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The Dangers of Warrant Execution in a Suspect's Home: Does an Empirical Justification Exist for the Protective Sweep Doctrine?

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**THE DANGERS OF WARRANT EXECUTION IN A
SUSPECT’S HOME: DOES AN EMPIRICAL
JUSTIFICATION EXIST FOR THE PROTECTIVE
SWEEP DOCTRINE?**

Illya Lichtenberg*

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“It is, indeed regrettable that the empirical data on a subject such as this are sparse, but we need not ignore the data which do exist simply because further refinement would be even more helpful.”¹

INTRODUCTION

This article studies the felonious killings of police officers while serving arrest warrants and other legal process.² The study seeks to test

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1. Maryland v. Wilson, 519 U.S. 408, 413 n.2 (1997) (commenting on the need for more data on police victimization).

2. The situations included and excluded from the research are discussed in the methodology section. See *infra* Part II.

the underlying assumptions of the rationale of *Maryland v. Buie*,³ concerning the dangers of warrant execution.⁴ Although the *Buie* decision relied on numerous empirically testable assumptions, the crux of the decision focused on third party attacks against the police after the principle suspect was securely in custody.⁵ Another question is also examined in the research: Did *Buie* cause a measurable change on the rates of felonious police fatalities during the service of arrest warrants or other legal process that is attributable to the expanded search ability extended to police?⁶

In *Buie*, the United States Supreme Court extended the search powers of police when executing a lawful arrest warrant.⁷ Specifically, *Buie* extended the *Terry* standard of reasonable suspicion of danger to the officer to the execution of arrest warrants in private homes.⁸ The *Buie* Court's underlying rationale was the execution of an arrest warrant in a suspect's home is inherently dangerous⁹ and the dangers are not dispelled when the suspect is in police custody and control.¹⁰ The potential danger extends to hypothetical and unknown third parties that may potentially ambush the police.¹¹

Part I addresses the Fourth Amendment issues surrounding dangers to the police.¹² Part II is an overview of the literature on dangers confronting the police and the little that is known about warrant execution.¹³ Part III discusses the data sources and methods used in the analysis.¹⁴ Part IV undertakes an analysis of the data to test the assumptions identified in Part I.¹⁵ Lastly, Part V discusses the findings and the conclusions of the data analysis.¹⁶

3. 494 U.S. 325 (1990).

4. See *infra* Part VI.

5. See *Maryland v. Buie*, 494 U.S. 325, 328 (1990).

6. See *infra* Part VI.

7. *Buie*, 494 U.S. at 325 (1990).

8. *Buie*, 494 U.S. at 327 (citing *Terry v. Ohio*, 329 U.S. 1 (1968)).

9. *Id.* at 333 ("Moreover, unlike the encounter on the street or along a highway, an in-home arrest puts the officer at the disadvantage of being on his adversary's 'turf.' An ambush in a confined setting of unknown configuration is more to be feared than it is in open, more familiar surroundings.").

10. *Id.* ("In the instant case, there is an analogous interest of the officers in taking steps to assure themselves that the house in which a suspect is being, or has just been, arrested is not harboring other persons who are dangerous and who could unexpectedly launch an attack.").

11. *Id.*

12. See *infra* Part I.

13. See *infra* Part II.

14. See *infra* Part III.

15. See *infra* Part IV.

16. See *infra* Part V.

I. THE FOURTH AMENDMENT AND DANGEROUS SITUATIONS

The Fourth Amendment protects citizens from unlawful searches and seizures by government agents.¹⁷ It requires that all searches and seizures be reasonable¹⁸ and that all searches and seizures justified by a warrant be supported by probable cause and numerous other requirements expressly stated in the Amendment.¹⁹ Until 1968, the Supreme Court interpreted the Fourth Amendment to require that all searches and seizures, whether conducted with or without a warrant, be supported by probable cause.²⁰ *Terry v. Ohio*²¹ permitted the police to conduct a limited frisk of suspects for officer safety on a lesser standard than probable cause.²² This came to be known as “stop and frisk” or a “*Terry* stop.”²³ Although probable cause did not exist, the police were permitted to undertake searches and seizures on a restricted basis to protect the officer from potentially violent suspects.²⁴

In 1983, the Supreme Court extended the *Terry* standard to motor vehicle stops.²⁵ In *Michigan v. Long*, the police were permitted to undertake a search of a motor vehicle and its contents for the purpose of locating weapons that might be used against the officer, despite the fact that the sole occupant of the vehicle was already under the control of the police.²⁶ The general theme of *Terry*, that policing is an inherently dangerous occupation, was extended in *Long* to include specific situations that are dangerous,²⁷ namely motor vehicle stops.²⁸

17. U.S. CONST. amend. IX (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath and affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”); see John Junker, *The Structure of the Fourth Amendment: The Scope of the Protection*, 79 J. CRIM. L. & CRIMINOLOGY 1105 (1989).

18. U.S. CONST. amend. IV, cl. 1.

19. U.S. CONST. amend. IV, cl. 2.

20. *Id.* Certain administrative searches for public health purposes were permitted on less than probable cause in *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967). Despite the fact that *Terry* created a new lesser standard justifying police intrusions on citizens Fourth Amendment rights, legal scholars have noted skepticism as to whether this actually resulted in any change in police practices for on street encounters. See Wayne R. LaFave, “*Street Encounters*” and the Constitution: *Terry, Sibron, Peters and Beyond*, 67 MICH. L. REV. 39, 40–46 (1968).

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

22. *Id.* at 30.

23. See *id.*

24. *Id.*

25. *Michigan v. Long*, 463 U.S. 1032 (1983).

26. *Id.*

27. The *Terry* Court, although primarily addressing the general dangerousness of policing, did acknowledge particular aspects of “on-the-street encounters” that are dangerous; *Terry*, 329 U.S. at 18 n.15.

Maryland v. Buie followed the same general principle, that policing is dangerous, to the specific situation of executing arrest warrants in the suspect's home.²⁹

A. *Buie* and the Protective Sweep Doctrine

Jerome Edward Buie was suspected of being involved in an armed robbery; subsequently, the police secured an arrest warrant for him.³⁰ The police placed Buie's home under surveillance and later executed Buie's arrest warrant.³¹ While the police were executing an arrest warrant at the house, Buie emerged from the basement and surrendered without incident.³² Buie was removed from his home while a detective continued to sweep Buie's house for other individuals.³³ During the protective sweep of the basement, the detective found a red running suit which was later used as evidence at Buie's trial.³⁴

The Supreme Court analyzed the *Buie* case to determine if the police were justified in conducting the search of the basement and seizure of the running suit without probable cause.³⁵ The *Buie* Court held that the search of the basement after Buie's arrest was unlawful as a search incident to a lawful arrest.³⁶ Since Buie had already been arrested and the basement was not within his wing span,³⁷ the search could not be lawful under *Chimel v. California*.³⁸ Absent some other justification, the police were required to possess probable cause to justify the search³⁹ and there was no probable cause to search the

28. *Long*, 463 U.S. at 1047.

