinary numbers, and their numbers continue to rise. Neighborhood Watch groups have undergone an incredible expansion since the 1980s. However, unnervingly, there are no exact numbers of the current existing groups. The U.S. Department of Justice’s 2008 Crime Prevention Review reported that 41% of the American population lived in a community covered by Neighborhood Watch.⁵² Yet this review was comprised of research studies conducted primarily in the 1980’s, long before the explosion of such groups in the past thirty years.⁵³ One such report, conducted by the National Institute of Justice in 1987, involved sending questionnaires to 2,300 Neighborhood Watch leaders,⁵⁴ observing the operations of Watch groups in ten communities and interviewing program managers and participants, and reviewing Watch program handbooks, newsletters, and training manuals.⁵⁵ Of the respondents, the areas serviced by a Neighborhood Watch were primarily racially homogenous with 75.1% of the residents being white.⁵⁶ The research also indicated that 40% of the population of Neighborhood Watch-communities were upper income wage earners.⁵⁷ Furthermore, 79.3% of the residents in

poor, disadvantaged neighborhoods and this might amplify involvement.” *Id.* at 192-193. Thus, there are two diverging arguments regarding participation in community crime prevention tactics: (1) the more stable the neighborhood, the more likely individuals will be involved in a crime prevention organization; and (2) due to greater need and demand, residents in disadvantaged neighborhoods are more likely to participate in Neighborhood Watch organizations. *Id.* at 206.

⁵¹ Skogan, *supra* note 40, at 47, 59.

⁵² Trevor Bennett, David P. Farrington & Katy Holloway, *Does Neighborhood Watch Reduce Crime?*, CRIME PREVENTION RES. REV. No. 3, at 6 (2008); Kang, *supra* note 51, at 4. Each of these articles cite to an unnamed and unlisted 2000 study by the National Crime Prevention Council.

⁵³ Trevor Bennett, David P. Farrington & Katy Holloway, *supra* note 52.

⁵⁴ James Garofalo & Maureen McLeod, *Improving the Use and Effectiveness of Neighborhood Watch Programs*, NAT’L INST. OF JUST., Apr. 1988, at 1 (summarizing the main results of the report within a National Institute of Justice newsletter). The value of this study even for 1987 is questionable because, as the National Institute of Justice itself warned its readers, any users of their study should use it cautiously for they had a response rate of merely 26%. *Id.* See generally, James Garofalo & Maureen McLeod, *Final Report: Improving the Effectiveness and Utilization of Neighborhood Watch Programs*, NAT’L INST. OF JUST., Ju. 1987, (containing the full report of the 1987 study).

⁵⁵ Garofalo & McLeod, *supra* note 55, at 2, 81.

⁵⁶ See Garofalo & McLeod, *supra* note 55, at 73.

⁵⁷ See *id.* at 71.

the watch communities owned their homes, and 79.2% lived in single-family homes.⁵⁸ Overall, these statistics paint a picture of a rather small sector of the community. Moreover, while very detailed in its data, this study was conducted almost 30 years ago and cannot possibly reflect the current reality of Neighborhood Watch statistics, given the acknowledged explosion and transformation of these groups.

Even USAonWatch, which arguably should provide the most up to date information, does very little to explain the current Neighborhood Watch landscape.⁵⁹ There are approximately 22,000 registered Watch groups nationwide.⁶⁰ However, as Neighborhood Watch groups voluntarily register with the site, this estimate does little to provide exact numbers of active Watch groups, most of which, it seems, choose not to register.⁶¹ The mere fact that the most recent comprehensive, yet incomplete, study attempting to account for all the Neighborhood Watch groups in the country was conducted a generation ago is incredibly unsettling. This lack of comprehensive accounting suggests two problems: 1) the current number of active Neighborhood Watch groups that are conducting unsupervised, untrained, and arguably unconstitutional surveillance of citizens is grossly underestimated, leaving the unsuspecting targets of this surveillance without any warning of their presence; and 2) there is no current analysis to suggest that this method of crime prevention is even effective. Given that there are no accurate or comprehensive statistics on the number, forms, origins, members, procedures, or activities of America's Watch groups, there is no accurate way to track the scope of current Neighborhood Watch organizations. This dearth of data in itself should be cause for alarm, given the power and number of Watch groups at work on the streets of this country. At the very least, citizens and law makers should know what Watch groups are doing, and where, and in what way.

d. Neighborhood Watch in Practice – Positive and Negative Examples

Given the allegedly positive, community-unifying goal of Neighborhood Watches, alongside their inherently exclusionist intent of community crime prevention, Neighborhood Watch in practice cannot be categorized as completely positive or completely negative. There are no national statistics, but salient examples highlight the mix of positive and negative effects that these groups have.

One potent example is that of the Guardian Angels. Now over three thousand members strong, the Guardian Angels are a group of unarmed, but self-defense trained, volunteers who work to keep the peace within a community.⁶² Through safety patrols that involve the youth, the Guardian Angels operate with the mission of providing “peaceful solutions to safeguard

⁵⁸ See *id.* at 72.

⁵⁹ *USAonWatch Program*, NAT'L SHERIFFS' ASS'N, <http://www.sheriffs.org/content/national-neighborhood-watch-program> (last visited Mar. 27, 2015). The USAonWatch Program has changed its name to the National Neighborhood Watch Program. *Id.*

⁶⁰ Matt Gutman, Jason Ryan, & Dean Schabner, *FBI, Justice Department to Investigate Killing of Trayvon Martin by Neighborhood Watchman*, A.B.C. NEWS (Mar. 19, 2012), <http://abcnews.go.com/US/fbi-justice-department-investigate-trayvon-martin-killing/print?id=15955985>.

⁶¹ See USAonWatch Program, *supra* note 60.

⁶² Leonard N. Fleming, *Bus Patrol Seeks Recruits – Volunteer Riders Sought in Response to Safety Complaints*, DET. NEWS (Oct. 29, 2013).

neighborhoods, schools and cyberspace from bullying, gangs, and violence.”⁶³ Starting in response to the high rate of crime in New York, the Guardian Angels have expanded their focus from Neighborhood Watch to now include cybercrime patrol and educational safety training in schools.⁶⁴ The unique feature of this group is how they seek and encourage the involvement of inner city youth. They believe that by incorporating participation of youth rather than labeling them as the problem, they empower “youth to take pride in their communities and contribute to the safety of their neighborhoods.”⁶⁵ The group has now been associated with the drop in crime in New York City,⁶⁶ and with the success of the Detroit bus-riding program,⁶⁷ one can predict an increase in their watching efforts in the future.⁶⁸

A group in sharp contrast to the Guardian Angels program and one that has produced fewer positive results is the orthodox Jewish Shomrim.⁶⁹ It has grown from a small citizen patrol group created “to protect the close-knit Brooklyn Hasidic community,”⁷⁰ to a nationwide group

⁶³ THE GUARDIAN ANGELS, https://www.facebook.com/guardianangels.org/app_250457581338 (last visited Mar. 27, 2015).

⁶⁴ See generally, THE ALLIANCE OF GUARDIAN ANGELS, <http://www.guardianangels.org/about/> (last visited Feb. 25, 2015). One of their latest recruitment and watch efforts that has gained recognition occurred in Detroit, Michigan, where they responded to several complaints from passengers and drivers that conditions on the buses for certain routes were plagued by crime and violence. Fleming, *supra* note 63. In response, the Angels created a program in which its members ride the buses driving those tough routes—the Grand River, Gratiot, and Woodward—during the rush hour times starting from three pm to around midnight. *Id.*

⁶⁵ The Alliance of Guardian Angels, *supra* note 65.

⁶⁶ See Michael Wilson, *Guardian Angels Seek Out More Mean Streets*, N.Y. TIMES (Mar. 22, 2007), www.nytimes.com/2007/03/22/nyregion/22guardians.html.

⁶⁷ See Fleming, *supra* note 63.

⁶⁸ Another positive example of Neighborhood Watch, yet with a different structure, is that of “Kid Watch.” In the late 1990’s, the University of Southern California partnered with the local law enforcement and public schools of Los Angeles to provide a rather different Neighborhood Watch program specifically for inner city school children. Ramon M. Salcido, Vincent Ornelas, & John A. Garcia, *A Neighborhood Watch Program for Inner-City Children*, 24 CHILDREN & SCH. 175, 176 (2002). “Kid Watch” attempted to provide a safe route for children traveling on foot to and from their home and school. *Id.* at 178. The USC-led initiative was able to recruit 256 volunteers and enroll over 8,000 students ranging from grade K to 12, and including a variety of racial groups, 69% Latino, 26% Black, 3% White, and 2% Asian/Pacific Islander. *Id.* at 179–80. After conducting in-depth interviews of the program volunteers as well as the children participating in the program, USC found that “Kid Watch” both increased the children’s feelings of safety when traveling to school, and restored a sense of community with those involved. *Id.* at 182, 184. Part of the success of this “Kid Watch” program can be attributed to USC’s detailed process of recruiting and training of volunteers: once recruited, volunteers could not participate in the program until they passed a background check conducted by the police. *Id.* at 179. Any past police record would make the potential volunteer ineligible. *Id.* Even after passing a background check, the volunteers were trained and specifically instructed not to intervene if trouble occurred, but to call 911. *Id.* As seen later from the Shomrim example, Neighborhood Watch organizations that have not stressed the importance of non-intervention are arguably the source of vigilantism.

⁶⁹ “Shomrim” is Hebrew for watchers. See Alex Alper, *Jewish Patrol Still Controversial in Crown Heights*, THE BROOKLYN INK (Oct. 27, 2010), thebrooklynink.com/2010/10/27/17265-jewish-patrol-still-sparks-controversy-in-crown-heights/; see also Jordan Heller, *Jewish Street Patrols Curb Crime – and Generate Controversy*, THE CHRISTIAN SCIENCE MONITOR (Feb. 10, 2009), www.csmonitor.com/The-Culture/2009/0210/jewish-street-patrols-curb-crime-and-generate-controversy.

⁷⁰ See John Doyle, *Van with a Plan*, N.Y. POST (May 25, 2009), nypost.com/2009/05/25/van-with-a-plan/.

that responds to reports of criminal activity such as armed robbery and burglary.⁷¹ The Shomrim has a 24-hour hotline and dispatcher specifically dedicated to responding to crime reported by community members.⁷² In 2009, the *New York Post* reported on the Brooklyn Shomrim's new \$250,000 mobile security command center that could only be compared to official NYPD command centers.⁷³ The \$250,000 price tag was paid through City Council and Brooklyn Borough grants; taxpayer money also provided the Shomrim group with everything from computers and color copiers, to a conference room, fax machine, flat panel television with modern communication systems and a portable defibrillator.⁷⁴ The *New York Post* has reported that the Shomrim uses the standby vehicle "for everything from finding missing children and aiding elderly residents to performing basic crime prevention."⁷⁵ Despite this access to what appear to be crime-fighting resources that only the police force could rival, a member of the group still maintains, "We serve as the eyes and ears of the Police Department . . . We're not cops, we're not police. We are here and ready to do anything else up to the point of going into a dangerous situation. We leave that to law enforcement."⁷⁶

Even more problematic is the manner in which the Shomrim acts as an investigative body. In 2010, the police arrested a member of the Baltimore Shomrim, 23-year-old Eliyahu Werdesheim, and charged him with assault, reckless endangerment, and false imprisonment.⁷⁷ According to police records, a young black teen was walking down a Baltimore street when a car with two men inside pulled alongside him and began to follow him.⁷⁸ The two men jumped out of the car and threw the teen to the ground, and Werdesheim struck the teen in the head with a radio while asking the teen if he "had anything on him."⁷⁹ According to the teen, Werdesheim said to him, "[y]ou wanna [expletive] with us, you don't belong here, get outta here!"⁸⁰ Thus contrary to other, positive examples of watch groups, the Shomrim exemplifies the inherent bias that lies at the heart of many watch groups: a bias against certain undesirable persons that manifests itself as outright targeting of such individuals as being unwelcomed and suspicious.

