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OVERSIGHT OF FEDERAL PROGRAMS FOR EQUIPPING STATE AND LOCAL LAW ENFORCEMENT AGENCIES

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

SEPTEMBER 9, 2014

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OVERSIGHT OF FEDERAL PROGRAMS FOR EQUIPPING STATE AND LOCAL LAW ENFORCEMENT

TUESDAY, SEPTEMBER 9, 2014

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:31 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Thomas R. Carper, Chairman of the Committee, presiding.

Present: Senators Carper, Landrieu, McCaskill, Baldwin, Coburn, Johnson, Paul, and Ayotte.

OPENING STATEMENT OF CHAIRMAN CARPER

Chairman CARPER. The hearing will come to order. We want to welcome all of our guests this morning. We especially want to welcome our witnesses, the first panel and our second panel.

One month ago today, an unarmed young man named Michael Brown was shot and killed by a local policeman in the town of Ferguson, Missouri. It has been stated that the officer was acting in self-defense. While the incident remains under investigation, this much is known. It has caused very real pain for Mr. Brown's family, as well as for many residents of Ferguson and for others across our country. The events that unfolded in Ferguson have sparked a much needed national discussion on a range of issues, including police strategy, law enforcement response to civil protest and unrest, and race relations. The purpose of today's hearing, though, is not to explore what happened in Ferguson on that fateful day or to assign blame. That is the responsibility of our judicial system.

Rather, the purpose of today's hearing is to examine the effectiveness of Federal programs that provide State and local police with surplus military equipment and grant funding for equipment, exercises, planning, and training. The issues we will be discussing today are not just about Ferguson. They affect communities across our Nation. As we take a deep dive into the Federal programs that help equip State and local law enforcement agencies, we want to explore the value of these programs to police, the communities they serve, and especially to taxpayers.

I want to just start off by thanking Senator McCaskill and her staff for all of their efforts in organizing this hearing and for co-chairing it with me. Our colleague from Missouri has spent a great deal of time in Ferguson this past month examining these issues,

and we look forward to learning from her firsthand experiences. Claire, I want to thank you for your leadership during this difficult time and, for all that you have done to help our country move forward and learn from what you and your fellow Missourians have been grappling with.

During the weeks that followed the shooting of Michael Brown, national media attention focused on the protests, including the response by local law enforcement. Many questions rightfully have been posed by local leaders, by civil rights organizations, by police associations, law enforcement experts, and others on whether the police response was correct, measured, and appropriate.

In thinking about these issues we will be discussing today, I cannot help but think about how, in my own home State of Delaware, we are learning all over again the value of our police spending more time outside of their police cars, working and talking every day with people in the community and engaging them in positive ways. As you might imagine, this helps build the bonds of trust that strengthen communities in ways that armored personnel vehicles and assault weapons never can.

We have convened today to examine the Federal Government's role in helping State and local police do their important work. Since 1997, Federal agencies have supplied over $5 billion in surplus Department of Defense (DOD) supplies and equipment to law enforcement. In addition, both the Departments of Justice (DOJ) and Homeland Security (DHS) administer grant programs that also can pay for military-style gear such as armored vests and vehicles.

In light of the events in Ferguson, our Committee has reviewed the role of Federal agencies in providing equipment, supplies, and weapons to State and local law enforcement. Our staff has received briefings from the agencies and has reviewed key documents. This review by Congress is long overdue. The Federal witnesses with us today will describe the programs that can supply tactical and military-style equipment and weapons to law enforcement and the current oversight requirements and procedures. We will hear from a second panel of witnesses with critical knowledge and opinions on these programs, including some with law enforcement backgrounds.

We will explore the proper roles and techniques for using this equipment. We will also examine whether Congress should do more to monitor and hold accountable the police departments that obtain sophisticated equipment. These programs were established with a very good intention: to provide equipment that would help law enforcement perform their duties. The question is whether what our police receive matches what they truly need to uphold the law.

We need to acknowledge that there have been instances where police have been outgunned by heavily armed criminals, including organized crime and gangs. In addition, we all remember well how helpful some of these programs were to enable police to perform extraordinarily well in the aftermath of the Boston Marathon bombing. But for these programs, the response would not have been as fast or as effective.

Of course, the job of law enforcement is to protect the lives and the well-being of the people of our Nation. Equally important, the job of law enforcement is the protection of our civil rights. So we

will also hear from witnesses with expertise on the civil rights issues that arise as a result of these programs.

It is my hope that we in Congress and other government leaders learn from what is discussed during today's hearing and from the ongoing developments in Ferguson and in similar situations across the country. In closing, we are here today because we have responsibility to ensure accountability of funds and equipment provided by the Federal Government to State and local police. It is our job to ensure that these programs provide value to police, to the communities they serve, and to taxpayers.

Dr. Coburn.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Good morning, and thank you to our witnesses for appearing, both this panel and the second one. And thank you to the Chairman for convening this hearing.

As I look at my short time left remaining in Congress, and having traveled for 2 weeks in Oklahoma in August, I am brought constantly and frequently back to the position of our Founders—and not only their vision but their wisdom.

Protect and Serve. Our Founders saw no role for the Federal Government in State and local police forces. None. And yet what we have seen is, on the basis of what we saw on 9/11, what seems to be an overreaction and a progress toward the Federal Government and law enforcement is doing the same thing it has done in every other area when it comes to the General Welfare Clause and the Commerce Clause. And we are on dangerous ground of undermining the very principles that built the country.

It is hard to see a difference between the militarized and increasingly federalized police force we see in towns across America today and the force that Madison had in mind when he said, "a standing military force with an overgrown executive will not long be a safe companion to liberty."

I have some real heartburn with not just the 1033 program, with the Urban Area Security Initiative (UASI) grants, with some of the Justice Department grants, and with a lot of the homeland security grants in terms of how they have been utilized, what they have been utilized for. And so I look forward to hearing from our witnesses. I have some significant questions. The 1033 program has been around a long time. It was not just in response to 9/11. But I think we need to have a good airing. We need to re-center where we are.

There is no role for the Federal Government in the local and State police forces in our country. And I hope we can winnow that out today to see where we have stepped across the line and actually have created some problems that would not have been there otherwise.

Thank you, Mr. Chairman.

Chairman CARPER. Thank you, Dr. Coburn.

Once she has given her opening statement, I am going to ask Senator McCaskill to introduce our witnesses, and we will look forward to that. I will lead off the questioning. I am going to have to leave just a little before 11:15 for a meeting in the Capitol. I am

going to try to get back. But in the meantime, you are chairing. Thanks very much.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you, Chairman Carper. I want to thank both you and Dr. Coburn for the interest you have shown in today's hearing. I know your decision to elevate this hearing to the full Committee level is a sign of your commitment to oversight in these very important areas, and I am very appreciative of the fact that it has been elevated to the full Committee.

I first approached Chairman Carper to hold this hearing because of the shock and sadness I felt as I saw events unfolding in Ferguson, Missouri, in the weeks following the death of Michael Brown. I heard reports and saw firsthand about aggressive police actions being used against protesters under the umbrella of "crowd control" and not in response to violence. Like many of you, I saw armored vehicles with a sniper pointing a rifle at an unarmed protester on a warm summer afternoon.

I think most Americans were uncomfortable watching a suburban street in St. Louis being transformed with vivid images, powerful images, across this country into a war zone, complete with camouflage, tear gas, rubber bullets, armored vehicles, and laser sights on assault weapons.

While this hearing may reveal many strong arguments why some of this equipment may be helpful for the safety of police officers in certain situations, I am confident that militarized policing tactics are not consistent with the peaceful exercise of First Amendment rights of free speech and free assembly. Those lawful, peaceful protesters on that Wednesday afternoon in Ferguson, Missouri, did not deserve to be treated like enemy combatants. I am hoping that what happened in Ferguson and what we learn at this hearing today will inform a better public policy that will protect our constitutional freedoms and also provide adequate public safety for the brave men and women who put on a uniform every day to protect the people of this great Nation through our very admirable rule of law.

The Federal Government has played a significant role in enabling police departments across the country to acquire the military weapons, vehicles, and other types of equipment we saw used in Ferguson. The Department of Defense's 1033 program, which was authorized in its current form in 1997, gives away DOD surplus equipment for free to State and local law enforcement. Much of the equipment from the program is as mundane as office furniture and microwaves. But the Department of Defense is also giving local law enforcement million dollar tactical vehicles, including its mine-resistant ambush protected vehicles (MRAPs). They are heavily armored vehicles built to withstand roadside bombs and improved explosive devices (IEDs). These are vehicles so heavy that they can tear up roads, and the Department of Defense knows this. Yet it continues to provide these vehicles to local law enforcement agencies across the Nation.

According to information provided by the Department of Defense, in just the last 3 years, the Department of Defense has given 624 MRAPs to State and local law enforcement agencies, seemingly

without regard to need or size of the agency that has received them. At least 13 law enforcement agencies with fewer than 10 full-time sworn officers received an MRAP in the last 3 years. The number of MRAPs in the possession of local police and sheriff departments is now far higher than the MRAPs in possession of our country's National Guard.

In Texas, for example, local law enforcement agencies have 73 MRAPs. The National Guard has only six. In Florida, local law enforcement agencies have 45 MRAPs. The National Guard has zero. I would like to ask unanimous consent that the information provided me from the Defense Department be included in the hearing record today.[1]

Chairman CARPER. Without objection.

Senator MCCASKILL. And also, the Department of Justice information received about consent decrees into the record.[2]

Chairman CARPER. Without objection.

Senator MCCASKILL. I question whether State and local law enforcement agencies need this kind of equipment and certainly whether they need it more than our States' National Guards. One of the key lessons learned throughout the Iraq and Afghanistan wars was the idea that we had to win hearts and minds, and one of the ways the military tried to do that was by acting more like a police force, working with communities, helping to repair broken windows and damaged property, and trying to appear less militaristic with their presence in the communities. I, therefore, find it ironic that at the same time we are embracing those tactics as strong evidence of progress against a counterinsurgency, we are, in fact, underlining the militarization of our domestic police departments.

I also have questions about why the Defense Department is giving away some of this material. According to the Defense Logistics Agency (DLA)—and we will have a witness from that agency testify momentarily—approximately 36 percent of the equipment that is given away to law enforcement is brand new.

Now, we will give you a chance to counter that. That was in the information we received from DLA.

Even if it is not 36 percent, if any of it is brand new, then there is a real question about what are we doing. Why are we buying things in the Department of Defense merely to turn around and give them away?

All of it—weapons, tactical equipment, office supplies—is still usable, and identical or similar items will be needed and bought new by the Defense Department again. It does not appear that buying new equipment to give it away and then spending money to replace it is an effective use of the Defense Department's resources.

Local law enforcement agencies are also requiring military-type equipment using grants from the Department of Justice and the Department of Homeland Security. In fiscal year (FY) 2014, the Department of Homeland Security made available over $400 million under its State Homeland Security Program and another $587

[1] The information provided by the Department of Defense appears in the Appendix on page 224.

[2] The information from the Department of Justice and submitted by Senator McCaskill appears in the Appendix on page 230.

million under its Urban Area Security Initiative Grant Program. Although these grants cannot be used to buy weapons, they can and do fund the purchase of armored vehicles and tactical equipment. And the Department of Justice Byrne Justice Assistance Grant (JAG) Program, which received $376 million in appropriations in fiscal year 2014, gives State and local law enforcement agencies funding that can be used from everything from mobile data terminals, lethal and non-lethal weapons, to office supplies and uniforms, and to provide the maintenance funds to maintain the expensive vehicles that have been given them by the Department of Defense.

These grant programs provide important assistance to State and local law enforcement agencies. However, it is impossible to tell how these Federal funds are being spent because Department of Homeland Security and Department of Justice do not track the purchases or keep adequate data. So we just cannot know from asking these agencies how much military equipment or anything else that local law enforcement agencies are actually buying. In fact, it is possible that either or both of these programs are funding police departments to, in fact, as I mentioned previously, maintain and sustain the same equipment they are getting for free from another Federal agency.

I am confident that many police departments are creating policies and providing training to ensure that any use of force is necessary and appropriate, and we must do everything we can to make sure that our law enforcement officers—those brave men and women who have sworn to protect us—have the equipment they need to maximize their own safety. But we also have to acknowledge that giving military-grade vehicles and weapons to every police officer and police force in America comes with costs, both in ways officers are perceived and the way this equipment is used.

Officers dressed in military fatigues will not be viewed as partners in any community. Armored military vehicles, even if they are painted black and used with the utmost discretion, are, by definition, intimidating. And supplying communities with the capacity to acquire military equipment with no requirement that the officers are trained on the proper use of the equipment, little visibility in he actually needs or capabilities of local forces, and inadequate guidelines directing their use may just be asking for the kind of overmilitarization that we saw on some days and evenings in Ferguson.

I was happy to hear that the White House has launched its own review of the programs and policies that have driven police militarization in this country, and I look forward to the results of that review. However, I understand that many of these issues may only be solved by legislation. I plan to build on what I learn today, together with my colleagues on this Committee, and to work with my fellow Senators in the coming weeks on legislation that will address the many public policy concerns that I am confident will arise in today's hearing.

I thank the witnesses for being here today. I certainly thank the Chairman and Ranking Member for their calling of this full Committee hearing, and we look forward to the testimony of the witnesses.

Chairman CARPER. Senator McCaskill, thank you again for your efforts in this whole incident and everything that flows from it.

If you would go ahead and just briefly introduce the witnesses, they all can testify, and then I will ask the first question, yield to Dr. Coburn, and then Senator McCaskill will be on her way. Thank you.

Senator MCCASKILL. Our first witness is Alan Estevez. He is the Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics at the U.S. Department of Defense. Mr. Estevez has managed military logistics, acquisitions, and supplies for the Department of Defense in various capabilities since 2002 and has overseen military acquisitions worth more than $170 billion. Mr. Estevez has worked with the Office of the Secretary of Defense since 1981.

Brian Kamoie is the Assistant Administrator for Grant Programs for the Federal Emergency Management Agency (FEMA). Mr. Kamoie oversees more than $17 billion in grant programs to build, sustain, and improve our national capability to prepare for, protect against, respond to, recover from, and mitigate all hazards. Mr. Kamoie previously served on the White House National Security staff and with the Department of Health and Human Services (HHS) on hazard preparation.

Karol Mason is the Assistant Attorney General, Office of Justice Programs (OJP). Ms. Mason oversees an annual budget of more than $2 billion dedicated to supporting State, local, and tribal criminal justice agencies, an array of juvenile justice programs, a wide range of research, evaluation, and statistical efforts, and comprehensive services for crime victims. Ms. Mason previously oversaw the Office of Justice Grant Programs as Deputy Associate Attorney General.

We would like to thank you for appearing today, and we look forward to your testimony. Mr. Estevez, you may begin.

Senator LANDRIEU. Mr. Chairman.

Chairman CARPER. Senator Landrieu.

Senator LANDRIEU. Because I have a conflict later this morning, can I submit a statement for the record,[1] please?

Chairman CARPER. Certainly.

Senator LANDRIEU. Thank you. And I want to associate myself with the remarks of Senator McCaskill and thank her for her leadership.

Chairman CARPER. You bet.

All right. Mr. Estevez, please proceed. Your entire statement will be made part of the record. Just feel free to summarize. If you go much over 5 minutes, we will have to rein you in. Thank you. We are glad you are here.

[1] The prepared statement of Senator Landrieu appears in the Appendix on page 62.

TESTIMONY OF THE HON. ALAN F. ESTEVEZ,[1] PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR ACQUISITION, LOGISTICS AND TECHNOLOGY, U.S. DEPARTMENT OF DEFENSE

Mr. ESTEVEZ. Thank you, Mr. Chairman, Senator Coburn, Senator McCaskill, and Members of the Committee. Thank you for the opportunity to appear before the Committee and discuss the Department's transfer of excess military property to law enforcement agencies. I appreciate the Committee's support of the Department and your continued interest in ensuring the success of our mission.

Following the events in Ferguson, Missouri, I believe it is appropriate that we address the issues regarding the equipping of police forces. As you note, my written testimony has more detail, and I submit it to the record.

The transfer of excess property to law enforcement agencies is a congressionally authorized program designed to ensure good stewardship over taxpayer resources. The program has provided property that ranges from office equipment and supplies to equipment that augments local law enforcement capabilities and enhances first responders during natural disasters.

More than 8,000 Federal and State law enforcement agencies actively participate in the program across 49 States and three U.S. territories. More than $5.1 billion of property has been provided since 1990.

A key element in both the structure and execution of the program is the State Coordinator, who is appointed by their respective State Governor. State Coordinators approve law enforcement agencies within their State to participate in the program and review all requests for property submitted by those agencies along with a statement of intended use. Working through State Coordinators, law enforcement agencies determine their need for different types of equipment, and they determine how it is used. The Department of Defense does not have the expertise in police force functions and cannot assess how equipment is used in the mission of individual law enforcement agencies.

Within the past 12 months, law enforcement agencies received approximately 1.9 million pieces of excess equipment: 1.8 million pieces of non-controlled or general property—that would be office-type equipment—and 78,000 pieces of controlled property. That is property that is more tactical in nature. Non-controlled items range from file cabinets to medical kits, generators to tool sets. Law enforcement agencies currently posses 460,000 pieces of controlled property that they have received over time. Examples of controlled property include over 92,000 small arms, 44,000 night vision devices, 5,200 high mobility, multi-purpose wheeled vehicles (HMMWVs), and 617 mine-resistant ambush protected vehicles. The Department does not provide tanks, grenade launchers, sniper rifles, crew-served weapons, or uniforms.

DOD has provided two HMMWV, one generator, and one cargo trailer to the Ferguson Police Department. Additionally, DOD has provided to St. Louis County Police Departments 6 pistols, 12 ri-

[1] The prepared statement of Mr. Estevez appears in the Appendix on page 66.

fles, 15 weapons sights, 1 explosive ordnance disposal robot, 3 helicopters, 7 HMMWVs, and 2 night vision devices.

Property obtained through this program has been used extensively in both protection of law enforcement officers and the public as well as for first responder disaster relief support. For example, during the height of Superstorm Sandy, New Jersey police drove two cargo trucks and three HMMWVs through water too deep for commercial vehicles to save 64 people. In Wisconsin, Green Bay police used donated computers for forensic investigations. During a 2013 flood in Louisiana, Livingston Parish police used six HMMWVs to rescue 137 people. In Texas, armored vehicles received through the program protected police officers during a standoff and shootout with gang members.

The Department is participating in the administration's Interagency Review of Federal Programs for Equipping State and Local Law Enforcement Agencies to ensure that equipment provided is appropriate to their needs, while enhancing the safety of law enforcement personnel and their communities. We will alter our procedures and propose any legislative changes we believe necessary that come as a result of that review.

In summary, the congressionally authorized 1033 program provides property that is excess to the needs of the Department of Defense for use by agencies in law enforcement, counter-drug, and counterterrorism activities. It enables first responders and others to ensure the public's safety and save lives. The Department of Defense does not push equipment on any police force. State and local law enforcement agencies decide what they need and access our excess equipment through their respective State Coordinators.

Thank you again for the opportunity to discuss the Department's transfer of excess military property. The Department is ready to work with Congress to review the program scope and mission. I look forward to answering your questions.

Chairman CARPER. Thank you, Mr. Estevez. Mr. Kamoie.

TESTIMONY OF BRIAN E. KAMOIE,[1] ASSISTANT ADMINISTRATOR FOR GRANT PROGRAMS, FEDERAL EMERGENCY MANAGEMENT AGENCY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. KAMOIE. Good morning, Chairman Carper, Chairman McCaskill, Ranking Member Coburn, and Members of the Committee. I am Brian Kamoie, Assistant Administrator of the Federal Emergency Management Agency, the Department of Homeland Security. On behalf of Secretary Johnson and Administrator Fugate, it is my pleasure to appear before you today to discuss the Department's Homeland Security preparedness grant programs.

Recent events in Ferguson, Missouri, have raised questions regarding the use of Federal grant funds by State and local authorities, especially the use of funds by law enforcement agencies. These events have also raised questions regarding the Department's oversight of these funds. I hope that my appearance before you today will help answer those questions.

[1] The prepared statement of Mr. Kamoie appears in the Appendix on page 73.

As you know, the Department's preparedness grant programs assist communities across the Nation to build and sustain critical capabilities to prevent, protect, mitigate, respond to, and recover from acts of terrorism and other catastrophic events. As a result of your support and investments and the work of our partners throughout our country, our national preparedness capabilities have matured, which is a key finding of the Department's third annual National Preparedness Report released last month.

The response to the 2013 Boston Marathon bombing demonstrated how preparedness grant investments have improved capabilities. The activities supported by grant funding—the planning, organization, equipment, training, and exercises—all came together to enable the emergency response. Grant funded equipment such as the forward-looking infrared camera on a Massachusetts State Police helicopter enabled the apprehension of Dzhokhar Tsarnaev, while enhancing the personal safety of law enforcement officers and protecting public safety.

What happened in Ferguson, Missouri, has prompted a national dialogue that goes well beyond the Department and its grant programs. In mid-August, President Obama ordered a review of Federal programs that support State, local, and tribal law enforcement agencies. We at the Department of Homeland Security look forward to contributing to this effort and to the insights it will provide.

The Homeland Security Grant Program, including the State Homeland Security Grant Program and Urban Area Security Initiative, is the primary Homeland Security Grant Program that supports State, local, and tribal communities, including the law enforcement community. Funds under these programs are awarded directly to States or tribes, which in turn manage, distribute, and track the funding. Thus, we work closely with and rely upon States and tribes to conduct oversight of the programs, and we monitor compliance with reporting and other program requirements. These programs are also audited by the Department's Inspector General (IG) and by States for the State and Urban Areas programs.

Under the Homeland Security Act, States are required to distribute 80 percent of the funds awarded under the State program to local communities within their State. The act also requires the Department to ensure that at least 25 percent of the combined funds allocated under the State and Urban Areas programs are used for law enforcement terrorism prevention activities. These activities include the purchase of equipment. Grant recipients must purchase equipment listed on the Department's Authorized Equipment List, which outlines 21 categories of allowable equipment. The Department prohibits the use of grant funds for the purchase of lethal or non-lethal weapons and ammunition. These equipment categories are not on the Authorized Equipment List.

Homeland Security grant funds may be used to purchase equipment that can be classified as personal protective equipment, such as ballistics protection equipment, helmets, body armor, and ear and eye protection. Response vehicles, such as Bearcats, are also allowed. The Homeland Security Act allows equipment purchased with grant funds, including personal protective equipment, to be used for purposes unrelated to terrorism so long as one purpose of the equipment is to build and sustain terrorism-based capabilities.

The Authorized Equipment List also notes that ballistic personal protective equipment purchased with grant funds is not for riot suppression.

The Department has worked with Missouri officials and searched our own data to identify equipment purchased with preparedness grant funds. We will continue our discussions with Missouri officials to determine which specific items may have been deployed to Ferguson.

In reviewing the use of those grant funds, the Department will make every effort to evaluate whether the use was appropriate under grant program rules. This includes the requirement and assurance that Federal grant funds not be used to engage in any conduct that is contrary to any Federal, State, or local law.

The Department considers oversight of grant programs a priority and takes this responsibility very seriously. The Department's financial and programmatic grant monitoring provides a systematic means of ensuring oversight, accountability, and proper management of preparedness funds. We strive continually to improve the Department's oversight of these funds.

Chairman Carper, Chairman McCaskill, Ranking Member Coburn, and Members of the Committee, this concludes my statement. I appreciate the opportunity to discuss these important issues with you, and I look forward to responding to any questions you may have.

Chairman CARPER. Mr. Kamoie, thanks so much for that testimony.

Ms. Mason, please proceed. Make sure that your mic is on, please.

TESTIMONY OF KAROL V. MASON,[1] ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE

Ms. MASON. Good morning. Chairman Carper, Ranking Member Coburn, Senator McCaskill, and distinguished Members of the Committee, thank you for inviting me to speak with you today about the Department of Justice's role in supporting State and local law enforcement agencies.

Recent events in Ferguson, Missouri, have raised concerns about whether State and local law enforcement's use of military-type equipment and tactical training should be more closely examined. As President Obama has said, the laws of the United States mandate a clear distinction between our national armed forces and civilian State and local law enforcement. To help maintain that distinction while ensuring that civilian law enforcement departments have access to state-of-the-art equipment and training, Congress has authorized the Department of Justice to administer programs and funding to help State, local, and tribal law enforcement agencies safeguard their communities, while also protecting the civil liberties of their citizens.

As Assistant Attorney General of the Office of Justice Programs, I am responsible for overseeing a range of activities designed to support law enforcement. Our work with law enforcement agencies

[1] The prepared statement of Ms. Mason appears in the Appendix on page 86.

is part of our overall mission to provide leadership, information, and other assistance to strengthen community safety and ensure the fair administration of justice.

One of our largest programs and the leading source of Federal funding for law enforcement is the Edward Byrne Memorial Justice Assistance Grant (JAG) program. JAG, a formula grant program, supports a wide range of activities intended to improve the effectiveness and efficiency of the criminal justice system.

Due to its importance in community crime prevention and reduction, we take great pains to see that funds are used appropriately and administered in the most transparent way possible.

Our Bureau of Justice Assistance (BJA), the office responsible for managing the JAG program, takes a number of steps to ensure compliance with program stipulations and prevent misuse of funds, including the requirement of quarterly financial and activity reports and an annual desk review of each of its active grants. These measures allow us to maximize our oversight of JAG grants and minimize the potential for inappropriate use of Federal funds.

As we provide critical funding to State and local law enforcement agencies, our research and development standards and testing programs managed by the National Institute of Justice enable us to deploy state-of-the-art equipment and technology to aid them in their work. Much of the equipment and technology used in public safety is adapted from the military. A notable example is the police body armor, which has saved the lives of more than 3,100 officers.

Our partnership with the Department of Defense and the Department of Homeland Security has allowed us to collaborate on the research and development of these technologies and to help make them available to public safety agencies. We accomplish this by providing technical assistance to State and local agencies through the National Law Enforcement and Corrections Technology Center.

I wish to also add that through the Police-Public Contact Survey, our Bureau of Justice Statistics collects data on citizen-law enforcement interactions such as driver stops and requests for assistance. We are actively working to improve our understanding of the nature of these interactions and to bolster our collections of data on the excessive use of force by law enforcement.

Mr. Chairman, the Department of Justice and my office, the Office of Justice Programs, are committed to using our resources to help America's law enforcement agencies protect their communities while earning the trust and respect of the citizens they serve. We will continue to bring the latest knowledge and the best tools to this task. I want to thank you for the opportunity to speak with you today, and I look forward to working with this Committee to ensure that we are able to meet our collective goals of public safety and public trust.

Thank you.

Chairman CARPER. Ms. Mason, thank you for that testimony, and again, to each of you, for what you have had to say.

Dr. Coburn and I and the Members of this Committee spend a lot of time trying to figure out how do we make sure that the amount of resources that we are applying to a particular problem or challenge, particularly something that poses a risk to our Na-

tion, to our homeland, how do we make sure that the resources that we apply are commensurate with the risk that exists. With that as a metric, with that as background, speak with us about each of these three programs. How well are we doing in terms of enabling law enforcement to have the resources, some of the resources that they need, to meet the level of risk that they face in their communities, public safety risks? Mr. Estevez, please.

Mr. ESTEVEZ. From a taxpayer perspective, we have bought equipment that is no longer needed by the Department of Defense for a variety of reasons, and I will say, Senator McCaskill, it is not that some of it is not new, "brand new" is the term that I was shaking my head at. And there is a variety of reasons why stuff would become excess. But when it is no longer needed, we make it available across the Department of Defense first, and law enforcement by congressional authorization has dibs early in that process, before it goes out to State agencies. And not all of the equipment that is provided to law enforcement is available to everyone else.

I think we are providing equipment that is useful to law enforcement, both from a disaster relief and from a public protection utilization, and it is not for the Department to really judge how law enforcement—that is not our expertise. We rely on the State Coordinators appointed by the Governor of each of those States who vet incoming requests from their local law enforcement agencies. We do due diligence about numbers, if it is an agency requests, 100 rifles and there are only 10 law enforcement officers, they do not get 100, they get 10. But we rely on the State Coordinator.

So I think we are buying down risk out there for our law enforcement agencies and the protection of the public and providing public safety and also, of course, disaster relief.

Chairman CARPER. Excuse me. Mr. Kamoie, same question. How do we make sure that we are aligning risk with the resources that are being offered by these three agencies within the Federal Government?

Mr. KAMOIE. Thank you, Chairman Carper. I think it is appropriate to start the discussion with risk. As you know, the Homeland Security Grant Program, both the State program and the Urban Area Security Initiative, are risk-informed allocation decisions, meaning the Secretary of Homeland Security factors risk into the allocation of those funds, and the statute directs in the Urban Area Security Initiative program, for example, that he put the resources in the highest-risk urban areas in the United States. In this year, fiscal year 2014, the Secretary designated 39 high-risk urban areas to receive funding.

The risk assessment is done in partnership with our colleagues at the Department's Intelligence and Analysis Division, working with the Department of Justice and the Federal Bureau of Investigation (FBI) and the intelligence community (IC). So we provide the Secretary with the best picture of risk we can. We recommend to him allocations based on those risk profiles. We communicate with the jurisdictions about their risk profiles, invite them to submit information to us that they believe we might not have or we might not have take into account. And then the Secretary makes those allocation decisions.

As to how well we are doing, what I would point to is the requirement vis-a-vis law enforcement that 25 percent of the annual appropriations for the State and Urban Areas programs go to law enforcement. For the 5-year period of fiscal year 2008 to fiscal year 2012, States——

Chairman CARPER. Go ahead and wrap it up, and I want to leave some time for Ms. Mason, please.

Mr. KAMOIE. Absolutely. States exceeded that 25-percent requirement by nearly $1 billion, and they spent 36 percent of the funding. So the funding is getting to the law enforcement as the statute intends.

Chairman CARPER. Good. Ms. Mason, same question. Risk, resources, how are they aligned?

Ms. MASON. Thank you, Senator. The JAG Program is a formula program and money is allocated to State and local jurisdictions based on a formula, based on the violent crime rates and population data. And the Office of Justice Programs has very little discretion over the use of that money by State and local jurisdictions.

But what we do is provide them with training about various criminal justice issues, and we are in the process of pulling together a toolkit that will enable law enforcement to know how to, for example, control crowds while also protecting civil liberties.

So one of our primary responsibilities is to make sure that we equip local law enforcement with the training that they need and that they request in order to use our best practices to protect their communities.

Chairman CARPER. All right. Thank you.

The second question deals with coordination or the appeared lack thereof. In some cases you are directed to coordinate. You are directed by law to be coordinating from agency to agency. Give us some examples of maybe where you are coordinating well and, frankly, some areas where you need to coordinate better, please. Really succinct and right to the point, please.

Mr. ESTEVEZ. We need to do a better job in coordination. Let me start off there. There is probably a failure in coordination across the interagency regarding what we are providing. The Department is coordinating with the State Coordinators, coordinating with our colleagues, my fellow witnesses. We do, when, there is missing equipment, coordinate and let them know that kind of issue. But coordinating on what police forces could use, that could be better.

Chairman CARPER. Mr. Kamoie.

Mr. KAMOIE. Mr. Chairman, I think we are coordinating well in the risk assessment that I mentioned that informs the allocation of the programs. But I think through our discussion today and the White House review, I think we will have a lot of opportunity to improve how we coordinate on the downstream use of the equipment, perhaps discussion of training and what else we might do. So I think there is a lot of opportunity for improvement.

Chairman CARPER. Thank you. Ms. Mason.

Ms. MASON. I concur with my colleagues, and we look forward to the results of the President's review and information about how we can better coordinate our resources together.

Chairman CARPER. Just give us, very briefly, some idea of how the review is going. Give us some idea of what the timeline is for

completion of the review, when we will have an opportunity to hear about it.

Mr. ESTEVEZ. It is in its preliminary stages, Senator. I am not sure what the outcome timeline is.

Chairman CARPER. Are we talking this quarter? This year?

Mr. ESTEVEZ. I am going to defer to Brian, who is actually sitting on that.

Mr. KAMOIE. Sorry, Chairman. I do not know the timeline. What I can tell you is it is a comprehensive review that is looking at the very same kinds of data that you have requested, looking at how these programs operate and what the opportunity space might be for improvement.

Chairman CARPER. If you would just answer that question for the record, think about it a little further and answer that question.

Chairman CARPER. You do not have anything, Ms. Mason?

Ms. MASON. No, I do not have any more information about the timeline, but I——

Chairman CARPER. We want a good, thoughtful, comprehensive review, but we want it sooner rather than later.

The last thing I want to say before I turn the gavel over to Senator McCaskill and leave, my colleagues have heard me say more than a few times, one of the adages that my father often gave to my sister and me when we were kids growing up, we would do some bone-headed stunt, he was always saying, "Just use some common sense." I would just hope, in addition to all the rules and regulations and oversight and laws we have in place dealing with these issues, I just hope we are using some common sense. I hope we are using it within certainly this Committee. I hope we are using it within the agencies that oversee these three programs. And I hope they are using it at the State and local level.

I am going to run off to this meeting at the Capitol. If I can get back, I will. And if not, Senator McCaskill, you have it. Thank you all. Dr. Coburn.

Senator COBURN. Thank you.

Mr. Estevez, when was the last time that you can recall that the equipment from a 1033 transfer program was used in counterterrorism?

Mr. ESTEVEZ. Senator, we do not have the capability of monitoring how the equipment that we have provided is——

Senator COBURN. I understand that, but do you have any recollection—other than Boston and the Tsarnaev and he is in the boat and maybe some equipment was used there, when——

Mr. ESTEVEZ. I do not, Senator.

Senator COBURN. Does anybody know when the last time in terms of true counterterrorism that equipment was used?

Mr. ESTEVEZ. I am sure we could pulse the system for anecdotes on that, but I really would have to do that, sir.

Senator COBURN. All right. I am not going to go through the audit and the lack of response or timely response by your organization to the audit, but how do you all determine what Federal supply classes are available to be transferred?

Mr. ESTEVEZ. That is done basically by our item managers who manage——

Senator COBURN. I know, but tell me, how do they decide an MRAP is appropriate for a community of my hometown, 35,000 people?

Mr. ESTEVEZ. That is done by the State Coordinator.

Senator COBURN. I understand that, but how did you ever decide that an MRAP is an appropriate vehicle for local police forces?

Mr. ESTEVEZ. An MRAP is a truck, Senator, with——

Senator COBURN. No, it is not a truck. It is a 48,000-pound offensive weapon.

Mr. ESTEVEZ. It is not an offensive weapon, Senator. It——

Senator COBURN. It can be used as an offensive weapon.

Mr. ESTEVEZ. When we give an MRAP, it is stripped of all its electronic warfare capability. It does not have a .50-caliber weapon on it. It is not an offensive weapon. It is a protective vehicle.

Senator COBURN. OK. I will just make a point. You all give out .30-caliber weapons. It is on your list. A .30 caliber is a 3-centimeter weapon. That is this big. That is the size of the shell. I just want to know how you come about to say that Muskogee, Oklahoma—and I know who makes the decision on whether equipment—but you make it available, and then a State through the Law Enforcement Support Office (LESO) and the State Coordinator determines that they get one of those. There are six of them in Oklahoma, all right? How did we ever get to the point where we think States need MRAPs? How did that process come about?

Mr. ESTEVEZ. This is one of the areas that we are obviously going to look at, Senator, on how we decided what equipment is available. I mean, obviously we have made some big decisions. Fighter aircraft, tanks, Strykers, those types of things are not available. Sniper rifles, not available. Grenade launchers, not available.

Senator COBURN. Drones are available.

Mr. ESTEVEZ. No.

Senator COBURN. Airplanes are available.

Mr. ESTEVEZ. Airplanes are available.

Senator COBURN. Helicopters are——

Mr. ESTEVEZ. Cargo helicopters, helicopters, not Apaches.

Senator COBURN. OK. But, you cannot tell us today how we make those decisions of what goes on the list and off the list.

Mr. ESTEVEZ. It is basically a common-sense decision inside the Department, and then we do, as I keep saying, go back to the States.

Senator COBURN. When something is removed from the list—and I do not know if you have any recent experience with this—are agencies required to return the restricted equipment?

Mr. ESTEVEZ. That is why we retain title for what we call controlled equipment, so that we can pull that equipment.

Senator COBURN. So is a .30-caliber gun——

Mr. ESTEVEZ. A 7.62 weapon is available on the—7.62mm is available.

Senator COBURN. I am talking 30—OK.

Mr. ESTEVEZ. No crew-served weapons, nothing that requires a belt for feeding ammunition.

Senator COBURN. All right. Are you aware of any that have been previously authorized that are now restricted?

Mr. ESTEVEZ. The type of stuff that we have ended up further restricting, body armor. We used to provide body armor. We no longer do that. Part of that is for safety reasons. Once body armor becomes excess, we cannot guarantee its safety. Major equipment, I am not aware of any, Senator.

Senator COBURN. OK. Thank you.

Mr. Kamoie, according to FEMA's Authorized Equipment List, battle dress uniforms are an authorized purchase under preparedness grant programs, right?

Mr. KAMOIE. I believe that is correct, Senator.

Senator COBURN. Why?

Mr. KAMOIE. The Authorized Equipment List is reviewed biannually, and we consult with State and local responders and stakeholders and the grantees who advise us on what it is they need to build the capabilities to support the national preparedness goals. Responders——

Senator COBURN. Let us get right down to the point——

Mr. KAMOIE. So responders have told us that——

Senator COBURN. So we need to have in the States, funded by the Federal Government, a militarized police force? I mean, that is a component of it.

Mr. KAMOIE. Well, I think a lot more——

Senator COBURN. And that fits in with our goals?

Mr. KAMOIE. We certainly can review the types of uniforms that our responders are requesting, but they have advised us, in the building of capabilities to fight terrorism, that this type of dress would be useful.

Senator COBURN. OK. Let me ask you the same question I asked Mr. Estevez. When was the last time that you are aware, in terms of the grant money that is being given out, either the UASI grants or the Homeland Security grants—and, by the way, the Homeland Security grants are not based on risk. The UASI grants are. The others are based on a mandate that came through this Committee that said X State will get X percent, rather than doing it on risk like we should have. When was the last time we have seen what you have given being used, other than the response to the Tsarnaev brothers, used against counterterrorism?

Mr. KAMOIE. That was the last time, the Tsarnaev——

Senator COBURN. When was another time?

Mr. KAMOIE. I am quite sure that New York used its Domain Awareness System in the Times Square bombing attempt. That is a funded asset with these grant funds.

Senator COBURN. OK.

Mr. KAMOIE. So within the last——

Senator COBURN. With the Homeland Security grants, with the 1033 program, with the Department of Justice grants, over the last 5 years, we have put out $41 billion worth of money, and we know of really two times.

The point I am getting to is that we will never have enough money to be totally prepared for everything, and so the question is, it is common sense, much like the Chairman said, and judgement, and I see I am about to run out of time. We need a reassessment, both of the 1033 and both the grant programs at Homeland Secu-

rity as well as the Byrne Justice program. I will submit the rest of my questions for the record.

And, Ms. Mason, I just want to extend, if I may, just for a moment. I did a complete oversight of the grant programs 3½ years ago at the Justice Department, and what we saw was not pretty. And your testimony kind of inferred that you guys are really on top of all your grants right now. Would you kind of restate what you said in your opening testimony in terms of your grant management?

Ms. MASON. Thank you for the question, Senator. What I would say is that we have done a very good job of implementing the things you suggested in your assessment of our grant programs, primarily through the creation of the Office of the Audit Assessment and Management, where we do a lot of internal self-assessment and looking at our programs. We have implemented risk assessment tools to determine which of our grants should get more in-depth monitoring. So we have also implemented that every single one of our grants gets a desk review every year. So we believe that we are doing a much better job in overseeing our grant programs.

Senator COBURN. All right. Thank you very much. Thank you, Madam Chairman.

Senator MCCASKILL. [Presiding.] I want to clear up and make sure that the record is clear. In response to a question from Congress to the Defense Logistics Agency, they responded that of the 1033 programs, 36 percent of the property issued is new and not used. In other words, almost 40 percent of what you are giving away has never been used by the military.

Mr. ESTEVEZ. And I apologize for shaking my head when you said that earlier. What they said is that it is Condition Code A. Condition Code A is like new.

Senator MCCASKILL. OK. Well, so we can argue about brand new, new, or like new. What in the world are we doing buying things that we are not using? And isn't that a fundamental problem that you need to get at? Before we even talk about whether all this stuff is being used appropriately or being used with training or being used in a way that makes common sense, how in the world are we buying that—and, by the way, we are going to—I guarantee you when I get this list—and I will, because this will not be the last hearing we have on this. I guarantee you the stuff you are giving away, you are continuing to buy. I guarantee it. So tell me how that happens.

Mr. ESTEVEZ. Well, first of all, we will have to look at the type of stuff that is provided in new condition.

Senator MCCASKILL. Well, give me an example of something that is provided in new condition.

Mr. ESTEVEZ. Senator, I will have to go through——

Senator MCCASKILL. But 36 percent of what you are giving away, you have no idea what it is you are giving away that is new?

Mr. ESTEVEZ. I will have to go through the list, Senator, and I will be happy to take your question for the record on that. So as force structure changes, as our budget changes, things that we thought we would need were no longer needed, or things that we bought for the war—and I am not talking about tactical rifles and

the like. I am talking about basic medical kits, that type of stuff—may no longer be needed as we draw down force structure based on changing environment on the ground.

The Budget Control Act (BCA) changes our force structure. Things that we required will no longer be needed as that force structure changes. That is the basic reason.

Senator MCCASKILL. Well, this is actually totally in your wheelhouse because you have acquisitions. So if we are buying so much stuff—and what is going to drive me crazy is when I figure out that what you gave away last year, you bought this year. That is going to drive me crazy. So just be ready. It is going to drive me crazy.

Let me look at how much you are giving away. I know that this is the State Coordinator, but I want to make sure that we are clear about how out of control some of this is.

In Dr. Coburn's State, the Payne City sheriff's office has one full-time sworn officer. One. They have gotten two MRAPs since 2011. Now, you gave the impression in your testimony that you all are at least doing the minimum about making sure what you give is somehow proportional to the size of a force.

Before you answer that, let me give you this fact. In the Lake Angelus Police Department, in Michigan, you gave them 13 military assault weapons since 2011. They have one full-time sworn officer. So, one officer now has 13 military-grade assault weapons in their police department.

How in the world can anyone say that this program has one lick of oversight if those two things are in existence?

Mr. ESTEVEZ. I will have to look into the details on each of those. The rule of thumb is one MRAP validated by the State Coordinator for a police department that requests an MRAP, no more than one. So I would have to look at the incident in Senator Coburn's State. And the same thing with rifles, weapons.

Senator MCCASKILL. I will make part of the record the list.[1] We have a long list of law enforcement agencies that received 3 times as many 5.56 and 7.62 military-grade weapons per full-time officer, and this is a long list. This is not a short list. So, I think we need to get to the bottom of that.

The risk allocation you talked about, Mr. Kamoie, there is a formula that every State gets money, regardless of risk, right? It does not matter if you have zero risk in your State. Everyone gets money.

Mr. KAMOIE. There are State minimums prescribed by the Homeland Security——

Senator MCCASKILL. Which has nothing to do with risk.

Mr. KAMOIE. Correct.

Senator MCCASKILL. OK. I want to make sure we are clear on that. And isn't it true now that rather than these communities coming and saying, "This is what we have figured out we need," now you tell them how much money they get, and they give you a list of what they want to buy with it?

Mr. KAMOIE. Well, we have actually moved more toward project-based applications where we are asking grantees up front to identify the types of projects and the investment, really with an eye to-

[1] The information provided by Senator McCaskill appears in the Appendix on page 224.

ward tighter fiscal management and oversight of the programs. We want to know more of this. I think the evolution of the program has gone from, at a time when they were pretty generic homeland security strategies at the State level, where we are trying to tighten the investment justifications and then telling us in advance.

Senator MCCASKILL. MRAPs can be very dangerous, correct, Mr. Estevez? They flip?

Mr. ESTEVEZ. They are very heavy vehicles.

Senator MCCASKILL. And yet there is no requirement for training for any of these departments that are getting these vehicles.

Mr. ESTEVEZ. We cannot provide training to police departments, Senator.

Senator MCCASKILL. So, are you comfortable with the fact that Texas has received 73 MRAPs in 3 years while the entire National Guard of Texas only has six? How can you explain that?

Mr. ESTEVEZ. Again, for excess material—and an MRAP was put on the list of available—we provided—and the States and State Coordinators are responsible for ensuring training. The military force is retaining about 12,000 MRAPs across the Army and the Marine Corps, a smattering in the Air Force and the Navy, and they are going to allocate those across the entire force structure. So I am not sure how they will be allocated across the Guard.

Senator MCCASKILL. Could it be that the Guard does not want them because they know that they tear up the roads and they flip easily and have limited applicability?

Mr. ESTEVEZ. The Guard will—if the Guard requires an MRAP for deployment, they will be issued an MRAP.

Senator MCCASKILL. Does it make you uncomfortable that there are States where the National Guard has no MRAPs, but police departments have them everywhere? Does that fact make you uncomfortable in any way?

Mr. ESTEVEZ. I believe the Guard will be allocated the force structure that they are needed for their Federal role. So as I said, there are 12,000 MRAPs that will be allocated across the force structure as they come back from——

Senator MCCASKILL. Why are we giving them away to police departments before we give them to the Guard?

Mr. ESTEVEZ. Because we bought 24,000 MRAPs, so we have more MRAPs than we will need. And we bought——

Senator MCCASKILL. I understand. But why would the police departments be in line to get these before the National Guard?

Mr. ESTEVEZ. The ones that we are excessing are the older, they are not the best MRAPs. We have retained the best MRAPs in the force structure.

Senator MCCASKILL. Is there any reason that any of the three of you can give me why we would not, if we are going to continue funding State and local—and, by the way, I have seen a lot of good during my career from Federal funding to State and local law enforcement. And, by the way, I want to be clear. I saw a vehicle extricate some police officers in a pretty dangerous situation in Ferguson once some of the outsiders started coming in from other States that wanted a confrontation with the police.

Having said all that, has there been a discussion about perhaps saying the first thing that we would fund before we begin to fund

anything else, not a Federal mandate but, rather, the first on your list must be body cams? Has that been discussed either at DOJ or at Homeland Security? That these officers that are going to be using some of this equipment, that the best way to check whether or not it is being used appropriately is for every officer to wear a camera?

Ms. MASON. Senator, the Office of Justice Programs, our JAG funds are available for law enforcement agencies to use to purchase body cameras, and we do see value in body cameras. But as you know, our National Institute of Justice is studying the effectiveness of body cameras and the appropriate use of body cameras.

Senator MCCASKILL. But they can buy them now?

Ms. MASON. Yes, ma'am.

Senator MCCASKILL. So it would not be hard if we decided, before you get anything else, we are going to insist you use our money for body cams before you buy other things, like full-blown battle gear or camouflage uniforms or grenade launchers that attach to rifles?

Ms. MASON. The JAG money is formula money, and we do not control how State and local jurisdictions use that money. But it is a permissible use to buy body cameras.

Mr. KAMOIE. Chairman McCaskill, video cameras are on the Authorized Equipment List, and if a grantee came forward and said to us that they believe that body cameras for law enforcement would serve purposes for which the program is authorized in terms of preparing capabilities for terrorism, operational coordination, situational awareness, we would consider that an allowable expense.

Senator MCCASKILL. OK. Senator Johnson.

OPENING STATEMENT OF SENATOR JOHNSON

Senator JOHNSON. Thank you, Madam Chairman.

Secretary Estevez, are you aware of any local police department that has purchased an MRAP with their own funds?

Mr. ESTEVEZ. I am not, and I do not know how they would.

Senator JOHNSON. Or a .30-caliber weapon?

Mr. ESTEVEZ. I could not answer that question on what a local police department buys with their own funds, but MRAPs are not available, so that is why I know that.

Senator JOHNSON. Again, I was not around here, but according to my briefing here, the first program was authorized in a defense authorization bill primarily about the drug wars. Is that correct?

Mr. ESTEVEZ. That is correct.

Senator JOHNSON. So what were local police departments missing that they needed to be funded or given from the Defense Department to combat the War on Drugs?

Mr. ESTEVEZ. First, let me be clear. We, the Department, we do this because we are asked to do this.

Senator JOHNSON. I understand. Again, I am just asking for the history. What equipment were local——

Mr. ESTEVEZ. The police departments were outgunned by drug gangs, so they were looking for protection, and they were looking for fire power.

Senator JOHNSON. OK. Then apparently this was expanded in 1997, my note says, "based on lobbying from police organizations."

Mr. ESTEVEZ. Again, I cannot answer why the authorization was expanded. At the time it was for counterterrorism, but if it was lobbying from police organizations, OK.

Senator JOHNSON. Of course, there is always a great desire to get free things from the Federal Government, correct?

Mr. ESTEVEZ. Of course.

Senator JOHNSON. This program, which has apparently provided about $5.1 billion of free equipment since 1997—it has all been free, correct?

Mr. ESTEVEZ. Yes. It is not free to the taxpayer. We bought it, used it, and——

Senator JOHNSON. I understand, but free to the local governments, correct?

Mr. ESTEVEZ. That is correct.

Senator JOHNSON. Free to local police departments.

Mr. ESTEVEZ. Yes, sir.

Senator JOHNSON. Do you know of too many police departments that turn free things down?

Mr. ESTEVEZ. Again, I am not in the position of a local police department, but if something was available and they thought they needed it—because they have to sustain this equipment. If they thought they needed it and it was useful to them, why not?

Senator JOHNSON. Mr. Kamoie, the $41 billion that DHS has granted under your program since 2002, has there been any—that is grant money, correct?

Mr. KAMOIE. Yes, Senator.

Senator JOHNSON. Is there any cost sharing associated with that?

Mr. KAMOIE. In several of our programs, the Port Security Grant Program, for example, in some years there is a cost-sharing requirement in the——

Senator JOHNSON. How much? Of the $41 billion, how much is that multiplied by local budgets?

Mr. KAMOIE. Given that the cost share requirement was imposed in some years and not, we will have to followup with you on that, but I can tell you the Emergency Management Performance Grant Program, about $350 million a year, is a 50-percent cost share in that every year.

Senator JOHNSON. Do you think if we multiply that by another $40 billion, has there been a 50-percent cost share, we have basically granted $41 billion worth of funds for the purchase of this type of equipment, and local governments have maybe contributed $1 billion?

Mr. KAMOIE. Well, we will have to followup with you on numbers.

Senator JOHNSON. OK.

Mr. KAMOIE. But just to be clear, Senator, the over $40 billion is not just for law enforcement. I mean, there are a lot of other purposes for these programs: port security, transit security. That number includes our firefighter programs, staffing for emergency managers and firefighters.

Senator JOHNSON. When people get things for free, when you get a lot of money, one of the first things my wife as an IRS agent learned, the first government phrase was, "Use it or lose it." And that is just a concern in terms of how you put money to work.

Ms. Mason, the $4.4 billion granted by the Department of Justice since 2005, has that had any kind of cost-sharing requirement associate with it?

Ms. MASON. The JAG money is formula money that does not require cost sharing from local governments. But, for example, this year we awarded $280 million in grants. Those are spread between the 56 U.S. States and territories as well as local governments. So for 80 percent of our grants, JAG grants, the average award size is only $30,000.

Senator JOHNSON. So, all three of the witnesses, are you aware of any piece of equipment that is either given away or allowed to be purchased—I am really talking about the Defense Department. Are any of those pieces of equipment that have been given away that would not be available for purchase by a local police department? Or are they all available on the open market?

Mr. ESTEVEZ. An MRAP is not available on the open market because it is out of production. It was only made for the Department.

Senator JOHNSON. But when it was in production, were there any restrictions in terms of people being able to buy that?

Mr. ESTEVEZ. I would have to go back and look at that. It was probably the restriction it was unavailable.

Senator JOHNSON. OK. I think my point being is if—we are making the decision at the wrong level here. If local police departments actually needed this equipment, if they felt it was necessary, isn't the proper way of doing this to have them go through their city councils, go through their States, make the political case for armoring up to protect themselves, whether it is against drug lords or whether it is against counterterrorism? I can understand the Federal role in terms of information sharing and potentially communication devices so we can provide that information. But, I mean, hasn't this gone out of control simply because the Federal Government is there, we are just granting money, and people are going to use it?

Mr. ESTEVEZ. I guess from my perspective, Senator, we have bought this stuff for the Department of Defense. It is no longer needed. The States need to make that decision on whether they need this type of equipment. And, in fact, they do, and that is the funnel. So the State Coordinator, appointed by a Governor, makes the decision on whether a local police force, after a request by a local police force, needs it or not, not the Department of Defense.

Senator JOHNSON. So, again, prior to these programs in place, did any police department have any type of this equipment? Did they ever use their own funds and purchase this type of equipment? Or is it only because it is available, it is given to them for free—"Yes, I will take some of that," "That would be kind of a neat thing to have parked in our garage."

Mr. ESTEVEZ. I am not an expert in local policing, but police forces certainly had armored vehicles, police forces certainly had weapons.

Mr. KAMOIE. Senator, in our Port Security Grant Program, we do fund a lot of police boats that patrol the waterways of our Nation's over 100 ports. The cost-share requirement for that has varied over year by year, but in many years it has been 25 percent. And so, yes, a local jurisdiction has to make a decision about those invest-

ments, and I do not have the entire history, but I would imagine that in our port cities, before the Port Security Grant Program was created, that many of them likely did acquire police vessels to secure the port.

Senator JOHNSON. OK. So, again, I really would like that information in terms of how much cost sharing, and if we are looking for a solution, I think that would be it right there. I think people need to have skin in the game. These decisions in terms of what type of equipment is going to be purchased need to be made at the local level. They have to show their citizens that we really do need that type of protection.

And, by the way, I am all for protection of the police department. Senator Baldwin and I and her representative attended a congressional Badge of Courage ceremony, Badge of Bravery for Lieutenant Brian Murphy and Officer Sam Lenda in the Oak Creek Sikh massacre, and we saw a video of these brave, courageous public servants, public safety individuals, just walking straight into danger. So we are all about making sure that these officials are protected. But the decision needs to be made at the local level, not here in the Federal Government. Otherwise, this is exactly the problem we have when we make the decision at the wrong level of government.

Mr. KAMOIE. Senator, we will provide you that information.

Senator JOHNSON. OK. Thank you, Madam Chairman.

Senator MCCASKILL. Senator Baldwin.

OPENING STATEMENT OF SENATOR BALDWIN

Senator BALDWIN. Thank you.

I was pleased and somewhat relieved to see Attorney General Holder and the Justice Department announce that they will independently investigate not only the shooting of Michael Brown but also the policing practices of the Ferguson and St. Louis County police forces. I think that Department of Justice investigations like these serve a critical role in maintaining and in some cases rebuilding public confidence in law enforcement.

I would like to know from our panelists then if the grant programs administered by each agency look at whether a State or local law enforcement agency is under active investigation for civil rights or civil liberties violations or has a history of those violations.

Mr. Estevez, the statute that authorizes the 1033 program requires the Secretary of Defense to carry out the program in consultation with the Attorney General. So I wonder: What is the nature of the consultation between the Department of Defense and the Department of Justice on this program? And is there a discussion of whether a law enforcement agency is under investigation for the possible deprivation of constitutional rights?

Mr. ESTEVEZ. Senator Baldwin, the consultation with the Department of Justice is one of the areas that we are frankly lacking, that we need to do a better job of, that we will look at under the administration's review and we will discuss with this Committee. So we need to do a better job there.

I will say that——

Senator BALDWIN. Well, I accept your statement at face value that you can do better. But currently in that consultation is the matter of an open or closed investigation into civil rights or civil liberties deprivation a part of your discussion or consultation?

Mr. ESTEVEZ. No.

Senator BALDWIN. And is there any reason why it could not be in the future?

Mr. ESTEVEZ. Of course it could be.

Senator BALDWIN. OK. Mr. Kamoie, is there coordination between the Department of Homeland Security and the Department of Justice in the programs that you administer on these same questions?

Mr. KAMOIE. Thank you, Senator Baldwin. We certainly coordinate on the risk elements of the allocation decisions and recommendations for the Secretary. The risk formula is prescribed by statute. It is a combination of threat, vulnerability, and consequence, and the elements of each of those are laid out in statute. But to answer your specific question, no, we do not take into account whether a law enforcement organization is under investigation for potential deprivation of civil rights and civil liberties.

Senator BALDWIN. Ms. Mason, in administering the Byrne JAG program—it is obviously a within-Department consultation discussion—do those issues get discussed?

Ms. MASON. Thank you for the question, Senator. The Byrne JAG grants are formula money, and we have very little discretion over how that money is used. But the Civil Rights Division does coordinate with our office when they are doing investigations and as they develop their consent decrees, and we work closely with them in designing the content of the consent decrees.

Senator BALDWIN. I understand what you said about the formula and the lack of discretion, but tell me a little bit more about the nature of that consultation and how that can come into play in decisions that you are entertaining.

Ms. MASON. Well, there are two factors in that. The Office of Justice Programs has its own Office of Civil Rights that makes sure that all of the grant programs for the Department comply with civil rights laws. If the Civil Rights Division is investigating one of our grantees, they typically will coordinate with our Office of Civil Rights. We will monitor things and, as the process proceeds, have input into whatever agreement is reached between the Department with that agency.

Senator BALDWIN. Thank you. I want to move to the issue of training, especially in the 1033 program. We have heard in testimony that billions of dollars' worth of surplus military equipment has been transferred to State and local law enforcement agencies, including some significantly sophisticated materials previously operated by trained military personnel, primarily in combat situations for some of that equipment. This includes, as we have talked about, MRAPs, armored vehicles, grenade launchers, assault rifles.

We certainly have great confidence in the skills of our first responders, but these pieces of equipment are not traditional police equipment and may be very unfamiliar to many police officers and sheriff's deputies in communities across this country.

So I understand that the Defense Logistics Agency conducts a biennial inventory review of the States that participate in the 1033 program. But this effort appears to be focused simply on corroborating that the transferred equipment is accounted for.

Can you tell me if the DLA review, Mr. Estevez, or even the original application process makes any inquiry at all as to whether the agency has the appropriate training or access to the appropriate training to use and maintain this equipment or if after the fact the equipment is being properly used?

Mr. ESTEVEZ. Defense Logistics Agency, which facilitates this program, does not have that capability, and neither does the Department of Defense as a whole. We cannot manage local police forces. Even equipment that we are trained to use is trained to use for combat operations, not for local policing operations. And let me also say we do not provide grenade launchers, to be clear.

So the training, the State Coordinator certifies that a local police force that is going to receive an item has the ability to train themselves to use it, so if they are going to get a helicopter, they have a pilot. And the State Coordinator certifies that the local police force has the ability to sustain the equipment that they are going to be provided.

Senator BALDWIN. And what confidence do you have that that level of inquiry is happening at the State Coordinator level if it is not happening under your supervision?

Mr. ESTEVEZ. I think that, frankly, varies by State Coordinator, but I think State Coordinators in the last number of years have actually put more attention and due diligence on that process. And we found that as we did a full-out review of the whole program with the State Coordinators, suspended all the States because of accountability issues, and during that process we found that State Coordinators are focusing their attention on those issues, Senator.

Senator BALDWIN. Mr. Kamoie, are there similar requirements in either the application process or the audit process for training, for proper maintenance of equipment? What accountability can you share with this Committee in the Department of Homeland Security?

Mr. KAMOIE. We encourage training for grantees. It is an allowable expense under our programs. We do not require training, but we do offer training through the Department's Center for Domestic Preparedness for responders and the Department's Federal Law Enforcement Training Center. So we do offer it, we encourage it, but we do not require training.

Senator BALDWIN. And, Ms. Mason, I believe you already testified that training is one of the things that can be funded through grants. But can you talk about the training opportunities available in Byrne JAG?

Ms. MASON. Yes. The training opportunities, Byrne JAG funds may be used for training, but separate and apart from our JAG funding, the Office of Justice Programs provides a full range of training opportunities for law enforcement. Over the last 3 years, we have put together approximately 100 online training courses. We also have many webinars on various issues. We survey the law enforcement to find out what training classes and things they would need. But it is part of our mission to make sure that we pro-

vide a range of training opportunities for State and local governments.

Senator BALDWIN. Thank you.

Senator MCCASKILL. Senator Paul.

OPENING STATEMENT OF SENATOR PAUL

Senator PAUL. I think many of us were horrified by some of the images that came out of Ferguson. We were horrified by seeing an unarmed man with his hands over his head being confronted by an armored personnel carrier. We were horrified by seeing an unarmed man with his hands over his head being confronted by a man with a draw on an assault weapon. We were horrified by images of tear gas being shot into the yards of people's personal homes who were protesting.

One of the fundamental things about America is dissent and the ability to have dissent, and it needs to be peaceful. There needs to be repercussions for people who do not act in a peaceful way. But confronting protesters with armored personnel carriers is thoroughly un-American, and for 150 years, we have had rules separating the military, keeping the military out of policing affairs. But you obscure that separation if you allow the police to become the military.

In FEMA's Authorized Equipment List, there is actually written descriptions for how the equipment should be used, and it says it is specifically not supposed to be used for riot suppression. Mr. Kamoie, is that true, that it is not supposed to be used for riot suppression? And how do you plan on policing that since the images show us clearly large pieces of equipment that were bought with your grants being used in that riot suppression?

Mr. KAMOIE. Senator Paul, that is——

Senator PAUL. Or protest suppression, rather?

Mr. KAMOIE. That is accurate. The categories of personal protective equipment that include helmets, ear and eye protection, ballistics, personal protective equipment, there is a prohibition in the Authorized Equipment List that it is not to be used for riot suppression.

Senator PAUL. And what will you do about it?

Mr. KAMOIE. We are going to follow the lead of the Department of Justice's investigation about the facts. We are going to work with the State of Missouri to determine what pieces of equipment were grant funded. And then we have a range of remedies available to us should there be any finding of noncompliance with those requirements. Those include everything from corrective action plans to ensure it does not happen again, recoupment of funds. So we will look very closely at the facts, but we are going to allow the investigation to run its course and determine what the appropriate remedy is.

Senator PAUL. But it gets back to that whole question. If you are a police force anywhere in the country, from Dundee, Michigan, of 3,900, which has an MRAP, to 25 other cities under 25,000 have MRAPs, they think these are for riot suppression—well, I do not know what they think they are for in a city of 3,900 people. But many of the police forces actually think that this is what the equipment would be good from, is riot suppression in a big city, in an

urban area. And you are specifically instructed that it is not for that. And we have talked about and we have had maybe two instances of terrorism. There has been billions and billions of dollars and maybe two instances of terrorism. So I think really by supplying all of this free equipment, much of which is just, frankly, inappropriate and really should not be on anybody's list of authorized equipment.

Mr. Estevez, in the NPR investigation of the 1033 program, they list that 12,000 bayonets have been given out. What purpose are bayonets being given out for?

Mr. ESTEVEZ. Senator, bayonets are available under the program. I cannot answer what a local police force would need a bayonet——

Senator PAUL. I can give you an answer: None.

Mr. ESTEVEZ. OK.

Senator PAUL. So what is President Obama's Administration's position on handing out bayonets to the police force? It is on your list. You guys create the list. Are you going to take it off the list or are we going to keep doing it?

Mr. ESTEVEZ. We are going to look at what we are providing under the Administration's review of all these programs.

Senator PAUL. So it is unclear at this point whether President Obama approves of 12,000 bayonets being given out? I would think you could make that decision last week.

Mr. ESTEVEZ. I think we need to review all the equipment that we are providing, Senator, and as I said, we, the Department of Defense, do not push any of this equipment on any police force. The States decide what they need.

Senator PAUL. My understanding is that you have the ability to decide what equipment is given out and what equipment is not given out. If you decided tomorrow, if President Obama decided tomorrow that mine-resistant ambush protection 20-ton vehicles are not appropriate for cities in the United States, he could decide tomorrow to take it off a list; you could decide this tomorrow. My question is: What is the Administration's opinion on giving out mine-resistant ambush protection 20-ton vehicles to towns across America? Are you for it or against it?

Mr. ESTEVEZ. Obviously, we do it, Senator. We are going to look at that. I will also say that—I can give you anecdotes where mine-resistant ambush protection vehicles have protected police forces in shootouts.

Senator PAUL. But we have already been told they are only supposed to be used for terrorism, right? Isn't that what the rule is?

Mr. ESTEVEZ. Our rule is for counter-drug, which could have been the shootout—I would have to look at the incident—counter-narcotics, counterterrorism.

Senator PAUL. I guess the point I wish to make is that these are fairly simple problems, and common sense applied years ago, we could have fixed these. We are going to maybe fix them, although I have my doubts, because I have seen rarely anything ever fixed in government. But I would say that we are now responding to a tragic circumstance in Ferguson to do this. But I find these decisions to be very easy to make. You just should not be giving out mine-resistant vehicles. Bayonets—there is no excuse. I do not understand why we have to get together and have a study for months

to decide bayonets are inappropriate to be giving out. I cannot imagine any use for a bayonet in an urban setting.

So, really, this has gotten out of control, and this has largely been something that—the militarization of police is something that has gotten so far out of control, and we have allowed it to descend, along with not a great protection of our civil liberties as well. So, we say we are going to do this. It is OK if it is for drugs. Well, look at the instances of what has happened in recent times, the instance in Georgia just a couple of months ago of an infant in a crib getting a percussion grenade thrown in through a window in a no-knock raid. It turns out the infant obviously was not involved in the drug trade, but neither was even the infant's family. Happened to be in the wrong place at the wrong time. No one has even been indicted on this.

So, really, this is crazy out of control, and giving military equipment, and with the breakdown of the whole idea of due process, of no-knock raids and not having judges issue warrants anymore, you can see how this gets out of control, and people are very concerned with what is going on here. And I see the response so far to be lackluster, and I hope you will do a more complete job in trying to fix this.

Thank you.

Senator MCCASKILL. Senator Ayotte.

OPENING STATEMENT OF SENATOR AYOTTE

Senator AYOTTE. Hi. I want to thank all the witnesses for being here, and certainly thank Senator McCaskill, the Chairman, and the Ranking Member for having this hearing.

What I wanted to understand in particular, Mr. Estevez, I think as you have described the 1033 program, it is—you have a State Coordinator, and then DOD does not decide what equipment is needed. You are just relying on that State Coordinator for those decisions.

Mr. ESTEVEZ. That is correct, and I should point out that the Governor of the State has the State Coordinator, not us, and we rely on the State to filter those decisions.

Senator AYOTTE. So is there any followup in terms of what the equipment is being used for and what type of training the police departments that are receiving it have obtained when the equipment is transferred?

Mr. ESTEVEZ. State Coordinators, in certifying that the local agency needs that, certify that they are going to have the available training and train themselves on that equipment.

Senator AYOTTE. Do you do any types of followup other than receiving the certification? Is there any kind of audit of what is happening and how the equipment is being used?

Mr. ESTEVEZ. There is no followup on how the equipment is being used. Our audits—for the controlled equipment, because we provide—96 percent of what we provide is non-controlled benign equipment. We followup on——

Senator AYOTTE. Yes, when I am referring to this, I should have been specific on the controlled equipment. Obviously, office furniture you would not generally have a followup on.

Mr. ESTEVEZ. We followup on accountability of the equipment. We retain title to that equipment, but we do not followup on its use, Senator.

Senator AYOTTE. OK. So do you think, with this process that is being reviewed right now, not only the President but the congressional oversight that will be had here, that the way the system is working right now, DOD has some responsibility to not just to have a follow-up in terms of what is being done with this equipment?

Mr. ESTEVEZ. I think that that has to be part of the look at what we are doing, the review. I think, speaking from the Department of Defense's standpoint, it is very hard for us because we do not have expertise in police forcing—it is not what we do—on whether it is an appropriate use or not appropriate use. Now, I can look at the pictures of Ferguson and wince like everybody else in this room, but I think that has to be part of the dialogue and discussion of what we are going to do and how we are going to assess the use of equipment.

Senator AYOTTE. Mr. Kamoie, I wanted to ask the Homeland Security role. I do not know if you are the appropriate person to ask this question, but on the Homeland Security front, what type of oversight is there in terms of the 1033 equipment? Does Homeland have any oversight over the receipt of that?

Mr. KAMOIE. We do not, Senator.

Senator AYOTTE. Is there any coordination between the grants that Homeland is giving in light of what the departments are receiving on the 1033 front?

Mr. KAMOIE. We do not coordinate in the decisionmaking about local law enforcement requests. The process that Mr. Estevez has laid out, we do not coordinate that at all.

Senator AYOTTE. So you would not necessarily even know on issuing a homeland grant what the DOD has done in terms of issuance of equipment to local agencies?

Mr. KAMOIE. Correct.

Senator AYOTTE. OK. So how do you then know, in terms of the use of the homeland grants for this, that there should not be some followup?

Mr. KAMOIE. So that is an entirely different story. I will say I know the Defense Department's equipment under the 1033 program is free. Grantees have paid for, I believe, transportation costs using grant funding. But it is a very small percentage of use of grant funds.

So in terms of how grantees use equipment that has been acquired with our programs, for the State program, even the Urban Area program, the grants pass through the State; 80 percent of the State program funding has to go to local jurisdictions within that State. So we work with the State in oversight. In their applications they tell us more and more detail now about the projects they intend, and certainly we have the ability to drill down in, as we are doing with the State of Missouri and follow up on use of the equipment to ensure that it meets program requirements. So we have visibility.

We do not have real-time visibility on all acquisitions made at the local level, but working with our State partners, we can get pretty good visibility.

Senator AYOTTE. I would like an opinion from all of you, if you are able to answer. We have focused a lot, understandably so, on these programs and the military-style equipment to agencies in a Ferguson-type situation. What I would like to know is the use of the equipment, whether it is from Homeland Security, how have we evaluated the needs in a Boston Marathon bombing situation or a situation like that, which seems to me quite different than obviously a Ferguson situation?

Mr. KAMOIE. Thanks for the question, Senator. So we work with grantees and provide them tools to assess the risks that they face and the hazards in their community. We try and provide them guidance on how to estimate their capabilities for addressing the threats that they have identified. They certainly have discretion in terms of the kinds of equipment that they think would best meet those needs. But as we did see in Boston, the equipment that was purchased, including the law enforcement equipment, certainly facilitated the response, certainly facilitated the pursuit and apprehension of Tsarnaev. And so we do work with communities in terms of their assessments of their risk, and they are building to capabilities to address them.

Senator AYOTTE. Ms. Mason, I wanted to ask you about on the Justice end with regard to the Byrne JAG grants. Do we know how much of those grants are used for this type of equipment? Because having been Attorney General of my State, a fair amount of those grants have gone to other things, I know, as well, for example, whether it is protecting children from online predators or whether it is providing assistance to victims of crime, even though there is obviously Victims of Crime Act (VOCA) and Violence Against Women Act (VAWA) funds. But there is all kinds of variety in terms of how those funds would be used. Do you have a sense of how much is used for this in terms of the equipment purchasing?

Ms. MASON. Yes, thank you for the question. As you mentioned, the JAG money is available to address the full range of criminal justice issues in a State, and what we have seen is that of the money that is allocated for the law enforcement category—because there are courts categories, victim categories. But of the law enforcement category, about 40 percent of the money allocated in that category goes to equipment, but most of the equipment that we are seeing people buy are computers, technology, and things like that. And for vehicles, the JAG money can only be used for cars, boats, helicopters, without coming back to the Director for specific approval, and we have only since 2005, we went back and did an investigation. We have approved only seven armored vehicles since 2005.

Senator AYOTTE. Thank you. My time is up.

Senator MCCASKILL. I think Senator Coburn has a few more questions, and then we will get to the second panel.

Senator COBURN. I just want to introduce to the record an article from October 16, 2013, the Boston Globe,[1] which sets the record straight. Tsarnaev was found because a guy went out to check his boat because he saw the end of it up. It did not have anything to do with money that we spent. It did not have anything to do with

[1] The Boston Globe article appears in the Appendix on page 218.

anything other than he noticed it and he was surprised by the fact that he found this guy in the fetal position in his boat and called 911. So this needs to be in the record to set the record straight about what that is.

Senator MCCASKILL. Without objection.

Senator COBURN. I have one question for the three of you, and then we will go to the next panel. What have you heard directly from the Administration in terms of review at your level about the review that the Administration announced based on what happened in Ferguson? What information have you received at the Justice Department, at Homeland Security and FEMA, and at the Department of Defense? What have you heard directly from the White House?

Ms. MASON. We have already had meetings about the review, and we have already been supplying information. So the review is an active process at this time.

Senator COBURN. As far as the Justice Department is concerned.

Ms. MASON. All of us are involved.

Senator COBURN. Well, let me get them to answer specifically. What have you heard, Brian?

Mr. KAMOIE. Senator Coburn, I have participated in the first meeting of the review panel. It is a comprehensive review of the programs, their operation, the very same kinds of questions we have talked about here, training, our oversight, auditing, compliance. Senator, I look forward to reading that article. Information that was provided to me by the Massachusetts Homeland Security Agency and the State Police indicate that——

Senator COBURN. Infrared camera.

Mr. KAMOIE. The infrared camera was instrumental in locating him. So I look forward to reading that article.

Senator COBURN. Here is the direct quote from the guy that called 911 to tell them, "There is somebody in my boat, and he has been injured. I think he is Tsarnaev."

Mr. KAMOIE. I understand, Senator. I look forward to reading it.

Mr. ESTEVEZ. My direct staff at the Assistant Secretary level is participating in the review. My fellow colleague has been over at the White House. We have been providing information to the White House and are fully engaged. The only reason I was not over there was because I was out of town at the time.

Senator COBURN. Thank you. That is great to hear. That is called appropriate response. Thank you.

Senator MCCASKILL. We have a second panel with four witnesses. Does anybody else have one or two questions that they really want to ask these three witnesses before we move to our second panel?

[No response.]

I have two simple questions. Before Ferguson, had the three of you ever met?

Mr. ESTEVEZ. No.

Mr. KAMOIE. No.

Ms. MASON. No.

Senator MCCASKILL. Not good.

Second question, do any of you now have any policy that requires you to track any kind of usage data for the equipment you are providing that is considered military grade? Yes or no.

Mr. ESTEVEZ. No.

Mr. KAMOIE. No.

Ms. MASON. We do have activity reports that we require on a quarterly basis from our grantees about how they use our JAG funds.

Senator MCCASKILL. Well, I would like to see and put in the record,[1] since you are the only one that says—you claim you have usage data, I would like all the usage data that would show what military weaponry, camouflage, uniforms, helmets, all the things we saw in Ferguson, and the data you have about how that has actually been utilized by the recipients of your funds.

Thank you. Thank you all very much for being here.

[Pause.]

Thank you all for being here. I do not want to hurry you, but I want to make sure—this is a large panel, and we have people that want to ask questions. And time is ticking so I want to get started. Let me introduce this panel.

Jim Bueermann is the president of the Washington, DC-based Police Foundation. The foundation, established in 1970, has a mission to advance policing through innovation and science. Mr. Bueermann previously worked for the Redlands Police Department for 33 years, serving in every unit within the department. He served as its chief for 13 years from 1998 to 2011.

Dr. Peter Kraska is a professor and chair of graduate studies and research within the School of Justice Studies at Eastern Kentucky University. Dr. Kraska researches the changing role of police in society, including the relationship between the police and the military, as well as the special equipment, tactics, and training used by police over the last several decades.

Mark Lomax is executive director for the National Tactical Officers Association (NTOA). Mr. Lomax previously served as a program manager for the United Nations in Liberia, West Africa, where he oversaw their police Special Weapons and Tactics Team (SWAT) and crowd control units. Mr. Lomax served 27 years with the Pennsylvania State Police, with a majority of his career in special operations assignments. Mr. Lomax was invited to participate in this hearing at the request of Chief Belmar of the St. Louis County Police Department. Mr. Lomax is accompanied by Major Ed Allen of the Seminole County Sheriff's Office.

Wiley Price is a photojournalist, award-winning, I might add, photojournalist for the St. Louis American newspaper. Mr. Price is a native St. Louis resident who covered the police presence in Ferguson firsthand.

And Hilary Shelton is the Washington Bureau Director and Senior Vice President for advocacy for the National Association for the Advancement of Colored People (NAACP), where he has worked on a wide variety of legislative and policy issues of national importance. Mr. Shelton, while being an important person with the

[1] The report appears in the Appendix on page 493.

NAACP, is also a St. Louis native. Welcome, Hilary. We are glad you are here.

I would like to thank all of you for appearing today, and we will begin with your testimony, Mr. Bueermann.

TESTIMONY OF JIM BUEERMANN,[1] CHIEF (RET.), REDLANDS, CALIFORNIA, AND PRESIDENT, POLICE FOUNDATION

Mr. BUEERMANN. Distinguished Members of the Committee, thank you for this opportunity to appear before you to discuss this very important topic of Federal programs that provide equipment to our civilian police forces.

As the Senator just mentioned, the Police Foundation's mission is to advance democratic policing through innovation and science. We conduct rigorous scientific research, provide technical assistance, and conduct critical incident reviews that help the police across the country become more effective.

Like many Americans, I have been closely following the events in Missouri and the national discussion about the militarization of American civilian police forces. Central to this issue is the use of military-like equipment and tactics by the police.

To many people, the use of armored vehicles, assault rifles, or SWAT teams is unwarranted and highly inappropriate. Conversely, to police officers, their use simply represents safer, more effective ways of handling the dangerous situations they are paid to resolve. I think both perspectives have merit.

The police use of military-like equipment and tactics can either be appropriate or not depending entirely on the context of their use. The antidote to militarizing our police is community policing, transparency, accountability, and paying close attention to the culture of policing.

While the Committee reviews these programs, I urge you to consider their benefits along with needed programmatic changes. There has been substantial positive impact on the public and officer safety from the programs that provide equipment to law enforcement.

For example, 2 weeks ago, in Illinois, the Cook County Sheriff's Department used armored vehicles to get officers to the scene and extract six children and two adults being held hostage after a home invasion robbery. Two officers were shot during the 20-hour standoff, but the equipment prevented further injury to officers and helped with the safe recovery of the hostages.

In West Bloomfield, Michigan, a suspect barricaded himself in a residential neighborhood, engaged in a firefight with the police, and killed a police officer. During the standoff, the police used their armored vehicle to safely evacuate the neighborhood.

And, finally, this summer, the Las Vegas Metropolitan Police Department used rescue helicopters obtained through the 1033 program 11 times during search and rescue missions in mountainous terrain. They also used boats obtained through the program six times for rescue missions on Lake Mead.

Based on my experience in local policing and familiarity with the Federal programs that provide or fund local law enforcement equip-

[1] The prepared statement of Mr. Bueermann appears in the Appendix on page 91.

ment, I offer the following suggestion that I believe will strike a balance between the needs of the police and compelling community interests.

Every policing agency that desires access to Federal surplus property via DOD's 1033 program should be required, as part of the application process, to provide proof that it has received public input and local governing body approval of the department's acquisition of the property; and that it has adequate, publicly reviewable training, transparency, and accountability policies in place.

I believe it is important that the 1033 program be retained with appropriate transparency, accountability, and oversight guidelines incorporated. Completely eliminating them could have substantial impact on public safety, and doing so would make taxpayers potentially pay again for the same equipment they paid for while it was used by the military.

I also recommend that Congress appropriate funds to adequately study this issue. There is a paucity of research into the militarization of the police and the impact of the Federal Government providing assistance to acquiring the equipment that may encourage this.

In conclusion, I urge the Committee and Congress to examine and consider the Federal implications for advancing the following five guiding principles of sustaining democratic policing.

First, the police and the community must constantly focus on community policing framed around a set of organizational values developed in concert with the community.

Second, police organizations should reflect the communities they serve. When diverse communities see the police as not reflecting their members, they can lose faith in the police to understand their needs in meaningful ways.

Third, policing agencies must provide their officers with appropriate and effective value-based training, accountability technology like body-worn cameras, and less lethal tools.

Fourth, the police should utilize the best available scientific evidence about what works to control crime and disorder.

And, finally, critical incident reviews should be conducted after every critical incident involving the police to capture lessons learned and translate them to lessons applied so events like those occurring in Ferguson do not happen again.

Thank you for the opportunity to testify before you.

Senator MCCASKILL. Thank you, Mr. Bueermann. Dr. Kraska.

TESTIMONY OF PETER B. KRASKA, PH.D.,[1] PROFESSOR, SCHOOL OF JUSTICE STUDIES, UNIVERSITY OF EASTERN KENTUCKY

Mr. KRASKA. Senator McCaskill, Senator Coburn, Members of the Committee, and wonderful staffers, thank you for inviting me.

Let me begin today's comments with two examples of police militarization, one old—in fact, it predates 9/11-and one new, this year in May.

In September 2000, Federal law enforcement conducted a joint drug investigation with the Modesto, California, police department.

[1] The prepared statement of Mr. Kraska appears in the Appendix on page 99.

Employing the Military Special Operations model, the Modesto P.D.'s SWAT team conducted a predawn dynamic entry into a family's home—suspecting the father, it turned out incorrectly, of being involved in low-level drug dealing. One of the children in the home—Alberto—was 11 years old and complied with all of the officers' screams to get into the prone position on his bedroom floor. A paramilitary police officer, standing over him with a 12-gauge shotgun, then accidentally discharged his weapon into Alberto's back, killing him.

Now move forward to May of this year. A Georgia police department's SWAT team conducted a no-knock drug raid on a family's private residence. The officers threw a percussion grenade into the home, the device landed in an infant's crib next to his face, and then it detonated. Despite being comatose for a number of days and receiving severe lacerations and burns, the baby did survive. Not that it should matter, but the family was not involved in drug dealing.

Some might dismiss these cases as mere anecdotes, but the facts, based on extensive national level scientific research, are clear. These examples are emblematic of an historic—yet up until recently little publicly noticed—shift in American democratic governance. The clear distinction between our civilian police and our military is blurring in significant and consequential ways.

The research I have been conducting since 1989 has documented quantitatively and qualitatively the steady and certain march of U.S. civilian policing down the militarization continuum, culturally, materially, operationally, and organizationally—despite massive efforts at democratizing police under the guise of community policing reforms.

The growth in militarized policing has been steep and deep. In the mid-1980s, a mere 30 percent of police agencies had a SWAT team. Today well over 80 percent of departments, large and small, have one. In the early 1980s, these agencies conducted approximately 3,000 deployments a year nationwide. Today I estimate a very conservative figure of 60,000 per year. And it is critical to recognize that these 60,000 deployments are mostly for conducting drug searches on people's private residences.

This is not to imply that all police, nearly 20,000 unique departments across our great land, are heading in this direction. But the research evidence along with militarized tragedies in Modesto, Georgia, Ferguson, and tens of thousands of other locations demonstrates a troubling and highly consequential overall trend.

What we saw played out in the Ferguson protests was the application of a very common mind-set: style of uniform and appearance and weaponry used every day in the homes of private residences during SWAT raids. Some departments conduct as many as 500 SWAT team raids a year, and just as in the two examples above, and in the Ferguson situation, it is the poor and communities of color that are most impacted.

It is hard to imagine that anyone intended for the wars on crime, drugs, and terrorism to devolve into widespread police militarization. At the same time, it is also hard not to see that by declaring war, we have opened the door for outfitting our police to be soldiers with a warrior mind-set.

To conclude, I mentioned that police militarization predates 9/11. This is not just an interesting historical fact. It is critical because it illuminates the most important reason or causal factor in this unfortunate term in American policing and American democracy. It is the following: Our long-running and intensely punitive self-proclaimed war on crime and drugs.

It is no coincidence that the skyrocketing number of police paramilitary deployments on American citizens since the early 1980s coincides perfectly with the skyrocketing imprisonment numbers. We now have 2.4 million people incarcerated in this country, and almost 4 percent of the American public is now under direct correctional supervision. These wars have been devastating to minority communities and the marginalized and have resulted in a self-perpetuating growth complex.

Cutting off the supply of military weaponry to our civilian police is the least we could do to begin the process of reining in police militarization, and attempting to make clear the increasingly blurred distinction between the military and police. Please do not underestimate the gravity of this development. This is highly disturbing to most Americans, on the left and the right.

Thank you.

Senator MCCASKILL. Thank you, Dr. Kraska. Mr. Lomax.

TESTIMONY OF MARK LOMAX,[1] EXECUTIVE DIRECTOR, NATIONAL TACTICAL OFFICERS ASSOCIATION, ACCOMPANIED BY MAJOR ED ALLEN, SEMINOLE COUNTY SHERIFF'S OFFICE

Mr. LOMAX. Good afternoon. I would like to thank Chairman Carper, Ranking Member Coburn, Senator McCaskill, and Members of this Committee to have the opportunity to speak with you today.

Since its inception in 1983, the NTOA has served as a not-for-profit association representing law enforcement professionals in special operations assignments in local, State, and Federal law enforcement agencies. The mission of the NTOA is to enhance the performance and professional status of law enforcement personnel by providing a credible and proven training resource as well as a forum for the development of tactics and information exchange.

The American law enforcement officer recognizes, probably more accurately than most, that they are not in conflict with the citizens they serve. To the contrary, the brave men and women of this profession willingly place themselves between danger and the public every day at personal sacrifice to themselves and their families. This is evident by the Law Enforcement Memorial, walking distance from where we sit today.

Law enforcement agencies in the United States have taken advantage of the 1033 program from its inception, but certainly at a greater frequency after the terrorist attacks of September 11, 2001. DHS/DOJ grants, and the DOD 1033 program allow agencies to acquire the necessary equipment rapidly and at considerable cost savings to the local taxpaying public. The 1033 program has allowed local agencies to acquire heavy-duty high-wheeled vehicles,

[1] The prepared statement of Mr. Lomax appears in the Appendix on page 107.

forklifts, generators, and vehicles that improve operational capabilities and responder safety.

The threat that firearms pose to law enforcement officers and the public during violent critical incidents has proven that armored rescue vehicles have become as essential as individually worn body armor or helmets in saving lives. Moreover, in the DHS, FEMA type resource definitions, law enforcement and security resource document, it is recommended that SWAT teams have tactical equipment, including armored rescue vehicles, in the event of a disaster. Most tactical commanders utilize these resources judiciously and are sensitive to both their real and perceived appearance.

However, it is not uncommon for agencies to take receipt of such equipment and receive little or no training on how to utilize it, when to deploy it, and equally as important, when not to deploy it. Prior to obtaining equipment from the 1033 program or purchasing commercially utilizing DHS grant money, agencies are not mandated to demonstrate training levels for the use of that equipment. It is incumbent upon that agency to obtain the necessary training based upon regulatory or voluntary compliance standards associated with such equipment. Such training could take place at the requesting agency location.

Another challenge is that there are not enough of the specialized law enforcement teams developed, specifically Mobile Field Force Teams, in every jurisdiction around the country. Consequently, when a law enforcement administrator is faced with a civil disorder event, they often deploy the only resource they have immediate access to—the local SWAT team. It is important to note that approximately 87 percent of law enforcement agencies in the United States have fewer than 50 officers. With the exception of large metropolitan cities or jurisdictions that have had prior civil disorder events, most agencies have not invested in a mobile field force capability. There is also a general lack of training, regarding civil disorder events, for tactical commanders, planners, public information officers, and first-line supervisors. This must change.

The NTOA published the NTOA SWAT Standards in 2011, which outlines the most basic requirements for tactical teams in terms of operational capabilities, training management, policy development, operational planning, and multi-jurisdictional response. The standard, however, is a voluntary compliance standard. Subsequently, many law enforcement leaders view them as "unfunded mandates." The NTOA's position, though, is that when an agency makes the decision to develop a SWAT capability, it should also make the investment in the training, equipment, and best practices that are required to support such an effort.

Again, on behalf of the 40,000 law enforcement professionals that the NTOA represents, I thank you for this opportunity to speak to you today on these current issues and challenges and look forward to answering any questions the Committee may have.

Senator MCCASKILL. Thank you. Mr. Price.

TESTIMONY OF WILEY PRICE,[1] PHOTOJOURNALIST, THE ST. LOUIS AMERICAN NEWSPAPER

Mr. PRICE. Good afternoon. My name is Wiley Price, I am the staff photojournalist at the St. Louis American newspaper in St. Louis, Missouri. I would like to first thank Senator McCaskill for inviting me here to this hearing today.

The shooting death of Michael Brown, an unarmed teenager, by a Ferguson, Missouri, police officer on Saturday, August 9, 2014, may very well become the turning point in moving forward in changing the way policing is conducted in this country, especially in neighborhoods of people of color.

First, mandatory body cameras for officers patrolling our streets to ensure accountability for the way citizens are addressed during routine stops. This policy would allow us to examine the methods police use during these stops. There are special challenges to policing in urban areas where there are strong feelings, often negative, about the conduct and role of the police.

The uprisings in Ferguson are an example of inept and insensitive police behavior at the highest decisionmaking level. It raises the question of how much force is appropriate to control a group of angry protesters armed initially with rocks, bottles, and, later, Molotov cocktails.

What police used to defend themselves at the early stage of the confrontation was a high level of military weaponry not often seen on the streets in the United Sates. What we saw were large military-style weapons including armored vehicles normally seen on the national news during conflicts concerning the Middle East war zones. Most Americans would not be so shocked if this were a response to an overt terrorist attack on an American city, but not during a spontaneous protest over the shooting of a young African American male by a white police officer while walking in the street in the middle of the day. Most believe that if we can spend this kind of money on weapons, why not use those same resources to better train the police in community policing and train them also on the best way to resolve conflict?

If heavy military weapons are to be deployed, they should be in the hands of trained officers subject to competent high-level police command. This show of military might in Ferguson by the police only escalated the understandably strong feelings felt by the very people that the police are sworn to serve and protect. The days of unrest were followed by growing protest from people who already felt disrespected and frustrated by the local law enforcement on a daily basis.

That concludes my statement.

Senator MCCASKILL. Thank you, Mr. Price. Mr. Shelton.

[1] The prepared statement of Mr. Price appears in the Appendix on page 209.

TESTIMONY OF HILARY O. SHELTON,[1] WASHINGTON BUREAU DIRECTOR AND SENIOR VICE PRESIDENT FOR POLICY AND ADVOCACY, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. SHELTON. Thank you very much, Senator McCaskill. I want to thank Senator Carper and Senator Coburn and all the others that are gathered here today. I want to thank you so much for inviting me here to testify and for soliciting the input of the NAACP on this very important topic.

As you mentioned, my name is Hilary Shelton, and I am the Director of the NAACP's Washington Bureau and serve as Senior Vice President for policy and advocacy.

The NAACP deeply appreciates the needs of local governments, including law enforcement agencies, to secure equipment as cost-effectively as possible. We have supported increased resources and personnel for local police departments since the founding of the association 105 years ago. Over the last couple of decades, given the shrinking State and Federal budgets and the oftentimes increasing demands, the communities represented and served by the NAACP seem to have suffered disproportionately from reduced State and local funding.

Our concerns are when military equipment, weapons of war which are commonly used to fight an avowed enemy of our country, are transferred to local domestic law enforcement agencies with little or no oversight, training, or specific and clear integration when and how they are used in civilian circumstances.

The tragic killing of Michael Brown in Ferguson, Missouri, the ensuing protests, and the resulting demonstrations of force by local law enforcement attracted the attention of many to a heretofore little known program, the Defense Department's 1033 program, by which the Federal Government transfers excess military equipment to State and local law enforcement agencies. While many Americans were rightfully upset by the apparent militarization of community-based law enforcement agencies, it is a sad commentary on race in America that this is not a new phenomenon to most Americans of color.

The war on drugs and the war on crime have been predominantly waged in racial and ethnic minority communities, and too often against African Americans. Since 1989, military equipment has been used by law enforcement agencies to fight the war on drugs. Thus, it should be no surprise that racial and ethnic minorities have grown accustomed to seeing weapons of war in our communities, on our streets, and even entering our homes.

On Saturday, August 9, 2014, an unarmed, 18-year-old, college-bound African American teenager named Michael Brown was shot to death by a police officer in Ferguson, Missouri. According to nearly every report, the ensuing protests began peacefully. The people were angry, admittedly and understandably outraged, but initially peaceful. Their protests were met by local law enforcement agents in warfare type mine-resistant ambush protected vehicles, or with military-style assault weapons aimed at them.

[1] The prepared statement of Mr. Shelton appears in the Appendix on page 210.

The resulting impression on the people of Ferguson and on people throughout our country and the world who were watching these events is that these Americans were being marginalized, that their concerns, their anger, and their protests were not being valued or respected by local law enforcement.

One CNN reporter, as a matter of fact, even said it looked more like Belfast or the Middle East than the heartland of America.

Thus, the fact that the population of Ferguson is over 67 percent African American has not been lost on many of the protesters, nor on the United States or international observers. As a matter of fact, I was at the United Nations when all this broke loose, and they were asking me questions about Ferguson. Even people who could not speak English knew the word "Ferguson."

So what steps does the NAACP recommend to solve the problems associated with the overmilitarization of law enforcement agencies and to build trust and security within these communities?

First, we must change the paradigm which drives our criminal justice system. We need to move away from the failed war on drugs and war on crime scenarios, and law enforcement needs to be trained to stop stereotyping people based on what they look like, the clothes they wear, and the neighborhoods in which they live.

If the Department of Defense's 1033 program is allowed to continue, it should be restructured to emphasize non-lethal equipment and that the equipment be used not to pursue the flawed war on drugs or civilian protests and demonstrations, but rather that it be used to promote the idea that law enforcement is designed to protect and serve the citizens who are within their jurisdiction.

Included in the requirements necessary to receive such equipment must also be policies, training, and oversight which includes the End Racial Profiling Act, which is pending in the House and the Senate, and the Law Enforcement Trust and Integrity Act, which is being prepared for reintroduction by Congressman John Conyers.

Second, all domestic law enforcement agencies should also develop their own internal policies calling for thoughtful restraint, and proof of these policies should be a requirement before any equipment transfer or funding occurs.

And, third, we need full transparency and disclosure. Not only should the Department of Defense be required to disclose what equipment they have distributed and to whom, but State and local law enforcement agencies must also be required to publicly report on the equipment they have requested and received and the intended purpose.

And, finally, the NAACP would like to strongly advocate for more programs such as the Department of Justice Community Oriented Policing (COPS), program and for an increase in the funding of COPS programs. The COPS program is intended to incentivize better law enforcement practices through community engagement. It remains the primary vehicle by which the Federal Government rewards innovation and research on police transparency and accountability.

In summation, American policing has become increasingly militarized through the acquisition and use of weapons and tactics designed for war. The lines between Federal military force and civil

law enforcement are becoming increasingly blurred. Sadly, communities of color have historically borne the brunt of this obfuscation. We need to correct this problem, not just check it. We need to continue to strive for a democracy under which all Americans can live. And we should not allow any American community or government entity to be considered at war with any other.

I thank you again, Chairman Carper, Senators Coburn and McCaskill, and all the others that are here today, and I certainly look forward to your questions.

Senator MCCASKILL. Thank you so much.

I am going to go ahead and defer my questions and allow the other Senators who are here to go first. Senator Coburn.

Senator COBURN. Yes, thank you, and thanks for your testimony.

Mr. Bueermann, at what point do you think the Federal Government's obligation to local law enforcement begins?

Mr. BUEERMANN. Well, that is a great question. I think that one of the benefits of the Federal Government is trying to create a national coherence around what policing should look like all across the United States, and that is a difficult place for the Federal Government to be. There are leadership training programs like the National Academy that the FBI puts on at the FBI Academy that helps police leaders across the United States better understand these kinds of issues that we are talking about today. So certainly that would be an appropriate role for the Federal Government.

As somebody who used to be a police chief, I really appreciated the ability to acquire equipment. In my department we used it primarily for vehicles and office equipment for our community policing stations and our recreation programs that we could not have afforded if the 1033 program had not existed.

So from a local perspective, I thought that was a wonderful way for us to get a return on our Federal tax investment. But I certainly understand the issues that are at play in this discussion.

Senator COBURN. Dr. Kraska, I appreciate you coming, and I appreciate you working with us.

Tell me what the difference is between a militarized and increasingly Federalized police force and a standing army.

Mr. KRASKA. It is actually a bit of a complicated history that I will not get into too much, but we have to remember that the Posse Comitatus Act of 1878 had been in place untouched for quite a long time until the 1980s drug war. And it was not until the 1980s drug war—it was actually the Reagan Administration that wanted to completely repeal Posse Comitatus, but what instead happened is they just amended it significantly to allow for cross-training and weapons transference.

Just as an aside—I do not want to make too much of an aside, but we also have to remember that the Department of Defense has been very actively involved in training local police departments as well, not just providing them equipment but providing them training. I have a great quote—I am not going to read it now, but if you ask me to read it, I will—that talks about even having Navy SEALs and Army Rangers come to a local police department and teach them things. So it is not just weapons transference.

The Federal Government has increasingly since 9/11 played a significant role in accelerating these trends toward militarization,

and, the extent to which the 1033 program, the Department of Homeland Security funds, et cetera, have contributed to it, I would certainly call it significant. But I think we have to remember that the militarized culture of a component of policing—and it is just a component of policing. This is not a unified phenomenon in all the police of the United States of America. We have a police department right next to us, the Lexington P.D., very smart, very wise. They do not do this kind of thing at all, and they would never do it.

So the policing community is a bit split over this, and I do not want anybody to get the impression because of the experts we have heard that policing is all for this stuff, because it is just not true. There are lots of folks that are not.

Anyway, back to Federalization. So I think the Federal Government has played a significant role in probably the last 10 to 14 years.

Senator COBURN. All right. The rest of my questions I will submit for the record so we can move on in our time.

Senator MCCASKILL. Senator Johnson.

Senator JOHNSON. Thank you, Madam Chairman. Dr. Kraska, in your testimony, what I have written down in my notes is equipment versus procedures versus operations. How much of it is really about procedures, responding to just events in society versus the actual equipment? I mean, what is causing what?

Mr. KRASKA. Great question and, of course, difficult to answer. I do know that the militarization trend began as part of the drug war. It has not had anything to do with terrorism. It has not had anything to do with threats to national security. It has had everything to do with prosecuting the drug war.

That is when we saw the precipitous rise in not only the number of SWAT units, but their amount of activity. That is when we saw departments doing 750 to 1,000 drug raids per year on people's private residences. That is when we saw police departments all over the country in small little localities sending off two or three officers to a for-profit training camp, like Smith & Wesson or Heckler & Koch, getting training and coming back to the department and starting a 15-officer police paramilitary unit with no clue what they were doing whatsoever.

That all happened as a part of the drug war. So I have a hard time making any sort of credible analysis that what we are seeing is just a reaction to an increasing insecure homeland situation. This stuff has been well in place and it is still absolutely happening today in the same way it was in the 1990s and the 2000s.

Senator JOHNSON. So again, I am coming from a manufacturing background trying to solve problems going to the root cause. What I am hearing, because again, in my briefing, this equipment for transfer really first started from a Defense authorization bill targeted at the drug war.

Mr. KRASKA. Absolutely.

Senator JOHNSON. So I know in these last 3 years because of another hearing, we spent $75 billion fighting the war on drugs. We are not conquering it, are we? So what do we need to do? And I will ask Mr. Lomax. What do we need to do procedurally? What is the solution here?

Mr. LOMAX. Thank you, Senator. The solution relative to equipment and procedures——

Senator JOHNSON. If this was all really caused initially by the drug war, the militarization buildup of this, is in reaction to the drug war, these no-knock raids are about drugs, what is the solution?

Mr. LOMAX. I think the solution starts at the top, leadership. The solution comes from decisionmaking, policy, procedures. Getting back to what your initial question was to Dr. Kraska, the nexus between equipment and procedures, I think procedures come first, policy, documentation, transparency, decisionmaking.

So again, it is not the equipment per se. It is who is making those decisions on how to use it, how to deploy, or when not to deploy it.

Senator JOHNSON. I mean, are we making any progress on the war on drugs at all? We have been engaged in this for decades now.

Mr. LOMAX. Again, that is a question that needs to be taken up by the legislators and Congress and the policymakers as far as how we are doing on the war on drugs.

Senator JOHNSON. And I realize these questions are somewhat removed from militarization of the police force, but again, I am looking, based on the testimony, this is the reason this militarization began. Mr. Shelton, what is your solution? I mean, obviously, drugs have devastated communities. Crime has devastated communities.

Mr. SHELTON. It has to change. The paradigm that we are utilizing now, criminalizing in the way that we are and actually putting people in prison along these lines is outrageous. Quite frankly, as mentioned by Dr. Kraska, we have 2.4 million Americans in jail, about 50 percent of those for drug-related offenses. They are nonviolent offenses.

You talk about a health care approach to problems of the drug problem in the United States and get away from much of the criminal, now military, approach to our drug problem in this country. I should talk about problems with the police officers and the overaggression and even practices of racial profiling. We have some strategies for that as well.

Senator Cardin here, one of your colleagues, has a bill that is now pending before the U.S. Senate called the End Racial Profiling Act that goes a long way to help restore the trust and integrity necessary for law enforcement to be effective. We know that will go many miles toward the direction of fixing the crime problem in our society.

As we talk about these issues, it makes no sense to me that we have 79,288 assault rifles that were actually given by the Department of Defense to local police departments, 205 grenade launchers, 11,959 bayonets. And I am trying to figure out what they are going to do with 3,972 combat knives. But indeed, that is what with local policy departments now. It makes no sense.

Senator JOHNSON. So again, war on drugs, but also war on crime. Mr. Shelton, a recent article written by Walter Williams, he lists the statistic from 1976 to 2011, there has been 279,389 African-Americans murdered. It is a rate of about 7,000 per year. Ninety-

four percent of those murders are black on black. I mean, that is a real crime problem that you have to be concerned about.

And by the way, I would think local police departments are also concerned about it.

Mr. SHELTON. Well, absolutely. As a matter of fact, the issue dealing with crime in the African-American community goes back to our founder 105 years ago, or one of our founders, W.E.B. Du Bois. Clearly, the crime problem in the African-American community has to be addressed, but it cannot be addressed successfully if we have the distrust in police officers that we are seeing because of programs like this one.

We are going to have to establish a new trust pattern in our country. Also, I was very happy to hear Dr. Kraska mention the issue of those who are most affected in addressing the issues of crime in any community throughout this country are those that are reflective of those communities in which they are there to serve. All that has to be part of the paradigm.

The only time things begin to cool off, in Ferguson, Missouri, quite frankly, is when the first African-American Attorney General of the United States went to Ferguson to show that the top law enforcement officer in our country was there and that their concerns be taken very seriously. That works across the board.

Senator JOHNSON. OK. My time is running out. Thank you, Madam Chairman.

Senator MCCASKILL. Thank you. Senator Ayotte.

Senator AYOTTE. Thank you. One of the things that I am trying to understand is everything depends on the situation—would you agree with that—in terms of what is appropriate to deploy, what is appropriate in terms of a response, and also I think it all comes down to appropriate training as to how to respond to a situation. Because would you all agree with me that we are going to respond differently to a situation like the Marathon bombing versus a situation like Ferguson and part of that is training and what we need to respond to those situations may be different.

Mr. SHELTON. If I might begin? Just before training comes policy. What we need is a clear policy on how to respond to circumstances like that we experienced in Ferguson and other places. Policy, then training, and then accountability. Those are the triumvirate, I believe, that moves this issue along.

Senator AYOTTE. So one of the things I wanted to followup on this idea of, for example, SWAT teams, because having worked with the police in my State in a number of settings, they have had to respond to some pretty dangerous situations that did involve, for example, a drug crime where you had, you know, high level individuals who were quite dangerous, quite armed, and that it was the most appropriate that a SWAT team respond because they had the most training of how to deal with a situation like that versus sending, you know, one patrol officer or a handful of patrol officers that are not oriented toward dealing with a situation where you have, for example, an armed drug dealer, not necessarily a user, but someone who is profiting off the situation.

Then I have been to situations where we had a hostage situation and we had a SWAT team situation there where, truthfully, I was glad that the SWAT team was there because they had the training

and they trained particularly for hostage situations that would allow the police to have the right training and to know how to negotiate, No. 1, to know how to handle a situation, not to have bystanders harmed.

So what I am trying to understand is to make a broad brush of saying, 60,000 SWAT operations. I think that is a pretty broad brush. So I am trying to get at from maybe all three of you and the first who have commented on this, it seems like it is appropriate for us to have some individuals who have this type of training because I have been there at these scenes with them where I would have wanted the right SWAT team trained to deal with the situation, and we successfully ended situations because the people there had the right training and trained for this specifically, were not just taking the patrol officer off the street to address it.

So how do we distinguish from that and this situation where, the public is—it is a protest situation where it is people exercising their First Amendment rights? This is not an easy question to answer, but I think this is what we are grappling with here, particularly, particularly I think we have asked a lot more of the police post-9/11 in terms of what response we have asked of them as first responders, and maybe we have sent mixed messages.

So I would like to get your comment. I know that is more of a statement, but I would like to hear your comment on some of those thoughts.

Mr. BUEERMANN. So, Senator, if I can start this off? What you have just articulated, it is a great question that, ultimately, I think is the crux of this discussion because anybody who thinks that we are not going to have tactical teams or high-powered weaponry in policing in the United States just has not been paying attention to the realities of police officers.

As Mr. Lomax said, the memorial not far from here has 20,000 names on it of heroic Americans who gave their life trying to protect their own communities. So there is a time and a place for any one of these particular tools. I made reference to the FBI's national academy. One of the problems we have in this country is there is not a national coherent about when we should use these particular tools.

You can find out the hard way. This is the rationale for doing critical incident reviews, to understand those learning opportunities. But at the end of the day, it comes down to leadership, whether that leadership is expressed by the local city council that selects the police chief, by the police chief himself or herself, that decides whether they should or should not have a tactical team and under what circumstances they should use that.

If you leave it to the police officers, like any of us, they have a burning desire every day to go home to their families. And so, much of their world is framed around the perception that what I am about to do, the service of a search warrant, could be dangerous. I have personally served lots of search warrants and I understand——

Senator AYOTTE. Well, not to interrupt you, but my own State in the last few years, we lost one officer exercising a search warrant in a drug situation and we lost another one in a domestic violence, executing an arrest warrant.

Mr. BUEERMANN. And I do not know any police officer that does not recognize that nobody made them become a cop, that that is a voluntary occupation and they know the inherent risk in that. The question comes in the balancing of this, and I think many of the members of the panel have touched on this, that ultimately, this leadership issue is a function of the relationship that the police department has with the community.

Professor Kraska talked about the police department next door to him that has a great relationship and they would not do certain things. At the same time, if they needed a tactical team, I have no doubt, to protect their citizens or their officers they would employ that. It is when you use it and that common sense and that wisdom that comes from leadership and the proper training. That is where, I think, the Federal Government should spend a lot of its attention on, how do you stimulate that ability to do the right thing.

Mr. KRASKA. Oftentimes these kind of conversations devolve into an either/or type of argument and it is really critical to recognize that there are absolutely lots of situations, Columbine, for example, where you have to have a competent, professional response. A use of force specialist, military special operations folks, police specialists, whatever you want to call them, you have to have that, no doubt.

What I was talking about was 60,000 deployments. I was not talking about 60,000 deployments for those situations. Those situations are incredibly rare. Thank goodness they are incredibly rare. Those situations absolutely require a competent response, active shooter, terrorist, whatever kind of situation.

Our research demonstrated conclusively that 85 percent of SWAT team operations today are proactive, choice-driven raids on people's private residences, 85 percent. What that means is that the original function of SWAT in the 1970s——

Senator AYOTTE. Right.

Mr. KRASKA [continuing]. Was the idea that SWAT teams were to save lives. They were to respond in a laudable way to very dangerous circumstances, to handle those circumstances well. What happened during the 1980s and early 1990s drug war is that function flipped on its head. We went from these teams predominantly doing reactive deployments, maybe one to two of these in an entire municipality, one to two a year. Smaller jurisdictions, probably something like that would not happen in a hundred years, but they were there to handle it.

This has devolved now into what I am talking about, widespread misapplication of the paramilitary model, misapplication. Unjustified growth, having many smaller police departments. Most of these departments are small. Our research showed that 50 percent of these small police departments, 50 percent of them, are receiving less than 50 hours of training per year for their SWAT team. The recommended amount from the NTOA used to be 250. I think they have reduced it to 200, 250 hours versus 50 hours.

These are not well-trained teams. These are a localized, 18,000 police departments all doing their own thing with no oversight and no accountability. And that is why we are seeing and we have seen hundreds of these kinds of tragedies that I have mentioned, but

also lots of terrorized families that have been caught up in these drug operations and drug raids. Thank you.

Senator AYOTTE. Thank you. Anybody else?

Mr. LOMAX. Senator, just a couple of comments relative to the SWAT that you saw. There is a need, like the panelists have discussed in the last couple of minutes. The No. 1 priority of SWAT is to preserve life, No. 1, and we think of a SWAT team—most people just think of a tactical entry team. That is part of a SWAT team. You have intelligence, you have negotiators, you have security and so forth.

So again, the No. 1 goal of a SWAT team is to preserve life, whether it is the hostages, civilians, even the suspect. So again, like what Dr. Kraska said, over the many years, the use of SWAT has been—outreached its main purpose. But going back to the reason for a SWAT is those small particular situations that you have personally observed where the training, the equipment, the expertise saved lives.

Senator MCCASKILL. Thank you, Senator Ayotte. For Mr. Bueermann and Mr. Lomax, I am very sensitive to the cry that goes up about unfunded Federal mandates, but this is a little bit of a different situation. We are pushing, in wholesale fashion, military equipment to local police departments. Do you sense that the police community would be offended if we put a few more rules of the road on their ability to receive these resources from the Federal Government?

Why would we not require that if you are going to get Federal funding in this space, that you would have to have 200 hours worth of training and that the size of your police department would be relevant to the decisions as to what you would receive, and that a SWAT team on a very small community, particularly one that is a suburb where there could be regional access to specialists in the rare but very, very important situation where that kind of training is absolutely essential to protect lives of innocent people, and most importantly, the lives of the police officers.

Why can we not begin to do more with—if we are going to give you money, we are going to make you jump through a few hoops. Is that something that you think the police community would not accept and understand, that this has gone too far?

Mr. BUEERMANN. I have had this conversation with several police chiefs since Ferguson erupted and I do not think that they would be alarmed by this. I think there is an expectation that there is going to be an adjustment in the program, and the thoughtful police chiefs and sheriffs that I have spoken to about this would agree with what you just said, that there needs to be some governing effect on the transfer of some of this equipment.

I do not think you have an objection, other than the one you had earlier about if you are giving away equipment, you are buying—how does that make sense about office equipment, but certainly tactical equipment, whether that be armored vehicles or guns, should be connected. I have made some suggestions.

With a local public input capacity, a public hearing about this, and some guidance from the government relative to accountability measures like that body-worn cameras or training issues, because many of those arguments local police chiefs would be making to

their local city councils, and some of those arguments fall on deaf ears. They cannot get the councils to pay attention to it because there is a price tag attached to that. I think you actually might be helping many police chiefs in this country elevate the level of training that they would like to see their people receive.

Senator MCCASKILL. Mr. Lomax, and then I will ask Dr. Kraska.

Mr. LOMAX. Yes, I agree with my colleague here that, No. 1, for the vast majority of chiefs and sheriffs out there adding extra steps as far as documentation, policy, and accountability would not be a problem. I think in light of the fact that this program has done tremendous contribution to police departments in the last 20-plus years, that right now there definitely needs to be a paradigm shift, a way of thinking differently, because perception is reality.

Right now the perception is there is a militarization of policing, which becomes reality to a lot of people. The added steps, whatever they may be, for this 1033 program, I think, would be a welcome sign, because also it would kind of ensure training. And again, as Jim mentioned, it will give them more power to say, we need more training in order to procure this equipment.

And also, there needs to be local input. I believe Senator Johnson mentioned it earlier, that this should be a local issue, too. From the State to the locals, they should have input into their police departments and how they are properly equipped.

Senator MCCASKILL. Dr. Kraska.

Mr. KRASKA. Excuse me for being a professor and talking on and on, so I will actually read a thing that I had written before, hopefully pretty quickly. If it were possible to provide funds and programs that allowed a small, tightly regulated component of U.S. police to obtain military grade equipment for the extremely rare terrorist or active shooter situation, perhaps these programs might be of some benefit.

However, the myriad and unavoidable unintended consequences of such programs render them not just dubious, but dangerous. Military gear and garb changes and reinforces a war fighting mentality among civilian police where marginalized populations become the enemy and the police perceive of themselves as a thin blue line between order and chaos that can only be controlled through military model power.

The ethic, the massive community policing reform programs intended to instill in American policing, that is an ethic of community empowerment, developing authentic trust between the community and police, democratic accountability, all those types of things, have been smoothly displaced by a military paradigm.

A recent edition in COPS Magazine by the Director of COPS, said very clearly. He said, We are seeing the growing militarization of American policing lead to the destruction of community policing. So it is a cultural problem. It is not just a regulation, let us put a few tweaks and bumps here.

When you hand these departments this level of weaponry and these goods, it changes their mindset. Remember, most of these departments have 25, 30, 50 officers. Fifteen of them serve on a SWAT team. Now they have an MRAP, an armored personnel carrier, a $325,000 armored personnel carrier paid for by Homeland Security. What do they say to themselves? Here is an example.

"We have racial tensions at the basketball game. We are going to bring the MRAP to the basketball game on Friday night." That is a quote. Changes their mindset. So I cannot see a way that the transference of military goods from wartime to our civilian police agencies is ever a good idea.

Senator MCCASKILL. It is interesting you say that because in preparing for this hearing, we took a look at a search on Amazon for "police officer toys." And what came up, and it is in the packet of pictures,[1] the next picture,[2] the one with the—yes. This is the first thing that came up. And this is a military helmet. It is a hand grenade. Obviously, the kind of weaponry that we have not traditionally thought of police officers.

Now, these are what parents are buying for their children who say they want to grow up and be police officers. So this is something that has gotten, I think, into our culture that is very damaging. Speaking of community policing, I have watched as community policing has gone down and down and down—and by the way, the Homeland Security grants have not gone down—in fact, the Homeland Security grants are bigger now than community policing.

So why is it that I do not hear as much from my police communities and the lobbying organizations about the cuts to community policing like I do when there is any talk about UASI or the Homeland Security grants. Why is it that there does not appear to be the hue and cry? We need the voices of the police community lobbying for community policing money.

I watched community policing work as a prosecutor. I watched it work with the drug problem, a serious drug problem. That and drug court were two things that really were working in Kansas City. So what do you attribute the fact that the policing community does not seem to be as worried about the funding for community policing as they are for some of these streams of funding that are buying all of this weaponry?

Mr. BUEERMANN. This is a cultural aspect of policing. But it also is the responsibility of every American, quite frankly, to say to their locally elected people that this is what we expect from our police department. We expect our police department to be one that is fair and equitable, that treats everybody with dignity and respect. At the same time, they grapple with very difficult and challenging situations.

The best counter terrorism strategy in the United States that the local police can do is community policing. There is an absolute need, and you have heard it from everybody that is up here today in front of you, to co-produce public safety between the police and the community, and that will never happen if there is distress, if the police departments do not reflect the community they serve, if we do not have a constant discussion.

If there is any silver lining that comes out of the events in Ferguson, it is that we will begin this discussion that should have happened probably in 1997, not in 2014, about how we use this equipment, whether it comes from a Federal program or out of a city's

[1] The pictures submitted by Senator McCaskill appear in the Appendix on page 233.
[2] The picture submitted by Senator McCaskill appears in the Appendix on page 258.

general fund, in an appropriate way that does not damage the relationship the police have with the community.

If we do not do that, then we should not be surprised when that becomes the norm sometime in the future.

Senator MCCASKILL. What about the idea that if this were an active shooter situation or hostage situation or terrorism situation, that some of this equipment be housed on a regional basis under the control of the State National Guards to then act as an access point that would provide more accountability as to when it is utilized and would require that it would not utilized by anyone who had not had appropriate training and it would only be utilized in those circumstances where it really would save lives and protect police officers, as opposed to the incredible change we have seen that these are now, OK, we have this thing in the shed, let us figure out some way to get out and use it.

Mr. BUEERMANN. I think you have just articulated the reason we should study this particular phenomenon more at the same time we are trying to work on solutions, because we do not know enough about how this equipment is used. We heard that from the earlier panel.

Senator MCCASKILL. They have no idea. And by the way, Justice Department said they do. They just know what they are buying with it. They do not know how it is being utilized. None of them know how it is being utilized.