29. *Buie*, 494 U.S. at 332–33.

30. *Id.* at 328.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *See id.* at 330 (“The issue in this case is what level of justification the Fourth Amendment required before Detective Frolich could legally enter the basement to see if someone else was there.”).

36. *Id.* at 336 (citing *Chimel v. Cal.*, 395 U.S. 752 (1969)).

37. *Id.*

38. *Id.* (“Affirmance is not required by *Chimel v. California*, where . . . the justifiable search incident to an in-house arrest could not extend beyond the arrestee's person and the area from within which the arrestee might have obtained a weapon. First, *Chimel* was concerned with a full-blown search of the entire house for evidence of the crime for which the arrest was made, not the more limited intrusion contemplated by a protective sweep. Second, the justification for the search incident to arrest considered in *Chimel* was the threat posed by the arrestee, not the safety threat posed by the house, or more properly by unseen third parties in the house.” (citations omitted)).

39. *Id.* at 332–33 (“Possessing an arrest warrant and probable cause to believe Buie was in his home, the officers were entitled to enter and to search anywhere in the house in which Buie might be found, however, the search for him was over, and there was no longer

basement once the arrest was executed fully.⁴⁰

The Court entertained the question of what level of justification is required before the police could lawfully enter the basement to discover if anyone else was present.⁴¹ The Court analyzed the situation under the reasonableness test⁴² where the interests of the state are balanced against the suspect's privacy interests.⁴³ In arriving at its conclusion, the Court reviewed two prior cases, *Terry v. Ohio* and *Michigan v. Long*.⁴⁴ The Court's concern in *Terry* and *Long* for officer safety involved dispelling the officer's concern that the person with whom they were dealing was not armed or otherwise dangerous.⁴⁵ The Court approached the search of the home in the same context.⁴⁶ The concern in *Buie* was not an immediate known suspect, as in *Terry*, but unknown third parties whose presence, or lack thereof, was unknown to the police.⁴⁷

The Court also concluded that the in-house arrest was more dangerous than the situations in *Terry* and *Long*.⁴⁸ The basis of this rationale was an issue of turf—the suspect's home was his environment and the officer was at a greater disadvantage than on-the-street where circumstances are more equal.⁴⁹ The Court concluded that the facts of *Buie*, the existence of a possibly dangerous third party, were a sufficient justification to outweigh the intrusion upon Buie's privacy interests.⁵⁰ The Court thus created a standard that differed from

that particular justification for entering any rooms that had not yet been searched.”).

40. *Id.*

41. *Id.* at 331–32.

42. *Id.*

43. *Id.*

44. *See id.*

45. *See id.* at 333 (“In *Terry* and *Long* we were concerned with the immediate interests of the police officers in taking steps to assure themselves that the persons with whom they were dealing were not armed, or able to gain immediate control of, a weapon that could unexpectedly and fatally be used against them.”).

46. *See id.*

47. *See id.* (“[T]he officers [had an interest] in taking steps to assure themselves that the house in which a suspect is being, or has just been, arrested is not harboring other persons who are dangerous and who could unexpectedly launch an attack. The risk of danger in the context of an arrest in the home is as great as, if not greater than, it is on-the-street or roadside investigatory encounter.”).

48. *See id.*

49. *Id.* (“Moreover, unlike an encounter on the street or along a highway, an in-home arrest puts the officer at the disadvantage of being on his adversary's ‘turf.’ An ambush in a confined setting of unknown configuration is more to be feared than it is in open, more familiar surroundings.”).

50. *See id.* at 334 (“We are quite sure, however, that the arresting officers are permitted in such circumstances to take reasonable steps to ensure their safety after, and while making, the arrest. That interest is sufficient to outweigh the intrusion such procedures may entail.”).

Chimel because it did not involve the dangerousness of the suspect,⁵¹ it involved unknown third parties.⁵² It differed from *Terry* because it did not require individualized suspicion,⁵³ as the existence of a third party is not known until the search has been conducted.⁵⁴ But the dangerousness theme underlies the entire rationale behind the *Buie* holding:⁵⁵ the execution of arrest warrants is a dangerous business, the danger is not dispelled upon the successful arrest and incapacitation of the suspect, and third parties continue to pose a serious risk.⁵⁶

The Court relied upon the same basic assumption in *Terry*, *Long*, and *Buie*: policing is a dangerous occupation and there is a great risk of intentional harm being inflicted on the police in the course of their duties.⁵⁷ *Terry* created this rationale and *Long* and *Buie* relied on it almost exclusively.⁵⁸ In *Long* and *Buie*, the Court created situation-specific assumptions concerning specific police activities.⁵⁹ These decisions identify specific activities that are uniquely dangerous to the police and permit the expansion of police discretion and authority to reduce the likelihood of danger without threatening the integrity of evidence incidentally obtained in the due course of exercising this discretion.⁶⁰ *Buie* extended the policing-as-a-dangerous-occupation rationale further than *Terry* and *Long*, as it applied only to potential or hypothetical dangers that might or could exist rather than potential threats from existing parties in the flesh.⁶¹ In addition, *Buie* justified intrusions into a suspect's dwelling—a place where the Fourth Amendment has long been held to provide its greatest protections.⁶²

II. RESEARCH ON POLICE DANGEROUSNESS

Violence directed towards the police has been the topic of

51. *See id.* at 336.

52. *See id.*

53. *Id.* at 334 (“Beyond that, however, we hold that there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those at the arrest scene.”).

54. *Id.*

55. *See id.* at 331 (“The *Terry* case is most instructive for present purposes.”).

56. *Id.* at 333.

57. *See id.* (citing *Terry v. Ohio*, 392 U.S. 1 (1968)); *Michigan v. Long*, 463 U.S. 1032 (1983).