The Oregon Glock Block is another watch group that has far less virtuous goals than those of groups such as the Guardian Angels.⁸¹ The Glock Block is composed of residents who have obtained concealed carry permits with the intention of deterring crimes including lawn

⁷¹ Alper, *supra* note 70.

⁷² Heller, *supra* note 70.

⁷³ See Doyle, *supra* note 71.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Justin Fenton, *Member of Jewish Patrol Group Accused of Striking Teen in City*, THE BALTIMORE SUN (Dec. 2, 2010), http://articles.baltimoresun.com/2010-12-02/news/bs-md-ci-shomrim-member-arrest-20101201_1_nathan-willner-shomrim-patrol-group.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See Chumley, *supra* note 27.

ornament theft and vandalism.⁸² One member has stated, “[w]e don’t feel Neighborhood Watch is sufficient, and we don’t feel the Clackamas County Sheriff’s Office is sufficient.”⁸³ Like the Shomrim, the Glock Block overtly makes itself the super-police of its neighborhood.

The existence of such differing groups demonstrates that there are both positive and negative examples of Neighborhood Watch. However, the more salient negative examples demonstrate a danger that lurks in all watch groups, if unregulated. The problem is not merely the existence of vigilante groups that abuse their power. The deeper problem is that even the positive examples of Neighborhood Watch still carry an inherent bias against members of their communities whom the groups deem to be undesirable.

II. NEIGHBORHOOD WATCH AS UNREGULATED QUASI-POLICE

a. Citizen Patrols

Newer forms of Neighborhood Watch groups reveal a progression towards quasi-policing rather than community-based observation. In contrast to Neighborhood Watch groups, citizen patrols are structured as more formalized community crime-prevention devices.⁸⁴ These groups serve as auxiliaries to the police department, providing the “eyes and ears” for the police by regularly patrolling the community and reporting “suspicious” activity.⁸⁵ Their roles can vary from assisting in traffic control at accident and crime scenes and special events to more specific crime deterrence and prevention.⁸⁶ Local law enforcement departments train patrol members in a variety of subjects including first aid, CPR, patrol procedures, traffic control, crime prevention, police science, criminal law, self-defense, and crowd psychology.⁸⁷ The main driving force behind civilian police groups appears to be saving costs for local law enforcement agencies.⁸⁸ Not surprisingly, therefore, these groups tend to act and look like their police counterparts.

Despite the cost savings that such programs can provide, their neo-police nature begs the question as to whether they blur the lines between civilian volunteers and police officers, who have a sworn duty and the training to protect and serve.⁸⁹ Jessica R. Cattelino specifically discusses the auxiliary police in Manhattan’s Ninth Precinct, in the Lower East Side, considered

⁸² *Id.*

⁸³ *Id.* (quoting Clackamas County resident, Coy Toloman).

⁸⁴ See *Neighborhood Watches and Citizens on Patrol*, LOCAL INITIATIVES SUPPORT CORPORATION, http://www.lisc.org/csi/images/key_safety_partners/asset_upload_file419_16324.pdf (last visited Apr. 8, 2015).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See *People v. Rosario*, 585 N.E.2d 766, 768 (N.Y. 1991), *cert. denied*, 112 S.Ct. 1210 (1992); LOCAL INITIATIVES SUPPORT CORPORATION, *supra* note 85.

⁸⁸ See LOCAL INITIATIVES SUPPORT CORPORATION, *supra* note 85; *Albermarle Supervisors Approve Plans for Auxiliary Police Force*, NBC29 (Dec. 18, 2013), <http://www.nbc29.com/story/24138130/albermarle-supervisors-approve-plans-for-auxiliary-police-force>.

⁸⁹ Jessica R. Cattelino, *The Difference That Citizenship Makes: Civilian Crime Prevention on the Lower East Side*, 27 POLAR: POL. & LEGAL ANTHROPOLOGY REV. 114, 117 (2004).

one of the largest and most notable citizen patrol groups in the U.S.⁹⁰ Members patrol on foot or in a patrol car; they also wear uniforms that are almost indistinguishable from those of police officers.⁹¹ Members train and operate directly out of the local precinct, and receive funding from the police department.⁹² Though they are not allowed to carry firearms, members can carry nightsticks while observing and reporting suspicious activity in the community.⁹³ They can receive more than fifty hours of training and are often required to pass written and physical examinations.⁹⁴ It is hard to see how such a program is not functionally identical to a formal police department. The New York City Auxiliary Police Program is an exemplar of this new citizen patrol model. Touted as one of the largest civilian police programs in the United States, it had over 8,000 male and female members in 1991 and over 4,500 in 2008.⁹⁵ The group has come under scrutiny precisely because of the way it blurs the line between civilian and police.⁹⁶ In *People v. Rosario*, the defendant appealed his second-degree murder conviction by challenging the authority of such auxiliary officers.⁹⁷ Rosario claimed that the auxiliary officer who arrested him was neither a police officer nor a peace officer.⁹⁸ Therefore, Rosario argued, his arrest was illegal because it was referred to a uniformed policeman by an auxiliary police officer who could not enjoy the benefit of the “fellow officer” rule.⁹⁹ This rule allows a police officer to act on the strength of a radio bulletin or telephone alert from another officer or department as probable cause for an arrest, because a “fellow officer” was its source.¹⁰⁰ Rosario argued that because auxiliary officers “are not given the extensive and comprehensive training as are police officers . . . [they] do not qualify for the presumption of reliability accorded under the ‘fellow officer’ rule and therefore, should not be granted the authority to direct an arrest.”¹⁰¹

The New York appellate court rejected Rosario’s argument.¹⁰² Though the court recognized that the auxiliary officers are not provided with the extensive training provided to uniformed police officers, it concluded that the training that these officers received was sufficient to warrant application of the “fellow officer” rule.¹⁰³ Ironically, the court then continued and

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Auxiliary Police Program Overview*. CITY OF NEW YORK DEPARTMENT http://www.nyc.gov/html/nypd/downloads/pdf/careers/nypd_auxiliary_police_overview_2008.pdf (last visited Apr. 8, 2015).

⁹⁶ *People v. Rosario*, 585 N.E.2d 766, 768 (1991), *cert. denied*, 112 S.Ct. 1210 (1992).

⁹⁷ *Id.* at 766, 767.

⁹⁸ *Id.*

⁹⁹ *Id.* at 767-68.

¹⁰⁰ *Id.* at 768.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 768-69.

reasoned in a way that contradicted this analysis: it held that an auxiliary officer is merely a peace officer in only limited circumstances, “and therefore *has no power to arrest* beyond that of a private citizen.”¹⁰⁴ The court—like the Neighborhood Watches and the police themselves—wanted it both ways: its decision allowed the auxiliary police to work under the guise of two identities, as merely a civilian patrol in some contexts yet invested with the arresting authority of an actual police force in others.

The dissenting opinion rejected the validity of this contradictory double-standard, and highlighted the sweeping differences between actual police and auxiliary police.¹⁰⁵ The dissent emphasized the complex and difficult task of “[d]etermining whether a given set of observed behaviors and circumstances constitutes probable cause to arrest.”¹⁰⁶ The dissenting opinion explained how despite the lack of formal legal training that police officers receive, society is willing to allow the police to make these difficult determinations because of the special training that they receive and pre-qualifications they must meet.¹⁰⁷ The dissent concluded that applying the “fellow officer” rule to such lesser-trained civilian forces works only to place “too much weight on the goal of ‘enabling law enforcement to do its job’” rather than the countervailing social value of protecting citizens from unwarranted intrusions.¹⁰⁸ In fact, the risk of Fourth Amendment violations should outweigh any benefits to the police of allowing the exception to apply to these lesser trained civilians.¹⁰⁹ This strong and eloquent dissent cogently highlights the inevitable dangers that police departments seem to overlook when giving civilians badges, uniforms, patrol cars, and little training, then asking them to observe and report on “suspicious” activity.

Blurring the lines between the role of civilian and police is an obvious problem with Citizen Patrols. However, this same danger inheres in all community crime prevention groups, whether taking the form of Neighborhood Watch or Citizen Patrol. There is a troubling and unconstitutional risk in the way these community crime-prevention organizations attempt to create the “ideal community” by excluding groups who are targeted as “undesirables” by such organizations without constitutional protections. Furthermore, these issues do not even begin to describe the negative implications of vigilantism among these Watch groups.

b. The Problem of Vigilantism

The Shomrim example discussed is merely exemplary of a more widespread problem existing in many of these independent Neighborhood Watch-like groups: vigilantism, or private citizens taking the law into their own hands. Community crime prevention tactics that go beyond simple observing and reporting can have the effect of creating a quasi-private militia, a potential for mob violence under cover of quasi-police authority. With what appears to be large financial backing from their municipal governments,¹¹⁰ it is hard not to view the Shomrim as blurring the

¹⁰⁴ *Id.* at 769 (emphasis added).

¹⁰⁵ *See id.* at 770-72 (Titone, J., dissenting).

¹⁰⁶ *Id.* at 770 (Titone, J., dissenting).

¹⁰⁷ *See id.* at 770-71 (Titone, J., dissenting).

¹⁰⁸ *Id.* at 770 (Titone, J., dissenting) (internal quotation marks omitted).

¹⁰⁹ *See id.* at 771 (Titone, J., dissenting).