Mr. BUEERMANN. We should spend more time and money researching this. I think you make a great point about regionalizing certain kinds of assets and there are lessons that we could learn from other fields that do this. This could easily be one of the guidelines that is attached to this kind of program, that you have to demonstrate what the regional approach is to using these kinds of equipment. And we see that already in some other Federal programs. But this should be a regional asset and not necessarily a localized asset.

The problem is there are 17,000 police departments in this United States. Each one has a slightly different challenge in front of them, and so there needs to be a thoughtful approach to this that ties this stuff together. I think that ensuring that the locally elected body weighs in on this, that local communities have an opportunity to voice their opinion, whether this makes sense or it does not make sense for us to have this particular piece of equipment, means that there is a much greater likelihood that you are going to see a regional approach to these things and not necessarily an individual department where a one-officer department has an MRAP. I mean, there is a story there that we should know more about.

Senator MCCASKILL. Or 13 assault grade rifles——

Mr. BUEERMANN. We should know more about that.

Senator MCCASKILL [continuing]. For one sworn officer. I mean, that, obviously, is almost comical it is so out of bounds. One of the things that I witnessed in Ferguson, and I would like you to weigh in on this, Mr. Price, was the chicken and egg situation that really occurred, where you had a spontaneous demonstration, you had—the vast majority of which was very peaceful beginning on Saturday.

We did have some looting on Sunday night. But aside from the looting on Sunday night, the vast majority of it was peaceful up until the following weekend when you began to see a whole lot of people, embedded among the peaceful protesters, that were there for a confrontation. There is no question in my mind that the idea that all of this equipment was brought out early in the week contributed to a mentality among the peaceful protesters that they were being treated as the enemy.

Mr. PRICE. That is correct.

Senator MCCASKILL. That they were the enemy.

Mr. PRICE. Yes.

Senator MCCASKILL. That this was a military force and they were facing down an enemy. These were peaceful protesters that, in America, we are supposed to be celebrating as part of our constitutional heritage. Talk about, Mr. Price, how the freedom of the press worked in here. What were the challenges you faced as you were there with your camera, day in and day out, from being able to cover what was going on because of that mentality that was almost a siege mentality that began really on Monday following the shooting on Saturday.

Mr. PRICE. Well, Senator, one of the big problems I had with the police was that sometimes they lumped the media in with the protesters, particularly during the daylight hours when they took on a policy of no standing protester or media could be found stationary. And the problem I had with that was, you already have us locked into a 2-point mile radius so we are right here in front of you. But yet, they wanted us to keep in motion. And I was thinking to myself, would it not be easier if once they do slow down, you have them corralled in one location, here we are, and there is 80 to 100 people standing here. Why should we continue to move?

And particularly when you are also asking the photographers to move with them. There was some tussle from time to time. I even saw a couple of the CNN correspondents while they were live on the air being forced, 20 or 30 feet down a certain area. I felt like they were aggravating a peaceful stance. Well, now they are tired of walking up and down the street. Now they are going to stand and chant. But no, you want to keep them in motion and you want the media to go with them.

I felt like they were aggravating the situation as opposed to keeping it peaceful.

Senator MCCASKILL. I am assuming tactical officers receive training about when putting in this kind of military presence during daylight hours when you have lots of children and elderly? I mean, this crowd. Yes, there were some young people in the crowd, but it was the middle of the afternoon and you had a mounted sniper weapon pointing at people that never ever envisioned having someone point a sniper weapon.

This happened on Wednesday afternoon. It was about three o'clock in the afternoon that that occurred. So is there somewhere in the training that that would be appropriate under those circumstances?

Mr. LOMAX. Senator, I am not sure of the particulars of what was going on at that time. Hopefully, the DOJ investigation and other investigations will determine what was going on, because a lot of

times there may be intelligence out there that something is going on that maybe we do not know what is happening.

Senator MCCASKILL. Well, believe it or not, I was told that the reason that happened is that he was using his scope in order to observe the crowd. Well, have they heard of binoculars? It seems to me there is a better way to monitor a crowd that is peacefully protesting than pointing mounted sniper weapons at them under those circumstances.

I mean, it seems common sense would tell you that is going to make the situation much worse, not make it better.

Mr. LOMAX. Yes, you are right.

Senator MCCASKILL. I was told that he was up there in order to observe the crowd.

Mr. LOMAX. Correct.

Mr. KRASKA. Most police departments that handle civil protests correctly know that the last thing you want to do is instigate. There was just a wonderful article written in the Washington Post that interviewed a whole bunch of chiefs of police that understand this and how you sit back and you do not antagonize and you certainly do not display this level of weaponry.

If I might, I will just throw out a one quick speculation, and I am willing to speculate before the DOJ report comes out. I think what you saw was a high level of fear of victimization among the police, and it is a huge cultural issue right now in policing where so many for-profit training groups and training academies are teaching this survivalist warrior mentality.

You never know whether the next person is going to kill you and you have to go home at night, so you take every possible precaution you can. Well, all of that sounds wonderful, but it does lead to an intense fear of the other, of those people, of the community you are serving, and I think——

Senator MCCASKILL. And there had been looting on Sunday night and they burned down a store. I mean, let us be fair here. It was not like that this activity was completely lawful. There was a lot of unlawful activity that I think really—it shook the bones of the law enforcement community in this area, that they would have that kind of lawlessness. So that is something that we have—to be very fair, we have to factor that into their response.

Mr. KRASKA. Absolutely, but I would have to say you have to look at the situation. Look at Hurricane Katrina where the initial response from FEMA was not what has been traditionally done in this great country, which is humanitarian aid. The initial response from FEMA, under the Department of Homeland Security, was, this is a security threat, and they spent three, almost four full days supposedly securing the area, later of which we found out was false, that there was not an area to secure.

People were in dire need of help. Securing the area before they gave humanitarian aid. That is the kind of mentality I am talking about. It is a security first, aid second mindset, which is also what our good friend said down the table.

Senator MCCASKILL. Right Did you have something you wanted to add, Mr. Price?

Mr. PRICE. Yes. In the picture that you just showed, the distance between the police and the protesters was probably a hundred feet.[1]

Senator MCCASKILL. Very small.

Mr. PRICE. Very small. So, I mean, when they were standing there, even when the police were shouting, it was like in that photo, you could clearly hear what everyone was saying from the police department as far as moving back, dispersing. So the use of a scope, even when that truck rolled up, all the photographers were looking around like, OK, what is this for? We began to think that there was something else going on behind the scenes that we did not know about. None of that took place.

Senator MCCASKILL. You just assumed it was not for you?

Mr. PRICE. Yes, exactly. And we were wondering, why the truck was there because, again, it brought up suspect that there was something going on that we did not know. Other photographers were questioning each other about what was going on. And this went on for 3 or 4 days.

And again, the police aggravated peaceful marchers when they were just standing there chanting. Instead of just letting them chant, and you have them in a stationary environment, they moved them around, which irritated them. That is all they did.

Senator MCCASKILL. Right. Well, I want to thank all of you for being here. We will follow up with another Subcommittee hearing, I am sure, on this subject as we—and I would certainly ask Mr. Bueermann and Mr. Lomax for you to begin working on what you think, based on your knowledge of the police community in this country, what would be reasonable changes in policy that would begin to get us back to a place where we have not done—where somebody, a young man who wants to grow up to be a police officer, thinks what he needs to get as part of his uniform is a hand grenade.

Obviously, that is a problem. And I would like us to work on that together. We will continue to work with all of you who have come today. Certainly, the NAACP is part of this national discussion and obviously I am on the ground in Ferguson a lot trying to figure out how we navigate through a still very difficult road ahead as we figure out how to regain trust in that community with that police department.

The great people of Ferguson deserve to have a police department that they feel comfortable with, and so, there is a lot of work yet to do.

The hearing record will remain open for 15 days until September 24 at 5 p.m. for the submission of any other statements and any other questions for the record. If there is any information that you all would like to provide to the record, be sure and get it to us before then. We will remain in contact with you as we work on this problem. Thank you very much.

[Whereupon, at 1:20 p.m., the hearing was adjourned.]

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[1] The pictures submitted by Senator McCaskill appear in the Appendix on page 233.

APPENDIX

Opening Statement of Chairman Thomas R. Carper
"Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies"
September 9, 2014

As prepared for delivery:

One month ago today, an unarmed young man named Michael Brown, was shot and killed by a local policeman in the town of Ferguson, Missouri. It has been stated that the officer was acting in self-defense. While the incident remains under investigation, this much is known. It has caused very real pain for Mr. Brown's family, as well as for many residents of Ferguson and for others across the country. The events that unfolded in Ferguson have sparked a much needed national discussion on a range of issues, including police strategy, law enforcement response to civil protest and unrest, and race relations. The purpose of today's hearing, though, is not to explore what happened in Ferguson on that fateful day or to assign blame. That is the responsibility of our judicial system.

Rather, the purpose of today's hearing is to examine the effectiveness of federal programs that provide State and local police with surplus military equipment and grant funding for equipment, exercises, planning, and training. The issues we will be discussing today are not just about Ferguson. They affect communities across our nation. As we take a deep dive into the federal programs that help equip state and local law enforcement agencies, we want to explore the value of these programs to police, the communities they serve, and the taxpayers.

I want to thank Senator McCaskill and her staff for their efforts in organizing this hearing and for co-chairing it with me. Our colleague from Missouri has spent a great deal of time in Ferguson this past month examining these issues, and we all look forward to learning from her first hand experiences. Claire, thank you for your leadership during this difficult time and, for all you have done to help our country move forward and learn from what you and your fellow Missourians have been grappling with.

During the weeks that followed the shooting of Michael Brown, national media attention focused on the protests, including the response by local law enforcement. Many questions rightfully have been posed by local leaders, civil rights organizations, police associations, law enforcement experts and others on whether the police response was correct, measured and appropriate.

In thinking about these issues we'll be discussing today, I can't help but think about how, in my home state of Delaware, we are learning again the value of our police spending more time outside their police cars, working every day with the community in positive ways. This helps build the bonds of trust that strengthen communities in ways that armored personnel vehicles and assault weapons never can.

We've convened today to examine the federal government's role in helping state and local police do their important work. Since 1997, federal agencies have supplied over $5 billion in surplus Department of Defense supplies and equipment to law enforcement. In addition, both the Departments of Justice and Homeland Security administer grant programs that also can pay for military-style gear such as armored vests and vehicles.

In light of the events in Ferguson, our committee has reviewed the role of federal agencies in providing equipment, supplies and weapons to state and local law enforcement. Our staff has received briefings from the agencies and has reviewed key documents. This review by Congress is long overdue. The federal witnesses with us today will describe the programs that can supply tactical and military-style equipment and weapons to law enforcement, and the current oversight requirements and procedures. We will also hear from a second panel of witnesses with critical knowledge and opinions on the programs – including some with law enforcement backgrounds.

We will explore the proper roles and techniques for using this equipment. We will also examine whether Congress should do more to monitor and hold accountable the police departments that obtain sophisticated equipment. These programs were

established with a very good intention: to provide equipment that would help law enforcement perform their duties. The question is whether what our police receive matches what they truly need to uphold the law.

We need to acknowledge that there have been instances where police have been outgunned by heavily armed criminals, including organized crime and gangs. In addition, we all remember well how helpful some of these programs were to enable police to perform extraordinarily well in the aftermath of the Boston Marathon bombing. But for these programs, the response would not have been as fast or effective. Of course, the job of law enforcement is to protect the lives and the wellbeing of the people of our nation. Equally important, the job of law enforcement is the protection of our civil rights. So we will also hear from witnesses with expertise on the civil rights issues that arise as a result of these programs.

It is my hope that we in Congress and other government leaders learn from what is discussed during today's hearing and from the ongoing developments in Ferguson and in similar situations across the country. In closing, we are here today because we have responsibility to ensure accountability of funds and equipment provided by the federal government to state and local police. It is our job to ensure that these programs provide value to police, the communities they serve, and the taxpayer.

Opening Statement of Sen. Coburn

Sept. 6, 2014

Hearing, "Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies"

Good morning, and thank you to our witnesses for appearing, both this panel and the second. And thank you to the Chairman for convening this hearing.

As I look at my short time left remaining in Congress, and having traveled for two weeks in Oklahoma in August, I am brought constantly and frequently back to the position of our Founders. Not only to their vision, but to their wisdom.

Protect and Serve. Our founders saw no role for the federal government in state and local polices forces. None. And yet what we have seen done, on the basis of what we saw on 9/11, seems to be an over-reaction: Progress toward what the federal government and law enforcement doing the same thing it's done in every other area when it comes to the General Welfare clause and the Commerce Clause. We're on dangerous ground, undermining the very principles that built the country.

It's hard to see a difference between the militarized and increasingly federalized police force we see in towns across America today, and the force that Madison had in mind when he said, "a standing military force with an overgrown executive will not long be a safe companion to liberty."

I have some real heartburn with not just the 1033 program and the UASI grants, but with some of the Justice Department Grants, and other homeland security grants, both how they're utilized, what they've been utilized for. And so I look forward to hearing from our witnesses. I have some significant questions. The 1033 program has been around a long time, not just in response to 9/11. But I think we need to have a good airing. We need to re-center where we are.

There is no role for the federal government in the local and state police forces in our country. And I hope we can winnow that out today to see where we've stepped across the line and actually created some problems that wouldn't have been there otherwise.

Thank you, Mr. Chairman.

Oversight of Federal Programs for Equipping State and Local Law Enforcement
September 9, 2014
Senator Claire McCaskill
Opening Statement

Thank you Chairman Carper. I want to thank you for the interest that you and Dr. Coburn have shown in the topic of today's hearing. I know that your decision to elevate this hearing from my Subcommittee to the full Committee level is a token of your commitment to oversight of these very important issues.

I first approached Chairman Carper to hold this hearing because of the shock I felt as I saw events unfolding in Ferguson, Missouri , in the weeks following the death of Michael Brown. I heard reports from my constituents about aggressive police actions being used against protesters, well before any violence occurred. Like many of you, I saw armored vehicles with a sniper pointing a rifle at unarmed protesters in the middle of the day. I was shocked to see the way that the police were deploying this military equipment against residents of Missouri who were exercising their first amendment rights.

The federal government has played a significant role in enabling police departments across the country to acquire the military weapons, vehicles, and other types of equipment we saw used in Ferguson.

The Department of Defense's 1033 program, which was authorized in its current form in 1997, gives away DOD's surplus equipment, for free, to state and local law enforcement. Much of the equipment from the program is as mundane as office furniture and microwaves, but DOD is also giving local law enforcement million dollar tactical vehicles, including its Mine-Resistant, Ambush-Protected vehicle, or M-RAP. M-RAPs are heavy armored vehicles built to withstand

roadside bombs and improvised explosive devices. These are vehicles so heavy that they can tear up roads, and DOD knows this. Yet it continues to provide these vehicles to local law enforcement agencies here.

According to information provided by DOD, in just the last three years, DOD has given 624 M-RAPs to state and local law enforcement agencies, seemingly without regard to need or the size of the agency. At least 13 law enforcement agencies with fewer than ten full-time sworn officers received an M-RAP in the last three years.

The number of M-RAPs in the possession of local police and sheriffs' departments is now far higher than the M-RAPs in the possession of the National Guard. In Texas, for example, local law enforcement agencies have 73 M-RAPs; the National Guard has 6. In Florida, local law enforcement agencies have 45 M-RAPs and the National Guard has 0. I would like to ask for unanimous consent that the information provided to me from the Defense Department be included in the hearing record.

I question whether state and local law enforcement agencies need this kind of equipment. One of the key lessons learned throughout the Iraq and Afghanistan wars was the idea that we had to win hearts and minds, and one of the ways the military tried to do that was by acting more like a police force – working with communities, helping to repair broken windows and damaged property and trying to appear less militaristic with their presence in the communities. It is ironic that the Defense Department's policies are now fostering the opposite mentality at home.

I also have questions about why the Defense Department is giving it away. According to the Defense Logistics Agency ("DLA"), approximately 36% of the equipment that is given away to law enforcement agencies is brand new. All of it – the weapons, tactical equipment, and

office supplies – is still usable, and identical or similar items will be needed and bought new by the Defense Department again. It doesn't appear that buying new equipment to give away – and then spending money to replace it – is an effective use of the Department's resources.

Local law enforcement agencies are also acquiring military-type equipment using grants from the Department of Justice and the Department of Homeland Security. In FY 2014, DHS made available over $400 million under its State Homeland Security Program and another $587 million under its Urban Area Security Initiative Grant Program. Although these grants can't be used to buy weapons, they can and do fund the purchase of armored vehicles and tactical equipment. And the Department of Justice's Byrne JAG Program, which received $376 million in appropriations in FY14, gives state and local law enforcement agencies funding that can be used for everything from mobile data terminals and lethal and non-lethal weapons, to office supplies and uniforms.

These grant programs provide important assistance to state and local law enforcement agencies. However, it is impossible to tell how these federal funds are being spent because DHS and DOJ don't track the purchases or keep adequate data. So we can't know, just from asking these agencies, how much military equipment – or anything else – local law enforcement agencies are buying. In fact, it is possible that either or both of these programs are funding police departments to maintain and sustain the same equipment they're getting free from the Defense Department.

I am confident that many police departments are creating policies and providing training to ensure that any use of force is necessary and appropriate. And we must do everything we can

to make sure that our law enforcement officers – those brave men and women who have sworn to protect us – have the equipment they need to maximize their own safety.

But we also have to acknowledge that giving military-grade vehicles and weapons to every police officer and police force in America also comes with costs, both in the way officers are perceived and in the way this equipment is used. Officers dressed in military fatigues will not be viewed as partners in any community. Armored military vehicles, even if they are painted black and used with the utmost discretion are, by definition, intimidating.

And supplying communities with the capacity to acquire military equipment with no requirements that officers are trained on the proper use of the equipment, little visibility into the actual needs or capabilities of local forces, and inadequate guidelines directing their use, may just be asking for the kind of over-militarization that we saw in Ferguson.

I was happy to hear that the White House has launched its own review of the programs and policies that have driven police militarization, and I look forward to the results of that review. However, I understand that many of these issues many only be solved by legislation. I plan to build on what I learn today and work with my fellow senators in the coming weeks on legislation that will address the concerns raised today.

I thank the witnesses for being here today and I look forward to their testimony.

Oversight of Federal Programs for Equipping State and Local Enforcement
September 9, 2014
Senator Mary Landrieu

Statement for the Record

Thank you Chairman Carper and Ranking Member Coburn for convening this hearing. And thank you Senator McCaskill for your leadership in your home state of Missouri during this difficult time and for taking the lead on this issue in the United States Senate. Last month, the world watched the events in Ferguson, Missouri in disbelief and I hope this hearing will bring us closer to addressing some of the issues that emerged from those events.

Since 1997, over $5.1 billion dollars in military equipment has been transferred to local law enforcement agencies through the Department of Defense 1033 Program. Similarly, the Department of Homeland Security and the Department of Justice have awarded grants to local law enforcement agencies that have been used to purchase military equipment. This equipment has been valuable to the State of Louisiana following hurricanes, when high water vehicles are used to evacuate many residents, saving countless lives. In Plaquemines Parish, deuce and a half trucks have been refitted to remove debris from roads following storms.

Despite the utility of military surplus equipment in jurisdictions across the country, the chaos we witnessed in the streets of Ferguson raises serious questions about the use of equipment transferred via the 1033 program. I question whether the law

enforcement agencies in Ferguson were trained on how to properly use such heavy military equipment and if so, whether these agencies adhered to the appropriate protocols.

I also question the current structure of the 1033 program. As a member of the Defense Appropriations Committee, I understand the importance of fully equipping the National Guard. In my home state of Louisiana, the National Guard is always looking to modernize equipment such as UH-60 Blackhawks. As we transfer equipment to law enforcement agencies, we must ensure that we are properly prioritizing the National Guard when determining where to transfer surplus equipment.

As I mentioned, the Department of Homeland Security and the Department of Justice have awarded grants to local and state police departments used to purchase military equipment. I think it is important that Congress understand the level of cooperation between these agencies, the decision making process and the long term oversight of the funding and equipment provided.

Today, we are focusing on equipment transferred from the United States military to local law enforcement agencies in Ferguson. Although I understand that this hearing focuses on specifically on military equipment, there are a number of cultural issues that contributed to the events we witnessed in Ferguson, last month that must be addressed.

For instance, the city of Ferguson has a population of 16,000, 69% of which are African American. Yet, there is only one African American serving on its city council out of 6 members. Also, its police department employs only 3 African American officers out of 53.

Opelousas, Louisiana, with a population of 21,000, is demographically similar to Ferguson. Yet Opelousas has an African American mayor, African American police chief and 5 of 6 of its city council members are African American. I raise this point to highlight the importance of representation through civil engagement by all members of a community.

Based on a cursory review of the employment rosters in the largest law enforcement agencies in Louisiana, our prosecutors and local law enforcement agencies strive to be representative of the populations that they serve. Of the 3 United States Attorneys in Louisiana, 2 of the 3 are African American.

This is also not to imply that my home state is not without its challenges. In the Western District of Louisiana, the U.S. Attorney and the Louisiana State Police are currently investigating the circumstances surrounding the death of a man arrested in March of this year; an investigation I firmly support and which has been welcomed by the local Sheriff.

Again, we cannot have a discussion about military equipment without having a candid discussion the underlying issues in specific individual jurisdictions. This includes evaluating the resources available to train officers how to properly engage and utilize equipment in demonstration situations. More importantly, we should evaluate the availability of training focused on fostering good relationships between local law enforcement and the communities that they serve.

We have programs through the Community Oriented Policing Services (COPS) Office that provide funding to hire police officers, with additional consideration for the hiring of police officers to focus on selected community policing issues. The COPS Office also provides funding to advance the practice of community policing in law enforcement agencies through the development of innovative community policing strategies and best practices.

I understand that the Director of the COPS program, Ronald Davis, was one of the first federal officials to arrive in Ferguson. I would note that in FY14, the House Commerce Justice Science Appropriations (CJS) bill zeroed out the program but it was ultimately funded at $224 million as a result of the Senate CJS bill. This year, the House CJS bill funded COPS at $206 million and the Senate at $224 million. The events in Ferguson highlight the importance of the COPS Office and the associated training it provides.

As we move forward, I hope that this hearing will help us determine the appropriate improvements to the 1033 program as well as the associated grant programs in the Department of Homeland Security and the Department of Justice. I thank the witnesses for joining us today and I look forward to working with my Senate colleagues on this very important issue.

HOLD UNTIL RELEASED BY THE
U.S. SENATE

STATEMENT OF

MR. ALAN ESTEVEZ

PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE
FOR ACQUISITION, LOGISTICS AND TECHNOLOGY

BEFORE THE

SENATE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS

ON

OVERSIGHT OF FEDERAL PROGRAMS FOR EQUIPPING STATE AND LOCAL LAW
ENFORCEMENT AGENCIES

SEPTEMBER 9, 2014

HOLD UNTIL RELEASED BY THE
U.S. SENATE

Mr. Chairman, Senator Coburn, Members of the Committee, thank you for the opportunity to appear before the Committee and discuss the Department's transfer of excess military property to law enforcement agencies. I appreciate the Committee's support of the Department and your continued interest in ensuring the success of our mission.

Introduction

The transfer of excess military property to law enforcement agencies is a Congressionally authorized program designed to ensure good stewardship over taxpayer resources. The program to transfer excess military property to law enforcement agencies has provided property that ranges from office equipment and supplies to equipment that augments local law enforcement capabilities and enhances first responder support during natural disasters.

Authorization for the Program

The Fiscal Year 1991 National Defense Authorization Act initially authorized DoD to transfer excess property to federal and state law enforcement agencies. The program provides property that is excess to the needs of the Department of Defense for use by agencies in law enforcement, counter-drug, and counter-terrorism activities. The Fiscal Year 1997 National Defense Authorization Act reauthorized this program in Section 1033, from which it gets its common name.

Following the tragic events of 9/11, there was increased Congressional emphasis on the transfer of equipment to Federal, State, and local first responders in support of homeland security.

How the Program Works

Once a DoD Component no longer has a need for a piece of equipment or property, it is turned in to the Defense Logistics Agency (DLA) for disposition, which includes reutilization, transfer, donation, or sale. If the property is no longer needed inside the Department of Defense, as a Congressionally authorized special program, law enforcement agencies are entitled to review excess property for what they believe is required to augment their ability to accomplish their mission to aid and protect the public.

A key element in both the structure and execution of the program is the State coordinator, who is appointed by their respective State Governor. State coordinators approve law enforcement agencies within their state to participate in the program. Once approved, law enforcement agencies can review excess property that is turned in for disposal. Law enforcement agencies submit automated requests for specific property along with a description of intended use for each requested item to their State Coordinator for review. The State Coordinator screens the request and subsequently submits electronically the approved requests to DLA. DLA conducts a basic review of requests based on the size of the requesting law enforcement agency (e.g. a requesting law enforcement agency of 10 officers would not receive a transfer of 20 M-16 rifles.) Approximately 25% of law enforcement agency requests are denied either by DLA or the State Coordinator based on the size of the law enforcement agency or the justification for the request, or the State Coordinator's confidence in the requesting law enforcement agency. DLA notifies the respective State Coordinator of any denials to law enforcement requests. Approved requests are visible to the State Coordinator and the requesting law enforcement agency via the automated information system. For approved requests, the law enforcement agency is responsible for all transportation, maintenance, and sustainment costs,

as well as training its personnel in the proper use, maintenance, and repair of excess DoD property.

Types of Property Available

Greater awareness of the program by law enforcement has resulted in an increase of property transfers in recent years. More than 8,000 federal and state law enforcement agencies actively participate in the program across 49 states (all but Hawaii) and three U.S. territories. More than $5.1 billion (acquisition value) worth of property has been provided since 1990.

There are two types of property made available through this program: non-controlled and controlled property.

Overall, approximately 96% of the property provided to law enforcement agencies has been non-controlled property. This is property without military attributes, such as commercial vehicles, office furniture and supplies, generators, tents, tarps, tool kits, first aid kits, blankets, safety glasses, hand-tools, vehicle maintenance equipment, storage containers, lockers, shelving, and forklifts.

Approximately 4% of the property provided has been controlled, i.e., military designed equipment on the Department of State Munitions Control List or Department of Commerce Control List, such as weapons, aircraft, watercraft, and tactical vehicles. Controlled property is conditionally loaned to ensure recipients return this property to DoD for demilitarization at the end of its useful life. DLA maintains accountability over all conditionally loaned equipment and may recall this property at any time.

Certain types of property are restricted from transfer outside the DoD due to national security concerns (e.g. tanks, fighter aircraft, Strykers, tracked vehicles, weapons greater than 7.62mm, Military Services uniforms) or for safety reasons

(e.g. used Kevlar helmets and ballistic vests whose ballistic protective ability can no longer be guaranteed). These items are not provided to law enforcement agencies.

Law enforcement agencies determine their need for types of equipment and they determine how it is used. The Department of Defense does not have expertise in police force functions and cannot assess how equipment is used in the mission of an individual law enforcement agency. Property obtained through this program has been used extensively in both the protection of law enforcement officers and the public, as well as for first responder disaster relief support. For example, life-saving equipment obtained through this program was used by police departments in Rye N.Y., during Hurricane Sandy in October 2012 and in southern Illinois after a tornado hit on November 18, 2013. During the height of Superstorm Sandy, Jersey Shore police drove two cargo trucks and three HMMWVs through water too deep for commercial vehicles to save 64 people. Also during Sandy, police in New York used aircraft received through the program to fly rescue personnel and first responder supplies to remote areas. Indiana police used an excess Coast Guard watercraft in its operations to interdict a major drug trafficking ring along Lake Michigan. In Wisconsin, Green Bay police use donated computers for forensic investigations. During a 2013 flood in Louisiana, Livingston Parish police used six HMMWVs to rescue 137 people. In Texas, armored vehicles received through the program protected police officers during a standoff and shootout with a gang member.

Within the past 12 months, law enforcement agencies received approximately 1.9 million pieces of excess equipment: 1.8 million pieces of non-controlled property and 78,000 pieces of controlled property. The total number of pieces of controlled property currently in the possession of law enforcement

agencies that have not been returned for demilitarization since the 1990s is approximately 460,000. Examples of controlled property provided include: 92,442 small arms (representing 4% of items currently in possession of law enforcement agencies), 44,275 night vision devices (1.9% of items), 5,235 high mobility, multi-purpose wheeled vehicles (HMMWVs) (0.2% of items), 617 mine resistant ambush protected vehicles (0.03% of items), and 616 aircraft (0.03% of items). DLA has provided to the Ferguson Police Department, two HMMWVs, one generator, and one cargo trailer. Additionally, DLA has provided to other St. Louis County Police Departments: 6 pistols, 12 rifles, 15 weapons sights, 1 explosive ordnance disposal robot, 3 helicopters, 7 HMMWVs, and 2 night vision devices.

Program Compliance

DLA conducts bi-annual program compliance reviews of the controlled property provided to each state. These reviews include inventory accountability and reconciliation, and spot checks on randomly selected law enforcement agencies. Non-compliant states are suspended for a minimum of 30 days, and may be terminated from the program. In Fiscal Year 2013, 21 states were temporarily suspended for inventory accountability and management control issues. In Fiscal Year 2014, six states were temporarily suspended for inventory accountability issues. Three states (Minnesota, New Jersey, Alabama) remain suspended for inventory accountability issues.

White House Review of Federal Programs

The Department is participating in the Administration's Interagency Review of Federal Programs for Equipping State and Local Law Enforcement Agencies to ensure that equipment provided is appropriate to their needs, while enhancing the safety of law enforcement personnel and their communities. We will alter our

procedures and propose any legislative changes we believe necessary that come as a result of that review.

Conclusion

In summary, the Congressionally authorized 1033 program provides property that is excess to the needs of the Department of Defense for use by agencies in law enforcement, counter-drug, and counter-terrorism activities. It enables first responders and others to ensure the public's safety and save lives. It is also worth noting that we are not "pushing" equipment on any police force. Local law enforcement decides what it needs and accesses our excess equipment through their respective State Coordinator.

Thank you again for this opportunity to discuss the Department's transfer of excess military property to law enforcement agencies. The Department is ready to work with Congress to review the program scope and mission. I look forward to answering your questions.

STATEMENT

OF

BRIAN E. KAMOIE
ASSISTANT ADMINISTRATOR FOR GRANT PROGRAMS

FEDERAL EMERGENCY MANAGEMENT AGENCY
U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE
THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
WASHINGTON, D.C.

"OVERSIGHT OF FEDERAL PROGRAMS
FOR
EQUIPPING STATE AND LOCAL LAW ENFORCEMENT AGENCIES"

Submitted
By

Federal Emergency Management Agency
500 C Street, S.W.
Washington, D.C. 20472

SEPTEMBER 9, 2014

Good morning Chairman Carper, Ranking Member Coburn, and Members of the Committee. I am Brian Kamoie, the Assistant Administrator for Grant Programs at the Department of Homeland Security's (DHS) Federal Emergency Management Agency (FEMA). On behalf of Secretary Johnson and FEMA Administrator Fugate, it is my pleasure to appear before you today to discuss the Department's homeland security preparedness grant programs.

The Department's preparedness grant programs are administered by FEMA through the Grant Programs Directorate (GPD). Many of the Department's preparedness grant programs are authorized by the *Homeland Security Act of 2002* (Pub. L. No. 107-296), as amended, and by the *Implementing Recommendations of the 9/11 Commission Act of 2007* (Pub. L. No. 110-53) (*9/11 Act*). These programs assist states, local communities and tribal nations, and thus the Nation, to build and sustain critical capabilities to enhance their abilities to prevent, protect, mitigate, respond to, and recover from acts of terrorism and other catastrophic events.

From the attacks of September 11th to the Boston Marathon in 2013, as well as the response to and recovery from Hurricane Sandy in 2012, we, as a Nation, are more aware of the threats and vulnerabilities we face, as well as the capabilities we have built to address these hazards. As a Nation, we established a national preparedness goal, identified the capabilities necessary to achieve that goal, established five national planning frameworks and exercised the system at all levels of government. As a result of your support and investments, and the work of our partners throughout the country, our national capabilities have matured.

This maturation of the Nation's preparedness is a clear theme and finding of the Department's third annual *National Preparedness Report* released on August 6, 2014. Required annually by the *Post-Katrina Emergency Management Reform Act of 2006* (Pub. L. No. 109-295) and *Presidential Policy Directive 8: National Preparedness*, the *National Preparedness Report* summarizes progress in building, sustaining, and delivering the core capabilities described in the *National Preparedness Goal*.

In its conclusions, the *Report* discusses numerous real world incidents, including the response following the April 2013 Boston Marathon bombing, to highlight the maturation of the Nation's

preparedness. Many of the capabilities demonstrated in Boston were built, enhanced, or sustained with funds made available through the Department's preparedness grant programs. This includes funding from the Homeland Security Grant Program (HSGP), which includes the State Homeland Security Program and the Urban Areas Security Initiative (UASI).

We believe that the preparedness grant funds provided to Massachusetts and to Boston saved lives and restored and ensured public safety in the aftermath of the Boston Marathon bombing. Since 2002, Massachusetts has received more than $990 million in preparedness grant funds. Since 2003, Boston has received more than $415 million through the various preparedness grant programs, including $210 million through UASI grants.

This funding was put to good use, including those funds used to purchase equipment. Much of the equipment purchased with preparedness grant funds, including the equipment purchased for State and local law enforcement agencies, enhanced the personal safety of law enforcement officers involved in the pursuit of the Tsarnaev brothers, expedited and facilitated the successful conclusion of that pursuit, and helped ensure the safety of the public.

Much of that equipment directly contributed to the apprehension of the surviving bombing suspect. During the pursuit, Massachusetts State Police used a Forward Looking Infrared (FLIR) camera purchased with preparedness grant funds to search for, locate, and apprehend Dzhokhar Tsarnaev. Further, the FLIR's ability to locate the suspect from a safe distance reduced the direct risk to law enforcement officers.

Personal protective equipment, such as ballistic vests worn by law enforcement officers, further contributed to their safety as did preparedness funds used to build specialized skills and tactics. Boston used UASI funds to train SWAT teams to better integrate bomb technicians into tactical operations, a crucial capability that was demonstrated in the aftermath of the bombings. UASI investments helped the Boston Regional Intelligence Center support bombing-related operations, analysis, and investigations. The Boston Urban Area also utilized UASI funds to support its Operational Communications capabilities

through a variety of enhancements, including: the acquisition of radio caches, the establishment of a mutual aid radio network, and the development of a radio channel plan.

In Boston, the activities supported by preparedness grant funds – the planning, organization, training, equipment, and exercises – all came together to prove the need and value of preparedness grant dollars. Events in Boston focused a spotlight on the violent nature of terrorism and the connection between specialized equipment and the ability of law enforcement agencies to respond quickly and effectively to a terrorist event while simultaneously providing for the safety and welfare of their officers and the public.

More broadly, beyond Boston, we believe that the preparedness grant programs have enhanced the Nation's overall security and preparedness. Since the beginning of these programs, we have strived to improve how these grant funds have been used and how these grant funds have been administered. Throughout the history of these programs, we have analyzed how these programs were being administered and how preparedness grant dollars have been used and measured, which I had the opportunity to discuss with you during this Committee's hearing on the Port Security Grant Program in June.

What happened in Ferguson, Missouri has resulted in tough questions and the beginning of a national discussion on these serious and complex issues. Preeminent among these is the response by law enforcement agencies to public demonstrations and protests, including the tactics and equipment employed in those responses. Policing in America's communities post-Ferguson is clearly under scrutiny. Also under scrutiny is the equipment used by law enforcement officers, particularly equipment perceived as having more of a military rather than law enforcement application in interactions with American citizens in their neighborhoods. This discussion will require that all of us, including the law enforcement community, address questions of police tactics and equipment, and by extension the civil rights and liberties of our citizens and the parameters surrounding assemblies, protests, and demonstrations by those citizens. A critical part of this discussion, particularly as we as a Nation look at the tactics and equipment employed by law enforcement, is the important concern for maintaining the safety of both community members as well as the law enforcement sworn to protect them.

This discussion, as evidenced by today's hearing, including the several federal agencies represented here, goes well beyond DHS and its preparedness grant programs. To facilitate this discussion, and particularly to take a critical look at federal funding for law enforcement and the oversight of those funds, President Obama ordered a review of federal programs that fund and support State, local and tribal law enforcement agencies. This review, which the President announced in mid-August, will take an especially close look at federal programs that fund or supply equipment to law enforcement agencies, in particular equipment that may be characterized as more military than civilian in nature. In announcing this review, the President made it clear that we as a government, as a Nation, needed to know if these programs, including the activities and equipment funded by these programs, are appropriate; whether law enforcement agencies receiving equipment under these programs also receive adequate training and guidance in the use of that equipment; and whether the federal agencies providing such assistance maintain proper oversight over the activities and actions these federal monies supported. This White House-led effort involves the participation of several federal agencies, including the Departments of Homeland Security, Defense, Justice, and Treasury. It will also require coordination with the Congress and with State, local and tribal officials. We at the Department of Homeland Security look forward to contributing to this effort and to the insights it will provide.

The primary grant program administered by the Department of Homeland Security that supports State, local and tribal communities, including the law enforcement community, and the grant program most relevant to events in Missouri, is the HSGP. The HSGP includes two interconnected grant programs: the State Homeland Security Program and the UASI. These two preparedness grant programs provide support to state and local law enforcement, and are the two grant programs that can be linked to supporting recent law enforcement activities within Ferguson.

Funds under the State Homeland Security Program are awarded directly to States, which in turn manage, distribute, and track the funding for their State. Per the requirements of the *Homeland*

Security Act of 2002, as amended, States are required to distribute (pass-through) 80 percent of these funds to local communities within the State.

Although funds under the State Homeland Security Program and the Urban Areas Security Initiative grant program fund a broad range of recipients, including emergency management agencies, public health and medical agencies, public works agencies, educational institutions, and fire departments, Section 2006 of the *Homeland Security Act of 2002*, as amended, requires the Department to ensure that at least 25 percent of the combined funds allocated under the State Homeland Security Program and the Urban Areas Security Initiative are used for law enforcement terrorism prevention activities (or LETPA). The Department ensures that this statutory requirement is met by requiring each State that receives a grant under the State Homeland Security Program or Urban Areas Security Initiative, or both, to dedicate at least 25 percent of the total funds they receive towards law enforcement terrorism prevention activities. The States have historically exceeded that minimum. Between Fiscal Year 2008 and Fiscal Year 2012, 36 percent of the funds allocated under the State Homeland Security Program and the Urban Areas Security Initiative were provided to support law enforcement terrorism prevention activities.

Eligible law enforcement terrorism prevention activities are set forth in Section 2006 of the *Homeland Security Act of 2002*, as amended, and outlined in the National Prevention Framework. Activities such as information sharing and analysis, forensics activities, screening, search and detection efforts as well as the interdiction and disruption of potential terrorist events are eligible expenses. Funds allocated to support law enforcement terrorism prevention activities also must be linked to one or more core capabilities within the National Preparedness Goal. More specific examples of these activities include:

- Maturation and enhancement of designated State and major Urban Area fusion centers, including information sharing and analysis, threat recognition, terrorist interdiction, and training/ hiring of intelligence analysts;

- Implementation and maintenance of the Nationwide Suspicious Activity Reporting Initiative, including training for front line personnel on identifying and reporting suspicious activities;
- Implementation of the *If You See Something, Say Something* campaign to raise public awareness of indicators of terrorism and terrorism-related crime and associated efforts to increase the sharing of information with public and private sector partners, including nonprofit organizations;
- Training for countering violent extremism; development, implementation, and/or expansion of programs to engage communities that may be targeted by violent extremist radicalization; and the development and implementation of projects to partner with local communities to prevent radicalization to violence, in accordance with the Strategic Implementation Plan (SIP) to the National Strategy on Empowering Local Partners to Prevent Violent Extremism in the United States; and
- Increased physical security, through law enforcement personnel and other protective measures, by implementing preventive and protective measures at critical infrastructure sites or other at-risk nonprofit organizations.

Supporting law enforcement terrorism prevention activities includes the purchase of equipment to support and enable those activities. Historically, across all of the homeland security preparedness grant programs, the purchase of equipment has represented the largest use of homeland security preparedness grant dollars. Looking at homeland security preparedness grant funding from Fiscal Year 2004 through Fiscal Year 2013, the Department's Integrated Financial Management Information System (or IFMIS) shows that 59.94 percent of preparedness grant program funds have been used for the purchase of equipment. This is followed by planning at 21.50 percent, training at 6.45 percent, organization support at 7.56 percent, management and administration at 2.55 percent, and exercises at 2.00 percent.

In general, recipients of preparedness grant program funds who purchase equipment must purchase equipment listed within the 21 allowable prevention, protection, mitigation, response, and recovery equipment standards listed in the Authorized Equipment List (AEL). The AEL, published by Department, identifies equipment allowable for purchase with homeland security

preparedness grant dollars. The AEL was developed, and is maintained and updated, by the Department in consultation with other Federal, State, local and tribal agencies in order to identify equipment needed by emergency responders to better prevent, protect against, respond to, and recover from terrorist events. The AEL is reviewed bi-annually to assess its contents in light of changing technologies, the changing needs of the various first responder communities, or based on specific requests from grantees.

The Department prohibits the use of homeland security preparedness grant funds for the purchase of weapons, including lethal and non-lethal weapons, ammunition, and weapon-related accessories such as weapon belts. These equipment categories are not included in the AEL. Homeland security preparedness grant funds may be used to purchase equipment that can be classified as personal protective equipment, such as ballistic protection equipment and explosive-resistant personnel carriers (commonly referred to as Bearcats). Section 2008 of the *Homeland Security Act of 2002*, as amended, allows equipment purchased with State Homeland Security Program and Urban Areas Security Initiative funds – including personal protective equipment – to be used for acts unrelated to terrorism, as long as that equipment is purchased to build and sustain terrorism-based capabilities.

The AEL notes that certain equipment purchased with DHS grant funds (e.g. ballistic personal protective equipment, such as helmets, body armor, and eye/ear protection) is not for riot suppression. As a point of reference, the 21 allowable categories under the AEL are:

1. Personal Protective Equipment
2. Explosive Device Mitigation and Remediation Equipment
3. Chemical, Biological, Radioactive, Nuclear, and Explosive (CBRNE) Operational and Search and Rescue Equipment
4. Information Technology
5. Cyber Security Enhancement Equipment
6. Interoperable Communications Equipment
7. Detection
8. Decontamination

9. Medical
10. Power
11. CBRNE Reference Materials
12. CBRNE Incident Response Vehicles
13. Terrorism Incident Prevention Equipment
14. Physical Security Enhancement Equipment
15. Inspection and Screening Systems
16. Animal and Plants
17. CBRNE Prevention and Response Watercraft
18. CBRNE Aviation Equipment
19. CBRNE Logistical Support Equipment
20. Intervention Equipment
21. Other Authorized Equipment

Given that homeland security preparedness grant program funds under the State Homeland Security Program and the Urban Areas Security Initiative are awarded directly to the State, the Department relies on and works with the State to provide oversight of these funds. The Department does conduct direct oversight of the State to ensure that the State complies with all monitoring and oversight requirements. Since 2002, Missouri has been awarded $173,434,570 in State Homeland Security Program funding. The St. Louis Urban Area has been a designated as a high-risk urban area since 2003 and has received $87,001,590 in Urban Areas Security Initiative funds. The St. Louis Urban Area is comprised of the City of St. Louis and the counties of St. Charles, Franklin, Jefferson, and St. Louis, as well as several counties in Illinois, specifically St. Clair, Madison, and Monroe counties.

The Department has worked with Missouri officials and searched our own data to identify equipment purchased with preparedness grant dollars, specifically funding from the State Homeland Security Program and the Urban Areas Security Initiative that may have been used in the law enforcement response to demonstrations in Ferguson. Missouri officials have provided us a very detailed inventory of equipment purchased with preparedness grant funds. This is a lengthy document which we are now analyzing to understand what equipment was purchased, by

who and for what purpose. That said, based on our discussions with State officials, we have identified major pieces of equipment and broad categories of grant-funded equipment used in Ferguson.

From these discussions, we have identified that St. Louis County, St. Louis City, and St. Charles County had tactical teams and line officers in Ferguson at various times as part of the law enforcement response. Additionally, the Missouri Highway Patrol had teams and equipment present as well, again supported by preparedness grant funds.

Missouri officials have also identified that the St. Louis Urban Area used preparedness grant dollars to supply various items for the law enforcement agencies in the region, which include response vehicles, helicopters, interoperable communications equipment (headsets and radios), personal protective equipment (suits and ballistic protection), night vision, and explosive detection and remediation equipment. The equipment identified by Missouri and purchased for use by the State and local communities, such as the St. Louis urban area, addressed objectives identified by the State in its 2011 homeland security strategy and in its funding applications for fiscal years 2010 through 2012. In its strategy as well as in its grant applications, Missouri identified resources and capabilities it would require to prevent, protect from, respond to, and recover from acts of terrorism.

Missouri has documented that from 2003 to the present, St. Louis County received approximately $9.6 million in preparedness grant funds. Of that $9.6 million, $9.4 million was spent on equipment and $200,000 for training. The equipment includes two helicopters, mapping systems, forward looking infrared FLIR camera systems and searchlights, a Bearcat explosive response / ordinance vehicle (purchased with $350,000 in Fiscal Year 2012 UASI funds), explosive response and remediation equipment (X-ray systems, bomb disabling tools), communication equipment (radios, headsets), night vision equipment, and tactical response equipment (tools, personal protective equipment). However, because several of the tactical teams share equipment, as well as multiple pieces of similar equipment involved, it is difficult for the State to assess at this time which of these specific items purchased may or may not have been used in the Ferguson response.

We are still in discussions with Missouri officials to determine which specific items may have been deployed to Ferguson, and we will continue to work with State officials to more precisely identify preparedness grant dollars used to support the law enforcement response in Ferguson. State officials have identified a preparedness grant-funded transport truck that was deployed to Ferguson to transport law enforcement officers and evacuate citizens requesting assistance. Additional personal protective masks and protective vests used in the Ferguson response from St. Charles County and partially funded with preparedness grant dollars were also identified.

In reviewing the use of those preparedness grant dollars, the Department will make every effort to evaluate whether the use was appropriate and in keeping with the requirements governing the preparedness grant programs. This includes the requirement and assurance that federal grant dollars not be used to engage in any conduct that is contrary to any federal, State, or local law.

The Department considers oversight of preparedness grant programs a priority, and takes this responsibility very seriously. The Department's grant monitoring provides a systematic means of ensuring oversight, accountability and proper management of preparedness grants. Monitoring ensures that:

- Funds are used in accordance with Federal law, regulations and administrative procedures;
- Funds are utilized to meet the objectives of the grant program as determined by law and grant guidance;
- Waste, fraud and abuse of grant funding is identified where it may exist and is eliminated; and
- Grantees are practicing sound grant management practices and making progress toward program goals.

To achieve these goals, the Department has maintained a rigorous system of both programmatic and financial monitoring. Each recipient of grant funds has been monitored to ensure that funds have been used in ways consistent with program and financial requirement. Over the history of

these programs the Department has continually reviewed its program and financial monitoring practices to determine how these practices might be improved. In Fiscal Year 2013, FEMA developed and implemented an integrated monitoring plan that seeks to gain efficiencies and improved information sharing between the financial and programmatic monitoring staff. The Department's preliminary reviews of integrated monitoring indicate that it is providing a more detailed understanding of the use of preparedness grant dollars. The Department will continue to assess the use of integrated monitoring as well as continue to consider additional areas for improved monitoring.

While financial and programmatic monitoring work hand-in-hand, they are not duplicative and therefore entail separate methodologies and processes.

1. **Financial Monitoring:** Assurance of compliance with statutory, regulatory, and FEMA grant administration requirements; and
2. **Programmatic Monitoring**: Identification of administrative or performance issues that threaten the success of grant objectives, and targeting assistance for issue resolution.

Integrated analysis of financial and programmatic monitoring data will also lead to an increased ability to proactively target assistance to grantees. Also in Fiscal Year 2014, in an effort to further increase insight into grantee activities, the Department began the implementation of project-level grant applications, as recommended by the U.S. Government Accountability Office for all the preparedness grant programs. Project-level grant applications provide an unprecedented level of information about how grantees are intending to utilize preparedness grant funds. This level of information will improve the Department's ability to ensure that grant spending is not duplicative, will better enable the Department to document the progress grantees are making towards filling capability gaps, and provide a clearer understanding of the actual use of preparedness grant dollars, which I know has been a longstanding interest of the Committee.

Enhanced insight into the use of preparedness grant dollars will enable us to better understand and monitor a grantee's use of preparedness grant funds. Better monitoring will enable better

oversight and enhance us to hold grantees accountable. And better accountability will enable us to work with grantees on remedies, whether such remedies would be to require grantees to provide corrective action plans, adopt improved grant management practices, or return misused funds.

Improvement of the Department's oversight of preparedness grant dollars is part of the path forward. The Department looks forward to contributing to those discussions and to the scrutiny that discussion will give the preparedness grant programs. In that discussion all equities and interests, those of citizens and those of law enforcement, must be addressed and balanced. There are a number of actions that can be considered, including better oversight of federal grant programs, increased scrutiny and changes to funded activities and allowable use of funds, enhanced training for law enforcement officers and possible changes in police tactics.

Mr. Chairman, Ranking Member Coburn, Members of the Committee, this concludes my statement. I am happy to have had this opportunity to discuss these important issues before the Committee and I am happy to respond to any questions the Committee may have.

Department of Justice

STATEMENT OF

KAROL V. MASON
ASSISTANT ATTORNEY GENERAL
OFFICE OF JUSTICE PROGRAMS
U.S. DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

FOR A HEARING ENTITLED

"OVERSIGHT OF FEDERAL PROGRAMS FOR EQUIPPING STATE AND LOCAL LAW ENFORCEMENT AGENCIES"

PRESENTED

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U.S. Department of Justice
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Chairman Carper, Ranking Member Coburn, and distinguished members of the Committee, thank you for inviting me to speak with you today. I am pleased to have this opportunity to discuss the role of the Department of Justice (DOJ) in supporting state and local law enforcement agencies through the administration of federal funds.

Recent events in Ferguson, Missouri have raised concerns about whether state and local law enforcement's use of military type equipment and tactical training should be more closely examined. As President Obama stated, the laws of the United States have always mandated a clear distinction between our national armed forces and civilian state and local law enforcement. To help maintain that distinction while ensuring that civilian law enforcement departments have access to state-of-the-art equipment and training to maintain public safety, Congress has authorized the Justice Department to administer programs and funding to help state and local law enforcement agencies protect the communities they serve, while also protecting the civil rights and civil liberties of their citizens.

The mission of the Office of Justice Programs (OJP) is to provide innovative leadership, critical research and information, and essential funding to help communities implement effective criminal and juvenile justice programs and strategies. To that end, our six program offices – supported by our business offices – work in close partnership with state, local, and tribal justice systems to provide comprehensive and cohesive support for the nation's public safety needs. As OJP's Assistant Attorney General, I oversee an annual budget of more than $2 billion dedicated to supporting state, local, and tribal criminal justice agencies; an array of juvenile justice programs; a wide range of research, evaluation, and statistical efforts; and comprehensive services for crime victims. OJP is committed to improving the effectiveness and efficiency of criminal justice systems by administering relevant funding, while ensuring we remain a good steward of federal funds by managing grants that achieve our goal of a fair and effective system of justice and by avoiding waste, fraud, and abuse.

A leading source of federal justice funding for law enforcement agencies is the Edward Byrne Memorial Justice Assistance Grant (JAG) program, commonly known as JAG, which is administered by the Department's Bureau of Justice Assistance (BJA) within OJP. The JAG Program was created as part of the Consolidated Appropriations Act of 2005, which merged the Edward Byrne Memorial Formula Grant Program with the Local Law Enforcement Block Grant

program. The JAG program provides states, tribes, and local governments with critical funding necessary to support a range of program areas, including law enforcement, prosecution and courts; prevention and education; corrections and community corrections; drug treatment and enforcement; planning, evaluation, and technology improvement; and crime victim and witness initiatives. JAG-funded projects may address crime by providing services directly to individuals and communities, or by improving the effectiveness and efficiency of criminal justice systems, processes, and procedures.

To effectively administer the JAG program, as established by the statute, the Department uses an allocation formula when making awards to jurisdictions. The allocation formula is calculated by BJA each year for states, territories, local jurisdictions, and tribes to determine the amount of JAG funding for which those jurisdictions are eligible. Once allocations have been determined and applications received, grants are made available to agencies at the beginning of each fiscal year. Agencies then have up to four years to use the funds awarded to them. OJP ensures that funds are being used efficiently and appropriately, meaning there is a criminal justice nexus and use is allowable within the seven program areas, which are law enforcement; prosecution; crime prevention and education; corrections and community corrections; drug treatment and prevention; planning, evaluation, and technology improvement; and crime victim and witness initiatives. Common JAG purchases include, but are not limited to, computer equipment and software, equipment for police cars, camera systems, firearms, and less-lethal weapons. Certain items, including armored vehicles, are considered "prohibited items" unless the BJA Director certifies that there are exigent and extraordinary circumstances that should allow the purchase of those items. JAG awardees are required to submit quarterly activity reports, quarterly federal financial status reports, and annual progress reports.

Each fiscal year, OJP has a statutory requirement, as required by Public Law 109-162, "Violence Against Women and Department of Justice Reauthorization Act of 2005," to conduct in-depth monitoring (on-site visits and Enhanced Programmatic Desk Reviews (EPDR)) on at least 10 percent of the total open, active award amount. In addition, OJP must provide in-depth monitoring for 10 percent of the total number of open, active grants. Monitoring activities also include annual Desk Reviews on all active grants which facilitate grant monitoring throughout the grant award period and helps grant managers prepare for site visits and EPDRs. Desk reviews include a comprehensive review of materials available in the grant file to determine administrative, financial, and programmatic compliance, as well as grantee performance. When conducting a site visit, grant managers must meet with the grantee to discuss specific issues related to implementation plan progress, observe grant activity, and assess planned versus actual progress.

BJA conducts an annual desk review of each of its active grants. The desk reviews allow grant managers to check for progress towards goals and objectives and compliance with programmatic, financial, and administrative requirements. Program managers also use these desk reviews to

determine if more training, technical assistance, or oversight is needed. The use of these reports and reviews helps BJA monitor federal grants, measure the programs' effectiveness, and promote transparency in the use of JAG and other program funds.

Quarterly, OJP assesses each grant to determine the degree of risk an award presents using the OJP Grant Assessment Tool. Based on the results of the risk assessment, awards deemed to be of the highest risk, including awards to JAG awardees, are subjected to an enhanced programmatic review that includes in-depth monitoring which allows grant managers to follow up on any issues identified during the annual desk review, verify grantee activities, validate reported information, and assess the status of project implementation. We believe that our risk-based monitoring approach allows us to maximize oversight within available resources and effectively select grantees for site visits each year, while our desk review process allows us to look at every grantee annually for compliance with established terms and conditions.

While the JAG program is the largest federal source of funding for state, local, and tribal criminal justice agencies, OJP supports law enforcement agencies through a wide range of research, development, and standards and testing activities. OJP's National Institute of Justice (NIJ) continues its long-standing efforts to adapt military technology and technological expertise for use by civilian law enforcement agencies to better ensure public safety and the fair and impartial administration of justice. NIJ has funded such activities since the establishment of its predecessor agency, the National Institute of Law Enforcement and Criminal Justice (NILECJ), in 1968. Modern police body armor was introduced in the mid-1970s as the result of an NILECJ-funded research project that prominently involved U.S. Army researchers. It is important to understand that police body armor is not the same as the tactical armor worn by military forces in combat. Rather, it comprises the protective vests worn on a routine basis by officers across the United States today. It is this body armor that is credited with having saved over 3,100 officers' lives since its introduction.

These research activities to adapt military technology and technological expertise continue today through an agreement with the Department of Defense (DOD) and the Department of Homeland Security (DHS). The purpose of this partnership is to enhance public safety and improve homeland security through research such as NIJ is conducting and by making excess DOD equipment – computers and hardware, as well as tactical gear – available to public safety agencies, including state and local law enforcement.

In addition to its research and development projects, NIJ also provides technical assistance through the National Law Enforcement and Corrections Technology Center System (NLECTC) to law enforcement and other criminal justice agencies by helping them identify and access military equipment through the DOD's 1033 Program. NIJ does not administer a separate program to provide federal financial assistance to state or local governments for purchases of military equipment to criminal justice agencies.

OJP remains committed to providing support to state and local law enforcement agencies through collaboration with our federal partners, as well as through internal projects. For example, BJA is preparing a tool kit of all our existing resources for online training and publications which focus on protecting civil rights and civil liberties, as well as maintaining appropriate crowd control. We will continue to provide funding and relevant, up-to-date research and best practices to ensure that state and local law enforcement agencies are able to appropriately and effectively enforce our nation's laws while protecting our citizens' civil rights and civil liberties.

The recent events in Ferguson show us that, as a nation, we still have more work to do. The Attorney General's quick and decisive response to those events offers proof of the Department's firm resolve to ensure public safety and the fair administration of justice are in proper alignment. OJP will continue to support these aims by providing America's law enforcement community with the tools and resources it needs to uphold the law and earn the trust and respect of the citizens it serves.

Mr. Chairman, my colleagues and I at OJP – and throughout the Department of Justice – are committed to deploying our resources in a manner that helps secure order while gaining and retaining the public's trust in the institutions that guide our democracy, law enforcement agencies chief among them. We will continue to bring the latest knowledge and devote the best tools to this task. I look forward to working with the Committee to ensure that these efforts meet the high standards expected of us by you and by the American people.

Testimony of Chief Jim Bueermann (Ret.), Redlands, CA
President, Police Foundation, Washington, D.C.

U.S. Senate Committee on Homeland Security and Governmental Affairs
Hearing on the Oversight of Federal Programs for
Equipping Local Law Enforcement Agencies

Tuesday, September 9, 2014

Mr. Chairman, distinguished members of the Committee, thank you for this opportunity to appear before you to discuss the very important topic of federal programs that provide equipment to our civilian police forces.

My name is Jim Bueermann and I am the president of the Police Foundation and the former Chief of Police of the Redlands, CA Police Department. The Police Foundation, established in 1970 by the Ford Foundation, is America's oldest non-membership, non-partisan police research organization. Our mission is to advance democratic policing through innovation and science. We conduct rigorous scientific research, provide technical assistance and conduct critical incident reviews that help the police across the country become more effective.

Determined to address the challenges of change in an ever-changing world, the Police Foundation did much of the research that led to a questioning of the traditional model of professional law enforcement and toward a new view of policing–one emphasizing a community orientation–that is widely embraced today. Seminal foundation research on issues such as police patrol practices, women in policing, use of force by police, and the police response to domestic violence has transformed policing in profound ways. The foundation has been committed to disseminating science and evidence-based practices to the field. My testimony reflects these principles.

Prior to my work with the Foundation I served for a year as an Executive Fellow at the US Department of Justice's National Institute of Justice where I worked on translating scientific evidence for police practitioners. Prior to that, I was a police officer in Redlands, CA for 33 years – the last 13 years serving as the Chief of Police and Director of Housing, Recreation and Senior Services. I retired from the department in 2011. I have extensive experience and expertise in community policing. During my tenure as police chief, for example, the Redlands Police Department incorporated Redlands' recreation, housing and senior programs as part of its evidence based community policing and problem solving

strategy that focused on risk and protective factors. In 2000, this orientation was judged one of the 25 most innovative governmental programs in America by the "Innovations in American Government" program sponsored by Harvard's Kennedy School and the Ford Foundation.

Equipment for Law Enforcement

As have many Americans, I have been closely following the events in Missouri. Among many aspects of the troubling incident in Ferguson is the national discussion about the "militarization" of this country's police forces. A focal point of this discussion is the Department of Defense's "1033 Program" that transfers surplus military equipment to local police departments. I believe most community policing experts will agree that the equipment itself may not be as problematic as the context and situation in which it is used. In fact, the 1033 program and other federal programs provide valuable equipment to law enforcement nationwide.

Few people would argue that the police need the means to keep themselves safe and apprehend or stop heavily armed and violent bank robbers, for example. So they might not object to a police SWAT team using an armored vehicle to stop them. In contrast, the same SWAT team, using the same armored vehicle to "control" vocal, yet peaceful protestors would be considered highly offensive. Context, not necessarily specific equipment or tactics, is one of the most important variables in determining whether military aspects of policing are appropriate or not.

During my career in Redlands the police department used the Department of Defense's 1033 Program to acquire surplus equipment. This included several M16 rifles for the department's SWAT Team, pick-up trucks, utility vehicles, desks, tables and filing cabinets for our community policing stations and miscellaneous office equipment used by our recreation, housing and senior services units. Since my retirement, the department has acquired a Mine Resistant Ambush Protected armored vehicle (MRAP).

The program ensures that our taxpayers do not have to pay for these resources twice. While Congress reviews these programs in the wake of Ferguson, I urge you to consider the benefits and greater context along with possible changes. There has been substantial positive impact on public safety and officer safety from 1033 and other programs that provide equipment to law enforcement. For example:

- Two weeks ago, the Cook County Sheriff's Department used armored vehicles to get officers to the scene and extract six children and two adults being held hostage after a home invasion. Two officers were shot during the 20 hour standoff, but the equipment prevented further injury to law enforcement and helped with the safe recovery of the hostages.

- Armored Personnel Carriers (APCs) and MRAPs have been used to affect snow and water rescues in Brunswick, OH. The high axle clearance these vehicles have afford rescuers the means by which to traverse deep snow or rushing water to get to stranded victims.
- The Las Vegas Metropolitan Police Department receives 1033 Program Surplus Property. The majority of items, 75 percent to 80 percent are aircraft parts that are used to maintain the two surplus HH-1H rescue helicopters, which are used primarily for mountain rescues of injured hikers, hoist rescues of persons trapped during the flood season, lost persons and persons requiring medical help. They are also utilized to transport searchers and K-9 Teams to remote locations when searching for missing children. In June and July of 2014 alone, the LVMPD Air

Support/Search and Rescue Section has utilized rescue helicopters obtained through the 1033 program 11 times during search and rescue missions in mountainous terrain. In addition, they used boats obtained through the 1033 program 6 times for diving/rescue missions at Lake Mead.

- The Pasadena, CA police department used 1033 helicopter equipment to completely refurbish its own helicopters which provide air support services for not only Pasadena but the entire San Gabriel Valley in Los Angeles County.

- The Los Angeles police recently used a armored "Bearcat" tactical vehicle to protect officers as they apprehended a heavily armed suspect who was firing a high powered rifle at them and had wounded an officer.

- In West Bloomfield, Michigan a suspect barricaded himself in a residential neighborhood and engaged in significant gunfire with law enforcement and ultimately ended up killed police officer Patrick O'Rourke. During the 20-hour standoff, law enforcement used their armored vehicle to safely evacuate neighborhood residents from the area.

Recommendations for the 1033 Program

Despite the benefits of various equipment provided through the 1033 program and the variety of types of equipment available, the two primary drivers of the public perception of police militarization are local law enforcement's use of armored vehicles and tactical units (commonly referred to as Special Weapons and Tactics Teams – SWAT).

Based on my experience and familiarity with municipal government, community policing and the 1033 Program specifically, and in light of the benefits these programs have for our communities, the Police Foundation proposes the following changes and amendments to the programs to ensure they continue to strike a balance between the needs of the police and community interests.

We recommend that pursuant to federal legislation or regulation, every police agency that desires access to federal surplus property via DOD's 1033 program should be required – as part of the application process – to provide proof to the DOD that: 1) it has received public input, and local governing body approval, of the department's acquisition of the property; 2) that it has implemented a publically accessible policy governing the use of armored vehicles and tactical units (such as SWAT); and, 3) it makes publically available the number of times and context it utilized armored vehicles and tactical units.

This requirement can be easily fulfilled through:

1. The passage of a resolution documenting the locally elected governing body's (e.g. City Council, County Board of Supervisors, etc.) approval of the application;
2. Minutes from a public hearing on the matter proving the community had an opportunity to express their opinion on the issue;
3. The implementation of police department polices that clearly outline the circumstances under which the military surplus equipment and tactical units (SWAT) can be used by the acquiring agency, and,

4. The public availability of the aforementioned policies and the number of times and context the department utilized armored vehicles and tactical units. Allowances can be made for anti-terrorism cases or other highly sensitive investigations with the approval of the agency executive.

Because the 1033 property is conveyed to policing agencies "free," there is frequently no local requirement that the policing agency obtain approval from the local governing body in the same way they would be required under local purchasing ordinances for the same equipment if they had to "buy" it. The addition of military equipment like armored vehicles or SWAT teams in police departments with little use for them can create budgetary and organizational pressure to use them. Policing leaders who acquire military-like equipment, that is expensive to buy or maintain, and SWAT teams, can feel pressure from city or county administrators, or elected officials, to justify the expenditures. This can result in "normalizing" their use in "routine" circumstances and contributes to the militarization of the police.

In my opinion, the requirements I have proposed would not be overly burdensome for the police because they already have to follow a similar procedure for expensive items they now purchase. In addition, this ensures the local community has an opportunity to voice their support or opposition to the proposed acquisition, consider the police justification for the equipment and have access to the number of times and context the equipment and tactical were used. This community input and department transparency is entirely consistent with a fundamental underpinning of community policing that urges the police to "co-produce" public safety with the community they serve.

I believe it is important that these programs are retained with appropriate transparency, accountability and oversight guidelines incorporated. Completely eliminating them would have substantial impact on public safety and local budgets.

Militarization of the Police

The discussion of military-like equipment in police departments is part of a larger conversation happening nationally about "militarization" of the police. Even the phrase "militarizing the police" has different connotations. Broadly, the term "militarization" is defined as the use of military equipment and tactics by civilian policing authorities. I think there is more to this complicated issue.

The job of police is to respond to the threats that face our communities each day and protect public safety. Adequate and updated equipment is a necessity to keep both officers and our citizens safe and the equipment needs shift when the landscape shifts.

In February 1997, two gunmen heavily armed with fully automatic assault rifles robbed a bank in the North Hollywood jurisdiction of the Los Angeles Police Department (LAPD). Patrol officers interrupted the robbery and the robbers immediately began firing at them. Several officers and civilians were wounded. The officers were outgunned as they were armed only with their handguns and shotguns. When LAPD SWAT officers arrived, armed with assault rifles, the suspects were eventually shot. During the gun battle SWAT officers commandeered an armored truck to protect them while they rescued wounded civilians and officers. After this incident, many police departments, including LAPD, began arming their patrol officers with rifles to counter heavily armed suspects.

The "militarization" issue, however, goes beyond access to equipment. There are law enforcement agencies across the country that strive to find a balance in these areas that provide needed resources and tactics to line officers, while maintaining and strengthening connections to the community and the legitimacy of law enforcement within that community.

Main issues in the militarization discussion for law enforcement to consider include:

- Militarizing civilian police agencies runs contrary to the American view of democratic policing. The ability of the police to fulfill their public function is dependent on public approval of their actions and confidence in them because community members believe the police treat them in a respectful, fair and equitable manner.

- The police use of military-like equipment and tactics is appropriate or not depending on the context of their use. The inappropriate use of military-like equipment and tactics erodes public approval of, and confidence in, the police.

  The police use of an armored vehicle or SWAT team to keep officers safe while apprehending heavily armed and violent bank robbers, for example, would be more appropriate than the use of the same tactics to "control" vocal, yet peaceful protestors.

- Militarizing is a mindset that encourages police officers to assume a "warrior" orientation in the "war against crime." It is espoused through a police organization's culture and is represented by its values, messaging, recruitment, reward systems and policies.

- The addition of military equipment like armored vehicles or military-like SWAT teams in police departments with little use for them can create budgetary and organizational pressure to use them. Policing leaders who acquire military-like equipment, that is expensive to buy or maintain, and SWAT teams, can feel pressure from city or county administrators, or elected officials, to justify the expenditures. This can result in "normalizing" their use in "routine" circumstances and contributes to the militarization of the police. In striking a balance between serving the public safety interests and militarizing police departments leaders should also consider regionalizing the acquisition and use of this equipment or SWAT teams. This will help mitigate the normalizing of its use in inappropriate circumstances.

- Transparency, accountability and community input on a police department's acquisition and use of military equipment or tactics are the antidote to militarization.

  Transparency and community input is achieved through: 1) public hearings on the equipment use; 2) the police explanation of their rationale and a clear department policy regulating their use; and, 3) locally elected bodies voting to accept or reject the equipment. All of these actions should be taken before the police acquire the equipment or establish the SWAT team. Accountability is achieved when police department's document and share publically the number of times, and under what circumstances, they utilize military equipment like armored vehicles and SWAT teams. This also helps to counter the phenomena of normalizing their use in inappropriate situations.

Advancing Democratic Policing

I also urge the Committee and Congress to examine evidence-based policing strategies and proactive strategies and initiatives that law enforcement can use to better policing practices. This will enhance police legitimacy and leverage the taxpayer investment in public safety. The following are some key points to consider:

1. **Focus on Community Policing.**

   Community policing is not a program. It is a value-based, philosophical orientation and commitment to working with the community to solve public safety problems. Similarly, militarized policing is a mind-set that can permeate a police department's culture. Reward systems and symbolism. The police can use military-like equipment and tactics without eliminating community policing and its requisite connection to the people the police serve.

2. **The police must constantly focus on enhancing their legitimacy in the eyes of the community.**

   The ability of the police to fulfill their public function is dependent on public approval of their actions and confidence in them because community members believe the police treat them in a respectful, fair and equitable manner. The degree to which the police are transparent and accountable for their actions is critical to the formation of public confidence in the police.

3. **Police organization must reflect the community they serve.**

   In addition, policing organizations should reflect the communities they serve. When diverse communities see the police as not reflecting their members they can lose faith in the police to understand their needs in meaningful ways. This is extremely problematic when there is great disparity between the racial makeup of the community and the policing organization that serves them.

   Finally, it is crucial that police leaders demanding their workforce act in a legitimate manner also ensure that the organization's internal legitimacy – the way it treats its own members – is meaningful and credible.

4. **The police must be driven by a set of organizational values developed in concert with the community.**

   Each community has its own collective set of desires and expectations of its police officers. Police leaders should "listen naively" to a wide range of community input about its police department and include this input when formulating its mission and values. These values should minimally include: 1) the belief that police officers are "protectors of civil rights;" 2) the notion that recruiting officers in the "spirit of service" rather than the "spirit of adventure" furthers the true purpose and legitimacy of the police; and, 3) the development of a relationship with the community that the police openly hold as sacred. Police leaders must ensure that there is organizational alignment between the adopted values and all aspects of the organization (e.g.

recruitment, hiring, promotions, discipline, messaging, etc.) to ensure these values anchor to the cultures of the organizations they lead.

5. **The police and the community must "co-produce" public safety.**

When the police assume complete, insular responsibility for controlling crime and disorder, and unilaterally implement strategies intended to combat crime, they run the risk of alienating the public who may have little understanding or commitment to the chosen strategies. Community members know a lot about crime and disorder – especially in their own neighborhoods. The police should seek the input of the public when identifying problems related to crime and disorder. And they should collaborate with key stakeholders to identify effective strategies and partner with community groups and individuals to implement these strategies and "co-produce" outcomes related to safe and healthy communities.

6. **Policing agencies must provide their police officers with proper training, accountability technology and less-lethal tools.**

Every police officer should be provided with adequate basic, in-service and advanced training in the areas of police legitimacy, racial and cultural sensitivity, youth issues, dealing with persons suffering from mental illness, and use-of-force. In addition, officers should be equipped with accountability technology such as in-car and body worn cameras or tape recorders to document "enforcement stops." Finally, each officer should be equipped with less-lethal options for controlling violent individuals. Communities that fail to demand this training and equipment for its officers should not be surprised when officers use poor strategies and significant force in instances where it could have been avoided. And concomitant to this training, technology and equipment are adequate policies and practices that hold officers accountable for their actions.

7. **The poliee should utilize the best available scientific evidence about what works to control crime and disorder**

When the police use the best available science to inform their crime control strategies, and share this knowledge with the communities they serve, they are better situated to explain their rationale and avoid claims of favoritism or discrimination. Crime control science is not perfect and the police should receive training in "evidence based policing" to enable them to differentiate between rigorous scientific efforts and findings and flawed studies. Policing organizations can easily access US DOJ evidence based tools like crimesolutions.gov, research or membership organizations (e.g. the Police Foundation, George Mason University's Center for Evidence Based Crime Policy, the International Association of Chiefs of Police, the Police Executive Research Forum, etc.) or find academic institutions with staff willing to assist them in identifying good from not-so-good science.

8. **Leadership training.**
Leadership focusing on translating democratic principles to police practices and policies should be emphasized. The FBI National Academy is this country's de facto "police college" and educates more than 1000 current and up-and-coming police leaders each year. It would be an important part of creating a "national coherence" on these important issues. In addition,

innovative leadership development programs should be developed that are nimble enough to adapt to the rapidly changing world of police leadership.

9. **Critical Incident reviews.**
There is much truth to the adage that "those who cannot remember the past are condemned to repeat it." Just as aviation and the medical profession have mechanisms to learn from mistakes or near misses, so too should American policing have an organized way to take "lessons learned" and make them "lessons applied." Important lessons can be learned from the events in Ferguson. And these lessons can be translated into meaningful changes in the way American policing operates. But this will only happen if there is the will to ensure that the knowledge gained from these tragedies is captured and disseminated in a manner that encourages new learning and sustainable change. One method of accomplishing this is through the use of critical incident reviews of the type conducted by the Police Foundation after the Southern California "Chrisopher Dorner Incident" in 2013 (see www.incidentreviews.org). Critical reviews should be conducted after every policing incident in which a life is lost or substantial police use-of-force is used.

Conclusion

It is imperative that the Committee and Congress take a balanced view of federal efforts to assist local law enforcement in controlling crime and disorder and doing so in a democratic manner. The militarization of the police is problematic in this country and it should be addressed. However, it is important to remember that the police have a tough, dangerous job and need adequate resources to protect their communities and themselves. But, in providing the police with these resources we must never lose sight of the basic tenets of democratic, community-oriented policing that require police transparency and accountability, public input and the co-production of public safety between the police and the communities they serve.

Militarizing American Police

Submitted by: Peter B. Kraska, Professor, Eastern Kentucky University

I'll begin with two Examples of Police Militarization – one old – in fact, pre 9/11, and one new – this year in May.

In September of 2000, federal law enforcement conducted a joint drug investigation with the Modesto California municipal police department. Employing the Military Special Operations model, the Modesto P.D.'s SWAT team conducted a predawn dynamic entry into the Sepulveda's family home – suspecting the father, it turned out incorrectly, of being involved in low level drug dealing. Their intelligence failed to note that the Sepulveda family had three young children in the house. Deploying percussion grenades, they stormed the house, and rousted the children out of bed onto the floor. One of the children – Alberto – was 11 eleven years old and complied with all of the officers' screams to get in the prone position on his bedroom floor. A paramilitary police officer – standing over him with a 12-guage shotgun – then accidentally discharged his weapon into Alberto's back – killing him. This incident devastated the Modesto Police Department, and obviously the surviving members in Alberto's family. The 3 million dollar judgment paid by the local municipality and the federal government was one of the largest awards given for a botched SWAT Raid.

Now move forward to May of this year -- we all heard what happened in Georgia – when a small city police department's SWAT team conducted a no-knock drug raid – again on a family's home suspected of low-level drug dealing. The officers threw a percussion grenade into the home, the device landed in an infant's crib next to his face, and then detonated. The officers did not allow the Mother to touch or console the wounded infant, so it laid by itself in its crib bleeding while the police waited for the paramedics to arrive. Despite being comatose for a number of days – and receiving severe lacerations and burns – he did survive. Not that it should matter, but the family was not involved in drug dealing.

Some might dismiss these are mere anecdotes, but the facts – based on extensive national level scientific research – are clear: these examples are emblematic of an historic – yet up until recently little noticed – shift in American democratic governance. The Clear distinction between our civilian police and our military is blurring in significant and consequential ways. This includes what Army General Charles J. Dunlap has called the "police-ization of the military". But of course what we're discussing today is the other side of the coin – the militarization of American policing.

The research I've been conducting, since 1989, has documented quantitatively and qualitatively the steady and certain march of U.S. Civilian policing down the militarization continuum (culturally, materially, operationally, and organizationally) – despite massive efforts at democratizing the police under the guise of Community Police reforms. This is not to imply that ALL police – nearly 20,000 unique departments across our great land – are heading in this direction. But the research evidence -- along with the militarized tragedies in Modesto, Georgia, Ferguson, and tens of thousands of other locations – demonstrates a troubling and highly consequential overall trend.

What we saw played out in Ferguson was the application of a very common mindset, style of uniform and appearance, and weaponry, used everyday in the homes of private residences during SWAT raids. SWAT teams – some departments conducting as many as 500 of these a year – using the Military Special Operations Model (with of course differing rules of engagement) for common and most often very minor drug offenses.

With the emphasis on counter-terrorism post 9/11 – the stage is perfectly set for a militaristic and extreme response not to just the crime and drug problem, but to the overall goal of internal security. And just as in the two examples above, and in the Ferguson situation, it is the poor, and communities of color, that are most impacted.

In short, the appearance and behavior of the police in the streets of Ferguson Missouri is highly consistent with, and representative of, the U.S. Police – with both ideological and material support from the Federal government – moving rapidly and confidently down the militarization continuum. It is critical to note that this trend is not universal by any means. There are many very smart police executives and line-level personnel that completely comprehend the dangers of this blur, and consciously work to keep the line bright.

I began inquiring into the contemporary role the military model has on the U.S. police when conducting a two-year long ethnography of multi-jurisdictional SWAT teams (Kraska 1996). Spending hundreds of hours training and going on actual deployments, I learned a great deal about police paramilitary units (PPUs) – or SWAT teams – at the ground level, and especially police paramilitary culture. I first learned that PPUs derive their appearance, tactics, operations, weaponry, and culture to a significant extent from military special operations units (e.g., Navy Seals). (It's important to reiterate that PPUs are only closely modeled after these teams – clearly there are also key differences between a police paramilitary unit and a military special operations unit – this is why they are referred to as police *para*-military).

With battle-dress utilities, heavy weaponry, training in hostage rescue, dynamic entries into fortified buildings, and some of the latest military technology, it became clear that these squads of officers fall significantly further down the militarization

continuum – culturally, organizationally, operationally, materially – than the traditional, lone cop-on-the-beat or road-patrol officer.

I also learned that the paramilitary culture associated with SWAT teams is highly appealing to a *certain segment* of civilian police (certainly not all civilian police). As with special operations soldiers in the military, these unit's members saw themselves as the elite police, involved in real crime fighting and danger. A large network of for-profit training, weapons, and equipment suppliers heavily promotes paramilitary culture at police shows, in police magazine advertisements, and in training programs sponsored by gun manufacturers such as Smith and Wesson and Heckler and Koch. The "military special operations" culture – characterized by a distinct techno-warrior garb, heavy weaponry, sophisticated technology, hyper-masculinity, and dangerous function – was nothing less than intoxicating for its participants.

I most importantly learned that my micro-level experience might have been indicative of a much larger phenomenon. I decided to test empirically my ground-level observations by conducting two independently funded national-level surveys. These surveys of both large and small police agencies yielded definitive data documenting the militarization of a significant component of the U.S. police (Kraska and Kappeler 1997; Kraska and Cubellis 1997). This militarization was evidenced by a precipitous rise and mainstreaming of police paramilitary units. As of the late 1990s, 89 percent of American police departments serving populations of fifty thousand people or more had a PPU, almost double of what existed in the mid-1980s. Their growth in smaller jurisdictions (agencies serving between 25 and 50,000 people) was even more pronounced. Currently, about 80 percent of small town agencies have a PPU; in the mid-1980s only 20 percent had them.

While formation of teams is an important indicator of growth, these trends would mean little if these teams were relatively inactive. This was not the case. There had been more than a 1,300 percent increase in the total number of police paramilitary deployments, or call-outs, between 1980 and the year 2000. Taking into consideration follow up research in 2007, and extrapolating from the original research, there are an estimated 60,000 SWAT team deployments a year conducted among those departments surveyed; in the early 1980s there was an average of about 3,000 (Kraska 2001). The trend-line demonstrated that this growth began during the drug war of the late 1980s and early 1990s.

These figures would mean little if this increase in teams and deployments was due to an increase in PPU's traditional ***and essential function*** – a reactive deployment of high-risk specialists for particularly dangerous events already in progress, such as hostage, sniper, or terrorist situations. Instead, more than 85 percent of these deployments were for proactive deployments, specifically random patrol work, and no-knock and quick-knock dynamic entries into private residences, searching for contraband (drugs, guns, and money). This pattern of SWAT teams primarily engaged in surprise contraband raids held true for the largest as well as the smallest

communities. PPUs had changed from being a periphery and strictly reactive component of police departments to a proactive force actively engaged in fighting the drug war.

As further evidence, a surprisingly high percentage of police agencies also deployed their teams to do routine patrol work in crime "hot spots"; a strong indicator of PPU normalization. In fact, a number of U.S. police departments are currently purchasing, through homeland security funding, military armored personnel carriers (APC's), some of which are being used for aggressive, proactive patrol work. The Pittsburg police department, for example, purchased a $250,000 APC using homeland security grant money (Deitch 2007). It is being used to conduct "street sweeps" in high crime neighborhoods. The personnel involved are SWAT officers outfitted with full police paramilitary garb and weaponry.

What exactly is a no-knock or quick-knock raid? In essence, they constitute a proactive contraband raid. The purpose of these raids is generally to collect evidence (usually, drugs, guns, and/or money) from inside a private residence. This means that they are essentially a crude form of drug investigation.

As noted above in the two examples of drug raids gone wrong, a surprise "dynamic entry" into a private residence creates conditions that place the citizens and police in an extremely volatile position necessitating extraordinary measures. These include: conducting searches often during the pre-dawn hours, usually in black military BDUs, hoods, and military helmets; a rapid entry into the residence using specialized battering rams or entry explosives; the occasional use of flash-bang grenades designed to temporarily disorient the occupants; a frantic room by room search of the entire residence where all occupants are expected to immediately comply with officers' urgent demands to get into the prone position; and, handcuffing all occupants. If a citizen does not comply immediately more extreme measures are taken – these situations may involve non-lethal and lethal weaponry. Finally, the police aggressively search the entire residence for contraband.

I receive at least two phone calls per month from journalists, lawyers, or police departments reporting a new botched raid, generally where a citizen has been killed or severely injured under highly questionable circumstances. Radley Balko has documented hundreds of seriously botched SWAT raids on private residences (Balko 2006). Botched PPU raids often devastate the communities and police departments involved, sometimes resulting in disbanded SWAT teams, laws being passed prohibiting or curtailing no-knock deployments, and expensive litigation judgments (Balko 2006).

One phone call I received involved a U.S. Army Green Beret soldier – suffering from PTSD and despondent because he had just heard he was being redeployed to Iraq for a third time – who had been killed by a SWAT team under highly questionable circumstances. The state attorney general's investigation of this botched raid concluded,

> The tactics adopted by the Maryland State Police EST [SWAT team] can be best considered as progressively assaultive and militaristic in nature.... This office is not unaware of the mounting criticism throughout our nation over the use of paramilitary units employing overly aggressive tactics against our civilian population. As State's Attorney, I can think of no greater threat to the good relations existing in out community as it relates to police/citizen relations than to witness the unbridled use of overly aggressive tactics by a faceless and shadowy paramilitary police unit...." (Fritz 2007:12,15).

Only 20 years ago, forced investigative searches of private residences, using the military special operations model employed during hostage rescues, was almost unheard of and would have been considered an extreme and unacceptable police tactic. It is critical to recognize that these are not forced reaction situations necessitating use of force specialists; instead they are the result of police departments *choosing* to use an extreme and highly dangerous tactic, not for terrorists or hostage-takers, but for small-time drug possessors and dealers. Attempting to control the crime problem by conducting tens of thousands of paramilitary style raids on private residences is strong evidence that the U.S. police, and the "war on crime" in general, have moved significantly down the militarization continuum.

Of course a militarized response is sometimes necessary and even unavoidable if done in self-defense or to protect lives in imminent danger. The crisis situation at Columbine High School is a solid example of the necessity of having a professional, para-militarized response to a pre-existing crisis. The bulk of U.S. SWAT activity (no-knock/quick-knock raids and aggressive patrol work), however, constitute a proactive approach. Numerous departments are choosing, based no doubt to an extent on political pressures, to generate on their own initiative high-risk events.

A central critique of this trend, therefore, does not focus on SWAT's traditional and vital reactive function. It instead concentrates on the inappropriate manner in which its function has been essentially turned on its head – normalizing itself into a range of proactive and mainstream police functions such as contraband raids. This is a strong example of the potentiality of the misplaced application of the military model in civilian policing.

Causation and Military Gear Procurement

I've had a small grant – funded by EKU's College of Justice and Safety – to study the various programs in place that allow state and local police to obtain military weaponry and hardware. I started working on this with a graduate student in our program, Justin Reffitt, due to my initial findings in 1996. Two national-level surveys found that the police were obtaining military gear, and as importantly, training from the U.S. military itself. As most of you are probably aware, these weapons transfer programs have been in place since the Reagan Administration's attempts to repeal the Posse Comitatus Act of 1878 as part of his drug control efforts. This led to significant amendments to Posse Comitatus allowing for the cross-fertilization of

military and police forces in the areas of training and weaponry. We uncovered in 1996 a large number of police departments, for example, that had been given used Armored Personnel Carriers by the U.S. Military.

These weapons procurement programs continued then from the late 1980s through 2000; and was of course 9/11 and the creation of the DHS which significantly increased the number of programs and money that allowed local PD's to procure a vast array of armaments. I have no doubt that those players from DHS, DOJ, and DOD involved in making this happen intended for this military weaponry and goods to be used for counter-terrorism purposes. However, the unintended consequence has been the widespread misapplication in the form of overkill during civil protests, conducting random patrol work in high crime neighborhoods, and conducting tens of thousands of no-knock and quick-knock raids on private residences.

This is critical to understand. If it were possible to provide funds and programs that allowed a small, tightly regulated component of the U.S. police to obtain military-grade equipment for the extremely rare terrorist or active shooter situation – perhaps these programs might be of some benefit. However, the myriad and unavoidable unintended consequences of such programs render them not just dubious, but dangerous. Military gear and garb changes and reinforces a war fighting mentality among civilian police, where marginalized populations become the enemy and the police perceive of themselves as the thin blue line between order and chaos that can only be controlled through military model power. The ethic the massive Community Police reform programs intended to instill in American policing – that is, one of community empowerment, developing authentic trust between the community and police, and democratic processes that lead to responsive police practices – has been smoothly displaced by a militarized paradigm. A recent editorial by the COPS office essentially predicted the doom of Community Policing due to what they called the "growing militarization of American policing." Of course there is a chance, if one examines my research carefully, that Community Policing had never stood a chance as compared to the seductive trapping of para-militarism in today's society.

Please consider the significance of one small preliminary finding: 23 police departments that serve communities of 25,000 people or less have already acquired an MRAP from the U.S. military. This does not include all of those department that have obtained an Armored Personnel Carrier from the military, or purchased one from the Department of Homeland Security, or purchased military heavy weaponry from Asset Forfeiture monies. Most of our 18,000 or so police departments in the U.S. are small – and these types of military gear go to them with little to no training, little to no oversight, and little to no accountability. Moreover, my research found that nearly 80% of small localities now have a SWAT Team. Imagine a police department with 30 officers, and 15 of them serve on the SWAT team; of course only on a part time basis where 95% of their time is doing routine patrol work. It does not take any sort of ideological leap to appreciate the high potential of that department developing a militarized mindset – or, police culture – which will

inevitably lead to a greater quest for cool military gear, more military model training, and more military model operations in their community (e.g., dynamic entry drug raids). These departments can and often do devolve from a long-running community service ethic to a new-age security-based paramilitary ethic. This is no doubt part of the ugly dynamic that played out in Ferguson Missouri.

Conclusion:
Finally, I have not even touched on the massive for-profit Armanments Industry, now supplying our 20,000 local police departments, with a sophisticated and highly lethal array of heavy weaponry and militaristic supplies. 1033 is perhaps the most visible and obviously most offensive conduit (at least to some) – but it has mostly been federal and local tax dollars – along with asset forfeiture money -- that have allowed the police to procure these supplies in massive, yet very difficult to document numbers.

In conclusion, I'd like share a recent embarrassing series of events. I just got back from a 3 week trip to rural and urban areas in Indonesia studying that country's efforts to demilitarize the police. I was hosted by Police Commissioner Adrianus Meliala and therefore had access to a wide range of Indonesian police, stakeholders, UN officials, and US officials all involved in the Indonesian National Police reform efforts. It was a fascinating and rewarding trip. Yet, what most impacted me was the irony of meeting with such dedicated and clear-minded people about police reform – and yet having everyone of them ask me to make sense of what was transpiring in Feguson Missouri. They were of course especially shocked by the militarized police presence and activities. It dawned on me what a bad example we're currently providing for the rest of the world with regard to democratic policing, and our eroding legitimacy to talk about human rights as it relates to criminal justice issues.

I can't imagine that anyone intended for the crime, drug, and terrorism wars – along with all of their various funds and programs – to devolve into the Mainstreaming and Normalization of militarization into American Policing; but these federal funds and policies are certainly nevertheless an important part of the causal equation.

I've mentioned that police militarization pre-dates 9/11. This is not just an interesting historical fact. Its critical because it illuminates the most important reason – or causal factor – in this unfortunate turn in American Policing and American democracy: our long-running and intensely punitive self-proclaimed "war" on crime and drugs. It is no coincidence that the sky-rocketing number of Police Paramilitary Deployments on American Citizens since the early 1980s, coincides perfectly with the sky-rocketing imprisonment numbers. We now have nearly 2.4 million people incarcerated, and almost 4% of the American public is under direct correctional supervision. This War has been devastating to minority communities and the marginalized; and has resulted in a self-perpetuating growth complex.

Cutting off the supply of military heavy weaponry and supplies to our civilian police is the least we could do to begin the process of reigning in our crime control industry, and attempting to make clearer the increasingly blurred distinction between the military and police.

Thank you.

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Written Testimony of Mr. Mark Lomax; Executive Director of the National Tactical Officers Association before the Senate Committee on Homeland Security and Governmental Affairs for the hearing on "Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies"

Sept. 9, 2014

My name is Mark Lomax and I serve as the Executive Director of the National Tactical Officers Association and on behalf of the more than 40,000 law enforcement professionals we represent, I would like to thank Chairman Carper, Ranking Member Coburn and the esteemed Members of this Committee to have the opportunity to speak with you today.

Since its inception in 1983, the NTOA has served as a not-for-profit association representing law enforcement professionals in special operations assignments in local, state and federal law enforcement agencies. The mission of the National Tactical Officers Association is to enhance the performance and professional status of law enforcement personnel by providing a credible and proven training resource as well as a forum for the development of tactics and information exchange. The Association's ultimate goal is to improve public safety and domestic security through training, education and tactical excellence. The Association's current membership represents over 1500 tactical law enforcement teams throughout the United States and Canada.[i]

The American law enforcement officer recognizes, probably more acutely than most, that they are not in conflict with the citizens they serve. To the contrary, the brave men and women of this profession willingly place themselves between danger and the public every day and at great personal sacrifice to themselves and their families. Their children go to school with your children, their families go to church with your families and they too are citizens of the communities for which they have been given the solemn responsibility to protect. They often ask for little beyond the appropriate level of training, equipment and support necessary to accomplish their mission. The National Tactical Officers Association (NTOA) believes that those law enforcement officers that are asked to conduct the most difficult and dangerous missions, deserve the appropriate level of training and equipment to ensure, as much as possible, their success and safety. The Department of Defense 1033 Program and Department of Homeland Security grant funding has supported that effort by providing much needed safety and emergency response equipment.

The National Defense Authorization Act of Fiscal Year 1997 authorized the Defense Logistics Agency, specifically the Law Enforcement Support Office (LESO), to administer the 1033 Program and allows for the office to transfer excess Department of Defense property to law enforcement agencies across the United States and its territories. Since its inception, the 1033 program has transferred more than $5.1 billion worth of property. In 2013 alone, $449,309,003.71 worth of property was transferred to law enforcement. [ii]

Law enforcement agencies in the United States have taken advantage of this program from its inception, but certainly at a greater frequency after the terrorist attacks of September 11, 2001. The program has directly benefited recipient agencies and the citizens they serve, as well as creating a number of unique challenges along the way.

After September 11, 2001, first responder agencies across the country willingly volunteered to collaborate with their federal partners in building a robust and capable homeland security system at all levels. At the time, most progressive law enforcement agencies in the US had a proven capability in the prevention, investigation and enforcement aspects of crime fighting. The most significant challenge associated with this transition, for local law enforcement, was evaluating the potential threats associated with terrorism occurring in their community and determining the appropriate level of involvement for each agency. The threat of a terrorist attack in our country has not diminished in the last decade, and may have in fact become a more serious threat.

Although the US has seen a steady decrease in overall crime over the last decade, local law enforcement agencies have also been challenged with increasing threats such as violent gang and extremist group activity, border security issues and active shooter scenarios in schools, businesses and other public venues.

Also adding to this shift, the 2004 and 2005 Atlantic hurricane seasons resulted in 15 named storms impacting the United States, most notably Hurricane Katrina. As a result, first responder agencies from around the country reassessed their role and responsibilities associated with natural disaster response operations, specifically rescue, evacuation, sheltering and security operations.

During the last decade, the US Federal Government, most notably through the Department of Homeland Security (DHS) has given direction and guidance to state and local governments, through such documents as the National Response Framework (NRF) and the National Incident Management System (NIMS), as to how those capabilities should be built out. In September, 2007, the DHS published the Target Capabilities List (TCL)[iii], which as it relates to law enforcement, specifically outlines in the section titled *Emergency Public Safety and Security Response* (pp. 263-276, included as Attachment 1) what capabilities state and local law enforcement agencies should possess when responding to significant critical incidents. The TCL has since been cross-walked over to the new 31 Core Capabilities outlined in the National Preparedness Goal. Core Capability #10 "On-Scene Security and Protection" is defined as:

> *Ensure a safe and secure environment through law enforcement and related security and protection operations for people and communities located within affected areas and also for all traditional and atypical response personnel engaged in lifesaving and life-sustaining operations.*

As law enforcement agencies across the country began building out these capabilities, a need was identified to standardize equipment, training, response plans and personnel credentialing to ensure uniformity in a multi-discipline, multi-jurisdictional unified response. In short, when affected agencies requested assistance during significant events, there was an expectation that like resources would be deployed to them consisting of the same capabilities for that discipline. The Resource Typing Library Tool (RTLT)[iv], provided by the Federal Emergency Management Agency (FEMA) and the National Integration Center (NIC) provides those typing definitions for all responder disciplines. The NTOA provided Subject Matter Experts for this effort. The RTLT defines seven different types of law enforcement response teams:

1. Bomb Squad/Explosives Teams
2. Law Enforcement Aviation – Helicopters, Patrol and Surveillance
3. Law Enforcement Observation Aircraft – Fixed Wing
4. Law Enforcement Patrol Team
5. Mobile Field Force Law Enforcement (Attachment 2)
6. Public Safety Dive Team
7. SWAT/Tactical Teams (Attachment 3)

Within several of these resource definitions, it is recommended that teams include in their equipment inventory such items as night vision, ballistic vests and helmets, personal protection equipment (PPE) such as protective clothing and respirators (gas masks), both impact and ballistic shields, chemical agents, shoulder fired weapons, aircraft, vessels and armored rescue vehicles.

Much of the equipment described above already had a place in US law enforcement, as did the specialized teams using them. However, the factors previously mentioned have reframed the way that state and local law enforcement administrators view their role in local, regional, state and national response plans. Normally the acquisition of expensive capital items or the significant increase of personnel by local law enforcement agencies are factored in over multiple budget cycles. However, to build this advanced capability out nationwide, law enforcement agencies had to reprioritize their general funding budgets and access Department of Homeland Security (DHS) and Department of Justice (DOJ) grants. DHS/DOJ grants and the LESO 1033 program allowed agencies to acquire the necessary equipment rapidly and at considerable cost savings to the local tax paying public. In order for any law enforcement agency grant applicant to purchase such equipment, it typically must be identified with an item number from the Approved Equipment List (AEL)[v]. All of the items described above, with the exception of weapons, have an AEL number.

The 1033 Program has allowed local agencies to acquire heavy duty high wheeled vehicles, forklifts, generators and vehicles that improve operational capabilities and responder safety.

Examples:

Seminole County, FL– The Seminole County Sheriff's Office (SCSO) has acquired property through the 1033 Program. Initial acquisitions of equipment included two OH-58 Kiowa's and in 1999 a UH-1 Huey Helicopter. As a result, the SCSO was able to implement an aviation capability that did not exist prior to that. The use of those aircraft would provide approximately 9533 flight hours of airborne law enforcement and rescue missions to include; 1184 suspect apprehensions, 323 EMS patient transports and 8260 patrol assists between 1996 and 2009, when they were ultimately replaced with commercial aircraft.

Additionally, the SCSO has acquired numerous heavy-duty high-wheeled trucks and forklifts that were used extensively during the response operations of Hurricanes Charlie, Francis and Jeanne in 2004 and the floods of Tropical Storm Fay in 2007. Those vehicles were utilized to deliver sandbags, food, and water; patrol flooded residential areas and evacuate stranded residents. These heavy duty trucks were used as a means by which deputies with chainsaws were able to cut, drag, and clear extremely large trees that had blocked many roadways and access points well ahead of any other type of available public or county resource.

The 1033 Program also provided numerous sets of hand held night vision units, allowing patrol and specialized units to conduct surveillance operations in a much safer and more effective way. Surplus military generators have been used to power critical infrastructure post storm, such as shelters, fuel pumps, sanitation lift stations and traffic control lighting systems.

July 8, 1998, Deputy Sheriff Gene Gregory was killed in the line of duty and two more Deputy Sheriffs were shot during a 13 hour standoff with armed gunman. Over 300 rounds were exchanged. Deputies were rescued with use of handheld ballistic shields. The incident was the catalyst for acquiring two armored rescue vehicles and have been deployed in support of dozens of barricade and hostage incidents since. They have also been used extensively during community events as display items to educate the citizens of the county, and provide insight into the elevated capabilities of specialized teams and units during times of crisis.

Volusia County, FL – March 25, 2009, Officer El-Shami was shot at by a homicide suspect. Florida Region 5 SWAT responds when subject barricades himself in his home equipped with night vision, body armor, gas mask and numerous handguns and rifles (including a 50 caliber rifle). Two armored rescue vehicles were utilized to approach the structure, deploy chemical agents and tactical robots and negotiate from a P.A. system. (Attachment 4)

Colorado Springs, CO – 1995, The Colorado Springs Police Department (CSPD) acquired three surplus OH-58 Kiowa helicopters and created an Air Support Unit that was highly successful. In 2006, The CSPD took possession of a new DHS funded Mobile Command Post which was used extensively during the Waldo Canyon and Black Forest wild fires. In 2014, CSPD received seven unarmored Humvees from the 1033 program. These vehicles are used in the event of natural disasters such as floods, blizzards and wild fires.

Pittsburgh, PA – April 4, 2009 – Three Pittsburgh Police Bureau Officers were shot and killed responding to a domestic disturbance call. Another officer was shot and seriously injured attempting to assist the downed officers. During the ensuing barricade, the suspect, who was armed with an AK-47 assault rifle, exchanged gunfire with the police. Over 3,500 rounds of ammunition were fired. A DHS funded armored rescue vehicle was used to attempt to rescue an officer and was struck by over 200 rounds. (Attachment 5)

Boston, MA- 2013, the Boston PD and multiple other law enforcement agencies utilized armored rescue vehicles in the apprehension of the surviving suspect. Military grade thermal imaging was used to safely confirm the suspect's location during the arrest.

These examples demonstrate the necessity and application of emergency response equipment, heavy duty vehicles and armored rescue vehicles. The threat that firearms pose to law enforcement officers and the public during violent critical incidents has proven that armored rescue vehicles have become as essential as individually worn body armor or helmets in saving lives. Most tactical commanders utilize this resource judiciously and are sensitive to both their real and perceived appearance.

In recent years, many agencies across the country have also added the patrol rifle to their general issue inventory for officers. This may be in addition to, or instead of the patrol shotgun. The patrol rifle offers greater accuracy, distance and magazine capacity than the shotgun and is often configured in the same manner as any carbine rifle available in the civilian retail market. Numerous surplus rifles have been acquired by agencies through the 1033 program to supplement this effort.

With this paradigm shift, comes the need for training, standardization and collaboration.

State and local law enforcement agencies have done a remarkable job of building out the seven team types mentioned above in the RTLT. However, it is not uncommon for agencies to take receipt of such equipment and receive little or no training on how to utilize it, when to deploy it or equally as important, when not to deploy it. Prior to obtaining equipment from the 1033 Program, or purchasing commercially utilizing DHS grant money, agencies are not mandated to demonstrate training levels for the use of that equipment. It is incumbent upon that agency to obtain the necessary training based upon regulatory or voluntary compliance standards associated with such equipment.

As part of the NTOA's mission, we have sought out opportunities to provide that training to our membership. The NTOA currently provides 43 different law enforcement training programs, most notably in subjects such as Incident and Tactical Command Post Operations, Command Decision Making and Leadership, Training Management and Risk Mitigation, Less Lethal Projectile Instructor and a variety of firearms and tactics subjects. Each year the NTOA provides approximately 110 training sessions to over 3500 law enforcement professionals at locations throughout the United States.

Another challenge is that there are not enough of the specialized law enforcement teams developed, specifically Mobile Field Force Teams, in every jurisdiction around the country. Consequently, when a law enforcement administrator is faced with a civil disorder event, they often deploy the only resource they have immediate access to, the local SWAT team. It is important to note that approximately 87% of law enforcement agencies in the United States have fewer than 50 officers. With the exception of large metropolitan cities or jurisdictions that have had prior civil disorder events, most agencies have not invested in a mobile field force capability. There is also a general lack of training, regarding civil disorder events, for tactical commanders, planners, public information officers and first line supervisors.

The NTOA published the NTOA SWAT Standard in 2011 (Attachment 6), which outlines the most basic requirements for tactical teams in terms of operational capabilities, training management, policy development, operational planning and multi-jurisdictional response. The standard however, is a voluntary compliance standard. Subsequently, many law enforcement leaders view them as "unfunded mandates" and choose to ignore them or not strive to reach full compliance in all categories. The NTOA's position though, is that when an agency makes the decision to develop a SWAT capability, it should also make the investment in the training, equipment and best practices that are required to support such an effort. The NTOA also recognizes that there is still much work to be done in terms of standardizing law enforcement response during critical incidents, namely civil disorder events.

Despite efforts made by the law enforcement profession to improve levels of training and standardization though, the equation will not be solved without collaboration from other stakeholders such as elected government officials at all levels, the media, community leaders and the public. It is incumbent upon every law enforcement agency to actively engage these groups in conversation and educate them on law enforcement responsibilities and limitations, as well as to familiarize them with the equipment they utilize and why.

Again, on behalf of the 40,000 law enforcement professionals that the NTOA represents, I thank you for the opportunity to speak to you today on these current issues and challenges and look forward to answering any questions the Committee has.

[i] National Tactical Officers Association - http://ntoa.org/site/

[ii] Defense Logistics Agency, Disposition Services - http://www.dispositionservices.dla.mil/leso/Pages/Training.aspx

[iii] Target Capabilities List - http://www.fema.gov/pdf/government/training/tcl.pdf

[iv] Resource Typing Library Tool - https://rtlt.ptaccenter.org/Public/Combined?q=law+enforcement

[v] DHS Grant Authorized Equipment List - https://www.llis.dhs.gov/knowledgebase/authorized-equipment-list-ael

Attachment 1

EMERGENCY PUBLIC SAFETY AND SECURITY RESPONSE

Capability Definition

Emergency Public Safety and Security Response is the capability to reduce the impact and consequences of an incident or major event by securing the affected area, including crime/incident scene preservation issues as appropriate, safely diverting the public from hazards, providing security support to other response operations and properties, and sustaining operations from response through recovery. Public Safety and Security Response requires coordination among officials from law enforcement, fire, and emergency medical services (EMS).

Outcome

The incident scene is assessed and secured; access is controlled; security support is provided to other response operations (and related critical locations, facilities, and resources); emergency public information is provided while protecting first responders and mitigating any further public risks; and any crime/incident scene preservation issues are addressed.

Relationship to National Response Plan Emergency Support Function (ESF)/Annex

This capability supports Emergency Support Function (ESF) #13: Public Safety and Security.

Preparedness Tasks and Measures/Metrics

Activity: *Plan for Public Safety and Security Response During Large-Scale, All-Hazards Events* Definition: Review existing and/or develop new strategies, plans, procedures, programs, or systems to respond to large-scale, all-hazards events	
Critical Tasks	
Res.B3d 1.2	Review, revise, and develop public safety policies, protocols, and procedures to be implemented to effect a command and control structure, consistent with NIMS
Res.B3d 1.2.2	Develop plans and procedures to ensure interoperable communications during public safety and security response
Res.B3d 1.2.3.1	Enter into interagency agreements and memoranda of understanding with appropriate surrounding agencies and jurisdictions, with the legal authority of the jurisdiction, to ensure adequate response and access to supplemental personnel
Res.B3d 1.2.3.2	Identify required resources and enter into contracts, as appropriate, to access and provide required resources during a crisis response to shelter, feed, and maintain a significant cadre of public safety and other related first responders
Res.B3d 1.2.1	Review and improve, as appropriate, standard operating procedures for the notification and mobilization of public safety resources during a crisis response

Res.B.3d 1.2.4	Review and improve, as appropriate, standard operating procedures for information sharing to the public, to the media, and to support agencies
Res.B3d 1.4.1	Review and improve existing planned evacuation routes and staging areas to determine sufficient public safety resources required to establish and maintain perimeters, safety zones, and public order as well as facilitate evacuations and/or sheltering-in-place activities
Res.B3d 1.4.2	Review plans for decontamination sites and access to decontamination equipment, including personal protective equipment for responders
Res.B3d 1.4.3	Ensure hospital and medical supply resources, as well as other key infrastructure, have been identified, and agreements exist or are drafted regarding the maintenance of security at these facilities during a crisis response
Res.B3d 1.4.4	Review and develop as appropriate, in coordination with legal counsel, such as the city/county attorney's and/or State Attorney General Office, policies regarding public safety enforcement actions required to maintain the public order during a crisis response, to include teams of enforcement officers for handling of persons disrupting the public order, violating laws, requiring quarantine, and so forth
Res.B3d 1.4.1.1	Develop and document, in conjunction with correctional and jail officials, coordination strategies for managing and possibly relocating incarcerated persons during a crisis response
Res.B3d 1.4.4.1	Identify and enter into agreements to secure the resources needed for the processing and temporary detention of law violators
Res.B3d 1.4.2.1	Review existing and develop protocols as appropriate for the operation of decontamination sites, and out-processing areas
Res.B3d 1.4.5	Establish a recovery strategy to access reimbursable opportunities, replenish supplies and equipment, re-assign personnel, and return to normal operation

Preparedness Measures	Metrics
Multi-disciplinary law enforcement and public safety agency planning teams have been established, per NIMS compliance.	Yes/No
Interoperable communications plans with all necessary parties are in place	Yes/No
Plans for providing security for the public and properties on and around an incident site are in place	Yes/No
Plans incorporate the anticipated security demands of government, non-government, and private sector stakeholders	Yes/No
Plans for supporting public safety in and around an incident site are in place	Yes/No
Plans include establishment of staging areas for law enforcement prior to entering site	Yes/No
Systems are in place or available to maintain accountability of personnel, track hot zone locations, and track resources	Yes/No
Plans for sheltering, housing, and feeding law enforcement personnel are in place	Yes/No
Plans for the post-incident provision of temporary prisoner holding facilities and arrest processing documentation are in place	Yes/No
Plans identify and provide for the resources necessary to maintain operations in an "all hazards" environment (e.g., electrical generators, personal protective equipment, communications equipment, etc.)	Yes/No
Plans address demobilization of public safety operations (replenishing supplies, re-assigning personnel)	Yes/No

Activity: *Determine appropriate training and exercises necessary to address gaps* Definition: Review existing training programs. Compare needs and gaps against available training assets.	
Critical Tasks	
Res.B3d 2.1.1	Identify gaps in personnel training at the awareness and first response operational level, to include familiarity with the expectations of and demands on the public safety responders as set forth in agency plans, protocols, and procedures for a crisis response
Res.B3d 2.1.2	Identify existing training resources and opportunities available at the Federal, State, and local level
Res.B3d 2.1.3	Develop a training strategy for all personnel
Res.B3d 2.2.1	Develop a strategy, in coordination with area jurisdictions, to participate in and/or conduct exercises which incorporate all existing response requirements, identify gaps, develop improvement plans, and implement preparedness enhancements

Preparedness Measures	Metric
Percent of public safety and security personnel trained at the awareness level	100%
Percent of public safety and security personnel identified in the training strategy as requiring training at the operational level are trained	100%
Frequency with which exercises to test public safety and security operations are conducted	Every 12 months

Performance Tasks and Measures/Metrics

Activity: *Command and Control Public Safety and Security Response Operations* Definition: In response to a notification for security assets, establish the management and coordination of the Public Safety and Security Response, from activation through to demobilization	
Critical Tasks	
Res.B3d 3.1.1	Identify personnel needed to maintain security support and response
Res.B3d 3.1.3	Establish staging areas for law enforcement to conduct deputization, personnel assignment, and briefing prior to entering the impacted area.
Res.B3d 3.5	Communicate with other response agencies regarding public safety response
Res.B3d 3.1.2	Deploy appropriate personnel for public safety and security
Res.B3d 3.1.2	Deploy appropriate relief personnel for public safety and security
Res.B3d 3.2	Coordinate public safety and security operations with Incident Command/Unified Command
Res.B3d 3.3.3	Arrange for shelter, housing, and feeding for law enforcement responders
Res.B3d 3.3.2	Arrange for proper sheltering, care, and feeding of detainees
Res.B3d 3.3.4	Utilize available technologies to maintain accountability of personnel, track hot zone locations, and track resources

Performance Measures	Metric
Time in which safety and security plans and procedures are implemented	Within 1 hour from incident
Percent of first responders at the incident receiving communication about the site-safety plan	100%
Time in which sufficient relief personnel are deployed to maintain public safety throughout a long-term incident (relief needed is estimated at 50 percent of total uniformed (patrol) staffing of a jurisdiction having primary responsibility for the incident)	Within 12 to 15 hours from initial deployment
Accountability is maintained, hot zone locations are track, and resources are tracked	Yes/No

Activity: ***Activate Public Safety and Security Response***

Definition: Upon notification, mobilize and deploy to begin operations

Critical Tasks	
Res.B3d 4.1	Conduct a public safety and security response
Res.B3d 4.1.3	Establish or integrate into Incident Command/Unified Command (IC/UC)
Res.B3d 4.1.1	Coordinate and receive instructions from tactical operations
Res.B3d 4.1.2	Ensure that responders have the appropriate equipment to perform assigned tasks

Performance Measures	Metric
Time in which sufficient personnel to perform public safety and security duties are deployed *Small local incidents: use on-duty and mutual aid personnel* *Large-scale incidents: Target should be equal to 50 percent of total uniformed (patrol) staffing of jurisdiction having primary responsibility for the incident*	Within 12 hours from initial deployment
Percent of responding public safety personnel who are self-sufficient (bring their own sleeping/eating/ restocking supplies) for a period up to 7 days	100%

Activity: ***Assess the Incident Scene and Secure the Area***

Definition: Upon arriving on scene, assess for immediate rescue needs, for remaining safety and security threats, and initiate security operations. Identify and implement protective actions for high priority key facilities or resources that may require heightened security.