58. *See id.*

59. *See id.*

60. *Id.*

61. *Id.*

62. “A man’s home is his castle” is a long quoted legal axiom. *See Wilson v. Lane*, 526 U.S. 603, 609–10 (1999).

numerous studies over the past several decades.⁶³ However, the application of research toward the violent victimization of the police in a context specific to the Fourth Amendment has only recently been examined.⁶⁴ One finding contradicted *Terry*'s expressly and implicitly stated assumptions that policing was a dangerous occupation.⁶⁵ This

63. See generally Sean A. Grennan, *Findings on the Role of Officer Gender in Violent Encounters with Citizens*, 15 J. POLICE SCI. & ADMIN. 78 (1987); Rebecca Reviere & Vernetta D. Young, *Mortality of Police Officers: Comparisons by Length of Time on the Force*, 13 AM. J. POLICE 51 (1994); David Konstantin, *Homicides of American Law Enforcement Officers 1978–1980*, 1 JUST. Q. 29 (1984); Terry D. Edwards, *Felonious Killings of State Police and Highway Patrol Officers: A Descriptive and Comparative Evaluation*, 14 AM. J. POLICE 89 (1994); Joel Garner & Elizabeth Clemmer, *Danger to Police in Domestic Disturbances—A New Look*, NAT'L INST. OF JUST., Nov. 1986; Albert P. Cardarelli, *An Analysis of Police Killed by Criminal Action: 1961–1963*, 59 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 447 (1968); Robert E. Little, *Cop Killing: A Descriptive Analysis of the Problem*, 7 POLICE STUD. 68 (1984); Charles Moorman, *Police Officers Murdered in California with One Shot: The 1980's*, 24 J. CAL. L. ENFORCEMENT 1 (1990); Larry Roberts, *An Analysis of Fatal Assaults Upon Law Enforcement Officers Which Occurred in the United States From 1972 Through 1978* (1981) (unpublished Ph.D. dissertation, University of Southern Mississippi) (on file with author); John G. Stratton et al., *Police in a Violent Society*, 54 FBI L. ENFORCEMENT BULL. 1 (1985); Lawrence W. Sherman et al., *Police Murder in Drug-Related Situations, 1972–1988*, in CRIME CONTROL REP. No. 7 (1989); Max Boylen & Robert Little, *Fatal Assaults on United States Law Enforcement Officers*, 63 POLICE J. 61 (1990); David Lester, *Predicting Murder Rates of Police Officers in Urban Areas*, 7 POLICE L.Q. 20 (1978); Mitchell B. Chamlin, *Conflict Theory and Police Killings*, 10 DEVIANT BEHAV. 353 (1989); Laura A. Wilson & C. Kenneth Meyer, *Violence at the Street Level: Police Casualties and Fatalities*, 64 POLICE J. 28 (1990); Freidrich Wenz, *Death Anxiety Among Law Enforcement Officers*, 7 J. POLICE SCI. & ADMIN. 230 (1979); Francis Cullen et al., *Paradox in Policing: A Note on Perceptions of Danger*, 11 J. POLICE SCI. & ADMIN. 457 (1983); James C. Hackler & Christian T. L. Janssen, *Police Killings in Perspective*, 27 CAN. J. CRIMINOLOGY 227 (1985); SAMUEL G. CHAPMAN, COPS, KILLERS, AND STAYING ALIVE: THE MURDER OF POLICE OFFICERS IN AMERICA (1986); William Wilbanks, *Cops Killed and Cop-Killers: An Historical Perspective*, 13 AM. J. POLICE 31 (1994); L. DYKSTRA, ILLINOIS LAW ENFORCEMENT OFFICERS ASSAULTED OR KILLED: 1972–1982 (1984); FED. BUREAU OF INVESTIGATION, KILLED IN THE LINE OF DUTY: A STUDY OF SELECTED FELONIOUS KILLINGS OF LAW ENFORCEMENT OFFICERS (1992); David Lester, *A Study of Civilian-caused Murders of Police Officers*, 6 INT'L J. CRIMINOLOGY & PENOLOGY 373 (1978); MONA MARGARITA, CRIMINAL VIOLENCE AGAINST POLICE (1980); Ruth D. Peterson & William C. Bailey, *Structural Influences on the Killing of Police: A Comparison with General Homicides*, 5 JUST. Q. 207 (1988); Edward F. Davis & Anthony J. Pinizzotto, *Above and Beyond the Call of Duty: Preventing Off-Duty Officer Deaths*, 65 FBI L. ENFORCEMENT BULL. No. 4, 1996, at 1; Cindy Clarke & Mark J. Zak, *Fatalities to Law Enforcement Officers and Firefighters, 1992–1997*, COMPENSATION & WORKING CONDITIONS, Summer 1999, at 3–7; JODI M. BROWN & PATRICK A. LANGAN, U.S. DEPT OF JUST., POLICING AND HOMICIDE, 1976–1998: JUSTIFIABLE HOMICIDE BY POLICE, POLICE OFFICERS MURDERED BY FELONS (2001); Candice Batton, *Police Murders: An Examination of Historical Trends in the Killing of Law Enforcement Officers in the United States, 1947 to 1998*, 10 HOMICIDE STUD. 79 (2006).

64. See *infra* notes 65–73 and accompanying text.

65. Ilysa Lichtenberg, Alisa Smith & Michael Copeland, *Terry and Beyond: Testing the Underlying Assumption of Reasonable Suspicion*, 17 TOURO L. REV. 439, 458–59 (2001).

study, examining the underlying rationale of *Terry*, compared police homicide victimization rates to the victimization rates of the general population, while controlling for the demographic characteristics of age and sex.⁶⁶ The study found that the victimization rates for police were considerably lower than the demographically controlled population.⁶⁷

Another study examined the dangerousness of motor vehicles stops to the police.⁶⁸ Rather than comparing the rates of victimization, the study utilized a “danger ratio.”⁶⁹ The danger ratio controlled for the frequency of the police activity rather than merely making comparisons between aggregate numbers.⁷⁰ The study found that roughly ten police officers were victims of felonious killing per year during motor vehicle stops.⁷¹ Because motor vehicle stop are so common in general police activities, the likelihood of such victimization was extremely unlikely.⁷² This study examined an assumption underlying motor vehicle stops in *Michigan v. Long* and uncovered evidence in part contradicting the assumption of the inherent dangers of motor vehicle stops in cases such as *Long*.⁷³

Unfortunately, the two studies aimed at examining dangers inherent to the police in the Fourth Amendment context failed to be situation specific. The studies examined broadly defined assumptions of the *Terry* and *Long* Courts, but failed to provide more specific circumstances where a particular police activity is dangerous, as the reasonableness test requires.⁷⁴ The reasonableness test is assessed on a case specific basis and does not rely on broad-based assumptions only partially related to the immediate situation in controversy.⁷⁵

66. *Id.*

67. *Id.* (“Based on this analysis, male police officers are not placed at risk of homicide victimization, either on or off duty, beyond that which male citizens in a similar age group face daily. The victimization rates between the two groups are very similar, and in fact it appears reasonable to conclude that police officers have a lower risk of homicide victimization than do the aggregate of males in a similar age group. This finding contradicts the assumption in *Terry* and its progeny that police face greater risk than the general population.”).

68. Illya Lichtenberg & Alisa Smith, *How Dangerous are Routine Police-Citizen Traffic Stops?: A Research Note*, 29 J. OF CRIM. JUST. 419, 419 (2001).

69. *Id.* at 420–21. The danger ratio was adapted from the research of Joel Garner and Elizabeth Clemmer. Garner & Clemmer, *supra* note 63, at 1 (examining the rate of police victimization while controlling for the frequency of the police activity).

70. Lichtenberg & Smith, *supra* note 68, at 419.

71. *Id.*

72. *Id.* 425–26.