¹¹⁰ *See* Robyn Rosen, *Meet London's Strictly Orthodox Crime Busters*, THE JEWISH CHRONICLE (June 17, 2011), www.thejc.com/lifestyle/lifestyle-features/50410/meet-londons-strictly-orthodox-crime-busters.

line between community crime prevention and vigilantism. When an eight-year-old boy went missing in Williamsburg, Brooklyn, the mother of the boy called the local Shomrim instead of dialing 911.¹¹¹ Then-Police Commissioner Raymond W. Kelly noted a delay of two hours or more from the initial call to the Shomrim and the time the police were notified.¹¹² Although Kelly stated that such delays are a long-standing issue with the Shomrim, he praised the Shorim for their search effort.¹¹³ The Shomrim, with their use of police scanners and unmarked cars with flashing red and blue lights,¹¹⁴ are arguably the most visible and powerful of such vigilante-style groups. However, the examples do not end there. In Stallings, North Carolina, a group of elderly women formed their own brand of Neighborhood Watch called the “Vigilante Grannies.”¹¹⁵ Formed in response to the vandalism and petty crime that plagued their community, these seniors appear unabashed about taking the law into their own hands. One of the members, Charmaine Nolan stated: “I see cars come and go, and if I don[‘]t recognize you, I don[‘]t mind asking where you live or who you[‘]re with and why you[‘]re here!”¹¹⁶ As a further example, the Ku Klux Klan, historically known as racist and incredibly dangerous vigilantes, began their own Neighborhood Watch group and were recruiting members in Springfield, Missouri.¹¹⁷ One flier even read: “Neighborhood Watch: You can sleep tonight knowing the Klan is awake!”¹¹⁸

Vigilantism occurs more frequently than most people realize and it is the dark reality and alter ego to the public, “community” fostering image of Neighborhood Watches. In *Turnage v. Kasper*, a Georgia appellate court found that some actions of neighbors claiming to be members of the Neighborhood Watch could qualify as “extreme and outrageous conduct.”¹¹⁹ Turnage and several other neighbors formed what the court described as an “Orwellian ‘Neighborhood Watch’ group,” where they would monitor and report on the activities of the Kaspers.¹²⁰ However, the group’s actions went far beyond just monitoring the activities of a neighbor. Turnage and several neighbors would photograph the Kasper family and purchased a digital audio recorder to monitor

¹¹¹ Corey Kilgannon, *For Hasidim, First Call for Help Often Isn’t to 911*, N.Y. TIMES (July 15, 2011, 2:35 PM), cityroom.blogs.nytimes.com/2011/07/15/in-hasidic-areas-first-call-for-help-isnt-to-911/?scp=8&sq=kletzky-video&st=cse&_r=0.

¹¹² *Id.*

¹¹³ *Id.*; see also Hella Winston, *Tragedy in Borough Park Puts Shomrim Under Scrutiny*, THE JEWISH WEEK (July 19, 2011), www.thejewishweek.com/news/new-york-news/tragedy-borough-park-puts-shomrim-under-scrutiny (reporting that eventually finding that the eight-year-old boy had been murdered increased tensions between the NYPD and the Shomrim).

¹¹⁴ Simone Weichselbaum, *Praise and Scorn for Hasidic Patrols: Some Say They Target Minorities*, N.Y. DAILY NEWS (July 5, 2011, 4:00 AM), <http://www.nydailynews.com/new-york/brooklyn/praise-scorn-hasidic-patrols-target-minorities-article-1.158630>.

¹¹⁵ *‘Vigilante Grannies’ Aim to Crack Down on Crime*, WCNC.COM (Aug. 3, 2011, 6:37 AM), www.wcnc.com/news/crime/Vigilante-grannies-aim-to-crack-down-on-crime-126647963.html.

¹¹⁶ *Id.*

¹¹⁷ Jessica Chasmar, *KKK in Missouri Trying to Recruit Neighborhood Watch Members*, WASH. TIMES (July 21, 2013), www.washingtontimes.com/news/2013/jul/31/kkk-missouri-trying-recruit-neighborhood-watch-mem/.

¹¹⁸ *Id.* (internal quotation marks omitted).

¹¹⁹ *Turnage v. Kasper*, 704 S.E.2d 842, 853 (Ga. Ct. App. 2010).

¹²⁰ *Id.* at 846.

their movements, which they would communicate to each other through walkie-talkies.¹²¹ Such action, if conducted by the government, may constitute a search without a warrant, because the neighbors could have invaded the Kaspers' reasonable expectation of privacy.¹²²

In another case, this one out of California, Arthur Amarillas and five family members brought suit against the Oak Creek Neighborhood Watch Committee alleging that the group had instigated a campaign of harassment and intimidation against the family.¹²³ Amarillas claimed that the Watch group sent an anonymous letter suggesting that the family was running a business illegally on their residential property and concealing it with a fence, requesting removal of the fence and the commercial equipment, and finally threatening to send letters to local newspapers, the district attorney, the police department, the IRS, and the Immigration and Naturalization Service if the family did not comply.¹²⁴ Amarillas complained of further harassment and intimidation that included the Watch group surveilling his house from parked cars, making false statements to government agencies, and discharging firearms at or near his home.¹²⁵ In a bizarre disposition of the case, the California appellate court affirmed the respondents' motion to strike, finding the anonymous letter to be protected under an anti-SLAPP (strategic lawsuit against public participation) statute,¹²⁶ essentially free speech in connection with a public issue or public interest.¹²⁷ The court thus allowed the respondents to both deny any connection with the anonymous letter yet claim protection under an anti-SLAPP statute for writing it.¹²⁸ The court does not resolve this contradiction, but rather dodges the dilemma.

The past decade has produced news stories and cases that reveal Neighborhood Watch organizations that not only patrol the streets of their neighborhood, but also willingly engage those who they consider "suspects," and arguably become the provocateurs of violent confrontations, rather than preventing violence. The question then becomes: how did this mere reporting form of community crime prevention transform itself into vigilante justice? Upon reviewing Neighborhood Watch and Block Captain manuals, it is clear that vigilantism is both discouraged and prohibited at the official level.¹²⁹ As the USAonWatch Program Manual itself states:

Community members only serve as the extra 'eyes and ears' of law enforcement. They should report their observations of suspicious activities to law enforcement; however, citizens should never try to take action on those

¹²¹ *Id.*

¹²² *See* Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

¹²³ Amarillas v. Campolong, No. H030971, 2008 WL 4606528, at *1 (Cal. Ct. App. Oct. 17, 2008).

¹²⁴ *Id.* at *2.

¹²⁵ *Id.* at *2.

¹²⁶ *Id.* at *11.

¹²⁷ *Id.* at *7.

¹²⁸ *Id.* at *11.

¹²⁹ DON E. FLETCHER & SARAH KAIP, BLOCK CAPTAIN'S HANDBOOK 14 (Ted E. Lawson et al. eds. 2004) (specifying that Community Watch is not "[a] vigilante force working outside the normal procedures of law enforcement."). USAONWATCH, *supra* note 27, at 22.

observations. Trained law enforcement should be the only ones ever to take action based on observations of suspicious activities.¹³⁰

Thus it appears that this change of Neighborhood Watch into vigilante justice is not one that reflects the organization's official purpose.

To make matters worse, the increase of state funding for such groups increases the degree of state participation and state sanctioning of these groups, which further intensifies the legal complexity. For example, the *Village Voice* used the Borough Park Shomrim, a Watch group in Brooklyn, New York, as an example of taxpayer dollars funding such groups with or without the knowledge of the taxpayers themselves.¹³¹ This Watch group in particular was able to procure \$50,000 in member-item earmarks from state senators and New York Assembly members, and \$42,500 from city council members.¹³² The group has used state funding for everything from bulletproof vests to mobile-command center trucks.¹³³ Not only does this type of direct funding raise issues of entanglement, and thus First Amendment violations,¹³⁴ but it also raises questions about whether the funding constitutes state endorsement of the arguably illegal activities engaged in by many of these groups. Beyond the reported discriminatory methods that these groups use, there are also allegations of how these groups fail to report crime perpetrated by their own members of the community.¹³⁵ State and local governments cannot fund such Watch groups while at the same time refusing to hold them accountable to the law, as these groups have

¹³⁰ USAONWATCH, *supra* note 27, at 22.

¹³¹ See Nick Pinto, *The Shomrim: Gotham's Crusaders – They Patrol Jewish Neighborhoods with Taxpayer Money—but Don't Always Clue in the Police*, THE VILLAGE VOICE, Sept. 7, 2011, <http://www.villagevoice.com/content/printVersion/3065623/>.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See U.S. CONST. amend. I; *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971) (creating a three-part test for analyzing when a statute or other government action violates the Establishment Clause of the Constitution), *modified by Agostini v. Felton*, 521 U.S. 203, 233 (1997) (merging the third inquiry of entanglement into the second prong of the test). As applied to funding for such Shomrim Watch groups, the court must inquire whether 1) the funding has a secular legislative purpose, 2) whether the principal or primary effect of such funding is one that neither advances nor inhibits religion, and 3) whether the statute does not foster excessive government entanglement with religion. As the cases regarding establishment issues are quite complex, and Shomrim Watch groups are technically not acting in a purely sectarian manner, analysis of the Shomrim using this framework could either lead to the conclusion that it does violate the First Amendment of the Constitution, or that it does not. See generally, David Saperstein, *Public Accountability and Faith-Based Organizations: A Problem Best Avoided*, 116 HARV. L. REV. 1353, 1378–79 (2003); see also Sarah M. Sternlieb, Comment, *When the Eyes and Ears Become an Arm of the State: The Danger of Privatization Through Government Funding of Insular Religious Groups*, 62 EMORY L. J. 1411, 1427 (2013) (“[U]ltimately it may be unlikely a court would find the government truly ‘establishes’ religion through the Shomrim.”).

¹³⁵ See Pinto, *supra* note 129 (discussing the story of Luzer Twersky who left the Hassidic community of Borough Park based on his own experiences with the Shomrim.). Twersky experienced abuse as a child by a man with connections to the Shomrim, yet the crime was unreported and the matter left to be resolved by a Rabbi. According to Twersky, this is not an unfamiliar occurrence in Hasidic communities with Shomrim, such as Borough Park, especially regarding children. The Village Voice here makes the connection between Twersky's own experience and the 2011 brutal murder of Leiby Kletzky by a Borough Park resident, attempting to establish the Shomrim's blatant cover-ups of criminal acts committed by members of its own Hasidic community.

essentially become quasi-police. Acting under color of the law with state funding cannot be viewed as anything but the actions of a state actor. Without defining the conduct of these Watch groups as state action, there are no constitutional safeguards that can be afforded to potential victims.

c. Lack of Constitutional Restraints

This issue of vigilantism presents a further, profoundly troubling legal problem: Neighborhood Watch members are essentially private citizens, thus they cannot be sued under § 1983.¹³⁶ This statute allows citizens to sue individuals who violate their constitutional rights, but only when these violations are committed “under the color” of law.¹³⁷ The purpose is to “deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails.”¹³⁸ The statute’s application turns on the court’s interpretation of what conduct constitutes *under color* of state law, and who can act *under color* of state law. In *Monroe v. Pape*, the Supreme Court created a broad standard of conduct covered by the statute, stating that “[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken ‘under color of’ state law.”¹³⁹ Generally, any government actor can be personally sued under this statute.¹⁴⁰

By losing the protections of § 1983 actions, the unsuspecting targets of Watch groups have lost important constitutional remedies, the most relevant being those guaranteed under the Fourth Amendment.¹⁴¹ The Fourth Amendment guarantees that “[t]he 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”¹⁴² Thus, while there are a few exceptions, a search conducted without a warrant is unreasonable under the Fourth Amendment.¹⁴³ To demonstrate that government action constituted a Fourth Amendment search,

¹³⁶ 42 U.S.C. § 1983 (1996); Ivan E. Bodensteiner, *Congress Needs to Repair the Court’s Damage to § 1983*, 16 TEX. J. C. L. & C. R. 29, 31 (2010); see Sharon Finegan, *Watching the Watchers: The Growing Privatization of Criminal Law Enforcement and the Need for Limits on Neighborhood Watch Associations*, 8 U. MASS. L. REV. 88, 126-27 (2013) (arguing that a person under these circumstances would not likely have the resources or knowledge to file a § 1983 claim).