Critical Tasks	
Res.B3d 5.1	Secure the incident site
Res.B3d 5.2.2	Determine the appropriate emergency medical personnel to respond on-site for injuries and fatalities
Res.B3d 5.1.1	Identify and establish inner most incident/crime scene perimeters

Res.B3d 5.1.2	Document observations regarding the affected area
Res.B3d 5.1.3	Report findings to IC/UC upon deployment of specialized LE teams
Res.B3d 5.2.3	Develop and maintain a rapid intervention group to respond to unexpected occurrences

Performance Measures	Metric
Time in which the incident site is secured	Within 30 minutes from initial units arrival on scene
Hot, warm, and cold zones are identified and segregated	Yes/No
On scene personnel accountability system is implemented	Yes/No

Activity: *Control Traffic, Crowd, and Scene*

Definition: Direct/redirect traffic and pedestrians out of the affected area(s). Assess, coordinate, and establish force protection and perimeter zones, maintain a visible and effective security presence to deter criminal conduct and maintain law and order

Critical Tasks	
Res.B3d 6.1	Identify and establish an incident perimeter and zones
Res.B3d 6.1.1	Identify security zone requirements
Res.B3d 6.2	Establish force protection capacity integrated within incident command system (ICS)
Res.B3d 6.2.1	Provide force protection for emergency response personnel to allow them to operate safely
Res.B3d 6.1.3	Provide and plan for access to the site for skilled support personnel
Res.B3d 3.4	Implement and maintain an on-scene personnel identity management system
Res.B3d 6.2.5	Secure animals during an animal health emergency
Res.B3d 6.1.2	Identify and secure critical sites, including hospital, shelters, points of distribution (PODs) etc.
Res.B3d 6.2.2	Plan and provide protection and security for unoccupied/evacuated properties within and around the incident site
Res.B3d 6.3	Control traffic and crowds

Performance Measures	Metric
Percent of incident site control zones/points that are clearly identified and staffed	100%
Perimeter zones are coordinated jointly by hazardous materials personnel, fire/rescue, and law enforcement	Yes/No
Time in which all traffic control and alternative ingress/egress routes are identified and staffed	Within 30 minutes from initial units arrival on scene
Percent of new or secondary injuries to the public and first responders at or around the incident site	0%
Percent of damaged buildings and debris blocking emergency response	100%

ingress/egress removed	
Time in which stoppage of all non-critical cargo and passenger rail, maritime, and highway transportation into incident area is coordinated	Within 1 hour from incident

Activity: ***Maintain Public Order***

Definition: Provide a visible law enforcement presence at key locations within the affected area. Protect people and property, and deter criminal activity

Critical Tasks	
Res.B3d 7.1	Assess situation for public order related concerns
Res.B3d 7.3	Implement plans for Emergency proclamations, martial law, curfew declarations, and other legal issues
Res.B3d 7.1.1	Conduct an initial reconnaissance of the area
Res.B3d 7.2	Coordinate with appropriate unit and develop a plan of action
Res.B3d 7.4.1	Conduct tactical deployment
Res.B3d 7.4.2	Use tactical operations teams to conduct searches of high priority unsecured sites to establish security and detain lawbreakers as necessary
Res.B3d 7.5	Maintain security operations
Res.B3d 7.1.2	Request assets required to provide security
Res.B3d 7.5.1	Provide security for public officials and investigation teams
Res.B3d 7.5.2	Institute and conduct security operations controlling personnel who are allowed to enter damaged and condemned buildings and the contents that they are allowed to remove

Performance Measures	Metric
Time in which search and/or apprehension procedures are initiated and conducted	Within 30 minutes from the notification or witnessing of suspected criminal activity

Activity: ***Conduct Law Enforcement Operations***

Definition: Upon notification or suspicion of criminal activity, identify, and take appropriate enforcement action with lawbreakers at or around the incident site

Critical Tasks	
Res.B3d 8.1	Coordinate with investigators to interview witnesses/bystanders in order to identify suspects
Res.B3d 7.4.2	Use tactical operations teams to conduct searches of high-priority unsecured sites to establish security and detain lawbreakers as necessary
Res.B3d 8.3	Make arrests as necessary

Performance Measures	Metric

Appropriate and timely enforcement action are taken	Yes/No

Activity: ***Manage Criminal Justice Population***

Definition: Manage criminal justice population to include incarcerated persons, those under criminal justice supervision, and tactically arrested individuals in the affected area

Critical Tasks	
Res.B3d 9.1	Establish mobile arrest and processing sites for arrestees
Res.B3d 9.1.1	Provide space in mobile arrest and processing site/area for: finger printing and photos, desk space, interview area, property storage, secure storage for valuables and/or evidence, isolation area for violent detainees, and secure area for vehicles
Res.B3d 9.2.1	Process those arrested (photos, fingerprinting) and document arrests
Res.B3d 9.2.2	Set up improvised holding cells to manage detainees
Res.B3d 9.2.3	Detain those arrested (in improvised holding cells)
Res.B3d 9.2.3.1	Provide detainee supervision 24/7 for the length of the incident
Res.B3d 9.2.3.2	Ensure holding facilities have provisions for food, access to drinking water and toilet facilities, and trash removal
Res.B3d 9.2.3.3	Establish system for documenting, securing, storing, transporting, and releasing detainee property
Res.B3d 9.2.3.4	Establish system to track detainee movement – in-coming, transfers, and releases
Res.B3d 9.2.3.5	Distribute notification of the destination holding facility
Res.B3d 9.2.3.6	Provide space for Prosecutors/Public Defenders to meet with operations staff and/or detainees
Res.B3d 9.2.4	Transport detainees to secure lock-up facility
Res.B3d 9.2.5	Ensure that established procedures for transfer of detainees during major emergencies are followed
Res.B3d 9.3.1	Designate alternate facilities to ensure continued operations by local, tribal, State, and Federal prosecutors/public defenders
Res.B3d 9.3.2	Set up improvised court facilities to ensure local, tribal, State, and Federal court services continue
Res.B3d 9.3.3	Implement protocols for contacting appropriate parole/probation agencies of any changes in residency status
Res.B3d 9.3.4	Establish protocols for alternate housing facilities for local, State, and Federally incarcerated prisoners
Res.B3d 9.3.5	Establish equipment lists and mobile booking kits and store at strategic locations
Res.B3d 9.3.5.1	Inventory mobile booking kits on a regular basis to ensure that equipment and materials have not been removed or damaged and remain in working order
Res.B3d 9.3.6	Ensure the capacity to run records checks for warrants, holds on detainees, and terrorist lists

Performance Measures	Metric
Time in which an arrest processing team is identified and equipped to intake, process, and document a large number of arrests	Within 1 hour from initial deployment
Time in which temporary holding cells for those arrested are coordinated and established	Within 2 hours from initial deployment
Time in which prisoner transport is coordinated and established	Within 2-4 hours from initial deployment
Time in which alternate facilities for prosecutor/public defenders are coordinated and established	Within 2 hours from initial deployment
Time in which alternate facilities for court services are coordinated and established	Within 2 hours from initial deployment
Time in which alternate housing facilities for local, State, Federally incarcerated prisoners are coordinated and established	Within 1 hour from initial deployment

Activity: ***Demobilize Public Safety and Security Response Operations***

Definition: Return to normal operations

Critical Tasks	
Res.B3d 10.1.1	Clear the incident scene upon completion of assigned temporary duties, or as directed by superiors
Res.B3d 10.1.2	Return local forces to regular service
Res.B3d 10.1.3	Recall temporary assistance resources to staging areas for out processing
Res.B3d 10.3	Conduct decontamination of all out processing personnel and equipment
Res.B3d 10.3.1	Identify public safety and security assets required for decontamination activities
Res.B3d 10.3.2	Coordinate with hazmat personnel to establish decontamination sites
Res.B3d 10.3.3	Coordinate with hazmat personnel to decontaminate affected public safety facilities and equipment
Res.B3d 10.2.1	Debrief all out processing personnel
Res.B3d 10.4.1	Activate reimbursement process for public safety and security resources
Res.B3d 10.4.2	Receive and process reimbursement requests
Res.B3d 10.4.3	Process compensation claims and related administrative activities
Res.B3d 10.5.1	Rehabilitate and replenish public safety and security resources
Res.B3d 10.5	Reconstitute personnel and equipment
Res.B3d 10.2.2	Participate in incident debriefing
Res.B3d 10.1.4	Identify staff needs dependant upon their upon their level of involvement and/or hours committed to the incident

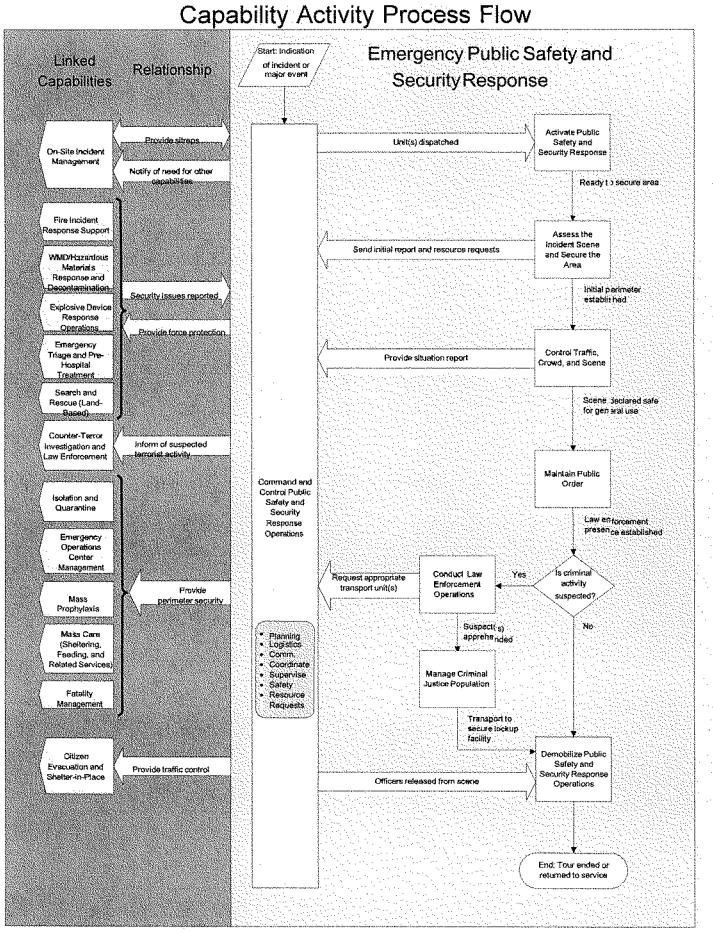
Res.B3d 10.2	Decontaminate, debrief, and out-process law enforcement personnel prior to leaving the impacted area
Performance Measures	**Metric**
Time in which public safety personnel are restored to normal or original operations	Within 12 hours from start of demobilization
Percent of public safety and security response personnel debriefed	100%

Linked Capabilities

Linked Capability	Relationship
On-Site Incident Management	Emergency Public Safety and Security Response provides the notification of the need for other capabilities to On-Site Incident Management, and they both provide situation reports to each other
Fire Incident Response Support	Emergency Public Safety and Security Response provides force protection to Fire Incident Response Support, while Fire Incident Response Support reports security issues to Emergency Public Safety and Security Response
WMD and Hazardous Materials Response and Decontamination	Emergency Public Safety and Security Response provides force protection to WMD and Hazardous Materials Response and Decontamination, while WMD and Hazardous Materials Response and Decontamination reports security issues to Emergency Public Safety and Security Response
Explosive Device Response Operations	Emergency Public Safety and Security Response provides force protection to Explosive Device Response Operations, while Explosive Device Response Operations reports security issues to Emergency Public Safety and Security Response
Emergency Triage and Pre-Hospital Treatment	Emergency Public Safety and Security Response provides force protection to Emergency Triage and Pre-Hospital Treatment, while Emergency Triage and Pre-Hospital Treatment reports security issues to Emergency Public Safety and Security Response.
Search and Rescue (Land-Based)	Emergency Public Safety and Security Response provides force protection to Search and Rescue (Land-Based), while Search and Rescue (Land-Based) reports security issues to Emergency Public Safety and Security Response.
Counter-Terror Investigation and Law Enforcement	Emergency Public Safety and Security Response provides information on suspected terrorist activity to Counter-Terror Investigation and Law Enforcement
Isolation and Quarantine	Emergency Public Safety and Security Response provides perimeter security to Isolation and Quarantine
Emergency Operations Center Management	Emergency Public Safety and Security Response provides perimeter security to EOC Management
Mass Prophylaxis	Emergency Public Safety and Security Response provides perimeter security to Mass Prophylaxis
Mass Care (Sheltering, Feeding, and Related Services)	Emergency Public Safety and Security Response provides perimeter security to Mass Care
Fatality Management	Emergency Public Safety and Security Response provides perimeter security to

Linked Capability	Relationship
	Fatality Management
Citizen Evacuation and Shelter-In-Place	Emergency Public Safety and Security Response provides traffic control to Citizen Evacuation and Shelter-In-Place, and coordinates the evacuation of incarcerated populations

Capability Activity Process Flow



Resource Element Description

Resource Elements	Components and Description
Law Enforcement officers for crowd control	Uniformed/sworn, reserve, volunteer, and in-training officers to control a large crowd in a high-density area
Law Enforcement officers for traffic control	Uniformed/sworn, reserve, volunteer, and in-training officers to control traffic from entering and leaving the affected areas.
National Guard	To augment crowd control, traffic control, and hard target security.
Private security company personnel	Supplement personnel to allow local law enforcement to perform law enforcement duties

Planning Assumptions

General

- Although applicable to several of the 15 National Planning Scenarios, the capability planning factors were developed from an in-depth analysis of the Radiological Dispersal Device scenario. Other scenarios were reviewed to identify required adjustments or additions to the planning factors and national targets.
- This capability applies to a wide range of incidents and emergencies, including accidental or deliberate disease outbreaks, natural disasters, and nuclear and conventional events.
- If the catastrophic incident results from terrorism, the Homeland Security Advisory System (HSAS) level will likely be raised regionally, and perhaps nationally. Elevation of the HSAS level requires additional local, State, and Federal security enhancements that may affect the availability of certain response resources.
- Police will be needed to direct traffic away from the contaminated area, prevent access to the contaminated area, and support movement of the population out of the contaminated area.
- Looting and/or damaging to unattended properties, especially shops and stores by armed hooligans and criminals should be considered.
- Public safety personnel will need to support the evacuation, sheltering, and protection of downwind populations.
- Public safety personnel will support the movement of approximately 35,000 people to shelters. Temporary housing will be needed.
- A decontamination process must be set up. Public safety personnel will be needed to support movement of the population in and out of the decontamination area.

Scenario-Specific

- The use of a radiological dispersion device (RDD) would have local implications on the public safety and security response teams. The assumption is that an RDD would be dispersed within a downtown or highly populated areas. With Washington, D.C., as an example, there are approximately 200–250 people in a single block. If this RDD were to affect an area of 36 blocks or more, 7,500–9,000 people would be affected. It is likely that local, State, and Federal law enforcement agencies would share resources to help contain the area and aid in crowd control for a high population such as this. Yet the States would have to balance the resources between preventing affected personnel from entering into other portions of the State by leaving the site.

Planning Factors from an In-Depth Analysis of a Scenario with Significant Demand for the Capability

Resource Organization	Estimated Capacity	Scenario Requirement Values	Quantity of Resources Needed
Law enforcement officers for crowd control	Capacity to control a large crowd within a downtown area	Sufficient numbers to regulate approximately 200 people per 36 blocks	Sufficient uniformed/sworn, reserve, volunteer, and in-training officers to accomplish the task 80% of officers will come from local sources and 20% will come from State sources.
Law enforcement officers for traffic control	Capacity to control traffic from both entering and leaving the affected areas	Sufficient numbers to regulate approximately 7,000 people, depending on automobile traffic or mass transit numbers	Sufficient uniformed/sworn, reserve, volunteer, and in-training officers to accomplish the task
National Guard	Capacity to supplement local and regional law enforcement agencies	Sufficient to allow local law enforcement to perform law enforcement duties	Appropriate guards to augment law enforcement personnel for crowd control, traffic control, and hard target security (at the World Trade Center, 8,500 were deployed within 24 hours from the attacks)
Private security company personnel	Capacity to supplement local and regional law enforcement agencies	Sufficient to allow local law enforcement to perform law enforcement duties	Appropriate numbers to supplement law enforcement personnel for limited traffic control and provide target security for private sector sites

Approaches for Large-Scale Events

To avoid duplication of resources, chemical, biological, radiological, nuclear, or explosive (CBRNE) and law enforcement resource organizations should cross-train with other capabilities and foster cross-border cooperation.

Target Capability Preparedness Level

Resource Element Unit	Type of Element	# of Units	Unit Measure (number per x)	Lead	Capability Activity supported by Element
Law Enforcement Officers for Crowd Control	Personnel	As Needed	Per Incident	State/Local	Secure Area Control traffic, crowd and scene

Resource Element Unit	Type of Element	# of Units	Unit Measure (number per x)	Lead	Capability Activity supported by Element
Law enforcement officers for traffic control	Personnel	As Needed	Per Incident	State/Local/ NGO	Secure Area Control traffic, crowd and scene
National Guard	Federal Resource Organization	As Needed	Per State	State	Secure Area Control traffic, crowd and scene
Private security company personnel	Personnel	As Needed	Per Incident	State/Local	Control traffic, crowd and scene

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Attachment 2

MOBILE FIELD FORCE LAW ENFORCEMENT (CROWD CONTROL TEAMS)

DESCRIPTION			
RESOURCE CATEGORY	Law Enforcement Operations	RESOURCE KIND	Team
OVERALL FUNCTION		COMPOSITION AND ORDERING SPECIFICATIONS	

RESOURCE TYPES						
COMPONENT	METRIC/ MEASURE	CAPABILITY	TYPE 1	TYPE 2	TYPE 3	NO TYPE 4
Equipment	Protective Clothing		Same as Type II	Same as Type III	Protective Clothing Soft Body Armor (helmet and face shield, gloves, shin guards) Fire-resistant clothing recommended	Not Applicable
			NOTES: Not Specified			
Equipment	Communication		Same as Type II	Same as Type III	Team Radio Communication Equipment (portable radios, extra batteries, battery charger, cellular phones)	Not Applicable
			NOTES: Not Specified			
Equipment	Respiratory Protection		Same as Type II	Same as Type III	NIOSH-approved protective mask	Not Applicable
			NOTES: Not Specified			
Equipment	Safety Equipment		Same as Type II	Same as Type III	Safety glasses; Ear protection (recommended); Fire extinguisher	Not Applicable
			NOTES: Not Specified			

RESOURCE TYPES						
COMPONENT	METRIC/ MEASURE	CAPABILITY	TYPE 1	TYPE 2	TYPE 3	NO TYPE 4
Equipment	-		Same as Type II	Same as Type III	Foul Weather Gear, Hand-Held Shields Personal Hydration System	Not Applicable
			NOTES: Not Specified			
Equipment	Chemical Protective Clothing		Same as Type II	Level C PPE suits for entire team	Not Specified	Not Applicable
			NOTES: Not Specified			
Equipment	Counter-Sniper Equipment		Provided by SWAT team	(2) Shoulder fired weapons	Not Specified	Not Applicable
			NOTES: Not Specified			
Equipment	Surveillance Equipment		Same as Type II	Same as Type III	Video equipment capabilities	Not Applicable
			NOTES: Not Specified			
Equipment	Individual Weapons		Same as Type II	Same as Type III	Department authorized handguns Duty gear and equipment	Not Applicable
			NOTES: Not Specified			
Equipment	Impact Weapons		Same as Type II	Same as Type III	Riot Control Batons or approved impact weapons	Not Applicable
			NOTES: Not Specified			
Equipment	Misc. Equipment		Same as Type II	Same as Type III	Bullhorns; Flex Cuffs; Mass arrest kits	Not Applicable
			NOTES: Not Specified			
Equipment	Delivery Systems		Same as Type II	Same as Type III	Chemical Agents and Delivery Systems; Less lethal munitions and delivery systems	Not Applicable
			NOTES: Not Specified			

RESOURCE TYPES						
COMPONENT	METRIC/ MEASURE	CAPABILITY	TYPE 1	TYPE 2	TYPE 3	NO TYPE 4
Personnel	-		1 OIC 1 Deputy OIC 4 Supervisors 2 Counter Snipers 8 Grenadiers 38 Officers 4 Prison Transportation Officers 1 Field Booking Team Recommended	1 OIC 1 Deputy OIC 4 Supervisors 2 Counter Snipers 8 Grenadiers 38 Officers 4 Prison Transportation Officers	1 OIC 2 Supervisors 1 Counter Sniper 4 Grenadiers 19 Officers 2 Prison Transportation Officers	Not Applicable
			NOTES: Not Specified			
Vehicles	-		Same as Type II	2 Prisoner Transportation Vans 14 Patrol Vehicles	1 Prisoner Transportation Van 7 Patrol Vehicles	Not Applicable
			NOTES: Not Specified			
Personnel	Training		Same as Type II	Same as Type III	No known national standard Law enforcement officer with certified advanced training	Not Applicable
			NOTES: Not Specified			

COMMENTS

1. Type I - A predesignated team consisting of a Type I or a Type II tactical team (platoon) including four 12-person squads and an OIC and a Deputy OIC. Each squad includes a supervisor. The team is capable of managing large-scale operations including managing crowds, traffic control enforcement, and general saturation presence for the purpose of maintaining order and preserving the peace to include CBRN environments. The team engages in routine training to maintain advanced skill level.
2. Type II - A predesignated team consisting of four 12-person squads and an OIC and a Deputy OIC. Each squad includes a supervisor. The team is capable of managing large crowds, traffic control enforcement, and general saturation presence for the purpose of maintaining order and preserving the peace to include CBRN environments. The team engages in routine training to maintain advanced skill level.
3. Type III - A nondesignated team consisting of two 12-person squads and an OIC. Each squad includes a supervisor. The team is capable of managing large crowds, traffic control enforcement, and general saturation presence for the purpose of maintaining order and preserving the peace.
4. Definitions -
   OIC: Officer in Charge
   NIOSH: National Institute of Occupational Safety and Health
   CBRN: Chemical, Biological, Radiological, Nuclear
   Level C PPE: Personal Protection Equipment consisting of a non-encapsulated chemical resistant suit with APR
   SWAT: Special Weapons Assault Team
   Platoon: Consists of (4) 12-person squads with an OIC (minimum rank of lieutenant) and Deputy OIC (minimum rank of sergeant), each with a driver. Total minimum personnel is 52, with a minimum total of 14 vehicles
   Squad: An organized element of a platoon consisting of 11 officers and a supervisor (sergeant). 12 total personnel in a minimum of 3 patrol vechicles.
   Field Booking Team: A team of personnel specially trained to respond to field incidents and set up a booking site to facilitate the booking process and transportation of those arrested. The size of the team depends on the nature of the incident.
   Mass Arrest Kit: Kit containing field booking forms, Polaroid or digital camera, flex cuffs, plastic bags for prisoner property, computers, cutting tool for flex cuffs, fingerprint equipment.

NOTES

Nationally typed resources represent the minimum criteria for the associated component and capability.

Attachment 3

SWAT/TACTICAL TEAMS

DESCRIPTION			
RESOURCE CATEGORY	Law Enforcement Operations	RESOURCE KIND	Team
OVERALL FUNCTION		COMPOSITION AND ORDERING SPECIFICATIONS	

RESOURCE TYPES						
COMPONENT	METRIC/ MEASURE	CAPABILITY	TYPE 1	TYPE 2	TYPE 3	TYPE 4
Team	Tactical Unit See Note 1 and Note 7		Type I Teams and Elements	Type II Teams and Elements	Type III Teams and Elements	None
			NOTES: Not Specified			
Team	Tactical Team See Note 2 and Note 7		One Type I tactical element One other Type I or Type II tactical element	One Type II tactical element One other type II or III tactical element	Multiple Type III elements	None
			NOTES: Not Specified			
Team	Tactical Element See Note 3 and Note 7		Same as Type II except for Multiple special tactics capabilities	5 Personnel Vehicle One or more special tactics capabilities	2-5 Personnel Vehicle Basic entry capability	None
			NOTES: Not Specified			
Equipment	Ammunition		Same as Type II	Same as Type III	Ammunition for all weapons	None
			NOTES: Not Specified			
Equipment	Distraction Devices		Same as Type II	Same as Type III	Distraction devices	None
			NOTES: Not Specified			
Equipment	Optics and Target Illumination		Same as Type II	Same as Type III	Night vision goggles Weapons optics IR Illuminators Lighted Weapons System	None
			NOTES: Not Specified			

RESOURCE TYPES						
COMPONENT	METRIC/ MEASURE	CAPABILITY	TYPE 1	TYPE 2	TYPE 3	TYPE 4
Equipment	Ballistic Protection		Same as Type II	Same as Type III	Multiple Hand-Held Ballistic shields and blankets (handgun and rifle related)	None
			NOTES: Not Specified			
Equipment	Respiratory Protection		Same as Type II	Self contained respiratory protection suitable for SWAT operations. See Note 6	None	None
			NOTES: Not Specified			
Equipment	Chemical Protective Clothing		Same as Type II	Level B and C PPE suitable for SWAT operations	Level C PPE suitable for SWAT operations	None
			NOTES: Not Specified			
Equipment	Insertion Equipment		Same as Type II plus FAST ROPE	Same as Type III	Rappel Portable ladders	None
			NOTES: Not Specified			
Equipment	Negotiation Equipment		Same as Type II plus Remote/mobile capabilities	Same as Type III	Transmitting equipment that includes wireless and hard-line	Mutual aid for pre-planned events
			NOTES: Not Specified			
Special Tactical Capability	Breaching		Same as Type II plus Explosives breaching charges	Same as Type III plus Exothermic breaching equipment	Mechanical and shotgun breaching equipment	Mutual aid for pre-planned events
			NOTES: Not Specified			
Special Tactical Capability	Observer/Marksman Capability		Same as Type II plus IR optics	Same as Type III plus Night operations capability	Long range, optically-equipped weapons	Mutual aid for pre-planned events
			NOTES: Not Specified			
Special Tactical Capability	Robotic Equipment		Same as Type II	Robot System with operator, communications, delivery capabilities and tactical weapons platform operations	Employment of available bomb squad robotic assets	Mutual aid for pre-planned events
			NOTES: Not Specified			

RESOURCE TYPES						
COMPONENT	METRIC/ MEASURE	CAPABILITY	TYPE 1	TYPE 2	TYPE 3	TYPE 4
Special Tactical Capability	Surveillance Equipment		Same as Type II plus: fiber optics	Same as Type III: plus video	Listening equipment	Mutual aid for pre-planned events
			NOTES: Not Specified			
Special Tactical Capability	Bomb Technician Support		Embedded Type I bomb team. See Note 4	Embedded or mutual aid Type II bomb team. See Note 4	Embedded or mutual aid Type III bomb team. See Note 4	Type 1, II, or III bomb team available for post-incident hazard removal
			NOTES: Not Specified			
Special Tactical Capability	Special Munitions Equipment		Same as Type II	Same as Type III	Chemical agents and Less Lethal weapons with delivery systems	Mutual aid for pre-planned events
			NOTES: Not Specified			
Special Tactical Capability	Negotiation		Same as Type II	Same as Type III	Negotiator	Mutual aid for pre-planned events
			NOTES: Not Specified			
Special Tactical Capability	Maritime Boarding. See Note 9		Underway boarding via air insertion and watercraft	Underway boarding via air or watercraft	Pier-side boarding via air and ladder climb	None
			NOTES: Not Specified			
Special Tactical Capability	Tactical Medic. See Note 5		Paramedics with advanced life support capabilities/ equipment	Same as Type III	EMTs (Recommended Paramedics)	None
			NOTES: Not Specified			
Special Tactical Capability	Insertion		Air mobile capabilities including FAST ROPE and rappel	Air mobile capabilities including FAST ROPE and rappel. See Note 8	Rappel from structures only	None
			NOTES: Not Specified			
Special Tactical Capability	Specialty Vehicles		Command Post Vehicle, APC, ATV, Boats, Armored Response Vehicle. See Note 9	None	None	None
			NOTES: Not Specified			

COMMENTS

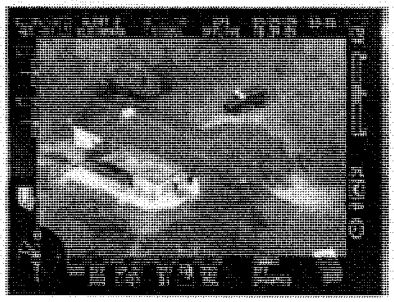
1. Note 1: The Tactical Unit within a department is comprised of multiple officers, teams or elements and led by a commander and/or supervisor.
2. Note 2: The Tactical Team is an operational entity comprised of multiple tactical elements, special capabilities and officers assembled for a mission. Tactical teams may be as a result of mutual aid in order to provide a regional capability.
3. Note 3: The Tactical Element is two or more tactical operators with an assigned mission or function within a team. NIMS tactical team elements are generally 5 tactical operators unless otherwise specified. Tactical Element Equipment includes:
   Protective Clothing: Tactical Body Armor (helmet, eye and ear protection, fire resistant gloves & hood) suitable for SWAT operations
   Weapons: Handguns and shoulder fired weapon suitable for SWAT operations
   Respiratory Protection: Protective mask with spare filters suitable for SWAT operations
   Breaching Equipment: Mechanical Breaching Equipment
4. Note 4: Bomb Team as defined in NIMS, qualified within their department to support local tactical operations
5. Note 5: Training includes Tactical Emergency Medic Support (TEMS)
6. Note 6: Minimum amount of breathing apparatuses to outfit an entry team (see SCBA below)
7. Note 7: Tactical Unit, Teams and Elements as defined in NIMS must be qualified within their department in the stated special tactics capabilities and equipment used to conduct tactical operations in high risk situation.
8. Note 8: FAST ROPE may only apply to metropolitan/urban areas or jurisdictions with available air mobility.
9. Note 9: May only apply to area with critical waterway or coastal areas.
10. Definitions -
    APC: Armored Personnel Carrier
    APR: Air Purifying Respirator
    ATV: All Terrain Vehicle
    EMT: Emergency Medical Technician
    Level B PPE: Non-encapsulated or encapsulated chemical resistant suit with SCBA
    Level C PPE: Non-encapsulated chemical resistant suit with APR
    PPE: Personal Protective Equipment
    SCBA: Self Contained Breathing Apparatus (may include re-breathers and or other hybrid type SCBAs suitable for SWAT operations)
    Special Tactics Capabilities: Tactical Units, teams or elements with an assigned specialty mission such as observer / marksman, breaching, bomb technician support, hostage negotiations. Special Tactics capabilities can exist within an element, team or unit based on the specific skills and qualifications of operators. Special Capabilities can also be gained by mutual aid from other jurisdictions or agencies with the capability to provide assistance in reasonable time.
    SWAT: Special Weapons and Tactics
    Tactical Officer: Sworn officers qualified within their department to conduct tactical operations in high risk situations.

NOTES

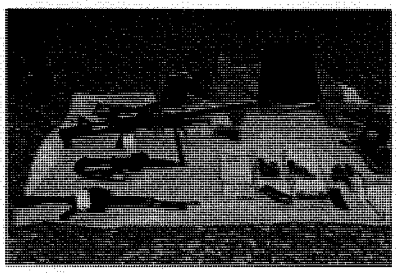
Nationally typed resources represent the minimum criteria for the associated component and capability.

Attachment 4: Volusia County, FL 2009

Orange City PD (FL) Officer El-Shami's vehicle after gunfire attack.



Armored rescue vehicles approaching suspect home.

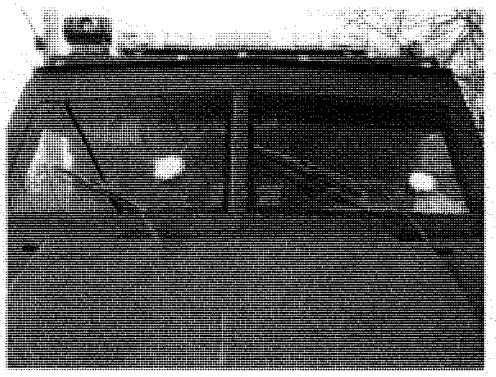


Weapons seized (includes 50 Caliber rifle).

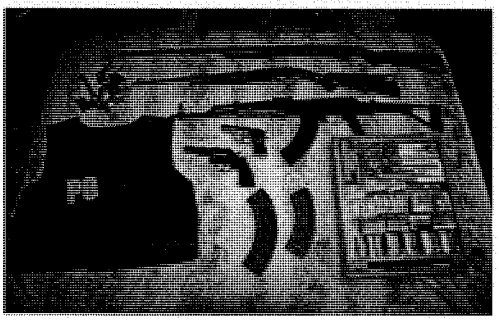
Ballistic vest, gas mask, night vision seized.

Attachment 5: Pittsburgh, PA 2009

Expedient rescue technique without the use of an armored vehicle.



Pittsburgh PD SWAT Armored Rescue Vehicle windshield shot during barricade incident.



Firearms and ammunition seized.

SWAT Standard
For
Law Enforcement Agencies

National Tactical Officers Association

Published September 2011

Dedicated to the memory of Sergeant Mark Renninger

End of watch: November 29, 2009

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NTOA SWAT Standard

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National Tactical Officers Association

Published September 2011

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NTOA Mission Statement

The mission of the National Tactical Officers Association is to enhance the performance and professional status of law enforcement personnel by providing a credible and proven training resource, as well as a forum for the development of tactics and information exchange. The Association's ultimate goal is to improve public safety and domestic security through training, education and tactical excellence. The National Tactical Officers Association operates in accord with the principles of *Veritas Probitas et Virtus* (Truth, Honesty and Integrity).

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ACKNOWLEDGEMENTS

The NTOA Standard for SWAT could not have been developed without the combined effort of numerous dedicated SWAT operators and tactical commanders that are members of the NTOA organization.

The National Tactical Officers Association also gratefully acknowledges the hard work and leadership of the California Commission on Peace Officer Standards and Training (POST) and the many law enforcement officers, supervisors, managers and support staff who helped to develop California's SWAT Operational Guidelines and Standardized Training Recommendations. This document and the critical work of these pioneers, along with the work of the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), served as a guide for the NTOA Standards for SWAT.

In addition, the NTOA Standard Review Committee recognizes the work done by the International Association of Chiefs of Police, Patrol and Tactical Operations Sub-Committee (IACP/PTO) on the SWAT Concepts and Issues Paper, October, 2010, as well as the 2011 SWAT Glossary document developed by members of the California Association of Tactical Officers (CATO).

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FOREWORD

On February 12, 2007, President George W. Bush signed Homeland Security Presidential Directive 19 (HSPD-19), which addresses the threat of terrorist use of explosives and IED's in the United States. The Directive, entitled: "Combating Terrorist Use of Explosives in the United States", tasks various federal agencies to collaborate in developing a layered national security strategy to deter, prevent, detect, and respond to terrorist use of explosives before the threat becomes imminent and which also ensures that protection and response efforts effectively neutralize or mitigate attacks should they occur.

HSPD-19 and the NTOA recognize that the coordination of joint response operations among bomb squads and tactical teams are critical to preparing for, deterring and defeating terrorist attacks. In order to facilitate joint operational capabilities across the tactical response spectrum, the NTOA believes that the development of Standard for SWAT Teams is critical.

Achieving the requirements to unify a layered security approach includes capabilities and resources to enable, coordinate and modify layered security architecture in response to changing requirements. Designating a coordination mechanism to analyze and steer critical capabilities, such as readiness among first responders and bomb squads, works to integrate these efforts and supports the implementation of strategic goals. The United States can layer a security approach through the creation of an organizational construct or designation of an existing entity responsible for coordinating and improving Federal Government efforts to combat terrorist use of explosives, including:

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1. Training, standards and best practices
2. Information sharing
3. Research and development, and
4. Assessment of overall national capabilities

Recommendations for improving our capabilities to combat the terrorist use of explosives within the United States (HSPD-19) include the development of new guidelines for the employment, training and equipping of Special Weapons and Tactics (SWAT) teams for response to explosives operations and for bomb technicians that support SWAT operations.

The NTOA has also participated in several working groups tasked with developing and updating the NIMS Resource typing Matrices as it relates to SWAT teams. Homeland Security Presidential Directive 5 (HSPD-5), Management of Domestic Incidents, also requires all federal departments and agencies to adopt and implement the NIMS. States, territories, tribes and local governments must also adopt NIMS in order to receive federal preparedness funding.

During this process it became very clear that in order to ensure that SWAT/tactical teams meet minimum capabilities, standards for the employment, training and equipping of SWAT teams should be written by practitioners who perform these duties on a daily basis.

The NTOA Project Red II document, published in May 2007, reported the results of focus groups formed during the September 2005 NTOA Annual Tactical Operations Conference representing SWAT officers and commanders from 42 departments and 37 states, as well as the recommendations from two Tactical Technology Seminars (TTS) funded by the Department of Defense, Technical Support Working Group (TSWG). The results of the Focus Groups and the TTS identified numerous urgent needs that must be addressed to better prepare U.S. domestic law enforcement to respond to a terrorist attack on a soft target:

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- Develop national standards for the equipment necessary to implement a national strategy for first responders and SWAT teams.
- Develop a national strategy for SWAT teams with guidelines and objectives that can be used by state, county and city police departments in developing local standard operating procedures, equipment requirements and training objectives.
- Develop a national training policy on training curricula and time required to maintain proper proficiency in all basic skills for full-time and collateral duty SWAT members.
- Develop national guidelines on command and control of multiple SWAT teams tasked to work together with other agencies, such as the National Guard.

Based upon the work described above and a growing interest from the association membership to develop a document such as this, the NTOA Board of Directors collectively agreed to move forward on this standard.

In September, 2008, the NTOA published the first version of this standard. Almost immediately, the association received input from members who brought to light that many aspects of the standard could be achieved through the establishment of multi-jurisdictional and regional team formations. In December, 2009, the NTOA republished the standard with the additional information (previously Section 9.0).

As the standard became more widely read among the tactical law enforcement community, additional comments were directed to the Board of Directors through email, letters, phone calls and the online chat forum at www.ntoa.org. Overall, there was far more support than opposition to the document. Despite that, the Board agreed that this should be a living document and directed that it be reviewed on a regular basis and improvements be made based upon the input received from members.

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INTRODUCTION AND OBJECTIVE

This document is the result of extensive efforts by the National Tactical Officers Association to provide guidance to association members in managing and operating Special Weapons and Tactics teams. The intent of this standard is to better prepare law enforcement to respond not only to emergency and high-risk incidents on a daily basis, but also to respond to a terrorist attack. It is the position of the NTOA that the decision to form a SWAT team carries with it the responsibility to provide the ongoing training, equipment, leadership and financial support necessary to create and maintain an effective team.

Where size and/or demographics limit the capabilities of an agency, this standard recommends that multi-jurisdictional resources be combined and coordinated in a manner which is consistent with reliable and safe interventions. Over the past 28 years, the National Tactical Officers Association has assisted many law enforcement agencies in developing multi-jurisdictional teams by providing references, documentation and training to facilitate their efforts. The NTOA remains committed and available to any law enforcement agency or its members who require assistance.

The objective of this document is to establish a basic standard for the association's member agencies and to serve as an efficient core set of concepts and principles that improve standardization within the profession of tactical law enforcement services. Any agency that chooses to use this standard as a benchmark for performance and operations does so voluntarily. The NTOA does not mandate compliance with this standard or attach such compliance as a prerequisite for any benefit granted under membership.

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1.0 SCOPE OF STANDARD

1.1 The scope of this standard includes concepts and principles that relate to the organization, training, operational tactics, personnel management and equipment of a SWAT team. The standard will not dictate how member agencies will write and apply any specific policies as it relates to SWAT team operations, but rather provide guidance based upon the terminology and collective viewpoint of the NTOA organization.

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2.0 DEFINITION OF SWAT

2.1 A Special Weapons and Tactics (SWAT) team is a designated law enforcement team, whose members are recruited, selected, trained, equipped and assigned to resolve critical incidents involving a threat to public safety which would otherwise exceed the capabilities of traditional law enforcement first responders and/or investigative units.

2.2 SWAT is an accepted title for a team with specialized training, expertise and equipment as defined above and further defined within these standards. The primary characteristic of SWAT that distinguishes it from other units is the focus of effort. SWAT teams are focused on tactical solutions, as opposed to other functions, such as investigation. The purpose of SWAT is to increase the likelihood of safely resolving critical incidents. Nothing in this standard is intended to preclude agencies from utilizing specially trained units in areas such as narcotics investigations, felony apprehension and other tasks. However, it is recommended that agencies that do not have their own SWAT team and instead utilize specially trained units should have a Memorandum of Agreement (MOA) with a SWAT team that recognizes and operates within the guidelines as set forth by this document. This SWAT team can be a full-time, collateral duty, multi-jurisdictional or regional team. The agreement should specify that the named SWAT team is the designated entity to be activated for SWAT-specific incidents such as hostage situations, barricade incidents or other high-risk situations requiring specialized capability.

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2.3 Until the arrival of the requested SWAT team, it is recommended that those agencies that do not have SWAT team response capability and currently utilize specially trained units, should focus on engaging in the following activities:

Establish a Tactical Command, which *may include:*

- Identify safe routes of travel for specialized vehicles (ambulances, armored rescue vehicles, etc)
- Identify a staging area
- Identify a Command Post location
- Gather essential tactical elements of information
- Provide a complete and accurate description of suspect(s) and hostage(s) as soon as they are available
- Develop a threat assessment
- Conduct reconnaissance
- Obtain floor plan
- Initiate building labeling/diagramming
- Conduct breach point analysis
- Identify tactical approach routes
- Identify potential precision long rifle hides
- Utilize electronic intelligence
- Make appropriate notifications
- Develop a medical threat assessment
- Initiate emergency rescues of "Citizen Down" and "Officers Down"
- Conduct evacuations of innocents and police that may actively or predictably be in danger of being killed or seriously injured

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- Provide medical assistance when appropriate
- Preserve a crime scene as needed

Establish an effective Perimeter, which *may include:*

- Coordinating containment/Isolation Security Teams
- Deploying patrol rifle teams
- Deploying canine handlers
- Confirming traffic/pedestrian control
- Deploying aviation support unit

2.3.1 Once a perimeter is set, specially trained law enforcement units should establish an Immediate Action Team in the event that the situation suddenly changes requiring officers on scene to take immediate action. Primary responsibilities of the "Immediate Action Team" are to prevent escape and to take the suspect into custody if surrender occurs. When responding to a dynamic or rapidly escalating incident such as an Active Shooter situation or one that exigent circumstances may require immediate intervention to save lives, the Immediate Action Team will tactically track and move to neutralize the threat before the suspect kills or seriously injures innocents. This contact team should continuously assess and identify its limitations and assist in scene transition from Patrol to SWAT when appropriate.

2.3.2 Timely request of specialized units such as SWAT and HNT are critical and will greatly increase safety and contribute to a successful resolution. When possible, commence with Negotiations once perimeter and Immediate Action Teams are established. This may result in a safe surrender, assist with gathering

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intelligence and slow the suspect actions, allowing time for SWAT resources to arrive.

2.4 Any action taken during a high-risk incident before SWAT is able to respond, should be reasonable and necessary. Such decisions should be based on the totality of the circumstances and the priority of life decision-making process. The above listed considerations are not mandates, nor all inclusive, and any decision to implement or not implement them should be based upon the training, equipment and capabilities of the officers on scene.

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3.0 SWAT TEAM PURPOSE

3.1 The primary purpose of SWAT is to provide a systematic approach to saving lives in accordance with the priorities of life and the specific standards set forth herein, in concert with the totality of circumstances presented.

3.2 While life safety is a priority of SWAT, the specific circumstances will dictate the level of force necessary to adequately protect the public and the officers involved. Resolution of some incidents may require the specific application of various levels of force, up to and including, deadly force.

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4.0 SWAT TEAM CONFIGURATION AND CAPABILITIES

4.1 The NTOA recognizes that there are many types of specialized tactical teams utilized in law enforcement. However, based upon the need to protect and ensure the safe delivery of tactical law enforcement services, the NTOA recognizes that a SWAT team must be mission capable in ALL of the following areas: hostage rescue, barricaded gunman, sniper operations, high-risk warrant service and high-risk apprehension, dignitary protection support, terrorism response, special assignments and other incidents which exceed the capability and/ or capacity of an agency's first responders and/or investigative units.

4.1.1 SWAT teams conducting hostage rescue operations should train their personnel on the following competencies:

- Threat assessment
- Intelligence gathering techniques
- Reconnaissance techniques
- Technology support (robotics, electronic surveillance)
- Tactical planning (timing and transition of crisis, deliberate, contingency phases)
- Adherence to priority of life matrix
- Breach point analysis (mechanical, explosive, thermal, ballistic)
- Tactical communication techniques

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- Containment and surveillance
- Sniper support roles
- Use of APC and other specialized vehicles
- Failed breach tactics
- Diversionary device tactics
- Less lethal applications
- Window porting
- Compromise procedures
- Communication procedures
- Integration of negotiators
- Medical threat assessment
- Post Incident documentation
- Floor plans, photographs
- Unusual incidents (damage, use-of-force, injuries)
- Arrest and control procedures
- Tactics
    - Open air/stronghold
    - Vehicle, vessel, aircraft

4.1.2 SWAT teams conducting barricaded gunman operations should train their personnel on the following competencies:

- Threat assessment
- Mission analysis
- Determination of criminal offense
- Determination of mental illness

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- Consideration of local requirements for search warrant prior to entry
- Intelligence gathering techniques
- Reconnaissance techniques
- Technology support (robotics, electronic surveillance)
- Tactical planning (timing and transition of crisis, deliberate, contingency phases)
- Adherence to priority of life matrix
- Breach point analysis (mechanical, explosive, thermal, ballistic)
- Tactical communication techniques
- Containment and surveillance
- Sniper support roles
- Use of APC and other specialized vehicles
- Failed breach tactics
- Diversionary device tactics
- Less-lethal applications
- Window porting
- Compromise procedures
- Communication procedures
- Integration of negotiators
- Medical threat assessment
- Post incident documentation
- Floor plans, photographs
- Unusual incidents (Damage, Use of Force, injuries)
- Arrest and control procedures
- Tactics

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- Open air/stronghold
- Vehicle, vessel, aircraft
- EOD/entry integration

4.1.3 SWAT teams conducting sniper operations should train their personnel on the following competencies:

- Firearm nomenclature and capabilities
- Environmental influences on shot placement
- Shooting through mediums, *i.e.,* glass, lexan, and wood
- Concealment and camouflage techniques
- Data books and record keeping
- Urban versus rural operations
- Surveillance and communication

4.1.4 SWAT teams conducting high-risk warrant service and high-risk apprehension operations should train their personnel on the following competencies:

4.1.4.1 High-risk warrant service

- Threat assessment
- Intelligence gathering techniques
- Reconnaissance techniques
- Tactical planning
- Breach point analysis
- Briefing techniques
- Containment
- Pre raid surveillance

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- Failed breach tactics
- Diversionary device tactics
- Less-lethal applications
- Window porting
- Compromise procedures
- Communication procedures
    - Announcement procedures
    - Tactical communications
- Medical threat assessment
- Post raid documentation
    - Floor plans
    - Unusual incidents (Damage, Use of Force)
- Arrest and control procedures
- Entry tactics
    - Dynamic search techniques
    - Deliberate search techniques
    - Transitional tactics
- Surround and Call-out
- Aggressive animal mitigation
- EOD / Entry Integration

4.1.4.2 High-risk apprehensions

- Stronghold assaults (see above HRWS)
- Open air assaults
- Vehicle assaults

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- Surveillance
  - Air/Ground
- Containment/vehicle blocking
- Rear assaults
- Frontal assaults
- Side assaults
- Long gun support
- Canine support

4.1.5 SWAT teams conducting terrorism response operations should train their personnel on the following competencies.

4.1.5.1 Tactical operations in a contaminated environment

- Personal Protective Equipment (PPE) selection, use, nomenclature, donning, doffing and decontamination procedures.
- Familiarization of OSHA 1910.132 and 1910.120 (or State equivalent), as well as NFPA 472 Standard for *Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents*.
- Familiarization of the NIOSH Emergency Response Resource Guides (http://www.cdc.gov/niosh/topics/emres/ppe.html)
- Incident Command System and multi-level integration of line level supervisors and managers into a larger command structure.

4.1.5.2 Tactical operations integrating SWAT and bomb squad

- Improvised Explosive Device component and HME (Homemade Explosive) identification and chemical precursor recognition

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- Destructive capabilities and scene consequences of tactically deployed IED's
- IED Threat Stream planning and intervention/response tactics to include suicide bombers and VBIED'S
- Overview of bomb squad deployment, RSP (render safe procedures) and operational capabilities
- Suicide bomber planning and response tactics

4.1.5.3 Threat assessment and vulnerability planning

4.2 SWAT teams conducting the operations listed above should have the following elements available when appropriate;

- Tactical Command: typically consists of the commander, assistant commander, team leader and scribe.
- Containment Team: typically consists of a two-person (or more) element capable of utilizing either lethal or less-lethal force, per area of responsibility. This may also include the use of tactical canine teams.
- Entry Team (Either emergency or deliberate): members required will be based upon the mission type, complexity of target environment and ability to adhere to officer safety priorities.
- Precision Long Rifle Team: typically consists of a two-person element per area of responsibility.
- Tactical Emergency Medical Support: Team configuration to include medical support or MOA with agency to provide medical support.

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4.3 Where size and/or demographics limit the capabilities of an agency, multi-jurisdictional resources should be combined and coordinated in a manner which is consistent with reliable tactics, techniques and procedures. Coordination should comply with the laws of the relevant state, which may require mutual aid or intergovernmental agreements.

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5.0 AGENCY POLICY GOVERNING SWAT TEAMS

5.1 Individual agencies should develop and maintain written policies designed to meet the needs of their operational environment and consistent with this standard.

5.2 The SWAT policy topics listed below are not all inclusive, but do provide the minimum basis for the sound management of any tactical team. Team commanders are strongly encouraged to explore any and all topics that may need to be established through a specific policy:

5.2.1 Team organization and function which includes an organizational diagram.

- Command relationships between the SWAT team, Incident Commander, Crisis Negotiation Team (CNT) and any other joint or support elements that ensure clear lines of responsibility and compliance with the protocols of the National Incident Management System and the Incident Command System.
- If applicable, Mutual Aid Agreements and/or governmental support requests shall be incorporated into this policy.

5.2.2 Personnel management

- Selection, retention, mandatory physical and tactical competency and other appropriate personnel management processes, to include the development of protocols and processes for the selection of team members and team leaders.

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- Selection, retention, mandatory physical and tactical competency and other appropriate personnel management processes; development of protocols and processes for the selection of SWAT commanders including minimum training and experience criteria before assumption of command.

5.2.3 Training requirements as designated by tasks. Minimum time periods should be established to develop and maintain assigned critical skills.

- Team command should facilitate the development of appropriate annual plans, lesson plans, schedules, and management protocols for the conduct of training which are consistent with NTOA standard. This should include, but is not limited to, designation and delineation of critical skills and the required internal certification processes as well as development of minimum training hour requirements based on the critical skills identified. The training program should include a documentation and verification process.
- Training should incorporate the current NTOA standard as it relates to safe conduct and the development of scenario-based exercises.
- Based upon the mission competencies previously described in this standard, it would be difficult for most collateral duty or full time teams to maintain operational readiness without meeting the following training recommendations:
    - New member initial training: Minimum 40-hour Basic SWAT course
    - Monthly: 16-40 hours critical skills maintenance based upon mission capabilities and current operational tempo.
    - Specialty assignments: Critical skill training such as long rifle, tactical emergency medical support, explosive breaching, etc. should be in addition to the above listed hours. These additional training hours

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should be based upon the specialized assignment of the operator and any state requirements or certification process that is required of them,

- Annual: Training attended by all members to address consistency in tactics and procedures, that may consist of lecture, drills and exercises lasting up to 40 hours.

5.2.4 Activation and deployment of the SWAT team.

5.2.5 Equipment: Appropriation, care, maintenance and removal of obsolete or faulty team equipment.

5.2.6 The design, activation and implementation of an appropriately staffed command post, which may include a Tactical Operations Center, Crisis Negotiation Center, Media Relations Center, etc.

5.2.7 The development of appropriate protocols and procedures, for the conduct of long-term or extended operations. Protocols shall include, at a minimum, processes for relief and rotation of personnel and proper staffing and training of a supplemental incident command center.

5.2.8 If TEMS is utilized, incorporation of medical threat assessment in mission planning, and utilization of TEMS support in training and during team deployments.

5.2.9 After Action Reports (AARs) which capture tactical and incident debriefing information for training purposes. SWAT command should review all AARs, critiques, tactics and actions taken by all elements during the critical incident.

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5.2.10 SWAT command should be capable of producing a written annual report, which shall include a recap of all activations, nature of incident, resolution, injuries occurred, use-of-force and other critical information.

5.3 Agency policies and Standard Operating Procedures (SOPs) should be reviewed annually and any changes shall include a risk assessment based on the following criteria;

- Case law review: Implications of national and jurisdictional rulings and precedents on current training, operations and policy.
- Training updates: Ensuring agency policy and SOP correspond with latest training received. Compliance with applicable law and as well as an ongoing assessment of risk management processes.
- Operational practices: Ensuring actual operational tactics are reflective of policy and a risk assessment of team assignments and tactical incident responses are consistent with the priority of life model.

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6.0 OPERATIONAL PLANNING

6.1 The SWAT team will develop an operational plan in a consistent format for pre-planning purposes. The planning processes shall include target scouting; development of detailed written operations orders, detailed operations order briefings, operation rehearsals and pre-mission inspections. Final approval for all operational planning documents should rest on the SWAT Commander or their designee.

6.2 All SWAT team members will be trained and should demonstrate proficiency in operational planning concepts.

6.3 Operational planning concepts will include procedures for responding to ongoing or evolving incidents, including the development of SOPs relating to rapid responses to emergent situations.

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7.0 SWAT TEAM AUGMENTATION

7.1 Where SWAT teams have access to additional supporting elements, they shall establish internal Standard Operating Procedures (SOPs) and/or external Memorandums of Understanding (MOUs), Memorandums of Agreement (MOAs) or Inter-Governmental Agreements (IGAs). At a minimum, these agreements shall clearly delineate, establish and specify law enforcement chain of command, operational control, duties and responsibilities of supporting units and joint training requirements. Agreements shall also specify which agency is charged with jurisdiction in the event of a criminal investigation involving the actions of a SWAT member, such as an officer involved shooting. Examples of this may include supporting elements such as an aviation unit, EOD team or armored rescue vehicle and drivers from another jurisdiction.

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8.0 MULTI-JURISDICTIONAL AND REGIONAL SWAT OPERATIONS

8.1 The SWAT team shall develop appropriate agreements, protocols and procedures for support relationships between and among neighboring teams for the handling of extraordinary incidents which exceed the capabilities and resources of the primary jurisdictional team. Standard Operating Procedures (SOPs) and/or external Memorandums of Understanding (MOUs), Memorandums of Agreement (MOAs) or Inter-Governmental Agreements (IGAs) shall clearly delineate, establish and specify law enforcement chain of command, operational control, duties and responsibilities of supporting units and joint training requirements. Agreements shall also specify which agency is charged with jurisdiction in the event of a criminal investigation involving the actions of a SWAT member, such as an officer-involved shooting.

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9.0 ALTERNATIVE MEANS OF COMPLYING WITH STANDARD

9.1 The NTOA recognizes that there are significant numbers of small-agency based SWAT teams that do not or cannot attain the number of personnel required by this standard. The NTOA also recognizes that as stand-alone entities these same agencies would struggle to achieve the training requirements. It is not the intent of the NTOA to diminish local control of SWAT teams, nor to cause the loss of SWAT teams as an agency critical incident response tool. Rather, it is the intent of the NTOA to provide support for existing teams and to enhance the physical and legal safety of team members engaged in a department-sponsored, high-risk and potentially life-threatening activity.

The NTOA realizes that some necessary modification of the means of accomplishing this standard may need to occur in certain agency cases. The NTOA accepts this necessity as long as the established standard is maintained. As an example, a small-agency SWAT team, whose agency leadership prefers not to hold membership in a multi-jurisdictional team and that has insufficient numbers of personnel to meet the standard, may enter into a joint response MOA with a neighboring small-agency team. Based on the resulting joint response protocol, both teams would respond to an incident, but the team with original jurisdiction would retain command and control authority.

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In agreements such as these, the NTOA recommends that regular joint training events for all levels, from tactical officer to incident commander, occur and that required small-agency team incident response SOPs be very similar, if not the same. The NTOA accepts that by combining the separate small-agency teams together in a joint response, the intent of the standard for numbers of personnel is met.

With reference to training, regular department training could be combined with SWAT training. For instance, department patrol rifle training that includes drills in keeping with SWAT team tactics, techniques and procedures could be counted as SWAT training. In keeping with this standard, regular policy and procedure training that includes SWAT policies, SOPs and response protocols could also count as SWAT training. The NTOA recognizes that there are many ways to accomplish training objectives, and that stand-alone, scheduled SWAT-training-only events, while preferable, are not the sole means of meeting the intent of this standard.

The NTOA is dedicated to its members, to the profession of law enforcement and to the communities that are served by SWAT teams. Accordingly, the NTOA remains ready to assist agencies and teams in meeting this standard.

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SUPPORTING DOCUMENTS

Supporting Documents

A. Sample SWAT SOP

B. Sample Multi-Jurisdictional/Inter-Governmental Agreement

C. Sample Memorandum of Understanding

D. CATO SWAT Glossary – (While this has not been adopted as the official glossary of the NTOA, it should be recognized as a valuable resource that supports many of the concepts within this standard)

For further sample documents, please refer to the NTOA website in the File Sharing section: http://ntoa.org/site/member-resources/file-sharing.html

OR

the NTOA Resource Library: http://ntoa.org/site/resource-library/

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NTOA SWAT STANDARD
Document A – Supporting 5.0

SAMPLE

National Tactical Officers Association

SAMPLE NTOA
STANDARD OPERATING PROCEDURES (SOP)

This document contains procedures for personnel, training, equipment management and operations for the SWAT team in accordance with NTOA Standards for SWAT. This SOP shall be annually reviewed for content and currency.

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SECTION 1: SWAT Missions

Definitions and explanations of the SWAT missions.

SECTION 2: NIMS ICS

Delineation of the ICS as the command management methodology; delineates relationship between Incident Commander and Tactical Commander, if one exists.

SECTION 3: Risk Management

The team's philosophy and concept for the analysis and mitigation of unacceptable risk for the three main risk categories: Training, Operations and Legal.

SECTION 4: Personnel Positions and Duty Descriptions

Descriptions of each team position and the duties that position fulfills. Includes terrorism information position in accordance with CALEA standard (46.3.1), for the purpose of "information sharing and intelligence dissemination of terrorist-related materials inter-agency."

SECTION 5: Selection, Retention, Dismissal and Reinstatement of Team Personnel.

A. Personnel Selection

- A statement on the reasons for selection.
- Application criteria.
- An explanation of the selection process.

B. Probationary Status

- An explanation of probationary requirement for initial selection to SWAT.
- An explanation of requirements for successful completion of probationary period.

C. Dismissal

- An explanation of the factors which will result in dismissal from the team.

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- An explanation of the impact of injury on team membership.

D. Reinstatement

- An explanation of the process by which former team members may be reinstated to the team.

SECTION 6: Training Management

A. Training Philosophy

- An explanation of the importance of training.
- An explanation of the team's complete training management program.
- An explanation and delineation of the team's Critical Skills List and a reference to the location of the specific document.

B. Training Certification

- An explanation of how the Team Leader will "certify" the team as mission-capable.
- An explanation of how the Team Leader will "certify" individual team members as mission-capable.

C. Training Management Process

- An explanation of documents created and utilized for managing team training, including Training Calendar, Training Schedules, Training Support Forms, Training Orders and Instructions.

D. Training Safety

- An explanation of required training safety processes and procedures.

E. After Action Reports (AARs)

- An explanation of and the process for the conduct and documentation of AARs for all training events and operations.

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SECTION 7: Equipment Management

A. Issued Equipment

- An explanation and list of equipment and uniform requirements that are the responsibility of the individual team member.
- An explanation and list of the equipment and uniform requirements that are the responsibility of the team.

B. Care and Maintenance of Equipment

- An explanation of the team's equipment maintenance program, including the spreadsheet and other documents for equipment tracking.
- An explanation of the maintenance requirements and the sanctions for failure to maintain equipment or fulfill assigned maintenance responsibilities.
- An explanation of the equipment maintenance inspection process, including the mandatory quarterly inspection and the once-per-year 100% inventory.

C. Equipment Storage

- An explanation of the storage requirements and processes for the storage of team equipment, including applicable federal, state and local laws and ordinances.
- An explanation of the maintenance process and storage of team vehicles.

D. Purposes of Special Equipment

- An explanation of why and for what purpose items of special equipment are utilized; includes the explanation of required special weapons and munitions (recommended that this become required knowledge for all team members).

SECTION 8: Response Processes and Operational Protocols

- A delineation of the main operational responses and requirements, e.g., Command Post operations, Containment, Long-Rifle operations, Emergency Actions operations, Negotiation, Medical Support operations, CBRNE operations.
- An explanation of the expectation for initial stabilization procedures by patrol/first responders, as well as designation of duties until SWAT arrives.

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A. Use of Deadly Force

- An explanation, with legal and policy references, as to the use of deadly force by team members.

B. Deadly Force Investigation and Protocols

- An explanation of how the process of investigating deadly force incidents will be conducted in regards to team members and incidents.

C. Priority of Life

- An explanation of the team's philosophy of life priority during incidents for tactical planning processes, e.g., hostages, officers, suspects.

D. Call Out Response Procedures

- An explanation of the activation and call out process for the team.
- An explanation of the initial planning process for response to an activation.
- Processes that facilitate initial and continual planning and response.
- Processes for responses to pre-planned (staged) and emergent (immediate action) operations.
- Leadership processes for incident response, planning and operations.
- An explanation of tactical response options and emphasis thereon.
- A description of the written order format, content and process.

E. SWAT Team Leaders Duties and Responsibilities

- An explanation of the individual and team duties of all team leaders according to team organization.
- An explanation of the operational duties of all team leaders.

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SECTION 9: Annual Report

- An explanation and template for the drafting of the annual report.

SECTION 10: Mutual Aid

- An explanation of mutual aid relationships affecting the team.
- Attachment of exhibits containing copies of all agreements.

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NTOA SWAT Standard

Document B – Supporting 8.0

AN AGREEMENT

FOR POLICE SERVICES BY AND BETWEEN

(City Name)* AND *(City Name)

WHEREAS, it is in the best interest of (***City Name)*** and ***(City Name)*** to provide for certain police services upon request; and

WHEREAS, the 1970 Illinois Constitution (Article VII, Section 10) and the Illinois Compiled Statues (5 ILCS 220/1) provide authority for intergovernmental cooperation; and

WHEREAS, the two Cities may obtain more effective and efficient police services when their police officers cooperate with and assist each other in providing certain police services;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the ***(City Name)*** and the ***(City Name)*** agree as follows:

A. DEFINITIONS

The following terms are defined for use in this Agreement:

1. "Agency" means the Police Departments of ***(City Name)*** and ***(City Name)***.

2. "Requesting Agency" means an Agency requesting emergency police services or assistance pursuant to this Agreement.

3. "Responding Agency" means an Agency providing emergency police services or assistance pursuant to this Agreement, or an Agency that may be called upon to provide emergency services or assistance pursuant to this Agreement.

4. "Emergency police services and assistance" means personnel and equipment necessary for providing emergency police protection and services in police matters involving a life threatening situation, a situation in which there is gave danger of bodily harm, or a situation involving mob action, a riot, or other similar civil disturbance.

5. "Jurisdiction" of the Agency shall be as follows:

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a. "***(City Name)***" means the corporate limits of said City.

b. "***(City Name)***" means the corporate limits of said City.

6. "Policies and procedures" means the policies and procedures adopted by the Agencies which set forth, among other things:

a. The persons in each Agency who are authorized to request emergency police services or assistance from another Agency and the matter in which such requests are to be processed and approved.

b. The persons in each Agency who are authorized to approve requests for their police officers to provide emergency police services or assistance in another Agency, and who are thus responsible for determining whether or not their Agency will respond, and if so, the number of personnel and the amount and type of equipment which will be provided.

B. POLICE SERVICES AND ASSISTANCE

The Chief of Police, or designee, shall be responsible for receiving requests for emergency police services and assistance in accordance with the policies and procedures adopted by the Agencies. The manner in which Agencies shall request emergency police services and assistance from other Agencies, and themselves respond to such requests, shall be as follows:

1. Any Agency, through its authorized personnel, may request police emergency police services or assistance from other Agencies.

2. The requesting Agency shall specify the type of emergency police service or assistance, which is needed, and state the number of personnel and the amount and type of equipment, which are being requested.

3. The responding Agency shall make a reasonable effort to provide the emergency police services or assistance requested pursuant to this Agreement, subject to its workload and availability of police officers at the time of the request, the nature and urgency of the request, and other such similar limiting factors. If it agrees to provide emergency police services or assistance, the responding Agency shall, at its sole discretion, determine the number of personnel and the amount and type of equipment that will be provided.

4. The Agency which is requesting emergency police services or assistance from other Agencies, and the types of emergency police services and assistance which they are requesting are as follows:

a. The ***(City Name)*** hereby requests that the police department of ***(City Name)***provide emergency police services and assistance in situations where they receive calls or other requests for emergency police services and assistance from persons who would ordinarily be within the jurisdiction of the police department of ***(City Name)***, or where the police officers or other personnel of said Agencies view circumstances indicating probable cause that there has

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been, is, or other rule or regulation within the jurisdiction of the police department of ***(City Name)***.

b. The ***(City Name)*** hereby requests that the police department of ***(City Name)*** provide emergency police services and assistance in situations where they receive calls or other requests for emergency police services and assistance from persons who would ordinarily be within the jurisdiction of the police department of the ***(City Name)*** or where the police officers or other personnel of said Agencies view circumstances indicating probable cause that there has been, is, or other rule or regulation within the jurisdiction of the police department of the ***(City Name)***.

C. POLICE AUTHORITY

Police officers and other personnel who are providing emergency police services and assistance within the jurisdiction of another Agency shall have the following police authority and power, and be subject to the following working procedures and measures:

1. When acting pursuant to this Agreement within the jurisdiction of the requesting Agency, police officers and other personnel of a responding Agency shall therein have the same police authority and power as police officers or other personnel of the requesting Agency.

2. The heads of the Agencies shall establish working procedures and measures as they deem necessary for the control and direction of police officers, personnel, and equipment that are acting within the jurisdiction of a requesting Agency pursuant to this Agreement; provided, however, that until such working procedures and measures are established, the police officers, personnel, and equipment of a responding Agency shall be subject to the direction and control of the Police Chief of the requesting Agency.

D. LIABILITY

The statutes and case law of the State of Illinois shall be used to establish the liability of the parties to this Agreement or for injuries caused to third parties. In the event of any injury to the person or property of the police officers or other personnel of a responding Agency, when acting pursuant to this Agreement within the jurisdiction of a requesting Agency, the governmental entity of the responding Agency shall be responsible for any damages from any liabilities arising out of such injury.

E. SEVERABILITY

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If any provision of this Agreement is invalid for any reason, such as invalidation shall not render invalid other provisions of this Agreement that can be given effect without the invalid provision.

F. EFFECTIVE DATE

This Agreement shall be effective when duly executed by the authorized representatives of the ***(City Name)*** and the ***(City Name)***.

G. AMENDMENT

This Agreement may be modified or amended by unanimous agreement of the ***(City Name)*** and the ***(City Name)***.

H. TERMINATION

This Agreement shall terminate, and shall have no force or effect, upon the passage by the ***(City Name)*** and the ***(City Name)*** of an ordinance, resolution, or other document indicating withdrawal from this agreement.

I. GOVERNING LAW

This Agreement shall be construed in accordance with the laws and Constitution of the State of the ***(Name of State)***. IN WITNESS WHEREOF, the City Council of ***(City Name)***and the City Council of the ***(City Name)*** have authorized their representatives to execute this Agreement; and said representatives have caused this Agreement to be executed, and have attached herewith a copy of the ordinance, resolution, or other documents adopted by their respective governing body authorizing them to execute this Agreement.

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NTOA SWAT Standard

Document C – Supporting 9.0

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is being executed between the Board of Trustees of the University of _____ on behalf of its University of _____ Division of Public Safety and the _____ Police Department to establish operating procedures for the joint Explosive Ordnance Disposal Unit (Unit). The agencies jointly and separately agree to abide by the terms and provisions of this Memorandum of Understanding and their respective Explosive Ordnance Disposal Unit departmental policies during the existence of the joint Unit.

PURPOSE AND MISSION The purpose of this Memorandum of Understanding is to formally adopt the procedures contained in the University of _____, Division of Public Safety Unit Order 95-1 and the _____ Police Department Policy and Procedure Statement 38 for operating the joint Explosive Ordnance Disposal Unit. The mission of the joint Unit is to provide a professionally trained Unit capable of rendering safe and/or removing suspected improvised explosive devices, incendiary devices, explosives, explosive chemicals, pyrotechnics and ammunition. In addition, to provide for legal, proper and safe transportation, disposal and/or storage or explosives and other items referred to above.

GENERAL AGREEMENTS

A. COMPOSITION AND COMMAND

The University of _____, Division of Public Safety and the _____ Police Department agree to assign three (3) officers each to the Unit as bomb technicians. Increases to the Unit by either agency may occur upon agreement by both participating agencies. Selection and dismissal of personnel to/from the Unit will be in accordance with the provisions outlined in Unit Order 95-1 and Policy and Procedure Statement 38

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respectively. Each department reserves the right to make changes in its personnel assigned to the Unit at any time. This will include the number of personnel assigned. Commanders of the Unit will be designed by the Chiefs of Police of the University of _____, Division of Public Safety and the _____ Police Department. Both commanders have equal responsibility for overall supervision, training, assignments, call-outs, and equipment purchase and replacement for the Unit. Command of the Unit shall rest with the Unit Commander or his/her designee. He/she shall assume responsibility for the conduct of the Unit and shall be in charge of the scene until the device has been rendered safe and the scene released to local authorities.

B. POLICY AND DIRECTION

The policy and direction of the Unit will be the joint responsibility of the University of _____ Division of Public Safety and the _____ Police Department.

C. INVESTIGATIVE GUIDELINES AND PROCEDURES

After the Unit has responded and secured an incident, the agency with jurisdiction will be responsible for processing the crime scene. The Unit will assist when requested to the extent possible.

D. COOPERATION BETWEEN AGENCIES

To the extent possible, all Unit activity will be joint activity, with no agency acting independently of the other agency.

E. OPERATIONAL PROBLEMS

Operational problems encountered will be mutually addressed and resolved by the participants from each agency. Ideally, it is agreed that resolution of operational problems will be at the lowest level possible. Any problem not resolved at this level will be referred to the heads of the respective agencies.

F. EQUIPMENT

Equipment acquisition will occur jointly with each agency attempting to divide the costs equally. In the event the Unit is dissolved, an inventory of all equipment shall be made, and the equipment shall be returned to the purchasing department. Equipment will be stored in accordance with University of _____ Division of Public Safety Unit Order 95-I and _____ Police Department Policy and Procedure Statement 38. It is understood that from time to time, some equipment may need to be stored temporarily at other locations until such time that it can be moved to a regularly assigned location.

G. PRESS RELEASES

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Press releases and/or the release of information to the media will be made by the agency that has jurisdiction where the event occurred in accordance with the releasing agencies established media release policy. No unilateral press releases will be made by any participant without the prior approval by the other participants. No information pertaining to the Unit itself will be released to the media without the mutual approval of all participants.

H. EVALUATION AND REVIEW

The Unit will be evaluated on an annual basis by the supervisors from each department who may make recommendations for improving the performance of the Unit.

It is agreed that this Memorandum of Understanding will remain in effect until further notice contingent upon agreement of the parties. This agreement may be terminated at any time by any participating agency delivering a written notice of termination to the other participating agency.

Signed this _____ day of _____, 20__

The Board of Trustees of University of _____

By: _____

Name, Comptroller

City of _____

By: _____

Name, City Manager

Attest: _____

Name, Secretary

_____

Name, City Clerk

Approved:_____

Approved as to form:

Legal Counsel: _____

City Attorney: _____

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SWAT Glossary

A terminology project initiated by the
California Association of Tactical Officers (CATO)

Ken Hubbs (San Diego PD) - CATO President

Background and Purpose:

The primary goal of this project was to initially develop a glossary of SWAT terminology that will achieve statewide consensus to promote and encourage similar dialogue and definitions being used within the California tactical community. The secondary goal of this project was to invite and encourage other statewide tactical associations in the United States to simultaneously participate with this project in an effort to achieve consensus nationwide upon project completion. The project has been completed and was finalized on October 29, 2010. It has been approved by CATO and is now posted on its membership web site. Other associations and tactical teams are welcome to adopt this glossary accordingly for their respective teams and members. Additionally, it is important to note this glossary is not set in stone and CATO will maintain, update, and review annually. If you have terms you would like to submit for consideration of inclusion, you may forward to Bill Lewis II at the e-mail address provided, realizing the scope and challenges to list every definition that will pertain more universally to teams as opposed to team specificity.

CATO Terminology Project Team:
Bill Lewis II – Project Lead (Oxnard PD - Retired) – SgtBLewis2@aol.com
Randy Winn – Project Member (Sacramento County Sheriffs) - rwinn@sacsheriff.com
Josh Dafoe – Project Member (San Diego PD) - jdafoe@pd.sandiego.gov
Bill Crisostomo – Project Member (Oxnard PD) – billcrisostomo@oxnardpd.org

In addition to contributions from tactical teams, individuals and training providers from California, contributions to this project from outside California as of July 15, 2010 were also provided by:

John Jeffries (Ohio Tactical Officers Association)
Mark Renninger (Washington State Tactical Officers Association)
Joe Carter (Florida SWAT Association)
Mark Hicks (Mississippi Tactical Officers Association)
Ed Mohn (Illinois Tactical Officers Association)
M.L. "Sandy" Wall (Houston Police Department - Retired)

This terminology project is dedicated to the memory of Sergeant Mark Renninger from the Lakewood (WA) Police Department. Sergeant Renninger last contributed to this project on behalf of the Washington State Tactical Officers Association (WSTOA) one week before he and three fellow officers were killed during an ambush in Tacoma, Washington. (EOW 11/29/2009)

Term	Definitions
360	360 degrees. Commonly associated with providing 360 degrees of ground-level coverage during operation or open area movement.
540	360 degrees of ground-level coverage plus "180" (degrees) above the ground surface.
55 Familial Rule	A self-imposed reality check question by a tactical commander related to a pending critical tactical decision regarding a hostage situation: "Would you make this same decision if a family member were being held as one of the hostages?"
55 Rule	A set of two coinciding questions self-imposed by a tactical commander related to critical decision making prior to initiating a tactical action; "Is this decision the right one within the next 5 seconds?" and "Will this decision be the right one 5 years from now in civil court?"
6 ("Six")	A reference to the rear or back of an individual operator or team. Often used as part of a request to provide cover as "Cover my six"
A	
Abort	Order given by team leader or any operator that identifies a discrepancy with predetermined plan. Command for mission termination and emergency egress.
Active shooter	An armed suspect who is actively shooting at and/or threatening to cause great bodily harm to other civilians and/or police and continues to do so while having unrestricted access to additional victims.
After action report	A comprehensive document to be completed following a debriefing or after action review of a planned or spontaneous operation to include the actions taken (or failures to act and omissions) by personnel, mission results and any pertinent and relevant information related to same operation including lessons learned and any training recommendations identified. Documentation should be supported with the operational plan, related reports, and any other written or photographic material associated with the operation. Can possibly serve as "evidence" of an operation should it be needed in criminal or civil court. See also "Debrief/Debriefing"
After action review	A structured process for analyzing a particular operation or exercise and usually includes subject matter experts or superiors specifically tasked with identifying areas for improvement. Informal reviews are normally reserved for small units and when there is no specific need or resources to conduct a more formal review. Formal reviews are reserved for larger organizations in examining complex training exercises or operations resulting in calamities and may take several months. See also "Debrief / Debriefing"
Air operations	The tactical use of an aircraft (plane or helicopter) for surveillance, scouting, aero-medical evacuation, direct action during a tactical situation and/or deploy operators at or near a target location while rapidly and safely exiting under potential adverse conditions while cognizant of inherent dangers. Also known as "Air Ops"
Alternate Firing Position	A pre-designated firing position that allows the sniper team to deliver precision fire to an area different than the original target in the event a suspect assaults from a different location.
Ambush drills	A predetermined procedure for immediately reacting to direct gunfire and clearing a kill zone by using available cover and concealment and returning suppressive fire.

APR	Air Purifying Respirator
Area search	Any search in which the location is terrain rather than a structure.
Armored/sedan rescue	Perform downed officer/citizen rescue utilizing an armored vehicle or a car.
Arrest team	A team of operators established to contact, control and detain suspect(s). Primary function is to safely and effectively receive anyone exiting a location. May also serve as exigent entry team. Also known as "Arrest/React Team"
ARV handling	Drive an "armored rescue vehicle" in a safe and approved manner. May require specialized drivers license endorsement.
Armored vehicle	A vehicle that is or has been hardened to protect the occupants from small arms fire and fragmentation. Also known as an "ARV" and "APV"
"Assault"	Command for start of entry at the target location.
Attention-getting techniques	Tactics and techniques utilized in an attempt to encourage and convince the suspect(s) to communicate with negotiators or operators, respond to direction given, and/or establish contact with tactical personnel. These techniques and tactics may also be utilized to establish and/or maintain psychological distractions directed at the suspect. See also "Environmental altering techniques"
Attic clearing	Safely clear and enter an attic using operators, available equipment and/or K9.
Attic mirror	See "Pole mirror"
"Avalanche"	Term used if operators find an explosive device or discover other exigent condition and orders immediate evacuation of the location. Also known as "Landslide"
B	
Backup / Backup operator	Operator who is second in the entry lineup and provides cover for and partners in primary cell with the scout (or point). Assists in reconnaissance and formulating tactical plans.
Background	That area behind a target where a bullet or other projectile would strike if it missed or passed through a suspect.
Backlighting	A condition in which a person is illuminated by a light from behind causing a strong silhouette.
Ballistic blanket	Flexible ballistic blanket.
Ballistic shield	A portable shield used to provide cover and ballistic protection.
"Bang out"	Term used when distraction device ready for deployment (pin pulled) but cannot be thrown where initially planned. May be tossed outside or into an empty room away from situation and involved personnel. Also known as "No bang" and "No bang zone." See also "Coming out location"
"Bang up"	Term used to call for deployment of distraction device and/or serve notice to other operators of pending device deployment. Also known as "Banger up" and "Bang"
Bar pull	A procedure in which the wrought iron security bars (or similar) are pulled from the doors or windows of a location in preparation for an entry.
Barricaded suspect / situation	A suspect who is reasonably believed to be armed in a location, whether fortified or not, and is refusing to comply with lawful police demands to surrender.

"Blue"	Code word for unplanned contact with other operators or law enforcement personnel to identify one as "law enforcement" to avoid friendly fire and other confrontations.
"Blue-on-blue"	Unplanned contact with operators or law enforcement personnel that may or may not result in friendly fire or other confrontations. This unplanned contact is usually the result of plainclothes personnel not identifiable as law enforcement and visual obscurity.
Booby trap	Any device that is set, positioned, constructed, or placed to hinder the movement of, or cause injury or death to persons. Ability to recognize, mark and avoid booby traps.
Bearcat	Lenco Armored Vehicle. See "Armored vehicle"
Block	Tactical movement to temporarily provide cover and protection to an operator from a threat zone not cleared and visible to that operator as the operator is moving toward another zone. This position is rescinded once all operators are out of the covered threat zone.
Bounding overwatch	The tactical movement of two team members wherein one is in a position to provide cover fire while the other operator displaces and moves to a further position of cover. Once that operator is set in a cover position, the other moves forward to a position of cover. Depending on the need for stealth movement, the operators can give the verbal notification "Covering" and "Moving." Movement in this manner backwards is called "Reverse Bounding Overwatch." Also known as "Leap Frog"
Break and rake	Technique used to breach a glass window and prepare it as an entry point or port.
"Breach and hold"	A tactical manuever by operators to maintain and hold their positions in close proximity of the entry point of a target location after breaching that entry point. An alternative to dynamic entry and immediate clearing of a location when armed and/or dangerous suspects are believed to be present. Suspects and other occupants can be called out from the location from the breach point to an area controlled by the operators. Also known as "breach and delay"
Breacher	Operator assigned the tool(s) and responsibilities for breaching. Also known as "Door Breaker"
"Breacher up"	Verbal command for breacher to respond to entry point or other fortified location for breaching.
Breaching	Forced entry into secured target location utilizing mechanical, explosive and/or manual tool to include use of specially-equipped vehicles and specialty 12-gauge shotgun munitions.
Breaching stick	Metal stick or pole (or similar) used to break and rake windows. Also known as a "Halligan tool"
Brief back	The formal process after an operational briefing (or as part of that process) wherein an operator will recite back to the team leader or operational leader his/her specific assignment/s and tactical/equipment responsibilities for a pending operation. This process may also be included within a staged rehearsal prior to the operation. Also known as "Assignment confirmation"

Briefing	The formal meeting process conducted prior to an operation or warrant service to; a) Account for all personnel involved in the operation, b) Ensure that the required materials and equipment are assigned (and subsequently distributed) to the proper personnel, c) Ensure the dissemination of the same information to all concerned personnel, d) Ensure the same level of understanding, by all personnel, of the information which is briefed and which is contained in the tactical operations plan, e) Provide an opportunity for any necessary clarifications or questions, f) Provide an opportunity to raise concerns not included in the tactical operations plan, g) Ensure that all personnel are properly equipped with the required safety equipment as well as appropriate equipment for communications, during the tactical operation, and h) Ensure uniformity in the commencement of the operation. Briefings are not restricted to tactical teams, and can include patrol personnel, investigators, specialty units like gangs and narcotics, and K9 teams.
Building labeling / identification	System using numbers and/or letters that identifies a specific location and allows everyone to understand which side, which opening and which level they are looking at or communicating about. Also known as "Site Identification" and "Sectorization System"
Bus assault	Perform duties associated with a hostage rescue or barricaded suspect aboard a stationary bus to control and/or enter onto a bus for the purpose of arresting suspect(s), rescuing hostages and/or securing person contained within. See also "Linear Assault"
Button hook	Tactical maneuver by operator to enter a room by wrapping quickly around the immediate door jamb to minimize exposure in the doorway and clear large portion of area during movement.
Bypass / "bypassing"	Order or action by team leader or operator related to passing by a (normally closed) door or passage way. Also known as "Pass" and "Blow-by"
C	
Call-out	Activation of a tactical (SWAT) team.
Call-out responsibilities	The individual actions of team leadership and personnel responsibilities that ensure preparedness and result in the swift response to a spontaneous call-out.
CBRNE	Chemical, Biological, Radiological, Nuclear - enhanced explosive devices
Chemical agents	Any liquid, compound, solid or gas that works by some pharmaceutical interaction with the body designed for law enforcement to cause uncomfortable symptoms in humans.
Chemical agents responsibilities	The ability to determine the appropriate type and amount of chemical agents necessary for a tactical operation as directed by the Commander/Team Leader and deliver the (chemical agent) munitions into the target location.
Civilian rescue	Operators perform a standardized civilian rescue.
"Clear"	Verbal confirmation that a room or area is safe. A "thumbs up" is often used as the hand signal.
Climb Assist	Tool used by operators to scale wrought iron fences or provide elevated stationary shooting position against a fence.

CN	Chloroaoetphenon (CN) a fast-acting irritant that affects the lachrymal glands, causing visual impairment and tearing, upper respiratory system irritation, itching, and may blister the skin. International color code: Red.
CNT	Crisis Negotiation Team. See "HNT"
"Coming out"	Verbal notification made before exiting a room or hallway into area where operators are located. Should wait for reply before exiting. See also "Room exit"
Coming out location	A location to safely deploy a diversionary device if the primary location has been deemed unsafe. Also known as "no bang zone" and "ditch point"
Comm	Abbreviation for (radio) communications. Radio communication capabilities.
Command and control	The exercise of authority and direction by a properly designated commanding officer over law enforcement personnel in the accomplishment of the mission.
Command Post / CP	Location of and designation for Tactical Command Post.
Communication of team movement	Communication to perimeter officers and Command Post of team movement which should ideally result in receiving acknowledgement/confirmation of movement before it occurs.
Competing interest	Anything that engages the attention and results in a division of attention or resources. To be effective, need not be so startling that it diverts attention. It is sufficient that it just can't be completely ignored.
Comprehensive training plan	A yearlong training plan listing the tactical skills and techniques employed by a tactical team, both team and individual, to include a desired frequency of training for each skill and technique over a 12-month period, that is crafted into a calendar (or matrix) to accommodate the training.
Compromise	A verbal acknowledgment meaning a team or team member has been observed by a hostile force or individual.
Compromise authority	Direct action authority granted by the Incident Command / Tactical Commander to a team leader authorizing the initiation of specific action and or series of actions in response to actions taken by the suspect(s).
Compromise drill	Either of two immediate action drills in which an unanticipated shot is taken by a sniper during a coordinated sniper-initiated assault or when an entry team is discovered during their approach for a planned entry.
Concealment	An area or object that prevents or limits suspect observation of an operator but does not always provide protection (cover) from fire.
Contained threat escort	Typically used in active shooter situations as a block and/or to secure a given portion of a structure or area, to provide an escort for EMS personnel to a triage location inside a much larger, but otherwise unsecured area to provide aid.
Containment	Pre-designated perimeter positions of target location(s) to control and contain suspect movements.
Contingency plan	An alternate plan that focuses thought and effort on anticipated problems that may arise during the conduct of an operation. Also known as "Plan B"
Convoy driving	A procedure for quickly moving a tactical team in vehicles through an urban area.

Count and condition	See "Roll Call"
Counter sniper operation	Tactics and techniques to deploy and secure a position of safety from and tactically superior to a criminal sniper location to provide precision fire to neutralize activity of a criminal sniper.
Counter sniper position	A position of safety and observation that is tactically superior to a criminal sniper location.
Cover	An area of protection from hostile fire or effects from fire. Ability to provide security to a designated area of responsibility or threat.
"Cover"	Verbal request (or command) for another operator to provide security or secure threat for an operator when that operator prepares to reload weapon, sustains malfunction and/or is unable to cover appropriate threat for other reasons. Also known as "Bravo" (see "Red")
Covered pile	The use of a blanket and/or any other item used in an attempt to obscure the ability to identify and/or observe involved individuals. Typically, a group of hostages being walked out by a suspect, covered by a blanket.
"Cover my six"	A request by an operator for any operator(s) to provide cover for his/her backside. See also "6"
Covered pile rescue	Technique used to rescue hostages being walked out by a suspect in a group (see "Covered pile") and neutralize suspect. Also known as "Blanketed Hostage Rescue"
Covert / covert clearing	The art of stealth, combined with slow, coordinated, quiet team movement, utilized in systematically entering and clearing a location while searching for and/or neutralizing a suspect safely. Also known as "Slow and deliberate" and "Methodical search"
CQB	Close Quarters Battle
Crisis communications	Recommended strategy by attorneys working for a law enforcement agency that hire a "public relations" firm for the high-profile "top situations" to maintain the attorney-client privilege; can include use of force incidents, SWAT incidents, K9 incidents, pursuits, officer misconduct (on and off duty), workplace harassment, and jail operations.
Crisis entry	Any entry which requires an immediate and sudden emergency assault to gain admission prior to the planned entry. See also "Exigent entry"
Criss cross entry	A tactical maneuver with two operators staged at a door with the first operator crossing through the doorway to a point inside followed immediately by the second operator crossing through the doorway to the opposite side.
Critical incident	Any incident that's scope goes beyond the normal ability of the personnel on duty.
Cross cover	A tactic whereby two operators mutually support each other by covering the area opposite of the other
CS	Orthochloroidenzalmalonoitrile (CS) is an irritant that affects the lachrymal glands, causing involuntary closing of the eyes, burning sensation in the eyes, stinging skin, runny nose, and a feeling of tightness in the chest. International color code: Blue.

D	
Deadly force	Force which is likely to cause death or great bodily harm.
Debrief / Debriefing	1) A moderated discussion completed prior to the initiation of an after action report that focuses on gaining understanding and insight regarding a specific operation or training exercise and involving those people who were personally involved. 2) A review and critical critique of the actions taken or not taken and thoughts by all personnel involved during an operation or high risk patrol encounter. 3) Serves as a source in determining lessons learned from the incident so that good performance continues, satisfactory performance improves, and poor performance is not replicated. Also known as "Tactical debrief" or "After action debrief." See also "After action review"
Delivery missions	The ability to tactically and safely deliver specified items to a target location (e.g., throw phone, food).
Diagram	A representation of an area or building floor plan based on available information.
Diagramming	A procedure used by tactical teams for determining likely placement of walls, doors, closets and so forth, of the inside of a building from exterior architectural features.
Dignitary protection	See "Personal Protection Detail"
Directed fire	Fire that is directed at location, area or suspect attempting to kill the suspect and/or suppressing the suspects ability to return fire while a tactical team, element or individual movement is conducted. Also known as "Suppressive Fire" – "Cover Fire" and "Weapons Fire"
Distraction device	A device intended to create surprise with a combination of sound, light and pressure to temporarily overwhelm a suspect's senses and prevent an effective response. Also known as NFDD, flashbang, light-sound diversionary device, diversionary device, DD, noise sound distraction device.
Distraction device deployment	Safe and effective use of deploying distraction device to enhance a tactical operation.
Diversion	A tactic used to draw a suspect away from the point of the principal attack; used to draw attention away from the real threat or action.
Diversionary device	See "Distraction device"
Dog abatement	Techniques and appropriate equipment used to repel, secure and/or neutralize a civilian dog so as not to jeopardize an operation and prevent injury to operators.
Drownproofing	Demonstrate the ability to self-rescue in training when immersed in above-head deep water while wearing full SWAT gear and carrying assigned weapon (simulated gear/substitute weapon acceptable). Also known as "water immersion testing"
Dual entry	An entry into a building which utilizes two or more entry teams, simultaneously, at more than one different points of entry.
Dynamic / dynamic movement	Team movement within a location or open area in a rapid controlled manner to clear an objective as safely and quickly as possible.
E	
Elevated position movement	Deploying to an elevated position, normally atop a building or higher terrain.

Emergency vehicle exit	Rapidly exiting a vehicle that is under fire, taking positions of cover and concealment, and returning suppressive fire.
End state	The desired result or final outcome of a tactical operation. Used to provide a focal point for directing the efforts to attain it without requiring excessive instructions or meticulous supervision.
Entry	Any procedure to gain admission.
Environmental altering techniques	Tactics and techniques utilized to alter the environment of the suspect(s) in an attempt to convince the suspect(s) to communicate with negotiators or operators, respond to direction given, or establish contact with tactical personnel. These techniques and tactics may also be utilized to establish and/or maintain psychological distractions directed at the suspect.
Evacuations	The removal of civilians from areas where they may be in danger due to suspect's ongoing or anticipated threat-related actions.
Exigent entry	Making an emergency entry into a location with little or no intelligence when there is an imminent threat of death or serious bodily injury to civilians or law enforcement personnel.
Explosive Breaching	Use of explosives to breach entry points. The surgical application of measured amounts of explosive compounds in order to affect the opening of a fortified portal.
Exploitation window	A period of time in which an individual or unit is at some sort of disadvantage as a result of an intentional action by their opponent. One of the most common methods for creating the window is by dividing attention, frequently with a distraction of some sort, because when a suspect's attention is even temporarily diverted they are less capable of quickly employing effective countermeasures.
F	
Failure drill	An immediate action drill in which the target/suspect is shot center mass, immediately followed by a carefully placed shot to the head that is often used for suspects using or attempting to use deadly force who may also be under the influence of drugs and/or wearing body armor. Also known as "Mozambique Drill," "Failure to stop" and "Drug and armor drill"
Fallback	Tactical retreat
Fast rope	An insertion technique which uses a thick woven fabric rope to slide down.
Field of fire	The area an operator can cover effectively from a given position with assigned weapon.
Fill and flow	A tactic used during entries in which members interact and position themselves based upon informal cues or movement from each other as they move within a location.
Final Firing Position / FFP	The position chosen by a sniper team that gives it the best tactical advantage and observation/firing position to engage suspects in an urban or rural environment. Selection of an FFP may require the sniper team to construct a hide.
Flashbang	See "Distraction device"
Flashbang pole	Collapsible or stationary pole used to place and deploy distraction devices into elevated positions or other access points to minimize exposure to operators.

Floaters	Two to four operators following the entry team to cover, control and secure subjects inside a location. See also "Trailers"
Focus of effort	The predominant activity or assignment that must be accomplished to achieve a successful resolution.
Fog	A condition that prohibits a tactical commander from obtaining accurate information in a timely manner.
Forced vehicle stops	Tactic using marked or unmarked police vehicles (or a combination of both) to 'box in' an unsuspecting suspect vehicle, preventing its flight.
Fourth-man bag	Equipment bag containing extra ammunition, first aid equipment and collapsible stretcher; initially deployed with one operator and usually left at the entry point or inside the entry point readily accessible by other operators if needed. Also known as a "Go bag"
Front 5 / Rear 5	Designates the initial perimeter cover positions of a location with minimum operators based on the numbering system assigned to a location for an immediate containment with "1" designating front side, "2" is left front side, "3" is rear side, and "4" is right front side. Front 5 represents perimeter coverage of both "1" and "4" sides (1+4=5) with Rear 5 covering both "2" and "3" sides (2+3=5).
Front 5 / Rear 5 Deployment	Deploying two teams of operators to initially secure perimeters using Front 5 / Rear 5 coverage. Also see "Front 5 / Rear 5"
G	
Great bodily harm	Serious physical injury that creates a substantial risk of death, causes serious permanent disfigurement/disability, or results in long term loss or impairment of the functioning of any bodily member or organ.
"Green"	Verbal signal used to communicate to other operators that your weapon is now functioning properly. See also "Red"
Groucho walk	The exaggerated bend of the knees to stabilize the operator's mobile shooting technique to increase accuracy.
H	
Hall boss / Hallway boss	Team leader that directs operators into rooms and positions of cover in a large hallway or open area during a dynamic movement, such as a rapid deployment or rapid team movement.
Handcuffing	Appropriately and safely apply handcuffs or flex-cuffs while wearing full tactical gear.
Hand signs	A method of non-verbal communications.
Hasty defense	A perimeter established between hostages or victims and an anticipated threat.
HHA	Hostage holding area.
Hide	The construction of a "Final Firing Position" (FFP) by means of using natural or man-made materials to blend in with the immediate area, whether in an urban or rural environment, so as to remain undetected by suspects.
High-low corner clear	A tactic whereby two operators, acting as a team, one kneeling and one standing, snap and hold a corner simultaneously.

High-low criss cross	A tactical maneuver designed for quicker secondary cover into a room with almost simultaneously entry made by two operators staged at a door. The first operator crosses through the doorway in a low crouched movement to a point inside followed immediately (or simultaneously) by the second operator crossing through the doorway high and above first operator to the opposite side. The intent of this maneuver is to enable second operator quicker access into the room to minimize the time of exposure for the first operator whose backside is temporarily exposed to the unknown threat zone and potential threat.
High risk warrant	A search or arrest warrant characterized by known or suspected hazards and risks to such a degree that the service of which poses a significant threat to the safety of officers.
HNT	Hostage Negotiation Team. Responsible for establishing communications and/or conducting negotiations with a person who is the focus of police activity. Also known as "CNT"
"Hold"	Verbal command for operators to stop and not move. Can be used as a reply to the request for "Moving" if not ready for movement into a room. A "closed fist" is often used as the hand signal.
Hostage	A person held by force or fear by a hostage taker as security that specified terms or an ultimatum will be met.
Hostage crisis / incident	Any incident where hostages are being held against their will inside a location or vehicle and controlled by a barricaded suspect(s) reasonably believed to be armed,
Hostage rescue	Deployment of tactical team in defense of life and to save and rescue hostages.
Hostage taker	A suspect which seizes a hostage(s).
"Hot"	Verbal signal that an area is not yet safe which may include oddities, furniture, or an unknown situation that can jeopardize the entry team.
HRT	Hostage Rescue Team. Perform duties for hostage rescue.
I	
IED	Improvised Explosive Device
Immediate action drill	Immediate response to an unplanned event and/or incoming or ongoing gunfire from a suspect(s).
Immediate deployment	Any deployment by a tactical team which is initiated immediately upon the arrival at a barricaded situation without further scouting, intelligence or coordination.
Immediate threat assessment	Method of clearing where the first operator to identify a threat addresses the threat and/or moves directly toward the threat or person in the room, giving verbal commands as they close the distance.
Impact munitions use	The ability to use such munitions accurately in a manner appropriate to the suspect's actions or other tactical needs such as window breaching and removal of exterior lights or other features.
Incident Commander	The ranking officer in charge of an overall incident using the "ICS" command system.
Inner perimeter	A close proximity boundary maintained initially by first responding officers, later transferred to the tactical team and designed to contain the situation and suspect(s) to the smallest possible area and prevent access to the target location by persons from the outside.
K	
K9	Police service dog; police canine

K9 team	Police service dog and K9 handler. A designated team specifically selected, trained, and equipped to work in conjunction with a tactical (SWAT) team to assist in tactical operations. Works under the direction and supervision of a tactical team leader during a tactical operation and training. Also known as "SWAT K9 Team"
K9 interaction/ integration	Working with a K9 team during a tactical operation or training. Using a K9 team to supplement a tactical team's ability to search for and locate a concealed suspect(s). Also known as "K9 Operations"
Knock & Announce	Verbal notice required by law before entering a building by force or otherwise during service of a search or arrest warrant. Directive to operator to recite legal notice required before entering a building by force or otherwise during service of a search or arrest warrant.
Knock & Notice	See "Knock & Announce"
L	
Ladder/wall	Climb over a wall with a ladder or use a ladder against a wall while maintaining proper weapon positioning and cover.
Ladder/window	Enter a window using a ladder wearing full tactical (SWAT) gear.
Ladder work	Using a ladder to secure an elevated position, or safely climb over or onto obstacles.
Landslide	See "Avalanche"
"Last man"	Verbal confirmation given by last operator to exit a location to advise operators handling rear security that no other operators are present within the location.
"Last room"	Verbal notification that an operator (or cell) has reached and cleared the last room in the direction being traveled. Often used during rapid deployments and rapid team movement when the layout is unknown or unclear.
LCC	Last cover and concealment on an approach of an objective.
Less lethal	Use of tools or police dog where the force is less likely to result in death or serious injury than force commonly considered deadly.
Light discipline	Eliminating or minimizing the use of lights to allow for undetected movement within a location.
Light-sound diversionary device	See "Distraction device"
Limited entry	A tactical maneuver normally associated with a warrant service where forward access by an entry team is limited to a measured and partial entry into a target location rather than fully enveloping the location. An alternative to dynamic entry followed by an immediate clearing of a location when armed and/or dangerous suspects are believed to be present. Suspects and other occupants can be detained at the point of the entry and/or be called out from other places within the location to the area controlled by the entry team.
Limited penetration	See "Limited entry"
Linear assaults	A planned assault to clear a linear-shaped confined space conveyance or elongated area such as a bus, train, subway, airplane or close-quarter hallways. See also "Tubular Assault"

Link up points	Locations within a containment area that provide for visual observations between operators and/or the team leader during a clearance operation.
Long cover	Area of cover responsibility down a hallway or tubular structure. A verbal notification ("I've got long"") meaning operator holds the end of a hallway or extended security during tubular or linear assaults.
Long line	A lengthy rope or nylon line secured to the K9 that limits penetration by the dog into a search area and controls movement of the dog (generally 30 to 40 feet in length).
Long rifle team	One team of two operators functioning as sniper and spotter. Also known as a "Sniper team"
Low light/smoke clearing	Operate safely in a vision obscured environment.
M	
Malfunction drill	An immediate action drill in which a procedure is implemented to clear a weapon stoppage.
Mechanical breaching	Use of hand held tools designed for breaching.
Mirroring	Use of a mirror while covertly observing and clearing a location or item of interest, including attics, to minimize exposure risk.
Mission planning	Properly plan for a tactical mission incorporating tactical priorities and techniques.
Mobile Field Force / MFF	The formations and techniques involved in MFF operations. A rapid response detail, highly mobile and capable of a variety of missions including crowd dispersal and mass arrests/bookings.
Modified button hook	A combination of the "button hook" and "criss cross" as an entry maneuver for two operators with first operator executing a "button hook" at the door followed by the second operator crossing to the opposite side of the door for entry.
Moosemuss	Acronym for the "Nine Tactical Principles" used during operational planning; Manuever, Objective, Offensive, Security, Economy of force, Mass, Unity of command, Simplicity, and Surprise.
"Move"	Verbal acknowledgement to operator requesting to move (see "Moving") that it is safe to do so and coverage is being provided.
"Moving"	Verbal notification from one operator to other operators that the operator intends to move.
N	
NFDD	Noise Flash Diversionary Device. A device creating a bright flash and loud report designed to temporarily divert the attention of persons in the immediate vicinity, giving tactical teams a window of opportunity to exploit to their advantage. See also "Distraction device"
Noise discipline	Eliminating or minimizing noise by operators to allow for undetected movement within a location. Ensuring each operator and assigned gear are rigged for silence during methodical searches.
No-knock operation	Any tactical operation in which law enforcement officers have been legally exempted from the usual requirements of knocking, identifying themselves and demanding entry. Circumstances and justifications must be documented.
Non-compliant	Any person not following police orders, including demonstrators, suspects, and resistant arrestees.
Non-compliant arrests	Perform as part of an arrest team encountering non-compliant persons.
NVG / NVD / NOD	Night vision goggle; night vision device; night observation device.

NV ops	Training and equipment for use of night vision devices during tactical operations
O	
Observer	See "Spotter"
OC	Oleoresin Capsicum (OC) is an inflammatory agent that is derived from the cayenne pepper. Produces a burning sensation when it contacts the eyes and skin. May cause the eyes to close involuntarily and may produce inflammation of the mucus membranes in the nose and esophagus.
"Officer down"	Verbal reference signifying an injured operator unable to move or continue operation.
Officer down rescue	Operators perform a standardized officer rescue.
OODA Loop	Decision making model that allows officers to prepare general tactics for commonly encountered situations as well as specific tactics when detailed circumstances are known ahead of time; Observe, Orient, Decide, Act.
Open area movement	Techniques and tactics used while traversing open areas safely and without cover in a fire zone.
Operational briefing	See "Briefing"
Operational guidelines	Serves as a training guide to aid operators in building a base of tactical knowledge which will provide them with options during actual operations.
Operational manual	Provides operational guidance in the administration and performance of a tactical team and issues specific to the team and its operations. It is not intended as a substitute to the agency policy manual and is subordinate to that manual should there be a conflict.
Operational plan	Any scheme, strategy or method, written or unwritten, which seeks to achieve an acceptable end state by focusing efforts, resolving conflicts, distributing power, allocating resources and affixing responsibility to members of the organization assigned to handle it. Generally identified as the written document for the planned deployment of a team or group of officers for the execution of an arrest and/or search warrant, deployment, or high risk operation that includes accessing the threats and risk of the operation with respect to tactics and techniques to be considered and used to accomplish the goal of the mission. Lists all personnel involved in operation and contingencies. Following an unplanned or spontaneous operation or callout, an operational plan is often recommended to be developed afterward to serve as a record of the incident.
Operator	Law enforcement officer assigned to a tactical team who has completed required (or pending) certification and/or basic SWAT school. Also known as "team member" and "tactical operator"
Operator identification	When necessary and required by policy and mission, appropriate insignias, patches, badges and/or agency markings clearly visible on the operator's vest, raid jacket, uniform and/or headgear to readily identify the operator visually to all persons within a target area or other location during an operation to eliminate any doubt as to the identification and authority of that operator. Identification markings may also apply to, but not limited to, vehicles, police dogs, shields, and ballistic blankets.

Opposite threat	Team movement fast or slow wherein each team member behind the scout ("point") covers a different arc of the 360 degree threat zone to provide coverage for "opposite threat." A fluid movement, not absolutely predetermined, and usually based upon the layout of the location to be searched.
Ops	Abbreviation for "Operations"
Outer perimeter	A boundary normally maintained by patrol units to prevent unauthorized personnel from entering into a critical incident and/or inner perimeter.
P	
Pain compliance	Tactics, techniques and munitions designed to gain compliance by the appliance of pain, but that typically do not cause serious physical injury.
Parameters	Established by tactical commander or team leader to define specific geographic boundaries within a designated perimeter wherein a suspect/s is allowed access prior to initiating available use of force options. In the absence of specific parameter orders, operators will rely on the standard use of force policy and contain the suspect's movement to the inner perimeter.
Partner tap up	A physical contact initiated by the second operator in a two-man cell ("partners") to notify the first operator the second operator is ready to accompany the first operator for entry into a room. Can be supplemented with a verbal command. Methods vary; shoulder tap(s), forearm tap(s), forearm squeeze, back-quad squeeze, shoulder squeeze, butt-cheek squeeze.
PBIED	Personnel Borne Improvised Explosive Devise
Performance standards	Levels of performance required for planning and carrying out missions or tasks, used to evaluate individual and team performance, serve as a guide for evaluating a training session and as a basis for debriefing an operation. See also "Standard"
Perimeter	A designated boundary maintained and controlled by law enforcement personnel to prevent unauthorized persons from entering into or exiting from an operational area. See also "Inner perimeter" and "Outer perimeter"
Perimeter unit	Patrol personnel or tactical operators responsible for containment of target location. Can be an intelligence source. May contain specialty teams; arrest/rescue team, K9 teams, chemical agent team, phone insertion team.
Personal Protection Detail	Perform duties associated with providing protection to dignitaries, VIP's, witnesses, or other protectees
PFQ	Physical Fitness Qualification
Pick	Manual tool used to breach doors.
Point / Point man	Lead operator in a lineup during a team movement. Position may be rotated during an operation.
Point of relinquished authority	When the Incident Commander / Tactical Commander has authorized a tactical action, and that action is initiated, they relinquish tactical decision making authority in regards to the action to the team leader responsible for leading and accomplishing the action.
Pole	Collapsible or stationary pole used during covert clearing to open doors and keep doors open. Also known as "Painter's pole"

Pole camera	Camera attached to collapsible or stationary pole. Usually used to clear attic spaces or around corners. See also "Search Cam"
Pole mirror	A mirror on a pole to assist in clearing an attic, basement, cellar, and crawlspace access prior to entry by an operator. Also can be used to view into window and door openings.
Porting	See "Window porting"
Post / "Post" / Posting	A tactical position taken by an operator at a door or passage way to cover movement of other operators. The position is held until rescinded by another operator or no longer necessary to provide protection. Also used as a verbal command or notification for same positioning.
PPE	Personal Protective Equipment (hazardous material suits)
Precision shooting	The ability to consistently shoot a target at a given distance and retain accuracy. Accurately shoot the head of a suspect or similar target that may be wearing body armor or holding a hostage during a dynamic (HRT) entry or training session. Also known as "Head Shot"
Press check	Technique of ensuring a weapon is loaded.
Primary entry	Primary location that team plans to make entry into location.
Primary sweep	The clearing responsibilities of a location given to operators to search for people with an emphasis on the areas where people normally live and are located (standing, sitting, lying).
Priority of Life (NTOA)	An explanation of the team's philosophy of life priority during incidents for tactical planning processes, e.g., hostages, officers, suspects. (Source: NTOA)
Priority of shot	The first operator (point man) is the operator with first opportunity to engage a suspect down range or shoot ("priority of shot") when team is moving linear in single file lineup.
Prioritization of Human Life	The ability to recognize previously established priorities that apply to human life during tactical operations and deployments (e.g., 1. Hostages, 2. Civilians, 3. Law enforcement personnel, 4. Suspects) See also "Safety Priorities"
Probe	Examine thoroughly and closely; an exploratory action made before entering a unknown area or room.
Proficiency testing	Annual process conducted in conjunction with comprehensive training plan to test and evaluate operators on identified individual and team skills and techniques through a combination of written/oral testing and practical application. Recommended as competition-based for morale/enthusiasm with remediation provided as needed. See also "Comprehensive training plan"
Push	Method by where operators "bump up" their positions through an area instead of "leap frogging".
R	
Rally point / "Rally point"	The verbal order to meet at and designation of a specific or predetermined location for operators to meet during an operation outside the primary target location when ordered to do so. Often designated during a briefing as a withdrawal or retreat point. Also known as "Rally"
Ram	Manual tool used to breach doors. Also known as "battering ram"

Rapid deployment	The immediate deployment of law enforcement resources to life threatening situations where the delay in such deployment could result in death and/or great bodily harm to persons; generally accomplished by using "rapid team movement" under the direction of a team leader
Rapid team movement	Dynamic movement as part of a team toward objective while providing 360-degree cover while passing low risk threats.
React Team	A team of operators assigned to rapidly deploy to a developing tactical situation in order to provide SWAT capabilities and tactics. Also known as "Immediate reaction team:
Read and react	Tactic involves non-verbal communication during a dynamic or covert movement where an operator "reads" the action and movement of a forward-moving operator(s) and determines the appropriate "reaction" accordingly. Also known as "Initiative-based tactics"
Rear guard	Operator(s) responsible for rear security of tactical team. Also known as "Cover 6" (covering 6 o'clock position)
Reconnaissance	See "Scouting mission"
"Red"	Verbal signal used to communicate to other operators that you are unable to shoot your weapon due to reloading, malfunction or other circumstance. Also known as "Alpha" (See also "Green")
Reloading drill	A procedure in which a weapon is quickly reloaded in a simulated tactical situation.
Reverse Bounding Overwatch	See "Bounding Overwatch"
Rip-and-ram	Manual hand-held breaching tool used to forcibly open security doors or screens.
Risk assessment	The process of evaluating and determining the presence of any or all potential hazards or dangerous conditions to law enforcement personnel that may be present or may occur during an operation to determine the appropriate risk level of that pending operation.
Robot	A mechanical devise, remotely controlled, that is self-propelled, utilized as an observation tool and equipped with specialty devices to perform missions and obtain information while limiting the risk of exposure to tactical operators.
Roll call	Communicating verbally or via radio the current status of each operator. Also known as "Count and condition"
Room entry	Enter room or series of rooms, with a partner, utilizing proper entry and clearing techniques.
Room exit	Exit a room after giving proper visual and/or verbal notification.
Rules of engagement	Tactical language/orders delineating rules of engagement for tactical operators. Also known as "use of force policy"
Rural movement	Move undetected within rural or open area to a final shooting position or staging area.
Rural operation	Tactical operation conducted in a rural area. Also known as "Rural Ops"

Ruse	An action or plan which is intended to deceive someone. Often used to lure a suspect outside a location in a secure and controlled setting for the purposes of arrest or neutralization. An alternative to dynamic entry followed by an immediate clearing of a location when armed and/or dangerous suspects are believed to be present.
S	
Safe room	A room or area which is easily defended and is used to safeguard a dignitary or hostages during tactical operations.
Safety officer	Designated officer(s), upon completion of approved safety course, who understands and can identify those factors that may create unsafe training scenarios and will take appropriate action if such factors exist when assigned as "safety officer" to scheduled, non-range tactical training that involves the use of firearms, including the use of blanks, Simunition, less lethal munitions, breaching munitions, and movements in a live-fire house. Additional training may include, but are not limited to, role-play scenarios, distraction devices, K9 interaction, defensive tactics, and rappelling.
Safety guidelines	Serve as a guide for ensuring a safe atmosphere within which maximum training benefit can be realized when conducting realistic tactical (SWAT) training where operators often engage in training activities such as the use of Simunition, distraction devices, chemical agents, shooting-on-the-move, live fire exercises, defensive tactics, K9 interaction, rappelling, etc.
Safety Priorities	An established policy of priorities in regards to considerations of health and the well-being of all persons involved within an operations in determining a course of action. Typically stated that the life of a suspect will not take precedence over the life of hostages, innocent persons/citizens or law enforcement officers. See also "Prioritization of Human Life" and "Priority of Life"
Scout	Generally designated as first operator in the primary cell or lineup of entry team during tactical movements primarily responsible for reconnaissance and assisting in formulating tactical plans. May also serve as "Point" or "Point man" during an operation.
Scouting mission	The systematic observation and documentation of the physical characteristics of an objective and the surrounding area usually conducted by scout, backup and assistants as necessary. Process of gaining intelligence on a target location, to include overview, exterior layout and interior layout. View a location and accurately assess threats, suspect resources, entry points, avenues of egress and ingress, rally points, etc. Also known as "Site Survey," "Recon" and "Reconnaissance"
Scouting report	Report provided to team leader and/or Tactical Commander by scout of the scouting mission.
Search Cam	A night vision fiber optic tool used to clear around corners, into rooms and attics, before deployment of operators. See also "Pole camera"
Search - Covert	Searching and securing of location and persons within the location covertly. See "Covert clearing"
Search - Dynamic	Searching and securing of location and persons within the location rapidly. See "Dynamic movement"

Search warrant checklist	A checklist-style document to ensure that all arrest and search warrant service operations have been thoroughly prepared and reviewed for accuracy and risk level prior to service. It should also include a "risk assessment" (or risk matrix) with a list of risk criteria to evaluate and determine threat level and the need for a tactical team to serve the warrant.
"Secondary"	Command usually given by team leader to abort primary entry point and proceed to secondary entry.
Secondary entry	Alternate entry point into a location in case primary entry point is not used.
Secondary Firing Position	A pre-designated firing position that is prepared in the close vicinity of a "Final Firing Position" that the sniper team can displace to it and retain the same ability to observe and deliver precision fire on the same target. See also "Final Firing Position" and "Alternate Firing Position"
Secondary sweep	The clearing responsibilities of a location given to operators to search for people with an emphasis on the areas where people might be located if given an opportunity to conceal themselves.
Sector of fire	An assignment which defines the limits within which a weapon is allowed to be fired. Not to be confused with a "field of fire" which is dependent only upon the characteristics of the weapon and terrain. See also "Field of fire"
"Set corridor"	Verbal order by team leaders for available operators to establish security via a simulated hallway to facilitate extraction of hostages, suspects or other operators.
Shelter in place	Providing protection to hostage or victim where they are initially located.
Shielded rescue	Using a shield to safely maneuver as part of a team to rescue a downed officer/citizen.
Shoot house	Live fire training structure or location.
"Shots fired"	Term used on radio to communicate when shots are fired during operation by any involved personnel.
Shots fired communications	Concise radio communications with Command Post and other involved personnel that relay critical information about shots fired and by whom during an entry.
Simuntion®	A trademark for training ammunition and encompasses many types of training rounds and marking cartridges. Simunition rounds are designed to be fired through police service weapons requiring slight modification to the weapon to ensure that normal service rounds cannot be fired during training and to simulate full recoil with reduced-pressure/reduced-velocity rounds for more realistic training.
Site survey	A procedure used during personal protection details which employs a physical examination of a site in which the protectee will be present.
Situational awareness	A commander's complete understanding of the significance and relationships of every facet of an operation. Situational assessment includes not only factors such as the intentions and capabilities of an adversary, but other influences such as terrain, weather, and lighting conditions. Also important to all other personnel involved in high-risk and/or complex assignments with severe time constraints.
Skid drop	A vertical insertion technique in which team members ride on the skids of a helicopter and step off while the helicopter is hovering.
SKIDDS	Acronym for "SWAT & K9 Interacting During Deployment School" but also includes a routine reference to scheduled training with K9 teams and tactical team as well as "hands-on" dog handling by tactical team members. "SKIDD" is sometimes used to describe a K9 team clearing a location.

Slicing-the-pie	A tactical maneuver for searching around corners and obstacles, normally done covertly, designed to minimize exposure around cover by angular acquisition of an area and maximize the tactical advantage for the operator. Ideally enables the operator to see the suspect (or a part of the suspect) before the suspect observes the operator. Also known as "Pie-Slice Technique" and the "Israeli 7-Step"
Slow-and-deliberate	Movement that is slow and deliberate, similar to covert, but not necessarily quiet like stealth.
SMEAC	Acronym used for operational planning; Situation, Mission, Execution, Administration/Logistics, and Command/Signal.
Span of control	A pre-determined or estimated number of operators that can be effectively managed and supervised by one team leader during an operation.
Split / "Split"	Tactical maneuver and/or command to execute the movement by a two-man cell first in a lineup to split cover responsibilities as they approach or have arrived at opposing open doorways or hallways to temporarily provide cover simultaneously while they await additional operators to form new two-man cells for subsequent entries.
Snap & hold	Tactical movement whereby an operator exerts control and covers around an uncleared corner.
Sniper	A highly-trained operator capable of delivering precision fire with a rifle. Operator with long rifle capability; long rifle marksman.
Sniper hides	Concealed shooting position within various terrain and environments.
Sniper-initiated assault	The tactic of initiating a coordinated assault on a building or vehicle immediately after the sniper takes a dedicated pre-planned or spontaneous precision shot.
Sniper situation	The active firing upon citizens and/or police by a stationary armed suspect.
Spotter	Operator deployed with sniper to provide designated duties and usually trained as a sniper also.
Spotter duties	Provides cover/security, observation assistance, target acquisition and radio communications for sniper.
Stack / Stacked	Two operators (or more) form a single file lineup parallel to the outside wall of a location to be entered.
Stage / Staged	Operators take positions on opposite sides of an entry point prior to making an entry.
Stairway clearing	Safely move and clear a stairway, covering all areas of threat, up and down.
Standard	Something established for use of a rule or basis of comparison In measuring or judging capacity, quantity, content, extent, value, quality, etc., a level of excellence, attainment, etc. regarded as a measure of adequacy. Refers to the level of proficiency with which the team completes its mission. All standards will refer to the minimum level of proficiency required to safely and effectively complete the team's assignments.
Standard Operating Procedures / SOP's	Formal policies that standardize methods and routines within an agency according to established procedures. Provide an ability to quickly and easily incorporate complex functions without extensive elaboration.
Static rappel	Any rappel which uses a fixed anchor point as opposed to a helicopter.
Stealth / stealth movement	See "Covert clearing"

Strategy	The science and art of employing all available forces in as effective a manner as possible to achieve a successful resolution.
Stress fire	Ability to accurately place shots after physical exertion, on difficult targets, in compressed time frames during training.
String of fire	A sequence in which a number of shooters complete a shooting assignment from one position, or one shooter completes an assignment from a number of positions or with more than one weapon. Also known as a "string"
Stronghold	A location or area where the suspect and/or police have established control.
Surrender commands	Recite standardized instructions to suspect while preparing the suspect for an arrest.
Surround-and-callout	Tactics normally associated with a warrant service used to surround and establish containment of a target location before contact with occupants to facilitate a subsequent callout of those occupants in a controlled manner to a secured and safe area. An alternative to dynamic entry followed by an immediate clearing of a location when armed and/or dangerous suspects are believed to be present.
Surveillance	Close (and usually clandestine) observation of a specific location or people. Recommended to be conducted in advance for a location prior to a warrant service or other deployment by a tactical team to provide additional and updated intelligence.
SWAT	Acronym for Special Weapons and Tactics team. A designated law enforcement team, whose members are recruited, selected, trained, equipped and assigned to resolve critical incidents involving a threat to public safety which would otherwise exceed the capabilities of traditional law enforcement first responders and/or investigative units. Also known as Special Enforcement Team (SET), Special Response Team (SRT), and Emergency Response Team (ERT).
SWAT K9 team	See "K9 team"
SWAT Team Purpose	Primary purpose is to provide a systematic approach to saving lives in accordance with the priorities of life and specific standards established in concert with the totality of circumstances presented. (Source: NTOA)
T	
Tactical Commander	The designated individual responsible for the operations and deployment of a tactical team.
Tactical debrief	See "Debrief / Debriefing"
Tactical engagement orders	Tactical language/orders delineating when deadly force can be used by snipers and long rifle teams if not previously covered within standard "use of force" policy.
Tactical intelligence	Raw data processed into useful information to develop and implement an operational plan.
Tactical liaison	A member of a tactical team designated as a conduit of information between a negotiation team and the tactical team.
Tactical out	Physically removing a K9 from a bite/apprehension. Also known as "strong out"
Tactics	Maneuvering for advantageous position. Methods and concepts used to accomplish particular missions.
Target acquisition drill	A procedure in which a shooter is required to quickly acquire a target and take it under fire.

