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Department of Defense Excess Property Program in Support of U.S. Law Enforcement Agencies: An Overview of DOD Authorities, Roles, Responsibilities, and Implementation of Section 1033 of the 1997 National Defense Authorization Act

U.S. HOUSE COMMITTEE ON ARMED SERVICES, SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS

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

Committee on Armed Services
Subcommittee on Oversight and Investigations
U.S. House of Representatives

Hearing on “The Department of Defense Excess Property Program
In Support of U.S. Law Enforcement Agencies: An Overview of DOD
Authorities, Roles, Responsibilities and Implementation of Section 1033
of the 1997 National Defense Authorization Act”

Thursday, November 13, 2014

Mr. Chairman, Ranking Member Tsongas and distinguished members of the Subcommittee, thank you for this opportunity to appear before you to discuss the very important topic of the Department of Defense’s Section 1033 program that provides surplus equipment to our civilian police forces.

Introduction

My name is Jim Bueermann and I am the president of the Police Foundation and the former Chief of Police for the City of Redlands, California. 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 policing 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 as a means of advancing democratic policing. My testimony reflects these principles.

Prior to my work with the Foundation I served for a year as an Executive Fellow at the U.S. Department of Justice's National Institute of Justice where I worked to translate scientific evidence for police practitioners. Prior to that, I was a police officer in Redlands, California 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 policy 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.

The 1033 Program and Tactical Equipment for Law Enforcement

Like many Americans, I have been closely following the events in Ferguson, Missouri. Among the many aspects of the national discussion of Ferguson includes the "militarization" of this country's police forces. One focal point of this discussion has been the Department of Defense's "Section 1033 Program" that transfers surplus military equipment to local police departments, and I applaud this committee for holding today's hearing as part of its ongoing oversight efforts of this program.

I believe most community policing experts will agree that the equipment itself is not 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 – but they need to be closely examined to ensure appropriate surplus equipment is transferred in a thoughtful manner with adequate guidelines in place.

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; most would 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. It is context - not specific equipment or tactics – that is one of the most important variables in determining whether the use of military-style equipment in policing is appropriate or not. And a law enforcement agency's transparent, accountable and collaborative relationship with its community relates to the degree to which people agree with the police position on "appropriate context."

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 1033 Program ensures that our taxpayers do not have to pay for these resources twice. As you review this program and consider possible changes, I urge you to consider its benefits to taxpayers and law enforcement, especially given the challenging budget environment many state and local governments are experiencing. There has been substantial positive impact on public safety and officer safety from 1033 and other programs that provide surplus equipment to law enforcement. For example:

- Several weeks ago, the Cook County Illinois 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, Ohio. The high axle clearances these vehicles have afford rescuers the means by which to traverse deep snow or rushing water to get to stranded victims.
- The Las Vegas, Nevada 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 utilized rescue helicopters obtained through the 1033 Program 11 times during search and rescue missions in mountainous terrain. In addition, the department used boats obtained through the 1033 Program 6 times for diving/rescue missions at Lake Mead.
- The Pasadena, California 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.

Recommendations for the 1033 Program

The two primary drivers of the public perception and criticism of police “militarization” and the 1033 Program are local law enforcement’s use of armored vehicles and tactical equipment/units. Based on my experience and familiarity with municipal government, community policing and the 1033 Program specifically, I proposes the following changes to the program to ensure it continues to strike a balance between the needs of the police and community interests.

I recommend that pursuant to federal legislation or regulation, every state and local police agency that desires access to surplus military armored vehicles or tactical equipment 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 regarding the possible acquisition of the equipment;
- 2) it has obtained approval from its local governing body for the department’s acquisition of the property (except in the case of elected sheriffs);
- 3) it has implemented a publically accessible policy governing the use of armored vehicles and tactical equipment and;
- 4) it makes publically available the number of times and context it utilizes the acquired armored vehicles and tactical equipment.