73. *Id.* 419–20; (specifically referring to *Maryland v. Wilson*, 591 U.S. 408 (1997) and *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), and referring to *Knowles v. Iowa*, 525 U.S. 113 (1999)).

74. See *Maryland v. Buie*, 494 U.S. 325, 331–32 (1990).

75. *Id.*

Research relating specifically to the dangers of warrant service is unavailable. Little research exists on warrants in general, and the little research that does exist focuses primarily on search warrants.⁷⁶ These studies make no attempt to gauge the inherent dangers of warrant execution. Their focus is primarily on search warrant applications, processes, and results, not execution.⁷⁷ Although search and arrest warrant execution may be similar in many regards, they also differ in material respects. *Buie* applies to arrest warrants, but it is unclear how *Buie* applies to the execution of search warrant.⁷⁸ A search warrant seeks an object while an arrest warrant seeks a person.⁷⁹ Thus, it is unlikely the limited data available on search warrants is of material use for empirically analyzing the execution of arrest warrants or legal process generally in a suspect's home. The absence of any references to the dangers of search warrant execution in the two studies is telling. Researchers conducted interviews and observations that could have uncovered whether serious safety concerns exist; however, the inference that the interviews did not uncover safety concerns is not dispositive.⁸⁰

Although the empirical research on violence against the police casts doubts upon parts of the underlying rationale of *Terry* and progeny, legal commentators have attempted to draw inferences from other research, which at least in part lends support to the Court's conclusion in *Buie*.⁸¹ For example, research concludes that suburban police departments have measurably increased their use of bullet proof vests;⁸² between 1980 and 1990 there has been a seventy-nine percent increase in juveniles who murder with a gun;⁸³ and juvenile boys and girls reported forty-one and twenty-one percent respectively could obtain a hand gun anytime they wanted.⁸⁴ It is unclear how these assertions have direct application to the service of warrants or legal

76. Richard Van Duizend, L. Paul Sutton & Charlotte A. Carter, *The Search Warrant Process: Preconceptions, Perceptions, and Practices*, NAT'L CTR. FOR STATE COURTS, 1968, at 3.171, 3.171–3.172; Craig D. Uchida & Timothy S. Bynum, *Search Warrants, Motions to Suppress, and "Lost Cases": The Effects of the Exclusionary Rule in Seven Jurisdictions*, 81 J. CRIM. L. & CRIMINOLOGY 1034, 1034 (1990).

77. Duizend et al., *supra* note 76, at 3.173–3.178; Uchida & Bynum, *supra* note 76, at 1058.

78. *See Buie*, 494 U.S. at 327.

79. Uchida & Bynum, *supra* note 76, at 1058 (finding that search warrant execution lead to an arrest in fifty-four percent of the primary warrants executed).

80. *Id.*

81. *See, e.g.*, Daniel L. Rotenberg, *Essay: An Essay on the Unexpected Person Factor in Searches and Seizures*, 39 ST. LOUIS L.J. 505 (1995).

82. *Id.* at 517 n.107.

83. *Id.* at 517 n.108.

84. *Id.* at 518 n.109.

process in the suspect's home, but legal scholars have advanced arguments, at least in part based on empirical evidence, as support for the protective sweep doctrine.⁸⁵

Overall, empirical evidence suggests that the Supreme Court's assumptions concerning the dangers of policing may be misguided. Concerning the service of legal process and arrest warrants specifically at a suspect's home, there is little evidence to support or refute the *Buie* Court's assumptions concerning the inherent dangers posed by warrant execution and the unknown third parties who may launch an attack on the police.

III. METHODOLOGY

The study presented in this article seeks to examine the situation-specific assumptions of the *Buie* Court's rationale.⁸⁶ As noted earlier, the *Buie* decision is based upon the potential dangers presented by unknown third parties.⁸⁷ The data collected for this study provide sufficient detail to draw conclusions concerning this assumption. Unlike previous studies testing assumptions of *Terry* and progeny, which focused on broad-based assumptions of dangerousness, this study seeks to examine the five principle assumptions of the *Buie* Court.⁸⁸ First, the service of process, particularly arrest warrants is dangerous.⁸⁹ Second, the home is more dangerous than the street.⁹⁰ Third, ambushes may occur.⁹¹ Fourth, the threat of lethal violence remains after the primary suspect has been securely placed in custody.⁹² Fifth, this threat of lethal violence arises from unknown third parties in the home.⁹³

This Part is split into two subsections.⁹⁴ The first addresses the sources of data utilized in the study noting the strengths and limitations

85. *See id.* at 518.

86. The use of the word "examine" as opposed to "test" was intentional. The data provide many insights into the variables, but additional data, currently unavailable, is necessary to test all of the assumptions fully. The missing data is that of the "base rate" data not available discussed earlier.

87. *See Maryland v. Buie*, 494 U.S. 325, 336 (1990).

88. *Id.*

89. *See infra* Part IV.A. The term legal process is defined broadly to include the service of any process authorized by a judicial officer or being authorized by law. This includes: arrest and search warrants; temporary restraining orders; civil commitment orders; a capias; bench warrant; civil judgment execution, or any other similar police activity with an eye towards inclusion.

90. *See infra* Part IV.B.

91. *See infra* Part IV.C.

92. *See infra* Part IV.D.

93. *See infra* Part IV.E.

94. *See infra* Part III.

of the data sources.⁹⁵ The second subsection discusses how the variables in the study were created from the data.⁹⁶

A. Data Source

The data sources used for the study were derived from Law Enforcement Officers Killed and Assaulted (“LEOKA”),⁹⁷ an annual publication of the Federal Bureau of Investigation.⁹⁸ The data provided by LEOKA includes all line of duty deaths of police officers on or off duty.⁹⁹ The data on deaths is separated into two primary categories:¹⁰⁰ accidental killings and felonious killings.¹⁰¹ In addition to providing aggregate statistics for the United States and its territories¹⁰² on the felonious killings of police, the LEOKA provides a narrative summary description of each felonious killing.¹⁰³ LEOKA does not provide any aggregate statistics on the felonious killings of police officers during the service of legal process or for warrant service, nor any comparable situational data.¹⁰⁴ The felonious killings occurring during warrant execution and other legal process service were derived from the narrative summaries of felonious killings in LEOKA.¹⁰⁵ The summaries selected for inclusion in the study were the execution or service of any legal process. The study construes legal process liberally to promote inclusion of felonious killings unless the descriptions clearly fell outside the possible scope of the *Buie* decision.

The Federal Bureau of Investigation Uniform Crime Reporting Section (“UCR”) collects the LEOKA data.¹⁰⁶ The UCR uses three methods for collecting information on police officers feloniously killed

95. See *infra* Part III.A.

96. See *infra* Part III.B.

97. See FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS, LAW ENFORCEMENT OFFICERS KILLED AND ASSAULTED (1996) [hereinafter LEOKA].

98. *Id.*

99. *Id.* at 3.

100. *Id.* at 3–5.