¹³⁷ 42 U.S.C. § 1983 (1996) (“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law. . .”).

¹³⁸ *Wyatt v. Cole*, 504 U.S. 158, 161 (1992).

¹³⁹ *Monroe v. Pape*, 365 U.S. 167, 184 (1961).

¹⁴⁰ However, qualified immunity, eliminating liability if the government official acted in good faith and with probable cause, provides a significant hurdle for the plaintiff to surmount. *Scheuer v. Rhodes*, 416 U.S. 232, 247 (1974) (extending the qualified immunity protection to all government officials and employees).

¹⁴¹ See *Ben v. Garden Dist. Ass’n*, No. 12-174, 2012 WL 2371395, at *2 (E.D. La. Mar. 13, 2012); Finegan, *supra* note 134, at 126–27.

¹⁴² U.S. CONST. amend. IV.

¹⁴³ *Katz v. United States*, 389 U.S. 347, 357 (1967).

an individual must “exhibit[] an actual (subjective) expectation of privacy” and demonstrate objectively that this expectation of privacy is “one that society is prepared to recognize as ‘reasonable.’”¹⁴⁴ A Fourth Amendment seizure occurs when the government actor significantly restrains an individual’s freedom to walk away.¹⁴⁵

Given the importance of the Fourth Amendment in protecting the privacy of citizens, the Supreme Court jurisprudence related to the criminal procedures governing police conduct under this provision is incredibly dense. The resulting rules cover all aspects of criminal procedure, from the manner in which a warrant should be issued, to situations in which a warrant is not necessary. While a warrant is needed to conduct a search and seizure, *Terry v. Ohio* created the stop-and-frisk rule: permitting a police officer without a warrant to restrain an individual’s freedom of movement and to pat down the surfaces of outer clothing based on the reasonable suspicion that the individual was about to commit or had just committed a crime.¹⁴⁶ Violations of these rules can both preclude introducing illegally obtained evidence at trial, the exclusionary rule,¹⁴⁷ and can provide a civil cause of action for a § 1983 claim.

These Fourth Amendment constraints are relevant to Neighborhood Watches because surveillance is the main component of the Neighborhood Watch.¹⁴⁸ Unfortunately common surveillance abuses, such as illegal searches of persons or places, illegal seizures of items or persons, or invasions of privacy, that would ordinarily indicate constitutional violations if committed by police are not rectifiable under § 1983 or under the Fourth Amendment when committed by members of a Neighborhood Watch.¹⁴⁹ By court interpretation of the statute, these private Watch organizations are not considered state actors. As demonstrated in the *Turnage* case, the lack of redress under § 1983 allowed for the Orwellian Watch group to conduct surveillance with audio recording and photographic equipment.¹⁵⁰ If the police had done these actions, they would have clearly violated the Kasper family’s Fourth Amendment right to privacy, as the conduct would have been considered a search. But because the quasi-police watch group conducted the surveillance, and because they are not considered government actors, there was no claim for a violation of Fourth Amendment rights.¹⁵¹

The opening story with David Flores serves as another example. *The New York Times* reported that the four Shomrim members blocked Flores’ car after witnesses claimed he was fondling himself in front of children.¹⁵² As they restricted Flores’ freedom of movement, such conduct would be considered an illegal stop under the Fourth Amendment if the members did not

¹⁴⁴ *Id.* at 361.

¹⁴⁵ *Terry v. Ohio*, 392 U.S. 1, 16 (1968).

¹⁴⁶ *See id.* at 19-20.

¹⁴⁷ *Mapp v. Ohio*, 367 U.S. 643, 655-56 (1961).

¹⁴⁸ “Neighborhood Watch,” NATIONAL CRIME PREVENTION COUNCIL, <http://www.ncpc.org/topics/home-and-neighborhood-safety/neighborhood-watch> (last visited Apr. 12, 2015) (“Neighborhood Watch counts on citizens to organize themselves and work with law enforcement to keep a trained eye and ear on their communities.”)

¹⁴⁹ *See* LARRY K. GAINES & VICTOR E. KAPPELER, *POLICING IN AMERICA* 401 (7th ed. 2011).

¹⁵⁰ *Turnage v. Kasper*, 704 S.E.2d 842, 846 (Ga. Ct. App. 2010).

¹⁵¹ *Id.*; *see* *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

¹⁵² Corey Kilgannon, *In Protecting Hasidic Neighborhoods, Squads Patrol Without Guns or Badges*, N.Y. TIMES, Sep. 3, 2010, at A14.

have adequate reasonable suspicion that Flores was committing or just committed a crime.¹⁵³ Flores had no legal remedy against the Shomrim members, under the Fourth Amendment or under § 1983 that would have allowed a judge to decide whether such conduct was constitutionally permissible. Flores never even had the opportunity to demonstrate that the Shomrim lacked the requisite proof of his alleged criminal activity. Instead, Flores fought a losing battle to demonstrate that the ensued shooting was justified.

The lack of protection under § 1983 thus allows, and possibly even encourages, Watch groups to conduct police-like work without the accountability of the police and without the constitutional or § 1983 remedies for victims who are subjected to excessive force, illegal search and seizure, or false imprisonment. A Watch victim's only remedy is a likely unsuccessful criminal or tort prosecution.¹⁵⁴ The United States District Court for the Southern District of New York has already admonished the police for applying stop-and-frisk practices in a racially disparate manner.¹⁵⁵ The lack of redress against private citizens who may commit these similar violations under color of the Neighborhood Watch is a frightening concept.

III. NOW ADD GUNS, SELF-DEFENSE, AND A CHIP ON THE SHOULDER

As presented in the first section of this Article, Neighborhood Watch groups possess an inherent suspicion of the "other," which often tend to be minority groups, particularly African Americans. Furthermore, the virtual lack of statistics about Watch groups means that there are arguably many more than the registered 22,000 Watch groups indicated on the USAonWatch website. That means there are Watch groups that could be conducting surveillance in every neighborhood without the knowledge of their intended targets or the police. This lack of visibility and therefore the lack of accountability of such groups could have potential dangerous effects; imagine for example what could have happened if a more clandestine version of the Shomrim group from the opening story had accosted David Flores at night with no one around. The story might have ended quite differently. Given that already dangerous possibility, the addition of lax concealed carry laws that bring guns into the mix and Stand Your Ground laws that allow violent self defense can only exacerbate the problem.

a. Carrying Weapons

The use of weapons by Neighborhood Watch groups may be the most dangerous aspect of these unregulated, often vigilante organizations. Concealed carry laws permit citizens to carry concealed and loaded guns in public.¹⁵⁶ While the Supreme Court has recognized and protected citizens' rights to bear arms, such rights are not without restrictions, which include preventing

¹⁵³ See *Terry v. Ohio*, 392 U.S. 1, 19–20 (1968).

¹⁵⁴ Sharon Finegan, *Watching the Watchers: The Growing Privatization of Criminal Law Enforcement and the Need for Limits on Neighborhood*, 8 U. MASS. L. REV. 88, 127 (2013).

¹⁵⁵ See *Floyd v. City of New York*, 959 F.Supp.2d 540, 661–63 (S.D.N.Y. 2013) (finding New York City Police Department's application of stop-and-frisk practices unconstitutional).

¹⁵⁶ Arkadi Gerney & Chelsea Parsons, *License to Kill: How Lax Concealed Carry Laws Can Combine with Stand Your Ground Laws to Produce Deadly Results*, CTR. FOR AM. PROGRESS, 9 (Sept. 17, 2013), <http://www.americanprogress.org/wp-content/uploads/2013/09/StandYrGround.pdf>.

dangerous persons from gun possession.¹⁵⁷ Trayvon Martin's death and George Zimmerman's final not guilty verdict began a national movement with focused efforts on race relations and public outrage over Stand Your Ground laws.¹⁵⁸ Since those events, a heated debate has begun on the merits of Stand Your Ground laws, and the ongoing debate over gun control continues despite the numerous shootings that have occurred recently.¹⁵⁹ As a result of the Zimmerman trial, more questions must be raised about the use of weapons in the Neighborhood Watch.¹⁶⁰

A few voices have begun to ask these uncomfortable questions. Kent Holder, a "Citizens Patrol" group member and retired firefighter, highlighted that in his view Zimmerman violated two basic tenets of Watch programs: "Never confront a person you perceive to be suspicious, and never carry a weapon while on duty."¹⁶¹ The first tenet has been addressed in the section of this Comment regarding vigilantism; the second tenet sheds light on the issue of carrying weapons while performing Watch duties.

Several decades ago, concealed carry permits were not lawful in most states, but today, every state has its own version of a concealed carry permit that is administered per that state's law.¹⁶² Four of the most lax states regarding concealed carry laws are Alaska, Arizona, Vermont, and Wyoming.¹⁶³ These states permit state residents and lawful gun owners to carry concealed and loaded firearms in public without requiring a law enforcement agency to pre-determine whether the individual has had firearms training or whether their criminal or personal history poses a risk to public safety.¹⁶⁴ Forty-six states administer permitting processes that go beyond the federal baseline for prohibition against felons, domestic abusers, the mentally ill, and other dangerous individuals.¹⁶⁵ A couple of these measures include completely barring individuals who

¹⁵⁷ See generally, *District of Columbia v. Heller*, 554 U.S. 570 (2008).

¹⁵⁸ Tamara F. Lawson, *A Fresh Cut in an Old Wound—A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, The Prosecutors' Discretion, and the Stand Your Ground Law*, 23 U. FLA. J.L. & PUB. POL'Y 271, 283–84 (2012).

¹⁵⁹ See David Sherfinski, *90% of Shooting Rampages Could be Stopped by Quick-Thinking Civilians: Expert*, THE WASHINGTON TIMES (Jan. 3, 2014), <http://www.washingtontimes.com/news/2014/jan/3/newtown-type-mass-shootings-tripled-recent-years-r/>.

¹⁶⁰ Jonathan Kaminsky, *Neighborhood Watch Groups Ponder Use of Guns After Zimmerman Trial*, THE WASHINGTON POST (July 28, 2013), articles.washingtonpost.com/2013-07-28/politics/40864661_1_george-zimmerman-unarmed-teenager-trayvon-martin.

¹⁶¹ *Id.*

¹⁶² Arkadi Gerney & Chelsea Parsons, *License to Kill: How Lax Concealed Carry Laws Can Combine with Stand Your Ground Laws to Produce Deadly Results*, CTR. FOR AM. PROGRESS, 9 (Sept. 17, 2013), <http://www.americanprogress.org/wp-content/uploads/2013/09/StandYrGround.pdf>.