This requirement can be easily fulfilled by providing:

1. Minutes from a public hearing on the matter proving the community had an opportunity to express its opinion on the issue (for all state, county and local police agencies);
2. A resolution passed by the local elected governing body's approval of the application for local law enforcement agencies (or, in the case of state law enforcement, approval from the governor);
3. Written policies from the law enforcement agency that clearly outline the circumstances under which the surplus armored vehicles and tactical military equipment can be used, and;
4. Public availability of the aforementioned policies and the number of times and context the acquiring department utilized the surplus armored vehicles and tactical equipment. Allowances could 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 of charge," 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 purchase it. The addition of military equipment, such as armored vehicles and tactical equipment, in police departments with little use for them can create budgetary and organizational pressure to use them. Policing leaders who acquire tactical military surplus equipment that is expensive to buy or maintain can feel pressure from city, county or state administrators, or elected officials, to justify the expenditures. This can result in "normalizing" their use in "routine" circumstances and contribute 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 currently purchase. In addition, these policies would ensure that local communities have 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 tactical equipment was used. This community input and law enforcement transparency and accountability is entirely consistent with a fundamental underpinning of community policing, which urges the police to "co-produce" public safety with the community they serve.

I believe it is important that the 1033 Program be retained, albeit with new transparency, accountability and oversight guidelines incorporated. Completely eliminating this program would have substantial impact on public safety and local budgets.

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; the equipment needs shift when the safety landscape shifts. For law enforcement agencies with highly constrained budgets, the 1033 Program may be the only means by which they can acquire armored vehicles and tactical equipment or firearms. Unfortunately, there are occasions when these are needed by our civilian police forces. For example:

- 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 Los Angeles police recently used an 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.

Even though the police may periodically use military-like equipment, most would agree that “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 and use force only when absolutely necessary. Law enforcement agencies across the country strive to find a balance in providing needed tactical resources to police officers while maintaining and strengthening connections to the community and their legitimacy in the eyes of the communities they serve.

Conclusion

I urge the Committee to adopt the transparency and reporting changes to the 1033 Program I have outlined above, which I believe are fair and balanced.

I also urge the Committee to ensure that transfer of surplus military equipment is used to support evidence-based policing 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. It will also help the police better gauge whether they “really” need military surplus armored vehicles and tactical equipment.

Finally, I urge the Committee to support the creation of a national center for conducting critical incident reviews. This will help determine if the 1033 Program is having the kind of impact that Congress intended.

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.” And these lessons can be translated into meaningful changes in the way American policing operates and utilizes the 1033 Program. 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 “Christopher 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.

It is imperative that the Committee 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 perceived “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.

HOLD UNTIL RELEASED BY THE
U.S. HOUSE OF REPRESENTATIVES

JOINT STATEMENT OF

MR. ALAN ESTEVEZ

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

AND

VICE ADMIRAL MARK HARNITCHEK
DIRECTOR, DEFENSE LOGISTICS AGENCY

BEFORE THE

HOUSE ARMED SERVICES SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS

ON

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

NOVEMBER 13, 2014

HOLD UNTIL RELEASED BY THE
U.S. HOUSE OF REPRESENTATIVES

Mr. Chairman, Ranking Member Tsongas, Members of the Subcommittee, thank you for the opportunity to appear before you and discuss the Department's transfer of excess military property to law enforcement agencies. I appreciate the Subcommittee'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, law enforcement agencies, under this congressionally authorized special program, are entitled to review the excess property to determine whether it would 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 lack of confidence in the requesting law enforcement agency. DLA notifies the respective State Coordinator of any denials of 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. Approximately 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 excess property transferred to law enforcement agencies 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 loaned conditionally, and recipients must return the 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 whose predominant purpose is for combat operations are restricted from transfer outside the DoD (e.g., tanks, fighter aircraft, Strykers, tracked vehicles, weapons greater than 7.62mm, grenade launchers, sniper rifles, crew-served weapons). These items are not provided to law enforcement agencies. Grenade launchers have not been issued to law enforcement agencies under this program since 1999.