101. *Id.* It should be noted that felonious killings include a definition that is considerably broader than the traditional measures of murder and non-negligent manslaughter measured in the Uniform Crime Reports.

102. The geographic scope of LEOKA is broader than the traditional Uniform Crime Reporting as it includes United States territories such as the U.S. Virgin Islands, Guam, and Puerto Rico. LEOKA also includes United States law enforcement officers killed in other countries. See *id.* at 62 tbl.22.

103. *Id.* at 41–57.

104. The closest classification provided by LEOKA is “arrest situations,” which is very broad and includes by majority non-warrant initiated arrests.

105. LEOKA compiles a “summary of incidents” resulting in the felonious killing of a police officer for each year it is published.

106. LEOKA, *supra* note 97, at 1.

in the line of duty.¹⁰⁷ First, police agencies participating in the Uniform Crime Reporting Program notify the UCR of the duty-related death and provide preliminary data.¹⁰⁸ The respective FBI field division also reports these incidents in the geographic area where the police officer was killed.¹⁰⁹ Once reported to the UCR, the Bureau of Justice Assistance, through the Public Safety Officers Benefits Program administrator, does a follow up throughout the year.¹¹⁰ The UCR considers this threefold reporting mechanism as providing valid and complete data.¹¹¹ Because of these three data collection procedures, the infrequency in which police are killed feloniously,¹¹² and the fact that the data provided are from the police on their own members,¹¹³ suggests the quality of this secondary data source is quite high in comparison to other measures of criminal victimization.¹¹⁴ The single greatest validity threat to the quality of the data is that because police provide the data on their own membership, there is the real possibility that the data omits misconduct, violence, or other questionable behavior by the victim-officer or that an officer strategically writes the report to mask police deviance.¹¹⁵

B. Variables and Definitions

Several variables were created from the summary descriptions provided in LEOKA of police officers feloniously killed during the execution or service of process. The first variable is the form of process being served. The second variable identifies the location of where the fatal incident between the police and the suspect occurred. The third variable specifies whether the suspect was secured or not when the felonious killing occurred. The fourth variable identifies

107. *Id.*

108. *Id.* (explaining that virtually all police agencies participate in the UCR program).

109. *Id.*

110. *Id.*

111. *Id.*

112. See Lichtenberg et al., *supra* note 65.

113. LEOKA, *supra* note 97, at 1.

114. Walter R. Gove et al., *Are Uniform Crime Reports a Valid Indicator of Index Crimes? An Affirmative Answer with Minor Qualifications*, 23 CRIMINOLOGY 451 (1985); Philip J. Cook, *The Case of the Missing Victims: Gunshot Woundings in the National Crime Survey*, 1 J. QUANTITATIVE CRIMINOLOGY 91 (1987); Scott Menard, *Short Term Trends in Crime and Delinquency: A comparison of UCR, NCS, and Self-Report Data*, 4 JUSTICE Q. 455 (1982); Richard McCleary et al., *Uniform Crime Reports as Organizational Outcomes: Three Times Series Experiments*, 29 SOC. PROBS. 361 (1982).

115. Two highly publicized incidents, Waco and Ruby Ridge, are included in the analysis, which raise suspicions concerning the data's integrity. For example, in the Ruby Ridge incident, the man who killed the officer was acquitted. See *Harris v. Roderick*, 933 F. Supp. 977 (D. Idaho 1996), *aff'd*, 126 F.3d 1189 (9th Cir. 2010).

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whether the felonious killings were the product of an ambush. The fifth variable indicates whether a third party caused the felonious killing.

Process: Process describes the intended activity being undertaken by the police when the felonious killing occurred. These are categorized into the following classifications:¹¹⁶

Arrest Warrant: This includes arrest warrants and bench warrants.¹¹⁷ The definition also includes felonious killings where the initial contact between the police and the suspect was based on other grounds but an active warrant was discovered during the contact or known to the officer prior to the officer's death. The police officer was not required to possess the warrant at the time of the felonious killing; but only required to have knowledge of its existence. Instances where the existence of a warrant was unclear, VOPs (Violation of Probations) and PVs (Parole Violations), were also coded as arrest warrant. Because *Buie* applied to arrest warrants, in some analyses a separate analysis of arrest warrants is conducted in that section.

Search Warrant: This includes all felonious killings where the police officer was in possession of a search warrant and had the intent to or was present for the purpose of executing the warrant. In addition, retaliatory killings after execution of the search warrant were included.

Search and Arrest Warrant: This includes all circumstances where both an arrest warrant and a search warrant were in the possession of the police.

Temporary Restraining Order: This includes all cases where the police went to a residence or other location for the purpose of serving a temporary or permanent restraining order or similar process.

Involuntary Commitment: This includes all cases where the police possessed a court order for involuntary commitment or court order for psychiatric testing to be served on the subject and/or for ordering the suspect be taken into custody.

Civil Process: This includes all service of a civil nature other than mental health. This variable could also be defined as any process that is not criminal or psychiatric in origin.

Third Party: Third party is defined as any person directly connected to the killing of the police officer who is not the target of the process. Because search warrants are directed at property and not at individual people, it was impossible to determine if third parties

116. Abbreviated terms used in the tables follow the form of process in parenthesis.

117. Bench warrants differ from arrest warrants in that bench warrants are for a failure to appear in court as where arrest warrants are for an actual offense.

existed, thus this variable was not applied to search warrant killings.¹¹⁸

Location: The location of the killing was coded as one of five categories: one indoor and four outdoor. *Room* refers to any killing occurring inside a primary residential dwelling. *Entrance*, indicates that the killing occurred at any entrance into a structure, including porches, front doors, and apartment building hallways and staircases. *Forced entry* refers to the officer being killed immediately upon forced entry, generally limited to knock and announce search warrant entries. *Outside*, indicates that the killing occurred clearly outside the home, including the patrol vehicle, yard, and unattached structures to the main structure.¹¹⁹ *Street* refers to killings unconnected to a warrant execution in the home. This includes encounters originating on the street, pursuits leading a substantial distance from the home, or apprehended suspects who later escape or attack the police when away from the home.

Secure: In cases of process effecting individuals, this variable refers to whether the police have placed the target of the process in police custody, primarily indicating the individual has been handcuffed. In the context of search warrants, this variable did not apply and was automatically coded as secured.

Home: This variable identifies whether the contact between the assailant and the victim-officer began at the home. A home is broadly defined and includes, single and multifamily dwellings, apartment houses and complexes, trailers, stationary or mobile, and motels. Cases where the home is not identified, indicates that the execution of the process was initiated at some other location, usually through street observation.