¹⁶³ *Id.*

¹⁶⁴ ALASKA STAT. ANN. § 18.65.700 (West 2014); ARIZ. REV. STAT. ANN. §13-3112 (2014) (West), amended by H.B. 2706, 2014 Ariz. Legis. Serv. Ch. 12 (Westlaw); VT. STAT. ANN. § 4003 (West 2014); WYO. STAT. ANN. § 6-8-104 (West 2014); see also Arkadi Gerney & Chelsea Parsons, *License to Kill: How Lax Concealed Carry Laws Can Combine with Stand Your Ground Laws to Produce Deadly Results*, CTR. FOR AM. PROGRESS, 9–10 (Sept. 17, 2013), <http://www.americanprogress.org/wp-content/uploads/2013/09/StandYrGround.pdf>. However, each of these states will typically issue a concealed carry permit to citizens upon application. *Id.*

¹⁶⁵ Gerney & Parsons, *supra* note 159, at 10.

have been convicted of certain misdemeanor violent crimes from obtaining a permit (North Carolina and Montana),¹⁶⁶ or granting broad discretion to the licensing authority to determine who is and is not permitted to carry concealed weapons despite meeting the minimum statutory requirements (California and New York).¹⁶⁷ Thus, depending upon the state, an unsuspecting target of a Neighborhood Watch group could encounter Watch members who possess concealed carry permits and have not been trained, or who have a prior criminal history.

Carrying a weapon is, on its face, contrary to and unnecessary for performing the duties of a Neighborhood Watchman. It is the official position of Watch groups that their mission is precisely that—they are to watch and maintain a non-interventionist strategy.¹⁶⁸ After all, if Watch members are told to merely watch and explicitly warned not to confront suspects, then what need is there to carry a weapon? However, with more Neighborhood Watch organizations taking the form of patrol groups resembling vigilante posses that attempt to curb crime with more “feet on the street” in community policing fashion, they have begun to morph into quasi-police units, as the facts above have shown. As quasi-police emboldened with surveillance, stop and frisk, crime prevention duties, and the right and task of confronting suspects, Watch groups are entering into a legal gray area regarding the carrying of weapons.¹⁶⁹

On the one hand, Neighborhood Watch members are obviously citizens, and as such, they too are afforded the protections of the Second Amendment right to bear arms,¹⁷⁰ to the full extent of their respective state’s gun carry regulations. However, on the other hand, Neighborhood Watch members may be forfeiting their mere citizen status when they serve as quasi-police. Allowing Watch members to carry weapons while taking a proactive role in patrolling the community to curb crime, but imposing no limitations or authoritative checks on these Watch members, is a very dangerous choice for society to make and for citizens to live with, especially those citizens who are deemed inherently “suspicious” by these armed quasi-police.¹⁷¹ Given the inherent bias that casts minority groups and those of a low socioeconomic status as undesirable, it only follows that these groups are in most danger from armed Neighborhood Watches. The death of an unarmed teenager walking home, shot by an over-zealous armed Watch

¹⁶⁶ N.C. GEN. STAT. ANN. § 14-415.12(b)(8) (West 2014); MONT. CODE ANN. § 45-8-321(c) (West 2014); *see also* Gerney & Parsons, *supra* note 159, at 11.

¹⁶⁷ CAL. PENAL CODE § 26150 (West 2014); N.Y. PENAL LAW § 400.00(1) (McKinney 2015); *see also* Gerney & Parsons, *supra* note 159, at 12.

¹⁶⁸ DON E. FLETCHER & SARAH KAIP, BLOCK CAPTAIN’S HANDBOOK 14 (2004) (“Community Watch...isn’t: 1) A vigilante force working outside the normal procedures of law enforcement.”); NEIGHBORHOOD WATCH MANUAL, *supra* note 26, at 22.

¹⁶⁹ *See* Jonathan Kaminsky, *Neighborhood Watch Groups Ponder Use of Guns After Zimmerman Trial*, THE WASHINGTON POST, July 28, 2013, http://www.washingtonpost.com/politics/neighborhood-watch-groups-ponder-use-of-guns-after-zimmerman-trial/2013/07/28/a00f3248-f79f-11e2-afc1-c850c6ee5af8_story.html.

¹⁷⁰ U.S. CONST. amend. II; *see* Kaminsky, *supra* note 166.

¹⁷¹ There are many who would argue against such an assertion. Professors Clayton E. Cramer and David Burnett argue that there are more incidents of citizens using guns to stop criminal attacks than there are reported by the media. Clayton E. Cramer & David Burnett, *Tough Targets: When Criminals Face Armed Resistance From Citizens*, CATO INSTITUTE, 3 (2012), <http://www.cato.org/sites/cato.org/files/pubs/pdf/WP-Tough-Targets.pdf>. They claim that several of the studies that attempt to report defensive use of guns are skewed due to faulty survey questions, exaggeration, or outright lies. *Id.* at 4. They ultimately argue that the spread and increase of gun carry licenses is a positive thing for it will prevent innocent law-abiding people from being at the mercy of criminals. *Id.* at 20.

member pursuing a possible suspect demonstrates this—Trayvon Martin is the Neighborhood Watch tragedy that had been waiting to happen.¹⁷²

Yet, it appears that the police are very hesitant to advise or restrict Neighborhood Watch members about these dangers.¹⁷³ In October 2013, the Sanford Police Department in Florida announced plans to impose certain restrictions on Neighborhood Watch members, including a ban on carrying firearms.¹⁷⁴ The new rules and detailed handbook would have required Watch members to undergo training, register with the police department and regularly update their status, and the Watch program itself would have been overseen by a full-time three-officer community relations unit.¹⁷⁵ Any members who violated the rules would face removal from the program, though no criminal charges would ensue.¹⁷⁶ Unsurprisingly, in less than a month, the Sanford Police Department reversed its plans for the strict no-gun policy, refusing to explain the impetus behind the reversal yet assuring that it was not due to any pressure from gun advocates.¹⁷⁷ Sanford Police Chief Cecil Smith said, “We are strongly suggesting, strongly recommending, strongly urging people not to be armed in the performance of Neighborhood Watch.”¹⁷⁸

Another attempt to place significant restrictions on vigilante Neighborhood Watch members was made by Representative Sheila Jackson Lee, a Democrat from Texas. In July 2013, she reintroduced the Justice Exists for Us All Act that threatened budget cuts for states that did not add a ‘duty to retreat’ provision to their Stand Your Ground laws, as well as for any state that did not require Neighborhood Watch programs to register with a local law enforcement agency.¹⁷⁹ She believed that the bill would help “decrease the incidence of gun violence resulting from vigilantes by reducing by 20% the funds that would otherwise be allocated.”¹⁸⁰ It may seem that a

¹⁷² See generally Jeffrey Toobin, *The Facts in the Zimmerman Trial*, THE NEW YORKER, July 16, 2013, available at <http://www.newyorker.com/online/blogs/comment/2013/07/the-facts-in-the-george-zimmerman-trial.html> (discussing the facts of the shooting death of a Florida boy that occurred during an encounter with a Neighborhood Watch coordinator).

¹⁷³ See Kaminsky, *supra* note 166.

¹⁷⁴ Barbara Liston, *Florida City Bans Guns for Neighborhood Watch Volunteers*, REUTERS, Oct. 30, 2013, www.reuters.com/article/2013/10/30/us-usa-guns-florida-idUSBRE99T13520131030 (discussing attempts by the Sanford Police Department to change the negative image of Neighborhood Watch by returning it to the simple observe-and-report format, in light of the recent death of Trayvon Martin and the Zimmerman trial).

¹⁷⁵ *Id.* at 2.

¹⁷⁶ *Id.*

¹⁷⁷ Barbara Liston, *Florida City Reverses Gun Ban on Neighborhood Watch Volunteers*, REUTERS, Nov. 6, 2013, <http://www.reuters.com/article/2013/11/06/us-usa-guns-florida-idUSBRE9A519C20131106>.

¹⁷⁸ *Id.* at 2.

¹⁷⁹ H.R. 2812, 113th Cong. § 2 (1st Sess. 2013); Danielle Schlanger, *Sheila Jackson Lee Introduces Bill to Pressure ‘Stand Your Ground’ States*, THE HUFFINGTON POST (July 25, 2013), www.huffingtonpost.com/2013/07/25/s

heila-jackson-lee-stand-your-ground_n_3653289.html. The Florida Stand Your Ground encompasses a series of amendments and additions to the state statutes signed by Florida Governor Jeb Bush that greatly expanded citizens’ ability to use deadly force for purposes of self-defense. FLA. STAT. ANN. §§ 776.012, 776.013, 776.031, 776.032 (West 2005); see Zachary L. Weaver, *Florida’s “Stand Your Ground” Law: The Actual Effects and the Need For Clarification*, 63 U. MIAMI L. REV. 395, 395, 399 (2008). A more detailed discussion of Stand Your Ground is found later in this article.

¹⁸⁰ Schlanger, *supra* note 176.

20% cut in state funds is a drastic measure in order to combat vigilante Watch groups, however, given the presence of groups like the “Glock Block” in Clackamas County, Oregon, it appears that drastic measures are needed.¹⁸¹ As introduced earlier, these groups are composed of private citizens who are obtaining concealed carry permits specifically in order to combat the rise of what appears to be non-violent crime such as theft and vandalism.¹⁸² There are no laws that prevent these citizens from obtaining firearms to act as armed vigilantes. And given the example of the Sanford Police Department’s failure to curb such virtual lawlessness, local police departments appear unable or unwilling to enter the legal gray area in tackling this issue.

Arguably, these private citizens serving as Watch members have not only the same Second Amendment rights as other citizens, but may have an even greater need to carry guns given the danger of patrolling for criminal activity. Take for example the altercation that occurred in Bluffdale, Utah in 2011, and the resulting appellate court case, *State v. Campos*, where a Watch member was shot while on patrol.¹⁸³ Given the rise in the number of burglaries and vandalism in his Bluffdale, Utah neighborhood, 36-year-old David Serbeck decided to patrol the area with his neighbor, the homeowners’ association president.¹⁸⁴ While he was driving, Serbeck and his neighbor encountered two 16-year-old girls, who they warned to be careful going home.¹⁸⁵ The young girls did not respond, and they proceeded to the Campos house, which was the home of one of the girls; they got into a car, and drove to pick up another friend.¹⁸⁶ As the teenagers drove back to the Campos house, Serbeck mistook their vehicle for a car involved in recent burglaries, and he and his neighbor began following it.¹⁸⁷ The young girls in the SUV saw the car with those unidentified men following them and became upset.¹⁸⁸ One of the girls called her father, 43-year-old Reginald Campos, to tell him that two men in a car were stalking them.¹⁸⁹ After the girls returned home, Campos armed himself with a gun, and he and his daughter went back out and found the two men a few blocks away.¹⁹⁰ Prior to the following encounter, Serbeck went home to retrieve his handgun, placed it under the center console of his SUV and then set out to find the suspicious vehicle.¹⁹¹ Campos and his daughter approached Serbeck, and there was a verbal altercation; according to Campos, Serbeck drew his gun and Campos fired three rounds at him in

¹⁸¹ See Cheryl K. Chumley, *Glock Block: Pistol-Packing Oregon Neighborhood Fights Crime Wave*, THE WASHINGTON TIMES, June 18, 2013, www.washingtontimes.com/news/2013/jun/18/glock-block-pistol-packing-oregon-neighborhood-fig/.