Target identification	Accurately identify the person (or target) and assess the threat posed by that same person before initiating further action.
Target identification drill	A procedure in which an operator is required to identify a particular target from multiple targets and take it under fire. Also known as "Target discrimination"
Tactical Medics	Medically-trained operators or tactically-trained medical personnel who are trained to conduct life-saving measures and evacuations in a tactical situation.
Team assessment	Independent assessment, evaluation or audit of a tactical team to address potential civil liability, reduce the risks associated with operations, and ensure the team is operating within currents standards. Should include, but not limited to, a review of policies, procedures, operations, supervision, training, litigation, use of force, documentation, discipline, and standards/certifications.
Team Leader	Responsible for the tactics and deployment of the team.
TEMS	Tactical Emergency Medical Support
Terminology	Recite definitions for commonly used verbal tactical (SWAT) terms and visual hand signs.
Threat assessment	See "Risk assessment"
Threat assessment drill	An immediate action drill in which an operator is simultaneously confronted by multiple threats and must remove them in the order of greatest danger first.
Threat discrimination	See "Target identification"
Thresh-hold assessment	Tactically "quick scan" clearing a room from outside of a doorway. Also known as "Thresh-hold evaluation"
Throw phone	Phone (or other communication device) designed to be thrown into location and used by negotiators to make contact and negotiate with persons (e.g., suspects, victims, hostages) within a contained perimeter.
Throw phone delivery	Deliver a throw phone (or other communication device) for negotiators into a location while minimizing exposure and damage to equipment.
Trailer / "Trailer"	Operator assigned to accompany entry team into location, or stages directly outside the entry point, but not initially assigned a specific duty or task during operation to enable rapid respond during the deployment to location or assignment when and where needed. "Trailer" or "Trailer up" is common command requesting immediate response by the designated Trailer(s).
Train	A linear lineup of operators with a team leader and cover operator(s) offset that are deployed for a "linear assault" and/or rapid deployment.
Train assault	Perform duties associated with a hostage rescue aboard a stationary train. See also "Linear Assault"
Training documentation	A comprehensive record of all individual and team training, including, but not limited to, the names of the personnel in attendance, date/duration of training, instructors(s), location, and the subject matter. Can incorporate overview of the training to include lessons learned for future training endeavors.
Transition / Transitioning	The changing from a long gun to a side arm (or vice versa) in times of need. Switching from a strong-hand shooting platform/position to a support-hand platform/position.

Transition drill	An immediate action drill in which the operator transitions and relies on his secondary weapon when the primary weapon is disabled.
Tubular assault	Clearing of a "tubular" structure such as an airplane, train or bus. See also "Linear Assault"
U	
Urban operations	Tactical operation conducted in a town, village or city. Movement within and around buildings or structures associated with a community.
Use of another's rifle	Use of long rifle sighted to another operator while completing qualifications and standards.
Use of light	Use of discipline in operating a light source while at risk during clearing.
V	
VBIED	Vehicle Borne Improvised Explosive Device
Vehicle assault	Perform duties associated with approaching an armed suspect contained within a stationary vehicle (e.g., car, cargo van, minivan, passenger van, pickup truck). Also known as "High Risk Vehicle Takedown"
Verbal commands	Recite standardized initial commands to a suspect when encountered during an entry or encounter.
Verbal out	Verbal command to K9 to release from bite.
VIP Protection	See "Personal Protection Detail"
W	
Wallbanger™	A tactical utility pole system that can be extended to different lengths and angles. It has several implements that can be attached to the end of the pole in order to accomplish 1) Single or Double command initiated bang pole utilizing thermal tube and pin gun technology, 2) Break and Rake feature that can also remotely deliver OC fog formulation into an objective and 3) DoorKey that can breach typical residential and commercial doors with the use of the over-pressure created from one or two flash-bangs.
Water immersion training	See "Drownproofing"
Warehouse ops	The utilization of an undercover facility specifically designed for tactical takedowns of suspects. An alternative to dynamic entry followed by an immediate clearing of a location when armed and/or dangerous suspects are believed to be present.
Warrant planning	An operational plan for the execution of an arrest and/or search warrant that includes accessing the threats and risk of the operation with respect to tactics and techniques to be considered and used to accomplish the goal of the mission.
Warrant service	Performing or carrying out an arrest or search warrant on a location.
Window covering	Observe and cover a window for interior movement.
Window entry	Rapidly and safely enter a building via a window with weapon and wearing full tactical (SWAT) gear after completion of window porting. Also see "Window porting"
Window of opportunity	A set of favorable circumstances that offer an advantage during a tactical operation if appropriately exploited.

Window of vulnerability	Occurs when conditions exist that place a tactical team at a disadvantage. Nearly inseparable with certain activities, especially those involving movement of some kind, such as movements to contact, such as entries and assaults. Because these conditions are difficult to completely eliminate, efforts are usually directed toward diminishing their duration or reducing their effects.
Window porting	Breaching and/or removal of all obstructions/barriers within a window and its frame and/or similar opening to allow operators to enter location through window, deploy distraction device and/or safely observe and cover a room's interior and any occupants from outside the location after porting the window. Also known as "Port and Cover" and "Porting"
WMD	Weapons of Mass Destruction

Testimony of Wiley Price
"Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies"
Committee on Homeland Security and Governmental Affairs
September 9, 2014

Good morning. My name is Wiley Price, I'm the staff photojournalist at the St. Louis American newspaper in St. Louis, Mo. I'd like the thank Sen. McCaskill for inviting me to share my recent experiences in Ferguson, Mo. at this Senate hearing. The shooting death of Michael Brown, an unarmed teen ager by a Ferguson, Mo. police officer on Sat. Aug. 9, 2014 may very well become a turning point in moving us forward in changing the way policing is conducted in this country, especially in neighborhoods of people of color. First, mandatory body cameras for officers patrolling our streets to ensure accountability for the way citizens are addressed during routine stops. This policy would allow us to examine the methods police use during these stops. There are special challenges to policing in urban areas where there are strong feelings often negative about the conduct and role of the police. The uprisings in Ferguson are an example of inept and insensitive police behavior at the highest decision making level. It raises the question of how much force is appropriate to control a group of angry protesters armed initially with rocks, bottles, and later Molotov cocktails. What police used to defend themselves at the early stage of the confrontation was a high level of military weaponry not often seen on city streets in the United Sates. What we saw were large military style weapons including armoured vehicles normally seen on the national news during conflicts in Middle East war zones. Most Americans would not be so shocked if this were a response to an overt terrorist attack on an American city, but not during a spontaneous protest over the shooting of a young African American male by a white police officer while walking in the street in the middle of the day. Most believe that if we can spend this kind of money on weapons why not use those same resources to better train them for community policing and train them on how to best resolve conflict. If heavy military weapons are to be deployed they should be in the hands of trained officers subject to competent high level police command. This show of military might in Ferguson by the police only escalated the understandably strong feelings felt by the very people police are sworn to serve and protect. The days of unrest were followed by growing protest from people who already felt disrespected, and frustrated by local law enforcement on a daily basis.

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TESTIMONY OF HILARY O. SHELTON

Director, NAACP Washington Bureau &
Senior Vice President for Policy and Advocacy

Before the Senate Committee on
Homeland Security and Governmental Affairs

On

"Oversight of Federal Programs for Equipping State and Local Law Enforcement"

Tuesday, September 9, 2014

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Good morning, Senator Carper, Senator Coburn, Senator McCaskill, and esteemed members of this panel. Thank you so much for inviting me here today to testify and for soliciting the input of the NAACP on this very important topic.

Founded more than 105 years ago, in February of 1909, the National Association for the Advancement of Colored People, the NAACP, is our nation's oldest, largest, and most widely-recognized grassroots-based civil rights organization. We currently have more than 1,200 active membership units across the nation, with members in every one of the 50 states.

My name is Hilary Shelton, and I am the Director of the NAACP Washington Bureau and the Senior Vice President for Policy and Advocacy. I have been the Director of the NAACP Washington Bureau, our Association's federal legislative and political advocacy arm, for over 17 years.

Let me be clear: The NAACP deeply appreciates the needs of local governments, including law enforcement agencies, to secure equipment as cost-effectively as possible. The NAACP has supported increased resources and personnel for local police departments. Over the last couple of decades, given shrinking state and federal budgets and oftentimes increasing demands, the communities represented and served by the NAACP seem to have suffered disproportionately from reduced State and local funding. Thus, we commend and would encourage the transfer of functioning items from the federal government to state and local entities, especially non-lethal tools including clothing, construction equipment, fire control equipment, and medical supplies among other items.

Our concerns, and they are indeed deeply-held concerns which we have harbored and expressed for many years now, are when military equipment, weapons of war which are commonly used to fight an avowed enemy of our country, are transferred to local domestic law enforcement agencies with little or no oversight, training, or specific and clear integration when and how they are used in civilian circumstances. They have no place in our cities, towns, suburbs, streets or our communities.

The tragic killing of Michael Brown in Ferguson, Missouri, the ensuing protests and the resulting shows of force by local law enforcement brought the attention of many to a heretofore little known policy by which the federal government transfers excess military equipment from the Department of Defense to state and local law enforcement agencies. The primary program through which this is done is the Department of Defense "1033" program, but there are programs within the U.S. Department of Justice and the federal Department of Homeland Security which also contribute to the militarization of local law enforcement. While many Americans were rightfully upset by the apparent militarization of a local law enforcement agency, it is a sad commentary on race in America that this is not a new phenomenon to most Americans of color.

HISTORY

One of the key tenets of American democracy has been our national tradition to maintain a distinct separation between federal military force and civilian law enforcement. The primary exception to this rule occurred about 150 years ago when federal troops were used to enforce order during the years immediately after the Civil War, primarily on the Southern states. In 1878, Congress enacted the *Posse Comitatus Act* (18 U.S.C. §1385) to ensure that this practice would come to an end. With a few notable exceptions, this line between the national military and local law enforcement was distinctly retained for over 100 years[1].

Then, in 1989, Congress included provisions in the Department of Defense (DoD) authorization law to greatly expand the role of the DoD in the national "war on drugs." It was in the following Department of Defense Authorization Act, building on this ever-expanding role of the DoD in the "war on drugs," that Congress created a pathway for the DoD to directly transfer excess equipment to federal, state and local law enforcement agencies for use in counter-drug activities. Although the initial program was subject to a sunset date after 5 years, the program was extended in 1992 and then made permanent; expanded to extend priority in property

[1] Else, Daniel H. The Congressional Research Service, "The "1033 Program," Department of Defense Support to Law Enforcement", August 28, 2014

transfers to fight terrorism as well as the "war on drugs"; and renamed the "1033" program in the Department of Defense Authorization Act of 1997.

THE IMPACT OF THE "1033" PROGRAM AND THE PROGRAM TODAY

It is of no surprise to most when I say the "war on drugs" has been predominantly waged against racial and ethnic minorities, and specifically in African Americans communities. Currently, two-thirds of all persons in prison for drug offenses are people of color[2] despite the fact that according to the National Institute on Drug Abuse, 60% of those who sought professional treatment for drug abuse in 2008 were white[3]. Furthermore, 91% of individuals arrested in drug sting operations by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in the past decade have been racial minorities – nearly all black or Hispanic[4].

Given that for nearly a quarter of a decade, since 1989, military equipment has been used by law enforcement agencies to fight "the war on drugs," it should be no surprise, then, that racial and ethnic minorities, especially African Americans, unfortunately, have grown accustomed to seeing weapons of war in our communities, on our streets, and even entering our homes. In June, 2014, the American Civil Liberties Union released an important report entitled, "War Comes Home: The Excessive Militarization of American Policing[5]." In their report, they found that paramilitary styled *Special Weapons And Tactics* squads ("SWAT") teams "were often deployed – unnecessarily and aggressively – to execute search warrants in low level drug investigations...[6]" They went on to find that "Overall, 42 percent of people impacted by a SWAT deployment to execute a search warrant were Black and 12 percent were Latino[7]." They concluded that, "The use of paramilitary weapons and tactics primarily impacted people of color[8]."

Furthermore, Congress authorized the 1033 program to fight the "war on drugs" and to pursue counterterrorism. But data collected by National Public Radio (NPR) and others does not confirm whether either of these public safety goals are, in fact, driving decisions about the current distribution of equipment[9]. Areas with large populations or high crime rates aren't receiving more (or less) than their share of the items[10].

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[2] The Sentencing Project, http://www.sentencingproject.org/template/page.cfm?id=122
[3] http://www.drugabuse.gov/publications/drugfacts/treatment-statistics
[4] Heath, Brad. USA Today, "Investigation: ATF drug stings targeted minorities," July 20, 2014
[5] ACLU Foundation, "War Comes Home: The Excessive Militarization of American Policing," June, 2014.
[6] Ibid, p.31
[7] Ibid., p. 5
[8] Ibid, p. 35
[9] Rezvani, Arezou, Pupovac, Jessica, Eads, David and Fishwer,Tyler, National Public Radio, "MRAPS and Bayonets: What we Know About the Pentagon's 1033 Program" September 2, 2014
[10] Ibid, and Cook, Lindsey, US News & World Report, "Which States Use the 1033 Program More?," August 25, 2014

ADDITIONAL FEDERAL PROGRAMS

In addition to the Department of Defense 1033 program, there exist several other programs which have contributed to the militarization of local law enforcement officials. Specifically, the federal Justice Assistance Grant Program (JAG) and the Edward Byrne Memorial JAG (Byrne) Program within the Department of Justice and the Homeland Security Grant Program at the U.S. Department of Homeland Security, and its two components, the State Homeland Security Program and the Urban Areas Security Initiative provide funding to local law enforcement agencies which lead to their militarization .

JAG money (across both programs), is the primary vehicle for federal support of state and municipal law enforcement. As outlined in the 2013 ACLU report, "The War on Marijuana in Black and White[11]", the JAG program requires departments to account for how they are using any grants received. Thus, local law enforcement agencies are motivated to use "preferred" methods of accountability to secure continuing federal assistance for officer payments, etc. Further, because JAG reporting guidelines list "increased drug-related arrests" as one specific way to document putting the money to good use, departments are incentivized to increase the number of drug arrests each year they receive federal assistance. Given the relatively static level of drug activity, this likely drives increases in low-level drug arrests. Finally, because low-level drug arrests are stunningly racially disproportionate, this means that the JAG grant/reporting system contributes to the racial disparities we see in criminal justice outcomes.

Under the programs operated by the U.S. Department of Homeland Security, grant recipients are required to use at least 25% of their grant funds to pursue the ill-defined "terrorism prevention-related law enforcement activities." By invoking images of war, aggressively funding the inherently flawed "War on Drugs", and creating an overhyped fear of "evil" within our borders, the federal government is justifying, if not promoting, the militarization of local community law enforcement[12].

FERGUSON, MISSOURI

On Saturday, August 9, 2014, an unarmed African American teenager named Michael Brown was shot to death under very disturbing circumstances by a police officer in Ferguson, Missouri. What followed were protest marches and demonstrations by the residents of Ferguson and others, including many from neighboring communities. According to nearly every report, including those by NAACP national staff and Board members who were present, the protests began peacefully. The people were angry, admittedly outraged, but peaceful. They were met

[11] ACLU Foundation, "The War on Marijuana in Black and White," June, 2013
[12] ACLU Foundation, "War Comes Home: The Excessive Militarization of American Policing," June, 2014, pp. 17-18

by local law enforcement agents in warfare type mine-resistant, ambush-protected vehicles (MRAPs) with assault weapons trained on them. As a matter of facts, in at least one televised case, a police officer carrying a military styled assault weapon aimed at local U.S. citizen protesters screaming, "I will F***ing kill you".

According to some reports, upwards of 70 officers decked out not just in riot gear, but in equipment suited for foreign battlefields, took to the streets in an attempt to disperse the largely peaceful demonstrations organized to protest Brown's death[13] also utilizing tear gas, rubber bullets and smoke bombs. CNN commentators compared the televised scene in Ferguson to war scenes in foreign countries.

The resulting impact on the people of Ferguson, and on people throughout America and the world who were watching the events on television and through the internet, is that these citizens were being marginalized, and that their concerns, their anger, and their protests were not being valued or respected by local law enforcement. The fact that the population of Ferguson is over 67% African American has not been lost on many of the protesters nor on the U.S. or international observers.

Washington Post reporter Radley Balko summed it up when he stated, "When you arm police like soldiers and outfit them with military weapons and train them on military tactics and tell them they're fighting a war, whether it's a war on crime or drugs or looters and rioters, they're going to start seeing themselves as soldiers, and seeing the people they serve less as citizens with rights and more as potential threats, and that's what we're seeing[14]."

RECOMMENDATIONS

As I stated earlier, we strongly support the transfer of non-lethal equipment to state and local law enforcement agencies.

The NAACP has long advocated for a change in the paradigm which has driven our criminal justice system. We need to move away from the failed scenario of declaring "war" on the American people, whether it be the "War on Drugs," or a "War on Crime," and law enforcement needs to be trained to stop stereotyping people based on what they look like, the clothes they wear, the color of their skin, and / or the neighborhoods in which they live. Above all, law enforcement at every level, local, state, and federal, should stop perceiving the citizens who they are hired to protect and serve as "the enemy.

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[13] Wing, Nick The Huffington Post, "Actual Military Veterans Say Cops In Ferguson Are Excessively Armed, Untrained Wannabes," August 14, 2014

[14] http://abcnews.go.com/US/ferguson-police-small-army-thousands-police-departments/story?id=24977299

Thus, if the Department of Defense "1033" program is allowed to continue, we would strongly urge that it be restructured to emphasize non-lethal equipment and that the equipment be used not to pursue the flawed "War on Drugs," the "War on Crime," or civilian protest and demonstrations, but rather that it be used to promote the principle that law enforcement is designed to "protect and serve" the citizens who are within their jurisdiction.

The majority of law enforcement officers are hard working, courageous, men and women, whose concern for the safety of those they are charged with protecting and serving is often paramount, even when their own safety is on the line. Yet when you provide anyone with fancy new tools, and without the proper training on how – and when – to use them, it is human nature to want to utilize all equipment at your disposal. This reaction is only exacerbated by a lack of clear internal guidelines and policies.

Thus, the NAACP strongly recommends that all law enforcement agencies, whether they be federal, state, or local, should also develop their own internal policies calling for restraint whenever possible, and that proof of these policies should be a requirement before any equipment transfer or funding is made available. We recommend the adoption of the "use of force" principles incorporated in the "Law Enforcement Trust and Integrity Act", now being readied for introduction in the Congress. We also support a requirement that any law enforcement agency which receives any federal funding or participates in equipment transfer programs such as the DoD "1033" program show proof of annual training of all personnel on the appropriate use of force as well as the anti-racial profiling training as included in the End Racial Profiling Act of 2013, now pending before the U.S. Senate and the House of Representatives (S. 1038 / H.R. 2581).

The NAACP also calls for full transparency and disclosure. Not only should the Department of Defense be required to disclose what equipment they have given, and to whom, but state and local law enforcement agencies should also be required to publically share, on an annual or semi-annual basis, the equipment they have requested, and received, and the intended purpose for that equipment. They should also disclose any and all limitations on the use of the equipment, as well as what training goes along with the acquisition.

Finally, the NAACP would like to strongly advocate for more programs such as the Department of Justice "Community Oriented Policing," or "COPS" program. The COPS program is the office of the U.S. Department of Justice that advances the practice of community policing in America's state, local and tribal law enforcement agencies. COPS does its work principally by sharing information and making grants to police departments around the United States relating to best practices for law enforcement, and provides Problem-Oriented Policing Guides addressing

crime-related problems, and publications composed by subject matter experts within the federal government, academics, and law enforcement leaders. The COPS program offers free publications to local law enforcement agencies on topics ranging from bullying in schools to computer mapping[15]. The COPS program is intended as a way to incentivize better law enforcement practices through community engagement. It remains the primary vehicle by which the federal government rewards innovation and research on police transparency and accountability. The NAACP strongly supports the COPS program, and encourages additional funding for this crucial resource which can be seen as the antithesis to militarization.

SUMMARY

American policing has become increasingly militarized in the last quarter century through the acquisition and use of weapons and tactics designed for war. The lines between federal military force and civil law enforcement are becoming increasingly blurred. Sadly, heretofore, communities of color have borne the brunt of this obfuscation. We need to correct this problem, not just check it, if we are to continue to strive for a democracy under which all Americans can thrive.

History has shown us that nations in which the local authorities regard and treat the citizens they are charged with protecting and serving as "enemies" fail. Thus, on behalf of the NAACP and our members nationwide, I would strongly urge you to take corrective action sooner rather than later. It should never be acceptable for Americans to be considered "collateral damage" at the hands of our professional law enforcement officials. We should not allow any American community or government entity to be considered at "war" with any other.

I thank you again, Chairman Carper, Senator Coburn, Senator McCaskill, and the others who have gathered here for the time and attention you have given to this extremely important issue. I welcome your questions.

[15] http://www.cops.usdoj.gov/default.asp?Item=35

POLITICS
Voters' guide to Mass. primary

OPINION
US the only power that can push for peace

SPORTS
In Rice case, after anothe

Boat owner seeks to clarify record on Tsarnaev capture

By David Abel | GLOBE STAFF OCTOBER 16, 2013

YOON S. BYUN/GLOBE STAFF

David and Beth Henneberry, with the trailer for their new boat, in Watertown.

WATERTOWN — After six months of film producers, book writers, and a legion of tourists trouping to his door, David Henneberry wants to set the record straight and demystify what has become a legend.

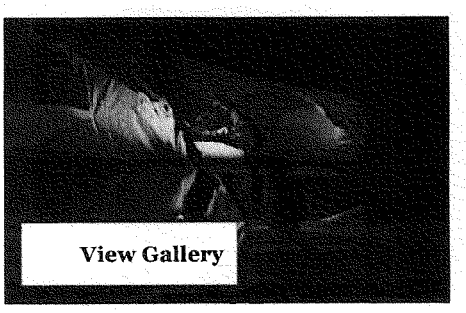
The retired technician was heralded for his bravery following a flurry of initial reports that suggested he found the Marathon bombing suspect hiding in his backyard after discovering dabs of blood on the side of his dry-docked boat. Henneberry said the truth is he would never have approached his shrink-wrapped Seabird if he had an inkling the alleged terrorist was inside.

CONTINUE READING BELOW ▼

"If I had seen blood out there, I wouldn't have investigated it," he said in one of the few interviews he has given in recent months. "I'm not crazy."

Here's what he said really happened on that Friday, four days after the attacks:

As he and more than a million others in the area waited inside their homes while police scoured Watertown for Dzhokhar Tsarnaev, Henneberry noticed from his back window that some padding he used to protect the hull of his 24-foot boat had fallen to the ground from beneath the shrink-wrap. It was a windy day, so it didn't strike him as suspicious.



Photos: The capture of Tsarnaev

MORE COVERAGE

More Marathon bombing coverage

"But it was driving him nuts," said Beth Henneberry, his wife, who spent the day at home with him. "He wanted to fix it."

So when authorities lifted the lockdown on the evening of April 19, the 66-year-old ambled out his back door and went to repair the buffer. As he did that, he noticed a strap that secured the shrink-wrap to the hull had become loose.

"I said, 'Hmmm. I'm going to check the boat,'" he said.

He grabbed a stepladder and put it beside the boat, which he called Slip Away II. Then he lifted a piece of shrink-wrap that covered a Plexiglas door, allowing him to look inside. He immediately noticed blood splattered on the deck. When he looked near the console, he spotted a body curled in a fetal position, wearing a hoodie and dark shoes.

"I thought, 'Oh my god, he's in there,'" Henneberry said.

He dropped the flap, scrambled down the ladder, and ran into the house.

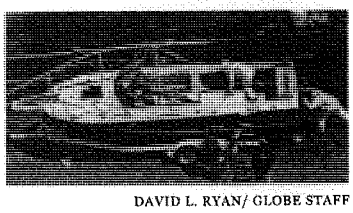
He looked at his wife and said, "He's in the boat! He's in our boat!"

"He was shaken," his wife said. "We were both shaken."

He immediately called 911. The massive police response that followed played out on national television, as the younger Tsarnaev was captured after a burst of gunfire and stun grenades.

Even six months later, the Henneberrys' home remains a stop on the local tourist circuit, attracting an unnerving number of gawkers, and the couple continue to field a steady stream of interview requests from media around the world.

The FBI has intercepted mailed packages to protect them from anyone seeking revenge; and at least one neighbor pestered them to get rid of the boat before the FBI carted it off, hoping its disappearance would dissuade sightseers.



DAVID L. RYAN/ GLOBE STAFF

FBI investigators scoured Henneberry's boat for clues after police had captured Dzhokhar Tsarnaev in Watertown.

On that April evening, the only time he became nervous, he said, was when an officer came to their neighbor's — where the couple had taken refuge — to ask whether he had any gas inside the boat. He told them the tank had about 40 gallons.

"'I guess I'm going to lose the boat,' I thought," he said, recalling the gunfire. "I hope we don't lose the house, or the neighborhood."

Returning home two days later, they found that police and FBI agents had taken over their house, a disturbing yet reassuring presence, they said.

Investigators remained at their house for nine days, and when they left, they took the couple's beloved, now bullet-riddled boat. It will remain in government custody as evidence until the conclusion of the trial and the appeals process for Tsarnaev, who has been accused of planting bombs that killed three people and wounded more than 260 others on Boylston Street.

The government has not offered the couple any financial compensation for their 32-year-old boat; their insurance company gave them only about $1,000.

"We generally don't compensate people for seized items," said Greg Comcowich, an FBI spokesman in Boston.

The Henneberrys, however, aren't complaining.

Like other victims of the Marathon bombings, they have been the beneficiaries of an outpouring of good will.

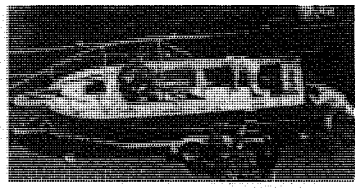
In less than a week after Tsarnaev's capture, a Texas man whom they had never met organized an online campaign that raised more than $50,000 to replace their boat. They have also received thousands of letters, countless calls, many handshakes, and gifts, everything from quilts to candles.

Last month, the couple used the money raised online to buy a 24-foot Rampage Sportsman, which they found on Craigslist and cruised from Marblehead to a mooring on the Charles. Henneberry named the 26-year-old boat, which will require some work, after his wife.

"It was really wonderful what they did for us," he said. "We can't thank them enough. We've come full circle."

Still, not everything has returned to normal for the couple, who have had to adjust to their status as local celebrities.

"It just goes on and on," Beth Henneberry said of the incessant attention. "We just want it to go away."



FILE/DAVID L RYAN/GLOBE STAFF

FBI investigators scoured Henneberry's boat for clues after police had captured Dzhokhar Tsarnaev in Watertown.

Some neighbors, whose homes were also taken over by police and strafed by automatic weapons, are also coping with the lingering impact of what happened here six months ago.

Olga Ciuc, who lives two doors down on Franklin Street, refuses to sleep in her old bedroom, which overlooks their backyard, and remains too afraid to walk her dog at night.

"What happened here was crazy," she said.

Her husband, Dumitru, said he and other neighbors are now more vigilant.

"There's a greater sense of insecurity," he said, showing the bullet holes in the back of their house, in their fence, and in their grill. "You just don't know what's going to happen; you don't know who's a friend and who's an enemy."

Other neighbors said they still get anxious when they hear helicopters or sirens nearby.

Lori, who was afraid to give her last name, said that she, her husband, and their baby moved onto the street just six weeks before it became a landmark. "At least we got to meet our neighbors," she joked.

Robert Goodman was about 30 feet from the second bomb on Boylston Street and had to relive the trauma when all the police surrounded his street. He still flinches when he hears loud noises and said the throng of tourists feels "intrusive."

"Everything has changed," he said.

For the Henneberrys, they're ready to move on from an experience they now call "the event."

They have repaired the sod that was shredded by a robotic vehicle police used to remove the shrink-wrap from their boat, replaced many of the windows that were destroyed, and repaired parts of their stone wall.

The only remnants of what happened in their backyard are a few splintered holes in their wood fence, from the many bullets that seemed to ricochet in every direction that evening.

"We're going to leave the fence like that for posterity," Beth Henneberry said.

They scoff when people call them heroes.

"If anything, we're incidental heroes," he said. "We just did what we should have done."

With that, Henneberry had enough of being interviewed.

"I just want this all to fade away," he said. "I'm not like a rock star who sought publicity. I don't want any more."

David Abel can be reached at dabel@globe.com. Follow him on Twitter @davabel.

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DEPARTMENT OF DEFENSE 1033 PROGRAM

The amount that each state has received from the 1033 Program: 2011-Present

State	Census Est. 2013 Population[1]	Total Number of Items Transferred	DOD Acquisition Cost of Items[II]	Acquisition Cost Per Citizen
Nationwide	319,743,925	398,048	$1,388,926,066.14	$4.34
AK	735,132	255	$849,231.92	$1.16
AL	4,833,722	29,969	$59,074,799.09	$12.22
AR	2,959,373	2,328	$24,995,592.43	$8.45
AZ	6,626,624	24,449	$33,343,175.90	$5.03
CA	38,332,521	41,127	$92,540,238.45	$2.41
CO	5,268,367	7,134	$15,224,323.03	$2.89
CT	3,596,080	1,207	$10,650,295.98	$2.96
DC	646,449	1,600	$4,320,709.46	$6.68
DE	925,749	1,713	$4,157,057.98	$4.49
FL	19,552,860	6,109	$266,118,092.62	$13.61
GA	9,992,167	21,266	$43,878,033.71	$4.39
HI	1,404,054	14	$1,392,208.00	$0.99
IA	3,090,416	801	$11,036,513.75	$3.57
ID	1,612,136	1,298	$6,816,888.82	$4.23
IL	12,882,135	8,543	$43,423,268.90	$3.37
IN	6,570,902	8,619	$29,447,700.25	$4.48
KS	2,893,957	982	$5,195,150.99	$1.80
KY	4,395,295	8,932	$30,118,819.52	$6.85
LA	4,625,470	2,850	$18,157,337.29	$3.93
MA	6,692,824	3,024	$8,864,180.30	$1.32
MD	5,928,814	3,668	$7,372,033.40	$1.24
ME	1,328,302	2,564	$9,096,563.08	$6.85
MI	9,895,622	18,597	$39,760,232.35	$4.02
MN	5,420,380	1,555	$7,384,554.22	$1.36
MO	6,044,171	2,344	$24,299,431.83	$4.02
MS	2,991,207	350	$1,044,251.11	$0.35
MT	1,015,165	357	$2,878,505.85	$2.84
NC	9,848,060	1,778	$8,237,620.37	$0.84
ND	723,393	790	$2,905,106.46	$4.02
NE	1,868,516	807	$7,624,753.81	$4.08
NH	1,323,459	812	$5,038,645.48	$3.81
NJ	8,899,339	4,087	$21,310,982.02	$2.39
NM	2,085,287	2,429	$22,060,355.09	$10.58
NV	2,790,136	1,808	$6,808,930.70	$2.44
NY	19,651,127	1,192	$17,607,351.80	$0.90
OH	11,570,808	19,291	$47,841,560.69	$4.13
OK	3,850,568	7,930	$32,293,014.57	$8.39
OR	3,930,065	2,131	$9,404,075.80	$2.39
PA	12,773,801	26,409	$8,909,920.11	$0.70
PR	3,615,086	1,671	$16,049,812.16	$4.44
RI	1,051,511	3,994	$3,982,840.36	$3.79
SC	4,774,839	9,861	$37,497,472.77	$7.85
SD	844,877	718	$3,112,047.53	$3.68
TN	6,495,978	9,971	$74,126,279.76	$11.41
TX	26,448,193	79,963	$111,912,250.72	$4.23
UT	2,900,872	1,380	$5,378,686.45	$1.85
VA	8,260,405	4,323	$86,678,128.33	$10.49
VT	626,630	111	$1,282,011.01	$2.05
WA	6,971,406	5,170	$21,244,968.02	$3.05
WI	5,742,713	1,909	$22,571,981.37	$3.93
WV	1,854,304	7,457	$8,480,575.98	$4.57
WY	582,658	401	$5,127,504.55	$8.80

1610

Police departments with *fewer* than 10 full-time officers that received MRAPs from 2011-Present:

Law Enforcement Agency	MRAPs Received from 2011-Present	Full-Time Sworn Officers at Each Agency[iii]
OK Payne County Sheriff	2	1
PA Fayette County DAS DTF	1	5
CA Del Rey Oaks Police	1	6
ID Preston Police	1	6
CO Florence Police	1	8
CO Yuma County Sheriff	1	8
ND Stutsman County DTF	1	8
NM Ramah Navajo Police	1	8
WY Big Horn County Sheriff	1	8
CA Saddleback College Police	1	9
IA Buena Vista County Sheriff	1	9
MO Bates County Sheriff	1	9
TX Univ. Texas System Police	1	9

Law enforcement agencies with *fewer* than 1,000 full-time sworn officers that received more than one MRAP from 2011-Present:

Law Enforcement Agency	MRAPs Received from 2011-Present	Full-Time Sworn Officers at Each Agency	Full-Time Officers per MRAP
OK Payne City Sheriff	2	1	0.5
TX Val Verde Sheriff	2	31	15.5
OK Cherokee Nation Marshall Service	2	32	16
MI Saginaw County Sheriff	2	71	35.5
TX Victoria County Sheriff	2	95	47.5
WY Cheyenne Police	2	105	52.5
FL Fort Pierce Police	2	126	63
FL Coral Gables Police	2	184	92
FL St. Lucie County Sheriff	2	259	129.5
AR Little Rock Police	2	520	260
FL Pinellas County Sheriff	2	863	431.5

Total number of MRAPs transferred from 2011-Present per state compared to the total number of MRAPs that the National Guard in each state has:

State	MRAPs Received from 2011-Present	Current Number of MRAPs that the National Guard Has
AL	11	3
AR	19	0
AZ	15	0
CA	42	3
CO	9	0
CT	11	0
FL	45	0
GA	12	0
HI	3	0
IA	13	12
ID	6	18
IL	15	0
IN	13	0
KS	6	0
KY	4	2
LA	19	0
MA	3	0
MD	3	0
ME	3	0
MI	23	0
MN	7	1
MO	20	6
MS	1	0

State	MRAPs Received from 2011-Present	Current Number of MRAPs that the National Guard Has
MT	2	0
NC	5	0
ND	2	0
NE	2	0
NJ	1	0
NM	20	0
NV	5	0
NY	9	0
OH	37	0
OK	30	0
OR	7	0
PA	7	0
SC	19	6
SD	2	0
TN	31	0
TX	73	6
UT	6	3
VA	16	0
VT	1	0
WA	17	0
WI	24	0
WV	1	0
WY	4	0
Nationwide	624	60

Law enforcement agencies that received three times as many 5.56 mm and 7.62mm rifles as they have full-time, sworn officers, or more:

Law Enforcement Agency	DOD Acquisition Cost of Rifles[iv]	Rifles received from 2011-Present	Full-Time Sworn Officers at Each Agency	Rifles Per Full-Time Officer
MA New Braintree	$1,560.00	13	1	13.00
MI Lake Angelus Police	$6,487.00	13	1	13.00
SC Darlington County Sheriff	$272,950.00	500	64	7.81
TX Johnson County Constable PCT 4	$5,542.00	14	2	7.00
CO Mountain View Police	$1,476.00	12	2	6.00
OH South Charleston Police	$2,633.00	6	1	6.00
AR Black River Technical College Police	$10,245.00	35	7	5.00
ID Kamiah Marshal's Office	$3,047.00	9	2	4.50
MI Unadilla WP Police	$1,134.00	9	2	4.50
OK North Enid Police	$1,134.00	9	2	4.50
OH Bethesda Police	$1,996.00	4	1	4.00
OK Tryon Police	$516.00	4	1	4.00
TN Parsons Police	$9,980.00	20	5	4.00
TX Waller County Constable PCT 2	$552.00	4	1	4.00
OH Elmwood PLACE Police	$1,800.00	15	4	3.75
TX Shiner Police	$1,890.00	15	4	3.75
IL Tremont Police	$3,684.00	11	3	3.67
OH Edgerton Police	$1,320.00	11	3	3.67
IL Hardin County Sheriff	$2,392.00	7	2	3.50
KY Spencer County Sheriff	$8,674.00	21	6	3.50
WY Labarge Police	$876.00	7	2	3.50
AL Washington County Sheriff	$6,317.00	17	5	3.40
OH Walbridge Police	$5,404.00	13	4	3.25
AR Lavaca Police	$1,116.00	9	3	3.00
AR Ravenden Police	$757.00	3	1	3.00
AR Saint Charles Police	$378.00	3	1	3.00
IA Sidney Police	$1,497.00	3	1	3.00
IL Aroma Park Police	$414.00	3	1	3.00
IL Odin Police	$414.00	3	1	3.00
IL Saint Anne Police	$3,408.00	9	3	3.00
KY Todd County Sheriff	$756.00	6	2	3.00
MN Eagle Lake Police	$1,478.00	6	2	3.00
MN Elmore Police	$1,118.00	3	1	3.00
MN Royalton Police	$360.00	3	1	3.00
MO Doolittle Police	$1,497.00	3	1	3.00
OH Millersport Police	$378.00	3	1	3.00
OH Rio Grande Police	$360.00	3	1	3.00
OK Depew Police	$396.00	3	1	3.00
OK Medicine Park Police	$1,082.00	6	2	3.00
OK Tupelo Police	$1,497.00	3	1	3.00

[i] The U.S. Census estimated population for 2013 in each state.

[ii] The amount of money the Department of Defense originally spent to purchase the items.

[iii] Based on the most recent Bureau of Justice Statistics Census of State and Local Law Enforcement Agencies available.

[iv] The amount of money the Department of Defense originally spent to purchase the rifles.

Response to United States Senate Committee on Homeland Security and Governmental Affairs August 27, 2014, Request for Information and Documents

Question Five:

Pursuant to 42 USC 14142, BJS created the Police Public Contact Survey (PPCS), which is a supplement to the National Crime Victimization Survey that has been conducted every three years since 1996. In the PPCS, a nationally-representative sample of persons 16 and older are interviewed about contacts with the police, both voluntary contacts (such as a call for service or to report a crime) and traffic and street stops. The survey obtains data on respondents' perceptions of police behavior during the encounters. Links to the two most recent reports from the data collected during 2011 are:

http://www.bjs.gov/content/pub/pdf/pbtss11.pdf
http://www.bjs.gov/content/pub/pdf/rpa11.pdf

Every three years with one or two exceptions, BJS collects data on police agencies through the Law Enforcement Management and Administrative Statistics (LEMAS) program. In the LEMAS in recent years, BJS collected data on lethal use of policies and the number of formal citizen complaints regarding use of force and the disposition of these complaints. The LEMAS data are collected in different years from the PPCS data.

Annually since 2003 through 2011, BJS collected data on arrest-related deaths, including homicides by law enforcement officers. BJS published at least two reports on these data, available at the links below; BJS recently undertook a major effort to assess the quality of these data and the results of the data quality effort will also lead to recommendations about how to improve the program.

-- http://www.bjs.gov/content/pub/pdf/ardus05.pdf
-- http://www.bjs.gov/content/pub/pdf/ard0309st.pdf

Annually, the FBI collects detailed data on homicides through its Supplementary Homicide Reports and the data can be used to report on homicides by law enforcement officers, including those that are determined to be justifiable and those that are not.

The Civil Rights Division's Special Litigation Section is charged with enforcing the police misconduct provisions of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. Using that authority, the Section has investigated dozens of law enforcement agencies nationwide to review whether their practices violate the Constitution or federal law. If we determine that the agency is engaged in a pattern or practice of violating people's constitutional or federal rights, our statutory mandate authorizes us to bring suit and seek a court order requiring reforms.

Over the past 20 years, the Section has worked to ensure constitutional policing in departments as small as six officers and as large as 17,000. Our investigations and cases generally focus on patterns and practices of excessive force; unlawful stops, searches, and arrests; and discriminatory policing. Within these broad categories, the Section has looked at numerous issues that confront police today, including police response to individuals with disabilities; use of specialized units; unlawful responses to people who observe, record, or object to police activity; pedestrian stops; and discriminatory policing based on race, ethnicity, national origin, sex, gender, sexual orientation, and religion.

In the past five fiscal years, the Department of Justice's Civil Rights Division has opened over 20 investigations into police departments, more than twice as many investigations as were opened in the previous five fiscal years.

The Department is currently enforcing14 agreements with law enforcement agencies, including 8 consent decrees.

- Consent Decrees: *New Orleans Police Department, Puerto Rico Police Department, Seattle Police Department, Portland (Oregon) Police Department, Detroit Police Department, Virgin Islands Police Department, East Haven (Connecticut) Police Department, Warren (Ohio) Police Department*
- Out-of-Court Agreements: *Missoula (Montana) Police Department, University of Montana Department of Public Safety, Suffolk County (New York) Police Department, Beacon (New York) Police Department, Easton (Pennsylvania) Police Department, Missoula County Attorney's Office*

When we reach a settlement or consent decree with an agency, those agreements typically require increased transparency and data collection, new or improved community-police partnerships, mechanisms to prevent discriminatory policing, improved investigation and review of uses of force, more effective training and supervision of officers, and independent oversight of the law enforcement agency. They provide significant, systemic relief, increase community confidence in law enforcement, and improve officer and agency accountability.

The Section's recent settlements, consent decrees, significant court orders, and letters setting forth the findings of our investigations are available on our website:

- http://www.justice.gov/crt/about/spl/findsettle.php#police

Older cases and investigations can be found here:

- http://www.justice.gov/crt/about/spl/split_archive_findsettle_2004.php

Over the past three years, the department has successfully concluded the implementation of two consent decrees, as well as a memorandum of agreement (MOA).

- Consent Decrees: *Los Angeles Police Department and District of Columbia Metropolitan Police Department*
- MOA: *Orange County (Florida) Sheriff's Office*

The department is able to enter into voluntary agreements with the vast majority of law enforcement agencies it investigates. However, the department has filed suit when agencies have been unwilling to correct patterns or practices of misconduct. The department is currently in litigation with four jurisdictions:

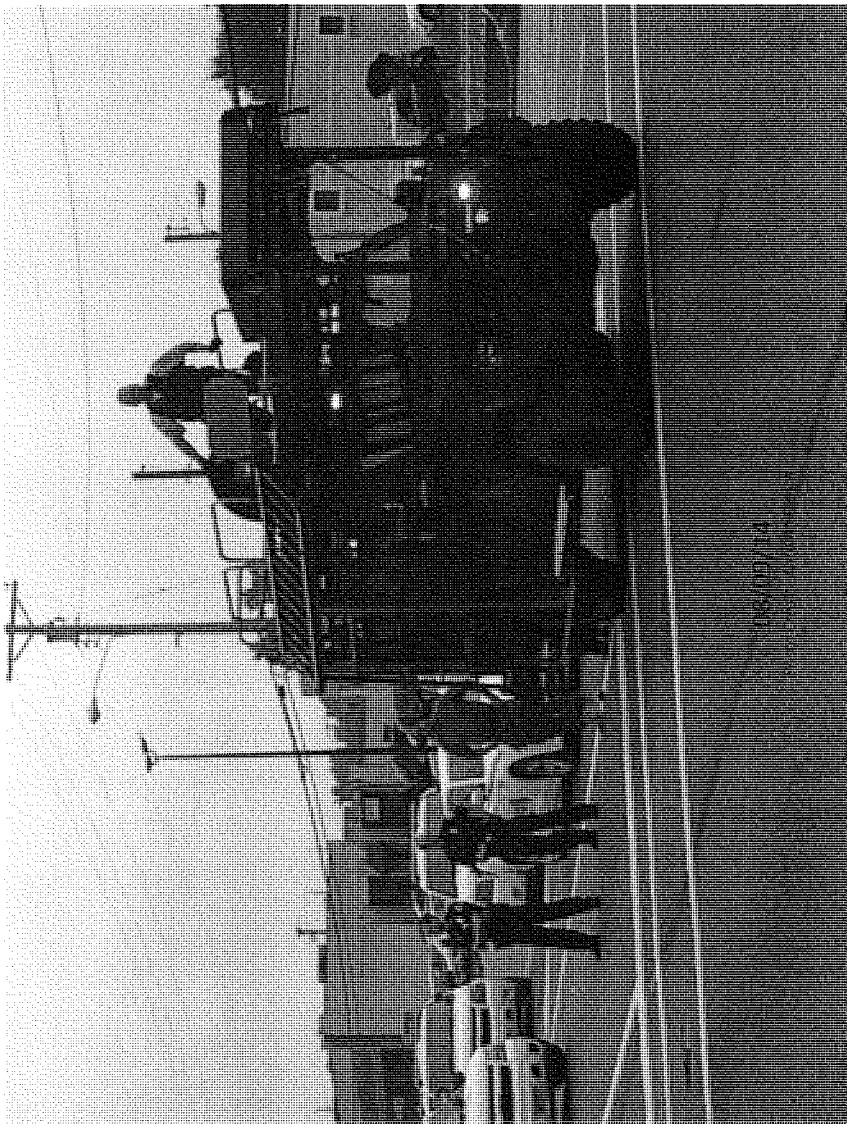
- *Maricopa, Arizona; Alamance, North Carolina; Colorado City, Arizona; Meridian, Alabama*

The department currently has eight open investigations. In the majority of these investigations the department has issued findings or technical assistance letters.

- Findings: *Albuquerque (New Mexico) Police Department, Miami Police Department, Los Angeles County Sheriff's Department-Antelope Valley, Newark (New Jersey) Police Department*
- Technical Assistance Letters: *Yonkers (New York) Police Department, Inglewood (California) Police Department*
- Ongoing Investigations: *Cleveland Police Department, Ferguson (Missouri) Police Department*

The department does not always find constitutional violations. In the past five years, the department has concluded five investigations of law enforcement agencies without finding constitutional violations.

- *Austin (Texas) Police Department, Escambia County (Florida) Sheriff's Office, Lorain (Ohio) Police Department, Harvey (Illinois) Police Department, Schenectady (New York) Police Department.*



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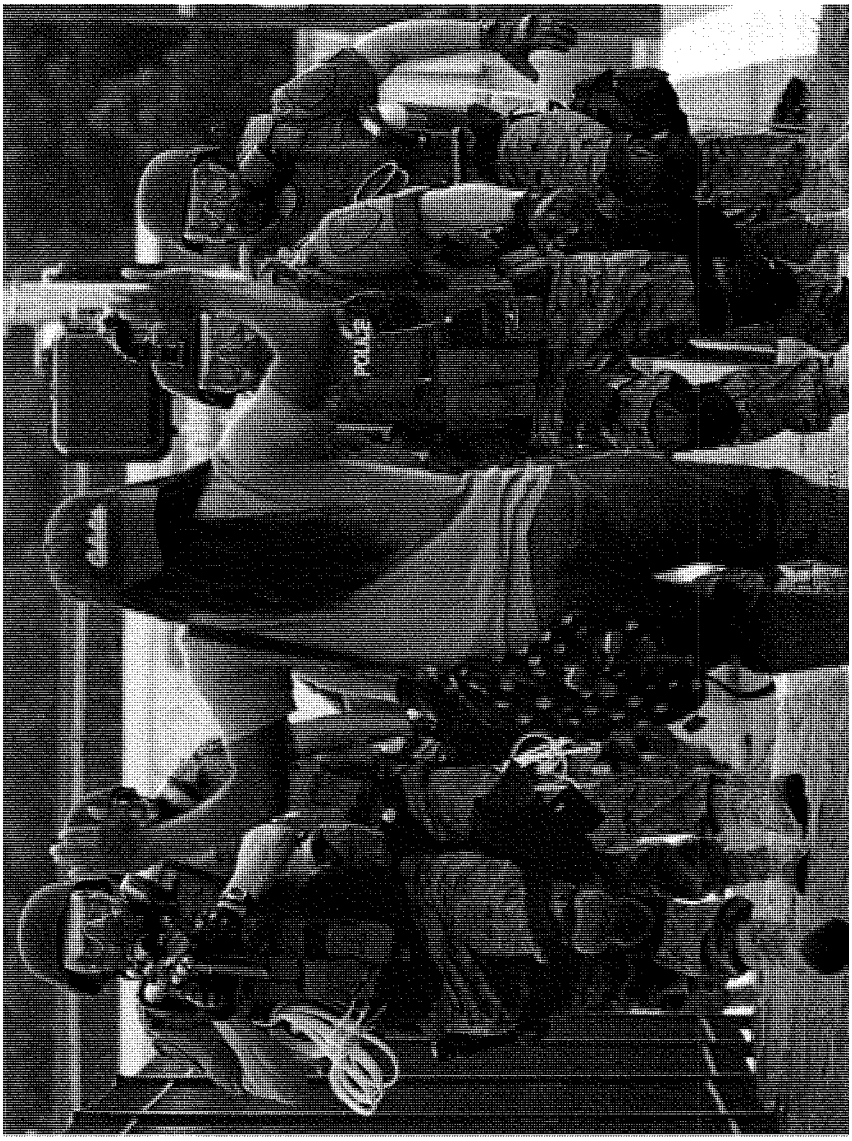

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Photo Credit - Robert Cohen, St. Louis Dispatch

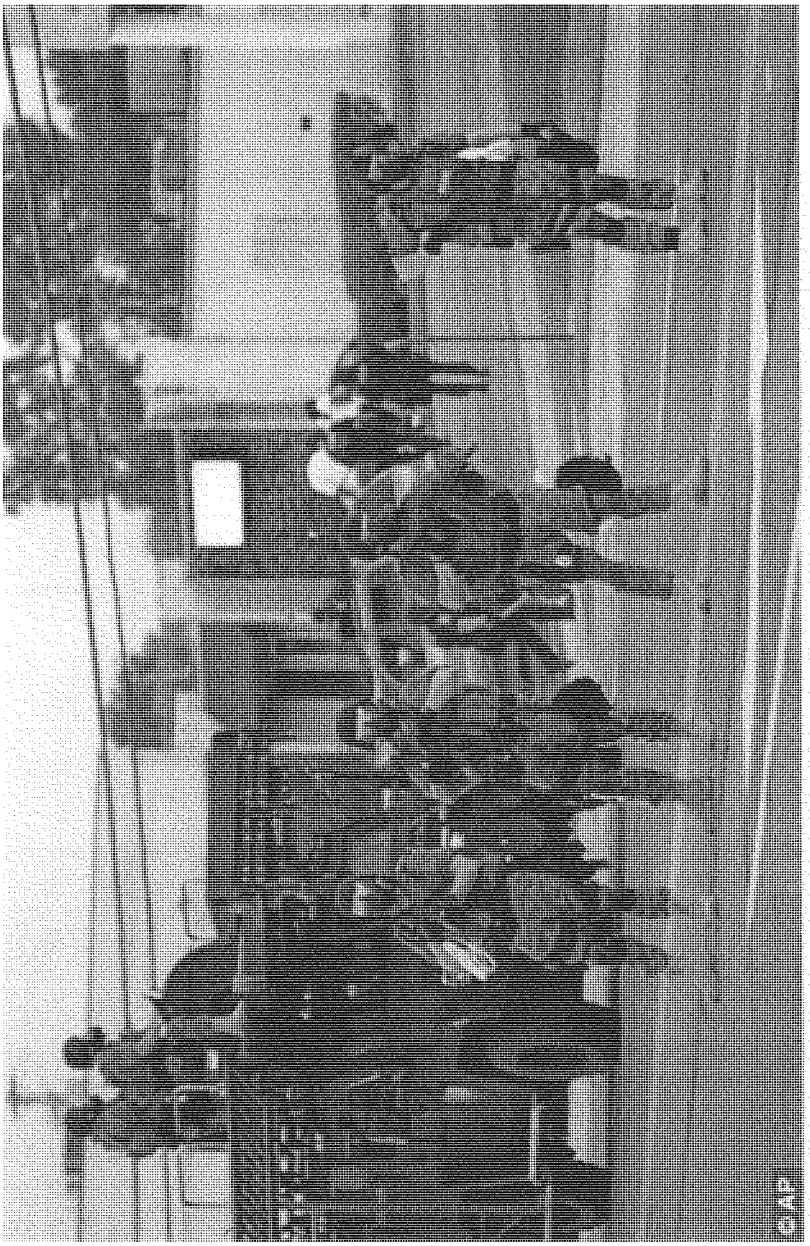

Photo Credit – Associated Press

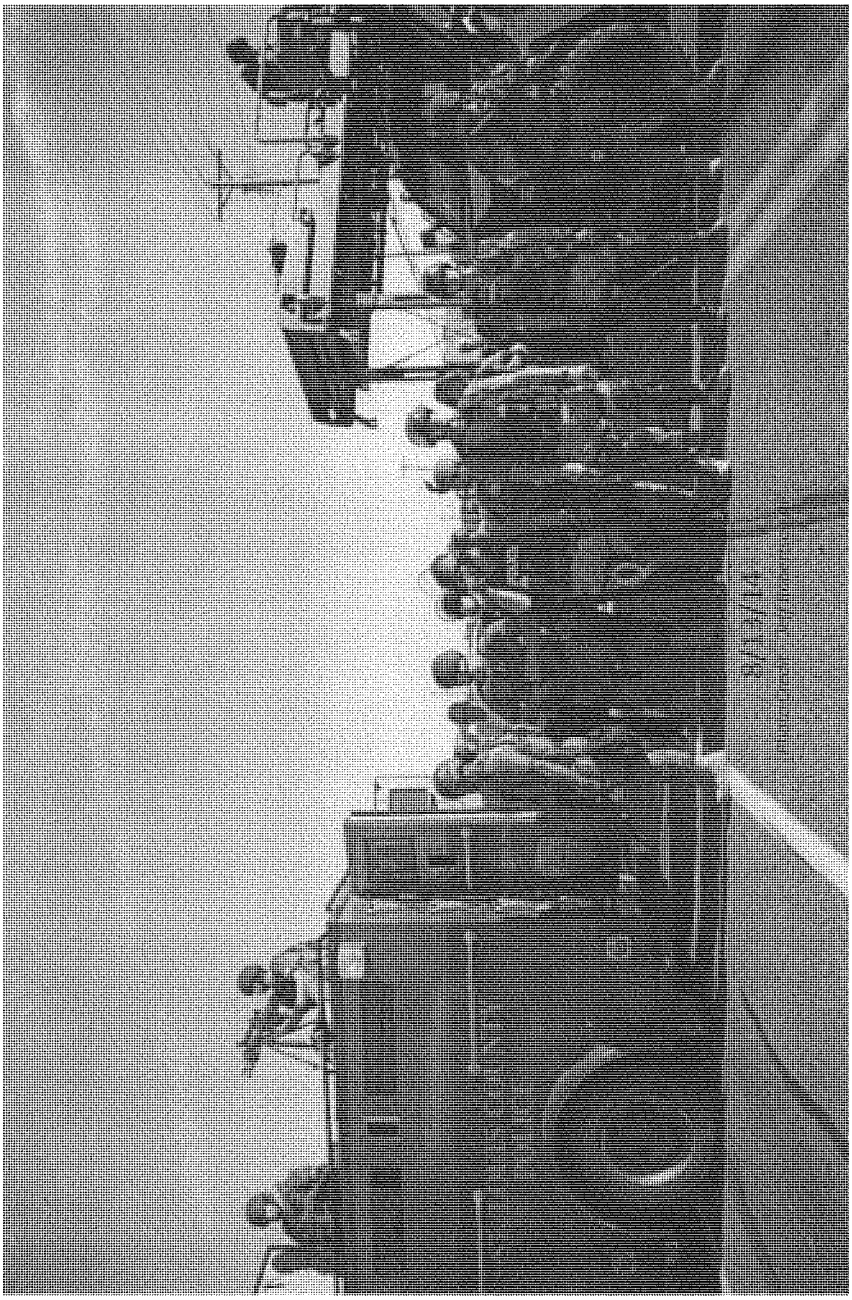

Photo Credit – Jeff Robertson, AP

8/13/14

Photo Credit - Reuters

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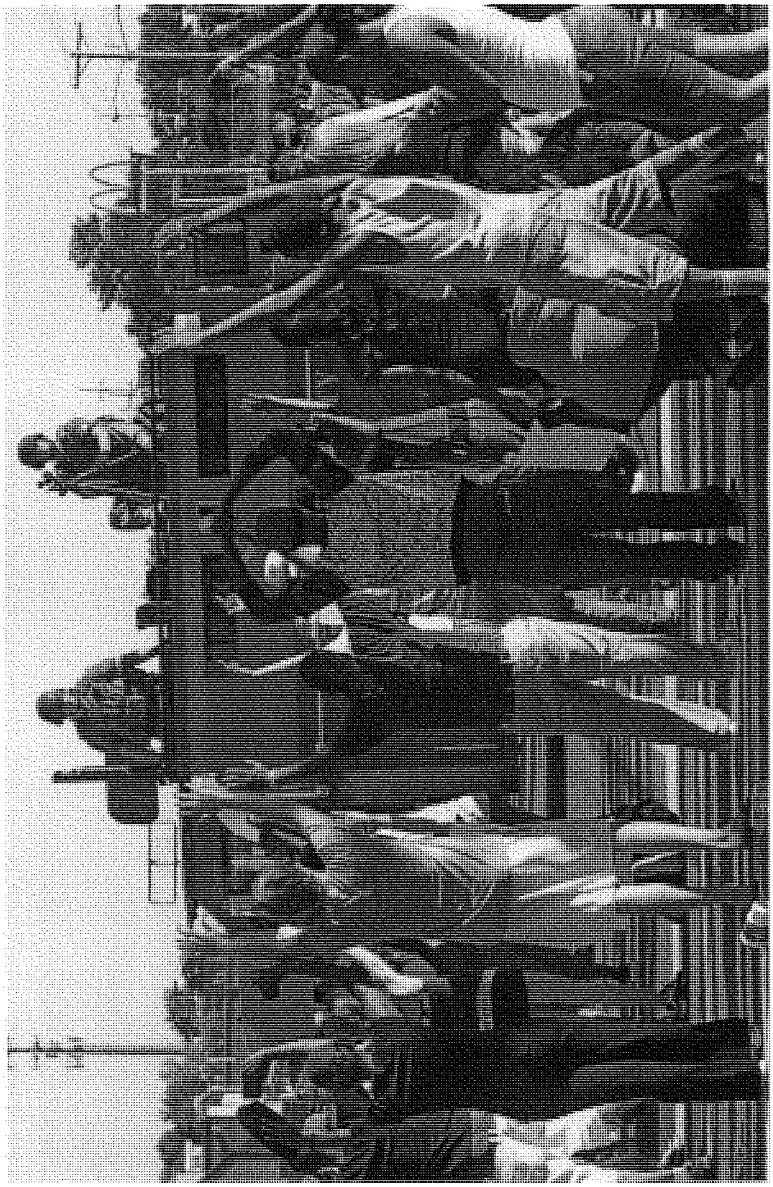
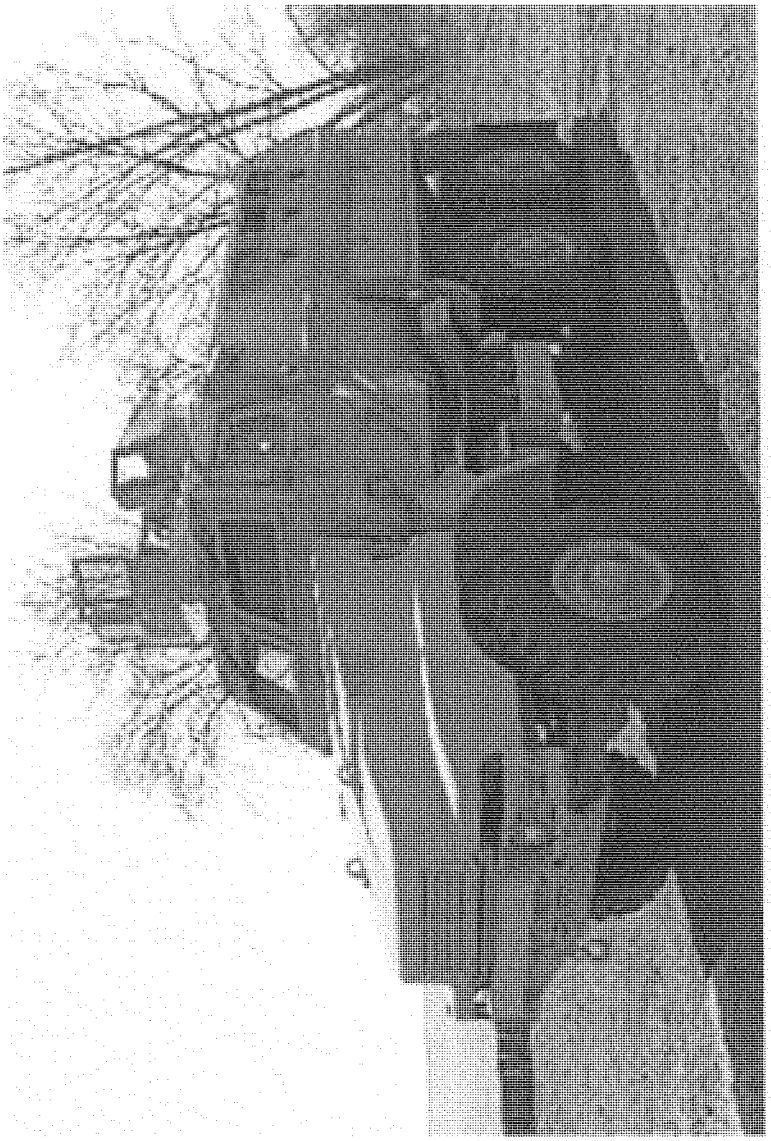
Photo Credit - Scott Olson, Getty Images

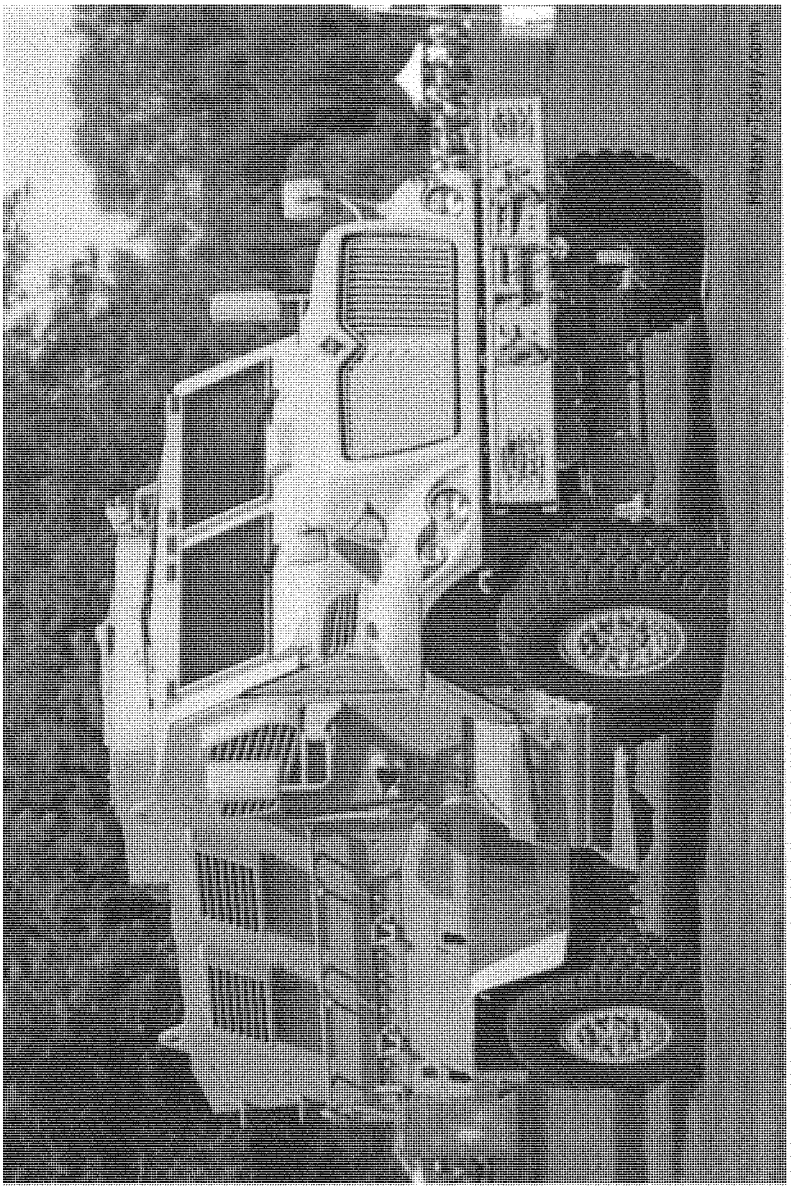


Bearcat

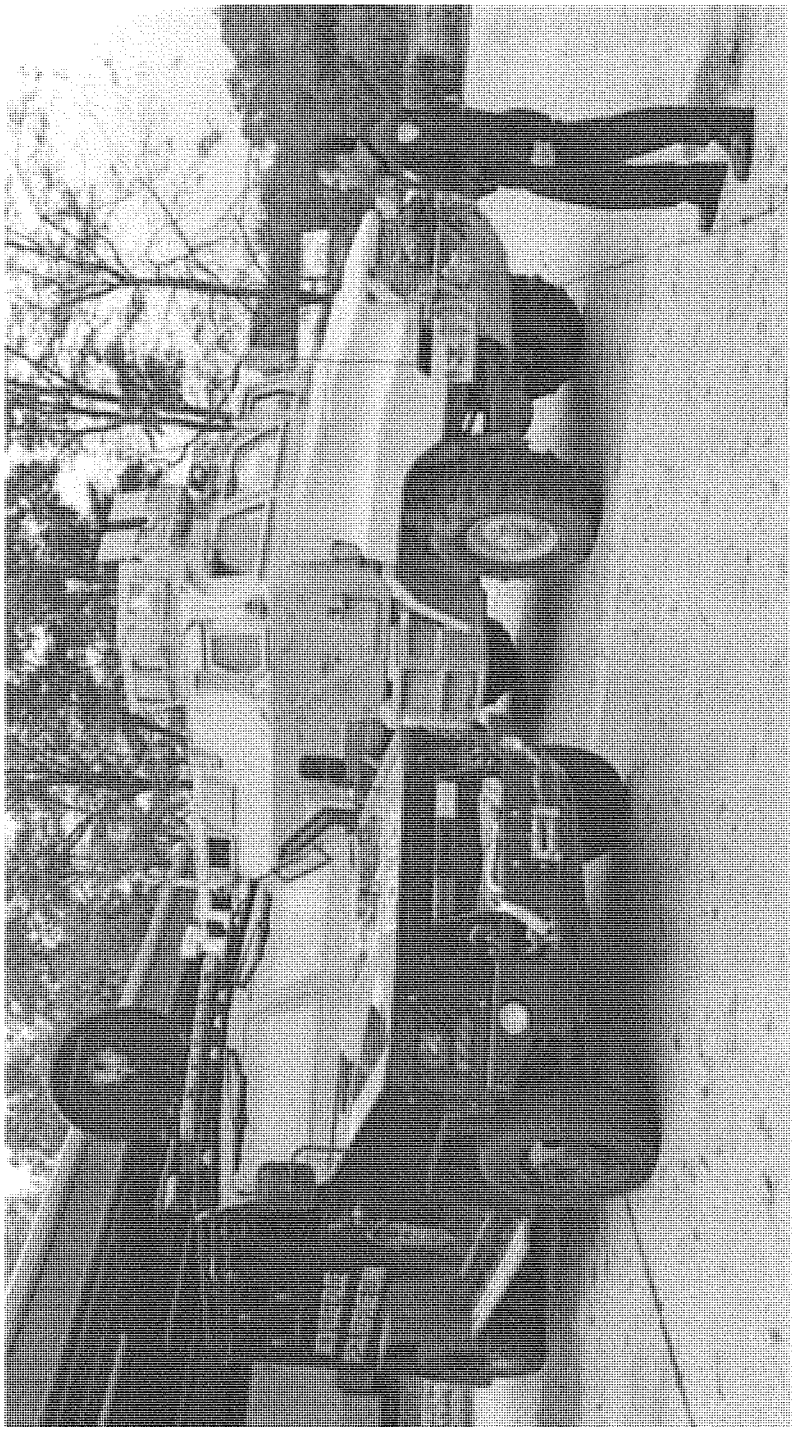
Bearcat



MRAP - Caimen



MRAP - MAXXPRO

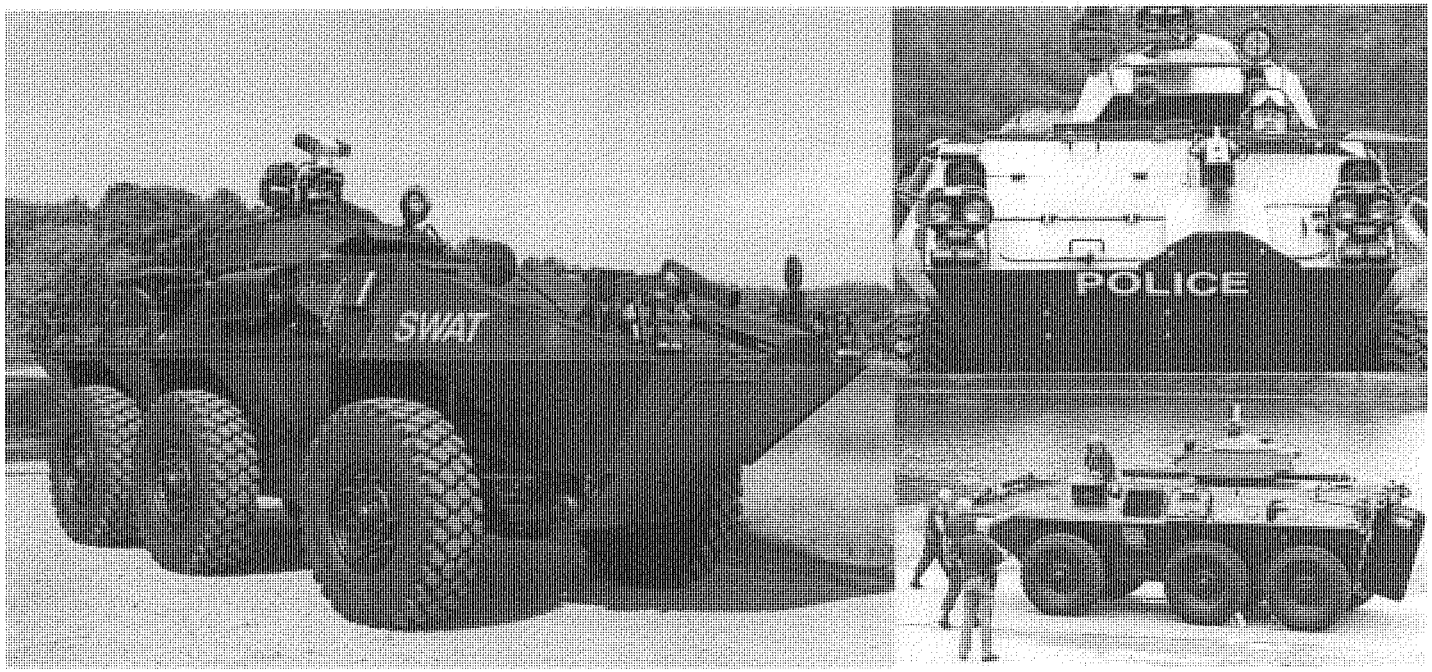


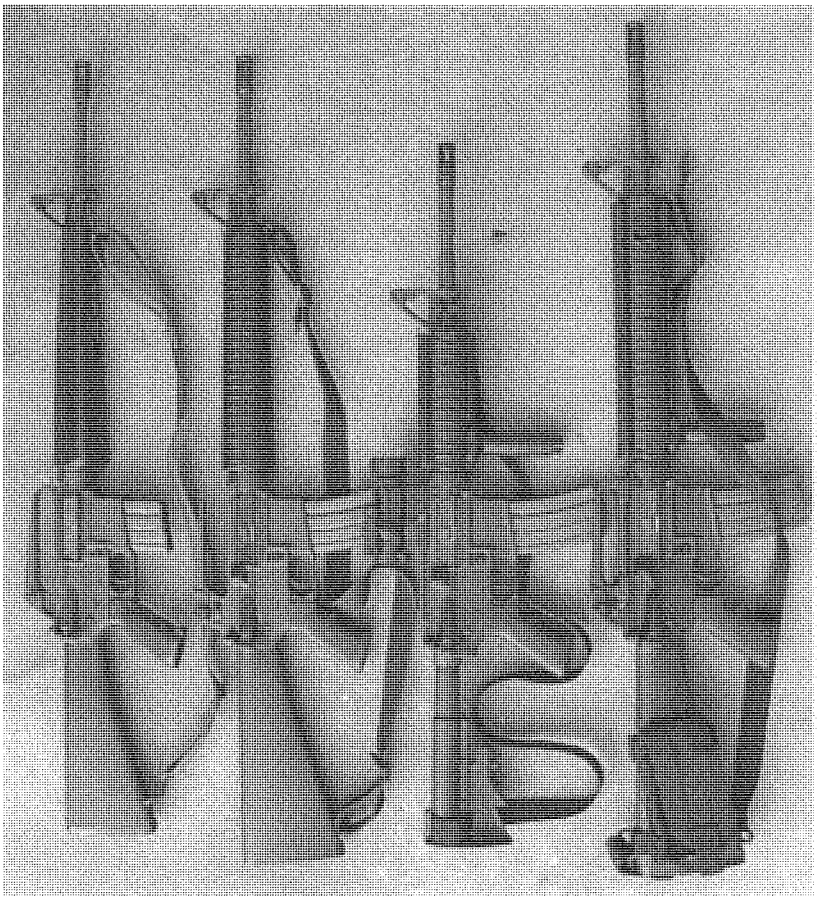
Bearcat and MRAP - Caimen

POLICE
MRAP

NASHVILLE, TN SWAT EQUIPMENT

Cobb County, Georgia SWAT Equipment

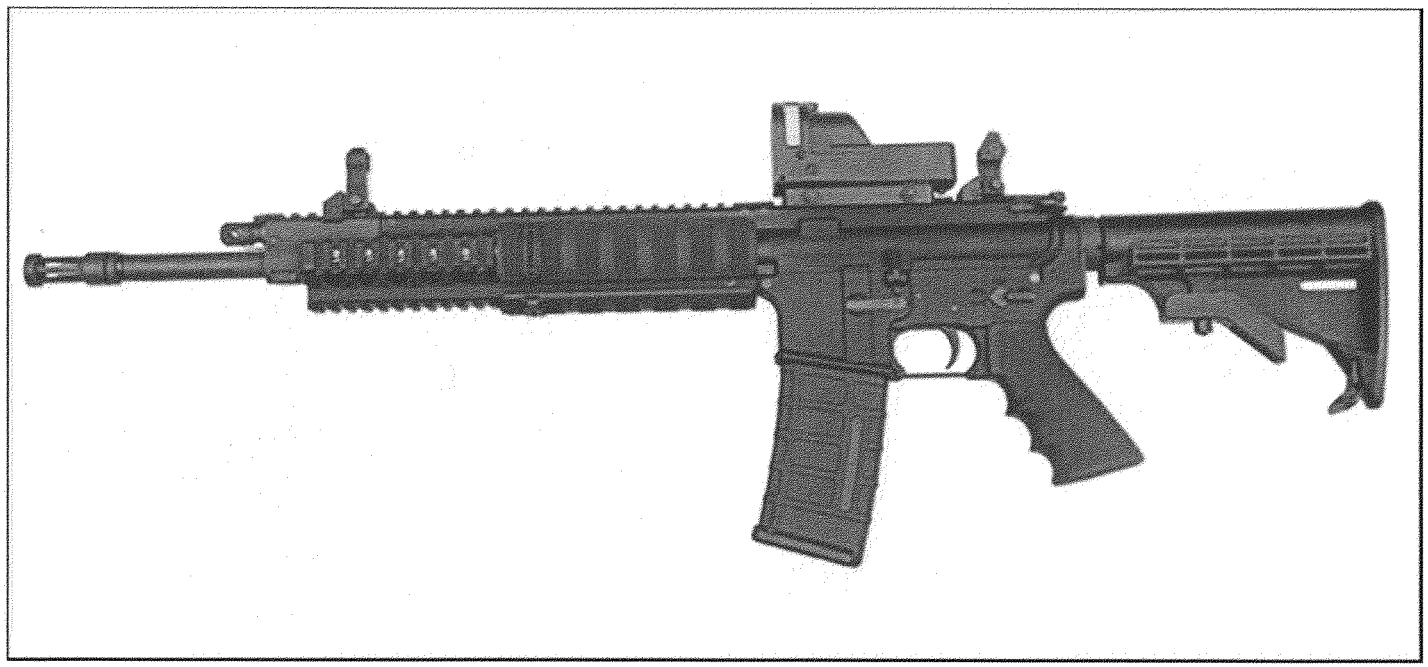




M16 Variations

M14 Assault Rifle

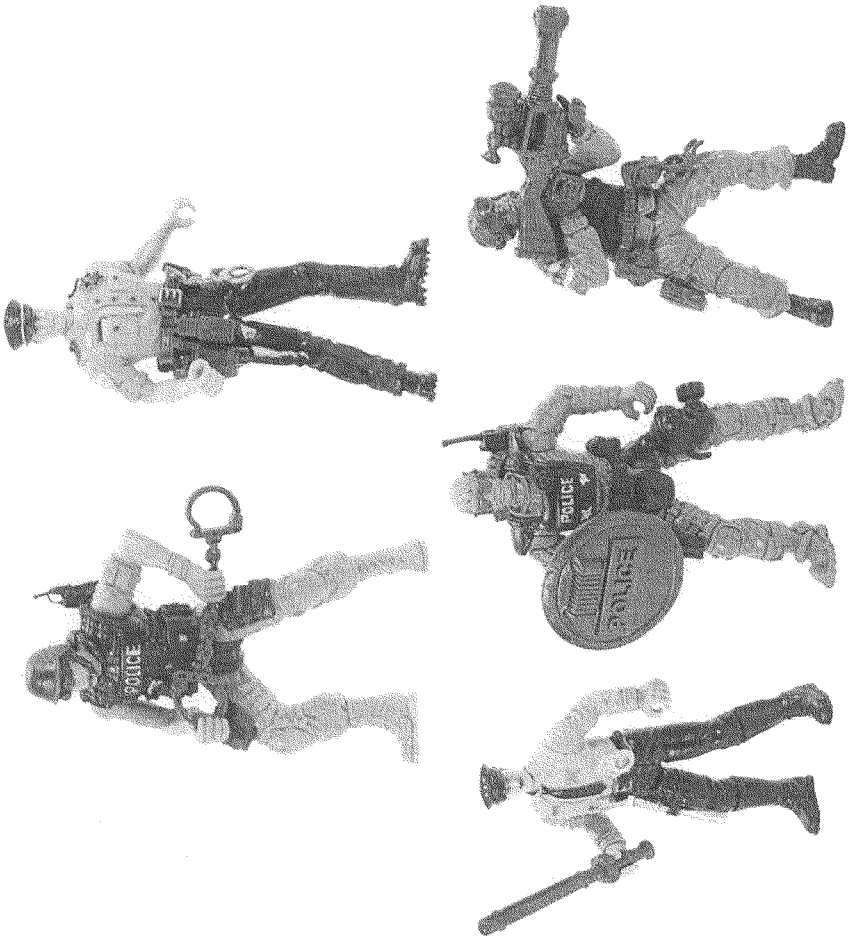
AR-15



Police officer with Grenade Launcher and camouflage – Anaheim, CA 2012

M7 66 Millimeter Grenade Launcher Attachment for M16 rifle

Bayonet - Knife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 Submitted by Sen. Baldwin

MRAPs And Bayonets: What We Know About The Pentagon's 1033 Program

by AREZOU REZVANI, JESSICA PUPOVAC, DAVID EADS and TYLER FISHER

September 02, 2014 6:09 PM ET

Amid widespread criticism of the deployment of military-grade weapons and vehicles by police officers in Ferguson, Mo., President Obama recently ordered a review of federal efforts supplying equipment to local law enforcement agencies across the country.

So, we decided to take a look at what the president might find.

NPR obtained data from the Pentagon on every military item sent to local, state and federal agencies through the Pentagon's Law Enforcement Support Office — known as the 1033 program — from 2006 through April 23, 2014. The Department of Defense does not publicly report which agencies receive each piece of equipment, but they have identified the counties that the items were shipped to, a description of each, and the amount the Pentagon initially paid for them.

We took the raw data, analyzed it and have organized it to make it more accessible. We are making that data set available to the public today.

Here's what we found:

1. Gear: MRAPs, Bayonets And Grenade Launchers

The 1033 program is the key source of the most visible, big-ticket, military item being sent to local law enforcement: mine-resistant, ambush-protected vehicles, or MRAPs. Designed to withstand bullets, grenades and roadside bombs on the front lines of war, more than 600 of them have been sent to local law enforcement agencies in almost every state in the U.S., mostly within the past year. Los Angeles County, for example, has nine of these vehicles, six of which were obtained just this past March.

But the program is a conduit for much more than just MRAPs. Since 2006, through the 1033 program, the Pentagon has also distributed:

79,288 assault rifles

205 grenade launchers

11,959 bayonets

3,972 combat knives

$124 million worth of night-vision equipment, including night-vision sniper scopes

479 bomb detonator robots

50 airplanes, including 27 cargo transport airplanes

422 helicopters

More than $3.6 million worth of camouflage gear and other "deception equipment"

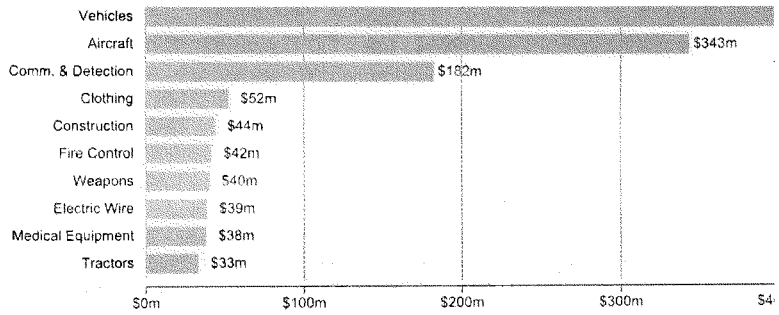
2. More Than Just Combat Gear

It turns out that weapons are a relatively small part of the 1033 program.

Each item in the database has a National Stock Number (NSN), which NPR used to determine the general category of each item and gain a broader understanding of what types of equipment have been made available through the 1033 program. The list includes building materials, musical instruments and even toiletries. (We've added those categories to the data we're publishing today.)

Top 10 categories by total cost to the Department of Defense

The Department of Defense categorizes every item in the 1033 program by its NSN, or National Stock Number. That National Stock Number contains the item's Federal Supply Category. Calculating the cost of every item in the program by its Federal Supply Category shows that vehicles have been the most expensive category for the Department of Defense by far.



Source: Defense Logistics Agency

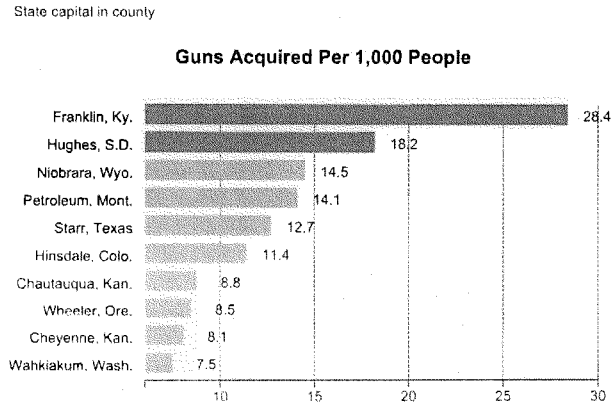
Actual weaponry, not including vehicles of any kind, account for just over 3 percent of the total value of all goods sent out by the Pentagon between 2006 and April.

3. What The Data Don't Tell Us: Why?

Congress authorized the 1033 program in 1989 to equip local, state and federal agencies in the war on drugs. In 1996, Congress widened the program's scope to include counterterrorism. But the data do not confirm whether either of those public safety goals are, in fact, driving decisions about the distribution of equipment. Areas with large populations or high crime rates aren't necessarily receiving more or less than their share of the items. Nor is a greater amount of equipment being sent to areas along the U.S. borders or coasts, places more likely to be drug trafficking corridors or terrorist targets.

Top 10 U.S. Counties, guns acquired through 1033 program

Breaking down the number of guns acquired through the Pentagon's 1033 program by total count and guns per 1,000 people shows the prevalence of state capitals in the program. These weapons may have gone to state police and other state-level agencies.



Source: Gun numbers from the Defense Logistics Agency. Population statistics from the Census Bureau American Community Survey 5-year estimates.

Credit: David Eads and Tyler Fisher / NPR

Looking exclusively at who is getting what, the data don't clearly point to why certain agencies are receiving more surplus items than others.

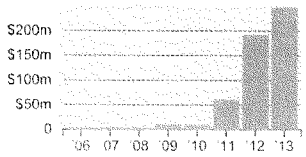
Here's how it works: Equipment is posted to LESO's (the 1033 program office) website, and then local agencies can request it. Only state coordinators to the Defense Logistics Agency are tasked with approving or denying those requests.

We did see trends in the data over time that show patterns of military overstocking and surplus.

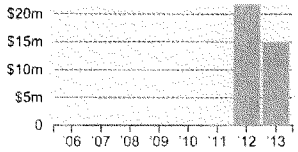
Dollar Amount Of Items Distributed By Category, 2006-2013

These charts detail the distribution of equipment in the 10 most expensive categories over time.

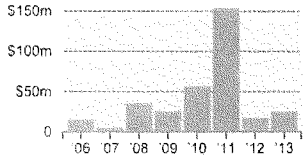
Vehicles



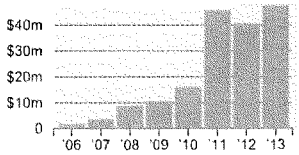
Construction Equipment



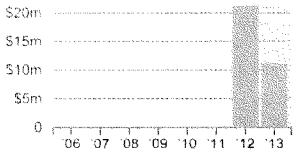
Aircraft



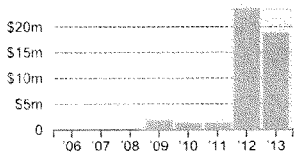
Communications & Detection



Medical Equipment



Clothing



Electric Wire

Tractors

What The Data Don't Tell Us: The Local Story

Our analysis of the data only took us so far. Many questions remain.

The data are merely a starting point for further exploration into why certain overstocked and surplus items are — and aren't — being requested. Questions remain about how and why they are being used, and the benefit, if any, to local law enforcement.

We've provided NPR member stations with the tools to begin asking these and other questions. With reporting at the national and local levels, we will continue to follow this story.

Editor's note at 2:30 p.m. ET, Sept. 3: A chart that explored the demographics of counties that have received equipment has been removed from this page. It wasn't intended to be part of this package and was inadvertently published before being finished. The data may be part of a future report.

Correction

Sept. 3, 2014

A previous version of the Total Guns Acquired chart stated that in Franklin County, Ky., guns acquired per 1,000 people were 28.3. It's actually 28.4 per 1,000 people.

pentagon

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Excerpt from information provided to NPR by LESO

WI	TREMPEALEAU	55121	2320-01-398-719	KIT,COMBAT IDE	2 Kit	1231
WI	TREMPEALEAU	55121	5895-01-518-886	KIT,DUAL,COM,I	5 Kit	1174.2
WI	JUNEAU	55057	6350-01-477-768	KIT,INFRARED F	1 Each	12181
WI	ASHLAND	55003	1095-00-392-410	KNIFE,COMBAT,	3 EA	34.42
WI	ASHLAND	55003	1095-00-392-410	KNIFE,COMBAT,	10 Each	34.42
WI	BROWN	55009	6240-01-532-418	LAMP,INCANDES	4 Each	339.41
WI	MILWAUKEE	55079	6240-01-532-418	LAMP,INCANDES	3 Each	339.41
WI	MILWAUKEE	55079	6240-01-532-418	LAMP,INCANDES	4 Each	339.41
WI	MILWAUKEE	55079	6240-01-532-418	LAMP,INCANDES	30 Each	339.41
WI	MILWAUKEE	55079	6240-01-532-418	LAMP,INCANDES	2 Each	339.41
WI	MILWAUKEE	55079	6240-01-532-418	LAMP,INCANDES	20 Each	339.41
WI	DOOR	55029	7025-01-470-331	LAPTOP	2 Each	1940
WI	DOOR	55029	7021-00-RUG-GE	LAPTOP RUGGI	50 EA	3139
WI	BROWN	55009	7045-DS-LAP-CA	LAPTOP CASE	2 EA	50
WI	DOOR	55029	7021-DS-LAP-TC	LAPTOP COMPU	12 Each	0
WI	CHIPPEWA	55017	1010-00-691-138	LAUNCHER,GRE	1 Each	720
WI	DANE	55025	1010-00-691-138	LAUNCHER,GRE	1 Each	720
WI	JACKSON	55053	1010-00-691-138	LAUNCHER,GRE	1 Each	720
WI	RACINE	55101	1010-00-691-138	LAUNCHER,GRE	1 Each	720
WI	RACINE	55101	1010-00-691-138	LAUNCHER,GRE	1 Each	720
WI	WAUKESHA	55133	1010-00-691-138	LAUNCHER,GRE	1 Each	720
WI	OCONTO	55083	3750-01-Z60-751	LAWN TRACTOF	1 EA	10940.35
WI	DOOR	55029	4220-01-474-515	LIFE PRESERVE	9 Each	517.48
WI	BROWN	55009	4220-01-379-615	LIFE PRESERVE	6 EA	42.28
WI	DANE	55025	4220-01-379-615	LIFE PRESERVE	4 EA	42.28
WI	EAU CLAIRE	55035	4220-01-379-615	LIFE PRESERVE	16 EA	42.28
WI	EAU CLAIRE	55035	4220-01-379-615	LIFE PRESERVE	2 EA	42.28
WI	IOWA	55049	4220-01-379-615	LIFE PRESERVE	12 EA	42.28
WI	WALWORTH	55127	4220-01-379-615	LIFE PRESERVE	4 EA	42.28
WI	DANE	55025	4220-01-056-866	LIFE RAFT,INFL/	1 Each	608.48
WI	DANE	55025	4220-01-056-866	LIFE RAFT,INFL/	1 Each	608.48
WI	DANE	55025	4220-01-056-866	LIFE RAFT,INFL/	3 Each	608.48
WI	DOOR	55029	3930-DS-WHS-E	LIFFTALOFT AM	1 EA	8000
WI	OCONTO	55083	4940-DS-MSC-RI	LIFT PLATFORM	1 EA	3689
WI	DOOR	55029	3930-DS-WHS-E	LIFTALOFT SPW	1 EA	8000
WI	JACKSON	55053	5855-01-333-960	LIGHT AIMING K	2 Each	545.69
WI	JACKSON	55053	5855-01-333-960	LIGHT AIMING K	2 Each	545.69
WI	RACINE	55101	5855-01-333-960	LIGHT AIMING K	1 Each	545.69
WI	DOOR	55029	6220-01-527-724	LIGHT BAR	1 Each	832.7
WI	BROWN	55009	6230-01-589-482	LIGHT KIT,WEAF	2 Kit	7204.38

2462	############	23	MOTOR VEHICLI	2320	Trucks and Truck Tractors, Wheeled
5871	2/6/2011 0:00:00	58	COMM/DETECT/	5895	Miscellaneous Communication Equipment
12181	############	63	ALARM, SIGNAL	6350	Miscellaneous Alarm, Signal, and Security Detection S
103.26	############	10	WEAPONS	1095	Miscellaneous Weapons
344.2	############	10	WEAPONS	1095	Miscellaneous Weapons
1357.64	############	62	LIGHTING FIXTL	6240	Electric Lamps
1018.23	############	62	LIGHTING FIXTL	6240	Electric Lamps
1357.64	############	62	LIGHTING FIXTL	6240	Electric Lamps
10182.3	############	62	LIGHTING FIXTL	6240	Electric Lamps
678.82	############	62	LIGHTING FIXTL	6240	Electric Lamps
6788.2	############	62	LIGHTING FIXTL	6240	Electric Lamps
3880	############	70	ADP EQPT/SOFT	7025	ADP Input/Output and Storage Devices
156950	############	70	ADP EQPT/SOFT	7021	ADP Central Processing Unit (CPU, Computer), Digita
100	5/7/2012 0:00:00	70	ADP EQPT/SOFT	7045	ADP Supplies
0	3/5/2014 0:00:00	70	ADP EQPT/SOFT	7021	ADP Central Processing Unit (CPU, Computer), Digita
720	############	10	WEAPONS	1010	Guns, over 30 mm up to 75 mm
720	############	10	WEAPONS	1010	Guns, over 30 mm up to 75 mm
720	############	10	WEAPONS	1010	Guns, over 30 mm up to 75 mm
720	6/9/2006 0:00:00	10	WEAPONS	1010	Guns, over 30 mm up to 75 mm
720	6/9/2006 0:00:00	10	WEAPONS	1010	Guns, over 30 mm up to 75 mm
720	############	10	WEAPONS	1010	Guns, over 30 mm up to 75 mm
10940.35	4/5/2012 0:00:00	37	AGRICULTURAL	3750	Gardening Implements and Tools
4657.32	############	42	FIRE/RESCUE/S.	4220	Marine Lifesaving and Diving Equipment
253.68	############	42	FIRE/RESCUE/S.	4220	Marine Lifesaving and Diving Equipment
169.12	############	42	FIRE/RESCUE/S.	4220	Marine Lifesaving and Diving Equipment
676.48	############	42	FIRE/RESCUE/S.	4220	Marine Lifesaving and Diving Equipment
84.56	############	42	FIRE/RESCUE/S.	4220	Marine Lifesaving and Diving Equipment
507.36	############	42	FIRE/RESCUE/S.	4220	Marine Lifesaving and Diving Equipment
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1825.44	############	42	FIRE/RESCUE/S.	4220	Marine Lifesaving and Diving Equipment
8000	############	39	MATERIALS HAN	3930	Warehouse Truck and Tractors, Self-Propelled
3689	4/5/2012 0:00:00	49	MAINT/REPAIR S	4940	Miscellaneous Maintenance and Repair Shop Speciali
8000	############	39	MATERIALS HAN	3930	Warehouse Truck and Tractors, Self-Propelled
1091.38	############	58	COMM/DETECT/	5855	Night Vision Equipment, Emitted and Reflected Radiat
1091.38	############	58	COMM/DETECT/	5855	Night Vision Equipment, Emitted and Reflected Radiat
545.69	4/5/2007 0:00:00	58	COMM/DETECT/	5855	Night Vision Equipment, Emitted and Reflected Radiat
832.7	############	62	LIGHTING FIXTL	6220	Electric Vehicular Lights and Fixtures
14408.76	############	62	LIGHTING FIXTL	6230	Electric Portable and Hand Lighting Equipment

Written Statement of the American Civil Liberties Union Before the U.S. Senate Committee on Homeland Security & Governmental Affairs

Hearing on

"Oversight of Federal Programs for Equipping State and Local Law Enforcement"

Tuesday, September 9, 2014 at 10:30 a.m.

Submitted by the
ACLU Washington Legislative Office

For further information, contact Kanya Bennett, Legislative Counsel, at kbennett@aclu.org.

The ACLU report, *War Comes Home: The Excessive Militarization of American Policing*, is available here: https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf.

The American Civil Liberties Union (ACLU) commends the U.S. Senate Committee on Homeland Security & Governmental Affairs for holding this hearing on "Oversight of Federal Programs for Equipping State and Local Law Enforcement." For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, DC, for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

Consistent with this mission, the ACLU is pleased to have this opportunity to submit testimony on the subject of federal programs that provide state and local law enforcement with military weapons and equipment. We have particular concerns with federal programs, including the Department of Defense 1033 Program, the Department of Justice Edward Byrne Memorial Justice Assistance Grant Program, and the Department of Homeland Security Grant Program, that have resulted in the militarization of American policing. Our concerns are shared in our recent report, *War Comes Home: The Excessive Militarization of American Policing*,[1] which is submitted with this statement. The report contains recommendations for the Congress, which we continue to refine as we learn more about these federal programs and the military tactics and equipment recently used in Ferguson, Missouri.

Militarized Policing in Ferguson, Missouri

As the nation watched Ferguson, Missouri, in the aftermath of the death of Michael Brown, it saw a highly and dangerously militarized response by law enforcement. Media reports indicate that the Ferguson Police Department responded to protests and demonstrations with "armored vehicles, noise-based crowd-control devices, shotguns, M4 rifles like those used by forces in Iraq and Afghanistan, rubber-coated pellets and tear gas."[2] Protestors were denied the right to assemble and a curfew was instituted. Almost a dozen reporters were arrested while exercising their First Amendment rights and other journalists reported being harassed and physically removed by police.[3]

Veterans from the Iraq and Afghanistan wars expressed horror and shock that they, while on active duty overseas, were less heavily-armed and combative then the local police in Ferguson.[4] Domestic and international media equated the images from Ferguson to familiar ones from combat zones in Iraq and Gaza. Law enforcement's response in Ferguson gave pause to many, and brought the issue of police militarization to national attention, especially in Washington, where President Obama said "[t]here is a big difference between our military and our local law enforcement, and we don't want those lines blurred."[5]

We appreciate the Congressional concern over the militarized response in Ferguson. Senator Claire McCaskill called for immediate de-militarization of the situation in Ferguson.[6] Senator Rand Paul described the need to differentiate a "police response and a military response."[7] Numerous House Members from across the country and from both parties also expressed dismay at the scenes from the St. Louis suburb. Representative Emanuel Cleaver, representing Kansas City, Missouri, commented that recent events in the small town reminded him more of "Fallujah than Ferguson."[8] In Southern California, Representative Duncan Hunter, a military veteran and member of the House Armed Services Committee said, "[t]he idea that state and local police departments need tactical vehicles and MRAPs with gun

turrets is excessive. Certain resources are designed and manufactured for a military mission—and it should stay that way."[9]

Representatives Hank Johnson and Raúl Labrador have announced plans to introduce legislation which would respond directly to concerns of militarized policing like those in Ferguson. The legislation will address the Department of Defense 1033 Program that provides surplus military-grade property to state and local law enforcement agencies at no charge, which cities like Ferguson are using.[10] In the past two years, the 1033 Program has provided St. Louis County law enforcement agencies, including the Ferguson Police Department, with military-grade vehicles, military rifles, night vision equipment, an explosive ordinance robot, and more.[11]

Militarized Policing and the War on Drugs

Militarized policing is not limited to situations like those in Ferguson or emergency situations—like riots, barricade and hostage scenarios, and active shooter or sniper situations—that Special Weapons And Tactics (SWAT) were originally created for in the late 1960s.[12] Rather, SWAT teams are now overwhelmingly used to serve search warrants in drug investigations, with the number of these teams having grown substantially over the past few decades. Dr. Peter Kraska has estimated that the number of SWAT teams in small towns grew from 20% in the 1980s to 80% in the mid-2000s, and that as of the late 1990s, almost 90% of larger cities had them. The number of SWAT raids per year grew from 3,000 in the 1980s to 45,000 in the mid-2000s.[13]

Our report, *War Comes Home: The Excessive Militarization of American Policing*, found that 79% of the incidents reviewed involved the use of a SWAT team to search a person's home, and more than 60% of the cases involved searches for drugs. We also found that more often in drug investigations, violent tactics and equipment were used. The use of a SWAT team to execute a search warrant essentially amounts to the use of paramilitary tactics to conduct domestic criminal investigations in searches of people's homes. This sentiment is shared by Dr. Kraska, who has concluded that "[SWAT teams have] changed from being a periphery and strictly reactive component of police departments to a proactive force actively engaged in fighting the drug war."[14]

The ACLU report highlighted the story of Jose Guerena, a 26-year-old Iraq war veteran, who was shot 22 times and killed by a SWAT team while they were raiding neighborhood homes in search of drugs. Mr. Guerena was sleeping after having worked the graveyard shift at the Asarco Mission mine in Tucson, Arizona. At 9:30 a.m., his wife woke him because she heard strange noises and saw the outline of a man standing outside the window. Mr. Guerena asked his wife to take their 4-year-old son and hide in a closet. With the safety on, Mr. Guerena took his rifle and went to investigate. A SWAT team fired 71 shots at Mr. Guerena, with 22 entering his body. He died on his kitchen floor without medical attention. No drugs were found in the Guerenas' home.[15]

Just as the War on Drugs has disproportionately impacted people and communities of color, we have found that the use of paramilitary weapons and tactics also primarily impacts people of color. Of the people impacted by SWAT deployments for warrants, at least 54% were minorities. When data was examined by agency (and with local population taken into consideration), racial disparities in SWAT deployments were extreme. In every agency, African Americans were disproportionately more likely to be impacted by a SWAT raid than whites, sometimes substantially so. For example, in Allentown, Pennsylvania, African Americans were nearly 24 times more likely to be impacted by a SWAT raid than whites were, and in Huntington, West Virginia, African Americans were 37 times more likely. Further, in

Ogden, Utah, African Americans were 40 times more likely to be impacted by a SWAT raid than whites were.[16]

The ACLU report featured the story of Tarika Wilson, a 26-year-old African American mother who was shot and killed by SWAT officers while she was holding her infant son. Ms. Wilson was not the suspect. The SWAT team had been looking for Ms. Wilson's boyfriend on suspicion of drug dealing when they raided Ms. Wilson's rented house on the Southside of Lima, Ohio, the only city with a significant African- American population in a region of farmland.[17]

Military Equipment Used by State and Local Law Enforcement

The military-style equipment, weapons, and tactics being used to conduct ordinary law enforcement activities best demonstrate militarized policing in the United States. We should be concerned that the equipment, weapons, and tactics that could be acquired and used include:

- Armored Personnel Carriers (APCs), Mine Resistant Ambush Protected vehicles (MRAPs), and other military vehicles that were created to transport infantry and provide protection from shrapnel and small arms fire on the battlefield; it is estimated that 500 law enforcement agencies have received MRAPs through the Department of Defense's 1033 Program;[18]

- Automatic weapons that are .50 caliber or greater and ammunition; through 1033, police have received magazines that carry 100 rounds of M-16 ammunition, which allow officers to fire continuously three times longer than usual;[19]

- Drones that are armored, weaponized, or both, and have been historically used to locate and kill enemy fighters in conflicts abroad;[20]

- Aircraft that are combat configured; since 2006, more than 500 military aircraft have been distributed through 1033;[21]

- Flash-bang grenades, sometimes referred to generically as a "distraction device," an explosive device that is used to distract the occupants of a building while a SWAT team is attempting to secure the scene;[22]

- Silencers, which soldiers use during raids and sniper attacks to muffle gunfire; police in 38 states have received silencers through 1033;[23]

- Long Range Acoustic Devises (LRADs), which were used in Ferguson to respond to protests in the aftermath of the Michael Brown shooting, and may cause permanent hearing loss;[24]

- Battering rams, "a large and heavy piece of wood or other material that is used to hit and break through walls and doors,"[25] which is nearly always carried on deployments, and is the primary tool used to breach doors and windows;[26]

- Battle Dress Uniforms (BDUs), fatigues that were designed for use by the U.S. Army throughout the 1980s and 1990s, that are typically worn with combat helmets when SWAT teams deploy;

the ACLU documented a total of 15,054 items of battle uniforms or personal protective equipment received by 63 responding agencies during the years 2011-2012;[27] and

- Training received by tactical teams, which often instructs law enforcement on how to develop a "warrior" mentality.[28]

Federal Programs that Contribute to Militarized Policing

The militarization of American policing has occurred as a result of federal programs that use equipment transfers and funding to encourage aggressive enforcement of the War on Drugs by state and local police agencies.

Department of Defense 1033 Program

The 1033 Program, launched in the late 1980s during the height of the so-called War on Drugs, authorizes the Department of Defense to transfer military equipment to local law enforcement agencies.[29] This program, enacted as part of the 1989 National Defense Authorization Act, initially authorized the transfer of equipment that was "suitable for use by such agencies in counterdrug activities."[30] In 1996, Congress made the program permanent and expanded the program's scope to require that preference be given to transfers made for the purpose of "counterdrug and counterterrorism activities."[31] There are few limitations or requirements imposed on agencies that participate in the 1033 Program.[32] In addition, equipment transferred under the 1033 Program is free to receiving agencies and, significantly, 36% of the property recently transferred was brand new.[33]

The Department of Defense operates the 1033 Program through the Defense Logistics Agency's (DLA) Law Enforcement Support Office (LESO), whose motto is "from warfighter to crimefighter." According to LESO, the program has transferred $4.3 billion worth of equipment through the 1033 Program.[34] Today, the 1033 Program includes more than 17,000 federal and state law enforcement agencies from all U.S. states and territories. The amount of military equipment being used by local and state police agencies has increased dramatically—the value of equipment transferred though the program went from $1 million in 1990 to $324 million in 1995 and to nearly $450 million in 2013.[35]

Department of Homeland Security (DHS) Grant Program

The main source of DHS funding to state and local law enforcement is the Homeland Security Grant Program (HSGP) and its two main components, the State Homeland Security Program (SHSP) and the Urban Areas Security Initiative (UASI).[36] Both grant programs require recipients to dedicate at least 25% of grant funds to "terrorism prevention-related law enforcement activities," though that phrase does not appear to be clearly defined.[37] The stated justification for DHS grants to state and local law enforcement is to support efforts to protect against terrorism, but even DHS acknowledges that it has a larger mission, which includes ordinary law enforcement activities. In 2010, DHS announced a new "anticrime campaign," which appears to have a minimal nexus to terrorism prevention,[38] but allows police departments to stockpile specialized equipment in the name of anti-terror readiness.

Department of Justice (DOJ) Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) Program

DOJ plays an important role in the militarization of the police through programs such as the Byrne JAG Program. Established in 1988, the program, originally called the Edward Byrne Memorial State and Local Law Enforcement Assistance Program, provides states and local units of government with funding to improve the functioning of their criminal justice system and to enforce drug laws. JAG funding can be used for a number of purposes, including indigent defense and drug treatment. However, JAG grantees spend much more of their funding on law enforcement than on other program areas.

Between April 2012 and March 2013, JAG grantees spent 64% of their JAG funding on law enforcement. In contrast, grantees spent 9% on courts, including both prosecution and indigent defense, and a mere 5% on drug treatment and 6% on crime prevention and education.[39] Grantees use a portion of JAG funds allocated to law enforcement to purchase numerous types of weapons. In 2012-2013, state and local agencies used JAG funds to purchase hundreds of lethal and less-lethal weapons, tactical vests, and body armor.[40]

It is equally clear that the DOJ's Byrne JAG funding is being used to conduct unnecessarily aggressive activities in drug cases. Approximately 21% of all law enforcement JAG funds go to task forces, the majority of which are drug task forces, which routinely employ paramilitary tactics in drug investigations.[41] Byrne JAG drug task forces have been widely criticized for incentivizing unnecessarily aggressive, often militarized, tactics—particularly in communities of color.[42] As of 2011, 585 multi-jurisdictional task forces were funded through the JAG program.[43]

Lack of Federal Oversight

The militarization of policing in the United States has occurred with almost no public oversight. The federal agencies implementing programs that provide state and local law enforcement with military weapons and equipment, and the Congressional committees charged with oversight of the agencies, have offered limited accounting of these programs. The lack of federal oversight is a reflection of only sporadic SWAT data collection and reporting at the state and local levels. Additionally, there is no federal agency mandated to collect information related to local law enforcement use of SWAT. The Bureau of Justice Statistics (BJS), an ideal outlet for such data collection, does not collect information pertaining to incidents of SWAT deployment, uses of military weapons or tactics in connection with such deployments, or the underlying purposes of such deployments.[44]

Some oversight of the 1033 Program exists, with the Department of Defense Law Enforcement Support Office (LESO) state coordinators providing limited accountability. It appears these state coordinators rarely deny requests for equipment and cannot impose consequences for overly aggressive use of equipment. There appears to be no requirement that the Department of Defense make any certification to Congress regarding the performance or impact of the Program. In addition, agencies are permitted to transfer equipment obtained through the 1033 Program to other agencies. The ACLU uncovered numerous examples of state and local law enforcement agencies transferring equipment that they had obtained through the 1033 Program. There do not appear to be any limitations on or oversight of this practice.[45]

There is virtually no oversight over DHS support to state and local law enforcement through the Homeland Security Grant Program.[46] In 2013, DHS distributed nearly a billion dollars to state and local law enforcement agencies through HSGP to "enhance the ability of states, territories, and Federally recognized tribes to prevent, protect against, respond to, and recover from potential terrorist acts and other hazards."[47] As discussed above, however, this money was often spent on ordinary law enforcement activities. Senator Tom Coburn conducted an investigation into DHS funding to state and local law enforcement agencies in 2012. Senator Coburn concluded, that "taxpayer money spent on homeland security grant programs has not always been spent in ways obviously linked to terrorism or preparedness" and that "[DHS] has done very little oversight of the program, allowing cities to spend the money on almost anything they want, as long as it has broad ties to terror prevention."[48]

There is also minimal oversight over expenditures of DOJ funds. The Bureau of Justice Assistance (BJA) conducts some oversight over JAG funds, and has been strengthening its oversight in recent months, particularly with regard to potential use of JAG funds to subsidize racially biased marijuana possession arrests. However, there is virtually no oversight over weapons expenditures or use of paramilitary tactics in drug investigations.[49]

Recommendations for Congress

The federal government should take the lead by reining in programs that incentivize local police to engage in excessively militarized tactics, especially in drug cases. The federal government holds the purse strings, and restricting the flow of federal funds and military-grade equipment into states and localities, and/or conditioning funds on the appropriate use of such equipment and training, would significantly reduce the overuse of hyper-aggressive tactics and military-grade tools in local communities.

We make the following recommendations, which we will continue to refine as we learn more about these federal programs and in light of the military tactics and equipment recently used in Ferguson:

(1) Congress should condition state and local law enforcement agencies' receipt of federal funds on an agreement not to use the funds to purchase automatic or semi-automatic rifles, APCs, or other military weapons and equipment not suitable for law enforcement purposes. This condition should be applied to grants made through the Department of Homeland Security's Homeland Security Grant Program, the Department of Justice's Byrne JAG Program, and all other funding streams through which money is transferred from the federal government to state and law enforcement agencies.

(2) Congress should impose strict limits on the 1033 Program, including prohibiting the transfer of automatic or semi-automatic rifles, APCs, or other military weapons and equipment not suitable for law enforcement purposes; eliminating the preference for "counter-drug" operations; and requiring the Secretary of Defense to submit an annual written certification that each agency participating in the 1033 Program has provided documentation accounting for all equipment transferred to the agency. The Secretary of Defense should be required to prohibit additional transfers to any agency for which the Secretary cannot provide such certification.

(3) Congress should require state and local law enforcement to use Byrne JAG and Homeland Security Grant Program dollars to purchase body cameras for SWAT officers. Body cameras

would create a public record of SWAT deployments and serve as a check against unnecessarily aggressive tactics. Body cameras can be distinguished from other privacy-invading cameras in public places because of their potential to serve as a check on police overreach. Any policy requiring SWAT officers to wear body cameras should incorporate rigorous safeguards regarding data retention, use, access, and disclosure.[50] Body cameras cannot be the only check on militarized policing, and should be coupled with other reforms to federal programs.

(4) Because militarized policing is being used to carry out the War on Drugs, Congress should investigate whether the Byrne JAG program is skewing police priorities, in particular toward increasing low-level drug arrests. In addition, Congress should encourage DOJ, and specifically BJA, to issue clear guidance to State Administering Agencies (SAAs) and local law enforcement agencies affirming that JAG priorities include eliminating unnecessary incarceration while promoting public safety and reducing unwarranted racial disparities in arrest rates. Congress should also require BJA to mandate that grantees and sub-grantees (agencies that receive funding directly from BJA and agencies that receive funding through an SAA, respectively) include the following data in their quarterly and annual reports:

(a) Demographic data, specifically, race, age, gender, and ethnicity for all arrests reported. Race data should include the following categories: white, Black or African American, American Indian and Alaska Native, Asian, and Native Hawaiian and other Pacific Islander. Ethnicity data should indicate whether or not the arrestee was Hispanic/Latino;
(b) The address/location of all arrests reported;
(c) The total number of individuals who reside in the area over which the sub-grantee exercises jurisdiction, as well as the racial demographics of this population; and
(d) Offense category for drug arrests, specifically, to differentiate drug sale or trafficking arrests from drug possession arrests. Type of drug should also be reported (e.g., X cocaine sale arrests or X marijuana possession arrests).

(5) As militarized policing appears to be carried out in a racially biased way, Congress should pass the End Racial Profiling Act, which would require state or local governmental entities or state, local, or tribal law enforcement agencies that apply for grants under the Byrne JAG Program and the Cops on the Beat Program to certify that they maintain adequate policies and procedures for eliminating racial profiling and have eliminated any existing practices that permit or encourage racial profiling.

Conclusion

American policing has become excessively militarized through the use of weapons and tactics designed for the battlefield. Militarization unfairly impacts people of color and undermines individual liberties, and it has been allowed to happen in the absence of any meaningful public discussion or federal oversight. The use of paramilitary weapons and tactics to conduct ordinary law enforcement—especially to wage the failed War on Drugs and most aggressively in communities of color—has no place in contemporary society. It is not too late to change course. Through greater transparency, more oversight, policies that encourage restraint, and limitations on federal incentives, we can foster a policing culture that honors its mission to protect and serve, not to wage war.

[1] ACLU, "War Comes Home: The Excessive Militarization of American Policing," June 23, 2014, *available at* https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf.
[2] David Nakamura & Niraj Chokshi, "Obama Orders Review of Military Equipment Supplied to Police," Wash. Post, Aug. 23, 2014, *available at* http://www.washingtonpost.com/politics/obama-orders-review-of-military-equipment-supplied-to-police/2014/08/23/6316b8aa-2b03-11e4-8593-da634b334390_story.html (last visited Sept. 3, 2014).
[3] Brian Stetler, "6 More Journalists Arrested in Ferguson Protests," CNN, Aug. 19, 2014, *available at* http://www.cnn.com/2014/08/19/us/ferguson-journalists-arrested/ (last visited Sept. 3, 2014).
[4] Matthew Farwell, "What Combat Veterans See In Ferguson, Missouri, Vanity Fair, Aug. 16, 2014, *available at* http://www.vanityfair.com/online/daily/2014/08/veterans-ferguson-matthew-farwell (last visited Sept. 3, 2014).
[5] Erin McPike & Jessica Ravitz, "Obama Orders Review of Military Equipment Sales to Police," CNN, *available at* http://www.cnn.com/2014/08/23/politics/military-equipment-police-review/ (last visited Sept. 3, 2014).
[6] Ed O'Keefe, "McCaskill to Chair Ferguson-Themed Hearing on Militarization of Police," Wash. Post, Aug. 28, 2014, *available at* http://www.washingtonpost.com/blogs/post-politics/wp/2014/08/28/mccaskill-to-chair-ferguson-themed-hearing-on-militarization-of-police/ (last visited Sept. 3, 2014).
[7] Rand Paul, "We Must Demilitarize the Police," Time, Aug. 14, 2014, *available at* http://time.com/3111474/rand-paul-ferguson-police/ (last visited Sept. 3, 2014).
[8] Johnathan Topaz, "Emanuel Cleaver: Ferguson Looks Like Fallujah," Politico, Aug. 19, 2014, *available at* http://www.politico.com/story/2014/08/emanuel-cleaver-ferguson-reaction-110139.html (last visited Sept. 3, 2014).
[9] Chris Jennewein, "Rep. Hunter Criticizes Police Use of Battlefield Equipment," Times of San Diego, Aug. 17, 2014, *available at* http://timesofsandiego.com/politics/2014/08/17/rep-hunter-criticizes-police-use/ (last visited Sept. 3, 2014).
[10] The ACLU supports this legislation that responds to serious concerns with the Department of Defense 1033 Program, but believes that other reforms are needed as indicated in the Recommendations section of this statement.
[11] Taylor Wofford, "How America's Police Became an Army," Newsweek, Aug. 13, 2014, *available at* http://www.newsweek.com/how-americas-police-became-army-1033-program-264537 (last visited Sept. 3, 2014).
[12] Daryl Gates, Chief: My Life in the LAPD (New York: Bantam, 1992), p. 131. For an excellent summary of the creation and evolution of SWAT, see Radley Balko, Rise of the Warrior Cop (New York: PublicAffairs, 2013).
[13] Peter Kraska, "Militarization and Policing—Its Relevance to 21st Century Police," Policing (2007) 1 (4) 1-13 (Jan. 1, 2007), p. 6.
[14] *Id.* at 7.
[15] *See supra*, note 1 at 17.
[16] *See supra*, note 1 at 36-37.
[17] See supra, note 1 at 5.
[18] *Id.*
[19] Matt Apuzzo, "War Gear Flows To Police Departments," N.Y. Times, June 8, 2014, *available at* http://www.nytimes.com/2014/06/09/us/war-gear-flows-to-police-departments.html?_r=01 (last visited Sept. 3, 2014).
[20] Marta H. Mossburg, "The Creeping Encroachment of Police-State Tactics, Baltimore Sun, Dec. 20, 2011, *available at* http://articles.baltimoresun.com/2011-12-20/news/bs-ed-mossburg-big-brother-20111220_1_state-police-drones-police-forces (last visited Sept. 3, 2014).
[21] *See supra*, note 19.
[22] There are other kinds of distraction devices such as "tactical balls," which wobble and spin when rolled or tossed into a room, but flashbang grenades seem to be the most well known. For the most part, the incident reports the ACLU studied tended to use either the words "flashbang" or "distraction device" to refer to these weapons.
[23] *See supra*, note 19.
[24] Lily Hay Newman, "This is the Sound Cannon Used Against Protestors in Ferguson," Slate, Aug. 14, 2014, *available at* *http://www.slate.com/blogs/future_tense/2014/08/14/lrad_long_range_acoustic_device_sound_cannons_were_used_for_crowd_control.html* (last visited Sept. 3, 2014).