Ambush: The term ambush was used on a very restricted basis. An ambush required that the officer have no knowledge of the killer's whereabouts prior to the killing. The ambush must be the direct cause of the killing; an ambush not resulting in fatal injury of police was not included. LEOKA utilized the term ambush in the summary descriptions; unfortunately, it did not appear that the use of the term was governed by any form of definition or used consistently. This research did not consider LEOKA's use of the term "ambush" as an indication that an actual ambush took place. There were significant discrepancies between LEOKA's use of the term and the use for this research. As a general note, the definitions used in this research resulted in a greater number of ambushes than those suggested by

118. All search warrant cases were coded as having no third party involvement.

119. Unattached structures included garages, sheds, etc.

LEOKA.

Temporal Scope: The data utilized in the study were extracted from years 1985 through 1995, totaling ten years of data.¹²⁰ Though more current data is available, this temporal scope was utilized so the before and after effects of *Buie* could be gauged. This encompassed five years of data prior to *Buie* (1985-1990) and five years after *Buie* (1990-1995).¹²¹

IV. DATA ANALYSIS

This Part begins with a brief assessment of the total number of police officers feloniously killed during the service or execution of process. Next, it examines whether *Buie* caused a decrease in the number of police officers killed during the execution or service of process.¹²² Each of the five variables discussed earlier is then examined individually.¹²³ Part V then discusses the findings and conclusions.¹²⁴

During the ten-year study period, there were sixty-eight incidents in which seventy-six police officers were feloniously killed in the line of duty while serving or executing any form of legal process. This results in an annual average of 6.8 incidents and 7.6 police officers being feloniously killed in the line of duty while engaged in the service of process during the study period. It is very difficult to gauge the dangerousness of this activity since it is unknown how often the police engage in the service and execution of process.

The *Buie* decision was rendered in the earlier part of 1990. To examine whether *Buie* affected the rate of felonious killings, officer deaths involving service of process in homes were examined both before and after *Buie*. Five years of data before the *Buie* decision and five years of data after are included for analysis. Figure 1 illustrates the observed changes in the number of police feloniously killed during service process and execution.

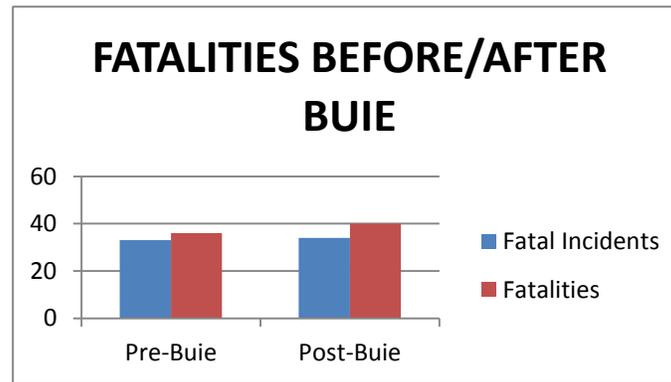
120. The data was specifically extracted from February 28, 1985 to February 28, 1995. These dates were selected to match the date of the *Buie* decisions release on February 28, 1990.

121. It is impossible to gauge whether *Buie* had an actual impact on police practices governing protective sweeps, it was presumed for purposes of this research that police practices and guidelines have followed the law as articulated by the Supreme Court.

122. See *infra* Part IV.A.

123. See *infra* Part IV.B-E.

124. See *infra* Part V.

Figure 1:

The differences between the before and after data for the felonious killing of police officers is slight. Before *Buie*, there are thirty-three incidents resulting in thirty-six felonious killings; after *Buie* there are thirty-four incidents resulting in forty felonious killings.¹²⁵ The slight increase in fatal incidents after *Buie* did not achieve statistical significance ($\chi^2 = .015$, $df = 1$, $p = .9028$).¹²⁶ The slight differences observed in the total number of officers killed also did not achieve statistical significance ($\chi^2 = .211$, $df = 1$, $p = .6464$).¹²⁷ The first analysis of the data, attempting to measure if the *Buie* decision resulted in a decrease in the number of felonious killings during process service, did not demonstrate any material alteration of the status quo. In fact, a slight and non-significant increase was observed. Although no observable changes were recorded, the finding is limited from a lack of knowledge concerning any increases or decreases in process service which may have occurred during the period.

A. Process Service

This section examines the felonious killings of police officer

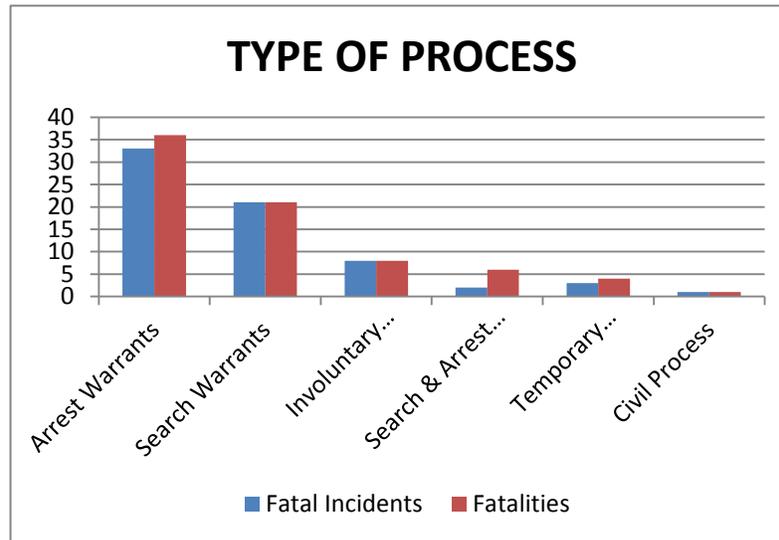
125. The difference between the number of officers feloniously killed and the number of incidents is due to the fact that more than one officer can be feloniously killed in one incident.

126. The chi squared test statistic used in the analysis is one of the most commonly used statistical tests for nominal level data. The $p = .9028$ value indicates that there is an over 90% probability that the observed differences were simply random and not caused by any outside forces.

127. Arrest warrants only also failed to achieve statistical significance ($\chi^2 = .235$, $df = 1$, $p = .6278$).

during specific process service and execution. Figure 2 illustrates the types of process service where felonious killings took place.¹²⁸

Figure 2:



Of the seventy-six felonious killings, thirty-six—just over half—occurred during the execution of an arrest warrant. This was followed by the execution of search warrants, which account for twenty-one felonious killings in twenty-one separate incidents. The service of temporary restraining orders, involuntary commitment orders, and civil process, account for only twelve—just under sixteen percent—of the total felonious killings. Clearly, service of arrest warrants followed by service of search warrants are the more dangerous police practices based on the aggregate statistics. Unfortunately, aggregate statistics cannot provide conclusive support that one particular activity is more dangerous than another because of the absence of a base rate—amount of time an officer spends on the activity—from which to compare.¹²⁹ Since the total number of arrest warrant executions is unknown, it is impossible to know how dangerous a particular activity is in relation to another activity. This data limitation applies to all other forms of process service and also applies to comparisons between them.

128. Compare to base rate issue in Garner & Clemmer, *supra* note 63, with Lichtenberg *et al*, *supra* note 65, and discussed earlier in this text, *supra* Part II.