¹⁸² See *id.*

¹⁸³ *State v. Campos*, 2013 UT App 213 ¶ 1, 309 P.3d 1160; see Nicole Gonzales et al., *Bluffdale Man Shot While on Neighborhood Watch*, KSL.COM, Sept. 20, 2011, www.ksl.com/index.php?nid=148&sid=7252008.

¹⁸⁴ Campos, UT App 213, ¶ 3; Gonzales, *supra* note 180.

¹⁸⁵ Campos, UT App 213, ¶¶ 4-5.

¹⁸⁶ *Id.* ¶ 5.

¹⁸⁷ *Id.* ¶¶ 3-5; see Gonzales, *supra* note 180.

¹⁸⁸ Campos, UT App 213, ¶ 5.

¹⁸⁹ *Id.*; Gonzales, *supra* note 180.

¹⁹⁰ Campos, UT App 213, ¶ 7; Gonzales, *supra* note 180.

¹⁹¹ Campos, UT App 213, ¶ 6.

response.¹⁹² After calling 911 to report the shooting, Campos was arrested for attempted murder.¹⁹³

By patrolling the neighborhood and stalking the girls, Serbeck created a fear that culminated in violence.—The Campos-Serbeck encounter demonstrates the danger of Neighborhood Watch members choosing to patrol, rather than watching and reporting. The encounter could have been completely avoided with proper training and safety precautions. Instead of drawing his weapon and changing a tense confrontation into a shoot-out, Serbeck could have diffused the violence with the proper training. Moreover, Serbeck and his neighbor did not identify themselves as members of the Neighborhood Watch to the girls when they first spoke to them.¹⁹⁴ If they had mentioned that to the young girls when they first stopped and warned them, perhaps they would not have feared the two men.

Furthermore, proper training would have taught Serbeck when to call the police to report alleged suspicious activity. During this entire event neither of the two Watch members decided that their duty had been met. The entire encounter with Campos might have been avoided, if Serbeck had identified himself as Neighborhood Watch or if the police had been called.

While the argument remains that Neighborhood Watch members need protection like any other citizen armed with Second Amendment rights, the issue still remains —what legal or practical authority allows Neighborhood Watch members to patrol a neighborhood in quasi-police fashion, carry loaded guns, deem who is “dangerous,” and then confront that “suspicious” person?

For the police, their authority to carry guns and threaten suspects with them is granted after strict training and certification process that serves as a check on the power given to the police. This is a process that Neighborhood Watch members almost never undergo.¹⁹⁵ Comparing the process of selecting and training police officers with that of Neighborhood Watch members is instructive: The process begins with police recruitment, which “develops the pool of sufficiently qualified applicants.”¹⁹⁶ Then, applicants must meet a variety of selection standards “that are rooted in federal, state, and local laws, court decisions that reflect the department’s concern about what types of individuals can perform police work at an acceptable level.”¹⁹⁷ Once the applicants meet the respective qualifications and complete the application, they must pass a

¹⁹² Gonzales, *supra* note 180. There are differing accounts of how the actual altercation between Serbeck and Campos occurred. According to Serbeck, Campos drew his weapon first at Serbeck and his neighbor, initiating the altercation. *Campos*, UT App 213, ¶ 8. In response, Serbeck retrieved his gun, identified himself as the Neighborhood Watch, “placed his gun on the ground, and kicked it behind him.” *Id.* As Campos’s daughter screamed to her father to not believe him, Campos shot Serbeck, while he was standing back up. *Id.* Campos did not have a concealed weapons permit though Serbeck did. Gonzales, *supra* note 180.

¹⁹³ *Campos*, UT App 213, ¶ 9-13; Gonzales, *supra* note 180. Rejecting his self-defense argument, the jury convicted Campos of attempted murder at trial. *Campos*, UT App 213, ¶ 17. The appellate court reversed and remanded the conviction for attempted murder, finding that “trial counsel provided constitutionally deficient assistance by failing to object to the inaccurate verdict form and failing to request a curative instruction when the prosecutor engaged in misconduct during closing arguments.” *Id.* ¶¶ 92–93.

¹⁹⁴ Gonzales, *supra* note 180.

¹⁹⁵ See generally, NEIGHBORHOOD WATCH MANUAL, *supra* note 26.

¹⁹⁶ LARRY K. GAINES & VICTOR E. KAPPELER, POLICING IN AMERICA 102 (7th ed. 2011).

¹⁹⁷ *Id.* at 104. These standards can include: residency requirements, educational standards, physical agility standards, background and work history checks, and psychological screenings. *Id.* at 104–14.

written test, physical agility test, polygraph test, background or character investigation, medical examination, psychological evaluation, and a final review by the oral interview board.¹⁹⁸ The process does not end with finally being selected; even after passing the minimum screening and selection processes, many years of training begin.¹⁹⁹ Arguably, this long selection and training process works to create police who have the authority to do a wide range of work, from simply directing traffic to the complicated and dangerous work of running drug stings. However, it is still a testament to the vast differences between the regulated training that the police undergo on the one hand, and the unregulated and possibly non-existent training many Neighborhood Watch members undergo on the other. Preventing Neighborhood Watch organizations from carrying firearms while on duty has proved to be unsuccessful, even after the shooting death of Trayvon Martin. If society will continue to allow Neighborhood Watch members to act like quasi-police, then these members should at least undergo a modified version of the selection and training process that police do.

Neighborhood Watch members carrying concealed weapons is exemplified comically in an episode of the *Boondocks*, and tragically in the recent Trayvon Martin incident, which ended with George Zimmerman being acquitted of murder. The comic example—like all good comedy—veers uncannily close to reality. McGruder’s episode predicts the Trayvon incident, stopping just short of concluding with a shooting-death of the “suspicious” victim. Given several of the factors already discussed, it appears that McGruder did nothing but pay attention to the details and follow the sociological paths where they led.

“How long will we wait on the police to protect us?”²⁰⁰ This question commences a scene within an episode of *The Boondocks*; the Neighborhood Watch captain, Mrs. von Hausen, expresses her disappointment with the police’s non-response to a string of burglaries in the fictional, middle class suburb of Woodcrest.²⁰¹ “This is our fault,” she continues, “we’ve let the predators think we’re weak!”²⁰² The Watch members are further disgruntled when they learn the Freeman family, one of the few African American families living in Woodcrest, refused to talk to the police about the burglaries.²⁰³ “We’re going to go check them out. If the cops don’t make

¹⁹⁸ *Id.* at 114–16.

¹⁹⁹ *Id.* at 118. Most states have an agency that establishes and regulates minimum training standards which consists of three phases: basic training, field officer training, and in-service training. *Id.* Basic training topics can be combined in the following areas: introduction to the criminal justice system, law, human values, patrol and investigation procedures, police proficiency, and administration. *Id.* at 120–21. The national average for academy training in 2003 was 628 hours. *Id.* at 119. Field training “attempts to bridge the gap between the academy and the practitioner,” and “rookie” police officers may be assigned to traffic or criminal investigation units before being assigned to patrol. *Id.* at 122–24. Finally, in-service training provides “veteran officers with new skills or update[s] them regarding changes in the law or criminal procedures.” *Id.* at 126.

²⁰⁰ *The Boondocks: Thank You For Not Snitching* (Cartoon Network television broadcast Oct. 22, 2007), available at http://www.dailymotion.com/video/x1ddzrs_the-boondocks-season-2-episode-3-thank-you-for-not-snitching_shortfilms. Aaron McGruder, creator and executive producer of *The Boondocks*, turned his original comic strip satire into a controversial television series aired on Cartoon Network’s Adult Swim. Mr. McGruder utilized the lives of an African American family to comment on topics like racism, juvenile delinquency, and American culture). *The Boondocks: About the Show*, <http://www.boondockstv.com/> (last visited Dec. 26, 2013)

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

them talk, I'll make them talk."²⁰⁴ Tom Dubois, African American attorney and next-door neighbor of the Freeman's, admonishes Mrs. von Hausen, explaining that the Neighborhood Watch is not a law enforcement agency.²⁰⁵

In a later scene, the Woodcrest Neighborhood Watch reconvenes to discuss Mrs. von Hausen's unsuccessful attempt to recruit the Freemans to participate in the Watch group and to encourage them to talk to the police.²⁰⁶ The patriarch of the Freeman family's mind-your-own-business attitude both shocked Mrs. von Hausen and increased her suspicions of the Freeman's involvement with the robberies.²⁰⁷ In the midst of the Watch members standing approval, Mrs. von Hausen picks up a rifle and yells, "I say it's time we officially militarize the Neighborhood Watch!"²⁰⁸

b. Self-Defense Statutes

Despite Trayvon's death, the fight against self-defense statutes, such as Stand Your Ground, like that against firearms, appears to be equally unsuccessful. Stand Your Ground laws are the other element in this deadly mix, combining unregulated vigilante Neighborhood Watch programs with their inherent exclusionist bias, with lax concealed carry laws. The implication of self-defense statutes, specifically Stand Your Ground, have been the subject of heated debate.²⁰⁹ Long-standing self-defense principles in the United States derive from English common law, and

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.* Given the death of Trayvon Martin, it is difficult to conclude that this Boondocks episode is extreme. On February 26, 2012 in Sanford, Florida, George Zimmerman, a Neighborhood Watch volunteer, shot and killed Trayvon Martin, a black seventeen-year-old, after engaging in a physical altercation. Due to the recent neighborhood break-ins, Zimmerman called the police to report his suspicions of Trayvon before approaching him, and Zimmerman followed Trayvon despite the dispatcher telling him not to follow. Lizette Alvarez & Cara Buckley, *Zimmerman is Acquitted in Killing of Trayvon Martin*, NEW YORK TIMES (July 14, 2013), <http://www.nytimes.com/2013/07/15/us/george-zimmerman-verdict-trayvon-martin.html>. See also, Jeffrey Toobin, *The Facts in the Zimmerman Trial*, THE NEW YORKER (July 16, 2013), <http://www.newyorker.com/online/blogs/comment/2013/07/the-facts-in-the-george-zimmerman-trial.html>.