[25] Merriam-Webster, http://www.merriam-webster.com/dictionary/battering%20ram (last visited Sept. 3, 2014).
[26] *See supra*, note 1 at 21.
[27] *See supra*, note 1 at 5.
[28] *See supra*, note 1 at 23.
[29] *See* 10 U.S.C. § 2576a.
[30] *See* National Law Enforcement and Corrections Technology Center, Federal Property and Equipment Manual: Federal Sources of Personal Property for Law Enforcement, 2 (Revised 2002), *available at* http://info.publicintelligence.net/FederalPropertyManual.pdf (last visited Sept. 3, 2014).
[31] *Id.* at 3.
[32] One limitation, which the ACLU supports, is a prohibition on the sale of equipment obtained through the 1033 Program.
[33] Defense Logistics Agency, "Fact Sheet: Responses on Excess Property Program for Representative Henry Johnson," sent in response to an inquiry from Representative Johnson requesting additional information on military-grade equipment to civilian police, Jan. 14, 2014.
[34] Defense Logistics Agency, Disposition Services, "Law Enforcement Support Office (LESO): Providing Support to America's Law Enforcement Community Since 1997," *available at* https://www.dispositionservices.dla.mil/rtd03/leso/, Jan. 23, 2014 (last visited March 17, 2014). An attempt to visit this webpage was made on September 3, 2014, but it is no longer available.
[35] *Id.*
[36] U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties, Civil Rights/Civil Liberties Impact Assessment: DHS Support to the National Network of Fusion Centers, 6 (March 1, 2013), *available at* https://www.dhs.gov/sites/default/files/publications/DHS%20Support%20to%20National%20Network_0.pdf (last visited Sept. 3, 2014).
[37] U.S. Department of Homeland Security, FY 2013 Homeland Security Grant Program (FY 2013 HSGP Fact Sheet), 1 (2013), *available at* http://www.fema.gov/media-library-data/8d0439562c89644a68954505a49cbc77/FY_2013_Homeland+Security+Grant+Program_Fact_Sheet_+Final.pdf (last visited Sept. 3, 2014).
[38] U.S. Department of Homeland Security, "Next Steps: Supporting Community-Based Efforts to Reduce Violent Crime," U.S. Department of Homeland Security, *available at* http://www.dhs.gov/xlibrary/assets/fact_sheet_reduce_violent_crime_080310.pdf (last visited Sept. 3, 2014). This problem is not theoretical; DHS provides numerous sources of support to state and local law enforcement agencies for reasons that are entirely unrelated to terrorism prevention. Indeed, DHS operates a nationwide law enforcement network called the Homeland Security Information Network, which was created to assist state and local enforcement agencies conduct their ordinary work related to investigating allegations of gun, drug, and gang offenses; the notion that DHS support to local law enforcement is purely for the purpose of terrorism prevention is a myth. *See, e.g.*, "Homeland Security Information Network—Law Enforcement Mission," Homeland Security, *available at* http://www.dhs.gov/homeland-security-information-network-law-enforcement-mission (last visited Sept. 3, 2014).
[39] Bureau of Justice Assistance, "Grant Activity Report: Justice Assistance Grant (JAG) Program, April 2012-March 2013," p. 2, *available at* https://www.bja.gov/Publications/JAG_LE_Grant_Activity_03-13.pdf (last visited Sept. 3, 2014).
[40] *Id.* at 4.
[41] *Id.* at 6.
[42] *See, e.g.*, Michelle Alexander, "Obama's Drug War," The Nation, Dec. 9, 2010, *available at* http://www.thenation.com/article/156997/obamas-drug-war (last visited Sept. 3, 2014) ("The Byrne grant program, originally devised by the Reagan administration to encourage state and local law enforcement agencies to join the drug war, has poured millions of dollars into drug task forces around the country that are notorious for racial profiling, including highway drug interdiction programs and neighborhood 'stop and frisk' programs. These programs have successfully ushered millions of poor folks of color into a permanent undercaste—largely for engaging in the same types of minor drug crimes that go ignored in middle-class white communities and on college campuses.")

[43] National Criminal Justice Association, "SAA Taskforce Performance Measures: A Look at Metrics Used to Evaluate MJTFs," National Criminal Justice Association, *available at* http://www.ncja.org/sites/default/files/documents/Taskforce-Performance-Measures.pdf (last visited Sept. 3, 2014).

[44] The other federal agency responsible for some criminal justice-related data collection is the Federal Bureau of Investigation (FBI). The FBI, through the Uniform Crime Reports, collects and publishes information pertaining to crime rates, law enforcement officers killed or assaulted, and hate crime statistics. The ACLU does not recommend designating the FBI as the federal agency with primary responsibility for collecting, maintaining, and evaluating information pertaining to the militarization of policing because BJS is the more appropriate federal agency for taking on this responsibility.

[45] *See supra*, note 1 at 30.

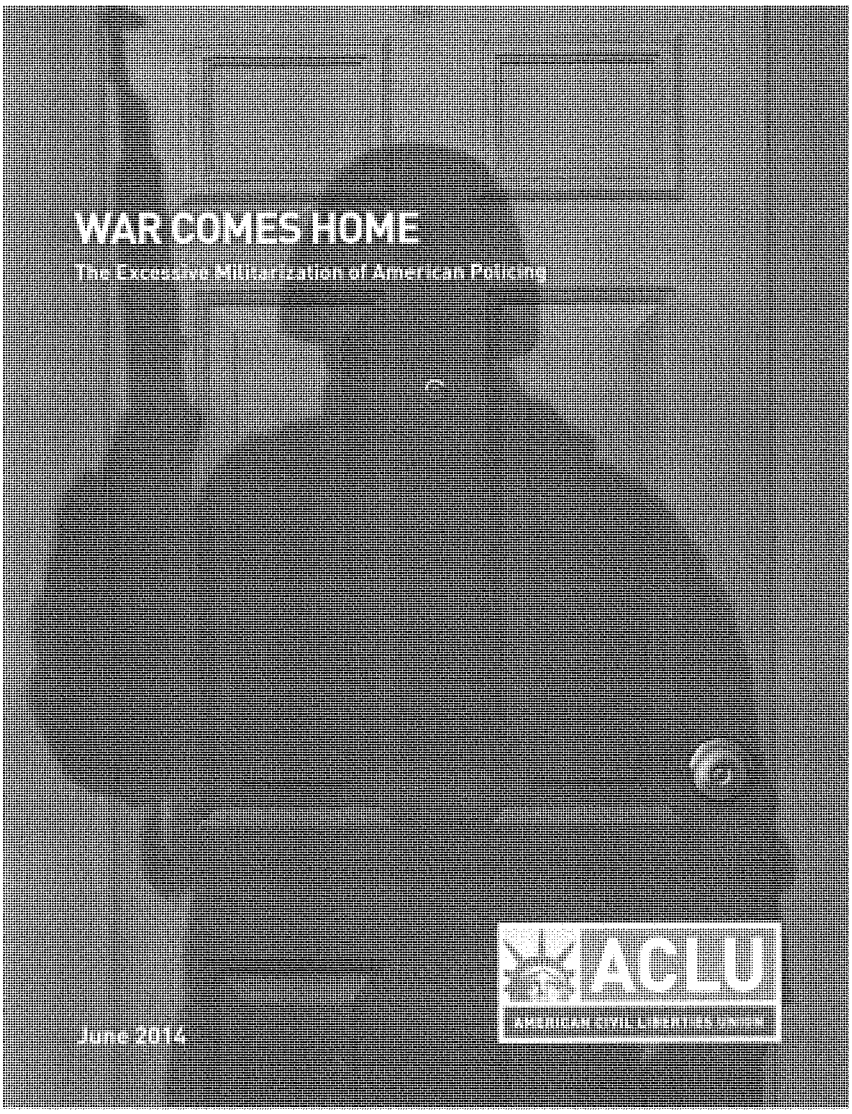
[46] As part of an ongoing effort to document the costs of securing the homeland, the Center for Investigative Reporting did a comprehensive investigation into states' receipt and distribution of DHS and other federal agency grant dollars in 2011 as part of its "America's War Within" series. To the best of the ACLU's knowledge, this is the most comprehensive collection of data (from 2009, however) on federal handouts to state and local law enforcement agencies. The Center for Investigative Journalism, "Price of Peril: Homeland Security Spending by State," http://cironline.org/sites/default/files/legacy/files/homelandsecurity/priceofperil.html (last visited March 21, 2014).

[47] *Supra* note 37 at 1.

[48] Senator Tom Coburn, Safety at Any Price: Assessing the Impact of Homeland Security Spending in U.S. Cities, 4, 5 (Dec. 2012), *available at* http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=b86fdaeb-86ff-4d19-a112-41Sec8Saa9b6 (last visited Sept. 3, 2014).

[49] *See supra* note 1 at 30.

[50] Specific recommendations for how to implement such safeguards are set forth in an article by ACLU Senior Policy Analyst Jay Stanley, "Police Body-Mounted Cameras: With Right Policies in Place, a Win for All" (Oct. 2013), *available at* https://www.aclu.org/files/assets/police_body-mounted_cameras.pdf (last visited April 4, 2014).


WAR COMES HOME
The Excessive Militarization of American Policing
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ACLU
AMERICAN CIVIL LIBERTIES UNION

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EXECUTIVE SUMMARY

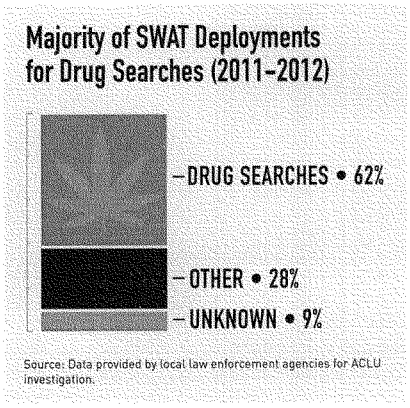
Across the country, heavily armed Special Weapons and Tactics (SWAT) teams are forcing their way into people's homes in the middle of the night, often deploying explosive devices such as flashbang grenades to temporarily blind and deafen residents, simply to serve a search warrant on the suspicion that someone may be in possession of a small amount of drugs. Neighborhoods are not war zones, and our police officers should not be treating us like wartime enemies. However, the ACLU encountered this type of story over and over when studying the militarization of state and local law enforcement agencies.

This investigation gave us data to corroborate a trend we have been noticing nationwide: American policing has become unnecessarily and dangerously militarized, in large part through federal programs that have armed state and local law enforcement agencies with the weapons and tactics of war, with almost no public discussion or oversight.[1] Using these federal funds, state and local law enforcement agencies have amassed military arsenals purportedly to wage the failed War on Drugs, the battlegrounds of which have disproportionately been in communities of color. But these arsenals are by no means free of cost for communities. Instead, the use of hyper-aggressive tools and tactics results in tragedy for civilians and police officers, escalates the risk of needless violence, destroys property, and undermines individual liberties.

This report provides a snapshot of the realities of paramilitary policing, building on a body of existing work demonstrating that police militarization is a pervasive problem. Analyzing both existing secondary source materials and primary source data uncovered through the ACLU's public records investigation, this report examines the use of SWAT teams by state and local law enforcement agencies and other aspects of militaristic policing.[2] As explained in the Methodology section, our statistical analysis included more than 800 SWAT deployments conducted by 20 law enforcement agencies during the years 2011-2012.[3]

SWAT was created to deal with emergency situations such as hostage, barricade and active shooter scenarios. Over time, however, law enforcement agencies have moved away from this original purpose and are increasingly using these paramilitary squads to search people's homes for drugs.

Aggressive enforcement of the War on Drugs has lost its public mandate, as 67 percent of Americans think the government should focus more on treatment than on policing and prosecuting drug users.[4] This waning public support is warranted, as evidence continues to document how the War on Drugs has destroyed millions of lives, unfairly impacted communities of color, made drugs cheaper and more potent, caused countless deaths of innocent people caught up in drug war-related armed conflict, and failed to eliminate drug dependence and addiction. The routine use of heavily armed SWAT teams to search people's homes for drugs, therefore, means that law enforcement agencies across the country are using this hyper-aggressive form of domestic policing to fight a war that has waning public support and has harmed, much more than helped, communities.

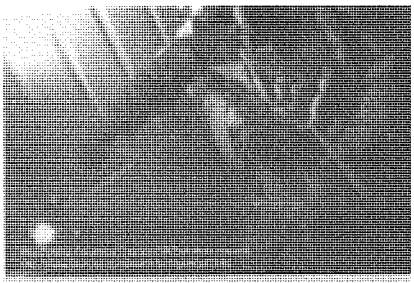


SWAT raids are undoubtedly violent events: numerous (often 20 or more) officers armed with assault rifles and grenades approach a home, break down doors and windows (often causing property damage), and scream for the people inside to get on the floor (often pointing their guns at them). During the course of this investigation, the ACLU determined that SWAT deployments often and unnecessarily entailed the use of violent tactics and equipment, including Armored Personnel Carriers (APCs), and that the use of these tactics and equipment often increased the risk of property damage and bodily harm. Unnecessarily aggressive SWAT raids can have disastrous consequences, including injury and death. The ACLU also uncovered numerous instances in which SWAT teams deployed when there were children present (and some in which the SWAT team knew in advance that children would be present).

To scale back the militarization of police, it is important to document how law enforcement agencies have stockpiled their arsenals. Law enforcement agencies have become equipped to carry out these SWAT missions in part by federal programs such as the Department of Defense's 1033 Program, the Department of Homeland Security's grants to local law enforcement agencies, and the Department of Justice's Edward Byrne Memorial Justice Assistance Grant (JAG) Program, each of which is examined in this report.

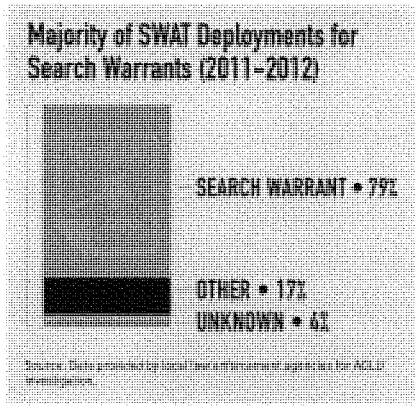
De-escalating militarized policing will also require analysis of how the presence of these weapons and tactics has impacted policing culture. Our analysis shows that the militarization of American policing is evident in the training that police officers receive, which encourages them to adopt a "warrior" mentality and think of the people they are supposed to serve as enemies, as well as in the equipment they use, such as battering rams, flashbang grenades, and APCs. This shift in culture has been buoyed by the U.S. Supreme Court's weakening of the Fourth Amendment (which protects the right to privacy in one's home) through a series of decisions that have given the police increased authority to force their way into people's homes, often in drug cases.

Additionally, solving the problem of police militarization requires discussion of how SWAT teams should be appropriately used and when their deployment is counterproductive and dangerous. Even though paramilitary policing in the form of SWAT teams was created to deal with emergency scenarios such as hostage or barricade situations, the use of SWAT to execute search warrants in drug investigations has become commonplace and made up the overwhelming majority of incidents the ACLU reviewed—79 percent of the incidents the ACLU studied involved the use of a SWAT team to search a person's home, and more than 60 percent of the cases involved searches for drugs. The use of a SWAT team to execute a search warrant essentially amounts to the use of paramilitary tactics to conduct domestic criminal investigations in searches of people's homes.



In the ACLU's study, SWAT teams forced entry into a person's home using a battering ram or other breaching device in 60% of drug searches.

Militarization of policing encourages officers to adopt a "warrior" mentality and think of the people they are supposed to serve as enemies.



The use of SWAT teams to serve search warrants could perhaps be justified if there were reason to believe that these situations truly presented a genuine threat to officer safety, but that did not appear to be the case from the documents that the ACLU examined; of the incidents in which officers believed a weapon would be present, a weapon (typically a firearm such as a handgun but rarely an assault rifle) was actually found at the scene in only 35 percent of cases. Even when officers believed a weapon was likely to be present, that belief was often unsubstantiated. Unfortunately, reasonable standards for deploying SWAT teams appear to be virtually nonexistent. Further, given that almost half of American households have guns, use of a SWAT team could almost always be justified if the "presence of a firearm" was the sole factor determining whether to deploy.[5] However, because the use of SWAT increases the likelihood that the occupants will use weapons to defend themselves, which increases the risk of violence, presence of a weapon alone should not automatically result in a SWAT deployment.

An estimated 500 law enforcement agencies have received Mine Resistant Ambush Protected (MRAP) vehicles built to withstand armor-piercing roadside bombs.

These problems have been allowed to occur in the absence of public oversight. Data collection has been sparse and inadequate: among the law enforcement agencies studied, the ACLU found that data collecting and reporting in the context of SWAT was at best sporadic and at worst virtually nonexistent.

In addition, there is typically no single entity at the local, state, or federal level responsible for ensuring that SWAT is appropriately restrained and that policing does not become excessively militarized. Maryland passed a law in 2010 requiring local law enforcement agencies to submit regular reports on their use of SWAT, but that law will sunset this year. Utah passed a similar law this year, which looks promising, but much more oversight is needed.

Attorney General Eric H. Holder, Jr., has announced broad criminal justice reforms, including guidelines to curtail the use of mandatory minimum sentencing laws by federal prosecutors in certain drug cases and a $4.75 million project funded by the federal government and designed to ease mistrust between local police departments and minority communities by collecting and studying data on searches, arrests, and case outcomes in order to help assess the impact of possible bias. These developments have real potential to reduce America's excessive reliance on overly aggressive approaches to policing and punishing drug crimes, but there is a danger that these federally-funded efforts could be undermined by the federal government's role in subsidizing the use of paramilitary weapons and tactics in localities, particularly in many communities of color. Without rethinking its role in militarizing local police departments, the federal government may end up sabotaging the very same reforms it is championing.

From our review of both primary and secondary source materials, we are able to present two sets of findings: one set of general findings based on our review of the existing

research, which our data supports, and one set of time-bound specific findings from our statistical analysis of the raw data we collected in connection with our investigation.

Our general findings, based on our review of existing research and supported by our data, are the following:

1. Policing—particularly through the use of paramilitary teams—in the United States today has become excessively militarized, mainly through federal programs that create incentives for state and local police to use unnecessarily aggressive weapons and tactics designed for the battlefield. For example, the ACLU documented a total of 15,054 items of battle uniforms or personal protective equipment received by 63 responding agencies during the relevant time period, and it is estimated that 500 law enforcement agencies have received Mine Resistant Ambush Protected (MRAP) vehicles built to withstand armor-piercing roadside bombs through the Department of Defense's 1033 Program.[6]

2. The militarization of policing in the United States has occurred with almost no public oversight. Not a single law enforcement agency in this investigation provided records containing all of the information that the ACLU believes is necessary to undertake a thorough examination of police militarization. Some agencies provided records that were nearly totally lacking in important information. Agencies that monitor and provide oversight over the militarization of policing are virtually nonexistent.

Our more specific findings from the statistical analysis we conducted of time-bound raw data received in connection with this investigation are the following:

3. SWAT teams were often deployed—unnecessarily and aggressively—to execute search warrants in low-level drug investigations; deployments for hostage or barricade scenarios occurred in only a small number of incidents. The majority (79 percent) of SWAT deployments the ACLU studied were for the purpose of executing a search warrant, most commonly in drug investigations. Only a small handful of deployments (7 percent) were for hostage, barricade, or active shooter scenarios.

FATALITY REPORT

LIMA, OHIO
JANUARY 2003

SWAT Officers Kill 26-Year-Old Mother Holding Infant Son

Tarika Wilson wasn't the suspect. She died when SWAT officers broke down her front door and opened fire into her home. Ms. Wilson was holding her 14-month-old son when she was shot. The baby was injured, but survived. The SWAT team had been looking for Ms. Wilson's boyfriend on suspicion of drug dealing when they raided Ms. Wilson's rented house on the Southside of Lima, the only city with a significant African-American population in a region of farmland.

4. The use of paramilitary weapons and tactics primarily impacted people of color; when paramilitary tactics were used in drug searches, the primary targets were people of color, whereas when paramilitary tactics were used in hostage or barricade scenarios, the primary targets were white. Overall, 42 percent of people impacted by a SWAT deployment to execute a search warrant were Black and 12 percent were Latino. This means that of the people impacted by deployments for warrants, at least 54 percent were minorities. Of the deployments in which all the people impacted were minorities, 68 percent were in drug cases, and 61 percent of all the people impacted by SWAT raids in drug cases were minorities. In addition, the incidents we studied revealed stark, often extreme, racial disparities in the use of SWAT locally, especially in cases involving search warrants.

INCIDENT REPORT

HUNTINGTON, WEST VIRGINIA
OCTOBER 14, 2011

SWAT Team Throws Flashbang into Home of Pregnant Woman

Knowing there would likely be a pregnant woman inside, a SWAT team still opted to break down the door of a home and throw a flashbang grenade inside in order to execute a search warrant in a drug case. Once inside the home, SWAT officers found one man, one pregnant woman, and a four-year-old child. While this particular report contained no information about the race of the people impacted by the deployment, the majority of the Huntington SWAT deployments the ACLU studied were conducted in connection with drug investigations, and the majority of the people impacted were Black.

5. SWAT deployments often and unnecessarily entailed the use of violent tactics and equipment, including armored personnel carriers; use of violent tactics and equipment was shown to increase the risk of bodily harm and property damage. Of the incidents studied in which SWAT was deployed to search for drugs in a person's home, the SWAT teams either forced or probably forced entry into a person's home using a battering ram or other breaching device 65 percent of the time. For drug investigations, the SWAT teams studied were almost twice as likely to force entry into a person's home than not, and they were more than twice as likely to use forced entry in drug investigations than in other cases. In some instances, the use of violent tactics and equipment caused property damage, injury, and/or death.

Reform must be systemic; the problems of overly aggressive policing are cultural and cannot be solved by merely identifying a few "bad apples" or dismissing the problem as a few isolated incidents.

Reform must be systemic; the problems of overly aggressive policing are cultural and cannot be solved by merely identifying a few "bad apples" or dismissing the problem as a few isolated incidents.

To begin to solve the problem of overly militarized policing, reform must happen at all levels of government that have contributed to this trend.

The federal government should take the lead by reining in the programs that create incentives for local police to engage in excessively militarized tactics, especially in drug cases. The federal government holds the purse strings, and easing the flow of federal funds and military-grade equipment into states and localities would have a significant impact on the overuse of hyper-aggressive tactics and military-grade tools in local communities.

Additionally, state legislatures and municipalities should impose meaningful restraints on the use of SWAT. SWAT deployments should be limited to the kinds of scenarios for which these aggressive measures were originally intended: barricade, hostage, and active shooter situations. Rather than allow a SWAT deployment in any case that is deemed (for whatever reason the officers determine) to be "high risk," the better practice would be for law enforcement agencies to have in place clear standards limiting SWAT deployments to scenarios that are truly "high risk."

SWAT teams should never be deployed based solely on probable cause to believe drugs are present, even if they have a warrant to search a home. In addition, SWAT teams should not equate the suspected presence of drugs with a threat of violence. SWAT deployment for warrant service is appropriate only if the police can demonstrate, before deployment, that ordinary law enforcement officers cannot safely execute a warrant without facing an imminent threat of serious bodily harm. In making these determinations, it is important to take into consideration the fact that use of a SWAT team can escalate rather than ameliorate potential violence; law enforcement should take appropriate precautions to avoid the use of SWAT whenever possible. In addition, all SWAT deployments, regardless of the underlying purpose, should be proportional—not all situations call for a SWAT deployment consisting of 20 heavily armed officers in an APC, and partial deployments should be encouraged when appropriate.

Local police departments should develop their own internal policies calling for appropriate restraints on the use of SWAT and should avoid all training programs that encourage a "warrior" mindset.

Finally, the public has a right to know how law enforcement agencies are policing its communities and spending its tax dollars. The militarization of American policing has occurred with almost no oversight, and it is time to shine a bright light on the policies, practices, and weaponry that have turned too many of our neighborhoods into war zones.

METHODOLOGY

This report is intended to provide a snapshot of the militarization of policing, a little-understood phenomenon that has not been adequately studied. It includes analysis of both existing secondary source materials and primary source data uncovered through the ACLU's public records investigation, which is described below.

On March 6, 2013, the ACLU sent public records requests to more than 260 law enforcement agencies in 25 states (we later added the District of Columbia and a number of cities in a 26th state).[7] We asked the law enforcement agencies to produce all incident reports (or other records) documenting each time a SWAT team was deployed between 2011 and 2012[8]—with such incident reports breaking down SWAT deployments by suspected crime, requesting agency, and purpose for the deployment—as well as any post-deployment documents relating to the use of no-knock warrants in conjunction with the SWAT deployment or the use of force during the deployment, including documentation relating to any injuries/deaths at the scene of the SWAT operation. As of September 30, 2013, we had received 3,844 records in response to these requests.[9]

In order to analyze the information contained in these records, we first identified the type of document (e.g., SWAT incident report, training document, grant request, 1033 record, etc.). For each document type, we identified several individual data points to collect.

For each SWAT deployment, we considered the following:

- The number, race, ethnicity, and sex of people impacted
- The number of children present, if any
- The number of mentally ill civilians impacted, if any
- The number of officer deaths/injuries, if any
- Whether forcible entry was made
- Whether a flashbang grenade or other distraction device was used
- The purpose of the SWAT deployment (e.g., to execute a search warrant, in response to a barricade, hostage, or active shooter scenario, etc.)
- In search warrant cases, whether the warrant was a no-knock warrant
- Whether the deployment was in connection with a drug offense
- Whether weapons were believed to be present
- Whether weapons were found
- Whether drugs and/or other contraband were found
- Whether the deployment resulted in property damage

For weapons transfers and federal grants, we considered the following:

- The amount and type of equipment received
- The type of grant program being applied for
- The amount of funding requested/received
- Whether the justification provided for the grant was related to drugs or terrorism

Some SWAT incident reports specifically include some form of check box or tick box allowing for a simple yes-or-no answer to one or more of the above questions (e.g., the incident report indicated whether a distraction device was employed by expressly requiring law enforcement personnel to check a box indicating "Yes" or "No"). When reports include such boxes, it is straightforward to transform the information contained in the incident

reports received into a coherent categorical variable representing the various responses of law enforcement personnel to the above questions.

The vast majority of the incident reports considered, however, did not consistently and systematically document information in such an easily transcribable manner, instead communicating or expressing answers—if any at all—to the above questions in a textual narrative (often located at the end of the incident report). It is, of course, relatively more difficult to generate a categorical variable from purely narrative text, and, in particular, one must decide how to deal with narratives that are silent or ambiguous with respect to one or more of the questions posed above.

For these types of incident reports, the following coding procedure was employed: If the narrative affirmatively answers one of the preceding questions, then the relevant categorical variable is coded as "Yes" (e.g., if the narrative explicitly indicates that a flashbang grenade was used during the SWAT operation, then the "Was a Distraction Device Used" variable is coded as "Yes"). Likewise, if the narrative explicitly answers one of the above questions in the negative, then the relevant variable is coded as "No." Further, if the narrative strongly suggests a positive answer to one of the preceding questions (e.g., with respect to the question of whether forcible entry was made, the incident report refers to extensive damage to the front door), then the variable is coded as "Likely Yes." Importantly, if the narrative is silent or ambiguous with respect to one of the above questions, then the relevant variable is coded as "Likely No," based on the theory that police officers are unlikely to affirmatively state in an incident report that a particular action was *not* undertaken. With respect to the use of a distraction device, for instance, police officers are unlikely, arguably, to expressly write down or indicate in the incident report that a distraction device was *not* used (when a distraction device was, in fact, not used at any point during the SWAT operation). It is simply too time-consuming or otherwise costly for police officers, in creating a post-deployment narrative, to mention all of the possible actions not undertaken during the SWAT operation; i.e., the narrative will contain mainly a description of what was done as opposed to what was not done. Finally, if the narrative is simply left blank—occurring with surprisingly high frequency in the

CASUALTY REPORT
FRAMINGHAM, MASSACHUSETTS
JANUARY 2011

SWAT Officer Shoots Grandfather of Twelve

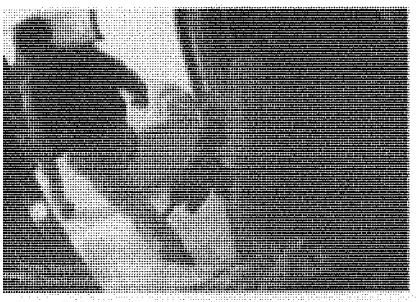
Ernie Stamp was in his apartment, watching a baseball game, when SWAT officers forced a battering ram through his front door and throw a flashbang grenade inside. Stamp, a 68-year-old grandfather of twelve, followed the officers' shouted orders to lie facedown on the floor with his arms above his head. He died in this position, when one of the officers' guns discharged. Stamp wasn't the suspect; the officers were looking for his girlfriend's son on suspicion of selling drugs. The suspect was arrested outside the home minutes before the raid. Even though the actual suspect didn't live in Stamp's home and was already in custody, the SWAT team still decided to carry out the raid. Framingham has since disbanded its SWAT team.

incident reports considered, then the relevant categorical variable is coded as "Unknown." No inferences are drawn in this instance. In the discussion that follows, data that was captured as "Likely Yes" or "Likely No" is described as being "probably" or "probably not" true.

To ensure that certain results are not merely a function of a small number of observations, the analysis considers only those law enforcement agencies that produced more than 15 incident reports in response to the original public records requests, with the exception of the Bay County Sheriff's Office, which was included in the analysis for the purpose of greater geographic diversity. It is important to note that the data analysis in the report does not seek to make statistical estimates about the larger universe

of SWAT deployments nationwide. Rather, the analysis is descriptive in nature, providing a general picture of SWAT deployments for this small cross section of otherwise randomly chosen law enforcement agencies—the information contained in the documents received is not used to make more general, broader statements about the use and impact of SWAT nationwide.

Narrowing the set of local law enforcement agencies that we considered as described in the preceding paragraph, the total number of SWAT incidents analyzed is 818, and these SWAT incidents are distributed over 20 local law enforcement agencies located in the following 11 states: Arkansas, Connecticut, Florida, Georgia, Mississippi, North Carolina, Pennsylvania, Texas, Utah, Washington and West Virginia. The agencies were diverse in terms of type (including municipal police departments, county sheriff's offices, a police department covering multiple unincorporated areas, and a state patrol), size of population covered (ranging from 35,000 to 778,000), region (covering the Mid-Atlantic, Appalachian, Northeast, South, West, and Northwest regions of the United States, with the South most heavily represented), and racial composition (with Black percentage population ranging from two percent to 42 percent). The SWAT incidents considered span the following time period: July 20, 2010, to October 6, 2013, with the vast majority of incidents occurring in years 2011 and 2012.



In the ACLU's study, SWAT teams were more than twice as likely to force entry into a person's home when searching for drugs than for other deployments.

For the most part, the data analysis consists of one- and two-way tabulations of the variables discussed above. Notably, the analysis treats missing values like other values, denoting missing or unknown values as "U." Rather than drop missing values from the calculations, missing values are explicitly recorded in the tabulations in order to highlight the substantial degree to which large sections of the incident reports received from the local law enforcement agencies are incomplete or simply left blank, with no explanation or additional reason given for the missing information.

Also, a significant component of the data analysis investigates racial disparities in the use and impact of SWAT deployments. To consider this issue, it is necessary to classify the "race" of a SWAT deployment in terms of the race of individuals impacted by SWAT operations (note that the challenge posed in doing so is that there may be multiple individuals of varying races impacted in a single SWAT deployment). This classification is accomplished in one of two distinct ways. Under the first approach, we create a variable called "Minority." Minority is defined here as referring only to Black or Latino individuals; our definition does not include other minority groups (e.g., Asian, Arab, and so forth). Any given SWAT incident is then described as "All White," meaning that all of those impacted by a given SWAT deployment were white; "All Minority," meaning that all of the individuals impacted by a given SWAT deployment were either Black or Latino; or "Mixed," meaning that the SWAT incident involved a mix of minority and non-minority individuals.

Under the second approach, we count the total number of individuals impacted by a given SWAT incident who were either white, Black, or Latino. That is, three numbers are calculated for each SWAT incident: (1) the total number of whites impacted by the SWAT operation, (2) the total number of Blacks impacted by the SWAT operation, and (3) the total number of Latinos impacted by the SWAT operation. Tabulations are then run, not with respect to the total number of individual SWAT incidents as above, but, rather, with respect to the total number of individuals impacted by SWAT operations. So, for example, when calculating the frequency of SWAT deployments by race in a given jurisdiction, under this second approach, we calculate the percentage of the total number of individuals

impacted by SWAT operations who are either white, Black, or Latino. In other words, the total number of Blacks impacted by SWAT operations in the jurisdiction is compared to the total number of individuals (of all races) impacted by SWAT operations.

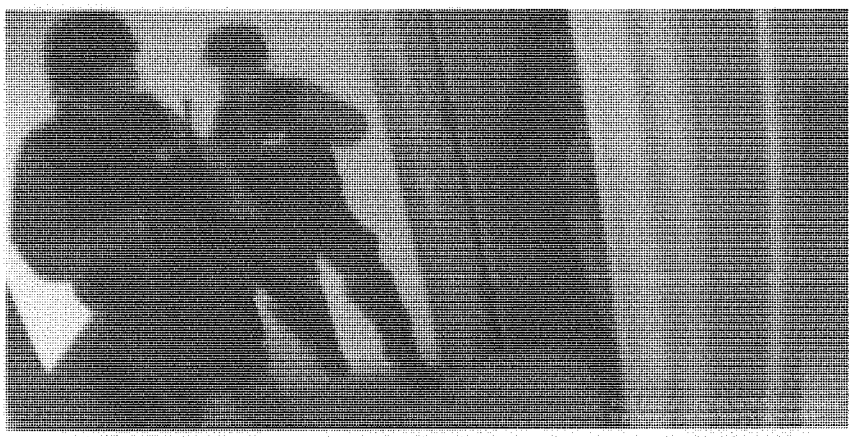
Under the first approach, the relevant unit of measurement is the total number of SWAT *incidents*; under the second approach, the relevant unit is the total number of *individuals* impacted by SWAT operations. Note that these two measures may generate differing results insofar as the average number of individuals impacted per SWAT deployment varies by race. Suppose, for instance, that one SWAT deployment can be classified as "All White" and another as "All Minority." Even though there is no racial disparity with respect to SWAT incidents in this example, there may still be a racial disparity with respect to the total number of individuals impacted by SWAT operations if the total number of individuals impacted in the "All Minority" SWAT incident is larger than the corresponding number of individuals impacted in the "All White" SWAT incident.

Racial disparities in SWAT impact *rates* (as opposed to the total number of individuals impacted by SWAT deployments) are also considered. By examining impact rates, it is possible to control for racial disparities in the underlying populations impacted by SWAT deployments. Rates are expressed in terms of individuals impacted by SWAT deployment per 100,000 individuals. In particular, to calculate the white, Black, or Latino SWAT impact rate in a given jurisdiction, the number of white, Black, or Latino individuals impacted by SWAT deployments is divided by the total white, Black, or Latino population in that jurisdiction; the corresponding ratio is then multiplied by 100,000 to obtain the impact rate per 100,000. In this report, the measure of racial disparity in a given jurisdiction in terms of SWAT deployments is calculated as the ratio of either the Black or Latino impact rate to the white impact rate. So, for example, a Black/white racial disparity measure (or ratio) of three implies that the rate at which Blacks are impacted by SWAT operations is three times the rate at which whites are impacted by SWAT operations. Likewise, a Latino/white racial disparity measure of three implies that the rate at which Latinos are impacted by SWAT operations is three times the rate at which whites are impacted by SWAT operations.

We also examined information pertaining to transfers of military equipment to 63 local law enforcement agencies located in the following eight states: Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, North Carolina, and Pennsylvania. The report provides totals by agency for different types of equipment, including bomb suits, night-vision goggles, drones, shock-cuffs, rifles, cell phone sniffers, facial recognition technology, forced-entry tools, biometric devices, utility trucks, APCs, helicopters, GPS devices, and personal protective armor.

Finally, we considered information pertaining to the type and amount of state and federal grant awards to 27 local law enforcement agencies located in the following 13 states: Arizona, Arkansas, Delaware, Florida, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, Pennsylvania, Texas, and Utah. Grants were coded to indicate whether the justification for a particular grant was drug-related ("Yes" or "No") or terrorism-related ("Yes" or "No"). Agencies in our dataset received funding from the following grant programs, among others: Federal Department of Homeland Security Grant Programs, the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, the Department of Justice Community Oriented Policing Services (COPS) Grant Program, State Homeland Security Grant Programs, and National Drug Control Policy State and Local Initiatives.

INTRODUCTION



Imagine that you are at home with your family, sleeping soundly in the early morning hours. You awaken suddenly to a loud explosion and the sound of glass shattering. A bright light blinds you and there is a terrible ringing in your ears. You cannot see anything, but through the ringing you hear the harrowing sound of your front door being broken down as your children begin to scream in the next room. As you come to your senses, you look outside your window and see what appears to be a tank in your driveway. Suddenly, people—you have no idea how many—break through your bedroom door. In the darkness, all you can see is that they are wearing black and carrying assault rifles, and their faces are masked. You hear people yelling at you and your partner to get on the floor and put your hands behind your back. Your children are still screaming in the next room and your dog is barking loudly. The people lead you, wearing whatever you wore to sleep that night, into the living room, pointing assault rifles at you the entire time. You are ordered to sit, and someone quickly handcuffs you to the chair. More people then bring your partner and your children into the living room at gunpoint. Your dog is still barking, and one of the people shoots it, killing it instantly, in front of you and your children. They then proceed to ransack your home, breaking down doors and shattering windows. You can see that the explosion you heard earlier came from a grenade that now lies near your feet, scorch marks covering the floor from the blast. They hold you and your family at gunpoint for the next several hours, refusing to answer any questions about why they are there or what they are looking for. Once they have finally left, you find your home in shambles. Broken glass litters the floor, and doors are broken from where the police kicked holes in them. Your dog lies breathless in a pool of its own blood. Tables are overturned, papers are strewn about, and electronic equipment has been ripped from the walls and left on the floor. Your partner is desperately trying to calm your hysterical children.

Unfortunately, this is not a scene from an action movie, and it did not happen during the course of a protracted battle in an overseas war. This is the militarization of our state and local police, and events like this are happening every day in homes throughout America.

Massive Military-Grade Weapons Caches in Arizona

The police department in Maricopa County, Arizona — led by the infamous Sheriff Joe Arpaio — has a .50-caliber machine gun that shoots bullets powerful enough to blast through the buildings on multiple city blocks. That's not all: the department has stockpiled a combined total of 120 assault rifles, five armored vehicles, and ten helicopters. This arsenal was acquired mainly through the Department of Defense's 1033 program, which transfers military-grade weaponry to state and local police departments, free of charge.

Maricopa County is not unique. According to our research, law enforcement agencies in Arizona have acquired a staggering cache of military weaponry, primarily through the 1033 program, including:

- 32 bomb units
- 704 units of night vision equipment, e.g., night-vision goggles
- 1034 guns, of which 712 are rifles
- 42 forced entry tools, such as battering rams
- 850 units of surveillance and reconnaissance equipment
- 13,409 personal protective equipment (PPE) and/or uniforms
- 120 utility trucks
- 64 armored vehicles
- 4 GPS devices
- 17 helicopters
- 21,211 other types of military equipment

All 1033 equipment certainly does not just go through the Pinson Police Department and make its way to state and local law enforcement agencies. A two-year investigation by the Arizona Republic revealed that one local agency, the Pinal County Sheriff's Office, dished out millions of dollars' worth of military equipment to non-law enforcement agencies and planned to auction off some of its around to raise revenue for itself.

A great deal of military-grade equipment in Arizona is ostensibly obtained for purposes of securing the U.S. border with Mexico, but the track record of federal grant programs suggests that this equipment may well be diverted to other activities, such as the investigations and warrants detailed elsewhere in this report. The bottom line is that Arizona law enforcement agencies at and well beyond the actual border have become unnecessarily and dangerously militarized. The Pinal County Sheriff's office, for example, obtained 94 rifles, two armored vehicles, and three helicopters. The Coconino County Sheriff's office obtained six armored vehicles, and the Mojave County Sheriff's office has four helicopters. Arizona law enforcement, designed to serve and protect communities, is instead equipped to wage a war.

Arming border communities for battle gives the ACLU serious cause for concern. For more on why the militarization of the United States-Mexican border is dangerous and counter-productive, see ACLU, "Border Communities Under Siege: Border Patrol Agents Rule Roughshod Over Civil Rights."

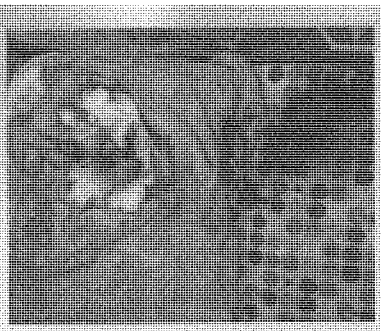
SWAT Raid Ends with Toddler in Medically-Induced Coma

After the Phoenixsmith family's home in Wisconsin burned down, they drove their rental van to stay with relatives in a small town just outside of Atlanta, Georgia. On the back windshield, the family posted six stick figures: a dad, a mom, three young girls, and one baby boy.

This van, containing several car seats, was parked in the driveway of the home where they were staying when, just before 3:00am on a night in May of 2014, a team of SWAT officers armed with assault rifles burst into the room where the family was sleeping. Some of the kids' toys were in the front yard, but the Habersham County and Cornelia police officers claimed they had no way of knowing children might be present. One of the officers threw a flashbang grenade into the room. It landed in Baby Bou Bou's crib.

> "My three little girls are terrified of the police now. They don't want to go to sleep because they're afraid the cops will kill them or their family."
>
> —Alicia Phoenixsmith

It took several hours before Alicia and Bouakhom, the baby's parents, were able to see their son. The 19-month-old had been taken to an intensive burn unit and placed into a medically induced coma. When the flashbang grenade exploded, it blew a hole in 19-month-old Bou Bou's face and chest. The chest wound was so deep it exposed his ribs. The blast covered Bou Bou's body in third degree burns. At the time of this report's publication, three weeks after the



The crib where Baby Bou Bou was sleeping, damaged by an exploding flashbang grenade.

> "This is about race. You don't see SWAT teams going into a white collar community, throwing grenades into their homes."
>
> —Alicia Phoenixsmith

raid, it was still unclear whether Baby Bou Bou would live. Bouakhom spent this Father's Day in the hospital with his son.

The SWAT team was executing a "no knock" warrant to search for someone who did not live in the house that was raided: Bouakhom's nephew, who was suspected of selling a $50 drug sale. "After breaking down the door, throwing my husband to the ground, and screaming at my children, the officers armed with M16s filed through the house like they were playing war," said Alicia. The officers did not find any guns or drugs in the house and no arrests were made. Bouakhom's nephew was eventually arrested without

Bounkham Phoneseuth, nicknamed "Baby Bou Bou," loves French fries, the theme song from Frozen, and playing with his three older sisters.

Bounkahm and Alecia spent the three weeks following the raid at the hospital. At the time the report was published, their son was still in a medically-induced coma.

incident at another location, holding a small amount of drugs on him.

Bounkahm, the baby's father, was born in Laos during wartime. He remembers communist soldiers breaking down the door of his childhood home. "It felt like that," he said. "This is America and you're supposed to be safe here, but you're not even safe around the cops."

The Phoneseuths have three daughters who are now scared to go to bed at night. One night after the raid, their 4-year-old woke up in the middle of the night screaming, "No, don't kill him! You're hurting my brother! Don't kill him." Alecia and Bounkahm used to tell their kids that if they were ever in trouble, they should go to the police for help. "My three little girls are terrified of the police now. They don't want to go to sleep because they're afraid the cops will kill them or their family," Alecia said.

When asked about the prevalence of SWAT raids to fight the War on Drugs, Alecia told us, "This is all about race and class. You don't see SWAT teams going into a white collar community, throwing grenades into their homes."

Learn more at www.justicefor babybouhou.com.

"After breaking down the door, throwing my husband to the ground, and screaming at my children, the officers—armed with M16s—filed through the house like they were playing war."

—Alecia Phoneseuth

BACKGROUND

American policing has become unnecessarily and dangerously militarized.[10] For decades, the federal government has equipped state and local law enforcement agencies with military weapons and vehicles, as well as military tactical training, for the (often explicit) purpose of waging the War on Drugs. Not all communities are equally impacted by this phenomenon; the disproportionate impact of the War on Drugs in communities of color has been well documented.[11] Police militarization can result in tragedy for both civilians and police officers, escalate the risks of needless violence, cause the destruction of personal property, and undermine civil liberties. Significantly, the militarization of American policing has been allowed to occur in the absence of public discourse or oversight.

The militarization of American policing has occurred as a direct result of federal programs that use equipment transfers and funding to encourage aggressive enforcement of the War on Drugs by state and local police agencies. One such program is the 1033 Program, launched in the 1990s during the heyday of the War on Drugs, which authorizes the U.S. Department of Defense to transfer military equipment to local law enforcement agencies.[12] This program, originally enacted as part of the 1989 National Defense Authorization Act, initially authorized the transfer of equipment that was "suitable for use by such agencies in counterdrug activities."[13] In 1996, Congress made the program permanent and expanded the program's scope to require that preference be given to transfers made for the purpose of "counterdrug and counterterrorism activities."[14] There are few limitations or requirements imposed on agencies that participate in the 1033 Program.[15] In addition, equipment transferred under the 1033 Program is free to receiving agencies, though they are required to pay for transport and maintenance. The federal government requires agencies that receive 1033 equipment to use it within one year of receipt,[16] so there can be no doubt that participation in this program creates an incentive for law enforcement agencies to use military equipment.

"The detection and countering of the production, trafficking, and use of illegal drugs is a high-priority national security mission of the Department of Defense."

—Then Secretary of Defense Dick Cheney, 1989[17]

It is inappropriate for the U.S. military to be actively supporting the domestic War on Drugs, which has destroyed millions of lives, unfairly impacted communities of color, made drugs cheaper and more potent, caused countless deaths of innocent people caught up in drug war-related armed conflict, and failed to eliminate drug dependence and addiction. Even if au argument could be made that providing local law enforcement with military equipment for counterdrug purposes ever made sense—which is dubious—there is no way to justify such policies today. Indeed, the U.S. Attorney General has suggested that the drug war has gone too far. Beginning in August 2013, Attorney General Eric H. Holder, Jr., announced plans to curtail the use of mandatory minimum sentencing laws by federal prosecutors in certain drug cases, agreed not to challenge state laws allowing the medicinal or recreational use of marijuana, and supported a move by the U.S. Sentencing Commission to reduce many drug sentences.

The DOJ plays an important role in the militarization of the police through programs such as the Edward Byrne Memorial Justice Assistance Grant (JAG) program. Established in 1988, the program, originally called the Edward Byrne Memorial State and Local Law Enforcement

Assistance Program, provides states and local units of government with funding to improve the functioning of their criminal justice system and to enforce drug laws. JAG funding can be used for any of the following purposes:

- Law enforcement
- Courts (prosecution and indigent defense)
- Crime prevention and education
- Corrections and community corrections
- Drug treatment and enforcement
- Program planning, evaluation, and technology
- Crime victim and witness programs

However, JAG grantees spend much more of their funding on law enforcement than on other program areas. Between April 2012 and March 2013, JAG grantees spent 64 percent of their JAG funding on law enforcement. In contrast, grantees spent 9 percent on courts, including both prosecution and indigent defense, and a mere 5 percent on drug treatment and 6 percent on crime prevention and education.[18] Grantees use a portion of JAG funds allocated to law enforcement to purchase numerous types of weapons. In 2012-2013, state and local agencies used JAG funds to purchase hundreds of lethal and less-lethal weapons, tactical vests, and body armor.[19]

The militarization phenomenon has gained even greater zeal since the events of September 11, 2001, the creation of the Department of Homeland Security (DHS), and the declaration of the so-called "War on Terror." Since the early 2000s, the infusion of DHS money and assistance to state and local law enforcement anti-terrorism work has led to even more police militarization and even greater military-law enforcement contact, and DHS grants have allowed police departments to stockpile specialized equipment in the name of anti-terror readiness.

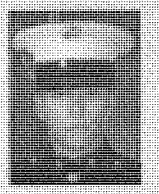
The main source of DHS funding to state and local law enforcement is the Homeland Security Grant Program (HSGP) and its two main components, the State Homeland Security Program (SHSP) and the Urban Areas Security Initiative (UASI).[20] Both grant programs require recipients to dedicate at least 25 percent of grant funds to "terrorism prevention-related law enforcement activities," though that phrase does not appear to be clearly defined.[21] The stated justification for DHS grants to state and local law enforcement is to support efforts to protect against terrorism, but even the DHS acknowledges that it has a larger mission, which includes ordinary law enforcement activities. In 2010, the DHS announced a new "anticrime campaign," which appears to have a minimal nexus to terrorism prevention.[22]

By invoking the imagery of war, aggressively funding the enforcement of U.S. drug laws, and creating an over-

FAIR WARNING

TUCSON, ARIZONA
2011

SWAT Team Shoots Veteran 22 Times



Jose Guerena, a 26-year-old Iraq war veteran, returned home and crawled into bed after working the graveyard shift at the Asarco Mission mine. Around 9:30am, his wife became nervous when she heard strange noises and saw the outline of a man standing outside her window. She woke Guerena, who asked his wife to hide in a closet with their 4-year-old son. Guerena picked up his rifle, with the safety on, and went to investigate. A SWAT team fired 71 shots at Guerena, 22 of which entered his body and killed him. Guerena died on his kitchen floor, without medical attention. The SWAT officers raided multiple homes in the neighborhood, and in another home they did find a small bag of marijuana. No drugs were found in the Guerenas' home.

hyped fear of siege from within our borders, the federal government has justified and encouraged the militarization of local law enforcement. The ACLU found throughout the course of this investigation that the excessive militarism in policing, particularly through the use of paramilitary policing teams, escalates the risk of violence, threatens individual liberties, and unfairly impacts people of color. In addition, because use of unnecessarily aggressive techniques has a documented impact on public confidence in law enforcement, there is reason to be concerned that excessive militarization undermines public trust and community safety as well.

Interestingly, members of the law enforcement community are far from unified on the topic of police militarization.

INCIDENT REPORT

GWINNETT COUNTY, GEORGIA
JUNE 23, 2012

Full SWAT Team Deployed, Despite Presence of Children and Elderly

In a search for marijuana, a SWAT team raided a home at 6:00 in the morning. Despite the fact that the department had previously decided that a SWAT deployment was unnecessary in this case, officers used the fact that one of the people thought to be in the home had been convicted of weapon possession in 2005 in another state as the basis for concluding people inside the residence might be armed. Therefore, the department changed its mind and deemed a full SWAT deployment necessary, despite knowing that there were likely to be children and an elderly woman present in the home when they executed the warrant. There is no indication as to whether any guns or weapons were found after the home was raided. All but one of the people thought to be involved were Black.

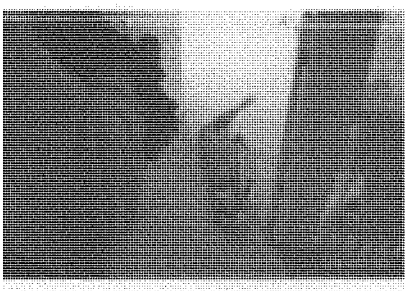
Some fully embrace militarism in policing: "We trainers have spent the past decade trying to ingrain in our students the concept that the American police officer works a battlefield every day he patrols his sector."[23] The most common rationale put forth to support the notion that the police in fact should be militarized is to protect life: "A warrior cop's mission is to protect every life possible and to only use force when it's necessary to accomplish that mission."[24] Others suggest that policing has in fact not become militarized at all: "Advocates from every corner of the political compass have produced a mountain of disinformation about the 'militarization' of American law enforcement."[25] Still others express concern that American policing has become too militarized; Salt Lake City police chief Chris Burbank recently stated, "We're not the military. Nor should we look like an invading force coming in."[26] Diane Goldstein, a retired lieutenant, agrees. Speaking of the drug war zeal of the 1980s, she stated that "[The] ever-increasing federalization of what traditionally had been a state and local law enforcement effort received massive funding as politicians, presidents and the Drug Czar increased the rhetoric of war." Even the U.S. Department of Justice has questioned the wisdom of militarizing local police departments: "According to the U.S. Department of Justice, Bureau of Justice Statistics, Report on State and Local Law Enforcement Training Academies (BJS Report), the majority of police recruits receive their training in academies with a stress-based military orientation. This begs the question; is this military model—designed to prepare young recruits for combat—the appropriate mechanism for teaching our police trainees how to garner community trust and partner with citizens to solve crime and public order problems?"[27]

One of the more dramatic examples of police militarization is the use of SWAT and other paramilitary teams to conduct ordinary law enforcement activities.[28] SWAT teams were created in the late 1960s as "quasi-militaristic" squads capable of addressing serious and violent situations that presented imminent threats such as riots, barricade and hostage scenarios, and active shooter or sniper situations.[29] The first SWAT team, at the Los Angeles Police Department, was developed in the wake of a series of emergency situations in which local police felt unable to respond as swiftly or as effectively as was necessary.[30] SWAT teams have since expanded in number, and are used with

Salt Lake City police chief Chris Burbank recently stated, "We're not the military. Nor should we look like an invading force coming in."

greater frequency and, increasingly, for purposes for which they were not originally intended—overwhelmingly to serve search warrants in drug investigations.

Of course, aggressive policing tactics extend well beyond the scope of this report, and examples of particularly aggressive policing, in which police officers appear more as an invading force than as protectors of a community, abound. Take Paragould, Arkansas, where at a December 2012 town hall meeting, Chief of Police Todd Stovall announced that police conducting routine patrols would "be in SWAT gear and have AR-15s around their neck."[31] He also asserted that the police would be stopping anyone they wanted to and that the fear of crime in Paragould gave his officers probable cause to stop anyone at any time, for any reason or no reason at all. Chief Stovall later issued a statement reassuring the residents of Paragould



It is not unusual for family pets to be shot unnecessarily.

Photo: Keep Columbia Free via FIO/Sunshine request
http://www.youtube.com/watch?v=Ng6mfpZ2kR4

that the police would not be violating their constitutional rights, but the fact that the Chief of Police felt comfortable announcing a plan for police officers on routine patrol to stop and question residents without justification while dressed in SWAT gear and carrying AR-15s is a foreboding sign. While unquestionably of grave concern, routine patrols using SWAT gear, stop-and-frisk,[32] and other aggressive policing tactics are beyond the scope of this report. Another important area is the use of military surveillance equipment and other forms of intelligence gathering, which also falls outside the scope of this report.[33] Finally, the militarization of the U.S. border is a critically important issue; we touch on this in our discussion of the enormous caches of weapons Arizona law enforcement agencies have received through the 1033 Program, but the broader issue of border militarization is also outside the scope of this report.[34]

This report builds on a body of existing work establishing that police militarization is indeed a problem. For example, Dr. Peter Kraska, Professor of Justice Studies at Eastern Kentucky University, has surveyed police departments across the country on their use of SWAT teams and estimates that the number of SWAT teams in small towns grew from 20 percent in the 1980s to 80 percent in the mid-2000s, and that as of the late 1990s, almost 90 percent of larger cities had them. He also estimates that the number of SWAT raids per year grew from 3,000 in the 1980s to 45,000 in the mid-2000s.[35] David Klinger and Jeff Rojek, both at the University of Missouri-St. Louis's Department of Criminology and Criminal Justice, conducted a study using SWAT data from 1986 to 1998 and found that the overwhelming number of SWAT deployments studied were for the purpose of executing a warrant (34,271 for warrant service, in contrast to 7,384 for a barricaded suspect and 1,180 for hostage-taking cases).[36]

Some scholars have proposed additional analytic frameworks for examining the militarization of policing. For example, Abigail R. Hall and Christopher J. Coyne, both in the Department of Economics of George Mason University, have developed a "political economy" of the militarization of policing.[37] In addition, Stephen M. Hill and Randall R. Beger, both professors in the Political Science Department at the University of Wisconsin-Eau Claire, place the issue within an international context,

arguing that the militarization of domestic policing is part of a broader "paramilitary policing juggernaut."[38] Journalist Radley Balko discusses the issue of police militarization at length in his recent book "Rise of the Warrior Cop" and the topic has received considerable, if episodic, attention in the mainstream media.[39] Our analysis adds to this body of work by incorporating an analysis of raw data—actual SWAT incident reports collected from numerous law enforcement agencies across the country.

From our review of both primary and secondary source materials, we are able to present two types of findings: one set of general findings based on our review of the existing research, which our data supports, and one set of time-bound specific findings from our statistical analysis of the raw data we collected in connection with our investigation. As explained in more detail below, our more general findings are that policing in the Unites States bas become excessively militarized and tbat this militarization has occurred with almost no transparency, accountability, or oversight. We also found, based on our analysis of the raw data we collected, that of the SWAT deployments studied, (1) the overwhelming majority were for the purpose of searching people's homes for drugs, (2) troubling racial disparities existed, and (3) the use of violent tactics and equipment often resulted in property damage and/or bodily harm.

American law enforcement can reverse the militarization trend in a way that promotes safe and effective policing strategies without undermining public confidence in law enforcement.

This report should not be read as an indictment of the police generally or of any individual police officers. It is also not an argument against the use of SWAT in appropriate circumstances—some scenarios undoubtedly merit an emergency response, and SWAT teams are often the best equipped to handle those scenarios. Finally, the report should not be understood to suggest that the incidents uncovered during the course of the ACLU's investigation did not necessarily merit some form of law enforcement response—many did. Instead, we argue that American law enforcement can reverse the militarization trend in a way tbat promotes safe and effective policing strategies without undermining public confidence in law enforcement.

DISCUSSION AND FINDINGS

Policing and Militarism

FINDING 1

Policing—particularly through the use of paramilitary teams—in the United States today has become excessively militarized, mainly through federal programs that create incentives for state and local police to use unnecessarily aggressive weapons and tactics designed for the battlefield.

Use of Military Equipment by SWAT Teams

It is clear from this investigation and other research[40] that American policing has become excessively militarized. We can see this in the use of military-style equipment—weapons and tactics designed for the battlefield—to conduct ordinary law enforcement activities. Police officers use these weapons routinely, across the United States, to force their way into the people's homes, disrupting lives and destroying communities.

One such weapon is the battering ram—"a large and heavy piece of wood or other material that is used to hit and break through walls and doors"[41]—which is nearly always carried on deployments, and the primary tool used to breach doors and windows (though explosive breaching—the use of explosives to cut through doors—seems to be gaining popularity).

Another device often used by SWAT teams is the flashbang grenade (sometimes referred to generically as a "distraction device"), an explosive device that is used to distract the occupants of a building while a SWAT team is attempting to secure the scene.[42] Flashbang grenades produce an extremely bright flash of light that temporarily overstimulates the retina and causes temporary blindness (lasting 5 to 10 seconds). They also make a deafening noise that makes people feel disoriented and can cause a lingering ringing. Although they are generally considered to be nonlethal, they have been known to set homes on fire[43] and induce heart attacks,[44] both sometimes resulting in death. In 2010, 7-year-old Aiyana Stanley-Jones was killed when, just after midnight, a SWAT team threw a flashbang grenade through the window into the living room where she was asleep. The flashbang burned her blanket and a member of the SWAT team burst into the house, firing a single shot, which killed her.[45]

Both battering rams and flashbang grenades can cause extensive property damage—half of the incidents the ACLU reviewed involved property damage such as damage to doors and/or windows (in another 30 percent of cases, it was impossible to know whether there was property damage in connection with a SWAT deployment, so the

Aiyana Stanley-Jones

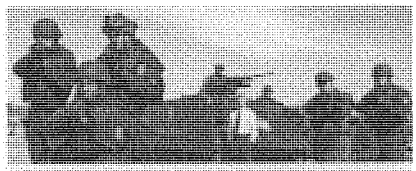
Photo: Family of Aiyana Stanley-Jones

total may be higher). SWAT incident reports almost never included an estimate of the amount of damage, and none of the incident reports reviewed suggested that the owners or residents of a home damaged by use of a battering ram or flashbang grenade would be reimbursed for repairs.

When SWAT teams deploy, they typically wear combat helmets and "battle dress uniforms" (BDUs), fatigues designed for use by the U.S. Army throughout the 1980s and 1990s. The ACLU documented a total of 15,054 battle uniforms or other personal protective equipment received by 63 responding agencies during the relevant time period. The use of BDUs is another trend in the militarization of policing; as retired police officer Bill Donelly stated in a letter to the editor in the Washington Post, "One tends to throw caution to the wind when wearing 'commando-chic' regalia, a bulletproof vest with the word 'POLICE' emblazoned on both sides, and when one is armed with high tech weaponry...Police agencies face tactical challenges that do require a specialized and technically proficient team approach, but fortunately these incidents are relatively infrequent even in the largest cities. It would appear that U.S. law enforcement, even in the smallest and safest communities, is suffering from a collective 'inferiority complex' that can be relieved only by military-style clothing and arsenals of formidable firepower."[46]

Another piece of equipment that seems to be gaining popularity among SWAT teams is the armored personnel carrier (APC). APCs were created to transport infantry and provide protection from shrapnel and small arms fire on the battlefield. One version popular with law enforcement agencies is the Ballistic Engineered Armored Response Counter Attack (BearCat) APC, but more modern APCs include the MRAP (Mine Resistant Ambush Protected) vehicle, which provides additional protection from improvised explosive devices (IEDs). In the battlefield, APCs are typically armed with machine guns mounted on top of the vehicle in a turret; when used domestically, the guns are removed and the vehicle is used primarily for protection by law enforcement responding to SWAT call-outs and emergencies. Thus, APCs are not typically armed when in use by domestic law enforcement; however, they appear threatening and observers do not necessarily have reason to know whether an APC is armed.

In 2013, the Department of Defense started giving away MRAPs through the 1033 Program. According to the Department of Defense, MRAPs are designed to protect occupants against armor-piercing roadside bombs.[47] In 2007, the United States spent $50 billion to produce 27,000 MRAPs and deploy them to Iraq and Afghanistan.[48] No longer needed overseas, MRAPs have made their way into local communities. Because the ACLU launched this investigation in early 2013 and requested records only from 2011-2012, we did not ask the jurisdictions studied to send documentation of MRAP requests, so it is not possible to know from this investigation how many towns have acquired such vehicles through the 1033 Program. Media accounts put the number at around 500.[49] Dallas, Texas, has one.[50] So does Salinas, California,[51] as well as the Utah Highway Patrol.[52] And, perhaps most bizarrely, the Ohio State University Police has one—in order to provide "presence" on football game days.[53]



Police in South Carolina pose with their Bearcat

Photo: Supplied by Lt. Chris Cowan

Military Training

The militarization of policing culture is also apparent in the training that tactical teams receive—SWAT team members are trained to think like soldiers. The ACLU asked hundreds of law enforcement agencies to submit copies of SWAT training materials. One response from the Farmington, Missouri, Special Response Team consisted of a piece written by Senior PoliceOne Contributor Chuck Remsberg for Killology Research Group. The piece summarizes a presentation given at a conference of the International Association of Law Enforcement Firearms Instructors and warns that "preparations for attacks on American schools that will bring rivers of blood and staggering body counts are well underway in Islamic

terrorist camps." It further states that "police agencies aren't used to this…We deal with acts of a criminal nature. This is an act of war, but because of our laws we can't depend on the military to help us…[T]he U.S. in [sic] the one nation in the world where the military is not the first line of defense against domestic terrorist attack. By law, you the police officer are our Delta Force." It provides "'4 Ds' for Thwarting Terrorists' Plans to Massacre Our School Children" and concludes with an admonition to "Build the right mind-set in your troops."[54]

Even if there were merit to the argument that training SWAT teams to think like soldiers in the context of a school shooting would provide them with the skills that they need to respond effectively, it appears that training in how to develop a "warrior" mentality is pervasive and extends well beyond hostage situations and school shootings, seeping into officers' everyday interactions with their communities. For example, the Cary, North Carolina, SWAT team provides a training session explicitly titled "Warrior Mindset/Chemical Munitions" for all Emergency Response Team personnel. A PowerPoint training presentation sent by the National Tactical Officers Association urges trainees to "Steel Your Battlemind" and defines "battlemind" as "a warrior's inner strength to face fear and adversity during combat with courage. It is the will to persevere and win. It is resilience." Neither of these training documents suggests that SWAT teams should constrain their soldier-like tactics to terrorism situations. Additionally, in the documents reviewed for this report, the majority of SWAT raids took place in the context of serving search warrants at people's homes—not in response to school shootings or bombings.

Training programs like these impact how some SWAT officers view the people in their communities. For example, in one of the cases examined for this report, a SWAT team drove a BearCat APC into a neighborhood for the sole purpose of executing a warrant to search for drugs. Once the SWAT officers arrived at the home, they drove the APC to the residence, broke down the front and back doors, destroyed a glass table, deployed a distraction device, and pried a lock off a shed, all to find the house empty. One of the officers noted in his report that the house was "empty of suspects and civilians." The distinction between "suspects" and "civilians" is telling. If police see suspects less as civilians and more as enemies, what effect does that have on police-suspect interactions?

INCIDENT REPORT

BURLINGTON, NORTH CAROLINA
NOVEMBER 13, 2012

SWAT Officers Shoots Dog During No-Knock Raid

At 6:00 in the morning, a SWAT officer shot a dog during a no-knock raid and search of a home. The suspect was a single Black male who was suspected of selling marijuana at his home. Solely on the basis of information provided by a confidential informant (which is often unreliable), the SWAT team believed that the man possessed firearms. No information was provided about what kind or how many firearms the man was believed to possess. The team deployed a distraction device and broke down the door, causing damage and surprise. They found two unarmed men inside, along with a dog that bit one of the officers. The officer was carrying a shotgun, against the team's own policy. Using this shotgun, the officer shot the dog. Seventy percent of the people impacted by the Burlington SWAT deployments the ACLU studied were Black.

Legality of Forced Entry Into People's Homes

Generally speaking, the Fourth Amendment to the U.S. Constitution prohibits the police from entering a person's home without a warrant. Historically, if the police had a warrant to search a person's home, they were required by law to knock on the door, announce their presence, and wait for someone to answer.[55] When a person answered

the door, the police were required to show the warrant and were then entitled to demand entry to conduct a search.

Although the "knock-and-announce" rule still exists, today police executing a search warrant need not follow the rule if they have "reasonable suspicion" that the circumstances present a threat of physical violence or that evidence would be destroyed if advance notice were given.[56] Further, if they believe in advance of executing the search warrant that either of these circumstances will exist, they can obtain a "no-knock warrant," which allows them to enter a person's home without knocking. In either case, the police are permitted to force their way into a person's home. As a consequence, even though the police are not allowed to barge their way into a person's home simply because they believe drugs are present,[57] given that any time they have reasonable suspicion that knocking and announcing their presence would "inhibit the investigation of the crime by ... allowing the destruction of evidence,"[58] the reality is that drug cases often provide police with vast discretion to use forced entry into a person's home to execute a search warrant. Even when a court finds that the police have violated the knock-and-announce rule, the Supreme Court has held that the prosecution can still use the evidence seized as a result of a subsequent search at trial, significantly diluting the knock-and-announce requirement's value as a deterrent to police overreach.[59]

While search warrants authorize the police to search a given place for a particular item or items, they rarely delineate the tactics the police may use in executing the warrant (other than no-knock warrants, which, as explained above, authorize the police to enter without knocking or announcing their presence, and sometimes specifically authorize use of a night-time search). And though the Supreme Court has held as a general matter that the method of police entry into a home is a factor to be considered in assessing the reasonableness (and, hence, constitutionality) of the search,[60] there is no *per se* prohibition on the use of any particular method. Therefore, the fact that the police obtained a warrant in a given case does little to constrain their broad discretion to decide whether to deploy a SWAT team, break down a door with a battering ram, deploy a distraction device, etc.

In sum, while courts can at times provide recourse to violations of Fourth Amendment rights, by and large they do not offer robust protection from police use of aggressive equipment and tactics to execute search warrants in people's homes.

Federal Incentives to Militarize Policing

The Department of Defense operates the 1033 Program through the Defense Logistics Agency's (DLA) Law Enforcement Support Office (LESO), whose motto is "from warfighter to crimefighter." According to LESO, the program has transferred $4.3 billion worth of property through the 1033 Program.[61] Today, the 1033 Program includes more than 17,000 federal and state law enforcement agencies from all U.S. states and territories. The amount of military equipment being used by local and state police agencies has increased dramatically—the value of property transferred though the program went from $1 million in 1990 to $324 million in 1995 and to nearly $450 million in 2013.[62]

The 1033 statute authorizes the Department of Defense to transfer property that is "excess to the needs of the Department,"[63] which can include new equipment; in fact, 36 percent of the property transferred pursuant the program is brand new.[64] Thus, it appears that DLA can simply purchase property from an equipment or weapons manufacturer and transfer it to a local law enforcement agency free of charge. Given that more than a third of property transferred under the program is in fact new, it appears that this practice happens with some regularity.

A statistical analysis of the transfer of equipment under the 1033 Program is beyond the scope of this report, but we uncovered numerous examples of transfers that give cause for concern. For example, during the years covered by the investigation, the North Little Rock, Arkansas, police obtained at least 34 automatic and semi-automatic rifles, two MARCbots (robots designed for use in Afghanistan that are capable of being armed), several ground troop helmets, and a Mamba tactical vehicle.[65] The Arkansas state coordinator found that the LESO application for participation and the state memorandum of agreement were outdated, in addition to many weapons being unaccounted for in the inventory. Despite this, the coordinator signed off on a form that said all the inventory

forms were accurate. Bay County, Florida, received several military-style rifles, a forklift, and several utility trucks. The same county also has on inventory numerous M-16s, M-14s, sniper rifles, submachine guns, and ballistic shields, though it is not clear from the records whether Bay County obtained those items through the 1033 Program, from another federal source, or otherwise. Gwinnett County, Georgia, received nearly 60 military-style rifles, as well as numerous combat vests and Kevlar helmets.

In addition, agencies are permitted to transfer equipment obtained through the 1033 Program between each other. The ACLU uncovered numerous examples of state and local law enforcement agencies transferring equipment that they had obtained through the 1033 Program. There do not appear to be any limitations on or oversight of this practice.

As the saying goes, if all you have is a hammer, everything looks like a nail.[66] Likewise, if the federal government gives the police a huge cache of military-style weaponry, they are highly likely to use it, even if they do not really need to. Gwinnett County, Georgia, for example, received at least 57 semi-automatic rifles, mostly M-16s and M-14s, through the 1033 Program during the relevant time period. A third of Gwinnett County's SWAT deployments were for drug investigations; in half of them, the SWAT team broke down the door to get inside, and there was no record in any of the reports that weapons were found. In several of these cases, damage resulted to people's homes; in one case, the SWAT team deployed tear gas into a home in order to serve an arrest warrant, knowing there were people inside who were not subjects of the warrant. It is not possible to prove definitively that the weapons procured through the 1033 Program incentivized these deployments in Gwinnett. However, it is reasonable to infer that the program—the very purpose of which is to equip local police officers to use military equipment in drug investigations—has increased the likelihood that local police departments, not just in Gwinnett County but across the country, will deploy military weapons and tactics in drug investigations when possible.

Mission Creep

It is clear that local law enforcement agencies use DHS funds ostensibly obtained for the purpose of fighting terrorism to conduct ordinary law enforcement activities. In New Hampshire, for example, three police departments—in Concord, Keene, and Manchester (cities that are separated from each other by approximately 30 miles)—each used DHS grants to fund the purchase of an armored BearCat (the amount of grants received by these agencies ranged from $215,000 to $286,000). Justifications offered for these grants included prevention, protection, response, and recovery activities pertaining to weapons of mass destruction and the threat of terrorism. The Keene, New Hampshire, police department, for example, stated in its application for DHS grant funding to purchase an APC that "[t]he terrorism threat is far reaching and often unforeseen. Terrorist's [sic] goals, regardless of affiliation,

"Our application talked about the danger of domestic terrorism, but that's just something you put in the grant application to get the money. What red-blooded American cop isn't going to be excited about getting a toy like this? That's what it comes down to."

—Keene, N.H. Citty Councilmember

usually encompass the creation of fear among the public, convincing the public that their Government is powerless to stop the terrorists, and get immediate publicity for their cause." The application goes on to cite Keene's annual pumpkin festival as a potential terrorism target in need of protection with an APC.[67]

Not even Keene city officials believed that the city actually needed the BearCat to thwart terrorism. To explain why the police included the word "terrorism" on their application for federal funding for this purchase, a city councilmember said, "Our application talked about the danger of domestic terrorism, but that's just something you put in the grant application to get the money. What red-blooded American cop isn't going to be excited about getting a toy like this? That's what it comes down to."[68]

The police chief in San Diego, California, expressed the same sentiment when asked about his agency's decision to purchase an armored personnel carrier: "'If we had to take on a terrorist group, we could do that,' said William Lansdowne, the police chief in San Diego and a member of the board of the Major Cities Chiefs Association. Though his force used federal grants to buy one of those fancy armored vehicles—complete with automatic-gun portals—he said the apparatus was more useful for traditional crime-busting than counter-terrorism."[69]

It is equally clear that the DOJ's Byrne JAG funding is being used to conduct unnecessarily aggressive activities in drug cases. Approximately 21 percent of all law enforcement JAG funds go to task forces, the majority of which are drug task forces, which routinely employ paramilitary tactics in drug investigations.[70] Byrne JAG drug task forces have been widely criticized for incentivizing unnecessarily aggressive, often militarized, tactics—particularly in communities of color.[71] As of 2011, 585 multi-jurisdictional task forces were funded through the JAG program.[72] JAG funds often support drug task forces by paying for the salaries or overtime hours of task force officers as well as for vehicles and equipment; in 2012-2013, more than 680,000 law enforcement overtime hours were paid for using JAG funds.[73]

According to documents uncovered by the ACLU, local law enforcement agencies often received substantial funding from the DHS and DOJ during the time period studied. The city of Austin, Texas, for example, received $2.2 million in federal grant funding from August 2010 through January 2012. Fort Worth, Texas, received $1.2 million in 2011 and 2012 combined. Similarly, since August 2013, the Salt Lake City Police Department has received almost $2 million in federal grant awards. However, awards are not limited to large cities. In Montana, the Helena Police Department received $733,000 in DHS grants, and the Montana Department of Justice received more than $1 million in DHS grants. Likewise, Gastonia, North Carolina, has received more than $180,000 in federal funding since 2009, while the Bay County, Florida, Sheriff's Department has received approximately $360,000 in federal funding since late 2011. In 2011, the Raleigh Police Department received $120,000 as part of the 2011 State Homeland Security Program.

A 2004 classified memo all but confirms the blurring of the lines between the drug war and the U.S. military by calling the Drug Enforcement Agency (DEA) The "Other" Warfighter and stating that the War on Drugs "has all the risks, excitement, and dangers of conventional warfare.[74]

Simply put, American policing has become excessively militarized.

Lack of Transparency and Oversight

FINDING #2

The militarization of policing in the United States has occurred with almost no public oversight.

Limitations of Data Collection on SWAT Use

Data concerning the prevalence of SWAT is difficult to collect.[75] The ACLU filed public records requests with more than 255 law enforcement agencies during the course of this investigation. One hundred and fourteen of the agencies denied the ACLU's request, either in full or in part. Even if the ACLU had received and examined responsive documents from all 255 law enforcement agencies that received public records requests, this would represent only a sliver of the more than 17,000 law enforcement agencies that exist throughout the United States, and thus would shine only a dim light on the extent of police militarization throughout the country.

The agencies that refused to comply with our requests offered various justifications for the refusals, including the following:

- The requested documents contained trade secrets.
- Concerns about jeopardizing law enforcement effectiveness.
- The requested documents did not constitute "public records."
- The request was "overbroad and voluminous."
- The costs associated with producing the documents were simply prohibitive.

It strains credibility to believe that the information contained in SWAT incident reports contains "trade secrets." A trade secret is a commercially valuable plan, formula, process, or device. It is "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort."[76] A police report is not a "commercially valuable plan." Furthermore, most law enforcement agencies contacted did in fact provide some records, belying the notion that the records requested did not constitute "public records," that there were legitimate concerns about law enforcement effectiveness, or that the request was "overbroad and voluminous." These are simply excuses to avoid complying with the ACLU's request. In fact, the public should not even have to resort to public records requests to obtain information about policing practices—this information should be readily available.

The records that were produced revealed an extremely troubling trend: that data collecting and reporting in the context of SWAT was at best sporadic and at worst virtually nonexistent. Not a single law enforcement agency in this investigation provided records containing all of the information that the ACLU believes is necessary to undertake a thorough examination of police militarization. Some agencies (e.g., Tupelo, Mississippi) provided records that were nearly totally lacking in important information. Others (e.g., Salt Lake City, Utah) provided records that were quite lengthy, though still incomplete and extremely difficult to analyze because of their lack of organization. Others (e.g., Fort Worth, Texas) provide fairly comprehensive information, though often in narrative form, making statistical analysis difficult. This variation has two immediate results: (1) any analysis of the data will necessarily have to contend with a large number of

Data collecting and reporting in the context of SWAT was at best sporadic and at worst virtually nonexistent.

unknowns (as demonstrated above) and (2) it makes systematic, thorough, and uniform collection of SWAT data, at any level of government, impossible.

Lack of State and Local Oversight

There is almost no oversight of SWAT at the state or local level. Maryland is the exception—in 2009, Maryland enacted a law requiring law enforcement agencies that maintain a SWAT team to report, semi-annually, specific activation and deployment information.[77] The law required the Police Training Commission, in consultation with the Governor's Office of Crime Control and Prevention, to develop a standardized format for each agency to use in reporting data.[78] It also provided that if a law enforcement agency failed to comply with the reporting provisions, the fact of noncompliance by that particular agency would be reported to the state legislature.[79] Utah enacted a similar bill this year.[80]

BAY COUNTY, FLORIDA
JANUARY 6, 2011

SWAT Team Shatters Windows for to Search for Marijuana

Officers had no reason to believe that the man they suspected of selling marijuana out of his home was armed. Yet, they still classified their investigation as "high risk" to justify deploying a SWAT team. Instead of knocking and demanding to search the premises, the SWAT team burst into the man's home, igniting a flashbang grenade, shattering a window, and breaking down the man's front door. The suspect was not inside the home at the time of the raid, but a different man, a woman, and an infant were, none of whom were suspects in the investigation. The suspect was found in the backyard. No guns or weapons were found.

The Maryland law did not come out of nowhere. The year before, the Prince George's County Sheriff's SWAT team had raided the home of Cheye Calvo, the mayor of a small Prince George's County municipality. The county police department then held Calvo and his family at gunpoint for hours and killed his two dogs, on the basis of a misguided investigation in which Calvo and his wife were wrongly suspected of being involved in a marijuana transaction.[81] Calvo responded by drafting legislation, securing bill sponsors, attracting media, organizing grass-roots support, coordinating with other SWAT victims, knocking on doors, and personally appealing to the governor to sign the new law (over the objection of law enforcement), all a testament to the concerted efforts that must be taken to bring about SWAT reform. Although in the end the law did not contain everything he wanted, Calvo hoped that the law would bring change. He testified before the state legislature: "This bill is an important first step that doesn't restrict [police] use [of SWAT teams]. It merely brings transparency. Hopefully, it will ensure that the people who fund and authorize these SWAT teams have the information they need to set good public policy."[82]

The Maryland law resulted in some fairly robust reporting on SWAT use by local law enforcement. The Governor's Office of Crime Control and Prevention was able to collect, aggregate, analyze, and report on this data annually for the years 2010-2012, and more reports should be forthcoming.[83] Highlighting the importance of thorough documentation and transparency, these reports, which are available to the public, demonstrated that in Maryland, SWAT deployments are used principally for search warrants, focus on nonviolent felonies and misdemeanors, and typically result in forced entries, regardless of whether the warrant is standard or no-knock. Unfortunately, the story seems to end there, at least in Maryland. The state legislature has not used the information contained in the reports to enact any meaningful policy reform, as Calvo had hoped, and the law is scheduled to sunset this year, with no indication that it will be extended (though both the Prince George's police and the Prince George's Sheriff's

office will continue to provide the data required by the law as a condition of a lawsuit Calvo brought after the raid). Calvo has expressed disappointment that elected officials have not used the data to mandate reforms. Putting aside the limitations of Maryland's law, it should not take an incident like the raid on the Calvos' home to get this kind of oversight.

At the local level, among the agencies that submitted documents pertaining to their policies and procedures to the ACLU, most had some form of after-action reporting or internal review procedures in place that varied in terms of the amount of oversight provided. For example, in Cary, North Carolina, all specialty assignments, including the SWAT team, are required to conduct an annual review containing a statement of purpose for the specialty assignment, evaluation of the initial conditions that required implementation of the specialized assignment, and justification for the continuation of the specialized assignment. In Huntington, West Virginia, the Office of Professional Standards is required to present findings regarding all incidents to the chief of police in an annual report. Many other SWAT teams are subject to similar internal oversight.

However, as discussed above, the after-action reports we received were, for the most part, woefully incomplete, raising serious questions about their utility for internal review of SWAT deployment practices. Furthermore, the records indicated that internal reviews mostly pertain to proper weapons use and training and not to evaluating important civil rights implications of SWAT use. In addition, purely internal oversight is insufficient to guard against excessive, aggressive, and disproportionate use of SWAT. Greater oversight is needed.

Lack of Federal Oversight

In addition to insufficient state oversight, there is no federal agency mandated to collect information related to local law enforcement use of SWAT. The Bureau of Justice Statistics (BJS), housed within the Department of Justice's Office of Justice Programs, collects and publishes information pertaining to state prison systems, court administration, crime, victimization, justice employment information (e.g., the number of people employed by various criminal justice agencies), and information pertaining to justice systems on tribal lands.[84] It collects and publishes some information pertaining to law enforcement administration, but mostly in the areas of training, coroner activities, crime laboratories, and a slew of other categories that do not pertain directly to the militarization of policing. While BJS does collect information on some policing activity, such as hate crimes, it does not collect information pertaining to incidents of SWAT deployment, uses of military weapons or tactics in connection with such deployments, or the underlying purposes of such deployments.[85] Taking responsibility for collecting, maintaining, and analyzing information pertaining to the use of SWAT teams throughout the country would present certain challenges for BJS, but if local agencies improved their own record keeping on the use of SWAT—potentially aided by BJS through development of a data collection tool—BJS would enhance its ability to compile, aggregate, and analyze data collected and provided by local agencies.

Oversight of the federal programs that incentivize militarized policing is also needed.

Oversight of the 1033 Program exists, but there are gaps.[86] The only significant responsibilities placed on participating law enforcement agencies are that they not sell equipment obtained through the program and that they maintain accurate inventories of transferred equipment.

The state coordinator is required to approve or disapprove applications for participation, but there appear to be only two criteria that must be satisfied in order for a request to be approved: (1) that the agency intends to use the equipment for a "law enforcement purpose" (counterdrug and counterterrorism efforts are emphasized by law); and (2) that the transfer would result in a "fair and equitable distribution" of property based on current inventory. The Memorandum of Agreement (MOA) also provides that as a general matter, "no more than one of any item per officer will be allocated."[87] Most of the state coordinator's other responsibilities are administrative in nature (e.g., ensuring that LESO has current and accurate points of contact, that only authorized agency requests are submitted

to LESO, that participating agencies update their account information annually, etc.).

There is a biannual Program Compliance Review using a checklist.[88] The compliance review is not rigorous, however, and simply requires the state coordinator to certify that appointed personnel are proficient with DLA websites, that participating agencies are in fact eligible (the sole eligibility requirement is that the agency is a law enforcement agency), that the agency has in place proper records management and retention processes and inventory control, that there is a compliance review process in place, that there are steps in place to ensure that 1033 property is not sold, whether an agency has sold 1033 property or received property for the sole purpose of selling it, and that property transferred complies with the MOA.

The state coordinator is also required to state what steps are taken to ensure that participating agencies do not requisition unnecessary or excessive amounts of property. However, the ACLU did not uncover any records pursuant to its investigation to suggest that any of the agencies studied had a single request for equipment denied by the state coordinator during the two years studied.

States or agencies can be suspended for failure to conduct a required inventory, but there are no consequences for overly aggressive use of equipment.

LESO conducts an annual briefing for law enforcement personnel in each state.[89] This briefing includes information on technical support and training available to agencies via the LESO program. One person from each state is required to attend. The briefing does not appear to address the importance of exercising restraint in the acquisition and use of military equipment by local law enforcement agencies.

There appears to be no requirement that the Department of Defense make any certification to Congress regarding the performance or impact of the program.

There is virtually no oversight over DHS support to state and local law enforcement through the Homeland Security Grant Program.[90] In 2013, DHS distributed nearly a billion dollars to state and local law enforcement agencies through the HSGP to "enhance the ability of states, territories, and Federally recognized tribes to prevent, protect against, respond to, and recover from potential terrorist acts and other hazards,"[91] but as discussed above, this money was often spent on ordinary law enforcement activities. Oklahoma Senator Tom Coburn conducted an investigation into DHS funding to state and local law enforcement agencies in 2012. Senator Coburn concluded, on the basis of information contained in DHS reports, briefings with the DHS Office of the Inspector General, and project data and spending plans from 29 urban areas, that "taxpayer money spent on homeland security grant programs has not always been spent in ways obviously linked to terrorism or preparedness" and that "[DHS] has done very little oversight of the program, allowing cities to spend the money on almost anything they want, as long as it has broad ties to terror prevention."[92]

There is also minimal oversight over expenditures of DOJ funds. The Bureau of Justice Assistance conducts some oversight over JAG funds, and has been strengthening its oversight in recent months, particularly with regard to potential use of JAG funds to subsidize racially biased marijuana possession arrests. However, there is virtually no oversight over weapons expenditures or use of paramilitary tactics in drug investigations.

There does not appear to be much, if any, local oversight of law enforcement agency receipt of equipment transfers under the 1033 Program or grants from the DHS or DOJ. None of the documents the ACLU reviewed relating to policies and procedures contained any provisions regarding internal oversight of such transfers and grants. The ACLU is also not aware of any formal procedures that have been imposed at the local level requiring public oversight of requests for equipment transfers or grants, though some municipalities have held ad hoc hearings when their local law enforcement agencies have proposed a transfer or grant that may be controversial.[93] The public has a right to know what weapons and tactics are being used to police it and how its tax dollars are being spent.

The Purpose of SWAT

FINDING #3

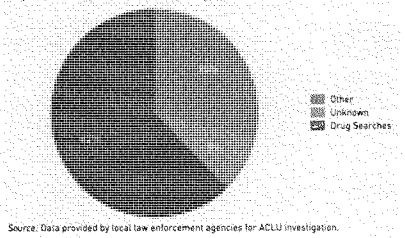
SWAT teams were often deployed—unnecessarily and aggressively—to execute search warrants in low-level drug investigations; deployments for hostage or barricade scenarios occurred in only a small number of incidents.

Use of SWAT to Search for Drugs

Even though paramilitary policing in the form of SWAT teams was created to deal with emergency scenarios such as hostage or barricade situations, the use of SWAT to execute search warrants in drug investigations has become commonplace and made up the majority of incidents the ACLU reviewed. When the police are executing a search warrant, there has been no formal accusation of a crime; rather, the police are simply acting on the basis of probable cause to believe that drugs will be present. There is no criminal case, no formal suspects, and often little if any proof that a crime has been committed; it is simply an investigation. Thus, the use of a SWAT team to execute a search warrant essentially amounts to the use of paramilitary tactics to conduct domestic drug investigations in people's homes.

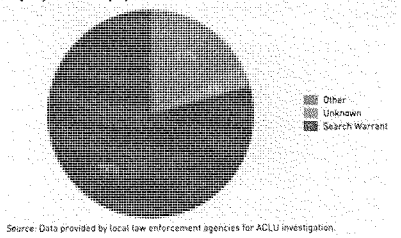
The majority (79 percent) of SWAT deployments the ACLU studied were for the purpose of executing a search warrant, most commonly in drug investigations. Only a small handful of deployments (7 percent) were for hostage, barricade, or active shooter scenarios. The remaining deployments were for other purposes such as protecting visiting dignitaries, capturing fleeing suspects, and responding to emergencies. Our investigation found that in the majority of deployments the police did not face genuine threats to their safety and security.

FIGURE 1
Majority of SWAT Deployments for Drug Searches (2011-2012)



Source: Data provided by local law enforcement agencies for ACLU investigation.

FIGURE 2
Majority of SWAT Deployments for Search Warrant (2011-2012)



Source: Data provided by local law enforcement agencies for ACLU investigation.

Further, often the quantity of drugs found did not seem to justify a SWAT deployment. For example, the Allentown SWAT team was deployed to search someone's house for drugs. They executed the warrant at 6:00 a.m., knowing children were likely to be present. When gathering intelligence the day before, the team did not see any weapons. Nonetheless, the team deployed a distraction device, broke the door down with a battering ram, and entered the residence to find three adults and three children asleep in the home. The team found no weapons and what the report described as a "small amount of marijuana."

This finding supports Kraska's earlier research. Kraska found, based on his survey data, that 80 percent of deployments during the time period he studied were for the purpose of executing a search warrant, not to deal with situations for which SWAT teams were created, such as hostage, sniper, or terrorist situations.[94] He concluded on the basis of his research that "[SWAT teams have] changed

from being a periphery and strictly reactive component of police departments to a proactive force actively engaged in fighting the drug war."[95] Based on our statistical analysis, we agree with this conclusion.

Lack of Standards

Most police departments have in place standards that allow for SWAT deployment in cases involving hostage, barricade, active shooter, or other emergency scenarios, or in "high-risk" warrant scenarios. But what constitutes a "high-risk" scenario depends largely on the subjective beliefs of the officers involved. This lack of clear and legitimate standards for deploying SWAT may result in the excessive and unnecessary use of SWAT deployments in drug cases.

One reason for thinking that serving a warrant may be "high risk" would be the presence of a person who is armed and dangerous. More often than not, we found that SWAT records contained no information to explain why the officers believed a particular scenario was "high risk." Even in incidents in which the police believe an armed person would be present, very often there was insufficient information to know what formed the officer's belief; often, the SWAT team was called out based on an officer's subjective belief that a person involved was "known to carry weapons" or "had been found to carry weapons in the past." SWAT officers seemed to make no effort whatsoever to distinguish between weapons that were lawfully owned versus those that a suspect was thought to possess illegally.

More often than not, we found that SWAT records contained no information to explain why the officers believed a particular scenario was "high risk."

In nearly every deployment involving a barricade, hostage, or active shooter, the SWAT report provided specific facts that gave the SWAT team reason to believe there was an armed and often dangerous suspect. For example, the Concord, North Carolina, SWAT team was called out to a barricade situation involving a man who had barricaded himself in his home, was making explosives, and was considered mentally unstable. All of this information was provided to police by a member of the man's family. The man had previously been arrested for making bombs and was known by family members to possess a large number of firearms. The team safely took the man into custody and seized at least four firearms, large amounts of ammunition, several axes and hatches, and bomb-making materials that had to be detonated by the bomb squad.

In contrast, incident reports for search warrant executions, especially in drug investigations, often contained no information about why the SWAT team was being sent in, other than to note that the warrant was "high risk," or else provided otherwise unsubstantiated information such as "suspect is believed to be armed." In case after case that the ACLU examined, when a SWAT team was deployed to search a person's home for drugs, officers determined that a person was "likely to be armed" on the basis of suspected but unfounded gang affiliations, past weapons convictions, or some other factor that did not truly indicate a basis for believing that the person in question was likely to be armed at the moment of the SWAT deployment. Of course, a reasonable belief that weapons are present should not by itself justify a SWAT deployment. Given that almost half of American households have guns, use of a SWAT team could almost always be justified if this were the sole factor.[96] However, because the use of SWAT increases the likelihood that the occupants will use weapons to defend themselves, which increases the risk of violence and thus of harm to both law enforcement and civilians, presence of a weapon alone should not automatically result in a SWAT deployment.

Some agencies have checklists or matrices that they employ to determine whether a situation is "high risk." In using these lists, officers check off various risk factors that

they believe to be present and, presumably on the basis of the risk factors present, calculate a risk score. SWAT deployment is considered (and sometimes mandated) on the basis of whether the risk level meets a predetermined threshold. Unfortunately, though, having such mechanisms in place does not obviate the problem of unnecessarily aggressive SWAT deployments because using an internal checklist or matrix does not eliminate subjectivity. In one case, the officer completing the threat matrix, and perhaps knowing that the woman who was the subject of the warrant had no serious criminal history, included the histories of other people (not even confined to other people at the residence) in calculating the threat score. This elevated the score to the level needed to justify a SWAT deployment. In addition, whether a person is likely to be armed is often considered a risk factor, but as discussed above, making that determination is highly subjective.

Some of the threat matrices examined in connection with this investigation contained factors and counting procedures that were themselves problematic. For example, the Concord, North Carolina, threat matrix considers "religious extremist" to be a risk factor. In addition to possibly violating the First Amendment,[97] predicting risk on the basis of religious ideology is ineffective for two reasons: (1) there is no simple link between the adoption of an ideology and violent action; and (2) it is exceedingly difficult to craft a coherent model of the kinds of ideologies or beliefs that could be expected to lead to violence.[98] Other jurisdictions that use a matrix often consider the fact that the deployment is part of a drug investigation as having a high point value, but simply having drugs in one's home should not be considered a high-risk factor justifying a paramilitary search. Without consistency, clarity, meaningful metrics, and the use of appropriate risk factors, these matrices seem to cause more problems than they resolve.

In addition, the ACLU did not uncover any policies or practices encouraging partial responses. It appeared that deployments almost always involved a complete deployment, including numerous officers armed with assault rifles, battering rams, and distraction devices. Many deployments—to the extent they were justified at all—would seem to have warranted a much less aggressive response, including perhaps fewer officers and less military weaponry.

Accuracy of Assessing Threats

One way to evaluate the reliability of a SWAT officer's unsubstantiated beliefs concerning the threat danger and likely presence of weapons is to measure the likelihood that an officer's subjective belief in the presence of weapons resulted in the SWAT team actually finding weapons at the scene. We found in the course of our investigation that the SWAT team found weapons (the overwhelming majority of which were firearms such as handguns, but rarely assault rifles) in just over one-third of the incidents in which they predicted finding them, which suggests the police are not particularly good at accurately forecasting the presence of weapons. Furthermore, if SWAT were being used for the limited purposes for which it was created, we would expect them to find weapons in nearly all of the incidents studied.

TABLE 1

Weapons Predicted v Weapons Found

	Weapons Located		
Weapons Believed To Be Present	Yes	No	Unknown
Yes	35%	32%	33%
No	13%	43%	44%

No-knock warrants were used (or probably used) in about 60 percent of the incidents in which SWAT teams were searching for drugs, even though many resulted in the SWAT team finding no drugs or small quantities of drugs. For example, the Burlington County, North Carolina, SWAT team was deployed to search for drugs in a person's home. Upon executing the warrant, all that was found was drug paraphernalia (such as a pipe) and a residue amount of cocaine (presumably the residue found in the pipe). Given that the ostensible purpose of forcing entry into a home is to prevent the destruction of "evidence" (i.e., the presumed purpose of the no-knock being issued in this case), this result is troubling. One would expect to

see a much higher rate of SWAT deployments resulting in the seizure of large amounts of drugs. Of course, as with the presence of weapons, the mere fact that there might be drug evidence that residents could, in theory, attempt to destroy upon the police knocking and announcing themselves, should not justify the use of militaristic SWAT teams forcing themselves into homes as if they are sweeping enemy territory in a war zone.

TABLE 2
Drugs Predicted v Drugs Found

	Contraband Located		
SWAT Deployed for a Drug Offense	Yes	No	Unknown
Yes	35%	36%	29%
No	11%	27%	62%

Of the cases we studied, in 36 percent of SWAT deployments for drug searches, and possibly in as many as 65 percent of such deployments, no contraband of any sort was found. When also considering that the mere presence of contraband should not be enough, by itself, to justify SWAT, this seems to suggest strongly that SWAT is overused.

Some Appropriate Uses of SWAT

The ACLU came across some incidents during the course of the investigation that appeared on the face of the records to demonstrate appropriate use of, and restraint in deploying, SWAT. In one such incident, an officer was asked by a neighboring agency to deploy a SWAT team. The officer went to the scene to investigate, and what he saw concerned him. In his report, he noted that officers from other agencies were involved in breaking down all the doors and windows of a person's residence. He asked if there was a warrant and was told there was none. When requested to deploy tear gas, he responded that his team does not simply deploy gas but rather conducts a careful evaluation to ensure that if gas is deployed, proper procedures are followed. The officer declined to assist the neighboring agency without a warrant being issued, and said that if a warrant were produced, he would then consider the request. The officer called his superior and apprised him of the situation, and the superior concurred with the decision to hold off. The chief of police eventually got involved, and he also concurred with the decision to hold off. Eventually a warrant was secured. On the basis of the warrant, and with the knowledge that a woman was in the residence, possibly being held against her will, the team decided to deploy. This demonstrates a hesitation to engage in activity that was possibly unconstitutional, restraint in the use of SWAT, insistence on following proper procedure, and professionalism in keeping superiors apprised of the situation.

Another example demonstrating restraint in the use of SWAT occurred in Hialeah, Florida, in July 2013. A man had set his apartment on fire, killed six building residents, and taken another two residents hostage. The chief of police tried to negotiate with the man for several hours before eventually calling in the SWAT team. He later told reporters that "[i]t was a very difficult decision because I not only have [sic] the lives of the two hostages that we want to rescue, but I have in my hands the lives of the six police officers that I'm sending in to confront this man."[99] The hostages survived, though the man did not. Exercising restraint in deploying a SWAT team honors individual liberties and maximizes public safety. If restraint was warranted in this case, it is difficult to justify the routine deployment of SWAT teams to serve search warrants in drug investigations in which no clear threat is presented.

If paramilitary tactics were limited to scenarios like these, there would be much less cause for concern. Unfortunately, these instances are the exception, not the norm.

Race and SWAT

FINDING #4

The use of paramilitary weapons and tactics primarily impacted people of color; when paramilitary tactics were used in drug searches, the primary targets were people of color, whereas when paramilitary tactics were used in hostage or barricade scenarios, the primary targets were white.

Race, SWAT, and Drugs

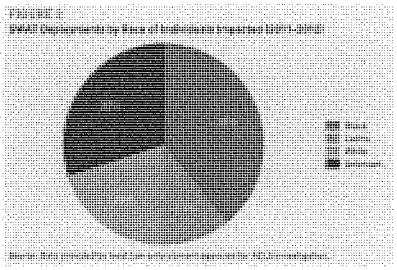
It is widely known that policing tactics across the country often unfairly target communities of color—the recent controversies surrounding stop-and-frisk programs in numerous cities across the country document the ineffective and unfair racial disparities associated with the practice.[100] According to the incident reports studied in the course of this investigation, the use of paramilitary tactics appears to be no different.

Unfortunately, many of the SWAT teams we looked at either do not record race information or record it unsystematically (in more than one-third of the incidents studied, the race of the people impacted was not clear from the incident report).[101] According to the records that did contain race information, SWAT team deployment primarily impacted people of color.

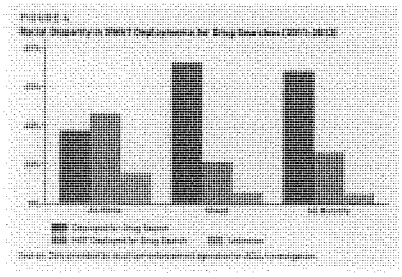
In looking at race data, we examined two variables: the race of the people impacted by each deployment and the race of the overall number of people impacted by SWAT raids in a given area during the studied time period. So the unit of measurement in the data presented in this section is either "number of deployments impacting people of a certain race" or "race of individual people impacted."

Where race was known, deployments that impacted people of color (the majority being Black) constituted 28 percent of the total, whereas deployments that impacted white people constituted 31 percent of the total. A small percentage (6 percent) impacted a mix of white people and people of color.

Breaking this down further into actual numbers of people impacted by SWAT deployments shows that of all the incidents studied where the number and race of the people impacted were known, 39 percent were Black, 11 percent were Latino, 20 were white, and race was unknown for the rest of the people impacted. This means that even though there were more deployments that impacted only white people or a mix of white people and minorities, many more people of color were impacted. This may relate to the fact that white people were more likely to be impacted by deployments involving hostage, barricade, or active shooter scenarios, which most often involve domestic disputes impacting small numbers of people, whereas people of color were more likely to be impacted by deployments involving drug investigations, which often impact large groups of people and families.



Of the deployments in which race was known, there was a significant racial difference in whether the deployment was conducted in a drug case.[102] Of the deployments that impacted minorities (Black and Latino), 68 percent were for drug searches, whereas of deployments that impacted white people, only 38 percent were for drug searches. Of the deployments that impacted a mix of white people and minorities, 73 percent were for drug investigations.



Sixty-one percent of all the people impacted by SWAT raids in drug cases were minorities.

Racial Differences in Use of SWAT for Search Warrants

The numbers become even more troubling when examining the racial breakdowns for search warrants. Of the deployments in which all of the people impacted were minorities, the deployment was for the purpose of executing a search warrant in 80 percent of cases, and where the people impacted were a mix of white people and minorities, the deployment was for the purpose of executing a search warrant in 84 percent of cases. In contrast, when all of the people impacted were white, the purpose was to execute a search warrant in 65 percent of cases.

When the number of people impacted by a deployment was known, 42 percent of people impacted by a SWAT deployment to execute a search warrant were Black and 12 percent were Latino. So overall, of the people impacted by deployments for warrants, 54 percent were minorities. In contrast, nearly half of the people impacted by deployments involving hostage, barricade, or active shooter scenarios were white, whereas only 22 percent were minorities (the rest were people wbo were known to have been impacted by hostage, barricade, or active shooter scenarios but whose race was not known, so the difference could be even greater).

In addition, when the data was examined by agency (and with local population taken into consideration), racial disparities in SWAT deployments were extreme. As shown in the table and graph below, in every agency, Blacks were disproportionately more likely to be impacted by a SWAT raid than whites, sometimes substantially so. For example,

TABLE 3

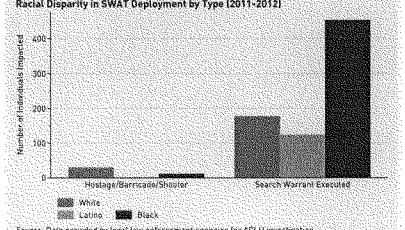
SWAT Impact Rates by Agency (2011–2012)

	SWAT Impact Rates per 100,000				
Law Enforcement Agency	White	Latino	Black	Times More Likely Latinos Impacted	Times More Likely Blacks Impacted
Allentown, PA, Police	12	348	281	29.09	23.51
Bay County, FL, Sheriff	6	0	39	0.00	6.56
Burlington, NC, Police	9	0	414	0.00	47.05
Caldwell County, NC, Sheriff	54	0	215	0.00	4.01
Chatham County, NC, Sheriff	74	0	1,146	0.00	15.51
Concord, NC, Police	44	92	485	2.09	11.06
Fort Worth, TX, Police	12	11	154	0.90	12.86
Gwinnett County, CA, Sheriff	1	1	7	0.53	5.49
Huntington, WV, Police	11	0	415	0.00	37.12
Little Rock, AR, Police	3	26	40	9.29	14.13
North Little Rock, AR, Police	6	0	200	0.00	34.54
Ogden, UT, Police	8	85	300	11.16	39.55
Salt Lake City, UT, Police	5	25	36	4.93	7.33
Spokane County, WA, Sheriff	57	14	588	0.25	10.35
Unified, UT, Police	3	13	26	5.18	10.26
Wilson County, NC, Sheriff	16	0	98	0.00	6.02

Source: Data provided by local law enforcement agencies for ACLU investigation.
NOTE: Agencies that do not record data on race/ethnicity are excluded.

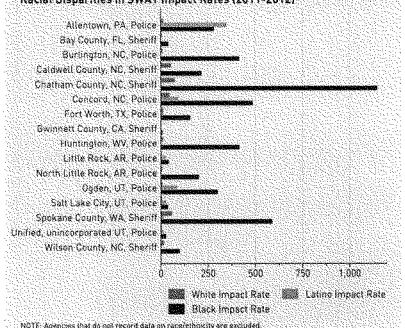
in Allentown, Pennsylvania, Blacks were nearly 24 times more likely to be impacted by a SWAT raid than whites were, and in Huntington, West Virginia, Blacks were 37 times more likely. Further, in Ogden, Utah, Blacks were 40 times more likely to be impacted by a SWAT raid than whites were.

FIGURE 5
Racial Disparity in SWAT Deployment by Type (2011-2012)



Source: Data provided by local law enforcement agencies for ACLU investigation.

FIGURE 6
Racial Disparities in SWAT Impact Rates (2011-2012)



NOTE: Agencies that do not record data on race/ethnicity are excluded.
Source: Data provided by local law enforcement agencies for ACLU investigation.

It is well established that the War on Drugs has been waged primarily and unfairly on people of color—from being disproportionately targeted for low-level drug arrests to serving longer prison sentences for the same drug crimes. Our findings add the unfair and disproportionate use of paramilitary home raids to this shameful list of racially biased drug enforcement.

Use of Violent Tactics and Equipment

FINDING #5

SWAT deployments often and unnecessarily entailed the use of violent tactics and equipment, including APCs; use of violent tactics and equipment was shown to increase the risk of bodily harm and property damage.

Use of Violent Tactics to Force Entry

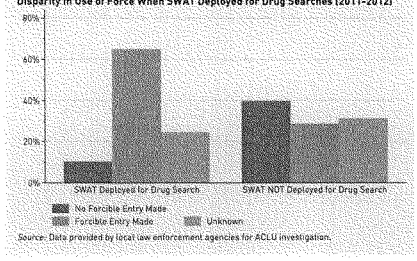
Of the incidents studied in which SWAT was deployed to search for drugs in a person's home, tbe SWAT teams either forced (or probably forced) entry into a person's home using a battering ram or other breaching device 65 percent of the time. This means that for drug investigations, the SWAT teams studied were almost twice as likely to force entry into a person's home than not, and they were more than twice as likely to use forced entry in drug investigations than in other cases.

Forcing entry into a person's home did not necessarily result in the discovery of weapons, drugs, or other contraband. Drugs or other contraband were either found or probably found in only a quarter of the deployments in which the SWAT team forced entry. In 54 percent of deployments in which the SWAT team forced entry into a person's home using a battering ram or other breaching device, the SWAT team either did not or probably did not find any weapons. For example, the New Haven, Connecticut, SWAT team deployed at 11:00 p.m. to execute a search warrant. The team broke down the front door, deployed a distraction device, and detained two people inside the home, but it did not find any weapons or contraband. Given the relatively small amount of drugs and

weapons found during the course of these deployments, it is difficult to justify the forcible entry into private homes.

The SWAT teams studied were much more likely to force entry in drug search cases than in other scenarios. When SWAT was deployed to search a home for drugs, the squad forced entry in more than 60 percent of incidents. In contrast, when SWAT was deployed for a reason other than searching a home for drugs, the squad forced entry in fewer than 40 percent of cases.

FIGURE 7
Disparity in Use of Force When SWAT Deployed for Drug Searches (2011-2012)



Source: Data provided by local law enforcement agencies for ACLU investigation.

Very little information was discernable regarding the use of flashbang grenades, but in the cases in which information was available, we discovered that of the incidents in which SWAT teams were searching people's homes for drugs, they were 14 times more likely to use a flashbang grenade, and they were three times more likely to use a flashbang grenade in drug investigations than in other cases.

Use of Armored Personnel Carriers During SWAT Raids

It was nearly impossible to track the use of BearCats and other APCs by SWAT teams. On the face of the documents examined, some law enforcement agencies (e.g., New Haven, Connecticut; Allentown, Pennsylvania; Unified Police Department, Utah) appear to deploy a BearCat almost routinely. Others (e.g., Gwinnett County, Georgia) do not appear to use an APC at all, though it is not clear whether that is because they do not have one or because they have one but do not use it (or even whether they use it routinely but do not record that fact). Still others (e.g., Bay County, Florida) seem to make selective use of APCs. In addition, some agencies used APCs that go by other names, and it is not always possible to know whether an APC is being referenced in an incident report.

From our review of the incident reports and discussions with members of law enforcement, we conclude that the use of BearCats or other APCs was rarely necessary for the types of deployments in which they were used based on two observations: (1) the numerous incidents in which an APC was deployed but not used for any obvious purpose; and (2) the numerous incidents in which the SWAT team was able to accomplish its objective without the use of an APC.

There were numerous incidents in which a BearCat was deployed but not put to any obvious use during the course of the deployment. For example, SWAT officers in Allentown, Pennsylvania, were deployed to search someone's home for drugs. They deployed at 6:45 a.m., with both a BearCat and an emergency van, knowing that a toddler was likely to be present. They broke down the door, entered the home, and handcuffed one man, while a woman tried to comfort her child, who was presumably upset by the commotion. There is no indication that the officers made any use of the BearCat, other than for transport. The ACLU uncovered numerous incidents such as this, when there was some attendant danger, perhaps, but this does not justify using an armored military vehicle directly in front of someone's home in the middle of a residential neighborhood.

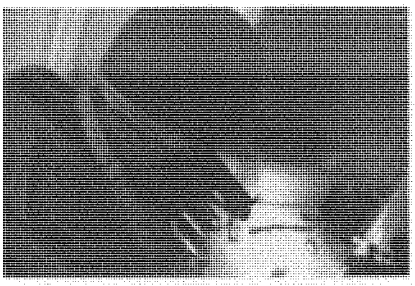
There were several incidents in which a SWAT team was able to accomplish its objective without use of an APC.[103] For example, in the Concord, North Carolina, case described above involving a man who had barricaded himself, suffered from mental illness, and was suspected of making bombs, the SWAT team was able to convince the man to surrender, and there was no indication on the face of the document that a BearCat was used. In another incident, the Allentown SWAT team was called out to deal with an armed robbery investigation. No BearCat was deployed, and the suspects surrendered without incident. SWAT teams consist of heavily armed, highly professional tactical officers trained to handle extremely high-risk scenarios. Such officers have proven themselves

to be effective when they are deployed to handle high-risk situations without the use of an APC.

While officer safety is sometimes a concern during the execution of a search warrant in which SWAT is deployed, it is not a concern in all such deployments. Importantly, there are effective alternatives to use of APCs, such as making ordinary police vehicles built for domestic law enforcement (as opposed to combat), bullet-proof.

Use of an APC can also *endanger*, not protect, both officers and civilians, and can increase the risk of property damage. In one case we examined, the SWAT team was deployed to handle a dangerous barricade scenario in which officers knew that a man was armed with a firearm. The team deployed with a BearCat. At one point, the man disappeared from view and exited the home through the garage; he started walking toward officers who were not aware of his presence because they were watching the front door. The officers should have been able to provide cover, but the BearCat literally obstructed their view of the garage. Eventually the man surrendered, but the situation could have had tragic results.

Use of a BearCat or other APC can also increase the risk of property damage. In one case, a SWAT team used a BearCat to break down a front gate. In another, a SWAT team used a BearCat to break through the front door of a man known to suffer from paranoid schizophrenia, after already forcing entry through multiple other sites and shattering a sliding glass door.



It is not unusual for people to mistake a SWAT deployment in the middle of the night for an armed burglary, and both civilians and police have been killed in resulting shootouts.

Photo: Keep Columbia Free via FIO/Sunshine request
http://www.youtube.com/watch?v=Ng6mfpZ2kR4

Consequences of Using Violent Tactics

Using aggressive tactics in drug raids can have disastrous consequences. In the deployments the ACLU examined, seven civilian deaths occurred in connection with deployment, two of which appeared to be the result of suicide (in at least one of these cases, the suspect stated that he was willing to come outside but then shot himself upon learning that the SWAT team was waiting for him). In the incidents we examined, 46 civilians were injured in the course of a deployment, often as the result of a use of force by a member of the SWAT team.[104]

Examples of the tragic results of SWAT officer-involved shootings are widely available. For example, earlier this year, the Albuquerque Police Department sent a heavily armed unit to confront James Boyd, a homeless man who was "camping illegally" in the Sandia Foothills. The encounter ended with officers shooting and killing him. Though it did not involve the search of a home, this example fits the militarization pattern for a number of reasons. First, the police approached Boyd in full SWAT gear simply because he was illegally camping in an Open Space area in the foothills outside of Albuquerque. Second, the officers purposefully escalated the conflict to the point where the use of lethal force was inevitable. The action that set it all off was the deployment of a flashbang grenade. Finally, the weapon that killed Boyd appears to have been an assault rifle or some other high-powered weapon (ironically, the SWAT officers fired live ammunition alongside beanbag rounds). Again, this demonstrates the alarming tendency of paramilitary policing to *escalate*, rather than *ameliorate*, the risk of violence.[105]

Although no SWAT officers were killed in any of the deployments that the ACLU examined, deaths to officers have indeed resulted from the use of paramilitary policing tactics. Take the case of Henry McGee, who was asleep with his pregnant girlfriend when the police forced their way into his home at dawn to look for a marijuana grow

operation. Believing his home was being burglarized, McGee drew a firearm and shot and killed an officer. He was initially charged with capital murder, but the grand jury refused to indict him. Investigators found a few marijuana plants in the home.[106] Thus, although some police officers often argue that excessively militarized weapons and tactics are needed to prevent violence, these wartime tools and tactics often have the opposite effect of *escalating* the risk of violence.

Use of Violent Tactics With Children Present

During the course of this investigation, we noted another troubling trend: the deployment of SWAT when children were present or without sufficient intelligence to know whether children would be present. As documented above, a SWAT deployment can involve significant levels of violence, including breaking down doors, shattering windows, and the detonation of explosive devices. In addition, SWAT officers also typically deploy wearing "BDUs" (battle dress uniforms), carry large semi-automatic rifles, which they sometimes point at people during deployment, and often use force, throwing people onto the floor and handcuffing them. Experiencing violent events can have serious and long-term impacts, particularly on children.[107]

Determining the number of SWAT deployments in which children were present was challenging because many reports did not indicate whether children were present. While some agencies specifically documented the presence and number of children through use of a check box or other data collection mechanism, others mentioned the presence of children only in passing, in the narrative portion of the report. In reviewing the documents, we noted when the presence (and, where possible, the number) of children was documented. We also drew inferences about incidents in which children were almost certainly not present (for example, reports involving hostage-taking related to domestic violence were almost always careful to note the presence of children, such that we inferred the absence of children when a report of a domestic hostage-taking did not mention them). In the rest of the cases, we made what inferences we could to determine when children were probably not present and counted the remaining incidents as unknown. Using this methodology, we determined that of the 818 deployments studied, 14 percent involved the presence of children and 13 percent did not. Thirty-eight percent probably did not involve the presence of children and 35 percent were unknown. This evaluation is necessarily unscientific because the reports provided simply did not provide enough information to draw a conclusion about the presence of children. In addition, SWAT teams should be more deliberate and precise in documenting the presence of children in order to avoid subjecting children to SWAT deployments whenever possible.

RECOMMENDATIONS

The militarization of policing is one example of how contemporary policing in America is failing to deliver on its primary objective of protecting and serving communities. The culture of policing in America needs to evolve beyond the failed War on Drugs, and the police should stop perceiving the people who live in the communities they patrol—including those the police suspect of criminal activity—as enemies.

This type of reform must be achieved systemically and include a transformation in police culture; the problems of overly aggressive policing cannot be solved by disciplining a few officers or dismissing the problem as a few isolated incidents. These recommendations are aimed at ensuring that law enforcement responses minimize harm to civilians and property and maximize as oppose to jeopardize the safety of everyone involved.

The federal government should take the lead by reining in programs that incentivize local police to engage in excessively militarized tactics, especially in drug cases. The federal government holds the purse strings, and restricting the flow of federal funds and military-grade equipment into states and localities, and/or conditioning funds on the appropriate use and training with regards to such equipment, would significantly reduce the overuse of byper-aggressive tactics and military-grade tools in local communities.

Additionally, state legislatures and municipalities should impose meaningful restraints on the use of SWAT. SWAT deployments should be limited to the kinds of scenarios for which these aggressive measures were originally intended – barricade, hostage, and active shooter situations. Rather than allowing for a SWAT deployment in any case that is deemed (for whatever reason the officers determine) to be "high risk," the better practice would be for law enforcement agencies to have in place clear standards limiting SWAT deployments to scenarios that are truly "high risk."