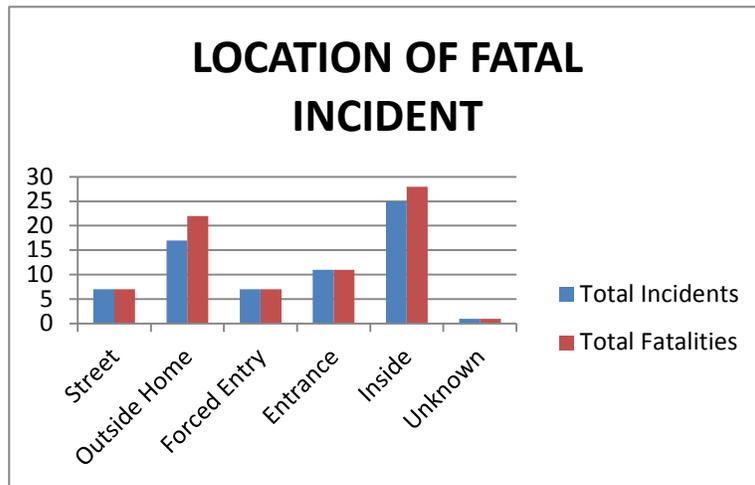
129. Garner & Clemmer, *supra*, note 63.

B. Home

The home was one of the more dangerous locations for the service and execution of process. Sixty-five of the seventy-six incidents and seventy-four of the eighty-five felonious killings took place at or around the suspect’s home, a staggering eighty-seven percent.¹³⁰ While this certainly lends support to the *Buie* Court’s assumption that in in-home warrant execution is more dangerous than on-the-street encounters, it is again subject to the limitations of the absence of a base rate. It is unknown how many warrants are executed at an individual’s home versus on-the-street encounters.

Although the home, when broadly defined, appears dangerous, the *Buie* Court used a more restrictive analysis of dangerousness than the prior analysis. The prior analysis examined the actual or intended service or execution of process in the suspect’s home. The *Buie* Court’s analysis and the protective sweep doctrine actually apply to being physically inside the home. Figure 3 breaks down the locations of the fatal assaults by location.

Figure 3:



when examined in more detail, inside the home remains dangerous, but not as dangerous as the first analysis indicated. The majority of the felonious killings of the police occurred prior to entry into the home. Roughly sixty percent of the fatal incidents took place outside the home prior to or during entry. Thus, of the seventy-six incidents occurring during this time period, only thirty-one of the incidents are within the framework of the protective sweep doctrine.

130. Search warrant related felonious killings were included in the analysis.

C. Ambush

Ambushes in the service of process were not uncommon, though short of being called a norm. Of the seventy-six fatal incidents, sixteen were classified as ambushes, resulting in the deaths of sixteen of the eighty-five police officers killed during the study period.¹³¹ The Court was very specific about ambushes in the *Buie* decision.¹³² The *Buie* Court specifically stated that “[a]n ambush in a confined setting of unknown configuration is more to be feared than it is in open, more familiar surroundings.”¹³³ To further test the *Buie* Court’s assumption, the ambush cases are analyzed separately for the type of process being served and the location of the ambush.

Of the sixteen incidents classified as ambushes, it appears that a closer examination provides less support for the *Buie* Court’s assumption. Only six of the sixteen ambushes occurred inside the home, five occurred during a forced entry attempt to execute a search warrant, three occurred at the entrance to the home, and two occurred outside the home entirely. Another notable observation is the small number of arrest warrant cases involving ambushes. Arrest warrants account for forty-three of the eighty-five police officers slain during the service of process—slightly more than fifty-percent. In the ambush context, only four of the sixteen ambush incidents occurred during the service of arrest warrants. It appears that an ambush occurring during the execution of arrest warrants is a relatively rare occurrence. Notably, search warrants account for eleven of the sixteen ambush incidents, many occurred during a forced entry. It appears that ambushes are more frequently related to search warrants, though they do occur on occasion in the execution of arrest warrants. In addition, of the fatal ambushes, only six, or 37.5%, occurred inside the home. This provides limited support and perhaps even contradicts the *Buie* Court’s assertion that ambushes within the home were to be feared more. It appears that in most ambush situations the police have not made entry into the home or are making initial entry.

D. Secured

In *Buie*, the Supreme Court was concerned that even after the police secured the principle suspect, the dangers to the police officer were not dispelled.¹³⁴ In this analysis, only one police officer was

131. This constitutes 18.8% of the felonious killings, roughly one in five of the fatalities the result of an ambush.

132. *Maryland v. Buie*, 494 U.S. 325, 333 (1990).

133. *Id.*

134. *Id.*

fatally assaulted while the suspect was secure. In this case, it was questionable whether the suspect was secure according to the definition. The suspect was not handcuffed, but merely placed in the rear of the patrol car, prior to the fatal assault.¹³⁵ Because this variable is interrelated with the third party variable, further discussion will be reserved for that section. It should also be noted that secured did not apply to search warrant cases, which were not included in the analysis of this variable.

E. Third Party

The crux of the *Buie* decision rested on the presence of unknown third parties who might launch an attack against the police after the arrest warrant has been executed and the targeted suspect secured.¹³⁶ This assumption has some strange aspects surrounding it. In *Buie*, the police conducted a protective sweep of the basement after they secured *Buie*.¹³⁷ It seems odd that a third party would launch an attack after the removal of the suspect. Why would an ambush against the police occur if the person is already gone? Because the person undertaking the ambush could not free the apprehended suspect if the ambush was successful, there appears to be little that could be accomplished, other than perhaps seeking revenge.

The troubled aspect of the Court's reasoning in *Buie* directed at third parties played out in the reality of the killings during the service of process. No felonious killings of police officers were directly attributable to third parties and only in two of the seventy-six incidents was there any third party involvement at all. In one case a third party thwarted the initial apprehension of the suspect, by interfering with the officer's arrest, the chase was then resumed, and the officer was later slain by the person he was pursuing. Clearly, the third party did not cause the death of the officer; in addition, at the time of the third party involvement, the suspect was not in custody.¹³⁸ In the other case, the three officers killed were serving an arrest warrant for a mother and son and there were three sons present in the motel room where the slayings occurred. The involvement of the two sons not targeted by the arrest warrants is unclear. Even if the two sons were involved in the slayings of the three officers, it does not fulfill the factual requirements of the *Buie* decision as the two suspects targeted by the arrest warrants were

135. *Id.*

136. *Buie*, 494 U.S., at 334.

137. *Id.* at 328.

138. *Id.*

clearly not yet secured.¹³⁹

This analysis undercuts the crux of the *Buie* Court's assumptions regarding unknown third parties. Experience both before and after *Buie* demonstrates that unknown third parties pose little threat to the police when service or executing legal process at a suspect's home.