²⁰⁹ Compare Steven Jansen & M. Elaine Nugent-Borakove, *Expansions to the Castle Doctrine: Implications for Policy and Practice*, NAT'L DIST. ATTORNEYS ASS'N, www.ndaa.org/pdf/Castle%20Doctrine.pdf (discussing the justifications for Stand Your Ground Laws and its potential impact on prosecutors, law enforcement, and public health), and Dahlia Lithwick, *Sympathy for the Shooter: How America Has Become A "Stand Your Ground" Nation*, SLATE MAGAZINE (February 25, 2014), http://www.slate.com/articles/news_and_politics/jurisprudence

[/2014/02/stand_your_ground_nation_from_trayvon_martin_to_jordan_davis_how_our_understanding.html](#) ("[W]hether or not specific jurisdictions define self-defense to include a duty to retreat, and whether or not specific juries are charged to apply it, America is quickly becoming one big "stand your ground" state, as a matter of culture if not the letter of the law."), with Walter Olson, *Why the Washington Post is Wrong about Stand Your Ground Laws*, THE DAILY CALLER (April 9, 2012), <http://dailycaller.com/2012/04/09/why-the-washington-post-is-wrong-about-stand-your-ground-laws/> (challenging the argument that "justifiable homicides" have increased in Florida since the enactment of the Stand Your Ground law), and John Lott, *Perspective: In Defense of Stand Your Ground Laws*, CHICAGO TRIBUNE (October 28, 2013), http://articles.chicagotribune.com/2013-10-28/opinion/ct-oped-1029-guns-20131029_1_ground-laws-blacks-ground-defense (arguing that Stand Your Ground laws do not substantially burden minorities).

they embody the rule of “retreat to the wall,” meaning that a person may respond to an attacker with deadly force but only after retreat is no longer safe.²¹⁰ The exception to this duty to retreat is when the attack occurs in one’s home or “castle,” what is known as the “castle doctrine.”²¹¹ Under the “castle doctrine,” individuals do not have to “retreat to the wall,” but they have the right to use reasonable force, even deadly force, to protect against intruders into the home.²¹²

Over the past several years, legislation on the state level has expanded the places where the “castle doctrine” applies, granting people the right not to retreat when they are in places outside the home such as “a vehicle, workplace, or anywhere else a person has a right to be.”²¹³ Called “Stand Your Ground” laws, this new wave of legislation allows individuals to use deadly force in self-defense even if the individual could safely retreat and avoid harm.²¹⁴ Experts argue that several factors have contributed to this expansion of the “castle doctrine,” including “[a] diminished sense of public safety after the terrorist attacks in 2001; [a] lack of confidence in the criminal justice system’s ability to protect victims; [t]he perception that the due process rights of defendants overshadow the rights of victims; and [t]he decrease in gun legislation over the last decade.”²¹⁵ These fears seem to have struck a chord—more than half of the states now have Stand Your Ground laws.²¹⁶

Florida was the first state to enact a Stand Your Ground law. The law, signed by Florida Governor Jeb Bush, encompasses a series of amendments and additions to the state statutes that greatly expanded citizens’ ability to use deadly force for purposes of self-defense.²¹⁷ The amendments to sections 776.012 and 776.031 of Florida’s Stand Your Ground law took effect in 2005 and eliminated the duty to retreat when defending oneself or defending others. It also permits the use of deadly force if it is necessary to prevent imminent death or serious bodily

²¹⁰ Cheng Cheng & Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence?: Evidence from Castle Doctrine*, 6 (Nat’l Bureau of Econ. Research, Working Paper, 2012), available at http://www.fgov.com/wp-content/uploads/citsafety/20120913_secondchance2.pdf.

²¹¹ *Id.*

²¹² Jansen & Nugent-Borakove, *supra* note 204, at 3; *Id.* (“It is not now and never been the law that a man assailed in his own dwelling is bound to retreat. If assailed there, he may stand his ground, and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home...Flight is for sanctuary and shelter, and shelter if not sanctuary, is in the home.” (quoting Judge Benjamin N. Cardozo)).

²¹³ *Id.*

²¹⁴ Arkadi Gerney & Chelsea Parsons, *License to Kill: How Lax Concealed Carry Laws Can Combine with Stand Your Ground Laws to Produce Deadly Results*, CTR. FOR AM. PROGRESS, 4 (Sept. 2013), <http://www.americanprogress.org/wp-content/uploads/2013/09/StandYrGround.pdf>.

²¹⁵ Jansen & Nugent-Borakove, *supra* note 204, at 4.

²¹⁶ *Preliminary Report and Recommendations*, AMERICAN BAR ASSOCIATION NAT’L TASK FORCE ON STAND YOUR GROUND LAWS, 61 n.7 (August 8, 2014), <http://www.abajournal.com/files/GunReport.pdf> (noting that as of 2014 the following 33 states have Stand Your Ground laws: Alabama, Alaska, Arizona, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin).

²¹⁷ Zachary L. Weaver, *Florida’s “Stand Your Ground” Law: The Actual Effects and the Need for Clarification*, 63 U. MIAMI L. REV. 395, 395, 397-98 (2008).

injury.²¹⁸ The amendments and additions reveal a radical departure from Florida's previous common law, which imposed a duty to use all reasonable means available to retreat before using deadly force, except when in the home or place of work.²¹⁹ Ironically and worrisomely, these laws even permit the use of deadly force when the tables have turned, such that the assailant himself is the one retreating and no longer poses a threat.²²⁰ Both state prosecutors and law enforcement groups voiced opposition to the bill, but with no success.²²¹

As with the gun issue, Florida's Stand Your Ground law came under heightened scrutiny during the prosecution of George Zimmerman for the murder of Black teenager Trayvon Martin.²²² Zimmerman used a self-defense strategy where he argued that he only fired his gun in order to protect himself from Martin's attack.²²³ Though Zimmerman did not formally invoke Stand Your Ground, the law was still relevant during the trial.²²⁴ The judge provided a jury instruction that included Florida's expanded self-defense laws, including the right to use deadly force even when one can safely retreat from an attack.²²⁵ The jury ultimately found Zimmerman's actions justified, and the two jurors who have spoken out since the trial have indicated that Stand Your Ground played a role in their deliberations during trial.²²⁶ Thus, the Zimmerman trial demonstrates how Florida's Stand Your Ground cannot be severed from its legal context: "It has become part of the overall conception of what constitutes justifiable use of force in that state."²²⁷

Stand Your Ground laws present further issues in the context of Neighborhood Watches, because researchers claim that they have led to an increase in fatal violence rather than a decrease,

²¹⁸ FLA. STAT. ANN. §§ 776.012, 776.031 (West 2014). The new addition of § 776.013(3) provides that a person who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to prevent death or great bodily harm. FLA. STAT. ANN. § 776.013(3) (West 2014). Lastly, newly added § 776.032 provides immunity from criminal prosecution and civil action for any use of force justified by §§ 776.012, 776.013, or 776.031. FLA. STAT. ANN. § 776.032(1) (West 2014). Such immunity in the criminal context includes protection against arrests, detentions, and prosecutions, and in the civil context provides reasonable compensation for litigation costs. FLA. STAT. ANN. § 776.032(1), (3) (West 2014).

²¹⁹ Weaver, *supra* note 212, at 400.

²²⁰ Tamara Rice Lave, *Shoot to Kill: A Critical Look at Stand Your Ground Laws*, 67 U. MIAMI L. REV. 827, 834 (2013).

²²¹ Weaver, *supra* note 212, at 401-02. The passage of such sweeping legislation went against years of Florida's common law, and the co-sponsor of the bill, Dennis Baxley, argued that the former duty to retreat created a grave risk for those facing such life and limb-threatening situations. Lave, *supra* note 215, at 835. Marion Hammer of the NRA further argued that a presumption that allows the use of deadly force in certain situations would protect the self-defending shooter from being badgered by a system that protects criminals. *Id.*

²²² See ARKADI GERNEY & CHELSEA PARSONS, CTR. FOR AM. PROGRESS, LICENSE TO KILL: HOW LAX CONCEALED CARRY LAWS CAN COMBINE WITH STAND YOUR GROUND LAWS TO PRODUCE DEADLY RESULTS 5 (2013).

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

and that they have often operated in a racially biased manner.²²⁸ Specifically, “Researchers at Texas A&M University found that enacting Stand Your Ground laws increased homicides in those states by 8[%]—or an additional 600 homicides across states—and concluded that by lowering the expected costs associated with using lethal force, [Stand Your Ground] laws induce more of it.”²²⁹ Despite arguments by supporters of these laws that the increase in homicides reflects the justifiable acts of self-defense, researchers at Texas A&M and the University of Georgia have not found this theory to be supported by the data.²³⁰ The opposite appears to be true: on the contrary, the data shows that the increase in homicides can be explained by an escalation of otherwise nonfatal altercations into fatal ones by removing the legal consequences of deadly force.²³¹

The *State v. Campos* case described previously, where the Neighborhood Watch patrol turned into a shooting, provides the perfect example of how a non-lethal altercation can turn deadly. The verbal altercation between Serbeck, HOA president of the Bluffdale neighborhood, and Campos, father to one of the girls being followed, escalated into a shooting when Serbeck drew his gun to protect his daughter and himself from a man he believed posed a threat.²³² The state of Utah, where this altercation occurred, happens to be a Stand Your Ground state.²³³ Therefore, neither Serbeck nor Campos had a duty to retreat when they suspected their lives to be threatened. As a result, the encounter that should have ended when Serbeck returned to his home, and could have ended again in a mere verbal altercation, instead resulted in a shooting. With new, more active Watch groups such as the Oregon Glock Block and the Vigilante Grannies, who welcome the idea of carrying firearms while patrolling the streets, there is no difficulty in predicting that future altercations will turn into shootings. The Vigilante Grannies happen to operate in North Carolina, yet another Stand Your Ground state.²³⁴

Another legally troubling consequence of these Stand Your Ground laws is that they are having a disparate racial impact. A study conducted by the Urban Institute’s Justice Policy Center found that “in states with Stand Your Ground laws, 35.9[%] of shootings involving a white shooter and black victim are found to be justified, while only 3.4[%] of cases involving a black shooter and white victim are deemed justifiable self-defense.”²³⁵ The *Tampa Bay Times* reported

²²⁸ *Id.* at 7.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² Andrew Adams, *Bluffdale Man Shot While on Neighborhood Watch*, KSL.COM (Sept. 20, 2011), www.ksl.com/index.php?nid=148&sid=7252008.

²³³ UTAH CODE ANN. § 76-2-402(1)(b) (West 2010) (“A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person.”).

²³⁴ N.C. GEN. STAT. ANN. § 14-51.3(a)(1) (West 2011) (“[A] person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies: (1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.”).

²³⁵ Gerney & Parsons, *supra* note 217, at 7-8. As a general control group, there is still a racially disparate impact of justifiable self-defense claims in non-Stand Your Ground states, states that have not extended the castle doctrine outside the home, but only with a lesser percentage. In those states, 29.3% of shootings involving a white shooter and

that out of nearly 200 cases of Stand Your Ground in Florida “73[%] of shooters who killed a black victim were found to be justified in doing so, while only 59[%] of those who shot a white victim were relieved of criminal liability.”²³⁶ These statistics only encourage Neighborhood Watch groups to continue to target minorities as the “other,” since if an altercation ensues, the Watch member will more than likely be justified in shooting the minority victim.