SWAT teams should never be deployed based solely on probable cause to believe drugs are present, even if they have a warrant to search a home. In addition, SWAT teams should not equate the suspected presence of drugs with a threat of violence. SWAT deployment for warrant service is appropriate only if the police can demonstrate, before deployment, that ordinary law enforcement officers cannot safely execute a warrant without facing an imminent threat of serious bodily harm. In making these determinations it is important to take into consideration the fact that use of a SWAT team can escalate rather than ameliorate potential violence; law enforcement should take appropriate precautions to avoid the use of SWAT whenever possible. In addition, all SWAT deployments, regardless of the underlying purpose, should be proportional—not all situations call for a SWAT deployment consisting of 20 heavily armed officers in an APC, and partial deployments should be encouraged when appropriate.

Local police departments should develop their own internal policies calling for restraint and should avoid all training programs that encourage a "warrior" mindset.

Finally, the public has a right to know how the police are spending its tax dollars. The militarization of American policing has occurred with almost no oversight, and greater documentation, transparency, and accountability are urgently needed.

A requirement that SWAT officers wear body cameras would create a public record of SWAT deployments and serve as a check against unnecessarily aggressive tactics. The ACLU generally takes a dim view of the proliferation of surveillance cameras in American life, but body cameras are different because of their potential to serve as a check on police overreach. Any policy requiring SWAT officers to wear body cameras should have in place rigorous safeguards regarding data retention, use, access, and disclosure.[108]

To further advance these principles, the ACLU makes the following specific recommendations.

To State Governments

1. States should enact laws encouraging the restrained and appropriate use of SWAT teams and similar tactical teams. Tactical deployments should be limited to scenarios in which there is a likelihood that the situation for which the SWAT team is being deployed presents an imminent threat to the lives of civilians and/or police personnel. When SWAT is deployed for warrant service, the basis for believing such a likelihood exists should have to be established explicitly and approved by a supervisor or other high-ranking official before the deployment.

2. States should remedy the problem created by the Supreme Court's decision in *Hudson v. Michigan* by enacting laws requiring that evidence obtained in violation of the traditional rule that requires that the police knock and announce their presence should be excluded from any subsequent legal proceedings.

3. States should enact laws requiring transparency and oversight of state and local law enforcement use of SWAT teams.

   - States should require local law enforcement agencies that maintain a SWAT team to use a standardized form to record specific data related to SWAT deployments. These forms should be used to generate quarterly reports.

   - States should require every state or local law enforcement agency that maintains a SWAT team to submit a quarterly report to the legislature that contains the number of times the SWAT team was activated or deployed, as well as the following for each activation/deployment: the address of the location of activation/deployment; the reason for each activation/deployment; the specific factors establishing compliance with the applicable deployment standard; whether forcible entry or a breach was conducted and, if so, the equipment used in forcing the entry or conducting the breach and for what purpose; whether a distraction device was used and, if so, what type and for what purpose; whether an APC was used and, if so, for what purpose; the race, sex, and age of each individual encountered during the deployment, whether as a suspect or bystander; whether any civilians, officers, or domestic animals sustained any injury or death; and a list of any controlled substances, weapons, contraband, or evidence of crime found on the premises or any individuals.

   - States should ensure that there is an agency responsible for overseeing and monitoring SWAT activity, and for implementing necessary reforms, including developing a process for addressing civilian complaints regarding SWAT tactics.

To City and County Governments and Law Enforcement Agencies

4. As an immediate step, law enforcement agencies should adopt internal deployment standards as a matter of local policy. Tactical deployments should be limited to scenarios in which there is a likelihood that the situation for which the SWAT team is being deployed presents an imminent threat to the lives of civilians and/or police personnel. When SWAT is deployed for warrant service, the basis for believing such a likelihood exists should have to be established explicitly and approved by a supervisor or other high-ranking official before the deployment.

5. Law enforcement agencies should adopt local policies requiring the implementation of the following best practices in the use of SWAT teams:

   - Each deployment should be pre-approved by a supervisor or other high-ranking official.

   - Each deployment should be preceded by a written planning process that documents the specific need for the deployment, describes how the operation is to be conducted, and states whether children, pregnant women, and/or elderly people are likely to be present (except in emergency scenarios in which engaging in such a process would endanger the lives or well-being of civilians or police personnel).

   - All SWAT deployments should include a trained crisis negotiator.

- SWAT officers should wear "on-officer recording systems" (so-called "body cameras") during deployments, and police departments should have in place rigorous safeguards regarding the retention, use, access, and disclosure of data captured by such systems.
- All deployments should be proportional to the need; a full deployment consisting of numerous heavily armed officers in an APC is often excessive. Many scenarios do not necessitate the use of a SWAT team at all, and partial deployments involving the minimal amount of military equipment necessary should be encouraged.
- For each SWAT deployment, a post-deployment record should be made that documents the following, in a manner that allows for the data to be easily compiled and analyzed:
  - The purpose of the deployment
  - The specific reason for believing that the situation for which the SWAT team was being deployed presented an imminent threat to the lives or safety of civilians and/or police personnel.
  - Whether forcible entry or a breach was conducted and, if so, the equipment used and for what purpose
  - Whether a distraction device was used and, if so, what type and for what purpose
  - Whether an APC was used and, if so, for what purpose
  - The race, sex, and age of each individual encountered during the deployment, whether as a suspect or bystander
  - Whether any civilians, officers, or domestic animals sustained any injury or death
  - A list of any controlled substances, weapons, contraband, or evidence of crime that is found on the premises or any individuals
  - A brief narrative statement describing any unusual circumstances or important data elements not captured in the list above.
- Law enforcement agencies should provide training programs for all SWAT teams that do not promote an overly aggressive or "warrior" mentality.

6. Local and county governments should ensure that there is an agency responsible for ensuring that its police are not excessively militarized, which could include civilian review boards. Such responsibilities should include the following:
   - Approving/disapproving all (a) requests for the receipt of weapons and vehicles under the 1033 Program; (b) requests for grant funding from the federal government that will be used to purchase military-style weapons and vehicles; and (c) proposals to purchase military-style weapons and vehicles from vendors
   - Developing a process for addressing civilian complaints regarding SWAT tactics, including a system for submitting complaints, conducting hearings, and providing for individual remedies
   - Making appropriate recommendations for agency-wide reforms
   - Considering, on an annual basis, whether continued maintenance of a SWAT team is appropriate and, if not, to recommending the dissolution of the agency's SWAT team.

To Congress

7. Congress should condition state and local law enforcement agencies' receipt of federal funds on an agreement not to use the funds to purchase automatic or semi-automatic rifles or APCs. This condition should be applied to grants made through the Department of Homeland Security's Homeland Security Grant Program, the Department of Justice's Byrne JAG grant program, and all other funding streams through which money is transferred from the federal government to state and law enforcement agencies.

8. With respect to the 1033 Program, 10 U.S.C. 2576a(a)(1), Congress should prohibit the transfer of automatic and semi-automatic weapons and APCs; remove the words "counter-drug" each time they appear in the statute; and require the Secretary of Defense to submit to Congress an annual written certification that each agency that participates in the 1033 Program has provided documentation accounting for all equipment transferred to the agency and prohibiting additional transfers to any agency for which the Secretary cannot provide such certification.

To the Administration

9. The Department of Justice's Bureau of Justice Statistics (BJS) should work with representatives of local law enforcement to develop a data collection tool to assess the militarization of policing, by monitoring the use of SWAT teams as well as the receipt and purchase of military weapons and tactics. Once the tool is developed, BJS should collect, compile, and analyze the available data on the use of military weapons and tactics, including SWAT deployments by state and local law enforcement agencies annually.

10. The Department of Defense should promulgate regulations pursuant to 10 U.S.C. 2576a(a)(1) clarifying that automatic and semi-automatic weapons and APCs are not suitable for use by state and local law enforcement agencies for the purpose of equipment transfers under the 1033 Program.

11. The Department of Defense should make the following changes to the 1033 Program, either by promulgating regulations or through the MOA that it enters into with local law enforcement agencies:

    - Require specific, individualized justification to receive 1033 equipment
    - Impose reasonable limitations on the number of weapons and vehicles local law enforcement agencies should be entitled to receive under the program
    - End the requirement that 1033 equipment be used within one year
    - Require that new applications for equipment under the 1033 Program take into account a law enforcement agency's existing inventory
    - Require that agencies receiving 1033 equipment through interagency transfer comply with the same application and reporting requirements as agencies that receive 1033 equipment directly from DLA
    - Develop a clear compliance review process that addresses both proper inventory management and documentation of each use of 1033 equipment.

12. The Department of Homeland Security should impose meaningful conditions on the receipt of funds to local law enforcement agencies. In order to receive funds, local law enforcement agencies should have to agree to the following:

    - Not to use the funds to purchase automatic or semi-automatic rifles or APCs
    - To certify to DHS that agencies receiving funds have not in fact used equipment purchased with DHS money except in actual high-risk scenarios
    - To require agencies receiving DHS funds to make a record of each equipment purchase made using DHS funds, which should be made available to the public.

13. The Department of Justice should improve oversight of the Byrne JAG program by providing guidance to grantees on the importance of exercising restraint when using paramilitary weapons and tactics and tracking the race, ethnicity, sex, and age of all people impacted by the use of paramilitary weapons and tactics purchased using Byrne JAG funds.

CONCLUSION

As public support for the War on Drugs reaches its lowest ever, it is important that we start to not only roll back battle plans but encourage law enforcement agencies to stop overusing the wartime tools and tactics that have fought these battles.

American policing has become excessively militarized through the use of weapons and tactics designed for the battlefield. Militarization unfairly impacts people of color and undermines individual liberties, and it has been allowed to happen in the absence of any meaningful public discussion.

It is generally accepted that public perception of the legitimacy of law enforcement turns on how the police treat people when exercising their regulatory authority, and people are more likely to obey the law when they perceive law enforcement authorities as legitimate.[109] There is some evidence that people perceive police militarization as threatening, which suggests that police militarization itself could undermine public safety.[110] More research should be done on this topic.

There is also a "large and persistent racial gap" in confidence in policing.[111] Because police militarization tends to be concentrated in communities of color, it threatens to undermine public confidence more dramatically in those communities, where such confidence in law enforcement is already strained. More research should be done in this area as well.

As previously mentioned, Attorney General Eric H. Holder, Jr., has announced broad reforms, including guidelines to curtail the use of mandatory minimum sentencing laws by federal prosecutors in certain drug cases and a $4.75 million project funded by the federal government and designed to ease mistrust between local police departments and minority communities by collecting and studying data on searches, arrests, and case outcomes in order to help assess the impact of possible bias. These developments have real potential to reduce America's excessive reliance on overly aggressive approaches to policing and punishing drug crimes, but there is a danger that these federally-funded efforts could be undermined by the federal government's role in subsidizing the use of paramilitary weapons and tactics in localities, particularly in many communities of color. Without rethinking its role in militarizing local police departments, the federal government may end up sabotaging the very same reforms it is championing.

The use of paramilitary weapons and tactics to conduct ordinary law enforcement—especially to wage the failed War on Drugs and most aggressively in communities of color—has no place in contemporary society. It is not too late to change course—through greater transparency, more oversight, policies that encourage restraint, and limitations on federal incentives, we can foster a policing culture that honors its mission to protect and serve, not to wage war.

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APPENDICES

APPENDIX A

Public Records Request letter sent from the ACLU to law enforcement agencies

NAME
TITLE
AGENCY
OFFICE
ADDRESS 1
ADDRESS 2

DATE

Re: Public Records Request / SWAT Teams and Cutting-Edge Weapons and Technology

To Whom It May Concern:

This letter is a request under the by the American Civil Liberties Union of . This request seeks records regarding your Special Weapons and Tactics (SWAT) teams, as well as your acquisition and use of cutting-edge technology.

Records Requested

A. Special Weapons and Tactics (SWAT) Teams

Please provide copies of the following created, updated, or edited, records from January 1, 2011, to the present:

1. All incident reports or other records documenting each time a SWAT team was deployed. All reports showing breakdowns of SWAT team deployments by crime, requesting agency, or purpose for the raid (i.e. to serve a warrant, arrest someone, diffuse a hostage crisis, etc.) and all post-deployment documentation, including:

    a. All documents relating to the number of no-knock warrants applied for, and the number of no-knock warrants granted, denied, or modified, in conjunction with a SWAT team deployment;

    b. All documents relating to uses of force by all SWAT teams and all incident reports documenting all injuries incurred by anyone at the scene of a SWAT team operation.

2. All procedures, regulations, or guidelines relating to SWAT teams, including the protocols and legal standards that must be met before SWAT team deployment.

3. All documents relating to the structure or mission of SWAT teams, including chain of command and the selection of team personnel, as well as the ranks, salaries, and lengths of service of team personnel.

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4. All documents or training materials used to instruct SWAT teams in any aspect of their operation, including information about any training, including but not limited to, with military units and other outside agencies and private contractors, when and where training sessions took place, and who conducted them.

5. All records relating to the procurement, maintenance or deployment of SWAT team weapons and other equipment, including guns, vehicles, personal protective equipment and uniforms, surveillance and reconnaissance equipment, less than lethal devices, apparatuses and systems for augmented detainee restraint (also known as shock-cuffs), forced entry tools, facial recognition technology, Cellebrite or other mobile forensics units, biometric technology, cell phone sniffers, and deep packet sniffers, including how it is stored, and who has access to it.

6. All written mutual aid agreements or memoranda of understanding with federal, state and local agencies, including any branch of the military and private entities concerning SWAT teams.

7. All records relating to funding sources and grants your SWAT team applied for, and whether or not the application was successful; and

8. All internal or external audits of SWAT team performance or records of cost effectiveness.

B. Cutting Edge Weapons and Technology

Please provide copies of the following created, updated, or edited, records from January 1, 2011, to the present:

1. The number of Mobile Forensic Data Extraction devices, GPS tracking devices, biometric technology, cell phone sniffers, deep packet sniffers, unmanned aerial vehicles (sometimes called "drones"), apparatuses and systems for augmented detainee restraint (also known as shock-cuffs), Cellebrite or other mobile forensics units, and devices capable of facial or behavioral recognition currently owned, leased, or borrowed or proposed for purchase or acquisition by your agency and the unit or division of your agency given primary use of each device.

2. All practices, procedures, and trainings governing use of all such devices.

3. All policies relating to the maintenance and retention of information obtained through such devices, including but not limited to, policies detailing how records of such information are kept, databases in which they are placed, limitations on who may access the records and for what purposes, circumstances under which they are deleted, and circumstances under which they may be shared with other government agencies or nongovernmental entities.

4. The legal standard or level of suspicion (e.g. probable cause, reasonable suspicion, relevance) the agency requires or proffers prior to using such devices.

5. All applications submitted by your Department for equipment through the Department of Defense's "1033" program[1] (either directly to the Department of Defense or to your state's administering agency), including whether the application was granted, denied, or granted in part (and if so, how).

6. All "1033" program inventories created and maintained pursuant to the May 22, 2012, moratorium (see https://www.dispositionservices.dla.mil/rtd03/leso/index.shtml).

7. All applications submitted by your Department for funding through the Department of Homeland Security's Homeland Security Grant Program or Urban Area Security Initiative program (including applications submitted to your state's administering agency), including whether the application was granted, denied, or granted in part (and if so, how).

Because this request is on a matter of public concern and because it is made on behalf of a non-profit organization, we request a fee waiver. If, however, such a waiver is denied, we will reimburse you for the reasonable cost of copying. Please inform us in advance if the cost will be greater than . Please send us documents in electronic form if at all possible.

According to , a custodian of public records shall comply with a request within days after receipt. Thank you for your prompt attention to this matter. Please furnish all applicable records to . If you have questions, please contact me at (phone number/email address).

Sincerely,

[1] Section 1033 of the National Defense Authorization Act for Fiscal Year 1997, codified at 10 U.S.C. § 2576a, permits the Secretary of Defense to transfer excess Department of Defense supplies and equipment to state and local law enforcement agencies. has entered into an agreement with the Defense Logistics Agency, which governs the transfer of military property to for use in civilian policing.

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Appendix B

Agreement Between the Defense Logistics Agency and the State of _____

AGREEMENT BETWEEN

THE DEFENSE LOGISTICS AGENCY

AND

THE STATE OF _____

PURPOSE:

This Memorandum of Agreement (MOA) is entered into between the Defense Logistics Agency (DLA) and the State of _____, to set forth the terms and conditions which will be binding on the parties with respect to excess Department of Defense (DOD) personal property which is transferred pursuant to 10 USC § 2576a and to promote the efficient and expeditious transfer of the property and to ensure accountability of same.

AUTHORITY:

The Secretary of Defense is authorized by 10 USC § 2576a to transfer to Federal and State Agencies, personal property that is excess to the needs of the DOD and that the Secretary determines is suitable to be used by such agencies in law enforcement activities, with emphasis on counter-drug/counter-terrorism activities, under such terms prescribed by the Secretary. The authorities granted to the Secretary of Defense have been delegated to the DLA in determining whether property is suitable for use by agencies in law enforcement activities. DLA defines law enforcement activities as activities performed by government agencies whose primary function is the enforcement of applicable Federal, State, and local laws and whose compensated law enforcement officers have powers of arrest and apprehension.

TERMS AND CONDITIONS:

The DOD, through the DLA, has final authority to determine the type, quantity, and location of excess DOD personal property suitable for law enforcement activities, if any, which will be transferred to the State. This agreement creates no entitlement in the State to receive excess DOD personal property. Property available under this agreement is for the current use of authorized program participants; it will not be requested nor issued for speculative use/possible future use with the exception of authorized Transitional Distribution Points (TDPs) and/or Customer Reserve Stock (CRSs), which are required to utilize property within one year or schedule its return to the nearest Defense Reutilization Marketing Office (DRMO). Property will not be obtained for the purpose of sale, lease, rent, exchange, barter, to secure a loan, or to otherwise supplement normal Law Enforcement Agency (LEA) or State/local governmental entities budgets. All requests for property will be based on bona fide law enforcement requirements. Requests for property for the purpose of cannibalization will be considered for approval on a case by case basis. A memorandum must be submitted to the Director of the Law

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Enforcement Support Office (LESO) requesting approval. Any transportation, repair, maintenance, insurance, disposal, or other expenses associated with this excess DOD personal property is the sole responsibility of the State/LEA.

The State will establish and submit to the DLA, a State Plan of Operation, developed in accordance with Federal and State law and conforming to the provisions of this MOA. This State Plan of Operation will detail organizational and operational authority including staffing and facilities. It will also address procedures for making determinations of LEA eligibility, allocation and equitable distribution of material, accountability and responsibility concerning excess DOD personal property, training and education, Operational Effectiveness Reviews (OERs), and procedures for turn-in, transfer, and disposal. Property obtained under this MOA must be placed into use within one (1) year of receipt and utilized for a minimum of one (1) year, unless the condition of the property renders it unusable. Only in special circumstances will property be obtained and held for the minimum time frames and then sold, bartered, exchanged, or traded. Approval will be considered on a case by case basis. A memorandum must be submitted to the Director of LESO requesting approval. Property will not physically move until the approval process is complete. If property is not put into use by the recipient within one (1) year, the State/LEA must contact the DLA LESO to coordinate the return of the property to the nearest DRMO for proper disposition. Once the DLA LESO is notified and a DRMO is identified, property must be returned within thirty (30) days. The State/LEA will bear the burden of returning the property to the nearest DRMO. Under no circumstances will property be sold or otherwise transferred to non-U.S. persons or exported.

Only the Governor appointed State Coordinator identified at the end of this document is authorized to enter into this Agreement on behalf of the State. An Appointment Letter from the State Coordinator, authorizing the State Point of Contact (POC) signature authority or to act on the behalf of the State Coordinator must be on file with the DLA LESO in order to actively participate in the program. The State Coordinator is required to sponsor LEAs that want to actively participate in the program and the State Coordinator must screen all LEAs requests for excess DOD personal property. The State Coordinator will validate that all approved requests for property are legitimate and for law enforcement purposes. In so doing, the State Coordinator assumes the responsibility to maintain records ensuring LEA accountability for all excess DOD personal property received through the 1033 Program for his/her state. In conjunction with each request, the State Coordinator will furnish a detailed justification for the property. Property received through the 1033 Program can only be distributed to an authorized LEA for whom the initial request was made and justification was provided, unless the property was requested for a TDP or from CRS.

The DOD has authorized the transfer and use of excess Federal property to the State/LEA and as such reserves the right to recall any and all property issued through the 1033 or 1208 Programs. As stipulated in Federal regulation, title may be conditionally granted to the State/LEA upon receipt of the property, however approval will be considered on a case by case basis. A memorandum must be submitted to the Director of LESO requesting approval before the disposal, sale, auction, trade-in, salvage or transfer of any 1033 or 1208 property can occur. Property will not physically move until the approval process is complete. Costs of shipping or repossession of the excess DOD personal property by the U.S. Government will be borne by the

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LEA. To the extent permitted by law, the State Coordinator/LEA shall indemnify and hold the U.S. Government harmless from any and all actions, claims, debts, demands, judgments, liabilities, cost, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property and injuries, illness or disabilities to or death of any and all persons whatsoever, including members of the general public, or to the property of any legal or political entity including states, local and interstate bodies, in any manner caused by or contributed to by the State/LEA, its agents, servants, employees, or any person subject to its control while in, upon or about the sale site and/or the site on which the property is located, or while the property is in the possession of, used by or subject to the control of the State/LEA, its agents, servants, or employees after the property has been removed from U.S. Government control. The State will maintain or assure that the LEA maintains adequate insurance to cover damages or injuries to persons or property relating to the use of the property. Self-insurance by the State/LEA is considered acceptable. The U.S. Government assumes no liability for damages or injuries to any person(s) or property arising from the use of the property.

All excess DOD personal property will be managed utilizing property accounting records. These records will be concise, accurate, and be able to provide timely and relevant information. Records will be maintained in accordance with the DLA Record Management Procedures and Records (DLA Directive (DLAD) 5025.30 - See Appendix).

The DLA LESO will conduct an OER for all Federal Agencies, States, and U.S. Territories enrolled in the 1033 Program every two (2) years. If a Federal Agency, State, or U.S. Territory fails an OER, the DLA LESO will temporarily suspend their operations. If a Federal Agency, State, or U.S. Territory fails to correct identified deficiencies the DLA LESO will permanently suspend their operations. The Federal Agency, State, or U.S. Territory will bear all expenses related to the turn-in to the nearest DRMO, the transfer to an approved Federal Agency, State, or U.S. Territory or the disposal of all excess DOD personal property.

All property missing, lost, stolen, damaged, or destroyed must be reported to the DLA LESO. Excess DOD personal property with a Demilitarization Code of C, D, E, F, or G must be reported to the DLA LESO within twenty-four (24) hours. Excess DOD personal property with a Demilitarization Code of A, B, or Q must be reported to the DLA LESO within seven (7) days. Extensions will be granted on a case by case basis.

In the event of a domestic disaster, accountability of excess DOD personal property must be conducted by every Federal Agency, State, and U.S. Territory within the effected area. Excess DOD personal property with a Demilitarization Code of C, D, E, F, or G must be reported to the DLA LESO within seven (7) days. Excess DOD personal property with a Demilitarization Code of A, B, or Q must be reported to the DLA LESO within thirty (30) days. Extensions will be granted on a case by case basis.

All aircraft (fixed wing and rotary wing), Flight Safety Critical Aircraft Parts (FSCAP), Demilitarization required Munitions List Items (MLI), Commerce Control List Items (CCLI) may be transferred to the State for its use in law enforcement activities. The State Plan of Operation must ensure that all LEAs and all subsequent users are aware of and agree to

provide all required controls in accordance with applicable laws and regulations for these items. Additionally, the following conditions apply:

A. LEAs may transfer aircraft and FSCAP with other authorized LEAs, provided the aircraft and components are maintained in accordance with applicable airworthiness standards and procedures for maintenance and repair and provided further that the LEAs perpetuate repair and maintenance documentation. The LEA must request the transfer of aircraft and FSCAP through the State Coordinator, who in turn must request approval from the LESO. Aircraft and FSCAP will not physically move until the approval process is complete. All costs related to the transfer of aircraft and FSCAP will be borne by the State/LEA.

B. LEAs may transfer FSCAP and MLI items requiring demilitarization (Demilitarization Codes C, D, E, and F) to another authorized LEA within their State or they must be turned-in to the nearest DRMO when no longer required for law enforcement use. The LEA must request the transfer or turn-in of FSCAP and MLI items through the State Coordinator, who in turn must request approval from the LESO. Aircraft and FSCAP will not physically move until the approval process is complete. All costs related to the transfer or turn-in of FSCAP and MLI items will be borne by the State/LEA.

C. LEAs enrolled in the 1208 Program can sell, trade or barter aircraft and aircraft parts issued on or before September 30, 1996. LEAs that received aircraft or aircraft parts after September 30, 1996 have the following options: retain the aircraft or aircraft parts, transfer them to another LEA or turn them in to the nearest DRMO. The LEA must request to sell, trade, barter, transfer or turn-in aircraft and aircraft parts through the State Coordinator, who in turn must request approval from the LESO. Aircraft and aircraft parts will not physically move until the approval process is complete. All costs related to the sell, trade, barter, transfer or turn-in will be borne by the State/LEA.

LEAs may transfer weapons provided through the 1033 or 1208 Program to an authorized LEA within their State, to an authorized LEA in another participating State, or they must turn-in their weapons to the U.S. Army Tank-Automotive and Armaments Command (TACOM) when no longer required for law enforcement use. The LEA must request the transfer or turn-in of weapons through the State Coordinator, who in turn must request approval from the LESO. Weapons will not physically move until the approval process is complete. All costs related to the transfer or turn-in of weapons will be borne by the State/LEA.

When the State Coordinator/LEAs no longer require MLI/CCLI (Demilitarization B and Q), the State Coordinator/LEA must transfer the equipment to another authorized LEA or turn-in to the nearest DRMO. The State Plan of Operation must reflect these two options. The LEA must request the transfer or turn-in to the nearest DRMO through the State Coordinator, who in turn must request approval from LESO. MLI/CCLI (Demilitarization Codes B and Q) property will not physically move until the approval process is complete. All costs related to transfer, turn-in, or disposal of property will be borne by the State/LEA.

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Except where indicated in this MOA, **the State/LEAs may transfer, turn-in to the nearest DRMO, or dispose of other types of property (Demilitarization Code A items) in accordance with applicable Federal, State, and local laws when it is determined that the State/LEA no longer requires the property for law enforcement use.** The LEA must request the transfer, turn-in to the nearest DRMO, or disposal through the State Coordinator, who in turn must request approval from LESO. Demilitarization Code A property will not physically move until the approval process is complete. All costs related to transfer, turn-in, or disposal of property will be borne by the State/LEA.

By signing this MOA or accepting excess DOD personal property under this MOA, the State pledges that it and each LEA agrees to comply with applicable provisions of the following national policies prohibiting discrimination:

A. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) as implemented by DOD regulations 32 CR Part 195.

B. On the basis of age, in the Age Discrimination Act of 1975 (42 USC 6101, et seq) as implemented by Department of Health and Human Services regulations in 45 CFR Part 90.

C. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, P.L. 93-516 (29 U.S.C. 794), as implemented by Department of Justice regulations in 28 CFR Part 41 and DOD regulations at 32 CFR Part 56.

These elements are considered the minimum essential ingredients for establishment of a satisfactory business agreement between the State and the DOD. The State Plan of Operation is subject to Federal review and will require DLA LESO approval prior to any subsequent transfer of excess DOD personal property.

THE DLA LESO SHALL:

1. Maintain an accessible website that will provide timely and accurate guidance, information, and links for all individuals who work or have an interest in the 1033 Program.

2. Receive and approve/disapprove applications for participation by a State in the 1033 Program.

A. Receive and approve/disapprove applications for an approved State to conduct a TDP. Approved States will receive an Authorization Letter from DLA LESO.

B. Receive and approve/disapprove applications for an approved State to conduct a CRS. Approved States will receive an Authorization Letter from DLA LESO.

C. Maintain a current and accurate approved/disapproved list of all State Coordinators and all State POCs.

3. Receive and approve/disapprove applications for participation by a LEA in the 1033 Program.

A. LEAs must be certified by their State Coordinator as having powers of arrest and apprehension.

4. Provide a comprehensive overview of the 1033 Program to all State Coordinators prior to or within thirty (30) days of their assumption of their duties.

A. Encourage and assist State Coordinators and LEAs in the use of electronic screening of the Defense Reutilization and Marketing Service (DRMS) world-wide inventory and the procedures to search for, identify, and request property.

B. Encourage and assist State Coordinators and LEAs with scheduling formalized instruction from the DLA/LESO and/or DRMS.

5. Upon receipt of a valid Request for property through LESO Automation, ensure equitable distribution and proper identification of the property.

A. Identify High Profile (Weapons/Night Vision Devices (NVDs), Aircraft/Watercraft, High Mobility Multi-Purpose Wheeled Vehicles (HMMWVs)/Armored Personnel Carriers (APCs)), High Value (Acquisition Cost of $20,000 or more) and/or High Awareness (Demilitarization required, MLI, CCLI, FSCAP) property, and then issue-free of charge-to the State Coordinator or designee for further transfer to an authorized LEA. All transportation costs will be borne by the State/LEA.

B. Provide the State Coordinator/LEAs with the available flight historical records and related documentation to FSCAP components. This documentation will be available for inspection by LEAs prior to transfer. The documentation will be sufficient to be accepted by a Federal Aviation Administration (FAA) authorized repair facility for evaluation and possible determination for use on an aircraft. DOD makes no representation as to the property's conformance to FAA requirements. The LEA must subject the assets to safety inspection, repair, and/or overhaul by a competent manufacturer or other entity such as those certified by the FAA prior to placing into use. The property that is provided to the State Coordinator/LEA may not meet FAA design standards, and/or may have been operated outside the limitations required by the Federal Aviation Regulations.

6. Maintain all records in accordance with the DLA Record Management Procedures and Records (DLAD 5025.30 - See Appendix). All files records, with the exception of consumable items, will be retained for five (5) fiscal years (Example: October 1, 2007 to September 30, 2008 constitutes a fiscal year).

A. All excess DOD personal property records of consumable items will have their files maintained in an active status for (1) year, then placed in an inactive status for (1) year, then may be destroyed.

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B. All excess DOD personal property records that are more than five (5) fiscal years old may be purged with the exception of Demilitarization Code B through Q excess DOD personal property, property deemed "sensitive to theft", and property deemed "high dollar". The DLA LESO defines "high dollar" as excess DOD personal property that has an Acquisition Value of more than $20,000.

C. All excess DOD personal property with a Demilitarization Code A will have their files maintained in an active status for two (2) years, then placed in an inactive status for three (3) additional years, then may be destroyed.

D. All excess DOD personal property with a Demilitarization Code B through Q will have their files maintained through the life cycle of the property. If an item is approved for turn-in, transfer, or disposal, then the file will move to an inactive status and will be maintained for an additional three (3) fiscal years, then may be destroyed.

7. Maintain LESO Automation to approve/disapprove transfer, turn-in, and disposal requests from a State/LEA.

A. Assist State Coordinators with request procedures.

B. Assist State Coordinators/LEAs with transfer, turn-in, and disposal procedures.

8. Provide Reconciliation Reports through the Law Enforcement Equipment Database System (LEEDS) so that State Coordinators and DLA LESO can conduct monthly reconciliations of property records.

9. Validate the accountability of all High Profile (Weapons/NVDs, Aircraft/Watercraft, HMMWVs/APCs), High Value (Acquisition Cost of $20,000 or more) and/or High Awareness (Demilitarization required, MLI, CCLI, FSCAP) property annually with the State Coordinator.

10. Validate the accountability of all High Profile (Weapons/NVDs, Aircraft/Watercraft, HMMWVs/APCs), High Value (Acquisition Cost of $20,000 or more) and/or High Awareness (Demilitarization required, MLI, CCLI, FSCAP) property with the State Coordinator following a domestic disaster within the timeframes established in this MOA.

11. Conduct an OER of each State participating in the program, at a minimum, every two (2) years or as needed. OER results will be provided electronically and in hard copy within thirty (30) days.

A. If a State fails an OER, they will be verbally notified by DLA LESO that their operations have been suspended. The OER results will be provided within fourteen (14) days.

B. The State Coordinator will have twenty-one (21) days to draft a Corrective Action Plan for approval/disapproval by the DLA LESO. The State Coordinator has ninety (90) days to implement an approved Corrective Action Plan. At, or before the end of the

ninety (90) day Corrective Action Plan, the State Coordinator should schedule a second OER with the DLA LESO. Failure to properly execute the Corrective Action Plan and receive a Mission Capable grade on a second OER may result in termination from the 1033 Program.

C. If a State is terminated from the 1033 Program, the State/LEA will bear all expenses related to the turn-in to the nearest DRMO, the transfer to an approved Federal Agency, State, or U.S. Territory or the disposal of all excess DOD personal property.

12. Suspend or terminate a State from the 1033 Program if a State Coordinator or a LEA materially fails to comply with any term of this MOA, any Federal statute or regulation, any assurance provided in a State Plan of Operation or application, or a State MOA with a LEA.

A. Temporarily Suspend Operations-Pending Review (TSO-PR): withhold approval of excess DOD property or release of property under previously approved requests, transfers, turn-ins, or disposals pending administrative or legal review by the DLA LESO or appropriate Federal or State agency and/or LEAs.

B. Temporarily Suspend Operations-Pending Deficiency Corrections (TSO-PD): withhold approval of excess DOD property or release of property under previously approved requests, transfers, turn-ins, or disposals pending correction of administrative or legal deficiencies identified by the DLA LESO or appropriate Federal or State agency and/or LEAs.

C. Suspend Operations (SO): withhold approval of excess DOD property or release of property under previously approved requests, transfers, turn-ins, or disposals until major deficiencies are corrected and personnel changes are effected as recommended following administrative or legal review/action by the DLA LESO or appropriate Federal or State agency and/or LEAs.

D. Terminate Operations (TO): at the expense of the State/LEA(s) require the State Coordinator and/or identified LEA(s) to transfer, turn-in, or dispose of all property previously received through the 1033 or 1208 Program. DLA LESO will provide oversight.

THE STATE SHALL:

1. Access the DLA LESO website on a weekly basis for timely and accurate guidance, information, and links concerning the 1033 Program and ensure that all relevant information is passed on to participating LEAs.

2. Create a comprehensive State Plan of Operation, forward to the DLA LESO for approval/disapproval, and implement to conduct operations in accordance with the regulations of the 1033 Program. Maintain the approved MOA and State Plan of Operation on file.

A. If operating as a TDP, create a comprehensive TDP Plan of Operation, forward to the DLA LESO for approval/disapproval, and implement to conduct operations in accordance with regulations of the 1033 Program. Maintain TDP Authorization Letter and TDP Plan of Operation on file.

B. If operating as a CRS, create a comprehensive CRS Plan of Operation, forward to the DLA LESO for approval/disapproval, and implement to conduct operations in accordance with regulations of the 1033 Program. Maintain CRS Authorization Letter and CRS Plan of Operation on file.

C. Ensure the DLA LESO has a current and accurate listing of the State Coordinator and State POC Listing. Allow a maximum of four (4) screeners. The screeners must be full-time and/or part-time, sworn and/or non-sworn officers, per LEA performing this duty. The screeners must be named in a "Data Sheet", provided and approved by the State Coordinator, and approved by the DLA LESO and in the LEEDS/LEA File. Notify DLA LESO immediately upon notification of change of Governor or State Coordinator.

D. Enter into written agreement with each LEA, via the State Plan of Operation, to assure they fully comply with the terms, conditions, and limitations applicable to property transferred pursuant to this agreement. The State Plan of Operation must be signed by the Chief Law Enforcement Officer of the respective LEA.

3. Receive and approve/disapprove applications for participation by a LEA in the 1033 Program.

A. The State Coordinator will only certify LEAs that have powers of arrest and apprehension.

4. Provide a comprehensive overview of the 1033 Program to all LEAs once they are approved.

A. Encourage and assist LEAs in the use of electronic screening of DRMS world-wide inventory and the procedures to search for, identify, and request property.

B. Encourage and assist LEAs with scheduling formalized instruction from the State Coordinator, DLA LESO and/or DRMS.

5. Create requests or upon receipt of a valid Request for property from a LEA, ensure equitable distribution within the State and properly identify all property. Properly justify all requests and ensure identification of TDP, CRS or LEA.

A. Ensure LEAs are aware that High Profile (Weapons/NVDs, Aircraft/Watercraft, HMMWVs/APCs), High Value (Acquisition Cost of $20,000 or more) and/or High Awareness (Demilitarization required, MLI, CCLI, FSCAP) property is identified by DLA LESO and is subject to additional controls.

B. Request from the DLA LESO all available flight historical records and related documentation to FSCAP components. This documentation will be available for

inspection by LEAs prior to transfer. The documentation will be sufficient to be accepted by a FAA authorized repair facility for evaluation and possible determination for use on an aircraft. DOD makes no representation as to the property's conformance to FAA requirements. The LEA must subject the assets to safety inspection, repair, and/or overhaul by a competent manufacturer or other entity such as those certified by the FAA prior to placing into use. The property that is provided to the State Coordinator/LEA may not meet FAA design standards, and/or may have been operated outside the limitations required by the Federal Aviation Regulations.

C. If a State/LEA request is approved, the State Coordinator or a designee will receipt for property-free of charge-for a TDP (if approved), CRS (if approved), or further transfer to an authorized LEA. All transportation costs will be borne by the State/LEA.

D. The State Coordinator will bear responsibility for the allocation, receipt, transfer, turn-in, and disposal of all excess DOD property received through the 1033 Program (TDP, CRS, or LEA).

6. Maintain all records in accordance with the DLA Record Management Procedures and Records (DLAD 5025.30 - See Appendix). All files records, with the exception of consumable items, will be retained for five (5) fiscal years (October 1, 2007 to September 30, 2008 constitutes a fiscal year). These records must provide an audit trail for all excess DOD property from receipt "cradle" to transfer, turn-in, or disposal "grave". These documents include, but are not limited to the following: DRMS Form 103 (Screener Tally Sheet) optional for TDPs, with all justifications or printouts of automated requests, DD Form 1348 (Disposal Turn-In Document (DTID)), all requests for transfer, turn-in, or disposal, approved Bureau of Alcohol, Tobacco, and Firearms (ATF) Form 5, ATF Form 10, Certificate of Aircraft Registration (AC Form 8050-3), Aircraft Registration Application (AC 8050-1) and any pertinent documentation associated with the 1033 Program.

A. All excess DOD personal property records of consumable items will have their files maintained in an active status for (1) year, then placed in an inactive status for (1) year, then may be destroyed.

B. All excess DOD personal property records that are more than five (5) fiscal years old may be purged with the exception of Demilitarization Code B through Q excess DOD personal property, property deemed "sensitive to theft", and property deemed "high dollar". The DLA LESO defines "high dollar" as excess DOD personal property that has an Acquisition Value of more than $20,000.

C. All excess DOD personal property with a Demilitarization Code A will have their files maintained in an active status for two (2) years, then placed in an inactive status for three (3) additional years, then may be destroyed.

D. All excess DOD personal property with a Demilitarization Code B through Q will have their files maintained through the life cycle of the property. If an item is approved

for turn-in, transfer, or disposal, then the file will move to an inactive status and will be maintained for an additional three (3) fiscal years, then may be destroyed.

E. The records must also satisfy any and all pertinent requirements under applicable Federal statutes and regulations for the 1033 Program and for this property.

7. Maintain access to LESO Automation to approve/disapprove transfer, turn-in, and disposal requests from an LEA or to generate these requests at the State level and forward, all approvals to the DLA LESO for action.

A. Assist the LEAs with request procedures.

B. Assist the LEAs with transfer, turn-in, and disposal procedures.

8. Review Reconciliation Reports through LEEDS and conduct monthly reconciliations of property records.

9. Validate the accountability of all High Profile (Weapons/NVDs, Aircraft/Watercraft, HMMWVs/APCs), High Value (Acquisition Cost of $20,000 or more) and/or High Awareness (Demilitarization required, MLI, CCLI, FSCAP) property annually with each LEA by having them conduct and certify a physical inventory. All inventories will be maintained on file indefinitely.

10. Validate the accountability of all High Profile (Weapons/NVDs, Aircraft/Watercraft, HMMWVs/APCs), High Value (Acquisition Cost of $20,000 or more) and/or High Awareness (Demilitarization required, MLI, CCLI, FSCAP) property with each LEA following a domestic disaster within the timeframes established in this MOA by having them conduct and certify a physical inventory. All inventories will be maintained on file indefinitely.

11. Conduct an OER of LEAs participating in the program in order to ensure accountability, responsibility, and program compliance.

12. Suspend or terminate a LEA from the 1033 Program if a LEA materially fails to comply with any term of this MOA, any Federal statute or regulation, any assurance provided in a State Plan of Operation or application, or a State MOA with an LEA. Report all LEA terminations to the DLA LESO immediately upon termination.

NOTICES:

Any notices, communications or correspondence related to this agreement shall be provided by the United States Postal Service, express service, or facsimile to the cognizant DLA office. The DLA LESO, may, from time to time, propose modifications or amendments to the provisions of this MOA. In such cases, reasonable opportunity will, insofar as practicable, be afforded the State Coordinator to conform changes affecting their operations.

TERMINATION:

This MOA may be terminated by either party, provided the other party receives thirty (30) days notice, in writing, or as otherwise stipulated by Public Law.

The undersigned State Coordinator hereby agrees to comply with all provisions set forth herein and acknowledges that any violation of the terms and conditions of this MOA may be grounds for immediate termination and possible legal consequences, to include pursuit of criminal prosecution if so warranted.

IN WITNESS THEREOF, the parties hereto have executed this agreement as of the last date written below.

_____
Type/Print State Coordinator Name

_____ _____
State Coordinator Signature Date (MM/DD/YYYY)

_____
Type/Print DLA/LESO Representative Name

_____ _____
DLA/LESO Representative Signature Date (MM/DD/YYYY)

Attachment

12

Appendix C

Examples of SWAT incident reports and weapons transfers received in connection with the ACLU's investigation

Examples include:

- A Concord, North Carolina, threat matrix, showing that a person's religious views is a factor in determining whether SWAT should be deployed in that city
- A SWAT incident report from El Paso, Texas, describing a SWAT raid in which the squad used a Bearcat APC to break through the door of a man known to suffer from mental illness, after already forcing entry through multiple other sites and shattering a sliding glass door, then beat and tased the obviously-confused man
- Documentation of receipt by the Keene, New Hampshire, Police Department of the purchase of a Lenco Bearcat APC, using homeland security funds
- A SWAT incident report from New Haven, Connecticut, describing a nighttime SWAT raid in which the squad arrived at the home in a Bearcat APC, broke down the front door with a battering ram, deployed a distraction device inside the home, and detained two people inside a home, but did not report finding any weapons or evidence
- Documentation of receipt by the North Little Rock, Arkansas, Police Department of two Marcbots (robots capable of being armed) and a Mamba tactical vehicle
- A training document from the National Tactical Officer's Association showing that officers are being trained to have a soldier mentality

Concord Police Department
Threat Matrix Assessment for SOT Activation for Warrant Service

Warrant Type and Location
75 Kerr St NW Concord NC

Date: **06-21-2012**

Investigator Responsible:
Detective Kelly Seagraves

Supervisor Approval:

Tactical Commander Approval:

Location Factor Points
Multiple persons present X
Armed Counter Surveillance
Chemicals /Lab
Children on site X
Counter Surveillance
Dogs X
Vicious Dogs
Fortifications
Geographic Barriers
Possible Booby Traps
Security screens
Burglar bars
Use of Undercover Personnel
Video/Audio counter surveillance

General Risk Factors
Drug / Alcohol Abuse / Use X
Hate Group
Gang Association X
Terrorist
Suicidal
Mentally Unstable
Military Experience
Police Experience
Militia
Religious extremist

Weapon Factors
Assault Weapons
Explosives
Fully Automatic Weapons
Pistol
Revolver
Rifle
Shotgun
Edged Weapon / Instrument

Suspect Criminal History
Homicide
ADW
ADW On Officer
Resist Obstruct Delay X
Firearms X
Robbery
Sexual Assault
Probation / Parole X
Drugs X

Operation Risk Level
Level I (Low) 0-20
Level II (Moderate) 21-39
Level III (High) 40 +

Total Points Assessed ___
Risk Level Assessed _____

- 031396 -

469

EL PASO POLICE DEPARTMENT
SUPERVISOR'S DAILY LOG

Name: Sgt. Gabriel Peralta #1923		Date:	02-14-12 Page 2
Division: O.S.S.D		Type of Incident:	Forced Entry
Section: SWAT		If other, please specify:	Use of Force - Taser and LLB3 Use of Force- Hard Empty Hand

Date of Incident: 02-14-12 Time of Incident: 0015 Address of occurrence: 3022 Dublin
Involved Employee Name 1: Abascal, Victor ID # 1: 2231
Involved Employee Name 2: Guerra, Alex ID # 2: 2078
Peralta, Gabe ID# 3: 1923

Citizen's Complaint: ☐ Yes ☒ No Case Number: 12-044/225
Subject or Citizen's Name: [redacted]
Address: [redacted]
Phone: [redacted]

Brief explanation of events:

SWAT Team members responded to the listed address reference to a barricaded subject with a weapon call. Operators were provided information from Command Post that the listed subject was a mental health patient diagnosed with paranoid schizophrenia. After failed negotiations and deployment of chemical agents, operators were able to restrict the movement of subject [redacted] to the garage area. Operators made make forced entry through multiple entry sites, the front door was pushed inward into the house using the BearCat push bar. The sliding glass door was shattered using two less lethal rounds.

Operators designated an arrest team, less lethal and lethal team to confront subject [redacted] After several loud verbal commands to surrender and to visably show his hands to officers [redacted] refused to comply. Officer Guerra deployed two less lethal bean bag rounds, one to subjects left upper thigh and left upper bicep. Officers did not get the desired results, due to subject still refusing to show his hands. Officer Abascal followed up with a Taser cartridge deployment, which struck [redacted] in the middle back area

This temporarily impaired [redacted] so officers could affect an arrest. [redacted] refused to comply and actively resisted officer from placing handcuffs on him. While officers were attempting to place [redacted] hands behind him, Sgt Peralta struck [redacted] in the face with a closed fist. Sgt Peralta received the desired results because [redacted] immediately stopped resisting and provided officers his hands. [redacted] was subsequently taken into custody and released to patrol officers. Patrol officers obtained a medical release from Del Sol Hospital and was later booked into EPCDF. Lt. Ransom and Sgt. Law were advised on tactics used to subdue [redacted]

It should be noted that complete details of damage to the residence is documented in the After Action Report created by Sgt. Mark Fernandez. Taser No# X00-035516 was taken to IAD and memory log down loaded.

CC: Risk Management

EPPD 38-15-123 REV 07/2006

035241

Attachments: None ☐ Enclosed ☒
List below:
Use of Force Template - Taser
Use of Force Template - Less Lethal Beam Bag
Supervisor Taser Use Report
Event Call Card - Event #P2012079596 & #P2012079759
8- Photographs of [redacted] injuries
54-Photographs of damages to residence
Copy of After Action Report

Comments:

Shift Commander: Lt. David Ranson Date: 2/14/2012

Division Commander's Use Only:

Counseling ☐ Training ☐
Entered into Personnel File ☐ Complaint Requires Additional Follow-Up ☐
Initiate PID ☐ Complaint Resolved ☐
Approved ☐ Forward to:

Comments:

Division Commander: Date:

BPPD 36-15-123 REV 07/2006

035242

City of Keene

Police Department 400 Marlboro Street New Hampshire 03431

PRESS RELEASE

Keene Police Department Special Mission Rescue Vehicle Acquisition

November 20th, 2012

On Friday, November 16th, 2012, members of the Keene Police Department and the City's Fleet Services took possession of the Department's Special Mission Rescue Vehicle from Lenco Industries. Lenco provided training on the vehicle and its equipment prior to release of the vehicle.

On that date the vehicle was dropped off with a private contractor to have a police radio installed. This is the only additional piece of equipment needed that the vehicle did not come built and equipped with.

Upon completion of the radio installation on Tuesday, November 20th, 2012, the vehicle was driven to the Keene Police Department and placed into service.

Training on the vehicle and its on-board equipment and capabilities will be ongoing. This vehicle was purchased through Department of Homeland Security and the New Hampshire Department of Safety – Grants management unit grant funding upon approval of the City Council.

Information concerning any incident may be provided anonymously via email on our website at:

http://www.ci.keene.nh.us/departments/police/anonymous-crime-tips

045225

NH Department of Safety - Grants Management Unit
FY 2010 Homeland Security Grant Application

Please address all points in sequence. **The NH State Strategy is approved to support the preparedness, prevention, protection and recovery needs of NH's PRIMARY First Responders** (see http://www.nh.gov/safety/divisions/homeland/2009/exe_summary.html). Responses should include all jurisdictions participating in the applications. Responses to each Section should be labeled; however do not exceed page limits for each Section. **Please use the standard Times New Roman font, 12 pt. with 1" margins.**

SECTION I: STRATEGY

(Maximum of 3 pages- use the letter for information pertaining to each Key item)

Describe your problem and solution in three pages or less. This narrative should include the following:

A. The acquisition of a **Specialized Mission CBRNE/WMD Rescue Vehicle** will help to guard against a terrorist or CBRNE/WMD incident as the vehicle is capable of deflecting blast fragmentation behind a wall of shielding, thereby protecting support and/or rescue personnel. This ability allows specialized personnel to respond to or enter into an area and effectively diffuse or render harmless any terrorist or CBRNE/WMD situation thus limiting a potential mass casualty incident.

The vehicle will be equipped with the latest in Radiation Detection and Explosive Gas Detection equipment to further enhance the safety and capabilities of the mission personnel. The vehicle will be equipped with a radio system that will meet APCO (Association of Public Safety Communications Officials) Project 25 specifications, assuring the interoperability between law enforcement and fire agencies throughout the State of New Hampshire. The system capable of integrating with future system designs.

B. The terrorism threat is far reaching and often unforeseen. Terrorist's goals, regardless of affiliation, usually encompass the creation of fear among the public, convincing the public that their Government is powerless to stop the terrorists, and get immediate publicity for their cause. Keene currently hosts several large public functions to include: an annual Pumpkin Festival, which draws upwards of 70,000 patrons to the City, the Clarence DeMar Marathon which has been held for the last 33 years and is an official qualifying race for the US Olympic Time trials as well as an official qualifying race for the Boston Marathon. This race brings in runners and spectators from all over the United States. Keene State College, part of the university system of New Hampshire, is located in the downtown area of the City of Keene and brings 6000 students to its environs daily. There are other city events that draw large crowds and all are susceptible to terrorist attacks. It is known that the use of Radiological Dispersion Devices by terrorists is much more likely than the use of a nuclear device. Cheshire County currently does not have a transport vehicle capable of protecting personnel in a critical incident or measure such radiation. The closest Specialized Mission Vehicle is well over 1 hour away and this does not include the time it takes to mobilize and prepare the personnel necessary to drive it to Cheshire County.

Highways passing through Keene, Routes 9 and 101, provide the major east/west corridor for trucking from Interstate 91 in Vermont to the Concord, Manchester, Nashua and the seacoast. Many of these trucks carry hazardous materials and are subject to terrorism, natural disasters and motor vehicle accidents.

045240

City of New Haven
Department of Police Services

Special Weapon And Tactics
After Action Report

Case Number: 13-7061		District: 6
Date of Operation: 02/15/2013	Time Initiated: 1054	Time Secured: 1116
Location of Operation: [redacted]		

Type of Operation

Arrest Warrant	x Search Warrant	___ Vehicle Stop	___ Other

Report

Explain Activity (Route, Point of entry, Tools used , Activity upon gaining entry)

Members of the New Haven Police Shooting Task Force secured a search warrant for [redacted] NHPD SWAT was briefed at 710 Sherman PKWY along with NHPD investigators. NHPD SWAT travelled to this target location utilizing the Bearcat. NHPD SWAT deployed from the vehicle in front of the residence. The front common door was breached utilizing a one man battering ram. Two subjects were detained within the residence. NHPD SWAT secured the location until relieved by New Haven Patrol and investigators.

Subjects located on scene (Arrested, Detained, interviewed):
1 Males
1 Female
1 Infant Male

Diversion used (Distraction device, Other):
Distraction device deployed within residence

Damage to property (Front door, broken windows, equipment):

First floor front interior door

This Document has been prepared by the New Haven Police Department
FOR LAW ENFORCEMENT USE ONLY

CITY OF NEW HAVEN
DEPARTMENT OF POLICE SERVICES

Injuries: (LEO, Subjects):
No reported injuries during execution.

Weapons Located (Firearms, Other):

Evidence Located:

Prepared By: __Officer D. Acosta Jr._ _____

Reviewed By: _____
SWAT Commander

Approved By: _____
OIC

This Document has been prepared by the New Haven Police Department
FOR LAW ENFORCEMENT USE ONLY

ARKANSAS 1033 PROGRAM

OPERATIONAL EFFECTIVENESS REVIEW

AGENCY INFORMATION

LAW ENFORCEMENT AGENCY (LEA): North Little Rock Police Department
DATE OF VISIT: 11/2/2011
LEA POINT OF CONTACT: John Breckon, Lieutenant
LEA ID: AR18787
STATE LESO REPRESENTATIVE: Tim Hicks, Arkansas LESO Manager
NEXT OER DUE: 2016

LESO FOLDER CONTENTS

FOLDER ITEM	YES	NO	N/A	COMMENTS
LESO APPROVAL LETTER	X			Needs to be updated.
LAW ENFORCEMENT AGENCY (LEA) APPLICATION	X			Needs to be updated.
ARKANSAS STATE OPERATION PLAN (SIGNED PAGE 13)	X			Needs to be updated.
DD FORM 103			X	
DD FORM 1348 RECEIPT	X			
DD FORM 1348 TURN IN			X	
DISPOSAL DOCUMENTATION			X	
TRANSFER DOCUMENTATION	X			
ATF FORM 10 (REQUIRED AFTER ACQUISITION)		X		No copies on file at the State LESO Office
ATF FORM 5 (REQUIRED AFTER TRANSFER)			X	
AC FORM 8050-1, CERTIFICATE OF AIRCRAFT REGISTRATION			X	
INVENTORY SUMMARY	X			Some items are no longer accounted for.

PHYSICAL INVENTORY CHECK & RECONCILLIATION

PROPERTY	LEEDS	ON HAND	EXPLANATION OF DIFFERENCE
ICRAFT	0	0	N/A
APC	0	0	N/A
WEAPONS	29	29	N/A
OTHER VEHICLES	7	7	N/A
HMMWVS	0	0	N/A
WATERCRAFT	0	0	N/A

VISIT OVERVIEW

I met with Lieutenant John Breckon at approximately 10:00 hours at the North Little Rock Police Department. I visually inspected (1), Rifle, 5.56 Millimeter, Serial Number 4791495. The remaining weapons are stored in a secure room and issued for officer use. Lt Breckon had a log available reflecting the weapon serial number and the individual whom it is issued to. Each weapon in the inventory has a metal tag attached for accountability and a photograph is attached as an example. Lt. Breckon maintains files for all 1033 Program actions to include a weapons folder, equipment folder, vehicle folder, and application folder. A review was conducted of the equipment listed on inventory and several items obtained during the 1990s are unaccounted for. The procedure for property adjustment was explained and Lt. Breckon was given the necessary forms to complete the request. Also noted was the fact the LESO Application for Participation is outdated along with the State Memorandum of Agreement. Those forms were also provided during the visit. Lt. Breckon took me to the city garage where the department's latest acquisition is being repaired and updated. The Mamba Tactical Wheeled Vehicle, DTID H9DEB112B16796, was inspected and photographed from the front and the driver's side (front); no data plate could be located. (Photographs are attached.) The department is in need of a repair/maintenance manual. Ms. Madden, LESO Vehicle Lead, was contacted and she stated no manuals are available through them, to contact the manufacturer. Overall had a great visit and expect no issues in regards to accountability of 1033 Program equipment or of accompanying paperwork.

<- 030613 ->

PRAISE: Accountability of items is a major concern to Lt. Breckon, understands responsibilities associated with the 1033 program.

AREAS OF CONCERN: No real deficiencies were noted, accountability of equipment is high.

RECOMMENDATIONS: Update Application Forms and submit a Property Adjustment Request Form.

FOLLOW UP ACTIONS: None scheduled at this time.

CONCLUSION: The compliance review results were found to be: _X_SATISFACTORY ___UNSATISFACTORY

Timothy F. Hicks, Law Enforcement Support Office (LESO) Manager

NAME & TITLE

SIGNATURE

<- 030614 ->

Not yet in service - Robots 2

DLA Disposition Services Law Enforcement Support Office
Transfer Request

CLEAR

Date of the Request: 2/12/13

Releasing Agency: Little Rock Police Dept **ID:** 2YTGUC	**Receiving Agency:** North Little Rock PD **ID:** 2YT107
Address: 700 West Markham	**Address:** 200 W. PERSHING BLVD
City, State, Zip: Little Rock, AR 72201	**City, State, Zip:** NORTH LITTLE ROCK, AR 72114
Phone: 501-371-4622	**Phone:** 501-812-6101
Releasing Agency Signature: #11817	**Receiving Agency Signature:**
	The below is N/A if the transfer is within the same State or Federal Agency
State Coordinator/Federal Approval: YES ◉ NO ○	**State Coordinator/Federal Approval:** YES ○ NO ○
Printed Name:	**Printed Name:**
Signature:	**Signature:**

The State Coordinator or Federal Chief Executive Official must approve the transfer request. The property may not physically move until the LEA receives approval from the LESO. This form must be signed by the Relessing LEA and State Coordinator or Federal Chief Executive Official as well as the Receiving LEA and State Coordinator or Federal Chief Executive Official (only if the property is being transferred to another State or Federal Agency).

Additional Comments:

	Item Name	NSN/Serial #	File #	DTID	Requisition Number	DEMIL CODE	QTY TO TRANSFER
FOR LARGE QUANTITY INVENTORIES, A SPREADSHEET MAY BE CREATED AND SUBMITTED WITH THIS TEMPLATE							
1	Marcbot / Robot Exp. Ord	1385015744707	23390429	W90Y2523263006	2YTGUC23390429	D	1
2	Marcbot / Robot Exp. Ord	1385015744707	23390430	W90Y2523263007	2YTGUC23390430	D	1
3							
4							
5							

LESO USE ONLY:

Adjustment Approved: YES ○ NO ○ **Completed in LEEDS:** YES ○ NO ○

LESO OFFICIAL: _____ **DATE:** _____

Reason if Disapproved: _____

Version March 31, 2012

<- 030622 ->

DRMS-I 4160.1, Section 4
Supplement 2, General Processing

C5 – RTD Program

Enclosure 8 - Letter of Authorization to Remove Property

Date: 10-13-2011

To: DRMO
DLA DISPOSITION SERVICES SITE
SIERRA ARMY DEPOT

From: LESO HEADQUARTERS
74 WASHINGTON AVE
BATTLE CREEK, MI

I, CASANDRA MADDEN the undersigned, hereby authorize
(PRINT NAME)

Susanville Taving to remove the below listed requisitions on my behalf.
(PRINT NAME)

Extent of Authority: To remove property.

SIGNATURE OF CUSTOMER: [signature]

LIST ITEM(S) by Requisition/DTID Number:

ONLY ONE OF THE MAMBA ARMORED VEHICLES:

NS-33
Lt John Breckon
501-351-6686
501-812-5101
North Little Rock Police Department
North Little Rock Arkansas

The provisions of this publication apply to all Remaining Government personnel at impacted, non-impacted and non-competed sites. This publication may be mandatory or advisory to the MEO, as stipulated in or modified by the Performance Work Statement.

Section 4, Supplement 2 S2-123

<- 030627 ->

1033 Program Transfer Request

Date of the Request:_____

Releasing Agency: LESO HEADQUARTERS **ID:**	**Receiving Agency:** NORTH LITTLE ROCK PD **ID:**
Address: 74 N. WASHINGTON AVE	**Address:** 200 W. PERSHING BLVD
City, State, Zip: BATTLE CREEK, MI	**City, State, Zip:** NORTH LITTLE ROCK, AR
Phone: 1-800-532-9948	**Phone:** -501-812-5101
Releasing Agency Signature:	**Receiving Agency Signature:**
	The below is N/A if the transfer is within the same State or Federal Agency
State Coordinator/Federal Approval: YES NO	**State Coordinator/Federal Approval:** YES NO N/A
Printed Name: CASANDRA MADDEN	**Printed Name:**
Signature:	**Signature:**

The State Coordinator or Federal Chief Executive Official must review and approve the transfer request. The property may not physically move until the LEA receives approval from the LESO. This form must be signed by the Releasing LEA and State Coordinator or Federal Chief Executive Official as well as the Receiving LEA and State Coordinator or Federal Chief Executive Official (only if the property is being transferred to another State or Federal Agency).

	Item Name	NSN/Serial #	File #	DTID	Requisition Number	QTY	DEMIL Code
1	MAMBA TACTICAL WHEELED	2355DSCOMBTV2				1	D
2							
3							
4							
5							
6							

LESO Use Only

Transfer approved by LESO: YES ◯ NO ◯ **Transfer complete in LEEDS:** YES ◯ NO ◯

The Transfer was not approved due to the following: _____

LESO Coordinator: _____ **Date:** _____

<- 030628 ->

TACTICAL MINDSET

Not proud of taking a life but realize satisfaction from performing a task learned through repetition and rehearsal.
"pride"
"teamwork"
"faith in teamates"

FEAR = EXILIRATING
NOT COWARDICE

PRACTICE – TRAINING – REPETITION
OVERCOMES FEAR

- 016049 -

1

ACTION – REATION- COUNTERACTION

WIN

Always Evolving
To scenario
ever changing

Action can begin with Officers
or suspects

SUSPECT THINKING RESIST

DOESN'T EXPECT OUR
COUNTERACTION

FBI Studies interviewing
Predators indicates they
look for weaker targets in
Suspects as well as Officers

neat, "professional" squared away
in command
"ALPHA DOG"

DOMINATE THE SITUATION

PREVAIL

- 016050 -

2

OODA Loop

Observe Orient Decide Act

TALK – FIGHT- SHOOT - LEAVE

"STEEL YOUR BATTLEMIND"

- 016051 -

3

WHAT IS BATTLEMIND?

- A WARRIORS INNER STRENGTH TO FACE FEAR AND ADVERSITY DURING COMBAT WITH COURAGE. IT IS THE WILL TO PERSEVERE AND WIN. IT IS RESILIENCE.

- **EXPECT SUCCESS**

- OBSTACLES AND SETBACKS ARE PART OF LIFE

- 016052 -

4

Appendix D

Fact Sheet: Responses on Excess Property Program

DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221

JAN 14 2014

The Honorable Henry Johnson
U.S. House of Representatives
Washington, DC 20515

Dear Representative Johnson:

This letter is in response to your inquiry requesting additional information on military-grade equipment to civilian police through the Defense Logistics Agency (DLA) Law Enforcement Support Office (LESO) program. Attached is a Fact Sheet with responses to your questions.

If you have any additional questions regarding this issue or need further details, please contact Mr. Robert Wimple, Director, DLA Legislative Affairs at (703) 767-5264 or robert.wimple@dla.mil.

Sincerely and Very Respectfully,

MARK DARNITCHEK
Vice Admiral, USN
Director

Attachment
As stated

FACT SHEET

SUBJECT: Responses on Excess Property Program for Representative Henry Johnson

DISCUSSION:

- ***In regards to your question, are new, used or both types of property transferred through the 1033 program? What percentage of new property is being transferred to law enforcement agencies? What percentage of the property is used?***

  - Both new and used property is issued through the 1033 program. Approximately 36% of the property issued is new and 64% is used

- ***What percentage of this property is military-grade weapons as opposed to non-military grade weapons?***

  - All weapons issued through the 1033 program are military grade.

- ***What does DLA do with the property not transferred to state and local law enforcement agencies?***

  - Excess DOD property is offered for reuse based on a priority cycle and the military services have the first priority before law enforcement agencies. If the property is not reutilized by those programs, it is offered to federal civil agencies and then to eligible state or local government recipients.

- ***Is there a Department of Defense budget line item associated with the 1033 Program? If so, what was that budget line for FY2011 and FY2012?***

  - Yes, FY2011 budget was $2.1M and FY2012 budget was $2.6M.

- ***According to various reports, DLA instituted a Moratorium on Weapons transactions in May of 2012. Is this or any other moratorium of the transfer of property or weapons in place?***

  - No, the moratorium was lifted in October 2013 based on a phased approach. States will be allowed to requisition weapons only if they are in good standing with LESO, receive all weapons into the LESO property accounting system, and provide photos of all weapons.

- ***How does DLA define the word "weapon" for the purposes of this moratorium?***

  - A weapon is defined as a firearm. The federal law that established the program uses the term "small arms" to define the kinds of firearms the Law Enforcement Support Office

1

can allocate to eligible law enforcement agencies. Small arms are considered those firearms that are .50 caliber and smaller.

- ***What was the reason (s) for this moratorium? What is the scope of the moratorium (i.e., the entire country or certain jurisdiction?) Do you expect the moratorium to expire? If so, when?***

o The suspension was enacted to ensure mandatory inventories of all issued firearms were verified as required by the DLA Memorandum of Agreement with the State. The moratorium applied to all states that requisitioned property.

- ***Does the moratorium apply to interagency transfers (i.e., transfers between state and local law enforcement agencies) or just to DLA transfers?***

o Weapons could be transferred between law enforcement agencies that were enrolled in the LESO Program when approved by the state coordinator and LESO.

- ***What current federal statutes and regulations are recipients of unused military goods distributed through the 1033 program required to comply with in order to receive and maintain military property? Are there any specific regulations that apply to military weapons that are transferred under the program?***

o 10 USC 2576a states that the Secretary of Defense may transfer to Federal and State agencies personal property of the Department of Defense, including small arms and ammunition, that the Secretary determines is suitable for use by agencies in law enforcement activities, including counter-drug and counter-terrorism activities and is excess to the needs of the Department of Defense. The DLA Memorandum of Agreement outlines annual inventory and other requirements for weapons.

- ***A September 14, 2012, article in USA Today (available at: http://usatoday30. usatoday.com/news/nation/story/2012/09/14/ariz-sheriff-ordered-to-return-military-goods/57781594/1) suggested that DLA was going to undertake a new rulemaking related to the 1033 program before the moratorium will be lifted. Is this correct? If the rulemaking has not occurred can you provide a citation to the new regulation? If not, what is the current status of the rulemaking?***

o The issues that led to the weapons moratorium led to changes in the DLA Memorandum of Agreement between the LESO and the States. Those revised Memorandum of Agreements are currently out for signature with the States. A copy of the agreement is provided.

- ***According to the LESO website, the 1033 program required a biannual compliance review in which the law Enforcement Support program staff must "visit each state coordinator and assist him or her in ensuring that property accountability records are properly maintained, minimizing the potential for fraud, waste and abuse." Is there any specific form, standard, or rubric used?***

2

- Yes. I have included a checklist that is used for compliance reviews.

- ***What criteria is used by the State Coordinator and LESO to approve or reject LEA requests for equipment? Does DLA have any performance metrics in terms of monitoring the recipients of equipment transferred through the 1033 program?***

- Governor-appointed state coordinators screen and recommend law enforcement agencies for participation. Requisitions for property are first approved by the state coordinator and then submitted to LESO with a justification that includes a brief description of law enforcement use. The LESO staff reviews each requisition, looking at such factors as the number of officers and the type and quantity of property requested, before items are approved. DLA monitors compliance with program requirements. Bi-annual compliance checks are conducted utilizing a checklist and the DLA Memorandum of Agreement outlines accountability, general terms and condition of the program and other requirements.

RECOMMENDATION: None

3

Appendix E

DLA Performance Review Checklist

Date: Click here to enter a date.

MEMORANDUM FOR THE STATE OF TENNESSEE
1033 PROGRAM STATE COORDINATOR

SUBJECT: Program Compliance Review (PCR) Checklist

I. LESO will Verify:

*1. Is the State Coordinator appointed, in writing, by the current Governor of the State?	Choose an item.
1a. Appointment letter effective date: *7/9/12*	
*2. Is the State Coordinator appointment letter on-file with the Law Enforcement Support Office (LESO)?	Choose an item.
*3. Has the current State Coordinator signed the current Defense Logistics Agency (DLA) Memorandum of Agreement (MOA)?	Choose an item.
3a. MOA date: *12/18/13*	
4. If applicable, are State Points of Contact (SPOCs) appointed, in writing, by the current Governor appointed State Coordinator?	Choose an item.
4a. Is SPOC appointment letter (s) on-file with the LESO?	Choose an item.
5. Has the State Coordinator delegated his/her authority to anyone other than a SPOC?	Choose an item.
5a. Is delegation of authority letter (s) on-file with the LESO?	Choose an item.

Comments: Click here to enter text.

II. Website Knowledge:

1. Appointed personnel performing the duties with the State 1033 Program, are proficient and knowledgeable when utilizing the following DLA websites:	
1a. AMPS Website: https://amps.dla.mil	Choose an item.
1b. RTD Website: https://business.dla.mil/landing/index.jsp	Choose an item.
1c. DLA Disposition Services Website: https://www.dispositionservices.dla.mil/index.shtml	Choose an item.
1d. LESO Website: https://www.dispositionservices.dla.mil/rtd03/leso/	Choose an item.

Comments: Click here to enter text.

III. Eligibility Requirements:

1. Are Applications for Participation submitted by Law Enforcement Agencies (LEA) with arrest and apprehension authority signed by the Chief Executive Official (CEO), then forwarded to the State Coordinator?	Choose an item.
2. Does the State Coordinator and/or SPOC (s) verify that the LEA is authorized to participate in the 1033 Program?	Choose an item.
3. Are State Coordinator-approved Applications for Participation forwarded to the LESO for approval?	Choose an item.

Comments: Click here to enter text.

IV. Records Management:

*1. Is there a current State Plan of Operation on file for the State?	Choose an item.
1a. State Plan of Operation effective date:	Click here to enter a date.
*2. Does the State Coordinator keep current copy of the State Plan of Operation, signed by the LEA CEO in LEA file?	Choose an item.
3. Does each LEA keep current copy of the State Plan of Operation, signed by their CEO on file?	Choose an item.
4. Does the State Plan of Operation address the following areas:	
5a. Purpose	Choose an item.
5b. Authority	Choose an item.
5c. Terms and Conditions:	
-LEA Eligibility Criteria	Choose an item.
-How to enroll in the 1033 Program	Choose an item.
-LEA Screener Criteria	Choose an item.
-Identification/Acquisition of Property	Choose an item.
-Transportation of Property	Choose an item.
-Storage of Property	Choose an item.
-Distribution of Property	Choose an item.
-Security of Property	Choose an item.
-Accountability of Property	Choose an item.
-Establish an Inactive File	Choose an item.
-Utilization of Property	Choose an item.
-State internal compliance reviews	Choose an item.
-Transfer of property	Choose an item.
-Disposal of property	Choose an item.
-Turn-in of property	Choose an item.
5d. DEMIL Property requirements	Choose an item.
5e. Training opportunities	Choose an item.
5f. State responsibilities in the 1033 Program	Choose an item.
5g. LEA responsibilities in the 1033 Program	Choose an item.
5h. Suspension and/or Termination Criteria	Choose an item.
5i. Signature requirements (ie. LEA CEO/State Coordinator/SPOC)	Choose an item.
*5. Transfers of high visibility property are approved by the DLA LESO.	Choose an item.

Comments: Click here to enter text.

V. Records Retention:

1. Are the following documents on-file with the State Coordinators Office and/or LEA?	
1a. DLA Form 103s (aka Manual Requisitions)	Choose an item.
1b. DD Form 1348-1A (for all 1033 Program property currently on the LEA inventory)	Choose an item.
1c. DD Form 1348-1A (for all turn-ins)	Choose an item.
1d. DD Form 1348-1A (for all transfers)	Choose an item.
1e. Transfer documentation	Choose an item.

1f. Turn-in documentation	Choose an item.
1g. Inventory adjustment documentation for authorized property	Choose an item.
1h. ATFE Form 10	Choose an item.
1i. ATFE Form 5	Choose an item.
1j. FAA Certificate of Aircraft Registration (Form 8050-1)	Choose an item.
1k. Exception to policy memorandums (if applicable)	Choose an item.
1l. Other documentation as applicable [justification forms, Memorandum for Record (s), etc]	Choose an item.

Comments: Click here to enter text.

VI. Property and Inventory Control:

1. Is 1033 Program property properly stored in a controlled storage area with limited access?	Choose an item.
2. Have all reports of missing, lost, stolen, damaged or destroyed 1033 Program property been reported to the appropriate State Coordinators Office?	Choose an item.
3. Have all reports of missing, lost, stolen, damaged or destroyed 1033 Program property been reported to the appropriate Local/State/Federal Officials and the LESO? Note: If the property is DEMIL Coded B, C, D, E, F, G or Q3 you have (24) Hours for notification. If your property is DEMIL Code A, or Q (with an Integrity Code of 6) you have within (7) days to report.	Choose an item.
4. In determining State Coordinator's recommendation for approval of LEA request, is consideration given to the needs and resources of its LEAs (i.e. size of LEA, mission requirement and like property on hand)? NOTE: LESO personnel must conduct a random search of records.	Choose an item.
5. Are annual reconciliations of property receipts being conducted?	Choose an item.
6. Has the State submitted the previous Fiscal Year's certified inventory to the LESO?	Choose an item.
6a. Date submitted:	Click here to enter a date.
*7. Are photographs of Front, Side and Data Plates provided to the LESO for Aircraft, Watercraft and Tactical Vehicles?	Choose an item.
*8. Are photographs of Weapons Data Plates provided to the LESO?	Choose an item.

Comments: *No issues to report.*

VII. Transitional Distribution Point (TDP):

*1. Is there an authorization document from DLA, on hand, authorizing your State to operate as a TDP?	Choose an item.
2. Are TDP property requests earmarked for a specific LEA identifying them as the end user?	Choose an item.
3. Is 1033 property identified and stored separate from other categories of property such as 1122 and State Agencies for Surplus Property (SASP)?	Choose an item.
4. Does the State Coordinator and/or SPOC understand that transfers	Choose an item.

of 1033 Program property from the TDP to LEAs within his/her State still need to be processed via the LESO prior to physical movement of property?

Comments: Click here to enter text.

VIII. Compliance and Utilization Reviews:

*1. Is there a State-level 1033 Program Compliance Review process in-place, that ensures that 5% of State LEAs are inspected within the 2-year reporting period since the last PCR? Choose an item.

(Current MOA-2009 states that "The State shall: Conduct an OER of LEAs participating in the program in order to ensure accountability, responsibility, and program compliance." Therefore, until new MOA is signed and effective, the "PASS/FAIL" criteria is based on proof that the State Coordinator/SPOC has an internal review process in place that ensures accountability, responsibility and program compliance of LEAs within their State.)

2. Does the State Coordinator follow through with LEAs to rectify cases on non-compliance found on State Level PCRs? Choose an item.

3. Does the State Coordinator provide documentation to the DLA LESO in cases of non-compliant LEAs? Choose an item.

4. What steps are taken to resolve cases of non-compliance to the terms and conditions of the 1033 Program?

Click here to enter text.

Comments: Click here to enter text.

IX. Non-Utilized 1033 Program Property:

1. Are current procedures in place for LEAs to identify and report serviceable property when no longer needed? Choose an item.

2. What steps does the State Coordinator take to ensure LEAs do not requisition unnecessary or excessive amounts of property?

Click here to enter text.

3. What steps does the State Coordinator take to ensure 1033 Program property is not sold?

Click here to enter text.

4. Has there been an incident, since the last conducted PCR, where an LEA has sold property received under the 1033 Program or received 1033 Program property for the sole purpose of selling it? Choose an item.

4a. If yes, provide detail and supporting documentation of the outcome (who, what, when, where, how much).

N/A

Comments: Click here to enter text.

X. Compliance to LESO MOA:

1. Is all property transferred consistent with requirements of the DLA MOA? Choose an item.

2. Is the State Coordinator's Office aware that they must ensure that the LEA maintains adequate insurance to cover damages or injuries to persons or property relating to the use of the property. (Self-insurance by the State/LEA is acceptable)	Choose an item.
3. Is the State Coordinators Office aware that property available under the MOA is for the current use of authorized program participants; it will not be requested nor issued for speculative use?	Choose an item.
4. Is the State Coordinators Office aware that property will not be obtained for the purpose of sale, lease, loan rent, exchange, barter, to secure a loan, or to otherwise supplement normal Law Enforcement Agency (LEA) or State/Local governmental entity budgets?	Choose an item.
5. Is the State Coordinator Office aware that any transportation, repair, maintenance, insurance, disposal or other expenses associated with the excess Department of Defense (DOD) personal property is the sole responsibility of the State/LEA?	Choose an item.
6. Is the State Coordinators Office aware that all property obtained under the MOA must be placed into use within one (1) year of receipt and utilized for a minimum of one (1) year, unless the condition of the property renders it unusable?	Choose an item.
7. Is the State Coordinators Office aware approval of any variation to the above standard for property no longer needed by an LEA must be approved by the LESO through the State Coordinators Office?	Choose an item.
8. Is the State Coordinator's Office aware that the DOD has authorized the transfer and use of excess DoD property to the State/LEA and as such reserves the right to recall any and all property issued at the state or LEA expense?	Choose an item.
9. Is the State Coordinators Office aware that excess DEMIL A & Q (with Integrity Code of 6) property will transfer title to the State/LEA after receipt, placement into use and utilization for a minimum of one (1) year?	Choose an item.
10. Is the State Coordinators Office aware that to the extent permitted by law, the State Coordinator/LEA shall indemnify and hold the U.S. Government harmless from any and all actions, claims, debts, demands, judgments, liabilities, cost, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property and injuries, illness or disabilities to or death of any and all persons whatsoever, including members of the general public, or to the property of any legal or political entity including states, local and interstate bodies, in any manner caused by or contributed to by the State/LEA, its agents, servants, employees, or any person subject to its control while in, upon or about the sale site and/or the site on which the property is located, or while the property is in the possession of, used by or subject to the control of the State/LEA, its agents, servants, or employees after the property has been removed from U.S. Government control. The U.S. Government assumes no liability for damages or injuries to any person(s) or property arising from the use of the property.	Choose an item.
Comments:	Click here to enter text.

XI. **Conclusion:**

XII. **Areas of concern:**

XIII. **Areas of Recommendation:**

Click here to enter text.

XIV. **Areas of Praise:**

XV. **PCR Inventory Results:**

	STATE OF TENNESSEE 1033 PROGRAM PROPERTY					
	STATE TOTALS	*REQUIRED SAMPLE SIZE	TOTAL REVIEWED DURING PCR		TOTAL ON-HAND	% ACCURACY
			*ITEMS PHYSICALLY INVENTORIED	*ITEMS REVIEWED VIA APPROVED CUSTODY CARD		
WEAPONS						
			*ITEMS PHYSICALLY INVENTORIED	*ITEMS REVIEWED VIA APPROVED CUSTODY CARD		
AIRCRAFT						
			*ITEMS PHYSICALLY INVENTORIED	*ITEMS REVIEWED VIA APPROVED CUSTODY CARD		
WATERCRAFT						
			*ITEMS PHYSICALLY INVENTORIED	*ITEMS REVIEWED VIA APPROVED CUSTODY CARD		
TACTICAL VEHICLES						
			*ITEMS PHYSICALLY INVENTORIED	*ITEMS REVIEWED VIA APPROVED CUSTODY CARD		
GENERAL PROPERTY						
TOTALS						
**OVERALL STATE INVENTORY ACCURACY RATE (%):						

* The DLA LESO PCR Team is required to physically inventory or obtain a copy of an acceptable custody card for 100% of the 1033 Program Weapons, Aircraft, Watercraft and Tactical Vehicles, as appearing on the accountable record, for each LEA that has been selected for review during the PCR. The LEA must provide the DLA LESO PCR Team a copy of any custody card (s) used, at the time of the site visit, and must maintain the custody card (s) on-file as part of substantiating records. An acceptable version of a custody card must contain the following elements: 1) LEA name, 2) Name of individual responsible for physical custody of item, 3) Item nomenclature (Name), 4) Serial number of item (if applicable), 5) QTY of item (if more than one), 6) Printed name of individual responsible for physical custody of item 7)

Signature of individual responsible for physical custody of the item and 8) Date.

**Overall State Inventory Accuracy Rate (%) is determined by adding required Weapons (A), Aircraft (B), Watercraft (C), Tactical Vehicles (D) and General Property (E) at LEAs selected for review during the PCR, and dividing by the actual # of the property that was physically inventoried (X) or verified via an approved custody card (Y) during the course of the PCR

$\frac{A + B + C + D + E}{(X \text{ or } Y)}$	**= Overall State Inventory Accuracy Rate (%)**

XVI. PCR Training provided to the State:

PCR Training Date:

# of Agencies Trained	# of Officers Trained	# of State Coordinator/SPOC trained	# of DLA Disposition Services Field Representatives Trained
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

Thank you for the hospitality and professionalism shown to us during our visit. As always, we at the LESO stand ready to support and serve. If you have any questions or concerns, please feel free to contact us at 1-800-532-9946 or via email at DRMSLESO@dla.mil.

XVII. Program Compliance Review Team:

X_____
Deborah Smith

X_____
Dan Arnold

Dates of Program Compliance Review: Click here to enter a date. to Click here to enter a date.

(U) DEA - The "Other" Warfighter

FROM: [redacted]
DEA Account Manager (S112)
Run Date: 04/20/2004

(U//FOUO) When you think about our top national security threats, chances are that terrorism and military conflict come quickly to mind - and for good reason. But how many of us list illegal narcotics among the top threats to our society? Our national leadership recognized the seriousness this problem poses and declared a war on drugs two decades ago. This "war" has all the risks, excitement, and dangers of conventional warfare, and the stakes are equally high.

(U//FOUO) We are all aware that the Drug Enforcement Administration (DEA) is leading our nation's counternarcotics (CN) efforts. But many are not aware that from the start NSA has been at the forefront of Intelligence Community (IC) support to this seemingly unconventional DOD mission. The novel collection and analysis techniques NSA developed and refined against these criminal hard targets have not only resulted in major successes in the war on drugs, but they have also proven invaluable to other critical SIGINT missions, particularly counterterrorism, sometimes blurring the lines between the two missions.

(C) DEA has close relationships with foreign government counterparts and vetted foreign partners. The results of this team approach regularly make the headlines in the form of major drug busts and arrests. Less known is the critical supporting role that NSA continues to play in key DEA operations to disrupt the flow of narcotics to our country and thwart other, related crimes. DEA, however, recognizes the unique access and sole source information NSA provides and coordinates major cases with the S2F/ICN Product Line.

(C) As a result, both agencies enjoy a vibrant two-way information sharing relationship that enhances their common mission. Processes have been carefully established to exchange lead (foreign intelligence) information while protecting NSA equities. The Customer Relationships Directorate (S1), the Data Acquisition Directorate (S3), and MRSOC work with the S2F/ICN office as an integrated team to realize these mission successes.

(S//SI) One of those successes: Based on SCS (US-966L) intercept, S2F/ICN issued an OPS IMMEDIATE report on 30 March 2004 on the exact whereabouts of Colombian narcotics trafficker Gonzalo Hinojosa, an evasive and brutal international fugitive wanted for murder, drug trafficking, and money laundering. S2F had the foresight to include a tearline to share the actionable intelligence with Panamanian partners. With a short window for action, NSA's [redacted] worked through the Joint Interagency Task Force (JITF) - South to immediately forward the information to DEA/Panama. DEA/Panama in turn alerted the Panamanian authorities who quickly located and apprehended Hinojosa, without knowing the information came from NSA SIGINT. As Chief [redacted] noted, this is an excellent example of "outcome- oriented collaboration."

(U//FOUO) To learn more about NSA support to the "other" warfighter, DEA, visit the International Crime and Narcotics (S2F) website.

ENDNOTES

1. Police militarization has been defined as "the process whereby civilian police increasingly draw from, and pattern themselves around, the tenets of militarism and the military model." Peter Kraska, *Militarization and Policing—Its Relevance to 21st Century Police*, Policing (2007) 1 (4) 1-13 (Jan. 1, 2007).
2. Other manifestations of the militarization of policing, such as routine patrols using SWAT gear, militarization of the U.S. border, and the use of military surveillance equipment and other forms of intelligence gathering—while unquestionably of grave concern—are beyond the scope of this report.
3. Because the analysis examined SWAT deployments conducted by a small subset of law enforcement agencies over a limited number of years, the analysis itself does not allow us to make more general conclusions about the use of SWAT nationally or over time. However, as explained throughout the report, the specific findings we make regarding the SWAT deployments studied support the existing research on the militarization of policing generally.
4. Pew Research Center for the People & the Press, "America's New Drug Policy Landscape: On Drug Policy, Gov't Should Focus More On…," April 1, 2014, *available at* http://www.people-press.org/2014/04/02/americas-new-drug-policy-landscape/4-2-14-1/ (last visited April 25, 2014).
5. According to a recent Gallup poll, 47 percent of adult Americans report that they have a gun in their house or elsewhere on their property. Gallup Politics, "Self-Reported Gun Ownership in U.S. Is Highest Since 1993," Oct. 26, 2011, *available at* http://www.gallup.com/poll/150353/self-reported-gun-ownership-highest-1993.aspx (last visited May 2, 2014).
6. Nick Gillespie, "Police in Columbia, South Carolina and 499 Other Cities Get 'Free' Tanks," *Reason.com*, November 18, 2013, *available at* http://reason.com/blog/2013/11/18/police-in-columbia-south-carolina-and-49 (last visited March 21, 2014).
7. Individual ACLU affiliates had the option to participate in the investigation and selected the law enforcement agencies with which to file records requests. A copy of the public records request filed with the agencies is attached as Appendix A.
8. Some agencies elected to provide SWAT incident reports for 2012 only.
9. There is no way to know definitively whether responding law enforcement agencies turned over all of the documents the ACLU requested. In addition, although we continued to receive documents throughout 2013 and into 2014, we did not review any documents received after September 30, 2013. All of the documents the ACLU received in connection with this investigation can be made available upon request.
10. Kraska (2007), 1.
11. *See generally*, American Civil Liberties Union, "The War on Marijuana in Black and White" (June 2013), *available at* https://www.aclu.org/files/assets/1114413-mj-report-rfs-rel1.pdf (last visited April 3, 2014); Michelle Alexander, *The New Jim Crow* (New York: New Press 2010). Racial disparities exist at each decision point in the criminal justice system. *See* The Sentencing Project, "Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers," 2 (2008), *available at* http://www.sentencingproject.org/doc/publications/rd_reducingracialdisparity.pdf. Thirty-eight percent of prison and jail inmates are Black, compared to their 13 percent share of the overall population. Latinos constitute 19 percent of the prison and jail population compared to their 15 percent share of the population. A Black male born in 2001 has a 32 percent chance of spending time in prison at some point in his life, a Latino male has a 17 percent chance, and a white male has a six percent chance. *See id.*
12. *See* 10 U.S.C. § 2576a.
13. *See* National Law Enforcement and Corrections Technology Center, *Federal Property and Equipment Manual: Federal Sources of Personal Property for Law Enforcement*, 2 (Revised 2002), *available at* http://info.publicintelligence.net/FederalProperty-Manual.pdf (last visited March 17, 2014).
14. *See supra*, note 14 at 3.
15. One limitation, which the ACLU supports, is a prohibition on the sale of equipment obtained through the 1033 Program.
16. Agreement Between the Defense Logistics Agency and the State of ___ (MOA), 3. The MOA is standard across states and is attached as Appendix B.
17. Joint Chiefs of Staff 1993: I 1, quoted in Christopher M. Schnaubelt, "Can the Military's Effectiveness in the Drug War Be Measured?" *Cato Journal*, Vol. 14, No. 2 (Fall 1994), *available at* http://object.cato.org/sites/cato.org/files/serials/files/cato-journal/1994/11/cj14n2-5.pdf (last visited April 24, 2014).
18. Bureau of Justice Assistance, "Grant Activity Report: Justice Assistance Grant (JAG) Program, April 2012-March 2013," p. 2, *available at* https://www.bja.gov/Publications/JAG_LE_Grant_Activity_03-13.pdf (last visited April 3, 2013).
19. *Supra* note 18 at 4.
20. U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties, *Civil Rights/Civil Liberties Impact Assessment: DHS Support to the National Network of Fusion Centers*, 6 (March 1, 2013), *available at* https://www.dhs.gov/sites/default/files/publications/DHS%20Support%20to%20National%20Network_0.pdf (last visited March 17, 2014).
21. U.S. Department of Homeland Security, *FY 2013 Homeland Security Grant Program* (FY 2013 HSGP Fact Sheet), 1 (2013), *available at* http://www.fema.gov/media-library-data/8d-0439562c89644a68954505a49cbc77/FY_2013_Homeland+Security+Grant+Program_Fact_Sheet_+Final.pdf (last visited March 17, 2014).
22. U.S. Department of Homeland Security, "Next Steps: Supporting Community-Based Efforts to Reduce Violent Crime," *U.S. Department of Homeland Security*, *available at* http://www.dhs.gov/xlibrary/assets/fact_sheet_reduce_violent_crime_080310.

pdf (last visited March 22, 2014). This problem is not theoretical; DHS provides numerous sources of support to state and local law enforcement agencies for reasons that are entirely unrelated to terrorism prevention. Indeed, DHS operates a nationwide law enforcement network called the Homeland Security Information Network, which was created to assist state and local enforcement agencies conduct their ordinary work related to investigating allegations of gun, drug, and gang offenses; the notion that DHS support to local law enforcement is purely for the purpose of terrorism prevention is a myth. *See, e.g.*, "Homeland Security Information Network—Law Enforcement Mission," *Homeland Security, available at* http://www.dhs.gov/homeland-security-information-network-law-enforcement-mission (last visited April 24, 2014).

23. Sgt. Glenn French, "Police militarization and an argument in favor of black helicopters," *PoliceOne*, Aug. 12, 2013, *available at* http://www.policeone.com/SWAT/articles/6385683-Police-militarization-An-argument-for-black-helicopters/ (last visited March 19, 2014).
24. Jack E. Hoban and Bruce J. Gourlie, "The Ethical Warrior," *PoliceOne*, Aug. 12, 2013, http://www.policeone.com/Officer-Safety/articles/6383533-Police-militarization-and-the-Ethical-Warrior/ (last visited March 19, 2014).
25. Doug Deaton, "Police militarization and one cop's humble opinion," *PoliceOne*, Aug. 15, 2013, http://www.policeone.com/Officer-Safety/articles/6390637-Police-militarization-and-one-cops-humble-opinion/ (last visited March 19, 2014).
26. Jay Evensen, "'Militarization' of local police nationwide worries Salt Lake Chief Chris Burbank," *Deseret News*, July 10, 2013, *available at* http://perspectivesonthenews.blogs.deseretnews.com/2013/07/10/militarization-of-local-police-nationwide-worries-salt-lake-city-chief-chris-burbank/, (last visited March 19, 2014).
27. Karl Bickel, "Recruit Training: Are We Preparing Officers for a Community Oriented Department?" *E-newsletter of the COPS Office*, Vol. 6, Issue 6 (June 2013), *archived version available at* http://webcache.googleusercontent.com/search?q=cache:http://cops.usdoj.gov/html/dispatch/06-2013/preparing_officers_for_a_community_oriented_department.asp.
28. SWAT teams go by many names, including Search and Response Team (SRT), Emergency Response Team (ERT), and Special Emergency Response Team (SERT). There is no real difference between these police units—they all use weapons that are not available to regular patrol officers and are trained to use tactics designed for extremely high-risk and emergency scenarios. For purposes of consistency and clarity, we will use the term "SWAT" throughout this report.
29. Daryl Gates, *Chief: My Life in the LAPD* (New York: Bantam, 1992), p. 131. For an excellent summary of the creation and evolution of SWAT, see Radley Balko, *Rise of the Warrior Cop* (New York: PublicAffairs, 2013).
30. These included the 1965 Watts rebellion, Charles Whitman's shooting spree at the University of Texas at Austin, and a barricade scenario that left several police officers dead.
31. Rob Deal, "Police Armed With AR-15s Roam the Streets of an Arkansas City Stopping and Asking for Citizens' ID," *Republican Party of Benton County Blog*, December 18, 2012, *available at* http://hentoncountygop.org/blog/?p=154 (last visited March 18, 2014).
32. "Stop and frisk" has been defined as "a crime-prevention tactic that allows a police o cer to stop a person based on 'reasonable suspicion' of criminal activity and frisk based on reasonable suspicion that the person is armed and dangerous, [which] has heen a contentious police practice since first approved by the Supreme Court in 1968." *See David R. Rudovsky and Lawrence Rosenthal, "Debate: The Constitutionality of Stop-and-Frisk in New York City,"* 162 U. Pa. L. Rev. Online 117, 117 (2013). Its legality and efficacy have both been questioned, and its detrimental impact on communities of color has been well documented. *See, e.g.*, Brett G. Stoudt, Michelle Fine, and Madeline Fox, "Growing Up Policed in the Age of Aggressive Policing Policies," New York Law School Review 56 (2011/2012): 1331-1370.
33. For more information about the government's use of illegal domestic spying tactics, see the ACLU's *Spy Files: the ACLU's Campaign to Stop Illegal Spying, available at* https://www.aclu.org/spy-files (last visited April 21, 2014).
34. For more information about border militarization, see the ACLU's *Border Communities Under Siege: Border Patrol Agents Ride Roughshod Over Civil Rights, available at* https://www.aclu.org/border-communities-under-siege-border-patrol-agents-ride-roughshod-over-civil-rights (last visited April 21, 2014).
35. Kraska (2007), p. 6.
36. David Klinger and Jeff Rojek, "Multi-Method Study of Special Weapons and Tactics Teams," p. 7 (an unpublished study of the U.S. Department of Justice) (2008), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/223855.pdf (last visited April 24, 2014).
37. Abigail R. Hall and Christopher J. Coyne, "The Militarization of U.S. Domestic Policing," *George Mason University Department of Economics Working Paper No. 12-50* (August 2, 2012) ("[D]uring the past four decades domestic policing in the U.S. has become increasingly militarized. That is, domestic law enforcement has taken on the characteristics of the armed forces by engaging in military-like training, acquiring military weapons and utilizing military tactics in everyday operations.").
38. David Klinger and Jeff Rojek, "A Paramilitary Policing Juggernaut," *Social Justice*, 1043-1578 (March 22, 2009).
39. Balko (2013). *See also* Jon Fasman, "Cops or Soldiers," *The Economist*, March 22, 2014, *available at* http://www.economist.com/news/united-states/21599349-americas-police-have-become-too-militarised-cops-or-soldiers (last visited April 25, 2014).
40. *See, e.g.*, Kraska (2007).
41. Merriam-Webster, http://www.merriam-webster.com/dictionary/battering%20ram (last visited March 19, 2014).
42. There are other kinds of distraction devices such as "tactical balls," which wobble and spin when rolled or tossed into a room, but flashbang grenades seem to be the most well known. For the most part, the incident reports the ACLU studied tended to use either the words "flashbang" or "distraction device" to refer to these weapons.
43. *See* Virginia Hennessey, "Monterey County agrees to pay $2.6 million in 'flash-bang' death of Greenfield man," *The Monterey Herald*, Aug. 19, 2013, *available at* http://www.montereyherald.com/localnews/ci_23897554/monterey-county-agrees-pay-2-6-million-flash (last visited March 19, 2014).
44. Shaila K. Dewan, "City to Pay $1.6 Million in Fatal, Mistaken Raid," *New York Times*, Oct. 29, 2003, *available at* http://www.

nytimes.com/2003/10/29/nyregion/city-to-pay-1.6-million-in-fatal-mistaken-raid.html (last visited March 19, 2014).

45. Charlie LeDuff, "What Killed Aiyana Stanley-Jones?" *Mother Jones*, November/December 2010 Issue, *available at* http://www.motherjones.com/politics/2010/11/aiyana-stanley-jones-detroit, (last visited March 19, 2014).
46. Bill Donnelly, "SWAT-ing at Flies," *New York Times*, Op-Ed; p. A20; Letters to the Editor (July 18, 1997).
47. American Forces Press Service, "Military Sealift Command to Deliver Largest MRAP Shipment," *U.S. Department of Defense: News*, Dec. 14, 2007, *available at* http://www.defense.gov/news/newsarticle.aspx?id=48416 (last visited March 21, 2014).
48. David Zucchino, "From MRAP to scrap: U.S. military chops up $1 million vehicles," *Los Angeles Times*, Dec. 27, 2013, *available at* http://articles.latimes.com/2013/dec/27/world/la-fg-afghanistan-armor-20131227 (last visited March 21, 2014).
49. Nick Gillespie, "Police in Columbia, South Carolina and 499 Other Cities Get 'Free' Tanks," *Reason.com*, Nov. 18, 2013, http://reason.com/blog/2013/11/18/police-in-columbia-south-carolina-and-49 (last visited March 21, 2014).
50. Tom Benning, "Dallas County sheriff acquires 'a beast' to handle the bad guys," *Dallas News*, Oct. 18, 2013, *available at* http://www.dallasnews.com/news/metro/20131018-dallas-county-sheriff-acquires-a-beast-to-handle-the-bad-guys.ece (last visited March 21, 2014).
51. Alex Greig, "California police department gets $650,000 37,000lb armored military truck," *UK Daily Mail, MailOnline*, Dec. 21, 2013, http://www.dailymail.co.uk/news/article-2527699/California-police-department-gets-650-000-37-000lb-armored-military-truck.html (last visited March 21, 2014).
52. Nate Carlisli, "Blankets to armored vehicles: Military gives it, Utah police take it," *Salt Lake Tribune*, Jan.19, 2014, *available at* http://www.sltrib.com/sltrib/news/57358599-78/police-program-utah-1033.html.csp (last visited March 21, 2014).
53. Molly Bloom, "Ohio State University Police Get IED-Resistant Military Vehicle for Use on Football Game Days," *NPR State Impact: Eye on Education*, Sept. 30, 2013, *available at* http://stateimpact.npr.org/ohio/2013/09/30/ohio-state-university-police-get-ied-resistant-military-vehicle-for-use-on-football-game-days/ (last visited March 21, 2014).
54. Some examples of SWAT incident reports and weapons transfers received in connection with the ACLU's investigation are included as Appendix C.
55. *See Wilson v. Arkansas*, 514 U.S. 927, 931-933 (1995).
56. *See Hudson v. Michigan*, 547 U.S. 586, 589-90 (2006).
57. *See Richards v. Wisconsin*, 520 U.S. 385, 394 (1997).
58. *Id.*
59. *Hudson*, 547 U.S. at 591, 599. State courts can offer greater protection under law than is provided under federal law. *See, e.g., Berumen v. State*, 182 P. 3d 635 (Alaska Ct. App. 2008) (officers serving search warrant knocked on door but failed to announce who they were before entering residence, violating state's knock-and-announce rule; exclusionary rule applied under state law). In addition, people who are harmed by SWAT team officers could sue the SWAT team and police department for violating their Fourth Amendment rights. In reality, though, it is difficult to prevail in such lawsuits because courts often find that even if officers violate a person's constitutional rights, if the officers "reasonably" believed that their conduct was lawful, they are immune from liability (referred to in the law as having "qualified immunity"). *Saucier v. Katz*, 533 U.S. 194, 202 (2001). *See, e.g., Whittier v. Kobayashi*, 581 F.3d 1304 (11th Cir. 2009) (SWAT officer who killed a man in his home during a SWAT raid was entitled to qualified immunity because "a reasonable officer could have had a reasonable suspicion that knocking and announcing his presence would have been dangerous under the circumstances facing the SWAT team.").
60. *See Wilson v. Arkansas*, 514 U.S. 927, 934 (1995). *See also United States v. Keszthelyi*, 308 F.3d 557, 569 (6th Cir. 2002) (*quoting Stack v. Killian*, 96 F.3d 159, 162 (6th Cir. 1996); *Ramage v. Louisville/Jefferson County Metro Gov't*, No. 08cv338, 2010 WL 2624128, at *5, 2010 U.S. Dist. LEXIS 63688, at *13 (W.D.Ky. June 25, 2010) (evaluating whether the decision to use a SWAT team was reasonable under the circumstances); *Solis v. City of Columbus*, 319 F.Supp.2d 797, 809 (S.D.Ohio 2004) ("[S]omething more than probable cause is required in order for a hyper-intrusive search to be reasonable [and] something more than usual care in the execution of such a search is constitutionally required").
61. Defense Logistics Agency, Disposition Services, "Law Enforcement Support Office (LESO): Providing Support to America's Law Enforcement Community Since 1997," *available at* https://www.dispositionservices.dla.mil/rtd03/leso/, Jan. 23, 2014 (last visited March 17, 2014).
62. *See supra*, note 14 at 4; *supra* note 61.
63. 10 U.S.C. § 2576a(a)(1)(B).
64. Defense Logistics Agency, "Fact Sheet: Responses on Excess Property Program for Representative Henry Johnson," sent in response to an inquiry from Representative Johnson requesting additional information on military-grade equipment to civilian police, Jan. 14, 2014. Attached as Appendix D.
65. The Mamba is a type of MRAP designed for use by the South African National Defense Force. *See, e.g.*, http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=6254:fact-file-mamba-apcmrap&catid=79:-fact-files&Itemid=159.
66. Abraham H. Maslow (1966). *The Psychology of Science*, p. 15.
67. The Keene Police Department's application for a BearCat APC is one of the documents included in Appendix C.
68. Callum Borchers, "Armored truck maker in middle of debate on dollars and safety," *Boston Globe: Business*, Jan. 4, 2013, *available at* http://www.bostonglobe.com/business/2013/01/04/pittsfield-company-selling-bulletproof-security-sparks-debate-over-cost/2DAQ3GHM8b4eNdeXcL2NqJ/story.html (last visited April 4, 2014).
69. Al Baker, "When the Police Go Military," *New York Times*, Dec. 3, 2011, *available at* http://www.nytimes.com/2011/12/04/sunday-review/have-american-police-become-militarized.html?pagewanted=all (last visited April 21, 2014).
70. *Supra* note 18 at 6.
71. *See, e.g.*, Michelle Alexander, "Obama's Drug War," *The Nation*, Dec. 9, 2010, *available at* http://www.thenation.com/article/156997/obamas-drug-war (last visited April 3, 2014) ("The Byrne grant program, originally devised by the Reagan administration to encourage state and local law enforcement agencies to join the drug war, has poured millions of dollars into drug task forces around the country that are notorious for racial profiling,

including highway drug interdiction programs and neighborhood 'stop and frisk' programs. These programs have successfully ushered millions of poor folks of color into a permanent undercaste—largely for engaging in the same types of minor drug crimes that go ignored in middle-class white communities and on college campuses.")

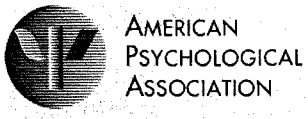
72. National Criminal Justice Association, "SAA Taskforce Performance Measures: A Look at Metrics Used to Evaluate MJTFs," *National Criminal Justice Association, available at* http://www.ncja.org/sites/default/files/documents/Taskforce-Performance-Measures.pdf (last visited April 3, 2014).
73. *Supra* note 18 at 10.
74. A copy of this memo is attached as Appendix F.
75. This finding is consistent with previous attempts to examine the prevalence and impact of SWAT using raw data such as incident reports. Klinger and Rojek (2008) attempted to collect standardized after-action reports from SWAT teams and characterized law enforcement participation in the study as "dismal." *See* Klinger and Rojek, *supra* note 36 at 2.
76. *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983), *cited in* FOIA Advocates, "FOIA Exemptions," *available at* http://www.foiadvocates.com/exemptions.html (last visited April 21, 2014).
77. *See* Maryland Public Safety Article § 3-507(e)(2).
78. *Id.*
79. *Id.*
80. S.B. 185, "Law Enforcement Transparency," (2014), *available at* http://le.utah.gov/~2014/bills/sbillenr/SB0185.pdf (last visited April 3, 2014).
81. Aaron C. Davis, "Police Raid Berwyn Heights' Mayor's Home, Kill His 2 Dogs," *Washington Post*, July 31, 2008, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2008/07/30/AR2008073003299.html (last visited March 17, 2014).
82. Rosalind S. Helderman, "Bill Calls for More Scrutiny of SWAT Teams by Police," *Washington Post*, Feb. 5, 2009, *available at* http://www.washingtonpost.com/wp-dyn/content/story/2009/02/05/ST2009020500034.html (last visited March 17, 2014).
83. Maryland Governor's Office of Crime Control and Prevention, *Law Enforcement: SB 447—SWAT Team Reporting, available at* http://www.goccp.maryland.gov/msac/law-enforcement.php (last visited March 17, 2014).
84. Office of Justice Programs, *Bureau of Justice Statistics*, http://www.bjs.gov/, March 5, 2014 (last visited March 17, 2014).
85. The other federal agency responsible for some criminal justice-related data collection is the Federal Bureau of Investigation (FBI). The FBI, through the Uniform Crime Reports, collects and publishes information pertaining to crime rates, law enforcement officers killed or assaulted, and hate crime statistics. The ACLU does not recommend designating the FBI as the federal agency with primary responsibility for collecting, maintaining, and evaluating information pertaining to the militarization of policing because BJS is the more appropriate federal agency for taking on this responsibility.
86. The process for acquiring equipment through the 1033 Program is fairly straightforward. States enter into a Memorandum of Agreement (MOA) with DLA. A law enforcement agency interested in participating in the program simply completes an application and submits it to the state coordinator, who approves it and sends it to LESO. From there, the process for acquiring excess property is simple. A local agency may search the DLA website, which functions as a sort of catalogue, and submit an online request for the equipment it seeks. The state coordinator approves or disapproves the request and forwards approved requests to LESO. From here, the request is sent to Military Standard Requisitioning and Issue Procedures (MILSTRIP) for final approval.
87. MOA, 11. This minimal limitation would seem to allow for the transfer of an extraordinary amount of equipment. If every officer in every participating agency is allowed to have one of every type of item available, including rifles, robots, and APCs, this is not a meaningful limitation at all.
88. A copy of this checklist is attached as Appendix E.
89. MOA, 10.
90. As part of an ongoing effort to document the costs of securing the homeland, the Center for Investigative Reporting did a comprehensive investigation into states' receipt and distribution of DHS and other federal agency grant dollars in 2011 as part of its "America's War Within" series. To the best of the ACLU's knowledge, this is the most comprehensive collection of data (from 2009, however) on federal handouts to state and local law enforcement agencies. The Center for Investigative Journalism, "Price of Peril: Homeland Security Spending by State," http://cironline.org/sites/default/files/legacy/files/homelandsecurity/priceofperil.html (last visited March 21, 2014).
91. *Supra* note 21 at 1.
92. Senator Tom Coburn, *Safety at Any Price: Assessing the Impact of Homeland Security Spending in U.S. Cities*, 4, 5 (Dec. 2012), *available at* http://www.coburn.senate.gov/public/index.cfm?a=-Files.Serve&File_id=b86fdaeb-86ff-4d19-a112-415ec85aa9b6 (last visited March 17, 2014).
93. The town of Keene, New Hampshire, held a hearing when its local police department sought a grant from DHS to purchase a BearCat. *See* "Free Keene: BEARCAT Hearing Promises Controversy," *NewHampshire.com*, Aug. 12, 2013, *available at* http://www.newhampshire.com/apps/pbcs.dll/article?AID=/20130812/AGGREGATION/130819787/0/newhampshire01 (last visited March 21, 2014).
94. Kraska (2007) at 6-7.
95. *Id.* at 7.
96. Forty-seven percent of adult Americans report that they have a gun in their house or elsewhere on their property. Gallup Politics, "Self-Reported Gun Ownership in U.S. Is Highest Since 1993," Oct. 26, 2011, *available at* http://www.gallup.com/poll/150353/self-reported-gun-ownership-highest-1993.aspx.
97. The U.S. Constitution prohibits government entities from targeting people based on their race, religion, or any other constitutionally protected status.
98. Gabe Rottman, "Radically Wrong: The Right to Think Dangerous Thoughts," *ACLU Blog of Rights*, March 1, 2013, *available at* https://www.aclu.org/blog/national-security-technology-and-liberty/radically-wrong-right-think-dangerous-thoughts (last visited April 3, 2014).
99. Enrique Flor and David Ovalle, "Hialeah police chief details tense moments of hostage rescue," *Miami Herald*, July 31, 2013, *available at* http://www.miamiherald.com/2013/07/28/v-fullstory/3528358/hialeah-police-chief-details-tense.html (last visited

March 20, 2014).

100. *See, e.g.*, New York Civil Liberties Union, "Stop and Frisk Data," *Racial Justice*, http://www.nyclu.org/content/stop-and-frisk-data (last visited April 4, 2014); *Bailey v. City of Philadelphia*, "Plaintiff's Fourth Report to Court and Monitor on Stop and Frisk Practices, C.A. No. 10-5952 (E.D.Pa.) (filed Dec. 3, 2013), *available at* http://www.aclupa.org/download_file/view_inline/1529/198/ (last visited April 4, 2014).
101. Some incident reports did not contain any information as to how many people were in a residence at the time of a deployment. This impedes analysis of the impact of SWAT on the lives of the people inside homes that are raided.
102. This is despite the fact that white people and minorities use and sell drugs at roughly the same rates. *See, e.g.*, Drug Policy Alliance, "Race and the Drug War," http://www.drugpolicy.org/race-and-drug-war (last visited April 4, 2014) ("Although rates of drug use and selling are comparable across racial lines, people of color are far more likely to be stopped, searched, arrested, prosecuted, convicted and incarcerated for drug law violations than are whites").
103. As noted, many of the incident reports studied were ambiguous on the subject of whether a BearCat was used, so it is impossible to know this definitively. Nonetheless, based on our review of the documents, we think a reasonable inference can be drawn that no BearCat was used in a number of cases in which SWAT accomplished its objective.
104. In examining the SWAT incident reports, the ACLU assumed that records were made of injuries often enough that the absence of a notation regarding civilian injury likely meant that no civilian injury occurred during the deployment. In addition, some police departments file use of force reports separately from SWAT incident reports, so it is possible that the SWAT deployments studied resulted in deaths and/or injuries that were not recorded in the SWAT incident report. For both of these reasons, the actual number of civilian injuries and/or deaths could be higher.
105. A chilling video of the shooting is available here: http://www.huffingtonpost.com/2014/03/24/james-boyd-killed-by-cops_n_5021117.html. The ACLU of New Mexico is calling on the mayor to change the training and culture within the Albuquerque Police Department so incidents like this one are not repeated. *See* "Action Alert: Ask ABQ Mayor Berry to Reform APD," *American Civil Liberties Union of New Mexico*, March 27, 2014, *available at* https://www.aclu-nm.org/action-alert-ask-abq-mayor-berry-to-reform-apd/2014/03/ (last visited April 24, 2014).
106. *See* George Chidi, "Texas grand jury refuses murder indictment on man who killed deputy on (sic) no-knock raid," *The Raw Story*, Feb. 8, 2014, *available at* http://www.rawstory.com/rs/2014/02/08/texas-grand-jury-refuses-murder-indictment-on-man-who-killed-deputy-on-no-knock-raid/ (last visited March 19, 2014).
107. *See generally*, Early Childhood Matters, "Community Violence and Young Children: Making Space for Hope" (November 2012), *available at* http://bernardvanleer.org/Community-violence-and-young-children-making-space-for-hope (last visited April 21, 2014).
108. Specific recommendations for how to implement such safeguards are set forth in an article by ACLU Senior Policy Analyst Jay Stanley, "Police Body-Mounted Cameras: With Right Policies in Place, a Win for All" (Oct.2013), *available at* https://www.aclu.org/files/assets/police_body-mounted_cameras.pdf (last visited April 4, 2014).
109. *See generally*, Jason Sunshine and Tom R. Tyler, "The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing," *Law & Science Review*, Vol. 37, Number 3 (2003).
110. Emily Ekins, "58 [sic] Percent Say Police Departments Using Drones, Military Weapons Goes Too Far, 60 percent of Tea Partiers Agree," *Reason-Rupe Poll*, Dec. 17, 2013, *available at* http://reason.com/poll/2013/12/17/56-percent-say-police-departments-usin2 (last visited April 21, 2014).
111. Tom R. Tyler and Albert A. Pearsall, III, "The Paradox of American Policing: Performance Without Legitimacy," *A Newsletter of the COPS Office*, Vol. 3, Issue 7 (July 2010), *available at* http://cops.usdoj.gov/html/dispatch/July_2010/AmericanPolicing.asp (last visited April 4, 2014).

During a "no knock" SWAT raid, an officer threw a flashbang grenade into the room where the Phonesavanh family was sleeping. It landed, and exploded, inside Baby Bou Bou's crib.

Officers were searching for a relative suspected of selling a small amount of drugs. Neither the suspect nor any drugs were found in the home. At the time this report was published—three weeks after the raid—Baby Bou Bou was still in a medically-induced coma.



Written Statement of

Gwendolyn Puryear Keita, PhD

Executive Director, American Psychological Association Public Interest Directorate

On behalf of the

American Psychological Association

At a Hearing

"Oversight of Federal Programs for Equipping State and Local Law Enforcement"

U.S. Senate Committee on Homeland Security and Governmental Affairs

September 9, 2014

Chairman Carper, Subcommittee Chairwoman McCaskill and members of the committee, please allow me to express our appreciation for the opportunity to submit testimony on behalf of the nearly 130,000 members and affiliates of the American Psychological Association (APA) regarding on the effects of the militarization of law enforcement.

APA is the largest scientific and professional organization representing psychology in the United States and is the world's largest association of psychologists. Comprising researchers, educators, clinicians, consultants, and students, our association works to advance psychology as a science, a profession, and as a means of promoting health, education, and human welfare. APA has long been committed to civil rights and to ensuring that bias based on ethnicity, race, gender and gender identity, age, disability status, and sexual orientation is eliminated from government policies and actions. To that end, our association has issued a variety of policy statements and supported federal policies to eliminate ethnic and racial discrimination, racial profiling, and to support full access of all Americans to the benefits of our society.

APA is committed to policies that ensure that all Americans are treated fairly under the law. Psychological research can provide insights to better understand these issues and inform possible remedies. The information in this testimony is based on psychological research from the following areas: a) the nature of bias and prejudice, including implicit prejudice; b) evidence-based strategies for bias reduction; c) policies that improve community relations and techniques of effective community policing; and d) strategies for de-escalating confrontations, increasing community trust, and reducing the potential for violence.

APA is concerned that, with the growing militarization of policing, the following elements have become all too common in law enforcement:

- Community fears of law enforcement aggression are increased and trust between the law enforcement and minority communities is reduced;
- Ethnic and racial bias is introduced in law enforcement response capable of a high level of force with a great potential to do physical harm;
- "Command and Control" replaces "Serve and Protect" as the primary law enforcement response in minority communities or in response to political protest.

Psychological research establishes that trust between law enforcement and the community it serves is essential for public safety, especially in ethnic minority communities. An increase in militarized policing, aggressive tactics, including "stop-and-frisk" and racial profiling, biased-policing, and a lack of fair procedures in law enforcement and the legal system reduce trust, degrade law enforcement-community relations, exacerbate tensions, and can lead to escalation.

To counteract the growing militarization of policing, APA advocates for the adoption of alternative policies. More specifically, APA recommends strategies that fall under the rubric of community policing. Bias-free policing, procedural justice, community outreach and inclusion, diversity in hiring, enhanced transparency and engaging the community in problem solving are elements that can produce effective law enforcement and community alternatives to prevent escalation of conflicts.

Bias

Biased perceptions of ethnic minority communities by law enforcement rooted in negative racial/ethnic stereotypes have resulted in strained relations with communities and at times have caused aggressive responses toward people of color. These harmful law enforcement interactions have fostered a perception among ethnic minority communities that police are unjustly aggressive toward communities of color, a perception that has deep historical roots in law enforcement participation in enforcing Jim Crow laws of the late 19th and 20th century. Thus, signs that police are engaging in aggressive strategies, such as militarization, confirm the worst fears of minority communities and can lead to escalation and confrontation. These policies do not create order, rather they exacerbate unrest.