V. DISCUSSIONS AND CONCLUSIONS

The *Buie* Court entertained a new expansion of the *Terry* rationale, implicating an area significantly protected by the Fourth Amendment, the home.¹⁴⁰ The Court applied a reasonable suspicion of danger to the officer analysis as a justification for the protective sweep of the home.¹⁴¹ This was a significant expansion of the *Terry* standard.¹⁴²

Until *Buie*, *Terry* and progeny were limited to suspicions concerning known suspects who could be identified by the police. Whether those suspicions were right or wrong was not the point; the underlying principle of *Terry* was that the officer was able to articulate specific grounds for the suspicion of a known person.¹⁴³ *Buie* drastically altered the *Terry* rationale—rather than requiring the police to justify why a particular person may present a threat to the officer or others at a particular time, *Buie* permits police to suspect a person is dangerous before the person even is known to exist. *Buie* also applied to an area where the expectation of privacy was even greater, the home.¹⁴⁴ *Terry* involved an on-the-street encounter¹⁴⁵ and *Long* involved a motor vehicle stop.¹⁴⁶ In both situations, there is a lesser expectation of privacy than in the home. *Buie* involved a protective sweep of an individual's home, thus allowing reasonable suspicion to be applied to the area with the greatest expectation of privacy. The *Buie* Court qualified this by limiting the protective sweep to places where an individual might be hiding, but that limitation leaves little outside the scope of the protective sweep.¹⁴⁷

In the traditional balancing test, the interests of the state are weighed against those of the individual.¹⁴⁸ The stakes are high on both

139. *Id.*

140. *Maryland v. Buie*, 494 U.S. 325, 337 (1990).

141. *Id.* at 335–36.

142. *Id.* at 333.

143. *Terry v. Ohio*, 329 U.S. 1, 30 (1968).

144. *Buie*, 494 U.S. at 335–36.

145. *Terry*, 329 U.S. at 6–7.

146. *Michigan v. Long*, 463 U.S. 1032, 1035–36 (1983).

147. *Buie*, 494 U.S. at 342 (Brennan, J. dissenting).

148. *Id.* at 332.

sides of the debate. On the side of the state are the officer's interest in not being victimized and potentially losing his or her life to an ambush or other third party attack. On the citizen's side are the interests in not having the privacy of the home invaded without a substantial state justification.

This research undertook an empirical examination of the *Buie* Court's rationale to provide a better understanding of the scope of police victimization during in-home warrant and other legal process execution and service. In addition to examining the scope of victimization, specific aspects of *Buie*'s underlying rationale were examined empirically. This empirical study examined how police officers are killed feloniously in the line of duty while executing arrest warrants and other process.

The findings were that the felonious killing of a police officer while serving legal process is an infrequent occurrence, an average of 7.6 officers per year.¹⁴⁹ Unfortunately, a danger ratio analysis is not possible because the data simply does not provide a base rate from which to compare, thus where the dangers of serving legal process falls in relation to other police activity remains unknown.

In support of the *Buie* Court's assumption was the finding that the home was a particularly dangerous location.¹⁵⁰ Eighty-seven percent of the officers feloniously killed while serving or executing process occurred while attempting to serve or execute process at a home. This supportive finding was limited by the fact that it is unknown how many warrants are executed at the home compared to other locations, thus making the computation of a danger ratio impossible. Although ninety-one percent occurred in or around the home, the protective sweep doctrine also is limited to within the home. When analyzed in this context, the number of police killed inside the home was reduced to less than half of the first analysis—approximately thirty-seven percent.

Also supporting the *Buie* Court's assumptions were the findings concerning felonious killings by type of service. Arrest warrants accounted for nearly fifty percent of the total felonious killings in the study. This finding was again limited by the inability to apply a danger ratio, as how often arrest warrants are served in comparison to other types of service is unknown.

The findings on ambushes against the police in the service or

149. This is less than the average of 10 police feloniously killed per year during motor vehicle stops observed in the Lichtenberg *et al*, *see supra* note 65, though this conclusion is limited by the inability to apply Garner & Clemmer's, *see supra* note 63, danger ratio.

150. *See Buie*, 494 U.S. at 333.

execution of process were mixed. There were ambushes against the police—slightly less than twenty percent—but much of this was accounted for during search warrant execution, particularly knock and announce situations. Arrest warrant service accounted for only a small number of ambushes. There is limited data to support the *Buie* Court's contention concerning ambushes, but they are infrequent and usually involve search warrants as opposed to arrest warrants.

In the context of an unknown third party launching an assault against the police after the arrest warrant has been executed and the suspect restrained, it appears that such attacks, if they occur at all, have not been frequent enough or severe enough to result in the felonious killing of a police officer. As discussed earlier, the crux of the *Buie* decision rests on the assumption that unknown third parties are willing to launch a potentially lethal attack against the police.¹⁵¹ The attacks by potential third parties simply did not occur as the Court believed they might. Third parties were unwilling or unable to launch a fatal assault against the police. The findings of this research conclusively point out that the suspects willing to fatally assault the police are the targets of the arrest warrant or other process, the people with the most to lose.¹⁵² This third party concept could not be applied to search warrants and perhaps a more focused analysis of the dangers of search warrant service would be helpful. Of course, the applicability of the protective sweep doctrine to the execution of search warrants is also unclear.

This research concludes that in a study of fatal assaults against the police during a ten-year period, there was no evidence to support a conclusion that unknown third parties present a serious threat to the police. It should also be noted that, since *Buie*, circuit courts have been split on the contentious issue of expanding the protective sweep doctrine, particularly to situations in which the police gain entry into the home through consent and then undertake a protective sweep.¹⁵³ Although this research did not specifically attempt to gauge the dangerousness of this police practice, the findings should be considered instructive for that purpose.

The findings of this research are limited in certain respects. The absence of the danger ratio is perhaps the most significant limitation and especially implicates the findings on the *process*, *location*, and *home* variables. The *secure* and *third party* variables are not seriously

151. *Id.* at 334.

152. This finding does not necessarily apply to search warrants.

153. Jamie Ruf, Note, *Expanding Protective Sweeps within the Home*, 43 AM. CRIM. L. REV. 143, 155–59 (2006).

implicated by the absence of sufficient data to create a danger ratio. This research has also relied on data that is now nearly twenty years old and more current data is available for analysis. Finally, the data was also extremely limited for its applicability to search warrant execution and should be considered with great caution.

Future research on the dangers of police activities would benefit greatly from data allowing the computation of a danger ratio. Also, research independently focusing upon the dangers inherent to the execution of search warrants would provide more instructive findings concerning the execution of that form of process. Finally, research using the most currently available data may be more useful for policy and legal decision-making.

Even considering the limitations of this research and potential benefits of a danger ratio and more current data, the dangers of third parties to the police while serving or executing legal process were not observed in this study. The findings of this research strongly suggest that the *Buie* Court's assumptions relied upon in justifying the protective sweep doctrine were erroneous.