One can predict the same Trayvon Martin outcome for the other twenty-two states that have created their own version of Stand Your Ground.²³⁷ This element, coupled with the rise in vigilante Neighborhood Watch groups, as well as lax concealed carry laws, together make for a very dangerous future for all “others” who find themselves in the wrong place at the wrong time. There appears to be a growing number of private citizens choosing to violently take the law into their own hands. The most troubling notion is the unregulated license granted to these Watch groups to harass, stalk, shake down, or take down unassuming “suspects.” Many are unregistered and untrained. And as of now, there is technically nothing illegal about the work they are undertaking. They exist for the most part outside the law.

CONCLUSION

Neighborhood Watch is often imagined as a positive aspect of society, a way for community members to “take back” their neighborhoods and battle rising crime. It would seem to be a natural protective mechanism to ensure that the social solidarity that defines a community remains intact. While positive in theory, ultimately these groups lead to very dangerous situations when built on the assumption that what is “different” is inherently suspect and dangerous.²³⁸ The faulty linkages made between the presence of minorities and those of low socioeconomic status and the rise in crime makes matters worse, as represented in many of the practices of Neighborhood Watch programs. Not only have there been reports of Watch programs targeting, and sometimes even assaulting, minority groups, but the Watch groups themselves may not even be representative of their communities.²³⁹ As more Watch groups are formed solely

black victim were found justified, while 2.9% of shootings involving a black shooter and white victim produced the same results. *Id.* at 8.

²³⁶ *Id.*

²³⁷ *Id.* at 4.

²³⁸ One block captain handbook provides a definition of suspicious behavior and how to respond to it. “Suspicious activity is *anything that is out of the ordinary or should not be occurring*. Knowing your neighbors, their habits, and the composition of their households will make it easier to recognize and report any suspicious activities occurring in your neighborhood.” DON E. FLETCHER & SARAH KAIP, BLOCK CAPTAIN’S HANDBOOK 69 (Ted E. Lawson et al. eds., 2004) (emphasis added).

²³⁹ Researcher Trevor Bennett argues that Neighborhood Watch groups are socially divisive, and often consist of a small, unrepresentative section of the community. TREVOR BENNETT, EVALUATING NEIGHBOURHOOD WATCH 51 (A.E. Bottoms ed., 1990). In my attempt to research the presence of minorities in these types of watch programs, I have not been able to find recent specific racial demographics of Watch groups. Arguably there must be minorities participating in this form of community crime prevention; however, the only examples I have found of such minority participation exists in the form of community policing in major metropolitan areas. For example, in Chicago, CAPS serves as a comprehensive community policing strategy where the police, residents, and City agencies work together to prevent crime and improve the quality of life in Chicago’s neighborhoods. *Get Involved in CAPS*, CHICAGO

based on the fear of crime rather than on the creation of social solidarity within the community, it is likely that vigilantism will become an even greater problem. There are examples of such vigilante groups forming: the Oregon Glock Block, the North Carolina Vigilante Grannies, and the Missouri KKK. Couple these issues with the increase in self-defense statutes such as Stand Your Ground and the legal right to carry concealed weapons, and a very dangerous mix has been created.

Since there is no accurate accounting of Watch groups, to tackle this problem, we should begin by finding the actual numbers of currently active Watch groups in the country. The last comprehensive accounting of Neighborhood Watch was conducted several decades ago in the 1980's.²⁴⁰ Given the rapid growth of these groups, and no requirement that they register with the local police department or municipal government, there is no telling how many Watch groups are actively patrolling the streets of America in quasi-police fashion. The 22,000 Watch groups that have registered for USAonWatch is a staggering number; however, this number again only represents groups that have chosen to register. Without an accurate accounting of these groups, it is impossible to gauge just how large this problem could be and what areas are particularly troublesome.

The question of how best to tackle this issue of the lack of statistics is more complicated than it appears. Requiring Watch programs to register with their local police department and obtain official training would be a good check on some of the abuses, but registration and training alone are insufficient. And new issues might be created. Some may argue that a closer connection with the police would provide a measure of oversight for such groups, but others may counter that it would remove the "community" essence of Watch programs, and that the police are not free themselves of issues involving racial targeting.²⁴¹ Furthermore, a closer connection to the police will do little to aid victims of vigilantism if these Watch groups are not deemed to be state actors and thus subject to § 1983 claims.

It is clear, however, that state governments, local police and the law itself cannot continue to turn a blind eye toward the actions of these groups. Given the current lethal mix of "outsider" bias, vigilante justice, lax concealed carry laws, and Stand Your Ground, the future of Watch groups should take one of two forms. First, if states want to ensure that these groups maintain their "community" essence and avoid police connection, states should impose regulations that restrict the practices and activities of these groups to non-policing actions, and thereby curb their vigilantism. It would still be important to register Watch groups in order to

POLICE DEPARTMENT (2003), <https://portal.chicagopolice.org/portal/page/portal/ClearPath/Get%20Involved> (last visited Mar. 25, 2015).

²⁴⁰ Trevor Bennett, Katy Holloway, & David Farrington, *The Effectiveness of Neighborhood Watch*, CAMPBELL SYSTEMATIC REVIEWS 11, 12 (Dec. 2008), available at: <http://www.campbellcollaborat>

ion.org/lib/download/248/.

²⁴¹ Within the past few years alone, police officers have shot and killed a number of non-threatening black males, including: Ezell Ford (unarmed), Tamir E. Rice (twelve-year-old holding a toy gun), John Crawford III (holding a BB gun that he was buying for his kids), Eric Garner (unarmed), and Michael Brown (unarmed). See *Who Police Killed in 2014*, THINKPROGRESS (Dec. 13, 2014, 9:02 AM), <http://thinkprogress.org/justice/2014/12/12/3601771/people-police-killed-in-2014/> (last visited Mar. 25, 2015). Given the current state of policing, increasing the association of Neighborhood Watch groups to police arguably would do little to curb the fear of racial targeting. However, failing to register Neighborhood Watch groups further promotes their untrained and clandestine activities, creating a much greater risk to those considered "suspicious."

keep an accurate account of current active Neighborhood Watches. However, such registration could be limited to just the Neighborhood Watch captain. This would allow the Watch group to ensure that they maintain a community-unifying focus without the added danger that results from patrolling the streets looking for “suspicious” activity. Thus, the Neighborhood Watch would return to its original form—simply watching and reporting without intervention.

Alternatively, a second solution would be to explicitly allow these groups to act in the form of quasi-police, in which case they should register with their local police departments, undergo extensive police-style training, and be subject to background checks. This would provide the necessary safeguards to ensure that Watch members are properly screened and trained before engaging in watch activities that involve patrolling the streets. Arguably, this type of Watch group should still take the form of watching and reporting while on patrol, and not engaging with “suspects.” However, the added training would provide knowledge to these Watch members of how best to avoid altercations, and what to do in order to ensure the safety of everyone involved if altercations should occur.

An even less restrictive way of providing *some* oversight would be to focus efforts on the Neighborhood Watch captain. A state or municipality can enact legislation requiring, at minimum, that the Neighborhood Watch captain must undergo a background check, undergo training by the police on the proper administration of a Watch group, and submit periodic updates of watch activities to the local police department. This solution allows for the flexibility of community members to join, but also provides a degree of accountability for the Watch Captain. Had such a program been in place in Florida, George Zimmerman probably would never have even been allowed to be a Watch captain.

If the quasi-police form of Neighborhood Watch is the favored structure, then the law must apply the same constitutional safeguards that are afforded to citizens against the police. The Flores story along with the *Turnage* and *Campos* cases revealed just how easily Neighborhood Watch surveillance can produce constitutional violations. 42 U.S.C. § 1983 and the exclusionary rule are both checks on the police, preventing the impermissible use of state authority to violate a citizen’s constitutional rights. Without applying these same safeguards against Neighborhood Watch groups even when they act like quasi-police, these Watch groups are free to use excessive force, conduct illegal searches and seizures, or falsely imprison “suspects” with no repercussions. With this legal shift, judges would no longer apply contradictory roles to these quasi-police as was done in *People v. Rosario*, where the Watch was afforded the protection of being merely a civilian while at the same time it was deemed protected because it was police. If Neighborhood Watch groups are allowed to act as quasi-police, then they should be treated as quasi-police. They should be subjected to civil suit under § 1983 for constitutional violations, and the exclusionary rule should apply to any illegally obtained evidence.

The last two suggestions are much more controversial, as they would result in a sweeping change in Neighborhood Watch activity. Nevertheless, there must be a change in the government funding of such groups, and in Watch group members being permitted to carry firearms. Continued government funding of Watch groups, as with New York’s funding of the Shomrim, despite the negative implications of the Watch group’s activities, suggests that political support of a powerful sect within a community allows society to ignore the wrong-doings that this group inflicts on other community members. There is no telling how many other Neighborhood Watches are also receiving line-item earmarks from their city or municipal government, thereby supporting possible unlawful activities. Providing funding without ensuring some mechanism of accountability is not only irresponsible but it is also dangerous, given the events of the past several years. If any state or city is unwilling to provide more oversight over Neighborhood

Watch groups, then at a minimum government funding of these groups must end. Otherwise, a state or local government could find itself subjected to litigation, where victims of Neighborhood Watch could argue that government funding equated to an endorsement of unlawful activities that put community members in danger and violated their lawful rights.

Furthermore, Neighborhood Watch group members should be prohibited from carrying firearms or any other sort of weapon while engaging in Watch activities. Permitting Watch members to carry weapons is antithetical to the purpose of the Neighborhood Watch. As seen from Watch manuals and training materials, the number one rule for any Neighborhood Watch group is to watch, not to engage. Therefore, the need to carry a weapon only suggests that the Watch group member is engaging in conduct that goes against the overall goal of the group: preparing to confront a “suspect.” Confrontation, search and seizure activities that should be left to qualified and trained police. Many may resist such a recommendation under the guise of the Second Amendment. However, the Second Amendment is not an unqualified right; states place many time, place, and manner restrictions on a citizen’s Second Amendment right. Restricting Neighborhood Watch members in this manner would not be any different.

Obviously, none of these solutions will change the underlying inherent bias of community organizations that are formed to prevent crime within the community. Protecting the community against “undesirables” lies at the very core of such groups. Keeping the “them” away from the “us” is an essential purpose—a purpose that cannot be so easily removed or changed. Nevertheless, recognition of this inherent danger is the first step towards its solution. Recognition of this “us”/“them” dichotomy can further inform the debate about whether Neighborhood Watch members should be able to carry firearms, and whether Stand Your Ground legislation should apply if the person invoking the defense was a Neighborhood Watch member and the one who provoked the altercation. Ultimately, recognition of this inherent danger could guide future research on whether Neighborhood Watch is actually effective in practice even at achieving its most laudable aims. Regardless of what direction states choose to tackle this problem, the death of Trayvon Martin, the conviction of David Flores, and the many violent confrontations in Neighborhood Watch groups around the nation illustrate that this issue can no longer be ignored.