There is substantial psychological research demonstrating that even well intentioned and non-prejudiced people have biases that are unconscious and, in fact, these are considered to be a human attribute, termed "implicit" bias.[i] These biases operate outside of awareness or conscious recognition, are based on attitudes or stereotypes, and can affect decision making and actions. Many of these assumptions are widely held, and "implicit" prejudice, stereotypic assumptions and perceptions of others that function outside of our awareness, are common. For example, Dr. Jennifer Eberhardt found that simply viewing an African American man's face made people (including police officers) more likely to "perceive" a gun that wasn't there.[ii] Dr. Phillip Atiba Goff's research shows that police officers and others saw African American boys -- as young as 10 -- as older and less innocent than white boys the same age.[iii] These types of perceptions can have deadly consequences when combined with powerful military weapons.

For law enforcement, equitable and fair policing practices and responses hinge on information and articulated facts of specific situations rather than biased stereotypes. Most often we see these biases expressed in the race-crime associations, but implicit biases can also apply to gender and gender identity, age, sexual orientation, and ethnicity.

Community Policies: Bias-free approaches and Procedural Justice

Psychological research can provide direction for law enforcement efforts to reduce crime and increase its cooperation with communities. This research shows the effectiveness of strategies such as: establishing a foundation based on constructive police-community partnerships, procedurally fair applications of the law, community outreach, recruitment strategies to ensure that the police department reflects the community, and training to reduce bias and stereotypes. Military weapons tactics are far less effective.

Community Oriented Policies

Community oriented policing is embedded in a philosophy that promotes organizational strategies that support systematic collaborative partnerships to engage in problem solving that addresses public safety. It is based on four pillars: community partnerships; organizational transformation; collaborative problem-solving; and crime prevention and community safety. This approach stresses law enforcement activities such as community outreach, communication, and participation. In addition, recruiting officers that reflect the ethnic diversity of the community is essential to effective safety policies. Increasing diversity in police and other departments changes perceptions of the public about law enforcement and has the potential to increase public trust.

The Department of Justice (DOJ) Community Oriented Policing Services (COPS) program exemplifies this approach and provides grants to states, local government and tribal authorities to implement these policies. DOJ Community Relations Service (CRS) helps local communities address community conflicts and tensions arising from differences of race, color, and national origin.

Bias-free policing

The expression of bias by law enforcement towards the citizens they serve is inappropriate. Bias can be reduced through training. Training law enforcement offices and others on the role of implicit prejudices and other law enforcement techniques can reduce the impact of these attitudes on behavior. The DOJ COPS Office has developed just such training: *Fair and Impartial Policing.* This training helps participants to override automatic associations/stereotypes with a goal of improving their reactions. These types of approaches should be integrated into all training of law enforcement practices and into department-wide policies.

Procedural Justice

Psychologist and law professor, Dr. Tom Tyler has focused his work on procedural justice – the sense of an individual that they will be fairly treated by law enforcement and the legal system.[iv] These policies ensure that bias and prejudice do not enter into the implementation of law enforcement procedures and build a sense of fairness and trust into law enforcement-community relations. The research literature identifies four essential components that describe procedural justice:

- Citizen participation that includes a voice for citizens to ask questions of law enforcement;
- Fairness and neutrality in law enforcement treatment of citizens;
- Dignity and respect shown in all encounters; and
- Trustworthy motives in all contacts.

These elements enhance the legitimacy of law enforcement in the community. Research has shown direct and measurable relationships between how law enforcement professionals treat people and how people perceive law enforcement. Further, the research findings demonstrate that perceived fairness shapes a person's willingness to cooperate with legal authority and obey the law. Finally, when citizens perceive that law enforcement is acting in a procedurally just manner and treating people with fairness, dignity, and respect, then the legitimacy of law enforcement is enhanced, and a law enforcement department's effectiveness is increased. Procedural justice is undermined by the show of force of "command and control policies" and militarization, as well as policies such as "stop-and-frisk," which have the potential to reduce trust and introduce bias into law enforcement procedures.

Recommendations

The APA recommends that the following policies be adopted at both the state and federal level to reduce the risks of violence and escalation of aggression that can emerge from the militarization of law enforcement, enhance law enforcement and community relations, and improve public safety.

- Encourage the development of community-driven responses that empower communities with limited resources to advocate for the resources they need, including improved policing and more accountability (e.g., citizen representation on review boards);
- Implement community-based policing nationwide and train law enforcement personnel on how stereotypes, including implicit bias, affect their and others' perceptions and decisions;
- Require such education and community-based policies, procedural justice, and bias-free policing training for law enforcement departments that receive surplus military equipment;
- Provide additional funding to Department of Justice initiatives such as COPS and CRS;
- Collect data at the federal level on all police shootings and on the racial/ethnic makeup of citizens involved in incidents such as "stop-and-frisk."

Conclusion

The American Psychological Association supports the Committee's efforts to draw attention to the risks of militarization, as well positive law enforcement policies. We recommend implementing community oriented policing activities that include: a) training efforts to reduce bias, b) efforts to increase procedural justice with fair and impartial law enforcement activities; and c) limiting the use of military equipment primarily to rescue activities. These changes will help us ensure that the Fergusons of the world become a thing of the past. APA stands ready to provide additional information to Congress to ensure these efforts are realized.

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TOM COCHRAN

September 23, 2014

The Honorable Tom Carper
Chairman
Committee on Homeland Security and Government Affairs
United States Senate
Washington, DC 20510

The Honorable Tom Coburn
Ranking Member
Committee on Homeland Security and Government Affairs
United States Senate
Washington, DC 20510

Dear Chairman Carper and Ranking Member Coburn:

I write on behalf of the nation's mayors to submit a statement for the record of the hearing you held September 9 on Oversight of Federal Programs for Equipping State and Local Law Enforcement. We recently observed the 13th anniversary of the September 11 terrorist attacks on our nation, a date which provides an important reminder of why several of these programs were established, and why it is vital that they be maintained.

On September 10 in his address to the nation, President Obama reminded us that the terrorist threat is real when he said: "Still, we continue to face a terrorist threat. We can't erase every trace of evil from the world, and small groups of killers have the capacity to do great harm. That was the case before 9/11, and that remains true today." What we have learned about this terrorist threat since then only reinforces the President's statement.

Local police departments and other first responders are the first line of defense against acts of terror that occur in our nation. We saw that on 9/11 and again at the Boston Marathon bombing. Regarding the Defense Department's 1033 program, Congress in its wisdom realized that surplus military equipment could be put to good use by first responders in our cities to protect our citizens and our nation from terrorists and greatly expanded the program following the 9/11 attacks.

Following the 9/11 attacks Congress also established the homeland security grant programs that have provided vital resources, including equipment, to our first responders. How that equipment was deployed effectively in response to the Boston Marathon bombing has been well documented. That equipment, of course, has also been used effectively in response to natural disasters, such as Hurricane Sandy, and to other incidents that were not acts of terrorism.

Clearly the way in which some of this equipment was used in Ferguson, MO in response to the demonstrations and rioting that followed the police-involved shooting of Michael Brown raises some serious concerns. We applaud your committee for beginning a thorough examination of the programs, how they are used, and how they can be improved. We urge you, however, not to move precipitously on legislative changes until your analysis, that of the Administration, and other examinations that are underway are completed.

We know that some police departments have very specific policies in place which govern how this equipment may be used and the training which police officers must have before they can use it. These programs provide important and needed equipment to many police departments, and many of those police departments are using it responsibly and effectively. Some of your witnesses at the hearing provided good examples of how this equipment has been used to keep the public safe and save lives.

We have already had some discussion of these programs among the mayors and we will be discussing them further in the coming weeks at a meeting of our Leadership in Sacramento in a few days and at a meeting of mayors and police chiefs on community policing which will be held in Little Rock October 8-9. We will share our policy recommendations with you as soon as they are completed.

We urge you to take into account the views of mayors and other local officials, most especially police chiefs and other law enforcement executives, before any changes are made. The U.S. Conference of Mayors stands ready to work with your Committee on this important issue.

Sincerely,

Tom Cochran

Tom Cochran
CEO and Executive Director

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JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

STATEMENT FOR THE RECORD

from

Chuck Canterbury

National President,

Grand Lodge, Fraternal Order of Police

on

"Oversight of Federal Programs for Equipping State and Local Law Enforcement"

before the
Committee on Homeland Security and Governmental Affairs
United States Senate

—BUILDING ON A PROUD TRADITION—

I would like to begin my statement by thanking Chairman Carper, Senator Coburn and Senator McCaskill for the opportunity to offer this statement for the record.

The FOP strongly supports the surplus equipment program administered by the Defense Logistics Agencies (DLA) and the Law Enforcement Support Office (LESO) at the U.S. Department of Defense (DoD). The surplus equipment program was originally launched in the 1970s to transfer surplus DoD equipment to other Federal entities. In 1991, Congress expanded the program to allow this surplus equipment to be donated to Federal and State law enforcement agencies engaged in counter-drug and counter-terrorism operations. In reference to the section of the National Defense Reauthorization Act (NDAA), it was referred to as the 1208 program. In 1997, the program was expanded to include local law enforcement agencies and, while counter-drug and counter-terrorism activities were the priority, the surplus equipment was no longer limited to just those types of operations. It became known after 1997 as the 1033 program, again in reference to the NDAA.

As recently as this June, the House of Representatives considered an amendment, H. Amdt. 918, which would have effectively gutted the program and rejected it on a 62-355 vote.

The 1033 program was established by Congress and it has been a very effective. Since 1997, more than 8,000 local, State and Federal jurisdictions have participated in the program and $5.1 billion worth of equipment–from boots and file cabinets to armored vehicles and aircraft–has been transferred to local, State and Federal law enforcement agencies. The expansion of this equipment program was prompted by a growing realization that local and State law enforcement were often outgunned and ill-equipped to respond to certain high-powered threats.

The 1997 North Hollywood shootout was a lethal and graphic demonstration of just how unprepared law enforcement was to an organized attack or assault by well-equipped criminals. Two gunmen with body armor and automatic weapons robbed a bank and were able to flee the scene while engaged in a running gun battle with law enforcement officers. The responding officers' firearms were not able to penetrate their body armor or stop the robbers' escape. It took 18 minutes for the Special Weapons And Tactics Team (SWAT) to respond to the incident. By this time, one gunman had killed himself while the other continued to fire at officers and civilians. The SWAT officers were forced to commandeer an armored car to extract the eleven law enforcement officers and seven civilians who were injured by gunfire. Ultimately, the SWAT officers were able to disable the second gunman by shooting him in his unprotected legs as he crouched behind a parked car. He later died of his wounds.

This incident showed the nation that their local law enforcement agencies needed better equipment and firearms to respond to such incidents. Obviously, a bank robbery by two heavily armored criminals and automatic weapons is not a common occurrence. But criminals–especially the larger and more organized criminals–can and do obtain body armor and high-powered weapons. It did demonstrate–the commandeering of the armored car to evacuate the wounded in particular–that our local and State law enforcement agencies needed help if they were to be better prepared to respond to incidents threatening the safety of the public.

The 1997 North Hollywood shootout also led to Congress passing the James Guelff and Chris McCurley Body Armor Act. Police Officer James Guelff of the San Francisco Police Department (SFPD) was gunned down in 1994 by a carjacker wearing soft body armor and wearing a ballistic helmet. Officer Guelff had emptied his service weapon at the carjacker and was reloading when fatally struck. None of his rounds got through the body armor or helmet. Ultimately, the SFPD SWAT team responded and killed the gunman, but not before he shot another officer, a paramedic and a civilian bystander.

In October 1997, Captain Peter Chris McCurley of the Etowah County Sheriff's Department, who had recently been selected to be chief of the drug task force, was serving a search warrant. Once through the door, Captain McCurley and the other officers found themselves facing a couple in body armor and AK-47s. The police captain was struck 18 times and died. Three other officers were injured before the two were taken into custody.

The James Guelff and Chris McCurley Body Armor Act increased penalties for the use of body armor in the commission of certain crimes and prohibits felons from purchasing body armor and other ballistic resistant equipment.

One year after the North Hollywood shooting Congress passed the Bulletproof Vest Partnership (BVP) Grant Act, which assisted local and State law enforcement agencies on equipping their officers with this vital, life-saving equipment. The program has a very simple goal--to increase the number of law enforcement officers wearing soft body armor. It has been a fantastic success. More than one million vests have been purchased as a result of the program, the percentage of officers wearing vests has risen dramatically and we can document more than 3,100 instances where a vest prevented a lethal injury to a police officer.

The BVP program, once noncontroversial and broadly bipartisan, is currently unauthorized. Ranking Member Coburn personally blocked floor action on the reauthorization measure–once during National Police Week–citing that the Federal government has no obligation to help keep its local and State law enforcement officers safe. Perhaps he believes body armor makes police officers appear too "militarized."

Once upon a time, Members of Congress worked in a bipartisan way to improve the safety of our nation's law enforcement officers and provide them with the best possible equipment to carry out their difficult and dangerous jobs. But today we find ourselves in the position of having to defend and justify the use of certain equipment because it looks too scary or "militarized." In particular, the media's coverage of the deployment of certain assets in response to the situation in Ferguson, Missouri last month has made "police militarization" the latest media buzzword. I dispute this strongly.

The decisions of law enforcement commanders in Ferguson are, and certainly should be, reviewed and examined. But the focus of the scrutiny should be on the decisions and the decision-making process about how the equipment was deployed. We should not accept that

because certain assets may have been deployed inappropriately, we should throw the baby out with the bath water and prohibit law enforcement agencies from having access to these tools.

I will also note for the record that none of the equipment deployed in Ferguson in response to the demonstrations and looting were obtained through the 1033 program. All of the equipment was budgeted for and paid for by the local government. It is also ironic, with all the criticism of police "militarization" that Governor Nixon called upon the National Guard to assist in restoring law and order. Since the 1960s, relying on the National Guard to restore order has become far less common. This is in part because local and State law enforcement agencies are better prepared and better equipped to respond to large scale events and incidents. It is curious that critics who bemoan that local and State law enforcement have become "too militarized" would want to return to a time when governors would be forced to call upon the National Guard–the actual military, albeit with limited domestic enforcement authority and without training or expertise–to assist law enforcement agencies until they are able to maintain the peace in their communities.

I also want to emphasize that the 1033 program deals in ***surplus*** equipment identified by the DoD as being no longer needed. All of the equipment available through this program has been paid for by the American taxpayer. While there is no cost to the local, State or Federal agencies receiving the equipment, the receiving agency picks up all transfer costs and future maintenance cost, saving the Federal government the storage and maintenance costs as well as ensuring equipment is used to benefit public safety.

It is important for the Committee to understand that equipment received through the 1033 program is ***demilitarized and repurposed for public safety use.*** Simply because a piece of equipment was originally purchased–with our tax dollars–by the DoD does not make it military equipment. A tool is defined by its use. The equipment is used to defend and protect officers and civilians from threats, not to inflict damage on enemy targets. The fact is that 96% of the equipment transferred to local and State law enforcement agencies is "non-controlled," meaning that it has no intrinsic military use.

For example, firearms are ***demilitarized*** and converted from fully automatic to semi-automatic weapons. Armored vehicles like Mine Resistant Ambush Protected (MRAP) vehicles are ***demilitarized*** and stripped of their weapons and electronic warfare gear and then are refurbished to carry out law enforcement and public safety objectives. Similarly, assault watercraft are ***demilitarized*** and converted for use as patrol and rescue craft on lakes and rivers.

It should also be noted that some of the armored vehicles like MRAPs, and unlike most other police vehicles, are constructed so as to protect its passengers from chemical, biological, radiological, nuclear or explosive (CBRNE) threats, be they liquid or airborne. Such vehicles would allow public safety personnel to enter an industrial park contaminated by a large chemical spill or respond to the detonation (or threat of detonation) of a "dirty bomb."

The practical uses of this equipment can be found in every region of the country. In July, the Sheriff's Department in Sangamon County, Illinois deployed their MRAP vehicle obtained from the 1033 program for the first time to end an armed standoff. Officers used the vehicle to approach the home where an armed man was holed up to toss him a telephone. Subsequent negotiations ended with the suspect's surrender without injury or loss of life.

As of this July, the Las Vegas Metropolitan Police Department (LVMPD) has utilized robots obtained through the 1033 program on 58 occasions. The robots were used on hostage barricade incidents and suspicious packages as well as bomb threat incidents. The robots provide standoff capability so that officers are not needlessly put in harm's way.

For just June and July of 2014, the LVMPD Air Support/Search & Rescue Section has utilized rescue helicopters obtained through the 1033 program 11 times during search and rescue missions where the helicopters were utilized to rescue folks from mountainous terrain. In addition, they used watercraft obtained through the 1033 program six times for diving/rescue missions at Lake Mead.

In August, a pair of armed vehicles were used to evacuate captives released by two gunmen whose robbery attempt led to their taking hostages. Two officers responding to the initial robbery were wounded by gunfire. Negotiations with the gunmen resulted in the release of four hostages–two women and children–but then reached a stalemate, leaving four captives in the barricaded home. Because the armored vehicles allowed officers to approach the home in safety, they were able to get close enough to breach the home in force, freeing the hostages who were quickly conveyed to the armored vehicle and driven from the scene.

Passaic County, New Jersey recently received five armored Humvees from the 1033 program. They have been demilitarized and repurposed as water rescue vehicles, able to operate in high standing water to respond to emergencies. Hurricane Irene and Superstorm Sandy demonstrated that during large scale weather events which resulted in flooding, no other emergency vehicles were able to operate. Vehicles obtained through the 1033 program were deployed during Sandy and effected the rescue of 64 people at the storm's height.

These vehicles can also affect rescues in standing snow or during snow storms. An MRAP from the 1033 program enabled the Adams County, Ohio Sheriff's Office to reach a home and rescue a bed-ridden man from a house fire. The home was inaccessible to most vehicles because of snow but the MRAP made it possible to rescue the man and bring him to safety.

Currently, law enforcement officers in the Commonwealth of Pennsylvania are engaged in a widespread manhunt for the suspect who ambushed a State Police barracks, killing one officer and injuring another. The State Troopers' Tactical Response Unit (TRU) have deployed MRAPs, in certain areas of the search, as the suspect is thought to be heavily armed and very motivated to attack law enforcement officers.

I am confident there are many, many more examples of equipment received through the 1033

program being used to protect and serve our local communities. Once demilitarized and repurposed, this equipment is a real boon to public safety. Obviously, local chiefs and sheriffs need to exercise good judgement when deciding when and how to deploy this, or for that matter, any equipment. These agencies should also be certain that officers are properly trained on how the equipment is to be used and handled in a deployment.

You would not, for example, have an armored Humvee on a regular beat patrol any more than you would deploy a bicycle officer to a busy interstate.

Chiefs and Sheriffs can do a better job of working with their rank-and-file officers and, just as important, the communities they serve. Citizens must be able to trust and respect the officers who keep their homes and neighborhoods safe and the best way to do that is by engaging them. This is the central tenet of the community-orienting policing strategy that has formed the basis of our nation's public safety strategy for a generation. More community interaction, not less, is the key to safer communities. If residents know that Officers Jones and Smith are their regular beat officers and come to know them as they do their jobs, there will be much greater confidence in the actions of not only those officers but the agencies as a whole.

With that said, response to critical incidents often require very quick decisions and swift action. The more tools available to these agencies, the more precise and specific the response. An officer responding to an active shooter has only the tools on his belt and in his squad car. Other options and assets may take much longer to deploy, if they are available at all. By restricting the tools available to the individual officer or the law enforcement agency, you also reduce their ability to respond effectively.

We ought not to be distracted by thinking the problem is with the types of equipment or how the equipment is procured. Instead, we need to focus on better decision-making at the local and State level with respect to how the equipment is deployed in the field. This, and of course appropriate training for the officers who are directed to use the equipment, is critical.

In conclusion, I would like to reiterate the FOP's support for the 1033 program and the benefits it provides to local, State and Federal law enforcement. I appreciate the Committee's interest in the program and other similar programs that help our State and local law enforcement agencies obtain the equipment and training they need to keep our homes and communities safe. If I can provide any other information about any of these programs, I am happy to provide it.

Thank you.

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September 24, 2014

To Whom It May Concern,

Please accept this statement for the record regarding the Senate Committee on Homeland Security and Government Affairs hearing entitled, "Oversight of Federal Programs for Equipping State and Local Law Enforcement."

Sincerely,

Donny Youngblood
President, Major County Sheriffs' Association
Sheriff-Coroner, Kern County (CA)

Major County Sheriffs' Association

Statement for the Record – U.S. Senate Hearing

U.S. Senate Committee on Homeland Security and Government Affairs

"Oversight of Federal Programs for Equipping State and Local Law Enforcement"

September 9th, 2014

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Purpose

This Statement for the Record has been drafted in response to the hearing conducted by the U.S. Senate Committee on Homeland Security and Government Affairs entitled, "Oversight of Federal Programs for Equipping State and Local Law Enforcement," held on September 9th, 2014. The hearing illuminated a range of important issues in the areas of public safety, modern law enforcement and Federal government assistance to law enforcement agencies at the State and Local levels. The Major County Sheriffs' Association (MCSA) has drafted this document with the intent to offer the Committee a number of additional perspectives, data points and considerations that may add a degree of insight and clarity to this complex set of important concerns.

General Concerns

The circumstances that occurred in Ferguson, Missouri raised significant attention to a range of issues regarding modern policing, community dynamics and law enforcement (LE) doctrine. Further coverage of events in Ferguson focused on wider issues, particularly what has been popularly termed as the "militarization of police" or "militarizing of law enforcement." Specific focus on the latter concern has largely centered on the types of equipment, weapons and tools used by LE agencies, particularly those utilized by Special Weapons and Tactics (SWAT) units or similar specialized policing entities. The hearing on September 9th paid specific attention to Federal assistance programs to State and Local LE agencies, equipment transfer and use of that equipment.

With those points in mind, many in the LE community are concerned that what happened in Ferguson has been portrayed as the norm in modern policing, when it is not. The vast majority of contacts between LE and suspects where there is an arrest ***do not*** result in death. In fact, according to statistics from the Department of Justice (DoJ), from 2003 through 2009, a total of 4,813 deaths were reported to the Bureau of Justice Statistics' (BJS) Arrest-Related Deaths (ARD) program. During the same six-year period, the Federal Bureau of Investigation (FBI) estimated nearly 98 million arrests occurring in the United States, meaning that 99.9998% of arrests ***did not*** result in death.

In the hearing, witnesses cited a range of numbers detailing the deployment of SWAT teams for various policing needs across the country, and expressed concern at the rise in SWAT team utilization over time. On this point, it is important to note that upticks in SWAT deployments should be assessed with specific attention given to exactly where those deployments occur. Certain areas of the country have disproportionate levels of violent crime or crimes that would require a SWAT-type response and thus more attention could be paid to the actual locations or regions of increased SWAT use – this will help to add clarity and context to this particular topic.

While the Senate hearing addressed a number of Federal assistance programs, including the Byrne-JAG grants executed by DoJ and various grants under the Dept. of Homeland Security (DHS), much of the hearing targeted the 1033 program administered by the Dept. of Defense (DoD). A select handful of issues and perspectives regarding 1033 assistance are worth review and consideration.

To start, the equipment utilized by LE from surplus DoD inventories are for the most part used for defensive or non-kinetic purposes. Assets received by LE – to include everything from armored vehicles, to HMMWV (Humvee) trucks to airplanes and helicopters – are not weaponized in any way, shape or form. They do not come armed with heavy machine guns, crew-served weapons and/or grenade launchers and they are often modified for more specific LE use. Firearms – while obviously containing a lethal capability – are often converted from fully-automatic/burst to semi-automatic mode of fire after being received by LE from the Federal government. These changes are made simply because semi-automatic mode of fire is more appropriate to the needs and mission-set of LE.

Additionally, much of the equipment that States and Locals receive through 1033 and other programs consist of articles that those departments would purchase through their own budgetary funding – but are increasingly unable to do so often due to budget cuts and resource constraints. The transfer of equipment from Federal inventory saves taxpayers a significant amount of money, simply because Federal surplus items have already been purchased once. In fact, many of the same items that they receive through Federal assistance programs have been used by LE agencies for decades including, semi-automatic rifles and armored vehicles.

Broadly, LE agencies use these tools to enhance the protection of police officers and the public they serve. LE agencies find ways to use many of these platforms – which may have been outfitted with weapons for the U.S. military – for a wide variety of non-lethal purposes. A few examples help to solidify this point:

- Aircraft – primarily helicopters, but fixed-wing aircraft as well – are used for specific and legitimate LE-related surveillance (such as monitoring high-speed chases or searching for fleeing suspects) as well as search and rescue operations. Many airframes used by the U.S. military for offensive/kinetic purposes have been successfully converted to, and used by, LE for non-lethal/non-kinetic roles – to include Bell Jet Ranger/Kiowa variants, Bell Iroquois variants and other rotary-wing frames. Also, the need for a robust aviation capability for LE and public safety can be seen in States like Alaska, where LE may need to respond to critical situations in remote areas often far removed or inaccessible by road.

- Armored vehicles – to include basic armored trucks (like the Bearcat made by Lenco Armored Vehicles) to Mine-Resistant Ambush-Protected (MRAP) platforms serve a strictly protective/defensive purpose for LE. They are primarily used to increase officer protection and to provide cover and safe transport for civilians in hostile fire/active-shooter-type situations, often where barricaded gunmen have fired multiple rounds and/or have taken hostages. MCSA is sensitive to perceptions about appropriate and realistic department use – but situations where a protective vehicle may be needed cannot be planned for, and could occur anywhere in the country with little warning or indication.

- Night-vision equipment – also highlighted in media reports along with aircraft and armored vehicles – can be used by first-responders in time-sensitive search and rescue operations, to locate missing persons or to apprehend suspects of violent crimes at night.

In all of these areas, it is important to focus not only on the type of equipment, but how it is deployed. Moreover, other types of equipment that the U.S. military utilizes for offensive purposes could be used for specific, non-destructive/non-offensive requirements. Even grenade launchers could be used for non-lethal purposes; for example, to launch signal flares or smoke grenades in search and rescue operations to alert missing persons, particularly in rural areas. Certainly, these tools aren't the only types of equipment that LE could employ to practically conduct a search and rescue operation – but search teams launching signal flares, in combination with an aerial search by helicopter, while using K-9 units and other assets can mean the difference between the quick location of a missing person and an unsuccessful search. Furthermore, equipment attained by LE agencies via the 1033 program is often readily put into significant use by first responders to increase public safety. As an example, according to the Washoe County Sheriff's Office in Washoe, Nevada, two OH-58 Kiowa and one HH-1H Huey helicopter obtained via the 1033 program have performed nearly 3,000 calls for service since 2011 and have been used to fight 46 fires.[1]

In terms of accounting and authorization for 1033 equipment, LE agencies often already adhere to a multi-layered system of reporting and accountability requirements – first to receive and then to keep equipment. Additionally, when making the decision to receive surplus equipment, approval to receive that equipment often involves multiple parties, sanctioning and review within local government, such as approval by a county board. In a way, this multilevel process of authorization is an added layer of accountability with respect to procurement. While the internal processes for equipment decision-making vary from agency to agency across the country, the Federal (specifically DoD with regard to 1033) role and their processes are uniform regardless of which State or Local agency is requesting equipment.

Finally, LE is concerned that perception, and not actual fact, is largely working to shape policy and the reaction to LE use of various equipment may not be comprehensively informed. In fact, many of the concerns that have been voiced by critics focus, not on the actual uses for specific equipment or how it is typically employed, but on how it is perceived by the public.[2] In other words, there is a perception that because a specific tool used by LE looks like a device used by the military (and it may actually have been at one time), that now LE are performing a military mission – when in fact, LE officers and agencies are still performing the same policing and public safety functions they have always performed. This perception dynamic can be seen with armored vehicles, most notably MRAPs. When looking at MRAPs, the appearance of that particular vehicle may suggest an offensive quality, but the design, construction and use of an MRAP is for purely defensive purposes. In fact, when used by the U.S. military, the MRAP served a defensive function; MRAPs were designed and deployed to protect U.S. combat troops from roadside bombs and other highly potent threats. While thankfully rare, the use of

[1] http://www.rgj.com/story/news/2014/08/22/northern-nevada-police-get-plenty-war-equipment/14468727/
[2] http://www.rgj.com/story/news/2014/08/22/northern-nevada-police-get-plenty-war-equipment/14468727/

improvised explosive devices on U.S. soil – like the Boston Marathon bombings of 2013 – can happen.

Additional Facts and Data

While media reports have focused on a number of items that LE agencies have received through various Federal programs (specifically the 1033 program), the September 9th hearing established a number of important facts that challenge some commonly held perceptions/misconceptions on this issue; some of these details should be remembered and considered in policy discussions moving forth. Alan F. Estevez, Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics at DoD – specifically testifying on the 1033 program to the committee on September 9th – indicated that:

> "The program has provided property that ranges from office equipment and supplies to equipment that augments local law enforcement capabilities and enhances first responders during natural disasters. More than 8 thousand federal and state law enforcement agencies actively participate in the program across 49 states and 3 U.S. territories. More than 5.1 billion dollars of property has been provided since 1990. A key element in both the structure and execution of the program is the state coordinator who is appointed by the respective state governor. State coordinators approve law enforcement agencies within their state to participate in the program and review all requests for property submitted by those agencies along with a statement of intended use. Working through state coordinators, law enforcement agencies determine their need for different types of equipment and they determine how it's used. The Department of Defense does not have the expertise and police force functions and cannot assess how equipment is used in the mission of individual law enforcement agencies. Within the past 12 months, law enforcement agencies received approximately 1.9 million pieces of excess equipment, 1.8 million pieces of non-controlled or general property – that would be office type equipment – and 78,000 pieces of controlled property – that's property that's more tactical in nature. Non-controlled items range from file cabinets to medical kits to generators to tool sets. Law enforcement agencies currently possess approximately 460,000 pieces of controlled property that they have received over time. Examples of controlled property include over 92,000 small arms, 44,000 night vision devices, 5,200 High Mobility Multipurpose Wheeled Vehicles or HMMWVs, and 617 Mine Resistant Ambush Protected vehicles or MRAPs. *The Department does not provide tanks, grenade launchers, sniper rifles, crew-served weapons or uniforms.*"

Based on the testimony highlighted above, it is important to note that the majority of equipment provided through the 1033 program is non-tactical in nature and consists of non-controlled property, such as basic office equipment. As Mr. Estevez testified, LE agencies do not receive grenade launchers, sniper rifles or crew-served weapons through the 1033 program.

Additionally, items that LE agencies can use for day-to-day policing – even those used for tactical deployment – or training purposes must go through a multi-layered system of recommendation and approval. When reviewing these numbers, it is critical to consider the overall context. Here specifically, it should be recognized that there are roughly 177,000 police departments across the U.S. – and when looking at the number of items transferred to States and Locals over the 15-plus year life of the 1033 program, the number of controlled items used by LE agencies is considerably smaller than recent media reporting suggests.

Finally, LE (and other public safety/civil units) have not just started using these types of equipment in the last couple of years – or even since the creation of the 1033 program. For example, LE have used helicopters and fixed-wing aircraft for decades for everything from search and rescue operations to tactical situations-based use to monitoring of narcotics production on public land like State, County and U.S. National Parks and Forests.

Specific Incident Data on Use

LE agencies across the country have used a range of surplus DoD items to conduct everything from daily administrative functions to routine policing to special missions that often involve dangerous dynamics and suspects. With the media and some in Congress focusing on armored vehicles – and their use by LE agencies – a review of how those particular assets are used by LE on a regular basis is valuable. Following below is a selection of examples highlighting how armored vehicles, some of which have been provided to State and Local LE via Federal assistance programs are used in a judicious and appropriate manner to de-escalate dangerous situations and save lives.

- **September 2014** – The Fairbanks Police Department in Alaska recently used its armored vehicle when a man threatening suicide stood in the middle of an intersection and sought for police officers to shoot him. With the help of the armored vehicle, police officers managed to, "approach the car and break out windows which opened up the possibility of a non-deadly tear gas alternative response."[3]

- **September 2014** – In Portland, Oregon, a call was made on a 27-year-old man named who was walking along a highway ramp with a possession of a handgun. Other callers indicated that he was trying carjack drivers. The freeway traffic was blocked off after numerous officers arrived and used an armored vehicle to stabilize the situation and take the suspect into custody.[4]

[3] http://www.adn.com/article/20140911/fairbanks-incident-shows-value-smart-police-military-gear
[4] http://www.ktvz.com/news/portland-gunman-who-tried-to-carjack-on-i84-caught/27825662

- **August 2014** – In Fond du Lac, Wisconsin, a suspect in a standoff with police fired two rounds from a 50 caliber sniper rifle. During the situation, which ended peacefully, law enforcement used a Lenco Bearcat armored vehicle to enhance officer and public safety.[5]

- **August 2014** – Los Angeles police pulled over a vehicle for reckless driving, but the suspects sped off onto a freeway and began firing at the officer, who was injured in an exchange of gunfire. Police used a variety of assets, including helicopters and a Lenco Bearcat armored vehicle, to successfully de-escalate the situation. Sources indicated the suspect fired multiple shots at LE officers who were in the Bearcat.[6]

- **August 2014** – Police in the town of Harvey, IL, engaged in a 20-hr standoff in a residential neighborhood with suspects following an armed robbery. Police used a variety of special tools and tactics to stabilize the situation, including an armored vehicle that was used to safely move 4 hostages (2 women and 2 children) that were being held in captivity.[7]

- **February 2013** – Police in Boston peacefully diffused a hostage situation when they deployed a SWAT team with an armored vehicle on scene after individuals in a domestic violence call refused to exit the building. The incident ended with no injuries.[8]

- **September 2012** – An active shooter situation in West Bloomfield, MI occurred where the suspect Ricky Coley barricaded himself in a residential neighborhood and engaged in significant gunfire with law enforcement and ultimately ended up killing police officer Patrick O'Rourke. During the 20-hour standoff, law enforcement used their armored vehicle to safely evacuate neighborhood residents from the area while the exchange of fire was transpiring.

The examples cited above represent a handful of recent, real-life scenarios where LE agencies have successfully and effectively used armored vehicles to enhance the safety of both officers and the general public. Additionally, the examples help to present a clearer picture regarding the types of unstable situations that LE officers are called to deal with across the Nation. One final note, armored vehicles have also been employed for other public safety uses beyond responding to hostile fire/active shooter situations. For example, in May 2014, following massive flooding, police in Brunswick, Ohio used armored vehicles to rescue approximately a dozen motorists trapped in their vehicles.[9]

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[5] http://www.channel3000.com/news/law-enforcement-defend-armored-vehicles-in-spite-of-criticism/27657380
[6] http://www.thecoli.com/threads/lapd-armored-tank-v-suv-on-the-freeway.241862/
[7] http://www.cbsnews.com/news/harvey-illinois-hostages-freed-after-lengthy-standoff-near-chicago/
[8] http://www.myfoxboston.com/story/21306143/police-respond-to-west-side-hostage-situation
[9] http://www.cleveland.com/brunswick/index.ssf/2014/08/brunswick_police_have_mine-res.html

Final Remarks

One bottom-line truth should not be overlooked in the discussion of the 1033 program: LE cannot operate to protect the public from potential threats – or quickly escalating threats – without the necessary equipment. This is especially important given that LE is often expected to respond and de-escalate situations that are often very violent and involve hundreds or thousands of people at once.

Numerous and striking instances in the recent years have shown where the absence of necessary equipment or ability to respond confidently has resulted in loss of life, significant destruction of property, mass theft and other harm. A situation like the North Hollywood bank robbery/shootout in 1997 is a prime example of how a specific situation can rapidly spiral out of control and where LE (called to restore order and prevent loss of life and property) could have mitigated against further instability had they been equipped with more effective tools. Additionally, a situation like the aftermath of Hurricane Katrina shows how a major disaster relief or humanitarian assistance concern can quickly transform into a multidimensional law and order challenge for all first responders.

Regarding doctrine and deployment, LE is always concerned that use of specialized equipment is appropriate for the specific scenario and that tactics, training and informed decision-making processes are always reviewed for improvement. Most police departments have these processes in place, follow and re-visit those processes and try to make the best decisions in what is often a very high-pressure, time-sensitive environment where indecision or delayed decision-making can cost lives. Moreover, senior leadership within most LE agencies make decisions for tactical deployment based on everything from intimate community understanding and field expertise, to careers' worth of operational experience. With those points in mind, given the roughly 177,000 LE agencies across all 50 states – all contending with different crime rates, types of crime, community dynamics, LE-community relations, neighborhoods, geography and socio-economic makeup – doctrine design and formulation should rest at the State or Local level in order to be most responsive and effective.

On the subject of training, most LE agencies regularly engage in a variety of training scenarios that involve ways to update, improve and refine LE approaches to everything from tactical deployment of equipment to effective engagement with the civilian public. LE agencies utilize a wide range of training mechanisms to use equipment properly – whether its firearms training provided by specialized groups or within the respective department's training arm or via other programs provided by the Federal government like the National Guard Bureau Counter-Drug at the NGB CD schools. Additionally, LE members are often former military, bringing with them a significant degree of understanding on proper use, safety and tactical deployment – and in fact, were probably hired by LE agencies because of their specific skill-sets – like helicopter pilots.

In the end, LE agencies throughout the nation have to operate according to a "hope for best but prepared for worst" approach – an unfortunate, but necessary reality. Even when provided with a degree of operational intelligence, LE officers often still have limited tactical visibility when responding to a call or situation. More simply, they can't see through walls and doors, and thus must address such situations expecting the worst. This fact automatically requires LE to approach potentially dangerous situations *with every precaution* – tool or tactic – they have at their disposal.

That being said, the overwhelming majority of modern day-to-day law enforcement activities are executed with standard policing practices, often in close cooperation and harmony with the local public and without the use of specialized tools, tactics or weapons. Put in a more visual way, modern LE officers are not patrolling U.S. streets in MRAPs or even non-standard tactical vehicles like armored Humvees. Most LE agencies have practical considerations when managing daily policing duties and the use of this equipment is either too impractical or too expensive to use for routine law enforcement.

Moving ahead, MCSA hopes that the data provided in this document, along with the points and information provided in the September 9th hearing will help guide policy-makers to execute informed and considerate decisions regarding the future of valuable Federal assistance programs to State and Local law enforcement.

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September 4, 2014

The Honorable Claire McCaskill
United States Senator
506 Hart Senate Office Bldg.
Washington, DC 20510

Dear Senator McCaskill:

The Mound City Bar Association, one of the oldest African American Bar Associations west of the Mississippi River, would like to go on record in strong opposition to the continued militarization of Missouri local police departments as well as local police departments throughout the United States of America.

We applaud your decision to lead the hearing of the Homeland Security and Governmental Affairs Committee on September 9, 2014 at 10:30 AM to examine federal programs that allow local police departments to obtain surplus property and equipment from the Department of Defense with the assistance of grants from the Departments of Homeland Security and Justice.

Our members, along with countless other citizens in Missouri and around the world, remain shocked and outraged by the military-like invasion of Ferguson, Missouri during peaceful protests surrounding the police shooting of Michael Brown, Jr. Our outrage was further inflamed when St. Louis County Police Chief Jón Belmar stated that the use of heavy military equipment is necessary because they "patrol very urban areas." Most African Americans reasonably concluded Chief Belmar's remarks were directed at them, demonstrating insensitivity to the feelings of the very people whom he has sworn to protect. We have not forgotten the images of white people pointing guns at federal agents during the Clive Bundy ranch debacle. Where was the heavy military equipment with rifles aimed at those white protesters?

We make reference to the above events solely to illustrate a dire and immediate need for federal legislation strictly prohibiting the use of heavy military equipment in domestic matters associated with the exercise of constitutional rights. The arrival of the police with heavy equipment instantly changed the nature of the protests causing commotion in otherwise peaceful assemblies. Furthermore, the military response was inconsistent with any reasonable perceived threat from the protesters. Such equipment should not be readily provided especially without proper training and oversight.

We have been actively working to address the many problems that the shooting in Ferguson has brought to international attention. We are committed to helping our community heal. However, this will not be possible if the community members cannot see the police as public servants. If we may be of any assistance to you in this regard, please feel free to contact me.

Respectfully,

Kendra R. Howard

Kendra Howard, President
Mound City Bar Association

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Statement by the
NAACP Legal Defense and Educational Fund, Inc.

Before the United States Senate
Committee on Homeland Security and Governmental Affairs

Hearing on
"Oversight of Federal Programs for Equipping
State and Local Law Enforcement"

Dirksen Senate Office Building
Room 342

September 9, 2014

I. Introduction

The NAACP Legal Defense & Educational Fund, Inc. (LDF) is pleased to submit this statement in connection with today's important hearing. Congressional oversight of the federal government programs that fund state and local law enforcement is always essential, but it is particularly critical now. Last month's police killing of an unarmed, African-American teenager in Ferguson, Missouri, and local law enforcement's outsized and shockingly militarized response to public outcry about that killing makes examination and review of the federal programs which fund and support local law enforcement absolutely imperative.

Founded by Thurgood Marshall in 1940, LDF is the nation's oldest civil rights law organization. Throughout our history, we have relied on the Constitution, as well as federal and state civil rights laws, to pursue equality and justice for African Americans and other people of color. LDF has been at the forefront of efforts to eliminate the pernicious influence of racial bias in America's criminal justice system. Since our inception, we have engaged in litigation and policy advocacy designed to eliminate racial bias at every stage of the criminal justice process, from racial profiling in police stops to discrimination in jury selection to racial disparities in sentencing.

The events of the last month in Ferguson highlight the persistence of police abuse and excessive force levied against African Americans and other communities of color. This is a moment in history; our nation should take hold of the moment and collectively chart a path forward to determine the most constructive ways for ending the horrific pattern of state-sponsored violence that continues to shatter the most vulnerable of our communities. While criminal justice is foremost a function of local government, the federal government must exert its legal authority and use its purse strings to ensure that local law enforcement is held accountable for these acts of violence. In the wake of Michael Brown's death, the federal government should undertake a series of systematic reforms to do whatever it can, wherever it can, to help end this conduct that undermines the confidence in and integrity of our justice system.

It is our hope that today's hearing, with its particularized focus on militarized policing, will be the first of several Congressional inquiries into the nature and extent of federal support for local law enforcement. Three federal programs provide the bulk of federal funding and/or equipment for local police agencies:[1] the Department of Homeland Security's grant programs,[2] the Department of Defense's 1033 Program,[3] and the Department of Justice's Edward Byrne Memorial Justice Assistance Grant (JAG)

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[1] Alicia Parlapiano, "The Flow of Money and Equipment to Local Police," The New York Times, Aug. 23, 2014, *available at* http://www.nytimes.com/interactive/2014/08/23/us/flow-of-money-and-equipment-to-local-police.html.

[2] 6 U.S.C. §§ 603 ("Homeland security grant programs"), and 604 ("Urban Area Security Initiative").

[3] 10 U.S.C. § 2576a ("Excess personal property: sale or donation for law enforcement activities").

Program.[4] Congress should ensure that these programs are subject to meaningful oversight and review. Local law enforcement agencies must adopt measures to promote accountability through the use of nondiscriminatory practices, training on racial bias, public reporting, and data collection. Finally, Congress should take substantive steps to demilitarize policing in America's communities and public schools.

II. Structural Reforms for Police Accountability

Exactly one month ago today, the nation was stunned by Michael Brown's tragic death at the hands of Ferguson police officer Darren Wilson. Mr. Brown, an unarmed, African-American teenager, was stopped by Wilson; moments after their interaction, Wilson shot Mr. Brown six times, killing him.[5] LDF, joined by countless others, has called for comprehensive federal and state investigations so that accountability for this tragedy may ensue and justice may be served. Additionally, we have asked for transparency, accountability, and leadership by local, state, and federal officials in pursing the investigations and in responding to public outrage about this horrific killing.

Police accountability and transparency are essential elements of any reform effort aimed at eliminating the unjustified, and often deadly, use of force by law enforcement. The use of lethal and excessive force by law enforcement against the African-American community, particularly young African-American men, is a national epidemic.[6] News reports of serious injuries and killings at the hands of local police are commonplace. In the weeks leading up to Michael Brown's death, Eric Garner, another unarmed African American, was choked to death by a New York City police officer.[7] Ezell Ford, also unarmed and African American, was shot to death by a Los Angeles police officer.[8]

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[4] 42 U.S.C. § 3750 et seq.

[5] Julie Bosman and Emma Fitzsimmons, "Grief and Protests Follow Shooting of a Teenager," The New York Times, Aug. 10, 2014, *available at* http://www.nytimes.com/2014/08/11/us/police-say-mike-brown-was-killed-after-struggle-for-gun.html; Frances Robles and Julie Bosman, "Autopsy Shows Michael Brown Was Struck at Least 6 Times," The New York Times, Aug. 17, 2014, *available at* http://www.nytimes.com/2014/08/18/us/michael-brown-autopsy-shows-he-was-shot-at-least-6-times.html.

[6] Stephanie Nebehay, "U.N. urges U.S. to stop police brutality after Missouri shooting," Reuters, Aug. 29, 2014, *available at* http://www.reuters.com/article/2014/08/29/us-usa-missouri-shooting-un-idUSKBN0GT1ZQ20140829.

[7] Joseph Goldstein and Nate Schweber, "Man's Death After Chokehold Raises Old Issue for the Police," The New York Times, July 18, 2014, *available at* http://www.nytimes.com/2014/07/19/nyregion/staten-island-man-dies-after-he-is-put-in-chokehold-during-arrest.html.

[8] Ruben Vives, Kate Mather, and Richard Winton, "LAPD shooting of mentally ill man stirs criticism, questions," Los Angeles Times, Aug. 14, 2014, *available at* http://www.latimes.com/local/lanow/la-me-ln-lapd-shooting-of-mentally-ill-man-stirs-criticism-questions-20140813-story.html.

Marlene Pinnock, an unarmed African-American woman, was savagely beaten by a California Highway Patrol officer.[9]

The systemic use of deadly force and violence against communities of color is deeply rooted in the structural deficiencies in police practices, supervision, and the failure of law enforcement officials to address directly the fundamental issue of racial bias, both explicit and implicit, in policing.[10] These attitudes and opinions are embedded in the law enforcement culture; the sooner we confront them honestly and openly, the closer we will be to eliminating them. An African-American female police officer in St. Louis gave voice to the need to address pernicious and widely-held views on race when she spoke of the stereotyping and fear among her white colleagues toward African Americans, noting that "their rationale, perception and interpretation of the issues are so far-fetched."[11] President Obama has also spoken about the "gulf of mistrust" that exists between local communities and law enforcement, and how young men of color are "left behind and seen only as objects of fear."[12] This well-documented gulf of mistrust[13] breeds the attitudes that infect police-citizen encounters with racial bias and unfairness.

As an initial step toward reform, LDF has called upon the Department of Justice (DOJ) to use its authority and substantial resources to "address the unjustified use of lethal and excessive force by police officers in jurisdictions throughout this country against unarmed black people." We have asked DOJ to implement actions designed to curb police violence against communities of color: (1) undertake a comprehensive and thorough review of police-involved assaults and killings; (2) provide strong incentives for racial bias training and avoiding the use of force in the DOJ grant process, including JAG and other funding sources; (3) hold police officers accountable to the full extent of the law; and (4)

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[9] Richard Winton, Kate Mather, and Joseph Serna, "Woman videotaped in CHP beating was walking into traffic, report says," Los Angeles Times, July 28, 2014, *available at* http://www.latimes.com/local/lanow/la-me-ln-woman-punched-chp-20140728-story.html.

[10] Cheryl Staats et al., "State of the Science: Implicit Bias Review," Kirwan Institute, 2013, at 36-45, *available at* http://kirwaninstitute.osu.edu/my-product/state-of-the-science-implicit-bias-review/; Phillip Atiba Goff, Matthew Christian Jackson, Carmen Marie Culotta, Brooke Allison Lewis Di Leone, Natalie Ann DiTomasso, "The Essence of Innocence: Consequences of Dehumanizing Black Children," Feb. 24, 2014, at 540, *available at* https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf.

[11] Aleem Maqbool, "African-American Police Officer: Ferguson 'Heart Wrenching,'" BBC News, Aug. 25, 2014, *available at* http://www.bbc.com/news/world-us-canada-28890068.

[12] Transcript, "Obama's remarks on Ferguson, Mo. and Iraq," The Washington Post, Aug. 18, 2014, *available at* http://www.washingtonpost.com/politics/running-transcript-obamas-remarks-on-ferguson-mo-and-iraq/2014/08/18/ed29d07a-2713-11e4-86ca-6f03cbd15c1a_story.html.

[13] Pew Research Center, "Few Say Police Forces Nationally Do Well in Treating Races Equally," Aug. 25, 2014, *available at* http://www.people-press.org/2014/08/25/few-say-police-forces-nationally-do-well-in-treating-races-equally/.

encourage the use of police officer body-worn cameras.[14] LDF has also joined other national civil and human rights organizations in calling for a number of additional structural reforms, including comprehensive review and reporting of racial profiling practices; review and reporting of stop and frisk, search, and arrest practices; updating the 2003 DOJ Guidance Regarding the Use of Race by Federal Law Enforcement Agencies; elimination of "broken windows" policing, which encourages aggressive responses to minor offenses; and the promotion of community-based policing.[15] These reforms complement the recommendations detailed in this submission and address the need to curtail the seemingly unfettered authority of law enforcement officers in their use of force.

III. Demilitarizing Local Law Enforcement

Without question, the jarring images of the military-style response by local police to the public protests in Ferguson shocked the nation. Municipal police officers, who are sworn to protect the communities they serve, suddenly appeared in military fatigues and full body armor. They rode through crowds gathered in peaceful protest in armored trucks. Shielded by gas masks, the officers readily deployed an arsenal of weapons against lawful protestors, including tear gas, stun grenades, rubber bullets, and sound-based weapons known as the Long Range Acoustic Device (LRAD) that were used in Iraq. Officers were also heavily armed with automatic rifles, some of which they pointed directly at protestors. As Senator Claire McCaskill (D-MO) noted, "The whole country, and every representative and senator have seen the visuals, and at some level, it made us all uncomfortable."[16] Senator Rand Paul (R-KY) wrote, "The images and scenes we continue to see in Ferguson resemble war more than traditional police action."[17] Representative John Yarmuth (D-KY-3d) commented, "The citizens of Ferguson deserve answers from police, not a military-style offensive."[18]

Excessive use of force by law enforcement against persons engaged in peaceful protest is an unfortunate part of our nation's civil rights history. No one can forget images from 50 years ago of high-pressure fire hoses and police dogs employed by Bull Connor,

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[14] Letter from Sherrilyn Ifill to Attorney General Eric Holder Regarding Use of Excessive Force by Police, Aug. 14, 2014, *available at* http://www.naacpldf.org/document/letter-attorney-general-holder-regarding-use-excessive-force-police.

[15] "A Unified Statement of Action to Promote Reform and Stop Police Abuse," Aug. 18, 2014, *available at* www.naacpldf.org/files/case_issue/Black%20Leaders%20Joint%20Statement%20-%208-18_0.pdf.

[16] Matt Apuzzo and Michael Schmidt, "In Washington, Second Thoughts on Arming Police," The New York Times, Aug. 23, 2014, *available at* http://www.nytimes.com/2014/08/24/us/in-washington-second-thoughts-on-arming-police.html.

[17] The Hon. Rand Paul, "Rand Paul: We Must Demilitarize the Police," TIME Magazine, Aug. 14, 2014, *available at* http://time.com/3111474/rand-paul-ferguson-police/.

[18] James Carroll, "Paul, Yarmuth Criticize Ferguson, MO, police," The Courier-Journal, Aug. 15, 2014, *available at* http://www.courier-journal.com/story/politics-blog/2014/08/14/kentuckys-rand-paul-and-john-yarmuth-criticize-missouri-police-response/14068113/.

Birmingham's Commissioner for Public Safety, against nonviolent protestors in Kelly Ingram Park, many of whom were children. Arrested during that time, Martin Luther King, Jr., famously wrote from a Birmingham jail, "You warmly commended the Birmingham police force for keeping 'order' and 'preventing violence.' I doubt that you would have so warmly commended the police force if you had seen its dogs sinking their teeth into unarmed, nonviolent Negroes."[19] Supporters of voting rights were met by equally horrific violence at the hands of law enforcement as they attempted to cross Edmund Pettus Bridge in Selma, Alabama. In the aftermath, LDF protected the ability of civil rights leaders and their supporters to march without violence by filing a lawsuit seeking to "enjoin and restrain [law enforcement] and all persons acting in concert with them from arresting, harassing, threatening, or in any way interfering with their peaceful, nonviolent march from Selma, Alabama to Montgomery, Alabama."[20] United States District Judge Frank Johnson, Jr., ordered a peaceful march to take place and asked LDF to draw up the plan for the march.

Given our intimate familiarity with the history of police violence against civil rights protesters, we were deeply troubled by the rapid escalation and militarized nature of the law enforcement response to the protests in Ferguson. Regardless of the intentions behind federal programs that send substantial amounts of military equipment to local police forces, the events in Ferguson demonstrated, in stark relief, the capacity for abuse of that equipment. The structure and size of these programs have made accountability and oversight difficult. While audits reportedly have raised questions about the operation of these programs, no investigations have been conducted on their continued advisability.[21]

For these reasons, LDF welcomed President Obama's announcement of a comprehensive review of the federal government's role in arming state and local law enforcement with military-style equipment.[22] As the President explained, "There is a big difference between our military and our local law enforcement and we don't want those lines blurred. That would be contrary to our traditions."[23] We are encouraged by the Administration's commitment to examining whether the government should continue to provide military equipment to localities, and if so, to ensuring that adequate training, monitoring, and guidance are provided to police recipients to curtail misuse. As Attorney General Eric Holder, Jr. recently stated, "It makes sense to take a look at whether military-

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[19] Martin Luther King, Jr., "Letter from a Birmingham Jail," April 16, 1963, *available at* http://www.thekingcenter.org/archive/document/letter-birmingham-city-jail-0#.

[20] Williams v. Wallace, 240 F. Supp. 100 (M.D. Ala. 1965).

[21] Apuzzo & Schmidt, *infra* note 16.

[22] Apuzzo & Schmidt, *infra* note 16.

[23] Scott Neuman and Steve Mullis, "Obama Orders Review Of Transfers Of Military Surplus To Local Police," NPR, Aug. 23, 2014, *available at* http://www.npr.org/blogs/thetwo-way/2014/08/23/342739540/obama-orders-review-of-transfers-of-military-surplus-to-local-police.

style equipment is being acquired for the right purposes and whether there is proper training on when and how to deploy it."[24]

As this Committee undertakes its own review of federal programs providing military equipment to local law enforcement, LDF suggests that the Committee pay particular attention to the militarization of policing in communities of color. These communities have historically borne—and continue to bear—the brunt of heavy-handed and increasingly militarized law enforcement tactics.[25] The "War on Drugs" has been waged in communities of color.[26] The "War on Crime" has been waged in communities of color.[27] And since the tools used to fight the "War on Terror" have been deployed in the campaigns on drugs and crime,[28] it is clear that war has been fought in communities of color as well. At each stage, communities of color have been the disproportionate targets of law enforcement's use of paramilitary tactics, heavy weaponry, and zero-tolerance policing.[29] Supplying military weapons and vehicles to officers and departments already engaged in abusive practices and acting under a "siege" mentality can and does enhance the possibility of extreme violence against communities of color.

As a general matter, we believe that Congress should focus its inquiry on the 1033 program and any other programs providing equipment—specifically military weaponry—with an eye towards significant reform. The programs have existed for decades, with few checks on their operation. There is a dearth of policies and procedures prescribing the appropriate uses of the equipment, leaving decision-making about usage within the discretion of local authorities. There appear to be few conditions, either legal or financial, attached to receipt and use of the equipment. With virtually no federal safeguards, local authorities in Ferguson and St. Louis County were licensed to rely on military tactics, armor, and weapons solely for purposes of intimidation and crowd-control.

In our view, the Committee should explore whether these programs should be significantly narrowed, with appropriate oversight and accountability imposed. While we

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[24] Apuzzo & Schmidt, *infra* note 16.

[25] Christian Parenti, Lockdown America: Police and Prisons in the Age of Crisis 69-89 (1999) (recounting the increasing use of paramilitary-style tactics by the New York Police Department, primarily in communities of color); Kenneth B. Nunn, Race, Crime and the Pool of Surplus Criminality: Or Why the "'War on Drugs' Was A 'War on Blacks'", 6 J. Gender Race & Just. 381, 404 (2002).

[26] Andre Douglas Pond Cummings, "All Eyez on Me: America's War on Drugs and the Prison-Industrial Complex," 15 J. Gender Race & Just. 417, 426-27 (2012).

[27] M. Chris Fabricant, War Crimes and Misdemeanors: Understanding "'Zero-Tolerance' Policing As A Form of Collective Punishment and Human Rights Violation," 3 Drexel L. Rev. 373, 377-79 (2011).

[28] Benjamin Wallace-Wells, "Patriot Act: The kitchen-sink approach to national security," New York Magazine, Aug. 27, 2011, *available at* http://nymag.com/news/9-11/10th-anniversary/patriot-act/.

[29] ACLU, "War Comes Home: The Excessive Militarization of American Policing," at 35-37, *available at* https://www.aclu.org/criminal-law-reform/war-comes-home-excessive-militarization-american-police-report.

recognize the need for security and protection, we are dubious about the expansive operation of these programs across the country. On September 5, 2014, Senator Richard Durbin (D-IL) sent a letter to the Secretary of Defense, noting several concerns about the current operation of the 1033 program. He noted that, while the 1033 program requires consultation with DOJ, no effective consultation currently occurs.[30] We strongly agree with Senator Durbin's suggestion that DOJ could ensure that: applicants for 1033 equipment have a valid purpose and need for the equipment; do not have a record of violations of federal law; and are not subject to any investigation that would raise concern about the proper use of equipment. In fact, we suggest that applicants be required to state in advance the intended purpose for such equipment, which could then be relied upon for purposes of monitoring and reporting. We also suggest that, if investigations are pending or violations are found, any application for equipment should be delayed or denied.

Senator Durbin also raised significant questions about proper oversight of the 1033 program.[31] There do not appear to be mechanisms for determining whether illegal or inappropriate use of the equipment has occurred. We believe that federal agencies should require recipient state and local law enforcement agencies to report annually on the actual use of the equipment. For example, the St. Louis County Police Department, Missouri Highway Patrol, and other law enforcement agencies should be required to report their usage of all types of military equipment against protestors. Additionally, local authorities should be compelled to identify the race, ethnicity, and origin of individuals involved in the law enforcement activity during which the equipment was used. Moreover, the federal agencies administering these programs should clearly delineate and implement serious consequences for misuse or unjustified deployment of such equipment.

It is also imperative that the federal government's provision of equipment be accompanied by mandatory training and guidance on proper usage. The relevant agencies should insist that local authorities receive training on how and when to deploy equipment. Additionally, local authorities should receive training on how to eliminate racial bias in all aspects of policing, including in the use of such equipment.

Equally troubling is the requirement by virtue of some state-federal 1033 operations plans that recipients use the transferred equipment within one year of receipt. This creates a perverse incentive for law enforcement to use military-grade equipment in routine law enforcement situations or other circumstances that do not justify its use.[32]

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[30] Letter from Senator Richard Durbin to The Honorable Chuck Hagel, Secretary, U.S. Department of Defense, Sept. 5, 2014, available at http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=8f5ff483-e2ba-4db5-97ce-b8c440acd0bc.

[31] Durbin Letter, *infra* note 30.

[32] State of Missouri Application to Participate, Department of Defense 1033 Excess Property Program (Revised Sept. 2, 2014), *available at* http://www.dps.mo.gov/dir/programs/cjle/dod.asp (date accessed: Sept. 5, 2014). One component of the application is the State Plan of Operation, which is essentially a memorandum of understanding between the recipient and the Defense Department. The State Plan of Operation contains the use-within-one-year provision:

Finally, we agree with Senator Durbin's call for a complaint procedure by which the public can formally report and trigger investigation of misuse of such equipment by civilian law enforcement.[33]

IV. Demilitarization of America's Public Schools

Apart from our general concerns about over-militarization of local police, we are particularly troubled by reports of the transfer and/or lending of military weapons for use in K-12 schools. A number of school districts participate in the 1033 program.[34] And some have even received military equipment. For example, the Granite School District in Utah reportedly received 12 AR-15s and two M-16s through the 1033 program.[35]

As a fundamental matter, militarization of our educational institutions poses a threat to all students. But the greatest risk is to students of color. These students are already disproportionately impacted by the criminalization of student conduct. For example, while African-American students make up 16 percent of student enrollment nationally, they comprise 27 percent of students referred to law enforcement and 31 percent of students arrested, often for minor "discretionary" offenses, like "disrespect."[36]

A significant contributor to the "School to Prison Pipeline" is the presence of law enforcement officers on school grounds, often known as "School Resource Officers." These officers are extensively involved in school discipline and often arrest, ticket, or cite students or refer them to the juvenile justice system for routine infractions. Research shows that the police presence in schools already negatively impacts school climate,

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Property obtained under this SPO must be placed into use within one (1) year of receipt, unless the condition of the property renders it unusable, in which case the property can be returned to the nearest DLA Disposition Services Site. If property is not put into use by the LEA within one (1) year, the State/LEA must coordinate a transfer of property to another LEA or request a turn-in to return the property to the nearest DLA Disposition Services Site.

[33] Durbin Letter, *infra* note 30.

[34] Districts and states reported to have received equipment through the 1033 Program include: California (Baldwin Park; Oakland Unified; Los Angeles; Stockton Unified); Florida (Washington; Bay District; Palm Beach County); Georgia (Fulton County; Dooly County); Kansas (Auburn); Michigan (Detroit; Schoolcraft); Nevada (Washoe); Texas (Ector; Ennis; Spring Branch); Texas (Frenship; Aledo; Edinburg; San Antonio; Trinity; Beaumont); and Utah (Granite). For a list of all agencies participating in the 1033 program, *see* Arezou Rezvani, Jessica Pupovac, David Eads and Tyler Fisher, "MRAPs and Bayonets: What We Know About the Pentagon's 1033 Program, List of Agencies Receiving Equipment," National Public Radio, Sept. 2, 1014, *available at* http://www.npr.org/2014/09/02/342494225/mraps-and-bayonets-what-we-know-about-the-pentagons-1033-program.

[35] Nate Carlisle, "Granite district using military M-16s to defend schools," The Salt Lake Tribune, Feb. 23, 2014, *available at* http://www.sltrib.com/sltrib/news/57563036-78/police-johnson-rifles-granite.html.csp.

[36] U.S. Department of Education-Office for Civil Rights, Data Snapshot: School Discipline, March 21, 2014, *available at* http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf.

fueling distrust and anxiety among students, despite doing little to improve safety.[37] Adding military weaponry will only exacerbate tenuous climates and further intimidate and alienate students. Some of the school districts reportedly participating in the 1033 program, including those in California, Florida, Georgia, Kansas, Michigan, Nevada, and Texas, have documented histories of discipline disparities involving students of color.[38]

The transfer of military-style equipment to schools is especially alarming given that school law enforcement personnel are routinely used to handle minor disciplinary matters. Those personnel are often not trained to handle such incidents, and the combination of possible implicit bias and unchecked discretion results in discipline disparities among youth of color, even though they do not misbehave more frequently than their white peers.

We cannot afford to conflate school safety with school discipline or understate the harmful consequences of militarizing school police. The use of *any* form of military equipment on school campuses is certainly well beyond the scope of federal programs designed to equip law enforcement with weaponry. And exacerbating overly punitive discipline practices and hostile school climates by arming school police officers with military-grade weapons poses significant danger to those students most vulnerable to overly punitive discipline. This Committee should investigate the extent of reliance by school districts on the 1033 program. In addition, we ask that the Committee ensure that the federal agencies overseeing the program make publicly available all data regarding school districts participating in the program, including the type of equipment received.

V. Conclusion

Michael Brown's tragic killing and the aftermath of his death have sparked a national outcry over abusive police practices against communities of color. The federal government has the moral, legal and financial authority to undertake a host of structural reforms designed to promote transparency, training, reporting, review, and ultimately accountability at the local level. Today's hearing regarding the over-militarization of local law enforcement represents a significant first step. LDF appreciates the opportunity to contribute to this important discussion.

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[37] "Police in Schools Are Not the Answer to the Newtown Shooting," Joint Issue Brief, Jan. 2013, *available at* http://www.naacpldf.org/publication/police-schools-are-not-answer-newtown-shooting.

[38] Salt Lake Tribune, *infra* note 35; Office for Civil Rights Data, *infra* note 36.

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

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WILLIAM J. JOHNSON
Executive Director

September 17, 2014

The Honorable Thomas Carper
Chairman
Homeland Security and Governmental
Affairs Committee
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Carper:

On behalf of the National Association of Police Organizations (NAPO), I am writing to you to submit this statement for the official record in response to the Senate Homeland Security and Governmental Affairs Committee's hearing on "Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies."

NAPO is a coalition of police unions and associations from across the United States that serves to advance the interests of America's law enforcement through legislative and legal advocacy, political action, and education. Founded in 1978, NAPO now represents more than 1,000 police units and associations, 241,000 sworn law enforcement officers, and more than 100,000 citizens who share a common dedication to fair and effective crime control and law enforcement.

As the Committee examines the effectiveness of federal programs that provide surplus military equipment to state and local law enforcement agencies, we urge you to consider that programs, such as the Department of Defense's (DoD) 1033 Program, enable law enforcement agencies to fulfill equipment needs that they would otherwise be unable to afford. This equipment is vital to public safety, especially as criminals have become more violent and well armed in recent years.

Moreover, since 9/11, state and local law enforcement agencies have assumed more duties to protect communities against terrorist threats. The most recent and prominent example of the pivotal role state and local law enforcement play in protecting our nation's communities occurred in the immediate aftermath of the Boston Marathon bombings. The surplus equipment provided through DoD's 1033 Program enabled state and local law enforcement officers to restore safety to the community. Eliminating such a program will inhibit the primary mission of law enforcement-to keep our communities safe.

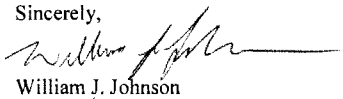
Also, NAPO was disappointed to hear Committee member comments regarding our efforts to secure funding for the Community Oriented Policing Services (COPS) Program. Since the beginning of the 108th Congress, NAPO has fought for increased funding for the COPS Hiring Program. We understand the importance of putting more officers on the street to build relationships with the communities they serve and maintain public safety, which is why we continue to expend all available efforts to promote community policing. In fact, it is our top priority.

Law enforcement officers put their lives on the line every day to protect our communities. They must have access to every tool necessary to protect the public. The 1033 Program provides tools for officers to use to ensure public safety in the most dangerous of circumstances.

We urge you to utilize our organization as a valuable resource for the Committee as you review federal programs that play a valuable role in equipping state and local law enforcement agencies with necessary equipment.

If you have any questions, please feel free to contact me at: (703) 549-0775. We look forward to working with you on this issue in the future.

Sincerely,



William J. Johnson
Executive Director

The Militarization of American Policing

Hearing on Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies

Statement of Norm Stamper, Seattle Chief of Police (Ret.), advisory board member of Law Enforcement Against Prohibition, and Author of
Breaking Rank: A Top Cop's Exposé of the Dark Side of American Policing

September 9, 2014

Introduction. Something has gone terribly wrong with American policing. Never wholeheartedly embraced by a freedom-loving people, the institution recently has suffered a major blow to its image, and to community-police relations. Thanks in part to the federal government's 1033 Program, which furnishes Department of Defense military surplus to city and county law enforcement, we have seen a rapid and massive expansion in the militarization of local policing exemplified by, but not limited to, the tragedy that occurred in Ferguson, Missouri this August. This trend is disturbing in the extreme, and must be reversed in the interests of public safety and community support for law enforcement.

As a former police chief who has made these mistakes myself (during the 1999 WTO protests in which I authorized military gear as well as the use of tear gas against nonviolent demonstrators), and who has spent the past 15 years working to atone for these past transgressions, I urge a top-to-bottom overhaul of the 1033 program. This is a task best reserved, I think, for multidisciplinary experts (tactical, legal, ethical) combined with a cross-section of the American people and subject to congressional oversight. I do

not mean to suggest, however, that tightened regulations, to include inspections, must await a more comprehensive examination of the 1033 program. On the contrary, the current situation demands immediate remedial attention.

I also urge consideration of the role of the federal government in mandating or encouraging additional law enforcement reforms implicit in this paper and along the lines of those developed during previous generations of national inquiries into local police practices.

Community policing. Throughout the '90s many cities began adopting the policies and practices of community policing. The essence of community policing is deceptively simple: the citizenry and the police working together, in full partnership, to identify, analyze, and solve crime and other neighborhood problems—including, as necessary, the community-police relationship itself. The goal? Safe streets, healthy communities, and a strong community-police bond.

Of course, such a relationship demands a high level of trust between police officers and the people they serve. But even in the most advanced versions of community policing (i.e., those that embrace systematic, joint community-police problem-solving, and reject a cosmetic or "PR" approach), this trust has been elusive. I believe there are two fundamental reasons for this.

America's War on Drugs. First, the drug war, as the expression implies, has served as the impetus for many departments to "militarize" key aspects of the work, by

which I mean procurement of military vehicles and weapons, adoption of military garb, use of military and quasi-military tactics, even the vocabulary of war as local agencies carry out *missions* to *target* and *defeat* the *enemy*—defined overwhelmingly as drug offenders, be they users or dealers.

From the onset of the drug war in the early '70s, this "enemy" has been disproportionately young, poor, and nonwhite. Many agencies argue that this is merely a statistical outcome, not an intended consequence.

But since President Nixon famously proclaimed drugs "Public Enemy Number One" and prioritized their eradication, an impossible goal, what has transpired is less a war on drugs than a war on the American people. We have incarcerated tens of millions of young, poor, black and Latino Americans for low-level, nonviolent drug offenses. The devastating effects of the drug war on inner-city residents, in particular, cannot be overstated. Families have been fractured and individual lives damaged if not lost. Entire neighborhoods have been turned into war zones, resulting in plummeting property values and a deeply diminished quality of life for millions of Americans. Across the country, residents have been forced to change the way they live and how they raise their children as a result of fear—of both drug trafficking and of law enforcement's aggressive, militaristic response to it.

Which brings us to the second barrier standing in the way of mutual trust between the police and the people they serve.

A history of paramilitarization. The drug war and post-9/11 considerations aside, policing has, from its early moments, been organized as a paramilitary bureaucracy. How a law enforcement agency is organized—not just the work it does on the streets—gives rise to and shapes an imposing workplace culture. The "cop culture," whether in compliance or in defiance of department policies and community expectations, pretty much determines the performance and conduct of our police officers

Much has been written on the powerful influence of this culture, its positives and its negatives. At the heart of current controversies, however, one negative stands out the tendency of our police officers to isolate themselves, to distance themselves from the residents they have been hired to serve and in the process to form an in-group solidarity that is all but impenetrable. The militarization movement has dramatically exacerbated this tendency.

Starting in the early '90s, even as some agencies embraced the language of community policing, most were moving incrementally toward an increased military presence in the communities they serve. SWAT accounted for the bulk of these martial actions, and upwards of 80 percent of all SWAT operations were, and remain, dedicated to low-level drug targets.

The "9/11 Effect." In the aftermath of 9/11, with new and legitimate concerns about homeland security, we saw a major escalation in the militarization of our police forces. Given the federal government's generosity in distributing military equipment,

vehicles, and weaponry—with virtually no strings attached (no demonstration of need, no training, no maintenance)—we have seen even tiny, rural police departments transformed into small armies, their peace officers converted into soldiers. With no real homeland security challenge, many of the 18,000 local police departments in the U.S. have too often employed their new military materiel and weaponry against essentially nonviolent, nonthreatening citizens.

In light of what we witnessed last month on the streets of Ferguson—city and county police officers clad in "camis," combat boots, ballistic helmets, and carrying semi-automatic military rifles—even an officer poised prominently atop a tall MRAP (mine-resistant ambush-protected vehicle), tripod-mounted sniper rifle at the ready—it is no wonder that so many Americans believe their local cops have become an occupying force, military in appearance, military in demeanor, military in tactics.

If my understanding of the pre-existing relationship between the largely black population of Ferguson, Missouri and its largely white police force is accurate, what happened in the hours after the controversial August 9 shooting death of an African-American teenager was depressingly predictable. Simmering fear, resentment, and tension exploded when at a peaceful vigil the police showed up looking and acting like storm troopers.

Imagine a pre-existing relationship in which the police of Ferguson had instead reached out to their community, had already forged a genuine partnership with its citizens

who want nothing more than safe streets and an effective, respectful police force.

Collateral damage. A single unnecessary or unwise militaristic action can destroy any hope of a constructive community-police relationship: the wrong house hit in a predawn raid of the family home; an elderly, unarmed resident caught in the crossfire; a toddler severely burned by a SWAT "flashbang" grenade; the family pet shot to death in the midst of a "shock and awe" invasion; a police officer killed by a disoriented, bewildered homeowner. Any one of these is enough to create a permanent rift in the way a community views its police force.

In the years prior to 9/11 there were roughly 3,000 recorded SWAT missions annually in the entire country. After 9/11—and notably, with the proliferation of the 1033 military surplus program—SWAT operations have mushroomed to more than of 50,000 separate missions per year. Many of these operations have been carried out by enthusiastic but undertrained and undisciplined police officers. The "collateral damage" has been staggering.

The difference between cops and soldiers. The purpose of our military in wartime is to kill or capture the enemy. By contrast, the purpose of our domestic police agencies is (1) to prevent crime (murder, sexual assault, burglary, domestic violence, grand theft, child abuse, arson, etc.) (2) to detect and apprehend those who commit these criminal offenses (and to assist in their successful prosecution), and (3) to provide other public safety services, ideally in seamless partnership with the residents who benefit from

these services. Soldiers follow orders for a living; police officers make decisions for a living.

There will always be times, places, and circumstances that demand a military-like approach with military-like discipline, decisiveness, tactical precision and teamwork. Active shooter incidents, armed and barricaded hostage-takers, and school and workplace shootings come to mind.

The challenge, then, is as obvious as it is difficult to meet. How do we build a police force of honest and honorable men and women who treat one another and the communities they serve with dignity and respect and who have the physical strength, psychological hardiness and resilience, self-confidence and self-discipline required to handle the full range of duties they are called upon to perform when these activities range from a bank robbery in progress to a crib death; from a school shooting to a nonviolent crowd of protestors?

The answer is complicated but within our grasp. It involves, at a minimum, a careful selection process for choosing new police officers, rigorous training, diligent supervision, effective discipline, and competent and courageous leadership—from elected officials, civic leaders, community activists, and, of course, the police chief and the police union.

It also demands a willingness to tackle the complex structural and cultural barriers to reasoned and responsible police work. Daunting though it may be, we can and

must reverse the militarization trend of American law enforcement.

I believe it all starts with a decision. We must decide to view America's cities as DMZs—demilitarized zones. And to treat our police officers as mature, respected partners of the community, even as we demand they act as such. I've written extensively on these and related subjects and invite readers to peruse selected chapters of my book, relevant, I believe, to the issues arising out of Ferguson: "Why White Cops Kill Black Men," "Racism in the Ranks," "Staying Alive in a World of Sudden, Violent Death," and "Demilitarizing the Police."

Thank you for your time and for discussing this important topic.

Sincerely,
Norm Stamper, PhD

Post-Hearing Questions for the Record
Submitted to the Honorable Alan F. Estevez
From Senator Tom Coburn, M.D.

"Oversight of Federal Programs for Equipping State and Local Law Enforcement"
September 9, 2014

Firearms Inventory Discrepancies

Question: On September 9th of last year (2013)—exactly a year ago today—the Department of Defense Inspector General (DOD IG) issued a memo to the Under Secretary of Defense for Acquisition, Technology, and Logistics titled "Firearms Inventory Discrepancies" that cited a Defense Logistics Agency Inspector General (DLA IG) Report of Crime Vulnerability Assessment that found "systemic accountability issues with the Law Enforcement Support Office [1033] program." The memo reported that 125 weapons transferred through the 1033 program were then unaccounted for. The DOD IG further noted "numerous audits and investigations conducted throughout the past decade have identified similar accountability issues" and stated that she was "bringing this matter to your attention to address/correct accountability issues" with the program because of the "systemic nature of the issues identified." What actions did the Department take last year, as a result of receiving that memo?

Answer: Since the issuance of the DLA internal report (DOD IG letter of September 9th, 2013), the following corrective actions have been taken by the department:

1) Revised the memorandum of agreement (MOA) with each state, requiring the states to conduct an annual inventory of all controlled property received under the program;

2) Employed the use of a new property accounting system, the Federal Excess Property Management Information System (FEPMIS), which allows both DLA and the LEAs to manage and to track inventories online;

3) Increased the frequency of Law Enforcement Support Office training and assist visits to State coordinators;

4) Imposed a nationwide moratorium, with the exception of New Hampshire, due to non-compliance with weapons and other program accountability requirements. This was imposed to ensure mandatory inventories of all issued firearms were provided as required by the MOAs with each state;

5) Increased focus on state compliance and accountability, resulting in suspension of three states and another 149 individual LEAs in 2013;

6) Required States to upload photos and serial numbers into FEPMIS for high profile property such as weapons, tactical vehicles, and aircraft as part of the required annual 100 percent

physical inventory of property in LEA custody;

7) Appointed a new Program Manager and increased the program office staffing from 14 to 20 personnel to assist with program compliance reviews; and

8) Developed standard operating procedures for the program.

CHARRTS No.: SHSGAC-05-002
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #2

Firearms Inventory Discrepancies

Question: On September 9th of last year (2013)—exactly a year ago today—the Department of Defense Inspector General (DOD IG) issued a memo to the Under Secretary of Defense for Acquisition, Technology, and Logistics titled "Firearms Inventory Discrepancies" that cited a Defense Logistics Agency Inspector General (DLA IG) Report of Crime Vulnerability Assessment that found "systemic accountability issues with the Law Enforcement Support Office [1033] program." The memo reported that 125 weapons transferred through the 1033 program were then unaccounted for. The DOD IG further noted "numerous audits and investigations conducted throughout the past decade have identified similar accountability issues" and stated that she was "bringing this matter to your attention to address/correct accountability issues" with the program because of the "systemic nature of the issues identified. "As the DOD IG noted, the Department was aware of accountability issues with the 1033 program as far back as 2002, when GAO reported problems with inventory records. In 2005 GAO reported millions of dollars of weapons and other sensitive military equipment were missing. How was it that the program still suffered from accountability issues and didn't undertake a comprehensive audit of all equipment transferred until 2013?

Answer: The Department of Defense acknowledges that past procedures and programs exercised by DLA during this time resulted in some property accounting issues. However, the Department did not wait until 2013 to conduct a comprehensive audit. The Defense Logistics Agency (DLA) conducted an internal audit from 2008 – 2009 and published these findings in 2010. This internal audit found fifteen findings regarding property accountability and program compliance; all fifteen findings have since been addressed. As a result of that audit, in 2012 DLA started modification to a USDA program called the Federal Excess Property Management Information System (FEPMIS). DLA fully shifted to this system in 2013. DLA conducted another internal audit in 2013 to verify corrective action had been taken from the published 2010 audit. The 2013 audit did find that corrective actions had been addressed.

Because of these two audits, DLA has since instituted substantive improvements to ensure

property accountability and program compliance with 1033 program participants. These improvements include:

1) Imposed a nationwide moratorium, with the exception of New Hampshire, due to non-compliance with weapons and other program accountability requirements. This was imposed to ensure mandatory inventories of all issued firearms were provided as required by the MOAs with each state;
2) Increased focus on state compliance and accountability, resulting in suspension of three states and another 149 individual LEAs in 2013, and;

3) Appointed a new Program Manager and increased the program office staffing from 14 to 20 personnel to assist with program compliance reviews.

CHARRTS No.: SHSGAC-05-003
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #3

Firearms Inventory Discrepancies

Question: On September 9th of last year (2013)—exactly a year ago today—the Department of Defense Inspector General (DOD IG) issued a memo to the Under Secretary of Defense for Acquisition, Technology, and Logistics titled "Firearms Inventory Discrepancies" that cited a Defense Logistics Agency Inspector General (DLA IG) Report of Crime Vulnerability Assessment that found "systemic accountability issues with the Law Enforcement Support Office [1033] program." The memo reported that 125 weapons transferred through the 1033 program were then unaccounted for. The DOD IG further noted "numerous audits and investigations conducted throughout the past decade have identified similar accountability issues" and stated that she was "bringing this matter to your attention to address/correct accountability issues" with the program because of the "systemic nature of the issues identified. "As the DOD IG noted, the Department was aware of accountability issues with the 1033 program as far back as 2002, when GAO reported problems with inventory records. In 2005 GAO reported millions of dollars of weapons and other sensitive military equipment were missing. Who in the Department has been held accountable for this systemic lax in basic program oversight?

Answer: The 1033 program manager who held the position from 2009-2012 was removed from his position. The new program manager strengthened the program through the following:

1) Increased the frequency of Law Enforcement Support Office training and assist visits to State coordinators;

2) Employed the use of a new property accounting system, the Federal Excess Property

Management Information System, which allows both the Defense Logistics Agency and the Law Enforcement Agencies to manage and to track inventories online; and

3) Developed standard operating procedures for the program.

CHARRTS No.: SHSGAC-05-004
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #4

DLA Audit Recommendations

Question. Are you familiar with the findings of the 2010 audit? Why did it take DLA three years to implement the most critical recommendations, like investigating each piece of unaccountable property reported and tracking serial numbers?

Answer. Yes, the Department of Defense is familiar with the findings of the 2010 audit that was performed by the DLA Inspector General's office. I understand that the internal audit found fifteen findings regarding property accountability and program compliance; all fifteen findings have since been addressed.

There was one major reason why DLA did not fully implement the two most critical recommendations as noted above. The property accounting system (LEEDS) that was used to document unaccountable property and track serial numbers was deemed inadequate for our use and had to be updated. DLA therefore started researching possibilities for a new property accounting system in 2011; the decision to start modification to a USDA program called the Federal Excess Property Management Information System occurred in March of 2012. DLA fully shifted to this system in 2013.

The new property accounting system allows for uploads of photographs and serial numbers for certain controlled property; tracks each individual Law Enforcement Agency (LEA) certification of annual inventories; enhances visibility of internal state transfers of property between LEAs; and tracks justifications for property requests.

CHARRTS No.: SHSGAC-05-005
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #5

DLA Audit Recommendations

Question. The 2013 audit found the Law Enforcement Support Office that oversees the 1033 program had only implemented 7 of the 15 recommendations from the 2010 report because of "staff shortages, attempts to standardize processes, personnel learning curve...a focus on operations and marketing, and other competing priorities". Can you explain why the Department thought marketing activities were more important than accurate accounting for missing military grade weapons and vehicles?

Answer: The Department does not concur with the 2013 audit that alleges that the focus of the LESO program was on marketing. The former LESO program manager mischaracterized this effort. Furthermore, in April 2012, DLA had essentially overhauled the program to include oversight, IT enhancement, program management, and an increase of staff with a focus on operations and accountability.

CHARRTS No.: SHSGAC-05-006
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #6

DLA Audit Recommendations

Question. Has the program been audited by an independent auditor since 2013 to determine the efficacy of the changes that have been made? If yes, by who and when?

Answer. No, an independent audit has not been completed since 2013. However, we implemented the following key improvements to strengthen program controls and oversight:

1) Revised the memorandum of agreement (MOA) with each state, requiring the states to conduct an annual inventory of all controlled property received under the program;

2) Increased the frequency of Law Enforcement Support Office training and assist visits to State coordinators;

3) Increased focus on state compliance and accountability, resulting in suspension of three states and another 149 individual LEAs in 2013, and;

4) Required States to upload photos and serial numbers into FEPMIS for high profile property such as weapons, tactical vehicles, and aircraft as part of the required annual 100 percent physical inventory of property in LEA custody.

CHARRTS No.: SHSGAC-05-007
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #7

1033 Annual Audit Requirement

Question. DLA reports that after the 2013 audit it instituted a requirement for agencies to perform an annual audit of 100 percent of the equipment received through the 1033 program. But it was always a program requirement for agencies to conduct an annual audit of weapons, vehicles, and aircraft—it just wasn't being completed by all the agencies and it apparently wasn't a priority for the Department to ensure program procedures were being followed. The addition of staff to assist agencies conducting the required annual review is also cited as a program reform. Can you explain in detail what that process entails and why an agency would require such assistance?

Answer. The annual inventory process begins on October 1 and must be completed by January 31 of each year. Law Enforcement Agencies (LEAs) conduct these inventories electronically in the Federal Excess Property Management Information System (FEPMIS). This process entails LEAs physically verifying all controlled property by serial number (if applicable) and submitting the results in FEPMIS. Once all LEAs in a state have completed their inventories, the state coordinator certifies each LEA's inventory, as well as the entire inventory for the state. States who fail to complete the annual inventory are immediately suspended.

Thorough, properly conducted annual inventories are critical to maintaining accountability of all controlled property. In order to ensure these inventories are done correctly, DLA provides state coordinators initial and remedial training as required. When questions arise with the use of FEPMIS and completing the annual inventory, DLA assists state coordinators as needed. The mission of the additional staff is to complete the Program Compliance Reviews with the LEAs, which entails physically inspecting at least 20 percent of the weapons and 10 percent of the general property for each state participating in the program on a biannual basis.

Please see section VI "Annual Inventory Requirement" of the attached Memorandum of Agreement (MOA) for detailed roles and responsibilities for inventories. The MOA attachment is titled "RFI Q7.pdf". (Available upon request in the HSGAC office.)

CHARRTS No.: SHSGAC-05-008
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn

Question: #8

1033 Annual Audit Requirement

Question. DLA reports that after the 2013 audit it instituted a requirement for agencies to perform an annual audit of 100 percent of the equipment received through the 1033 program. But it was always a program requirement for agencies to conduct an annual audit of weapons, vehicles, and aircraft—it just wasn't being completed by all the agencies and it apparently wasn't a priority for the Department to ensure program procedures were being followed. The addition of staff to assist agencies conducting the required annual review is also cited as a program reform. Why is it a good deal for taxpayers to pay for staff to help noncompliant agencies complete basic program requirements? Why can't these agencies that are allowed to possess and operate military grade weapons and equipment not be held accountable for taking responsibility for basic accountability procedures? Why does the Department think it's a function of the program to help them complete these basic requirements, instead of just suspending or terminating them from the program if they can't demonstrate the ability to meet the basic program requirements?

Answer. States and Law Enforcement Agencies (LEAs) are accountable for program compliance in accordance with the Memorandum of Agreement. As the administrator for this congressionally authorized program, the Defense Logistics Agency considers it a program requirement to provide training on program oversight and inventory requirements to State Coordinators upon appointment and through the annual training seminars to ensure accountability of controlled property. States and LEAs that are not in compliance with the Law Enforcement Support Office program requirements are suspended and/or terminated.

CHARRTS No.: SHSGAC-05-009
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #9

Unresolved Lost, Stolen, or Missing Weapons

Question. In response to an inquiry I submitted to DLA in May of this year, DLA reported 440 unresolved lost, stolen, or missing weapons, but downplayed that number by portraying it as a small percentage of the 91,361 weapons that have been transferred to agencies since the original transfer program was started in 1990. Is it the Department's position that 440 missing weapons are inconsequential?

Answer: No, it is not the Department's position that 440 missing weapons are inconsequential. Every missing weapon is taken very seriously. Current policy requires the automatic suspension of a Law Enforcement Agency (LEA) for a report of a missing, stolen, or misappropriated weapon. These LEAs are subsequently prohibited from acquiring further property until a full investigation

by DLA IG is completed. Once the investigation is complete, a LEA may apply for full reinstatement to the LESO program.

CHARRTS No.: SHSGAC-05-010
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #10

Unresolved Lost, Stolen, or Missing Weapons

Question. In response to an inquiry I submitted to DLA in May of this year, DLA reported 440 unresolved lost, stolen, or missing weapons, but downplayed that number by portraying it as a small percentage of the 91,361 weapons that have been transferred to agencies since the original transfer program was started in 1990. What responsibility does the Department assume for these missing weapons?

Answer. The Department maintains a robust oversight and accountability role with states and Law Enforcement Agencies (LEAs), ensuring states comply with Memorandum of Agreement requirements such as inventorying all controlled property received and reporting lost, missing, and stolen property. The Department will suspend an LEA or an entire state for failure to meet these requirements. The Department ensures that State Coordinator and LEAs input missing weapons into the National Crime Information Center (NCIC) database and upload a screen shot of the NCIC entry into the Federal Excess Property Management Information System within 72 hours of the reported loss. Additionally, the Defense Logistics Agency (DLA) actively monitors Federal, state, and LEA investigations into reported cases of lost, stolen, missing, or misappropriated controlled property issued by DLA.

CHARRTS No.: SHSGAC-05-011
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #11

Unresolved Lost, Stolen, or Missing Weapons

Question. In response to an inquiry I submitted to DLA in May of this year, DLA reported 440 unresolved lost, stolen, or missing weapons, but downplayed that number by portraying it as a small percentage of the 91,361 weapons that have been transferred to agencies since the original transfer program was started in 1990. Can an agency that cannot account for weapons, vehicles, or

other sensitive equipment remain enrolled in the program?

Answer. Yes. However, upon report of a missing weapon, that Law Enforcement Agency (LEA) is automatically suspended. The suspension is lifted only after an appropriate investigation is completed and the Defense Logistics Agency (DLA) is satisfied with the corrective actions taken by the LEA. If DLA is not satisfied with the LEAs corrective actions and explanations regarding loss, that LEA is terminated. The Maricopa County Sheriff's Office in Arizona was recently terminated for that reason.

CHARRTS No.: SHSGAC-05-012
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #12

Unresolved Lost, Stolen, or Missing Weapons

Question. In response to an inquiry I submitted to DLA in May of this year, DLA reported 440 unresolved lost, stolen, or missing weapons, but downplayed that number by portraying it as a small percentage of the 91,361 weapons that have been transferred to agencies since the original transfer program was started in 1990. Many of the weapons reported to DLA as missing in 2012 actually went missing in 2006, even as far back as 2001. What were the consequences to the states and the State Coordinators and 1033 program managers for this failure?

Answer. The Defense Logistics Agency (DLA) acknowledges past accountability issues. From 2001 to the present, the majority of the property, to include weapons, provided by the Law Enforcement Support Office was properly accounted for, safe guarded, and used within program guidelines. However, procedures and programs used during this time resulted in some property accountability issues. These included the transfer of weapon tracking responsibilities from the Department of the Army to DLA in 2003 and DLA's use of a legacy accounting system that did not have a strong property tracking function.

DLA's focus was on strengthening policies and procedures to ensure stronger program compliance and property accountability. This included replacing the legacy IT system with the Federal Excess Property Management Information System.

The Department takes seriously any missing weapon and has procedures in place to actively investigate missing, misappropriated, or stolen weapons. These include suspending the Law Enforcement Agency (LEA) from the 1033 Program for a minimum of 30 days; inputting the controlled property (weapons) into National Crime Information Center within 72 hours; initiating an investigation; directing the LEA to complete a preliminary Police report within 72 hours; and notifying the Bureau of Alcohol, Tobacco, Firearms, and Explosives within 72 hours.

CHARRTS No.: SHSGAC-05-013
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #13

Non-Compliant, Suspended, and Terminated 1033 Entities

Question. In response to the inquiry I submitted in May, DLA reported that as a result of the 2013 inventory, six states were found non-compliant, 1,691 agencies were suspended, and seven agencies were terminated from the program. Why would an agency be suspended from the 1033 program? Can agencies receive multiple suspensions and still remain enrolled in the program?

Answer. States and Law Enforcement Agencies (LEAs) are suspended from the 1033 program for noncompliance with weapons accountability and other program accountability requirements.

Yes, an agency may receive multiple suspensions over a period of time/years, but the suspension may be lifted if the LEA has implemented a Defense Logistics Agency-approved corrective action plan to address the violation. However, if an agency continues to violate the Memorandum of Agreement and does not improve, then it is terminated from the program.

CHARRTS No.: SHSGAC-05-014
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #14

Non-Compliant, Suspended, and Terminated 1033 Entities

Question. In response to the inquiry I submitted in May, DLA reported that as a result of the 2013 inventory, six states were found non-compliant, 1,691 agencies were suspended, and seven agencies were terminated from the program. How many individual agencies and states are currently suspended from the program and why? What would be grounds for termination from the program? How many agencies have been terminated since the current program was started in 1997?

Answer. As of the Law Enforcement Support Office suspension list dated October 3, 2014, there are 138 Law Enforcement Agencies (LEAs) and two states suspended from the program. For

a list of suspended agencies and the reasons why, please see the attachment titled "RFI Q14a". (Available upon request in the HSGAC office.)

Grounds for an LEA termination include failure by states and/or LEAs to comply with program requirements or to correct identified discrepancies after a suspension. Currently, there are a total of nine agencies that have been terminated from the program. Individual LEA terminations prior to 2012 were not maintained. However, the Department now tracks all terminations. For a list of terminations, please see the attachment titled "RFI Q14b". (Available upon request in the HSGAC office.)

CHARRTS No.: SHSGAC-05-015
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #15

Albuquerque Police Department

Question. The Albuquerque Police Department has received more than $5 million in equipment and funding through the three programs we are discussing today. And since at least 2010, the Albuquerque Police Department has been the subject of misconduct allegations and even public protests, accusing its officers of using excessive force and unreasonable deadly force. In early April of this year the Department of Justice concluded that its officers' unnecessary use of force had violated the Constitutional rights of the residents its members had sworn to protect. In late 2013, while the Albuquerque Police Department was under active DOJ investigation, it received an MRAP vehicle from the DOD 1033 program. Data reported by DLA shows equipment was transferred to a Bernalillo County law enforcement agency as late as April 23, 2014. Is the Albuquerque Police Department one of the agencies that has been terminated from the 1033 program?

Answer: No, the Albuquerque Police Department has not been terminated from the 1033 program. However, coordination with the Department of Justice (DOJ) is being strengthened. The Department now works with DOJ before transferring equipment to a LEA in order to ensure that there is not an open investigation or other derogatory information found on the LEA requesting excess property through the LESO program.

CHARRTS No.: SHSGAC-05-016
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn

Question: #16

Albuquerque Police Department

Question. The Albuquerque Police Department has received more than $5 million in equipment and funding through the three programs we are discussing today. And since at least 2010, the Albuquerque Police Department has been the subject of misconduct allegations and even public protests, accusing its officers of using excessive force and unreasonable deadly force. In early April of this year the Department of Justice concluded that its officers' unnecessary use of force had violated the Constitutional rights of the residents its members had sworn to protect. In late 2013, while the Albuquerque Police Department was under active DOJ investigation, it received an MRAP vehicle from the DOD 1033 program. Data reported by DLA shows equipment was transferred to a Bernalillo County law enforcement agency as late as April 23, 2014. How does the Department coordinate with the Department of Justice to review program eligibility for agencies under active investigation or agencies, like in the case of the Albuquerque Police Department, that have been found to use excessive force and violate the Constitutional rights of Americans?

Answer: Coordination with the Department of Justice (DOJ) is being strengthened. We participated in the Presidentially-directed interagency review of Federal programs for equipping State and local law enforcement agencies. We are working with the DOJ before transferring equipment to a Law Enforcement Agency (LEA) in order to ensure that there is not an open investigation on the recipient LEA or other derogatory information. DoJ and Department of Homeland Security, at our invitation, participated in our annual Law Enforcement Support Office conference to review 1033 program execution and address issues. This conference is a forum for the Department and State Coordinators to review federal supply classes in order to verify and validate the classes of equipment transferred under the 1033 program.

CHARRTS No.: SHSGAC-05-017
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #17

Determining Equipment Available

Question. Who determines what equipment is made available to local law enforcement under the 1033 program? Please provide a short description of the process followed to reach that determination, including the people involved in the decision making process.

Answer: The Military Services turn-in excess property to Defense Logistics Agency (DLA) Disposition Services on a daily basis, and that excess property is first made available for reutilization within the Department of Defense. If the property is not requested from within the Department, property may then be eligible for transfer to a Law Enforcement Agency (LEA).

Service Item Managers restrict certain items from being provided to the LESO program to include: uniforms, body armor, Kevlar helmets, and certain up-armored HMMWVs. Additionally, DLA has determined that 103 federal supply classes (FSC) will not be allowed for transfer to a LEA. These FSC's include items that have items with offensive capabilities or whose predominant purpose is for combat operations not suitable for transfer outside the DoD. These items include but are not limited to tanks, Bradley Fighting Vehicles, drones, and crew served weapons.

After the State Coordinator (SC) determines that the items are suitable for use for the LEA, a request is forwarded to the Law Enforcement Support Office by the SC that includes justification on how the LEA will utilize the property.

Before a request is approved, DLA makes a case-by-case determination considering the justification for the requested property and then approves or denies the request based on current property availability and current LEA 1033 Program inventory, ensuring fair and equitable distribution of available property to the greatest extent possible.

CHARRTS No.: SHSGAC-05-018
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #18

Federal Supply Classes

Question. In May of this year DLA reported 529 Federal Supply Classes were currently available for transfer through the 1033 program. How does DLA determine what Federal Supply Classes are available for transfer? What criteria are used? How often is the eligibility list reviewed, and at what level in the Department is the final determination of eligibility made?

Answer: The Defense Logistics Agency (DLA) reviews the list of items eligible for transfer at least semi-annually. DLA has been delegated responsibility to make these determinations on behalf of the Department. The Military Services turn-in excess property to DLA Disposition Services on a daily basis, and that excess property is first made available for transfer within the Department of Defense. If the property is not requested from within the Department, property may then be eligible for transfer to a Law Enforcement Agency (LEA).

DLA has determined that 103 federal supply classes (FSC) will not be allowed for transfer to a LEA. These FSCs include items that have items with offensive capabilities or whose predominant purpose is for combat operations and are not suitable for transfer outside the DoD. These items include but are not limited to tanks, Bradley Fighting Vehicles, drones, and crew served weapons. Items within the remaining FSCs are eligible to transfer to LEAs.

CHARRTS No.: SHSGAC-05-019
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #19

Federal Supply Classes

Question. In May of this year DLA reported 529 Federal Supply Classes were currently available for transfer through the 1033 program. DLA data shows that as late as 2012, grenade launchers were being internally transferred to agencies under the 1010 Federal Supply Class, even though DLA stopped issuing grenade launchers in 1999. Why was the 1010 Federal Supply Class removed from the list of eligible transfers and grenade launchers placed on the restricted list?

Answer. Federal Supply Class (FSC) 1010 is on the list of restricted FSCs, along with 102 other restricted FSCs. FSC 1010 includes weapons between 30mm and 75mm, which are not appropriate for Law Enforcement Agency (LEA) use. LEAs use Vietnam era, single shot grenade launchers to deliver riot control agents, not grenades, and the transfer noted in the question involves transactions of previously issued weapons between LEAs at the state level. The Defense Logistics Agency has not issued a Grenade Launcher since 1999.

CHARRTS No.: SHSGAC-05-020
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #20

Federal Supply Classes

Question. In May of this year DLA reported 529 Federal Supply Classes were currently available for transfer through the 1033 program. What other Federal Supply Classes or items previously transferred are now restricted? When a Federal Supply Class or item is removed from the eligibility list, are agencies required to return all restricted equipment?

Answer. No additional Federal Supply Classes (FSCs) have been restricted since 2012. Currently, when an FSC or item is removed from the eligibility list, the equipment is "grand-fathered", and agencies are not required to return the equipment. However, this policy will be reviewed by the interagency Law Enforcement Equipment Working Group.

CHARRTS No.: SHSGAC-05-021

Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #21

Controlled item transfers

Question. You testified that only 4 percent of all transfers made over the life of the 1033 program are controlled items. Please provide a list of all items used to compute the 4 percent statistic. The list should include FSC, NSN, and Item Name for each item, the quantity of items transferred for the time period for which the 4 percent statistic represents, and the total number of items transferred during this same period. Please provide the data in an editable Excel file.

Answer. In my Oral statement I testified "Within the past 12 months, law enforcement agencies received approximately 1.9 million pieces of excess equipment: 1.8 million pieces of non-controlled or general property, such as office type equipment; and 78,000 pieces of controlled property. That is property that is more tactical in nature."

This 12 month snapshot, calculated at the end of August 2014, was the basis for the 4 percent statistic. While controlled property remains on the property book until transferred or returned to DOD, non-controlled property is removed from the property book after 12 months. Due to data purges of non-controlled property since August 2014 we are unable to provide the specific data requested.

However, the Department is able to supply the data for the 12 month period from January 26, 2014, to January 26, 2015. During this 12 month period, law enforcement agencies received approximately 950,000 pieces of excess equipment: 878,500 pieces of non-controlled or general property (92.5% of property provided during this timeframe) and 71,500 pieces of controlled property (7.5% of property provided during this timeframe).

Please see the requested data attachment titled "RFI Q21.xls". (Available upon request in the HSGAC office.)

CHARRTS No.: SHSGAC-05-022
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #22

List of Denied Requests

Question. You testified that 25 percent of requests made by law enforcement agencies are denied. Please provide a list of all requests submitted in FY 2104 that were denied, including the requesting agency, state, county, items requested by FSC, NSN, and Item Name, reason for denial of the request, and indicate if the request was denied by the DLA or the State Coordinator.

Answer. Please see the attachment titled "RFI Q22.xlsx" (Available upon request in the HSGAC office.)

CHARRTS No.: SHSGAC-05-023
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #23

Response to 2013 DoD IG Memo

Question. What actions did the Department take to increase oversight of the 1033 program as a result of receiving the September 9, 2013, DODIG memo alerting the Under Secretary for AT&L that 125 weapons transferred through the 1033 program were then unaccounted for?

Answer: The Department started taking corrective actions to increase oversight of the 1033 program prior to the September 9, 2013 DOD IG memo to the Under Secretary of Defense for AT&L concerning the 125 unaccounted for weapons. Substantive improvements made to the program a full year prior to the issuance of the letter include:

1) Revised the memorandum of agreement (MOA) with each state, requiring the states to conduct an annual inventory of all controlled property received under the program;

2) Employed the use of a new property accounting system, the Federal Excess Property Management Information System (FEPMIS), which allows both DLA and the Law Enforcement Agencies (LEAs) to manage and to track inventories online;

3) Required States to upload photos and serial numbers into FEPMIS for high profile property such as weapons, tactical vehicles, and aircraft as part of the required annual 100 percent physical inventory of property in LEA custody;

4) Developed standard operating procedures for the program.

CHARRTS No.: SHSGAC-05-024
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Coburn
Question: #24

Program Oversight

Question. As the DOD IG noted in its September 9, 2013, memo, the Department was aware of accountability issues with the 1033 program as far back as 2002, when GAO first reported problems with inventory records. In 2005 GAO reported millions of dollars of weapons and other sensitive military equipment were missing. How was it that the program still suffered from accountability issues and didn't undertake a comprehensive audit of all equipment transferred until 2013? Who in the Department has been held accountable for this systemic lax in basic program oversight?

Answer: As noted by the 2010 audit, although the majority of the property provided by LESO was properly accounted for, safe guarded and used within program guidelines, LESO's policies did not include all the specific procedures necessary to correctly process transactions. During this period, LESO staff was focused on processing daily transactions to support Law Enforcement Agencies. DLA has since instituted substantive improvement to ensure property accountability and program compliance with 1033 program participants.

The 1033 program manager who held the position from 2009-2012 was removed from his position. The focus going forward was to identify and correct systemic program issues, not attributable to an individual, to ensure policies and procedures were in place to meet the intent of the 1033 program to both provide equipment to LEAs in support of their law enforcement duties and to increase rigor in DLA program management to ensure proper account and program compliance. As a result, the program was strengthened through the following:

1) Increased the frequency of Law Enforcement Support Office training and assist visits to State coordinators;

2) Employed the use of a new property accounting system, the Federal Excess Property Management Information System, which allows both the Defense Logistics Agency and the Law Enforcement Agencies to manage and to track inventories online; and

3) Developed standard operating procedures for the program.

Post-Hearing Questions for the Record
Submitted to the Honorable Alan F. Estevez
From Senator Claire McCaskill

"Oversight of Federal Programs for Equipping State and Local Law Enforcement"
September 9, 2014

Review of 1033 list

Question. How often is the list of items available to law enforcement under 1033 reviewed?

Answer. The Defense Logistics Agency reviews the list of items eligible for transfer at least semi-annually.

CHARRTS No.: SHSGAC-05-026
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #26

Condition of equipment on the 1033 list

Question. Please provide a list of the equipment provided under the 1033 program during the last five years that has a Condition Code A and/or is new, "almost new," or "like new." Please include the type of equipment, the recipient, the physical state of the equipment, and the original acquisition cost. For all vehicles on the list, please include a plain English description or the name and manufacturer of the item.

Answer. The Department of Defense uses Condition Codes to describe the physical condition of materiel upon turn-in to the Defense Logistics Agency for possible re-issue. Condition Code "A" is defined as "New, used, repaired or reconditioned materiel which is serviceable and issuable to all customers without limitation or restriction." The Defense Logistics Agency used the term "new" in a January 14, 2014, response to Representative Johnson, as a generalized description of Condition Code A, when referring to equipment provided through the 1033 program. Condition code "A" essentially means useable, or in good condition and includes used and reconditioned property.

Please see the attachment titled "RFI Q26.xlsx". (Available upon request in the HSGAC office.)

CHARRTS No.: SHSGAC-05-027
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #27

Items acquired in the last 5 years on 1033 list

Question. Please provide an accounting of all items acquired by the Department of Defense (DOD) over the past 5 years that also appear on the list of items available to law enforcement under the 1033 program.

Answer. Please see attachment titled "RFI Q27.xlsb" (Available upon request in the HSGAC office.)

CHARRTS No.: SHSGAC-05-028
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #28

Parts Acquisition

Question. What measures does DOD take to ensure that equipment acquired solely for parts is not being used otherwise?

Answer. In accordance with the individual state-signed Memorandum of Agreement, the state coordinator ensures that the items are being used in accordance with the justification provided in the initial request. However, during DLA's annual Program Compliance Reviews, the DLA team verifies that equipment acquired solely for parts is being used accordingly, not as an end item.

CHARRTS No.: SHSGAC-05-029
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies

Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #29

Guidance to State Coordinators

Question. What guidance does DOD provide State Coordinators on limitations or restrictions on what equipment they can disburse to the law enforcement agencies?

Answer. The Memorandum of Agreement that DLA has with each of the participating states outlines the terms and conditions for participation in the program. All requests for property must be based on bona fide law enforcement requirements. DLA also provides guidance to states regarding allocation limits, i.e. weapons, tactical vehicles, and aircraft.

CHARRTS No.: SHSGAC-05-030
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #30

Rejected 1033 applications

Question. Have any law enforcement agency applications to join the 1033 program been rejected by DLA in the past 10 years? If so, please provide a copy of each rejected application, including the name of the law enforcement agency, the date of rejection, and the reason for rejection.

Answer. The Defense Logistics Agency (DLA) does not approve Law Enforcement Agency participation in the 1033 Program. That determination is made by the state coordinator. However, DLA has on occasion had to remind state coordinators that only agencies that are Government agencies whose primary function is the enforcement of applicable Federal, State, local laws, and whose compensated officers have powers of arrest and apprehension are eligible to participate in this program.

CHARRTS No.: SHSGAC-05-031
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #31

Rejected 1033 applications

Question. Is DLA aware of any law enforcement agency applications to join the 1033 program that have been rejected by their respective State Coordinators? If so, please provide a copy of each rejected application, including the name of the law enforcement agency, the date of rejection, and the reason for rejection.

Answer. Yes, the Defense Logistics Agency (DLA) is aware of Law Enforcement Agency applications that have been rejected by their respective State Coordinators. For example, in Delaware the state coordinator rejected a request by the Delaware Office of the State Fire Marshal, and in New Jersey the state coordinator rejected a request from the Mercer County Prosecutor's Office.

DLA does not maintain records of rejections by State Coordinators.

CHARRTS No.: SHSGAC-05-032
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #32

Returned 1033 equipment

Question. In response to Question 5 of Senator McCaskill's August 27, 2014 request for documents, DLA submitted a list of equipment returned from law enforcement agencies to the 1033 program. Please provide the names of the law enforcement agencies that returned the equipment as well as the reason for return in addition to the information already in that list.

Answer. Please see the attachment titled "RFI Q32.xlsx" (Available upon request in the HSGAC office.)

Note 1: Individual Law Enforcement Agency (LEA) names were not available prior to July 2013.

Note 2: LEAs are not required to supply a reason when turning in property to the Defense Logistics Agency; therefore, that information is not available.

CHARRTS No.: SHSGAC-05-033
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill

Question: #33

Annual briefings for law enforcement personnel

Question. Chapter 10 of the U.S. Code, Section 380 provides that the Secretary of Defense, in cooperation with the Attorney General, shall conduct an annual briefing of law enforcement personnel of each state. The briefing will include information on training, technical support, equipment and facilities that are available to civilian law enforcement personnel from the Department of Defense. For all such briefings that took place nationwide from 2011-present:
a. Please provide a list of the date and location of each briefing.
b. Please provide a list of all participants for each briefing.
c. Please provide copies of the information that was presented by DOD during these briefings.

Answer. The briefing locations and dates are:

- FY 2011 – San Antonio, Texas; March 14-18, 2011
- FY 2012 – Seattle, Washington; May 1-3, 2012
- FY 2013 – N/A (this conference was not conducted due to funding availability and the Government shutdown.)
- FY 2014 – Battle Creek, Michigan; November 4-6, 2014

For an attendance list please see attachment titled "RFI Q33b.xlsx". (Available upon request in the HSGAC office.)

For copies of the information that was presented, please see attachments titled "RFI Q33c1.pdf", "RFI Q33c2.pdf", and "RFI Q33c3.pdf". (Available upon request in the HSGAC office.)

CHARRTS No.: SHSGAC-05-034
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #34

Role of State Coordinators

Question. State Coordinators serve as a filter for 1033 program requests - taking requests from law enforcement agencies, compiling them, and submitting them to DLA. Can State Coordinators request equipment that has not been requested by local law enforcement agencies?

Answer. Yes, this may be authorized on a case-by-case basis. The Defense Logistics Agency has approved five States (Florida, Illinois, Missouri, Pennsylvania, and Wisconsin) to operate as a Transitional Distribution Point, which authorizes the State Coordinator or appointed

state point of contact to request equipment on behalf of their Law Enforcement Agencies.

CHARRTS No.: SHSGAC-05-035
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #35

Role of State Coordinators

Question. State Coordinators serve as a filter for 1033 program requests - taking requests from law enforcement agencies, compiling them, and submitting them to DLA. Do State Coordinators request equipment a certain number of times each year or on a rolling basis as they receive requests from law enforcement agencies?

Answer. State Coordinators review and process requests for excess Department of Defense property throughout the year.

CHARRTS No.: SHSGAC-05-036
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #36

1033 list updates

Question. How often is DLA's list of available items updated?

Answer. The list of 103 restricted Federal Supply Classes is reviewed biannually by the Defense Logistics Agency (DLA) in coordination with the Department of Justice and Department of Homeland Security. DLA receives property from the Department of Defense and updates the property available to all customers on a daily basis.

CHARRTS No.: SHSGAC-05-037
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill

Question: #37

Law enforcement agency terminations

Question. Of the law enforcement agencies that had weapons stolen or go missing over the last three years, it appears that only two were terminated. Were these indefinite terminations or one year terminations? What is the basis for deciding to suspend, terminate for one year, or issue an indefinite termination of a law enforcement agency?

Answer. Terminations are not indefinite but must be in place for a minimum of one year. A Law Enforcement Agency (LEA) that has been suspended or terminated from the 1033 Program may request reinstatement. When requesting reinstatement, LEAs must demonstrate how deficiencies have been addressed and risks mitigated.

A LEA is suspended for a minimum of 30 days if a controlled item cannot be accounted for during the program compliance review or when self-reported by the LEA. If it is determined that there was negligence on the part of the LEA, then the Defense Logistics Agency will decide whether a longer suspension or termination is necessary.

CHARRTS No.: SHSGAC-05-038
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #38

DLA site visits and audits

Question. How many DLA employees do you have available to conduct site visits and on-site audits?

Answer. The Defense Logistics Agency has six employees with the primary function of conducting site visits/compliance reviews.

CHARRTS No.: SHSGAC-05-039
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #39

Contractors in the disposal program

Question. Are there any contractors involved in any aspect of the equipment disposal program? If so, what type of work do they perform and what is the rationale for using contractors to conduct oversight instead of hiring federal employees?

Answer. The Defense Logistics Agency has two contractor personnel assisting with inventory management. They do not perform oversight functions.

CHARRTS No.: SHSGAC-05-040
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #40

Specific transfers

Question. Please provide information regarding the following transfers of equipment under the 1033 program, including a description of the items transferred, any justification given by the State Coordinator expressing a need for such equipment, and any oversight conducted by DLA to ensure that the equipment was properly distributed.

- On Aug. 30, 2012, the Anchorage Department of Public Safety received 123 rifles worth $61,377.
- In a 6 month span in 2012, the Adamsville, AL police department, a town of 4,500 people, received 4 utility trucks valued at $206,357.
- On April 26, 2012, the Montgomery, AL Department of Conservation received 122 5.56 millimeter rifles (value: $60,878).
- On May 10, 2013, the Alabama A&M University Police Department received 2 utility trucks (Value: $78,104).
- The Albertville, AL Police Department, a town of 21,160, received 14 utility trucks valued at $581,612.
- In Jan, 2013, the city of Andalusia, AL, population 9,015, received 2 Remote Ordnance Neutralization Systems valued at $354,894.

Answer.

Note 1: Before July 1, 2013, when the Defense Logistics Agency (DLA) adopted the use of Federal Excess Property Management Information System (FEPMIS), the property accountability system in place did not have the capability to track specific transaction details.

Note 2: The current allocation standard for issuance of weapons is one weapon for every full-time or part-time officer assigned to a Law Enforcement Agency (LEA).

- *On Aug. 30, 2012, the Anchorage Department of Public Safety received 123 rifles worth*

$61,377. Our records indicate that in 1997, vice August 2012, the Department of Public Safety, Anchorage, Alaska, requested 125 M-16 rifles and DLA transferred 124. As of the certification of the 2013 annual inventory, the LEA has 123 rifles on record with one rifle reported as missing as of June 25, 2012, which is currently under investigation. A Program Compliance Review was conducted in August 2014. This transfer is in accordance with current DLA allocation limits: in this case, 1 weapon per officer.

- *In a 6 month span in 2012, the Adamsville, AL police department, a town of 4,500 people, received 4 utility trucks valued at $206,357.* As of the certification of the 2013 Annual Inventory, DLA confirms that the Adamsville, Alabama, Police Department received these soft skinned HMMWVs in the stated timeframe. This transfer is in accordance with the DLA allocation limits: in this case, in this case, one HMMWV per three officers.

- *On April 26, 2012, the Montgomery, AL Department of Conservation received 122 5.56 millimeter rifles (value: $60,878).* On August 3, 2011, the Department of Conservation, Wildlife and Freshwater Fisheries requested and was transferred 122 5.56mm rifles (M16s). As of the certification of the 2013 annual inventory, the LEA has 122 M-16s. This transfer is in accordance with the DLA allocation limits: in this case, one weapon per officer.

- *On May 10, 2013, the Alabama A&M University Police Department received 2 utility trucks (Value: $78,104).* In May 2013, Alabama A&M Police Department requested and was transferred two soft skinned HMMWVs. The justification included with the request indicated the soft skinned HMMWVs would be used as Police Department SWAT vehicles. This transfer is in accordance with the DLA allocation limits: in this case, one HMMWV per three officers.

- *The Albertville, AL Police Department, a town of 21,160, received 14 utility trucks valued at $581,612.* In 2012, the Albertville, Alabama. Police Department requested and was transferred seven soft skinned HMMWVs. In 2013, an additional seven soft skinned HMMWVs were requested and transferred with the justification that the soft skinned HMMWVs will be used by the Police Department during inclement weather and other emergency situations. This transfer is in accordance with the DLA allocation limits: in this case, one HMMWV per three officers.

- *In Jan, 2013, the city of Andalusia, AL, population 9,015, received 2 Remote Ordnance Neutralization Systems valued at $354,894.* In January and February 2014, the Andalusia, Alabama. Police Department requested and was transferred two Remote Ordnance Neutralization Systems, commonly referred to as "bomb robots."

Please see attachment for Question #41

CHARRTS No.: SHSGAC-05-045
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement

Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #45

Determination of available equipment

Question. Who determines what equipment is made available to local law enforcement under the 1033 program? Please provide a short description of the process followed to reach that determination, including the people involved in the decision making process.

Answer. The Military Services turn-in excess property to DLA Disposition Services on a daily basis, and that excess property is first made available for reutilization within the Department of Defense. If the property is not requested from within the Department, property may then be eligible for transfer to a Law Enforcement Agency (LEA).

DLA has determined that 103 federal supply classes (FSC), whose predominant purpose is for combat operations, are not suitable for transfer outside the DoD. This includes tanks, Bradley Fighting Vehicles, drones, and crew served weapons. Items within the remaining FSCs are eligible to transfer to LEAs.

After the State Coordinator (SC) determines that the items are suitable for use for the LEA, a request is forwarded to LESO by the SC that includes justification on how the LEA will utilize the property.

Before a request is approved, DLA makes a case-by-case determination considering the justification for the requested property and then approves or denies the request based on current property availability and current LEA 1033 Program inventory, ensuring fair and equitable distribution of available property to the greatest extent possible.

Post-Hearing Questions for the Record
Submitted to the Honorable Alan F. Estevez
From Senator Mark Pryor

"Oversight of Federal Programs for Equipping State and Local Law Enforcement"
September 9, 2014

DLA evaluation of requests

Question. What is the average length of time for the Defense Logistics Agency (DLA) to evaluate and determine a state's request for equipment or property? Are there a separate consideration tracks for the controlled versus non-controlled property? What type of guidance does the DLA provide states with on their requests? How does the DLA determine which pieces of property are available to be purchased by states? Do states have specific criteria to meet in their

request for property? If so, please list the specific criteria.

Answer.

1. What is the average length of time for the Defense Logistics Agency (DLA) to evaluate and determine a state's request for equipment or property?

   Once the request has been received and the justifications approved by DLA, the average processing time is one day.

2. Are there a separate consideration tracks for the controlled versus non-controlled property?

   Yes, we do use separate consideration tracks for controlled and non-controlled property.

3. What type of guidance does the DLA provide states with on their requests?

   The Memorandum of Agreement (MOA) that DLA has with each of the participating states outlines the terms and conditions for participation in the program. These terms and conditions include that property must not be obtained for the purpose of sale, lease, loan, personal use, rent, exchange, barter, to secure a loan, or to otherwise supplement normal LEA's budget. DLA also provides guidance to States regarding allocation limits. Additionally, we have continuous coordination and dialogue through State Coordinators quarterly teleconferences, annual training events, and routine communications regarding requests.

4. How does the DLA determine which pieces of property are available to be purchased by states?

   DLA does not sell items to states. Instead, excess material is issued free of charge to participating LEAs. DLA has determined that 103 federal supply classes (FSC), whose predominant purpose is for combat operations, are not suitable for transfer outside the DoD. This includes tanks, Bradley Fighting Vehicles, drones, and crew served weapons. Items within the remaining FSCs are eligible to transfer to LEAs.

5. Do states have specific criteria to meet in their request for property? If so, please list the specific criteria.

   All requests for property must include supporting justification indicating the law enforcement activities for which the property would be used. State specific criteria are outlined in each State's individual plan of operations.

CHARRTS No.: SHSGAC-05-043
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement

Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Pryor
Question: #43

Reasons requests are denied

Question. In your testimony, you mentioned that 25% of law enforcement agency requests are denied either by the DLA or the State Coordinator. What are the most common and consistent reasons for denials?

Answer. The most common and consistent reasons for which DLA would deny a request are:

1. The property is no longer available;

2. The State and/or LEA provided insufficient justifications for the property or its intended use;

3. The State and/or LEA has already met the allocation limits for that individual commodity.

CHARRTS No.: SHSGAC-05-044
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agnecies
Witness: PDUSD(AT&L) Estevez
Senator: Senator Pryor
Question: #44

Accountability and management issues

Question. Would you please detail specific examples of accountability and management control issues that the DLA is seeing which results in a state's program suspension or termination? How does the DLA work with states to resolve accountability and management control issues?

Answer. All suspensions from the program have been for non-compliance with program requirements. Typical accountability issues resulting in suspensions include:

1) Missing or unaccounted for high profile property such as weapons, vehicles;

2) Failure to meet the annual inventory requirements; and

3) Failure of program compliance reviews.

For example, North Carolina and Alabama are suspended for failure to comply with annual inventory requirements. Furthermore, repeated failure by states and/or Law Enforcement Agencies (LEAs) to comply with requirements or correct identified discrepancies after a suspension, will result in the termination of the LEA from the 1033 Program.

We visit the states and work directly with the state coordinators to provide assistance with accountability and management control questions.

CHARRTS No.: SHSGAC-05-041
Senate Committee on Governmental Affairs
Hearing Date: September 09, 2014
Subject: Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Witness: PDUSD(AT&L) Estevez
Senator: Senator McCaskill
Question: #41

Specific equipment

Question. Please provide a description as well as any available pictures of for the following items transferred through the 1033 program.1010-00-691-1382 LAUNCHER, GRENADE1080-00-103-1211 CAMOUFLAGE SCREENING SYSTEM1080-00-103-1233 CAMOUFLAGE SCREENING SYSTEM, SNOW LIGHT WEIGHT RADAR SCATTERING1095-00-913-2602 BAYONET1345-00-402-2226

MINE, ANTIPERSONNEL, PRACTICE1375-01-509-3981 DEMOLITION KIT, BREACHING SYSTEM,ANTI-PERSONNEL OBSTACLE1375-00-047-3750

DEMOLITION SET, EXPL1375-00-093-0090 CASE, DEMOLITION CHARGE1375-00-212-4602 CLIP, CORD DETONATING1375-00-567-0223 BLASTING MACHINE1375-01-021-0606 FIRING DEVICE, DEMOLITION1375-01-355-9060

CONTROL, REMOTE, FIRING DEVICE1375-01-417-7104 BLASTING MACHINE1385-DS-SUR-FEXP SURFACE USE EXPLOSIVE ORDNANCE2320-00-077-1631 TRUCK, TANK2320-01-044-7133 TRUCK, ARMORED2320-01-123-1601 LIGHT ARMORED VEHICLE2320-01-128-9551

TRUCK, UTILITY2320-01-437-6957 ARMORED SECURITY VEHICLE (ASV)2320-01-467-0677 FAST ATTACK VEHICLE5860-DS-LAS-ER00

STIMULATED COHERENT RADIATION DEVICES5865-01-421-0799

COUNTERMEASURES SET5865-01-533-5336 BLUE FORCE TRACKING SYSTEM, CF-295865-01-549-8562 COUNTERMEASURES SET5865-DS-ECM-ECCM

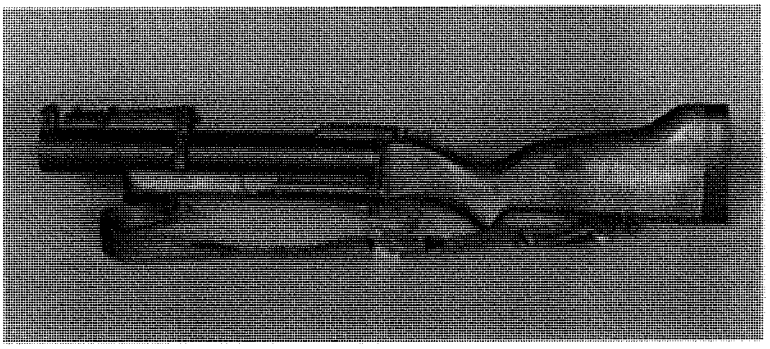
ELECTRONIC COUNTERMEASURES5895-01-055-2252 DETECTOR, RADIO FREQUENCY5895-01-063-8103 PLATOON EARLY WARNING SYSTEM5895-01-024-0394 COAXIAL CIRCULATOR5895-01-064-1697 DETECTOR, ANTI-INTRUSION5895-01-065-1079 COAXIAL TERMINATION5895-01-068-6747

PLATOON EARLY WARNING SYSTEM

Answer.

1010-00-691-1382 LAUNCHER, GRENADE

Used by LEAs to disburse Riot Control Agents.



1080-00-103-1211 CAMOUFLAGE SCREENING SYSTEM

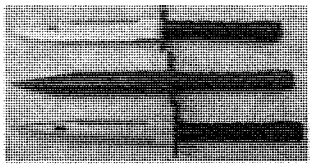
DESERT CAMO NETTING – Used by LEAs for shade and concealment while conducting surveillance missions

1080-00-103-1233 CAMOUFLAGE SCREENING SYSTEM, SNOW LIGHT WEIGHT RADAR SCATTERING

SNOW CAMO NETTING- Used by LEAs for shade and concealment while conducting surveillance missions

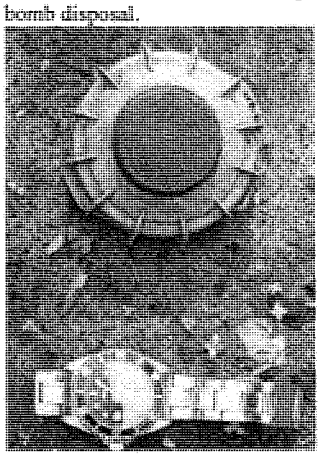
1095-00-913-2602 BAYONET

Utility knife used by LEAs as a pry bar, for cutting seatbelts, breaking windshields, and other cutting applications.



1345-00-402-2226 MINE, ANTIPERSONNEL, PRACTICE

Used by LEA for SWAT training aides for Breech training, "booby trap" training, and SWAT bomb disposal.



1375-01-509-3981 DEMOLITION KIT, BREACHING SYSTEM,ANTI-PERSONNEL OBSTACLE

Used by LEA for SWAT training aides for Breech training, "booby trap" training, and SWAT bomb disposal.

(No image available)

1375-00-047-3750 DEMOLITION SET, EXPL

Used by LEA for SWAT training aides for Breech training, "booby trap" training, and SWAT bomb disposal.

(No image available)

1375-00-093-0090 CASE, DEMOLITION CHARGE

Used by LEA for SWAT training aides for Breech training, "booby trap" training, and SWAT bomb disposal.

(No image available)

1375-00-212-4602 CLIP, CORD DETONATING

Used by LEA for SWAT training aides for Breech training, "booby trap" training, and SWAT bomb disposal.

(No image available)

1375-00-567-0223 BLASTING MACHINE

Used by LEA for SWAT training aides for Breech training, "booby trap" training, and SWAT bomb disposal.

(No image available)

1375-01-021-0606 FIRING DEVICE, DEMOLITION

Used by LEA for SWAT training aides for Breech training, "booby trap" training, and SWAT bomb disposal.

(No image available)

1375-01-355-9060 CONTROL, REMOTE, FIRING DEVICE

Used by LEA for SWAT training aides for Breech training, "booby trap" training, and SWAT bomb disposal.

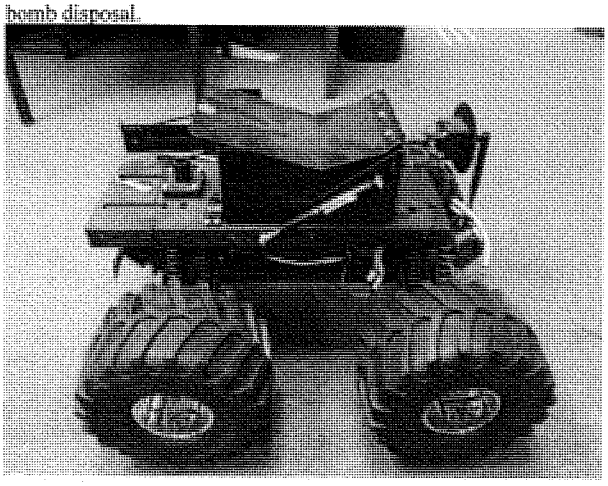
(No image available)

1375-01-417-7104 BLASTING MACHINE

Used by LEA for SWAT training aides for Breech training, "booby trap" training, and SWAT bomb disposal.
(No image available)

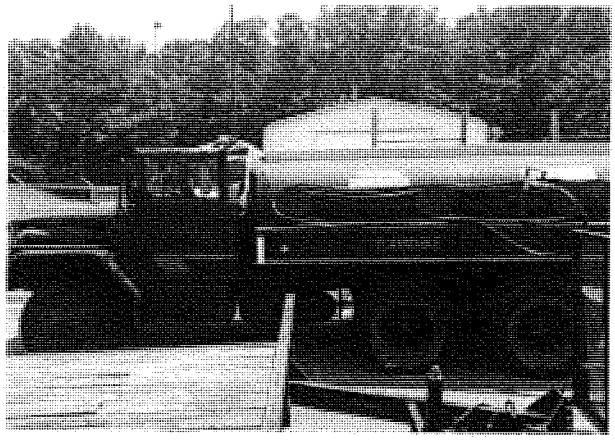
1385-DS-SUR-FEXP SURFACE USE EXPLOSIVE ORDNANCE

Used by LEA for SWAT training aides for Breech training, "booby trap" training, and SWAT bomb disposal.



2320-00-077-1631 TRUCK, TANK

Used by LEA for Refueling of vehicles and aircraft

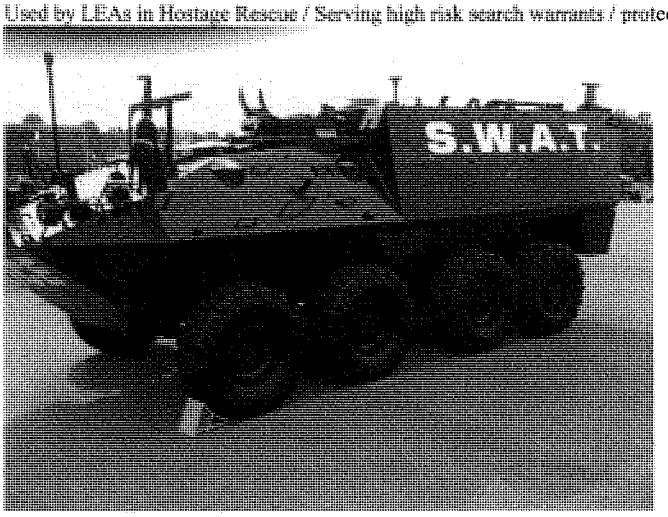


2320-01-044-7133 TRUCK, ARMORED

Used by LEAs in Hostage Rescue / Serving high risk search warrants / protection of officers

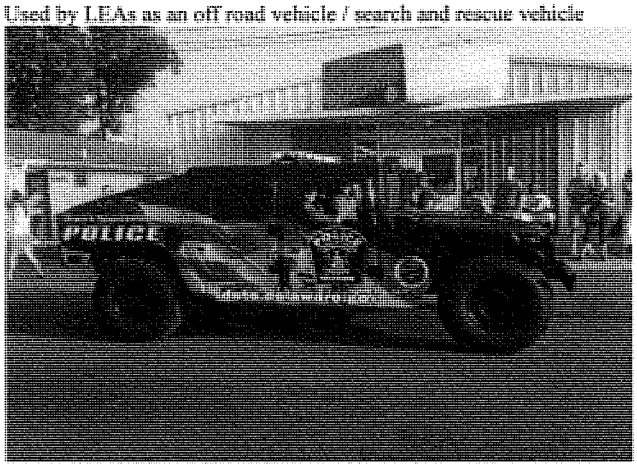
2320-01-123-1601 LIGHT ARMORED VEHICLE

Used by LEAs in Hostage Rescue / Serving high risk search warrants / protection of officers



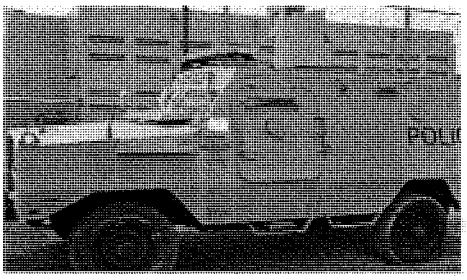
2320-01-128-9551 TRUCK, UTILITY

Used by LEAs as an off road vehicle / search and rescue vehicle



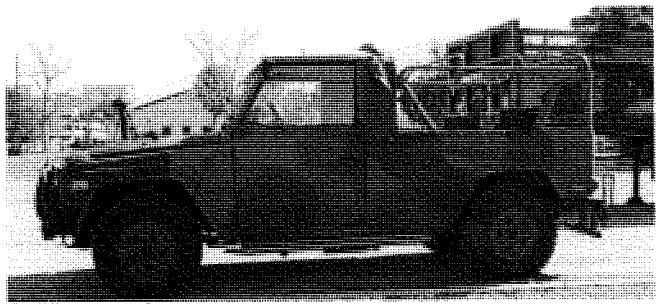
2320-01-437-6957 ARMORED SECURITY VEHICLE (ASV)

Used by LEAs for Hostage Rescue / Serving high risk search warrants / protection of officers



2320-01-467-0677 FAST ATTACK VEHICLE

Used by LEAs as a as an off road vehicle / search and rescue vehicle



5860-DS-LAS-ER00 STIMULATED COHERENT RADIATION DEVICES

Used by LEAs as a Training tool in detecting radiation.

(No image Available)

5865-01-421-0799 COUNTERMEASURES SET

Used by LEAs in Radio jamming device for surveillance missions.

(No image available)

5865-01-533-5336 BLUE FORCE TRACKING SYSTEM, CF-29

Used by LEAs to track vehicles via GPS.

(No image available)

5865-01-549-8562 COUNTERMEASURES SET

Used by LEAs as a Radio Jamming device for surveillance missions.

(No image available)

5865-DS-ECM-ECCM ELECTRONIC COUNTERMEASURES

Used by LEAs as a Radio Jamming device for surveillance missions.

(No image available)

5895-01-055-2252 DETECTOR, RADIO FREQUENCY

Used by LEAs as a radar gun for speeding vehicles

(No image Available)

5895-01-063-8103 PLATOON EARLY WARNING SYSTEM

Used by LEAs as a security alarm.

(No image available)

5895-01-024-0394 COAXIAL CIRCULATOR

Used by LEAs to connect TV cables and monitors.

(No image available)

5895-01-064-1697 DETECTOR, ANTI-INTRUSION

Used by LEAs as a security alarm.

(No image available)

5895-01-065-1079 COAXIAL TERMINATION

Used by LEAs to connect TV cables and monitors.

(No image available)

5895-01-068-6747 PLATOON EARLY WARNING SYSTEM

Used by LEAs as a security alarm.

(No image available)

Post-Hearing Questions for the Record
Submitted to Brian E. Kamoie
From Senator Thomas R. Carper

"Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies"

September 9, 2014

Question#:	1
Topic:	preparedness grant dollars
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

Question: In discussing successful uses of preparedness grant dollars, the Department has noted that the use of equipment purchased by Massachusetts and Boston law enforcement agencies assisted in the response to the 2013 Boston Marathon bombing. One specific example cited was that during the pursuit, a Forward Looking Infrared (FLIR) camera purchased with preparedness grant funds facilitated the apprehension of Dzhokhar Tsarnaev. Please clarify the role preparedness grant dollars played in the response to the bombing, including in Tsanaez's apprehension.

Response: Since 2002, Massachusetts has received more than $990 million in preparedness grant funds. Since 2003, Boston has received more than $415 million through eight grant programs, including $210 million through Urban Area Security Initiative (UASI) grants.

The response by Massachusetts and Boston emergency response agencies, including law enforcement, in the aftermath of the 2013 Boston Marathon bombing, remains a sterling example of the value of the preparedness grant programs. Much of the multi-jurisdictional, multi-discipline response by both state and local agencies was facilitated by the continual planning, training, exercises and equipment investments made possible by preparedness grant dollars. For example:

- *Urban Shield Boston 2011*: the multi-discipline, multi-agency full scale exercise, Urban Shield Boston 2011, provided first responders from the Metropolitan Boston Homeland Security Region (MBHSR) with real-world simulations of terrorist attacks within a highly urbanized environment. This exercise is an excellent example of the Federal and state/local partnership and use of grant funds for extensive planning and execution. The entire cost of this exercise was paid for by UASI funding. Also, the capabilities which were established and enhanced by

Question#:	1
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the UASI grant program and exercises such as Urban Shield have provided MBHSR first responders with the tools, equipment, training, skills and knowledge to respond aggressively to a terrorist threat or attack. Additionally, this exercise demonstrated how Homeland Security Grant funds can become a true force multiplier when coupled with highly skilled and professional emergency managers, command staff, SWAT team members, canine handlers, bomb technicians, firefighters, emergency medical technicians, paramedics, and Urban Search and Rescue technicians.

- *Interoperable Communications*: The Boston UASI has utilized DHS/FEMA grant funds to ensure first responders can communicate across jurisdictional lines and disciplines. The Urban Shield Exercise also provided a large scale test of the communications interoperability for the Metropolitan Boston Homeland Security Region (MBHSR). Each exercise site was assigned a specific radio channel and frequency for communications. There were some minor communications difficulties during the first round of exercises but problems were identified and fixed. From fiscal years 2006 to 2009, the Boston UASI invested a total of $13.8 million for communications interoperability. These funds have been used to provide a seamless, simple, and easy to use radio system for the nine jurisdictions and ten first responder disciplines within the MBHSR.

We believe firmly, as do Massachusetts and Boston officials, that many of the capabilities demonstrated in Boston in the immediate aftermath of the bombing, including the apprehension of the suspects, were built or enhanced–and have been sustained–through the preparedness grant funding made available under the Homeland Security Grant Program, including the Urban Areas Security Initiative and the State Homeland Security Program.

More specifically, Emergency Medical Services Special Operations Vehicles were staged at the Boston Marathon event as a routine measure. These vehicles are equipped with "medical surge" equipment needed to treat multiple casualties and were engaged in the mass care response within minutes of the bombing. In addition to explosive ordinance and detection equipment, explosive scent detecting canines were deployed in response to the Marathon Bombing. These specialized dogs and their handlers performed searches for suspects and additional explosive devices within the target area. The patient tracking system allowed Emergency Medical Services incident commanders to effectively track patients, their conditions, and where they were transported. As noted, the Massachusetts State Police Helicopter used to search for the suspects had a Forward Looking Infrared (FLIR) camera system. Following up on the tip from a home/boat owner, the

Question#:	1
Topic:	preparedness grant dollars
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

Massachusetts state police used the FLIR system to see the heat signature of suspect #2 (later identified as Dzhokhar Tsarnaev) and detect movement as he hid beneath a tarp on a boat. This allowed police–from a safe distance -to confirm suspect #2's presence and evaluate the threat he posed. This facilitated both situational awareness and operational coordination. We believe, as do Massachusetts and Boston officials, that the FLIR camera was instrumental in the apprehension of the suspect and protected the safety of law enforcement officers engaged in the search.

The multi-jurisdictional, multi-discipline response to the 2013 Boston Marathon bombing by both state and local agencies, facilitated by their continual planning, training, exercises and equipment enhancements, remains a benchmark example of how advance preparedness efforts come together to enable a highly effective response and demonstrates the ongoing value of the preparedness grant programs.

Post-Hearing Questions for the Record
Submitted to Brian E. Kamoie
From Senator Tom A. Coburn, M.D.

"Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies"

September 9, 2014

Question#:	2
Topic:	Preparedness Grants
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Tom A. Coburn
Committee:	HOMELAND SECURITY (SENATE)

Question: As you know I have looked closely at FEMA preparedness grants several times, as has the Chairman, and we are all familiar with the way these programs work and their inherent structural challenges, which keep FEMA from having practical insight into what specific items local agencies are buying with this grant money, or how they use items they have bought.

Do you think those challenges are a problem to the responsible administration of these programs?

If you were to recommend three reforms to Congress to improve your agency's ability to oversee the grants you distribute, what would they be?

Response: The Department of Homeland Security (DHS) has realized the challenge of managing a large multi-billion dollar federal grant program. To address this, DHS has had a number of conversations with congressional staff regarding the implementation of a project-based approach to grants management as a necessary solution to address several challenges: 1) the potential funding of duplicative projects across grant programs as a result of insufficient project level information available at the time of award; 2) the inability to report dollars spent at the project or purchase level; and 3) the inability to prioritize and filter grant dollars to the most critical gaps in national preparedness. The adoption of project-based applications has also been discussed as part of hearings before the House Committee on Homeland Security as well as the Senate Committee on Homeland Security and Governmental Affairs. (On this point see the statement by FEMA Deputy Administrator Manning before the House Committee on Homeland Security, Subcommittee on Emergency Preparedness, Response and Communications for the hearing titled "Homeland Security Grants: Measuring Our Investments", March 19, 2013. Also see the statement by FEMA Deputy Administrator Manning before the Senate

Question#:	2
Topic:	Preparedness Grants
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Tom A. Coburn
Committee:	HOMELAND SECURITY (SENATE)

Committee on Homeland Security and Governmental Affairs, Subcommittee on Emergency Management, Intergovernmental Relations and the District of Columbia for the hearing titled "Grants Measurement and Performance Measures", June 25, 2013.)

DHS prioritized the incorporation of a project-level approach to the management and administration of the preparedness grant programs. The project-based approach to the grant application is built upon a common set of foundational data elements that will allow DHS to compare projects within and across awards and measure progress within programs. Within the limitations of our current systems, DHS is gathering applicant data upfront at the project level in order to categorize the project as a discrete unit for pre-award evaluation and post-award management, reporting, and monitoring purposes.

We believe this change will enhance our ability to manage the grant program and allow the Department to be better stewards of federal grant funding. In addition, the Department is participating in the ongoing White House review of federal assistance programs, and, with the White House and other participating Federal agencies, will consider potential changes to the Department's grant administration practices.

Question#:	3
Topic:	Authorized Equipment List
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Tom A. Coburn
Committee:	HOMELAND SECURITY (SENATE)

Question: According to FEMA's Authorized Equipment List, "battle dress uniforms" are an authorized purchase under your Preparedness Grant programs. So are boots, body armor, ballistic helmets, protective padding such as knee pads, and ballistic shields.

How does FEMA enforce that prohibition?

Is FEMA capable of enforcing that prohibition?

What is the purpose of allowing equipment purchases with prohibitions in place that are essentially unenforceable?

Response: As intended by Congress and as specified in the authorizing language of the Homeland Security Grant Programs, all investments must assist governments in achieving target capabilities related to preventing, preparing for, protecting against, or responding to acts of terrorism. As the safety of law enforcement personnel and other first responders is of critical importance, the purchase of ballistic personal protective equipment is allowable for this purpose. The authorizing language also provides for multi-purpose use of all Homeland Security Grant Program investments. This "dual-use" provision permits the use of preparedness investments in a manner that enhances preparedness for disasters unrelated to terrorism if such use also assists governments in achieving target capabilities related to preventing, preparing for, protecting against, or responding to acts of terrorism. The Authorized Equipment List (AEL) notes that certain ballistic protective equipment, including body armor, helmets, face shields, and eye/ear protection, is not for riot suppression. To date, FEMA is not aware of any grantee violating the riot suppression language in the AEL. FEMA works with the grantee, the State Administrative Agency, to ensure compliance through monitoring and audits.

In reviewing the use of those preparedness grant dollars, the Department will make every effort to evaluate whether the use was appropriate and in keeping with the requirements governing the preparedness grant programs, including the AEL's riot suppression language. This also includes the requirement and assurance that federal grant dollars not be used to engage in any conduct that is contrary to any federal, State, or local law. If grant-funded equipment is used in a way contrary to program or other requirements, the Department, in coordination with the grantee, has the option of several remedies. These remedies include requiring corrective action plans and the potential recoupment of preparedness grant funds if those funds are connected to equipment associated with

Question#:	3
Topic:	Authorized Equipment List
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Tom A. Coburn
Committee:	HOMELAND SECURITY (SENATE)

actions contrary to program and other requirements, including the AEL's riot suppression language.

Question#:	4
Topic:	Counterterrorism Uses
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Tom A. Coburn
Committee:	HOMELAND SECURITY (SENATE)

Question: Again according to the AEL, other categories of allowable purchases include "tactical entry equipment," "explosive entry equipment," and "portable explosive magazines," although not explosives themselves.

Is the purpose of UASI and SHSP grants counterterrorism preparedness?

Let's say there is a known terror suspect who poses such an immediate and grave danger, his arrest requires a SWAT team to conduct a tactical entry using explosives. Is it your understanding that the federal authorities would allow or direct a local police force to conduct that raid, using only local equipment?

Is it that assumption that keeps such items on the Authorized Equipment List, and makes that equipment available using grant funds to any police agency which wants it?

Response: As provided under the *Homeland Security Act of 2002*, as amended, the purpose of the preparedness grant programs, including the State Homeland Security and the Urban Areas Security Initiative Grant Programs, is to assist State, local, and tribal governments to build and sustain capabilities to prevent, prepare for, protect against, and respond to acts of terrorism. One of the many allowable uses of preparedness grant funds is the purchase of various types of equipment, including equipment employed by law enforcement agencies. Indeed, the Authorized Equipment List, which governs and assists grantees in identifying equipment allowed under the programs, is comprised of equipment used by a myriad of emergency response disciplines to prepare for, respond to, and recover from acts of terrorism.

Many of the capabilities built and sustained with preparedness grant dollars directly support law enforcement responses to terrorist events. The Department has not attempted to oversee or judge tactical decisions made by individual agencies, including law enforcement agencies, in their response to specific events.

Question#:	5
Topic:	Requested Review of Federal Programs
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Tom A. Coburn
Committee:	HOMELAND SECURITY (SENATE)

Question: Your prepared testimony mentions President Obama's request for a review of federal programs that fund state and local law enforcement agencies. You said that officials at DHS "look forward to contributing this effort." The president's announcement was over two weeks ago.

Are you aware of any work beginning on this review effort, aside from the announcement?

The last my staff spoke with senior personnel in your office, no one had been contacted by the White House regarding this review. Has that changed?

Do you know the name of the White House official who is overseeing the review?

Have there been any meetings to discuss this review?

What is the timeline? When are findings expected?

Response: The Department of Homeland Security was initially contacted by the White House in late August. FEMA's Grant Programs Directorate (GPD) has been actively engaged in the review process since that time.

The White House is in the best position to provide details on the timeline of the process. To date there have been multiple meetings and conference calls held in connection with the ongoing review.

Post-Hearing Questions for the Record
Submitted to Brian E. Kamoie
From Senator Claire McCaskill

"Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies"

September 9, 2014

Question#:	6
Topic:	grantee site visits
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: How many Department of Homeland Security (DHS) employees do you have available to conduct site visits and on-site audits of grant recipients?

How many grantee site visits does DHS conduct annually?

Response: FEMA monitors grants awarded under the preparedness grant programs both on a programmatic level and a financial level. At a minimum, all open awards receive an annual desk review at the programmatic and financial level. On-site reviews are more limited and depend on a variety of factors, including available resources and staff.

Currently, FEMA has twenty-one (21) federal programmatic staff members who manage the individual grants awarded under the State Homeland Security Grant Program (SHSP) and Urban Area Security Initiative (UASI). In addition, FEMA has twenty-six (26) federal grant managers who provide financial oversight of these grants. As part of FEMA's oversight activities during fiscal years 2012-2014, FEMA has conducted sixty-two (62) financial site visits on HSGP recipients. On average, 26 financial site visits on HSGP recipients are conducted annually.

Grants under both SHSP and UASI are awarded directly to the states. Each state makes sub-awards to eligible entities within the state as well as providing UASI funds to designated urban areas. Under both the SHSP and UASI, FEMA's monitoring efforts focus on the states as the grantee. Each state, however, is responsible for the programmatic and financial oversight of its sub-awards. As a matter of oversight, FEMA can and does request equipment inventories and other information, where necessary, to review sub-grantee expenditures.

Question#:	7
Topic:	contractors
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: Are there any contractors involved in any aspect of the grantee monitoring program? If so, what type of work are the contractors doing in the oversight process and what was the rationale for using contractors to conduct oversight instead of hiring federal employees?

Response: Although FEMA has employed contractors in support of its programmatic and financial monitoring efforts, FEMA has not used, and does not use, contractors to perform actual monitoring activities. FEMA's grant monitoring activities, including desk reviews and on-site monitoring, are conducted by Federal staff.

FEMA's use of contract support in both programmatic and financial monitoring has been limited to a supporting role to assist FEMA in the development and establishment of the systems, including information tracking systems, to support FEMA's grant monitoring activities conducted by Federal staff.

FEMA has also employed contractors to assist FEMA staff in the development of several financial monitoring protocols, including the development of FEMA's "risk based" monitoring program. In addition, contract support was useful in the development of performance metrics and measures for accessing monitoring activities of Federal staff. As such, FEMA's use of contract support for its monitoring activities has been limited and the use of that contract support ended as of July 31, 2014.

Question#:	8
Topic:	law enforcement agencies
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: Is it permissible for law enforcement agencies to use DHS grant funds to maintain their existing equipment?

Is it permissible for law enforcement agencies to use DHS grant funds to pay for the transportation costs of obtaining equipment from other sources, such as the Department of Defense's 1033 program?

Response: It is generally permissible to use FEMA preparedness grant funds to maintain existing equipment. Information Bulletin (IB) 336, issued on November 20, 2009 identified maintenance costs as allowable expenses. The IB states, in part:

> Effective immediately, the use of FEMA preparedness grant funds for maintenance contracts, warranties, repair or replacement costs, upgrades, and user fees are allowable under all active and future grant awards, unless otherwise noted.

In February 2012, FEMA published IB 379, which expanded the allowability of maintenance and sustainment costs. In part, this IB states:

> DHS/FEMA's policy on maintenance and sustainment as communicated in GPD's Information Bulletin #336 "*Maintenance and Sustainment*" dated November 20, 2009, has been expanded to allow for the support of equipment, training, and critical resources that have previously been purchased with *either* federal grant *or* any other source of funding other than DHS/FEMA preparedness grant program dollars. This policy to expand allowability of maintenance and sustainment costs applies to all open grant years from FY 2007 to 2012.

FEMA has continued this policy through the HSGP Funding Opportunity Announcements for fiscal years 2013 and 2014.

In response to stakeholders' questions on use of grant funds to support Military Surplus Equipment under the expanded allowability of IB 379, FEMA issued an internal policy memo providing staff clear criteria when addressing stakeholders' concerns and questions as they related to Military Surplus Equipment. Staff utilized this memo to clarify that grantees were permitted to use grant funds to pay for delivery and refurbishing of military surplus equipment under IB 379 under the following conditions:

Question#:	8
Topic:	law enforcement agencies
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

- The equipment that is being transported and/or refurbished fits the mission/scope of the grant program being utilized
- The equipment being transported and/or refurbished is allowable per the Authorized Equipment List or the expanded allowable costs identified in the IB #379.
- There is clear cost-benefit to the activity, as detailed by the grantee
- The FEMA Grant Programs Directorate has approved the use of grant funding for the associated refurbishment/transportation costs, and provides written notice to the grantee
- No GPD grant funding is transferred to DoD or any other federal agency for the acquisition, refurbishment and/or transport of the equipment
- Transportation and refurbishment are handled by a non-Federal entity and transportation occurs domestically and not internationally. Under no circumstances should the grantee pay for transportation costs that are inherently the responsibility of DoD (or other Federal agencies).

Question#:	9
Topic:	DHS grants
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: What efforts does DHS make, if any, to ensure that grant applicants have qualified personnel capable of using the equipment they can buy with DHS grants?

How does DHS ensure that equipment purchased through its grants has not been used contrary to grant restrictions?

Response: The Department of Homeland Security does not maintain a specific policy for reviewing the qualifications of personnel at the state and local level. Funds under the preparedness grant programs are awarded by FEMA directly to the States, territories, the District of Columbia, and Tribal Nations. The further pass-through of State Homeland Security Program and Urban Areas Security Initiative funding to local law enforcement agency sub-recipients is done at the discretion of the States and Urban Area Working Groups, within program guidelines and provided that the States pass through at least 80 percent of those funds to local or tribal governments as required by statute.

However, all states, territories, the District of Columbia, tribal nations, and designated urban areas, are required to submit an investment justification portfolio to FEMA as part of their annual Homeland Security Grant Program application package. The investment justifications must demonstrate how a proposed project will support or address the gaps identified in the state/territory or urban area Threat and Hazard Identification and Risk Assessment and State Preparedness Report. All eligible law enforcement projects and expenditures must therefore fit within the scope of an approved investment justification.

Generally, eligible equipment purchases must align with one of the 21 allowable prevention, protection, mitigation, response, and recovery categories for Homeland Security Grant Program listed on the Authorized Equipment List. Equipment requests not covered by the defined Authorized Equipment List categories may be submitted via a formal waiver request for consideration for approval by the FEMA Grant Programs Directorate.

FEMA requires grantees to report their law enforcement terrorism prevention activities (LETPA) expenditures on a semi-annual basis, and regularly monitors grantees to ensure compliance. Activities eligible for use of LETPA focused funds are outlined in the *National Prevention Framework*. Monitoring of these activities is accomplished through on-site visits and/or audits of grantee reports and invoices. The FEMA regional offices perform financial monitoring and FEMA HQ performs programmatic monitoring.

Question#:	9
Topic:	DHS grants
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

If a grantee is found to be non-compliant with the Law Enforcement Terrorism Prevention Activities minimum expenditure requirement, FEMA has a range of remedies available under its grant administration regulations. If the grant remains open, FEMA can work with a grantee on a corrective action plan to make sure the requirement is met.

If the grant is closed and an audit determines non-compliance after the fact, FEMA can recoup from the grantee funds that did not meet the requirement, and consider withholding existing and future grant funds until a plan to meet the requirement going forward is in place. Finally, in the most egregious cases FEMA could make recommendations to DHS to suspend or debar a grantee from receiving further funding for a period of time if the grantee has demonstrated that it is not presently responsible in spending Federal funds. Such a course of action by DHS would preclude the grantee from receiving any Federal funding, not just FEMA homeland security grant funding.

Question#:	10
Topic:	project-based applications
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: At the hearing, you indicated that FEMA has "moved more toward project-based applications where we're asking grantees to identify up front the types of projects and the investment, really with an eye toward tighter fiscal management and oversight of the programs." However, in briefings with the Subcommittee staff, FEMA indicated the opposite, at least for Urban Area Secure Initiative (UASI) grants.

Please provide a timeline for the grant application process for UASI grants. Please indicate, at minimum, when in the process grant applicants are told how much funding is available to them, and when they must articulate the intended use of that funding. Please also indicate whether there are any opportunities to redirect that funding and FEMA's authority to approve or disapprove of any redirection of funding.

Response: FEMA has moved to a project-based application process for the Homeland Security Grant Program which includes the State Homeland Security Program (SHSP) and the Urban Area Security Initiative (UASI) Grant Program. Project-based applications were introduced in fiscal year (FY) 2014 and will continue in the FY 2015 grant cycle.

Project-based applications require that the applicant provide detailed project information as part of the initial application. As such, this information will be requested at the beginning of the grant cycle with the requirements specified in each program's Notice of Funding Opportunity (NOFO), previously referred to as the Funding Opportunity Announcement (FOA).

Each fiscal year's grant cycle begins with the enactment of the Department of Homeland Security appropriations act. Historically the Department's appropriations act has not only contained an appropriation for the various preparedness grant programs, but also a very specific timeline for the grant cycle. This timeline delineates the number of days for each phase of that year's grant cycle beginning with the release of the NOFO and ending with the award allocation announcement.

Using the FY 2014 grant cycle as a model, FEMA was required to make applications available to grantees within sixty (60) days after appropriations was signed. Within this sixty-day window, FEMA released the NOFO. The NOFO contained information on how much funding is available to each eligible State and Urban Area under the SHSP and UASI programs, as well as instructions on how to apply for grant funding. The NOFO also required grantees to submit applications within 66 days.

Question#:	10
Topic:	project-based applications
Hearing:	Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

As part of the FY 2014 grant application, applicants were required to provide project-level information in the application that was more extensive than was required in past grant cycles. Under the project-based application, the key change was that applicants were required to outline their expenditures across the Planning, Organization, Exercise, Training and Equipment (POETE) categories for each individual project, instead of at the broader Investment Justification level as in the past.

Investment Justifications, or IJs, provide narratives of proposed activities and have been used as the basis of the preparedness grant programs applications since the program's inception. The incorporation of project-based applications will provide a more detailed understanding of the proposed use of grant dollars at the time of application. For FY 2014, the first year of the project-based approach, applicants were required to submit at least one fully detailed project for every proposed investment. If states choose not to submit all of their projects in the initial application, they are required to provide detailed information on each of them at the time of the first Biannual Strategy Implementation Report (BSIR), which is due January 31, 2015.

Grantees have the opportunity to update their planned expenditures during the grant period of performance, but only with approval from their FEMA Program Analyst. Grantees are not allowed to divert funding from one program to another (e.g., from SHSP to UASI) due to the risk-based funding allocations.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 25, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of Karol Mason, Assistant Attorney General for the Office of Justice Programs, before the Committee on September 9, 2014, at a hearing entitled, "Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies." We apologize for our delay and hope that this information is of assistance to the Committee.

Please do not hesitate to contact this office if we may be of additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

Enclosure

cc: The Honorable Thomas R. Carper
Ranking Member

**Responses of the Department of Justice
to Questions for the Record
Arising from the September 9, 2014,
Hearing Before the Senate Committee on
Homeland Security and Governmental Affairs:
"Oversight of Federal Programs for
Equipping State and Local Law Enforcement Agencies"**

Questions Posed by Senator Claire McCaskill

1. **Has the disbursal of grant funding to police departments under the JAG program ever been suspended because law enforcement agencies are under investigation for civil rights or other violations?**

The civil rights laws and nondiscrimination provisions applicable to grant funding under the JAG program generally permit the suspension of funding after there is a civil rights investigation provided there is a finding that a grantee has violated any of those laws or provisions, the grantee has been provided due process of notice and an opportunity to respond, and a determination has been made that a grantee will not voluntarily come into compliance. We are not aware of a suspension of funds based on civil rights investigations alone, as opposed to suspensions based on findings of civil rights violations or consent decrees resolving civil rights investigations.

2. **How many Department of Justice (DOJ) employees do you have available to conduct the initial compliance checks in your monitoring program?**

The Office of Justice Programs' (OJP's) programmatic monitoring efforts include annual desk reviews of all its active awards. Annual desk reviews ("initial compliance checks") allow program staff to examine the grantees' progress towards programmatic goals and objectives and for compliance with financial, programmatic and administrative requirements. Program staff also use these desk reviews to determine if grantees need more training, technical assistance or oversight. Throughout the year, program staff also review grantee progress reports and quarterly financial reports.

These reports and reviews help BJA monitor federal funds, measure the programs' effectiveness, and promote transparency in the use of JAG funds. The Desk Review tool supports an extensive review of materials available in the grant file to determine administrative, financial, and programmatic compliance. It produces a historic record and an audit trail; provides a means of monitoring a recipient's progress over time; and documents, as part of the GMS official grant file, that the grant has been reviewed at least once annually.

The Bureau of Justice Assistance (BJA) which administers the Byrne Justice Assistance Grant (JAG) Program, currently has 50 employees who perform initial compliance checks.

3. **How many DOJ employees do you have available to conduct site visits and on-site audits of grant recipients?**

If, after the desk review (initial compliance check), issues are found that warrant further oversight, OJP conducts in-depth monitoring remotely or on-site. In-depth monitoring allows program staff to follow up on any issues identified during annual desk reviews, verify grantee activities, validate reported information, and assess the status of project implementation.

In addition, OJP employs a risk-based monitoring process to determine which grants will receive an on-site or enhanced programmatic desk review (EPDR) (similar to an on-site review) each year. All open and active grants undergo an annual automated grant risk assessment to set monitoring priorities. OJP assesses each grant to determine the degree of risk an award presents using the OJP Grant Assessment Tool. Based on the results of the risk assessment, awards deemed to be of the highest risk, including JAG awardees, are subjected to an enhanced programmatic review that includes an annual sampling of their financial records, or an on-site financial and programmatic monitoring review. About 10% of BJA awards receive an on-site or enhanced programmatic desk review. We believe that our risk-based monitoring process allows us to maximize oversight within available resources and effectively select grantees for site visits each year, while our desk review process allows us to look at every grantee annually for compliance with established terms and conditions.

Both types of monitoring (site visit/EPDR) include extensive contact with the grantee; reviews of key financial, programmatic, and administrative aspects of the grant program; and identification of issues for resolution. They result in a site visit/EPDR report that documents the grant manager's findings and a post-site visit/EPDR letter that is sent to the grantee through OJP's web-based Grant Management System (GMS).

BJA currently has 45 employees available to conduct programmatic in-depth (on-site or remote) monitoring reviews.

In addition to the programmatic monitoring conducted by BJA, OJP's Office of the Chief Financial Officer (OCFO) conducts in-depth financial monitoring, both on-site and remotely, to assess the financial integrity and accountability of grant awards. Similar to the process to select grants for programmatic monitoring, OCFO also uses a risk-based process to select grants for financial monitoring.

As a result of the Department hiring freeze that began with uncertainty over appropriations levels in January, 2011 and continued into February, 2014 due to the budget sequestration, OJP had only three full-time financial monitors conducting site visits in FY 2014. Since the end of the hiring freeze, OJP has hired eight additional financial monitors for OCFO to increase the number of financial site visits in FY 2015.

While OJP actively monitors its grant recipients, it does not conduct formal "audits" of these organizations. Audits of OJP grantees are conducted by two sources, both of which are external to OJP:

- Full-scope financial audits for grants to state, local and tribal governments, colleges, universities and other non-profit organizations (non-federal entities) are conducted by independent auditors under the provisions of the Single Audit Act of 1984 (amended in 1996) and OMB Circular A-133 ("Audits of State, Local Governments, and Non-Profit Organizations"), which provide audit requirements for ensuring grant funds are expended properly. All non-federal entities that expend $500,000 or more of federal awards in a year (increased to $750,000 for audits of fiscal years beginning on or after December 26, 2014) are required to obtain an annual audit in accordance with the Single Audit Act Amendments of 1996, OMB Circular A-133, the OMB Circular Compliance Supplement and Government Auditing Standards. A single audit is intended to provide a cost-effective audit for non-federal entities in that one audit is conducted in lieu of multiple audits of individual programs.

- Full-scope audits may also be conducted by the DOJ's Office of the Inspector General (OIG). During FY 2014, the OIG audited 30 OJP grantees, which included reviews of 67 grants.

OJP's involvement in these types of audits is limited to providing audit resolution services, to assist grant recipients in addressing recommendations and questioned costs included in the audit reports.

4. **How many grantee site visits does DOJ conduct annually?**

In FY 2014, OJP conducted in-depth programmatic monitoring on 653 grants (over 400 grantees) totaling over $1.2 billion. BJA conducted programmatic monitoring (both on site and enhanced desk reviews) for 192 sites, which covered 316 grants, totaling $449 million. In addition, OCFO completed on-site financial monitoring reviews of 307 grants totaling $621 million.

5. **Please provide any data in your control regarding equipment procured by law enforcement agencies with DOJ funding, including the cost of each item, the name of the law enforcement agency buying the equipment, and the justification given for the purchase of each item.**

See Attachment A - All Equipment Procured by Law Enforcement Agencies with DOJ Funds.

6. **Please provide a sample Byrne JAG grant application for law enforcement agencies.**

See Attachment B – City of Sedalia, MO Byrne JAG Grant Application Packet.

7. **Does DOJ ask law enforcement agencies to include information about their crime rates in any of the reporting requirements?**

DOJ uses Uniform Crime Reporting data for Part I violent crime in the statutory JAG Formula to determine the amount of funding awarded to states and localities. OJP does not ask for information on crime rates as part of reporting requirements.

8. **Is it permissible for law enforcement agencies to use Byrne JAG grant funds to maintain their existing equipment?**

Yes, maintenance of existing equipment with a criminal justice nexus is an allowable expense.

9. **Is it permissible for law enforcement agencies to use Byrne JAG grant funds to pay for the transportation costs of obtaining equipment from other sources, such as the Department of Defense's 1033 program?**

If the grantee could show a criminal justice justification for this activity, it would likely be allowable under the JAG program.

Chapter 10 of the U.S. Code, Section 380 provides that the Secretary of Defense, in cooperation with the Attorney General, shall conduct an annual briefing of law enforcement personnel of each state. The briefing will include information on training, technical support, equipment and facilities that are available to civilian law enforcement personnel from the Department of Defense.

10. **Please describe the role of the Department of Justice in planning, preparing, and conducting these briefings.**

As resources have allowed, the OJP National Institute of Justice (NIJ) has provided funding to support the Annual Law Enforcement Support Office (LESO) National Training Conference. The LESO is a component of the Defense Logistics Agency and administers the Department of Defense 1033 Equipment Program (1033 Program). NIJ last provided funding to support the conference in 2012.

Through the National Law Enforcement and Corrections Technology Center System (NLECTC), NIJ assists law enforcement and other criminal justice agencies in identifying and accessing equipment made available through the 1033 Program. This assistance includes providing relevant information and guidance virtually through the Justice Technology Information Network (http://www.justnet.org). NLECTC also provides a representative who can answer law enforcement agencies' questions about accessing available equipment. Representatives from NLECTC attended the annual LESO conferences to provide this information and services to public safety agencies.

11. What information was provided by DOJ during the last time such a briefing occurred?

The Department of Defense and the Department of Justice view the annual LESO National Training Conference as being responsive to the requirement to conduct an annual briefing as required by 10 U.S.C. Sec. 380 (b). At the conference, NLECTC representatives provided information on services available to assist law enforcement and public safety agencies on identifying and accessing equipment available through the 1033 Program. The most recent LESO National Training Conference was held in November 2014. NLECTC representatives did not attend this conference.

The DOJ is statutorily required to collect and distribute data about police use of force on an annual basis since 1994.

12. Is DOJ collecting this information on an annual basis?

DOJ agencies have annually used a variety of methods to collect and disseminate data about police use of force. The Bureau of Justice Statistics (BJS) has measured various aspects of police use of force through four different data collection vehicles. The Police-Public Contact Survey is a national survey of the nature and characteristics of citizen contacts with the police, including how many U.S. residents who have contact with police experience use of force by an officer. The Law Enforcement Management and Administrative Statistics Statistical Series has included questions about the annual number of complaints law enforcement agencies received regarding excessive use of force by officers. The Arrest-Related Deaths Program collects national-level information on civilian deaths attributed to events occurring during an interaction with law enforcement. Finally, the Census of Law Enforcement Training Academies queries all known law enforcement training academies in the U.S. and includes questions about the types of training police recruits receive on the use of force.

In addition to the work of BJS, the FBI annually collects information on justifiable homicides reported by participating police departments through their submissions to the Uniform Crime Reporting (UCR) Program.

13. If so, please provide details of how this information is collected.

The following information covers reports and products published during the most recent ten year period, from 2004 to 2013. A table detailing the annual publications by year is included at the end of this document.

Police-Public Contact Survey (PPCS) – Fielded by BJS in 1999, 2002, 2005, 2008, and 2011, the PPCS is a national survey of the nature and characteristics of citizen contacts with the police. Data are collected from a nationally representative survey of nearly 90,000 residents age 16 or older, and include information on face-to-face contacts with the police including traffic stops, arrests, handcuffing and incidents of police use of force.

Publications

2002 Characteristics of Drivers Stopped by Police, 1999 (NCJ 191548)
2005 Contacts between Police and Public: Findings from the 2002 National Survey (NCJ 207845)
2006 Characteristics of Drivers Stopped by Police, 2002 (NCJ 211471)
2007 Contacts between Police and the Public, 2005 (NCJ 215243)
2011 Contacts between Police and the Public, 2008 (NCJ 234599)
2013 Police Behavior during Traffic and Street Stops, 2011 (NCJ 242937)

Law Enforcement Management and Administrative Statistics (LEMAS) – Fielded by BJS in 2003, 2007, and 2012, the LEMAS data collection consists of a variety of questions to a nationally-representative sample of state and local law enforcement agencies about personnel, pay and benefits, budgets, record and information management systems, and community policing. The 2003 and 2007 LEMAS surveys also included questions about the annual number of complaints sampled law enforcement agencies received regarding excessive use of force by officers.

Publications
2006 Citizen Complaints about Police Use of Force (NCJ 210296)

Arrest-Related Deaths (ARD) Program – From 2003 through March 2013, BJS collected national-level information on civilian deaths that occurred during an interaction with state or local law enforcement personnel. Data collected included information on the decedent's demographic characteristics, the manner and cause of death, the law enforcement agency involved with the death, and circumstances of the incident, such as weapon use, and alleged criminal behavior of the decedent. While the collection continued through early 2013, published data are currently available through 2009. A forthcoming publication details the challenges associated with this data collection and the concerns about the quality of the data collected. BJS is investigating other potential methodologies for collecting more accurate, reliable and complete data on arrest-related deaths.

Publications
2007 Arrest-Related Deaths in the United States, 2003-2005 (NCJ 219534)
2011 Arrest-Related Deaths, 2003-2009 – Statistical Tables (NCJ 235385)

Census of Law Enforcement Training Academies – In 2002 and 2006, BJS conducted a survey of all known law enforcement training academies in the United States. Among other things, the survey included questions about the types of training police recruits receive on the use of force. This survey is currently being conducted, with data collection completed and results expected in 2015.

Publications
2005 State and Local Law Enforcement Training Academies, 2002 (NCJ 204030)
2009 State and Local Law Enforcement Training Academies, 2006 (NCJ 222987)

FBI's Uniform Crime Reporting (UCR) Program – The FBI annually collects details for each homicide known to the FBI through the UCR Program. In addition to incident-specific information on murders and non-negligent homicides that come to the attention of the police, the UCR program also collects data on justifiable homicides. In the UCR program, a justifiable homicide is defined as the willful killing of a felon by 1) a peace officer in the line of duty; or 2) a private citizen during the felon's commission of the felony. Each year the FBI publishes UCR data, including data on justifiable homicides by police officers, through the annual publication *Crime in the United*

States. In addition to this annual publication, the following publications of statistics on the use of force by police are available on the FBI website.

This table is a complete summary of the publications of statistical data collected annually by DOJ on police use of force.

Publication Year	Collection	Publication
2004	FBI's Uniform Crime Reporting (UCR) Program	FBI's Crime in the United States, 2003
2005	Census of Law Enforcement Training Academies, 2002 Police-Public Contact Survey, 2002	State and Local Law Enforcement Training Academies, 2002 Contacts between Police and Public: Findings from the 2002 National Survey
2006	Police-Public Contact Survey, 2002 Law Enforcement Management and Administrative Statistics, 2002	Characteristics of Drivers Stopped by Police, 2002 (NCJ 211471) Citizen Complaints about Police Use of Force
2007	Police-Public Contact Survey, 2005 Arrest-Related Deaths Program	Contacts between Police and the Public, 2005 Arrest-Related Deaths in the United States, 2003-2005
2008	FBI's Uniform Crime Reporting (UCR) Program	FBI's Crime in the United States, 2007
2009	Census of Law Enforcement Training Academies, 2006	State and Local Law Enforcement Training Academies, 2009
2010	FBI's Uniform Crime Reporting (UCR) Program	FBI's Crime in the United States, 2009

2011	Police-Public Contact Survey, 2008 Arrest-Related Deaths Program	Contacts between Police and the Public, 2008 Arrest-Related Deaths, 2003-2009 – Statistical Tables
2012	FBI's Uniform Crime Reporting (UCR) Program	FBI's Crime in the United States, 2011
2013	Police-Public Contact Survey, 2011	Police Behavior during Traffic and Street Stops, 2011

**Responses of the Department of Justice
to Questions for the Record
Arising from the September 9, 2014,
Hearing Before the Senate Committee on
Homeland Security and Governmental Affairs:
"Oversight of Federal Programs for
Equipping State and Local Law Enforcement Agencies"**

Questions Posed by Senator Tom Coburn

Albuquerque

In 2010, the Byrne JAG grant program gave $605,000 to the city of Albuquerque for equipment including rifles and protective equipment, according to documents your office provided my staff. Two years later the DOJ Office of Civil Rights opened an investigation into the Albuquerque Police Department for improper use of force complaints.

1. **When the investigation was announced, what steps did your office take to see whether equipment purchased using federal grant funds had been used in any incidents of alleged improper use of force?**

The Office for Civil Rights (OCR) at the Office of Justice Programs (OJP) and the Civil Rights Division (CRT) are two different components within the U.S. Department of Justice (DOJ). OCR enforces federal civil rights laws that apply to recipients of DOJ financial assistance through administrative procedures, whereas CRT, for the most part, enforces federal civil rights laws through litigation. CRT initiated an investigation of the Albuquerque Police Department (APD) that focused on allegations of excessive use of force by APD officers under the Violent Crime Control and Law Enforcement Act of 1994 and not on whether equipment purchased with federal funds was used during encounters involving excessive force by APD officers. During the course of the investigation regarding APD, CRT ensured that all relevant components within DOJ, including OCR, remained informed.

2. **What steps were possible? If OJP wanted to find out if grant money had paid for a gun used in an alleged incident of unreasonable deadly force, could that be done?**

Current reporting under the JAG grant program, administered by OJP's Bureau of Justice Assistance (BJA), requires grantees to indicate in their application for funding the type of equipment they intend to purchase within certain categories. For example, while firearms are not prohibited under the statute, they are one of the major categories that require notification if a state plans to purchase them. Thus, OJP will likely know what type of firearms equipment jurisdictions plan to purchase. However, OJP does not have the resources to track each individual purchase made with over 1100 state, local and tribal grantees per year. BJA verifies equipment purchases as part of its in depth (on-site or remote) monitoring reviews, which occur for approximately 10 percent of all its grants in any given year. Unless a grantee is included among the 10 percent selected, there generally is no way for OJP to confirm the purchase unless OJP specifically queries the grantee.

3. **While the investigation was ongoing, OJP continued to make grants to the City of Albuquerque. Given that DOJ colleagues suspected its police force of abuse, was there any suggestion that grants should be more closely scrutinized, and monies withheld, either in total or for certain items?**

As part of the Department's oversight of grants, DOJ personnel may become aware of serious programmatic or financial noncompliance issues of DOJ grantees through a variety of sources, which can lead to the grantee's placement on the High Risk Designation List. Grantees with the high risk designation will receive additional special conditions on all new DOJ awards. The City of Albuquerque was on the high risk designation list from July 12, 2010 to September 29, 2014 after a financial audit of a grant from the Office of Community Oriented Policing Services. Every grant APD received during the period it was on the high-risk designation list had special conditions, specifically the City of Albuquerque would provide relevant documentation upon request and would undergo increased financial monitoring. OJP generally does not add special conditions on awards to grantees that are under an investigation because the issue of noncompliance has not yet been concluded. Accordingly, OJP did not place any additional special conditions on JAG grants to the City of Albuquerque during the CRT investigation.

Excessive Force

Earlier this year, the DOJ investigation into Albuquerque police concluded that the officers had in fact used force unnecessarily. And specifically it found the APD SWAT team lacked leadership and accountability to prevent the unnecessary use of deadly force by its members.

4. **What actions, if any, did these findings prompt within OJP?**

As outlined above, OJP's OCR and CRT are two different components within DOJ. However, in some cases, settlements resulting from CRT's pattern or practice investigations can have federal funding implications on the local law enforcement agencies. CRT concluded its investigation on April 10, 2014, and on October 31, 2014 DOJ announced a settlement agreement with the City of Albuquerque. Through this agreement, the city agreed to implement comprehensive police reforms in the way it recruits, selects, guides, trains, supervises, investigates and disciplines officers, to ensure that officers are held accountable for their use of force and that they are fully prepared in carrying out their duties in an effective, constitutional and professional manner. As a result, OCR determined that the settlement did not require any action by OJP.

5. **Has there been any change in status for the City of Albuquerque with respect to the Byrne JAG program?**

No; the City of Albuquerque remains an eligible applicant within the Byrne JAG program. The Byrne JAG formula, as defined by statute, uses population and violent crime data to determine eligibility.

6. **Should there be?**

No; based upon the investigation and the resulting settlement agreement, no further action was warranted in this matter.

7. **In your opinion, how could the Office of Civil Rights' work receiving and investigating allegations of police misconduct be synchronized with your office's work making grants for law enforcement equipment?**

OJP, through OCR, continually works with CRT when awarding grants and monitoring recipients. While CRT's investigative findings do not necessarily prohibit the receipt of grants under the JAG statutory formula, BJA has previously added special terms and conditions to awards when the terms of the grant award have been violated. If the grantee does not comply with the terms and conditions of an award, OJP is authorized to withhold funds from the grantee until it comes into compliance.

Paying for Weaponry

I understand that unlike the DHS Preparedness Grant programs, Byrne JAG grants will pay for weaponry.

8. **Do you think that funding the purchase of weapons and equipment related to the use of lethal force is any different from funding the purchase of protective gear or non-lethal equipment? Why or why not?**

The JAG program provides funding for many types of equipment across the criminal justice enterprise, which includes firearms, less-than-lethal technologies, protective gear, computers and associated software, police vehicles, canine officers, and license plate readers. All of these items can be used for standard law enforcement operations. State and local jurisdictions make their funding decisions based on individual priorities, as the law allows. The JAG program is formula-based, allowing maximum flexibility for jurisdictions to make those funding decisions.

9. **Has OJP ever examined the use of weapons and related equipment it has helped local agencies purchase?**

OJP's National Institute of Justice (NIJ) conducts studies and evaluates the equipment used by law enforcement agencies. For example, NIJ has conducted outcome evaluations of law enforcement agency use of less lethal technologies (referred to by DoD as "nonlethal weapons") as part of its focus on making arrests safer, particularly in the case of conducted energy devices (more commonly referred to as "TASERs" after the most widely adopted such devices). NIJ research points to the fact that when used by trained, well supervised officers in accordance with strong policy, the use of such devices increases the safety of both officers and suspects http://www.nij.gov/topics/technology/less-lethal/pages/safety-of-conducted-energy-devices.aspx.

10. **Could OJP identify and/or locate all weapons purchased with its grant funds? If so how would it go about that, and how accurate would it be?**

Current reporting under the JAG grant program requires grantees to indicate the type of equipment they are purchasing, which falls within certain categories. For example, firearms is a specified category that requires reporting, so OJP has an understanding of what type of firearms equipment jurisdictions are purchasing. However, OJP does not have the resources to track each individual purchase made by over 1100 state, local, and tribal grantees per year. BJA verifies equipment purchases as part of its in-depth (on-site or remote) monitoring reviews, which occur for approximately 10 percent of all its grants per fiscal year. In limited cases, BJA may reach out to a law enforcement agency through a data call to determine equipment items that were purchased with federal funds.

11. **Do you know whether any DOJ-funded equipment was used in response to civil unrest in Ferguson?**

OJP has reviewed the grants previously made directly to the Ferguson, Missouri, Police Department. The items identified for purchase included surveillance cameras, training equipment, and conducted energy devices (commonly referred to as TASERs). The City of Ferguson has confirmed that none of the purchases made with the DOJ grant funds were used in response to the civil unrest. The State of Missouri has only provided one subgrant to the Ferguson Police Department. From the FY 2013 State JAG award, Missouri subgranted $8,991 to Ferguson. The city used these funds for three in-car cameras, two body-worn video cameras, and two vehicle-mounting kits.

12. **Is that something your office is looking into? If so, how? If not, why not?**

Yes, BJA has proactively researched the items purchased or identified for purchase by Ferguson from existing grants through program narratives and budgets already on file with BJA. In addition, BJA conducted a data call to both Ferguson, Missouri as well as the State Administrative Agency for the State of Missouri. According to their records, no equipment purchased with DOJ grant funds was used in response to the civil unrest in Ferguson.

Attachment A:

All Equipment Procured by Law Enforcement Agencies
with DOJ Funds

Byrne Memorial Justice Assistance Grant (JAG) Data Request
All Equipment Procured by Law Enforcement Agencies with DOJ Funds
October 2, 2014
Compiled by Matthew Kenyon and Emily Patton

The following data come from two sources: Performance Measurement Tool (PMT) data for JAG recipients of FY 2009 – FY 2013 grants and PMT data for ARRA JAG recipients of FY 2009 – FY 2010 grants. PMT data cover 9 reporting periods from April 2012 through June 2014. As with any PMT search, accurate data relies on accurate entry by grantees. The data presented in this report come from responses provided by grantees and rely on text and narrative entries with varying levels of detail. This report accurately reflects the information provided by grantees in the PMT but does not extend beyond the scope of the PMT.

The JAG and ARRA JAG PMT databases cover 20,346 unique grants awarded to 10,390 unique grantees[1]. These grantees use JAG funding in 7 program areas with Law Enforcement averaging 60% of all allocated funds[2].

[1] This includes sub-grants and sub-grantees.
[2] This number comes from the CY2013 JAG Spending Report

Equipment Purchases

JAG grantees report equipment purchases quarterly utilizing 18 categories in a check box system. Grantees are provided with the list of categories and are allowed to check which categories their quarterly purchases fall under. Grantees are not asked to provide additional detail beyond the categories, such as the number of items purchased or the make or model of the purchase, however they are allowed to add additional information about the purchases they made (including cost, make, or model) in additional follow-up questions.

Data from the ARRA JAG FY 2009 to FY 2010 grants were combined with data from JAG FY 2009 to FY 2014 grants. Analysis revealed that a total of 16,321 individual grantees reported that money was allocated for law enforcement equipment purchases.

Table 1.

Funding Allocated for Law Enforcement Equipment Purchases				Totals
Year	2012	2013	2014	**2012-2014**
Reporting Period	Apr.-Dec.	Jan.-Dec.	Jan.-June	**9 reporting periods**
Number of Grantees Reporting Allocations	7,371	6,395	2,465	**16,321**
Average Allocation For LE Equipment	$74,229	$67,358	$44,502	**$62,029**
Cumulative LE Equipment Funding Allocated	$547,144,063	$430,756,586	$109,698,477	**$1,087,599,126**

A majority of grantees reported equipment purchases in the 'Other' category. This included purchases of items such as uniforms and uniform equipment, crime scene processing equipment, general office supplies (i.e. desks, printers, ink), service subscriptions (i.e. GPS, internet), cameras and camera equipment, and supplies for their K-9 units (i.e. dog food, kennels). The next largest reported purchases were for 'Computer/Mobile Data Terminals', 'Computer Software', and 'Equipment for Police Cruisers'.

It is important to note that the number of purchases does not necessarily equal the number of items that were purchased under each category. For example, there are a total of 1,085 less-lethal weapon purchases reported in the PMT. This data doesn't include how many items were bought for each purchase, so the total number of items purchased is most likely higher.

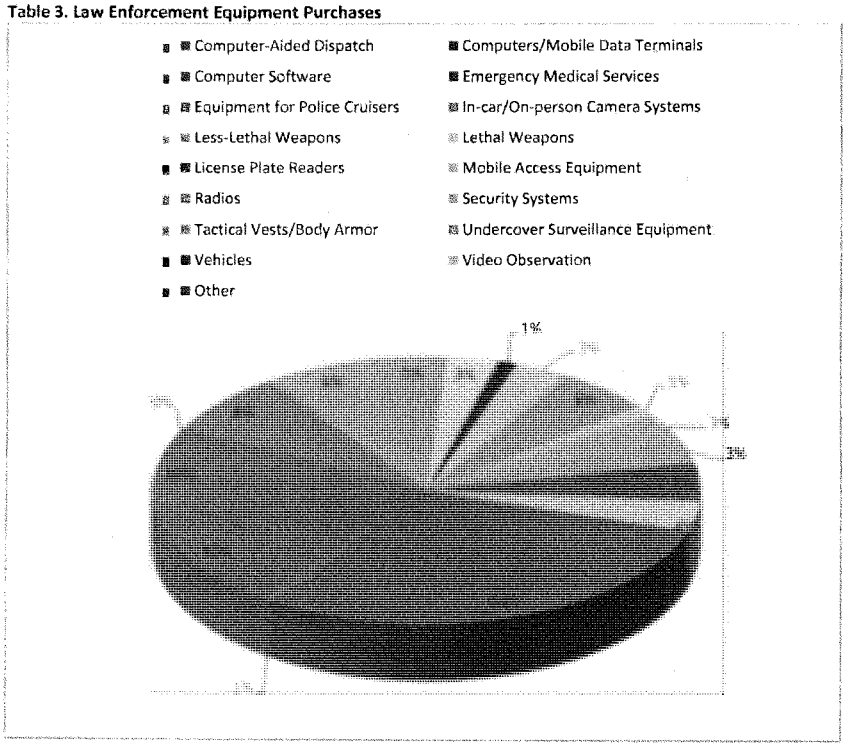
Tables 2 and 3 report on the number of purchases per equipment category.

Table 2. Law Enforcement Equipment Purchases

Equipment Type	Number of Purchases
Other	7,022
Computers/Mobile Data Terminals	2,906
Computer Software	2,283
Equipment for Police Cruisers	1,827
In-car/On-person Camera Systems	1,533
Radios	1,311

Less-Lethal Weapons	1,085
Vehicles	1,074
Video Observation	849
Tactical Vests/Body Armor	800
Mobile Access Equipment	760
Lethal Weapons	728
Undercover Surveillance Equipment	708
Security Systems	306
License Plate Readers	264
Computer-Aided Dispatch	202
Emergency Medical Services	79

Table 3. Law Enforcement Equipment Purchases



Purchases by State

The state with the highest number of law enforcement equipment purchases was Florida, with a reported total of 2,349. Other states with high equipment purchases include Texas (1,603), Arkansas (1,399), California (1,382), and North Carolina (1,049).

The lowest number of law enforcement equipment purchases was made by Guam (3). Other states and territories with low purchase rates include Tinian (of the Northern Mariana Islands) (8), the U.S. Virgin Islands (10), American Samoa (40), and Wyoming (53).

Attachment B:

City of Sedalia, MO

Byrne JAG Grant Application Packet

OMB Approval No. 0348-0043

APPLICATION FOR

	2. DATE SUBMITTED 06/09/2014	APPLICATION IDENTIFIER
1.TYPE OF SUBMISSION Application Construction	3. DATE RECEIVED BY STATE	STATE APPLICATION IDENTIFIER
	4. DATE RECEIVED BY FEDERAL AGENCY	FEDERAL IDENTIFIER

5. APPLICANT INFORMATION

Legal Name City of Sedalia	Organizational Unit Sedalia Police Department
Address (city, state, and zip code) P.O. Box 1707 Sedalia, Missouri 65301-3894	Name and telephone number of the person to be contacted on matters involving this application Matthew Wirt (660) 827-7823
6. EMPLOYER IDENTIFICATION NUMBER (EIN) 44-6000263	7. TYPE OF APPLICANT Municipal
8. TYPE OF APPLICATION New	9. NAME OF FEDERAL AGENCY Bureau of Justice Assistance
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE Number: 16.738 CFDA Title: EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT See Me & Hear Me Project
12. AREAS AFFECTED BY PROJECT Communications	

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICT(S) OF	
Start Date:	Ending Date:	a. Applicant	b. Project
10/01/2014	09/30/2015	MO04	MO04

15. ESTIMATED FUNDING		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$11,646	
b. Applicant	$0	Program has not been selected by state for review
c. State	$0	
d. Local	$0	
e. Other	$0	
f. Program Income	$0	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
g. Total	$11,646	N

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS REQUIRED.

a. Typed Name of Authorized Representative Stephen Gallihar	b. Title Mayor	c. Telephone number (660) 827-3000
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (Rev 4-88)
Prescribed by OMB Circular A-102

Grant Application Number: 2014--MO-DJ

ABSTRACT OF PROJECT

APPLICANT: CITY OF SEDALIA, MISSOURI
PROJECT TITLE: See Me & Hear Me Project

1. **PROJECT GOALS:**

   A. The Project Identifiers included on this grant are:
      1. Communications,
      2. Equipment-General
      3. Officer Safety
      4. System Improvements
      5. Traffic Enforcement

   B. Provide more reliable communications between deputies, dispatchers, and other county law enforcement.

   C. Purchase equipment that replaces worn out light bars and sirens that could not be replaced with the normal fiscal budget.

   D. Provide more reliable radio communications and better emergency equipment on patrol cars improving overall officer safety at both recipient agencies.

   E. Purchase equipment that improves the Pettis County radio system providing for an overall system improvement.

   F. Purchase new emergency lights and siren equipment providing officers the ability to conduct more traffic enforcement.

2. **SOLUTION:** The solution to the problems identified in this proposal is for an additional influx of funds to enhance the operation of the both the Police Department and the Sheriff's Department.

   Funds from this grant would be used to assist in the purchase of the following items:

   1. Purchase emergency lights also known as light bars,

   2. Purchase intersection clearing siren (Rumbler) to help create better awareness of patrol vehicles operating in emergency mode,

   3. and additional radio repeater system for the Pettis County Sheriff's Department.

   Since the cost of these appropriations exceeds both Departments budget

appropriations, the utilization of grant funds would aid both Departments in replacing and purchasing new equipment creating a more efficient operational environment for both Departments and the citizens that we serve.

3. **IMPLEMENTATION:** If the See Me & Hear Me Project is funded, the Sedalia Police Department would be responsible for the following:

1. Additional costs associated with the installation of all emergency equipment.
2. Maintenance costs of purchased equipment.

In addition, the Pettis County Sheriff's Department would be responsible for any additional costs for the radio repeater system purchased by grant funds.

The funds for the installation of equipment for the City would be taken from either the Department's Capital expenditure budget or a normal line item in the general budget. The Pettis County Sheriff's Department would be responsible for all installation costs of equipment purchased.

Grant Application Number: 2014-MO-DJ

See Me & Hear Me Project

PROGRAM NARRATIVE:

The Sedalia Police Department and the Pettis County Sheriff's Department have continued to survive difficult budget issues over the last several years due to the assistance of Department of Justice Grants. Grants have played a significant role in allowing both departments to purchase items that have become a necessity in providing high quality policing and service to the communities we serve. As both departments continue to evolve, we continue to need assistance with equipment in critical need areas.

One of the targeted tasks of the See Me & Hear Me Project is to provide a better service to the public through the improvement of the equipment utilized by both Departments. The Sedalia Police Department's proposal is to use grant funds to upgrade and purchase new emergency lights. All of the emergency lights (light bars) have begun to fail causing significant down time for patrol cars and potential large repair costs. Grant funds will allow the Sedalia Police Department the ability to replace aging emergency lights on four patrol cars. The new lights provide higher visibility at night and better visibility for patrol cars entering intersections while running with emergency lights activated. A new type of siren that has low frequency will also be purchased to help with busy large intersections. The siren has been proven to be at such a frequency as to alert more motorist than a regular siren.

Currently, both Departments have equipment that is need of replacement and upgrade. However, due to present budget constraints, equipment replacement and upgrade funds have been reduced at both departments. This has made it challenging for law enforcement to find innovative ways to complete the mission of their respective agencies and improve services to the general public.

In addition, the Pettis County budget does not have the funds to purchase new equipment due to the economic climate in Pettis County. Sales tax revenues that fund county and city government have continued to fall. Currently, Pettis County is not able to communicate effectively with outlying police departments or deputies in remote locations. Pettis County plans to use grant funds for a third phase to add a radio repeater system to outlying small communities providing better radio communication for deputies. Currently, if a deputy cannot be reached by radio another law enforcement officer must be sent to locate the deputy. Many times this process takes a substantial amount of time and is a safety concern for deputies in these remote areas.

The equipment requested in this grant application tailors to the needs of both Departments with the purpose of advancing law enforcement in both the City and

County.

A summation of this proposal is as follows:

1. Emergency Lights – The budget constraints of the City only allow for limited funds for equipment improvements. There is a need to upgrade the Department's light bars to allow more reliable operation of patrol vehicles and improved visibility when clearing an intersection.

2. Intersection clearing siren (Rumbler) – the purchase of intersection clearing sirens provide the improved ability to safely clear large intersection while operating a patrol car in emergency mode. This purchase will allow two patrol cars to test the new type of siren and determine if it truly helps warn motorist more effectively at intersections.

3. The Pettis County Sheriff's Department will use their funding to assist in the purchase of a radio repeater system to aid in the communication between dispatchers and deputies in remote locations. It will also facilitate the communication between outlying police agencies and Sheriff's deputies.

Budget Narrative:

City of Sedalia Request	Budget Category	Cost
1. Emergency Lights		$ 6080.00
2. Intersection Clearing Siren (Rumbler)		$ 908.00
Pettis County Sheriff's Department Request		
1. Pettis County Sheriff's Department Equipment Radio repeater system		$4658.00
TOTAL COST OF EQUIPMENT & INSTALLATION		**$11,646.00**
Total Request for JAG Funds		$11,646.00
Installation and Training Costs for the City of Sedalia		$ 0
Installation and Training Costs for Pettis County		-0-
TOTAL FUNDING BUDGET WORKSHEET		**$11,646.00**

Review Narrative

The following is the filing and review process that is proposed for the Bureau of Justice Assistance grant.

1.	Application Provided to Governing Body	April 24, 2014
2.	Notice Posted to Public for application	May 9th, 2014
3.	Public Comment & Action by Council	June 2nd , 2014
4.	Application Filing (30 day review required)	June 9th, 2014
5.	Application Deadline for filing	June 10, 2014

Applicant Disclosure of Pending Applications

The grantee, the Sedalia Police Department, does not have pending applications submitted within the last 12 months for federally funded assistance that include requests for funding to support the same project being proposed under this solicitation and will cover the identical cost items outlined in the budget narrative and worksheet in the application under this solicitation.

The sub-grantee, the Pettis County Sheriff's Office, is completing part 2 of the radio project described in the 2013 JAG, "*Can you hear me now Project.*" Part three of the project will be funded by the 2014 JAG. The funds for the 2013 JAG have been distributed to the grantee and upon completing of part 2 will be reimbursed to the sub-grantee. Using funding from multiple years has been done in a complementary manner to implement comprehensive programs. ***As a result, if this is considered a "pending" application the funding source is listed below:***

Possible Funding Source: Bureau of Justice Assistance
Possible Program: 2013 JAG Can you hear me now Project.
Contact Point: Kandia Conaway
Grant Administration Specialist
Bureau of Justice Assistance
US. Department of Justice
810 7th Street, NW Washington, D.C.
20531

RESOLUTION NO. 1843

A RESOLUTION AUTHORIZING THE SEDALIA POLICE DEPARTMENT TO ACT AS AN AGENT FOR THE CITY OF SEDALIA IN THE APPLICATION PROCESS FOR THE 2014 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE LOCAL GRANT (JAG) FROM THE U.S. BUREAU OF JUSTICE AS WELL AS AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF SEDALIA, MISSOURI AND THE COUNTY OF PETTIS, MISSOURI FOR DISTRIBUTION AND USE OF ANY AWARDED FUNDS.

WHEREAS, the City of Sedalia desires to pursue funding available under the Edward Byrne Memorial Justice Assistance Local Grant from the U.S. Bureau of Justice for the purposes of continued development of the operations of the Sedalia Police Department; and

WHEREAS, the City of Sedalia has previously accepted grants from the Bureau of Justice for the purposes as stated above and desires to participate in the 2014 Edward Byrne Memorial Justice Assistance Local Grants; and

WHEREAS, the Sedalia Police Department has a legitimate law enforcement need for these funds if awarded by the Bureau of Justice for the purposes of effective law enforcement; and

WHEREAS, the City of Sedalia, Missouri d/b/a the Sedalia Police Department will work in conjunction with the County of Pettis, Missouri d/b/a Pettis County Sheriff's Department in the distribution and use of any awarded funds, as more fully described in the proposed agreement attached to this resolution and incorporated by reference as though the proposed agreement were set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SEDALIA, MISSOURI as follows:

Section 1. The Sedalia Police Department is hereby authorized to act as the agent for the City of Sedalia, Missouri in the application process for the 2014 Edward Byrne Memorial Justice Assistance Grants for the purposes of continued enhancement of the Sedalia Police Department's Operation and effectiveness.

Section 2. The Council of the City of Sedalia, Missouri, hereby approves and accepts the agreement by and between the City of Sedalia, Missouri, and the County of Pettis, Missouri, in substantially the same form and content as the agreement has been proposed.

Section 3. The Mayor is authorized and directed to execute and the City Clerk is hereby authorized and directed to attest and fix the seal of the City of Sedalia, Missouri, on the document in substantively the same form and content as they have been proposed.

Section 4. The City Clerk is hereby directed to file in her office a duplicate or copy of the document after it has been executed by the parties or their duly authorized representatives.

Section 5. This resolution shall be in full force and effect from and after its passage and approval.

PASSED by the Council of the City of Sedalia, Missouri, this 2nd day of June 2014.

Presiding Officer of the Council

ATTEST:

Arlene Silvey MRCC

Arlene Silvey, MRCC City Clerk

GMS APPLICATION NUMBER: 2014--MO-DJ

CITY OF SEDALIA)
)
COUNTY OF PETTIS)

INTERLOCAL AGREEMENT
BETWEEN THE CITY OF SEDALIA, MO AND THE COUNTY OF PETTIS, MO

2014 EDWARD BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM

This Agreement is made and entered into this 2nd day of June, 2014, by and between The COUNTY of PETTIS, acting by and through its governing body, the County Commissioners, hereinafter referred to as the COUNTY, and the CITY of SEDALIA, acting by and through its governing body, the City Council, hereinafter referred to as the CITY, both of Pettis County, State of Missouri, witnesseth:

WHEREAS, this Agreement is made under the authority of laws of the State of Missouri; and

WHEREAS, each governing body, in performing governmental functions, or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement: and

WHEREAS, the CITY agrees to provide the COUNTY $4658.00 from the JAG award, if awarded, for the purposes of enhancing law enforcement in Pettis County: and

WHEREAS, the CITY and COUNTY believe it to be in their best interests to reallocate the JAG funds.

NOW THEREFORE, the COUNTY and CITY agree as follows:

Section 1.

CITY agrees to pay COUNTY a total of $4658.00 of JAG funds, if awarded.

Section 2.

COUNTY agrees to use $4658.00 for the JAG program until 30th day of September 2015.

Section 3.

Nothing in the performance of this Agreement shall impose any liability for claims against the COUNTY other than claims for which liability may be imposed under the Statutes for the State of Missouri.

Section 4.

Nothing in the performance of this Agreement shall impose any liability for claims against the CITY other than claims for which liability may be imposed under the Statutes for the State of Missouri.

Section 5.

Each party to this agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

Section 6.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 7.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

CITY OF SEDALIA, MO

Mayor Stephen Galliher

COUNTY OF PETTIS, MO

John C. Meehan, Presiding Commissioner

ATTEST:

Arlene Silvey MRCC

EASTERN Commissioner

The City of Sedalia and Pettis County will file for Justice Assistance Grant in the amount of $11,646 to be utilized by both the Sedalia Police Department and the Pettis County Sheriff's Department. The proposed project and its description can be viewed at the Municipal Building, located at 2nd and Osage, Sedalia, MO. and will be posted on May 9th, 2014. The stated purpose of the grant is to purchase equipment to enhance the patrol operations of both Departments. Public comments on the application can be directed to the office of the City Clerk on or after May 9th, 2014. A formal resolution for the grant application will be presented to the City Council at their regular scheduled meeting to be held on June 2, 2014.

The City proposes that the monies solicited from BJA under the JAG program be utilized for the purpose of enhancing the equipment needs of both the Sedalia Police Department and the Pettis County Sheriff's Department.

For additional information on this grant, contact Commander Matthew Wirt at (660) 827-7823.

Applications for funding are filed with the Bureau of Justice Assistance, Office of the Justice Programs, U.S. Department of Justice. Points of view in these grants are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Post-Hearing Questions for the Record
Submitted to Chief Jim Bueermann
From Senator Tom Coburn

"Oversight of Federal Programs for Equipping State and Local Law Enforcement"
September 9, 2014

Battle Dress Uniform

A 2012 article in the Department of Justice's COPS newsletter questioned whether the use of the "battle dress uniform" by police was compatible with the goals of community policing, asking "does this warrior look have an adverse impact on the relationship development and partnership building that is inherent in community policing?" The article cites research performed at Johns Hopkins University in which participants deemed officers in the more traditional police uniform as "more approachable" and indicated "they preferred to have this officer respond to their call for service rather than the officer in the military style battle dress uniform.

1. Can you explain what the effect of a police officer's dress has not only on public perception, but also that officer's own perception of his or her role?

   I refer you to the Johns Hopkins research[1] for scientific evidence of how people view military-like police uniforms. Little research has been done in this area, which is problematic on a variety of dimensions. There are varying degrees of military-like dress for police officers that form a continuum of traditional police uniforms all the way to complete military-like uniforms and equipment (e.g. SWAT officers). Some of these uniforms have very legitimate rationale and are not problematic to most communities. Others can present an image, and messaging to the community, that is in conflict with community policing principles and ideals. Anything that "messages" to officers an organizational acceptance or encouragement of the "militarized" orientation to non-tactical policing is extremely problematic and should be discouraged..

2. When you look at the pictures of the police response in Ferguson, there is little difference between the appearance of the officers uniforms, weapons, and personal protective equipment used there and pictures of our military combat troops in full battle dress in Iraq and Afghanistan. Is this an appropriate posture for our state and local law enforcement officers, even in response to protestors armed with Molotov cocktails like we saw in Ferguson? Or does this type of response by the police instead escalate the violence by both the protestors and police?

[1] Jackson, S., M. Hill, T. Gregory, F. Doyle, and Deangelo. (2009, May 1) Public Perception toward Police Uniforms. Paper presented at Johns Hopkins University Public Safety Leadership Program, Research and Evaluation, 700.317.9A Spring of 2009.

I think the images of the military-like equipped police in Ferguson, particularly during the daytime protests, were extremely disconcerting to most progressive police practitioners and many, many Americans. However, I do not know enough about the decision making with regard to the daytime protests to formulate an opinion about whether this was a correct decision or not. Certainly, the images were troubling to say the least.

The nighttime looting and assaults on the police certainly warranted a very different response from the police. There is a significant difference between a protest and a riot and the police are obligated to treat them differently. I do not know enough about the incident and its specific facts (i.e. threats to the police, level of assaultive behavior on the part of the looters, etc.) to formulate an opinion about the legitimacy of the nighttime police response. The U.S. Department of Justice's COPS Office is funding an "after action review" of the police response to the protests and looting. This inquiry should help address the question about the police response on these occasions. Overall, I believe it is true that inappropriate police responses can precipitate uncooperative – even violent – behavior on the part of people with whom they are interacting.

Increased Use

As Dr. Kraska noted in his testimony, the equipment obtained through these programs is increasingly used for routine, proactive policing activities.

3. Does this create unnecessary barriers between the police and these communities and do more harm than good?

   I am not familiar enough with Dr. Kraska's research to know if it meets accepted criteria for rigorous research (and therefore producing high quality, generalizable findings). However, I believe that certain kinds of military-surplus equipment like MRAPs can – without clear guidelines and adequate police transparency and accountability – create problems between the police and the communities they serve. I believe additional research is needed to answer this very important question.

Warrior-like Orientation

A 2013 article in the Department of Justice's COPS newsletter states that "the warrior-like orientation [in most police academy training programs] seems antithetical to a community oriented policing philosophy that is grounded in trust building, partnering, and developing and sustaining positive relationships with citizen stakeholders that are integral parts of community oriented policing." It quotes findings that "...paramilitary stress academies produce defensive and depersonalized officers, while collegiate non-stress training models, a small minority in American policing, have no such consequences."

4. Can we also reasonably infer that an increasingly militarized police culture reinforces defensive and depersonalized police officers, like we saw on display in Ferguson?

   Again, there is not enough research into this area to objectively answer this question. Congress should consider prioritizing research funding for such a study to provide better answers for policymakers. Any research should be conducted by non-membership policing research organizations, such as the Police Foundation. Having said that, based my own experience, I agree that "increasingly militarized police culture" can produce defensive and depersonalized officers. However, further scientific inquiry will be necessary to fully understand to what extent, and under what conditions this may be true,.

SWAT Served Search Warrants

I understand most SWAT deployments are to serve search warrants. In Maryland they found that about 90 percent of SWAT deployments are for search warrants.

5. Does this correspond to your research?

   We have not done research in this area, but would like to explore this research more if do so if the funding was available for studies. My own experience as a police officer/chief for 33 years suggests to me that this statistic may not be uniform for all jurisdictions. I would like to closely examine the research before I accept that number to be correct across jurisdictions.

6. To what extent has your organization taken a close look at police militarization and the use of SWAT teams?

   We have not conducted any rigorous research on this issue. However, if funding for such a study were available, the Police Foundation would definitely apply for it. This is an area we believe needs more research, and, as a non-membership, non-partisan policing research organization, we are best positioned to do so. We are currently engaging a variety of focus groups on this issue to try and identify easy-to-implement strategies to counter the militarization phenomena.

7. Has your group conducted a study of SWAT deployments, or the use of MRAPs and other armored vehicles?

   We have not conducted a study on this topic. Again, if funding were available, the Police Foundation would apply for it. This is an area we believe needs more research, and, as a non-membership, non-partisan policing research organization, we are best positioned to do so.

8. Do you know the percentage of SWAT deployments in which these vehicles are used?

I do not. There is not enough research into this area. Congress should prioritize funding for studies by objective studies done by independent policing research organizations, like the Police Foundation. The findings of such a study will help Congress help determine if its actions in this area have been helpful to communities and furthered our democracy or harmed it.

Federal Government in Local Law Enforcement

Mr. Bueermann, One question at the heart of this issue is grasping the federal government's role in local law enforcement.

9. At what point does it end?

   Clearly, this is up to Congress, the Administration, and, ultimately local communities. I believe there is a place for federal assistance in these areas. There is also a dire need for the federal government to immediately enact reasonable guidelines on how local communities acquire military surplus equipment and use federal funds to purchase similar equipment. Congress should prioritize research funding to study this issue in a scientific manner and direct the Justice Department to provide reasonable guidelines such as those I suggested in my testimony.

10. To what extent have federal programs like the ones we're discussing today helped local law enforcement stand up, equip and arm their own SWAT teams?

    I do not know the exact impact. There is very little research about this issue. Congress should prioritize funding for such an assessment. Having stated that, I believe there are SWAT teams that were created or funded with federal assistance. To what extent is unknown – but this could be determined by a research team with a bit of effort.

11. In your opinion, what is the federal government's duty to oversee the use of this equipment and weaponry, knowing that it will in nearly every case be used against its own citizens?

    I believe the federal government should closely examine and consider the type of military surplus equipment it provides civilian police agencies. I also believe it should reconsider the funding guidelines of its DOJ and DHS grant programs to determine if it is the federal intent to fund the acquisition of items such as armored vehicles. There are reasonable guidelines that the federal government should apply to the programs that either directly provide, or fund through grant programs, certain potentially problematic equipment.

Paying Twice

You say in your testimony that the 1033 program ensures taxpayers don't pay for the same resources twice.

12. Do you think that's a danger for heavy military equipment, like MRAPs? If it weren't for the 1033 program, hundreds of police departments around the country would be buying their own mine-resistant vehicles?

    Of course they wouldn't be buying mine-resistant vehicles – in my testimony I was primarily referring to other types of equipment, such as binoculars, rifles, furniture, etc. However, while I have strong personal opinions about the transfer of MRAPs to civilian police forces, I do believe that some departments would buy armored vehicles – like the "Bearcats" used in the Ferguson incident – if 1) MRAPs were not available to them; and, 2) they had the $150,000-300,000, which is what these civilian armored vehicles cost. In some instances, it might be very appropriate for the federal government to give a local agency an MRAP if they are otherwise in need of an armored vehicle. I believe the current practice of providing MRAPs to local communities without any substantive guidelines should be altered as soon as possible.

13. What is your organization's position on body-worn and dashboard cameras?

    It is our position that the limited research about body-worn cameras and dashboard cameras is highly suggestive that they increase police legitimacy and decrease police use of force and complaints about the police. As such, we recommend that EVERY patrol, traffic and specialized field officer and their police cars/motorcycles be equipped with cameras.

Post-Hearing Questions for the Record
Submitted to Dr. Peter B. Kraska
From Senator Tom Coburn

"Oversight of Federal Programs for Equipping State and Local Law Enforcement"
September 9, 2014

Increased Paramilitary Police

You have researched and written extensively about the increasing militarization of state and local police. Your past research has shown that as of the late 1990s, 89 percent of agencies in U.S. cities with populations greater than 50,000 and 80 percent of agencies in towns with populations between 25,000 and 50,000 had a paramilitary police unit, as compared to 20 percent in the mid-1980s. You also documented a 1,400 percent increase in paramilitary police unit deployments between 1980 and 2000, that more than 80 percent of the paramilitary police unit deployments were for proactive drug raids, and that a high percentage of these units engaged in routine patrols for high crime areas.

1. Is it possible to conclude from your research that these programs that provide state and local law enforcement with military grade weapons, vehicles, and other equipment have accelerated the presence of paramilitary police units and deployments of these units?

These federal programs have accelerated, and have acted as a catalyst for, police militarization. Previous to the drug war of the 1980s and throughout the 1990s, the police did not think in terms of acquiring military-grade weapons and armament. The federally operated military hardware transference programs that were put into place during this time period, provided a *strong measure of legitimacy* to the idea that the local police were at "war" with the drug-using/dealing segments of the community they served. The revived and greatly enhanced military transference programs subsequent to 9/11 had the same impact. Of course rather than justifying this federal program on drug control, the revived programs focus mostly on terrorism response and control.

The federal legitimization of military-grade weapons and gear on the local civilian police system, has helped to change the culture of these police agencies – from one of protecting and serving as a first-priority value, to "security" (or, "securing the homeland"). It is critical to recognize the symbiotic, and mutually reinforcing, relationship between military weapons and gear, and an increasingly militarized police culture.

2. What does your current research tell you about how this equipment and these units are being used in small medium sized towns across America?

The impact of the growth and normalization of the police paramilitary approach in small to medium departments is highly pronounced. Remember that a large police department can

Questions continued next page

much more easily compartmentalize its operations. It can, for example, house a large full-time SWAT team without having that SWAT team impact to any real degree police operations or police culture. (Please note that some large police departments strive for this compartmentalization, while others work toward using the "tactical" (i.e., paramilitary) approach as model for the entire department).

Smaller police departments are simply not able to do this. My research demonstrated that in smaller localities, over 20% of police officers serve part-time in a police paramilitary unit (SWAT team). This means these officers, who aspire to be the military special operations of the police – and who immerse themselves in the trappings of paramilitary culture – are fully mainstreamed into the everyday operations of the agency. I have witnessed first hand how this proximity can have a profound negative impact on the rest of the agency, with administrators and officers adopting the aforementioned "tactical mindset." This mindset values military weaponry and sees it as a viable option to solve the myriad problems a typical police agency encounters.

One telling example came from a small police department in Kentucky. They procured a armored personnel carrier through a military transference program. They had no idea how it was going to be used, or whether it would be useful. After owning if for two years they finally found an excuse to deploy it. They started bringing it to the high school's basketball games, along with officers fully decked out in paramilitary gear, in order to quell "racial tensions."

3. Does the provision of this gear make us safer or does it increase the risk it will be used inappropriately or produce unintended outcomes? Can you provide specific examples, other than Ferguson, where the deployment of police paramilitary units and tactics have actually degraded the response to incidents, such as in Hurricane Katrina?

The police institution has already proven how this gear does not make their communities safer and it produces numerous unintended consequences. The research conducted at the EKU College of Justice and Safety demonstrated that this gear has been mostly used for conducting contraband raids on people's private residences for the purpose of obtaining drug evidence and assets from low-level drug possessors and dealers. A recent study conducted by the ACLU corroborated these findings. It is critical to recognize that the police are choosing to manufacture a risk-filled and dangerous situation for themselves and citizens, when they use the Navy Seals dynamic entry model to conduct drug raids on private residences. To be clear, if the police were using the same approach for a known terrorist, few would call this a misapplication of the paramilitary model. However, according to the research, most of these raids – oftentimes using in part the gear provided to them by the military – are for minor drug offenses.

4. What happens to the traditional police role to protect and serve with an increasingly militarized and federalized police force?

Questions continued next page

The motto of "protect and serve" represents the apex value of civilian policing within a democratic society. The first instinct of our police agencies ought to be serving all members of the community impartially, for the greater good of the community. As a part of the police militarization trend, this guiding ethic is rapidly being replaced with a "security-first" mindset. The aftermath of Hurricane Katrina was a powerful example at the federal level, where the government's first instinct was to "secure the stricken territory" instead of to provide humanitarian aid. This DHS-driven response was unique in American history.

Unfortunately this security first ethic has flowed (not trickled) rapidly to local police agencies. And despite the massive and long-running efforts of the federal government to democratize local police through community policing reforms, our overall police institution – as led by the federal government – has become much more concerned about "securing the homeland' than they are protecting and serving the American public.

5. While there appears to be a general consensus that MRAPs don't belong on the streets of America, some have argued that there is no harm in maintaining the ability for state and local law enforce to obtain personal protective equipment like riot gear, body armor or uniform items worn by our combat troops through the 1033 program. Is there a psychological component at work as well, when units become more militarized because they look more militarized?

Police dress and style is consequential. Paramilitary culture is highly seductive for a significant segment of the U.S. police. They aspire to the military special operations model, they want the high-tech Cyborg 21st century style and gear, they scour through trade magazines that glorify paramilitary (or "tactical") culture, and they perceive of the paramilitary model as representing real crime fighting. This growing subculture in policing – one I would argue is rapidly becoming normalized – compels agencies to

- procure equipment such as MRAPs that have no real utility,
- spend tremendous amounts of money on SWAT teams and their equipment,
- attend SWAT roundups, training, and conference functions that are overtly militarized, and
- allow police administrators and SWAT commanders to see a highly dangerous pre-dawn dynamic entry on a family's home for possible low level drug possession as "reasonable."

The obvious fact that Cops are not Soldiers, and shouldn't look or arm themselves as such, is lost on those who are immersed in this subculture.

Questions continued next page

Posse Comitatus Act

Under our Constitution, the states are responsible for executing police power and maintaining law and order, and state and local police have a fundamental responsibility to uphold citizens' Constitutional rights. You have written about the significant erosion of the Posse Comitatus Act, which was passed to limit the use of the federal military to enforce state laws.

6. What is the appropriate role of the federal government in state and local policing?

The federal government has played an important role in attempts to reform the U.S. police. Policing in America has a checkered history of corruption, violence, and over-reach. Its history has been replete with numerous attempts to professionalize the police and to make them more accountable to the public they serve. However, these efforts can be misguided, and have led to some disastrous unintended consequences. Federally funded and pushed for crime and drug wars have incentivized the police into a crime and drug fighting mentality that often runs counter to local community norms. The federal government also created a massive civil asset forfeiture training program for local prosecutors and police that provided an ugly incentive to conduct massive numbers of the aforementioned SWAT raids on private residences. After 9/11 the Department of Homeland Security has provided local police tremendous ideological and material support for developing a "security-first" mindset and operational focus – as opposed to the ethic espoused in the community policing reform efforts.

7. Can you further increase federal oversight and involvement in state and local police matters without further eroding the principles of Federalism on which this country was founded, and under which the sovereignty of the states is Constitutionally guaranteed?

Before my Senate testimony I really had not given much thought to the extent to which "federal involvement" – broadly conceptualized as an entire range of political movements, funding initiatives, and policy changes – has driven so many of these unfortunate trends. However, it is clear now that it has been federal involvement that has primarily led the police institution down this path. This is not to say by any means that all federal programs designed to reform and assist local police have resulted in negative outcomes (e.g., professionalization, education, etc.).

Training Issue?

Several of my colleagues and even some on this witness panel have characterized what we saw in Ferguson as a training issue. They argue that the provision of specialized military grade equipment to our state and local law enforcement agencies is not a problem if training for paramilitary police units is standardized and properly overseen.

The call for increased training of the police in how to use military gear and weaponry completely misses the obvious: it is imperative that we reign in police militarization and not perpetuate it with further training. There are few good options when it comes to the type of training that these advocates are encouraging. The police institution has thus far relied on the following sources:

1) For-profit paramilitary training camps where police and military personnel learn tactical operations from retired military special operations' personnel. Some of these camps are operated by major gun manufactures that sell their weapons to police agencies.

2) Active-duty military units, such as the Navy Seals. My research found that almost 50% of police agencies have received "tactical training" from active-duty military personnel. (I can't imagine a worse-case scenario than to demand that the military provide "proper training" to local police when they send them an armored personnel carrier or heavy weaponry).

3) DHS funded tactical schools, which oftentimes are simply contracted out services of the aforementioned training camps.

8. Is what we saw in Ferguson simply a training issue, in which officers weren't sufficiently trained to respond to this type of scenario? Or does a militarized response by the police elicit the events we saw unfolding there?

The militarized response we saw was a direct result of an agency that had adopted a militaristic mindset along with the associated gear. As has been reported widely by numerous police administrators, most police departments would not take this approach, and would have simply let the demonstrators protest.

9. Is it realistic to expect, with more than 17,000 state and local law enforcement agencies participating in these programs, that a standardized training program, or a certification or accreditation program can be put into place to ensure that the weapons and equipment are not misused, overused, or in a worst-case scenario, fired in cases of excessive use of force, or improper use of deadly force?

This sort of massive new training program would likely only accomplish two things: a huge boost to the militarized police training industry, and a perpetuation of the destructive "security-first" ethic that is rapidly displacing the tradition of "to protect and serve."

NATIONAL TACTICAL OFFICERS ASSOCIATION
PO Box 797, Doylestown, PA 18901
Ph: 800.279.9127 Fax: 215.230.7552 www.ntoa.org

October 24, 2014

The Honorable Thomas R. Carper
Chairman
Committee on Homeland Security and Governmental Affairs
513 Hart Senate Office Building
Washington, DC 20510

Dear Senator Carper:

Thank you and the Committee Members for the opportunity to testify at the hearing that was held on September 9, 2014, titled "Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies."

Enclosed are the responses from the National Tactical Officers Association to the post-hearing questions.

Sincerely,

Mark E. Lomax
Enclosure

Post-Hearing Questions for the Record
Submitted to Mark Lomax
From Senator Tom Coburn

"Oversight of Federal Programs for Equipping State and Local Law Enforcement"
September 9, 2014

SWAT

You have emphasized the need for increased training of SWAT teams in the proper use of both equipment and tactics. SWAT teams were originally established to be used reactively, in response to emergencies like active shooter and hostage scenarios. Today, as Dr. Kraska points out, they are increasing used in proactive police activities, such as serving routine drug warrants and even routine patrols of neighborhoods.

1. How is the increasing militarization of police a training issue and not evidence of a fundamental cultural shift in the way state and local police interact with their communities, driven and incentivized by an influx of federal funding and equipment?

NTOA Response: **Law enforcement interaction with their various communities has, for the most part, improved with the philosophical implementation of Community Oriented Policing. The availability of federal funding and equipment has had very little influence on these relationships. The NTOA believes SWAT team deployment is a training issue in that the primary training focus is on decision making, not just technical skills development. Training law enforcement leaders in how, when and when not to use a SWAT team, is emphasized throughout the training. Templates, critical incident debriefs and current case law is used to enhance the leader's knowledge base. We believe that by thoroughly educating and training our Chief's and Sheriff's in SWAT capabilities and limitations, provides them with a solid foundation to make sound decisions on how to best serve their respective communities.**

Training and Change

Research on the effectiveness of training in police academies on community policing methods has shown that training, even highly effective training, is less a factor in behavioral change than departmental culture. A scholarly article titled, *Police Academy Socialization: Understanding the Lessons Learned in a Paramilitary- Bureaucratic Organization* cited "several studies [that] recognize how the reproduction of the paramilitary environment and the maintenance of the traditional police subculture undermine the formal teachings of the academy."

2. If we extrapolate that conclusion to the effectiveness of training on the appropriate use of SWAT teams, how effective could the training curriculum recommended by your organization really be to counter a culture of militarism that is already ingrained in our state and local law enforcement agencies and incentivized by these federal programs?

NTOA Response: **The training that we suggest needs to occur is not merely for the line level law enforcement officer on a SWAT team (although that is essential), but more importantly for the decision makers that determine when and how tactical law enforcement resources are utilized, such as first line supervisors, commanders, agency heads, the public and elected officials that approve the funding and policies that support such a capability. The "fundamental cultural shift" can be changed at the local community level, if the responsible stakeholders understand both the challenges and the risks associated with modifying this capability.**

Additionally, training at the local level should address why SWAT teams should not be the only law enforcement resource utilized in crowd control and civil disturbance events. While they do offer the ability to rescue victims under fire and encounter armed demonstrators, they should serve as part of a larger response capability that may also include community liaisons to deescalate tension, patrol officers to ensure pedestrian and traffic flow, mobile field force units to address crowd control, as well as Fire/EMS personnel to respond to injuries and fires caused by demonstrators. Holistic training is necessary to address how communities will address and respond to civil disturbance events.

Training Differences

In contrast to the training frequency for SWAT teams recommended by your organization, the specialized military units on which SWAT teams are modeled train continuously throughout the year.

3. Assuming training could effect a change that these units are used less frequently and only in reactive scenarios as appropriate, can a few weeks of training a year provide even a basic level of competency in the advanced tactics required these units?

NTOA Response: **The NTOA does not recommend that SWAT teams model themselves after military units. To the contrary, our organization offers training to federal law enforcement and military police units on SWAT operations and tactics. While there are many tactics and types of equipment that are used similarly by both disciplines, state and local law enforcement agencies are far more likely to respond to hostage and barricaded subject incidents than our military counterparts. The FBI Critical Incident Response Group maintains the Hostage Barricaded Subject (HOBAS) Database System which allows state and local law**

enforcement agencies to voluntarily enter data about such incidents that occur throughout the US. There are currently over 6000 incidents entered. The majority of those incidents were resolved through a combined effort of tactical operations and effective negotiations and rarely result in injuries or death to the subject, citizens or law enforcement officers involved.

The training frequency that we recommend in the NTOA SWAT Standard is the minimum recommended levels to maintain competency. In the Introduction and Objective of the Standard it states, *"It is the position of the NTOA that the decision to form a SWAT team carries with it the responsibility to provide the ongoing training, equipment, leadership and financial support necessary to create and maintain an effective team.* Training hours are an investment in risk mitigation.

4. Is it reasonable that small agencies can devote the amount of time and resources required to become proficient in these advanced tactics?

NTOA Response: Smaller agencies face a greater challenge in deploying a proficient SWAT team. This is due primarily to manpower and budget constraints. To ease this challenge the NTOA has emphasized and encouraged the creation of multijurisdictional and regional SWAT teams.

Equipment Payment

I understand from your prepared testimony that your organization does not advocate any significant change or reform to the types of equipment made available to local law enforcement through the programs we're discussing today, or any change in the way in which that equipment is paid for – that is, the tab would remain entirely with the federal taxpayer.

5. Is there any paramilitary equipment or weaponry that a police department or its tactical team should not have? Where do you draw the line -- what weapons or vehicles simply should not be in a police department's hands?

NTOA Response: The bulk of surplus equipment provided through the 1033 Program has enhanced local agencies ability to respond to critical incidents such as natural disasters. However, it is also recognized that this discussion has focused primarily on two specific types of equipment – weapons and armored vehicles.

During this discussion, the terms "paramilitary or military grade weapons" have been used. The majority of firearms obtained through the 1033 Program have been carbine rifles. And while they are the general issue rifle for all US military branches, they are also available to the public in any local gun store or gun show and more commonly known as an M-16, AR-15 or M-4. Additionally, US citizens can purchase 50 caliber rifles, as well as automatic and suppressed firearms if licensed appropriately. Legally purchased firearms are not the only threat. In November of 2012, the US Bureaus of Justice Statistics reported that between 2005 and 2010, an estimated average of 232,400 firearms were stolen each year. In recent years US law enforcement has increasingly encountered armed criminals with such weapons. Subsequently, most agencies across the country have begun to adopt the patrol rifle concept, replacing the shotgun as the general issued shoulder fired weapon. The patrol carbine rifle allows for greater accuracy, ammunition capacity and distance. The patrol carbine rifle is typically configured in a semi-automatic capability. To suggest that the 1033 Program or federally funded grants has armed law enforcement at a greater level than a citizen or a criminal has access to, would be inaccurate. Having said that though, the NTOA cannot reasonably defend the need for rifle mounted bayonets or rifle mounted grenade launchers. While there is an appropriate application and use of 37mm and 40mm projectile launchers, we do not believe they should be mounted to a lethal weapon system such as a rifle.

The second controversial piece of equipment discussed has been the armored rescue vehicle. When faced with a critical violent incident involving firearms, law enforcement agencies have an obligation to be able to rescue citizen victims and protect officers involved in such operations. Quite often, ballistic vests, helmets and shields are not sufficient. Armored vehicles are often necessary to bring negotiators close enough to communicate with a hostage taker, to deliver negotiated food, water and medicine for hostages and to deploy tactical robots and listening devices during standoffs. While armored HUMVEES, MRAPS and armored tracked vehicles were not designed for this purpose, they are the next best substitute. Ideally, SWAT teams that respond to such incidents should be equipped with an armored rescue vehicle designed for that purpose.

6. If a local community believes it needs a tactical police unit, what is its obligation to pay for that unit?

<u>NTOA Response:</u> The NTOA is not in a position to speak on behalf of all local communities. Our general impression though is that most communities understand the need for such units as well as the reasonable expenditure of local funds in support of such efforts. It is also our impression though that local communities expect that their governments will leverage every opportunity possible to offset those costs through federally funded programs.

7. In what circumstances should the federal government shoulder the responsibility of arming and equipping such a unit?

NTOA Response: **Following September 11, 2001 the traditional role of law enforcement changed. For the first time, local law enforcement was tasked with a number of Presidential Directives which called for an enhanced capability to respond to terrorist incidents. This has created a need for specialized equipment in some SWAT teams to enhance their ability to meet these directives. If or when another terrorist incident occurs on U.S. soil it will be local law enforcement acting as the first responders, not the federal government. If the federal government is going to task local law enforcement with these responsibilities then it has an obligation to properly equip them.**

8. In your opinion, what is the federal government's duty to oversee the use of this equipment and weaponry, knowing that it will in nearly every case be used against its own citizens?

NTOA Response: **The Department of Justice has the ability to investigate alleged police misconduct. The NTOA believes in reasonable accountability and transparent auditing measures for the programs in question. Regular reporting and inspections of not only the equipment itself, but the manner in which it is being utilized would be welcomed by most agencies.**

SWAT Oversight

In light of events in Ferguson, a number of proposals have been raised on how to reform and improve oversight of SWAT teams; I'd like to hear your organization's opinion on some of the ideas.

9. What is NTOA's position on SWAT units publishing regular statistics on deployments and their results?

NTOA Response: **The NTOA is not opposed to the publication of SWAT team use and results. The NTOA recognizes that transparency is likely to create a better understanding of the role SWAT plays in law enforcement functions.**

10. What is NTOA's position on requiring all police, including tactical units, to use body-worn and dashboard cameras?

NTOA Response: **The NTOA believes that body worn camera technology is a reasonable expectation of the public. The greatest challenge for local law enforcement agencies in**

implementing such a program is cost. The initial cost of purchasing the equipment is nominal in comparison to the cost of long term data storage. The NTOA would be willing to participate in future discussions and/or research necessary to explore this possibility.

11. Does your organization have a position on how police visually identify themselves?

NTOA Response: **The NTOA believes that SWAT teams should be easily identifiable as the police, with the appropriate markings on their respective uniforms and body armor protection. This topic is also addressed in SWAT Command and Supervisor courses taught by the NTOA.**

12. In what situations is it acceptable or advisable for an officer to cover his face, remove his badge or otherwise obscure his identity?

NTOA Response: **In rare instances, some SWAT operators on collateral duty teams are assigned full time to an undercover investigative assignment. In such circumstances, NTOA instructors suggest that those officers may conceal their face, but only after entry and once the presence of law enforcement has been clearly established with citizens they are interacting with. We have advocated against the use of balaclavas or face masks on initial contact with public, unless they offer some type of certified personal protection from such hazards as fire or debris, and credible information can be articulated that such a hazard will occur during the operation. The NTOA strongly encourages agencies to have marked patrol cars and uniform patrol officers present during high risk search warrant entries.**

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November 3, 2014

The Honorable Tom Coburn
Ranking Minority Member
Homeland Security and Governmental Affairs Committee
United States Senate
Washington DC 20510

Dear Senator Coburn;

Thank you so much for the opportunity to elaborate on the testimony that I provided to the committee on September 9, 2014, on the use of police force and the militarization of local law enforcement agencies. I appreciate the depth and breadth of your questions, as well as the subject matter, since the use of force in civilian policing has long been of vital importance to the communities served and represented by the NAACP. Below are my responses to your questions, and I welcome any further dialog you may wish to have with me on this subject.

Oversight

In the wake of Ferguson several people have suggested that greater oversight and accountability of state and local police, particularly police use of force, is warranted.

1. **What is the NAACP's position?**
   The NAACP fully agrees with the statement that greater oversight and accountability of state and local police is warranted (and we would add federal law enforcement officials as well), especially (although not limited to) in routine traffic and pedestrian stops and when force is used. The majority of law enforcement officers are hard working, caring and courageous men and women, whose concern for the safety of those they are charged with protecting and serving is often paramount, even when their own safety is on the line. However, if and when even one of their colleagues engages in practices which appear based on the race or ethnicity of a suspect, whether it be conscious or subconscious, the trust of the entire community can be, and will be, lost. Law enforcement agents should not endorse or act upon stereotypes, attitudes, or beliefs that a person's race, ethnicity, gender, appearance, sexual orientation, religious

affiliation, or national origin increases that person's general propensity to act unlawfully.

2. **What recommendations does your organization have?**
The NAACP strongly supports efforts to ensure that state and local law enforcement agents are held accountable for their actions. First and foremost, we feel strongly that all law enforcement agents, from commanders to the police agent on the beat, be given clear, uniform, definitions and explanations of what is and what is not acceptable behavior from what merits a stop, detainment, and / or detention of a suspect, to the acceptable use of force in apprehending a suspect of a crime or with information. Secondly, there must be an outright prohibition on the mis-use of policing powers, including racial profiling and excessive use of force, including deadly force.
Thirdly, there must be adequate training for all law enforcement agents, including those with law enforcement responsibilities. Fourth, the NAACP is calling for comprehensive, uniform data collection on everything from police stops to instances of use of force, and deaths in custody. This data must be complete and it must be uniform so that it can be analyzed and compared.
Fifth, civilians must have a private right of action to pursue to help them protect their rights. Finally, there must be independent agencies responsible for receiving complaints, and investigating allegations of police misconduct. Internal Affairs is not an adequate body to investigate many of the complaints lodged by Americans against police abuses.
The NAACP also supports the establishment of citizen review boards to help address community grievances. In order to be effective, the review board will be independent of police departments and they must have the authority and resources to conduct hearings, subpoena witnesses and report findings and recommendations to the public and it shall be housed away from police headquarters to maintain credibility and independence.
It must be relevant in that it must have investigatory power to independently investigate incidents and issue findings on complaints. It must be able to spot problem policies and provide a forum for developing and imposing reforms. It must have complete access to police witnesses and documents through legal mandate and / or subpoena power, and Board findings will be considered in determining appropriate disciplinary action. Finally, the NAACP strongly supports the establishment of civilian review boards which are reflective of the diversity of the community, including racial and ethnic Board and staff will be broadly representative of the community it serves.

3. **Have you shared these with any national law enforcement organizations?**
   Yes. We have been in discussions with groups which represent law enforcement agents of all ranks and races and ethnicities, including NOBLE (the National Organization of Black Law Enforcement Executives); the NBPA (the National Black Police Association); the FOP (the Fraternal Order of Police); the Major City Chiefs; and the International Association of Chiefs of Police, among others

4. **If so, what was their reaction?**
   The reaction has been varied. Some groups, including the Fraternal Oder of Police, have stated their vehement opposition to the NAACP proposals; other groups, including NOBLE, have implemented them and gone so far as to develop training programs and materials for their members which are consistent with NAACP recommendations. Several groups appear to accept our recommendations warmly, but have yet to take significant action to support or implement them.

Police Misconduct
The NAACP has done extensive work on police misconduct over the years.

5. **What sorts of misconduct stem from lack of training for line officers, as opposed to misconduct that stems from poor leadership?**
   Both the poor training of rank and file officers, as well as poor direction from those in a leadership capacity, have led to significant problems. We would however raise the mantra of inadequate policies, by which officers are trained and held accountable.
   In terms of poor training of leadership, this has led directly to the promotion of poor practices throughout law enforcement agencies. Leaders must not only enforce and promote sound policies, but they must also lead by example.
   In terms of "line officers", these are the men and women who most often come in contact with members of the community. They must be clear on what is and is not acceptable, as well as what is and is not good policing and sound policy to gain the trust and support of the community. Trust is an absolutely essential condition to a successful community policing operation.

6. **Based on what you saw on the news, and what was reported to you from people on the ground in Ferguson, did the problems seem to stem from poor officer training or poor leadership?**
   The leadership failed to lead and had failed to provide proper training, especially in terms of what an appropriate response might be, and the rank and file failed to be

responsive to the community. All of this is of course contingent on sound policing policies.

Helpful Reform

Mr. Shelton, have you had success in working with law enforcement organizations to study issues and encourage reforms in police conduct?

7. **Which ones have been helpful?**

   NOBLE (the Organization of Black Law Enforcement Executives) has been especially responsive to concerns raised by the NAACP. And in fact they developed a curriculum for their members on how to identify, and not use, racial profiling, while advancing more effective policy protocols.

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