Law enforcement agencies determine their need for types of equipment and how the equipment is used. The Department of Defense does not have expertise in state and local 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 high mobility, multi-purpose wheeled vehicles (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.

During the 12-month period ending August 2014, 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 this controlled property 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 HMMWVs (0.2% of items), 617 mine resistant ambush protected vehicles (0.03% of items), and 616 aircraft (0.03% of items). To take one example, DLA provided to the Ferguson Police Department two HMMWVs, one generator, and one cargo trailer. Additionally, DLA 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. Two states (North Carolina and Alabama) currently remain suspended for inventory accountability issues.

Interagency 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 increase information sharing and collaboration with departments and agencies with programs that provide equipment or funding for the purchase of equipment to State and local law enforcement agencies, alter our procedures, and propose any legislative changes we believe necessary that come as a result of that review or in response to any congressional changes.

Although the Administration's Interagency Review is not complete, the Department is pursuing the following changes to strengthen oversight of the program:

The Department will increase consultation with the Department of Justice (DoJ) and Department of Homeland Security (DHS). Additionally, the Department will notify both DoJ and DHS when a law enforcement agency has been suspended or terminated from the 1033 program. This would allow DoJ and DHS to factor this information into their decision-making process with regards to grant monies provided to these law enforcement agencies. DoJ and DHS, 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.

The Department is also pursuing stronger implementation criteria with the States. We have informed State Coordinators of the Department's intent to amend the memorandum of agreement with each State Coordinator to reflect a training plan with any request by a law enforcement agency for armored vehicles or assets requiring specialized training.

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 to 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 Coordinators. Although Congress authorizes the transfer of excess equipment to law enforcement agencies, the program does not further the Department's mission; however, the program is a good use of taxpayer dollars, and further enables first responders and law enforcement. We are ready to work with Congress in a deliberate manner to review the program's scope and mission.

Thank you again for this opportunity to discuss the Department's transfer of excess military property to law enforcement agencies. I look forward to answering your questions.

Written Opening Statement of Mr. Mark Lomax; Executive Director of the National Tactical Officers Association before the Subcommittee on Oversight and Investigations of the House Armed Services Committee for the hearing on “The Department of Defense Excess property Program in Support of U.S. Law Enforcement Agencies: An Overview of DOD Authorities, Roles, Responsibilities, and Implementation of Section 1033 of the 1997 National Defense Authorization Act”

Nov. 13, 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 Heck, Ranking Member Tsongas and the esteemed Members of this Subcommittee to have the opportunity to speak with you today.

Since its inception in 1983, the National Tactical Officers Association 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 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 has supported that effort by providing much needed rescue and emergency response equipment.

The DOD 1033 program allows agencies to acquire the necessary equipment rapidly and at considerable cost savings to the local tax paying public. From developing a robust and capable homeland security system to everyday patrolling, the 1033 program has benefited law enforcement and the communities it serves.

For example, ever since the 1999 Columbine school shooting, law enforcement has recognized that minutes and even seconds count in an active shooter situation. Lives are at risk if immediate police actions do not occur quickly and effectively. No longer can police departments wait for specialized units to respond in active shooter incidents. Therefore, many agencies across the country have also added the patrol rifle to their general issue inventory for officers. Numerous surplus rifles have been acquired by agencies through the 1033 program to supplement this effort. This is often the first line of rescue and saving lives for victims in mass casualty response by police.

Moreover, after September 11, 2001, first responder agencies across the country willingly volunteered to collaborate with their federal partners in domestic security. The 1033 Program allowed local agencies to acquire necessary equipment to build out its homeland security capacity, to include heavy duty high wheeled vehicles, forklifts, generators and vehicles that improve operational capabilities and responder safety in disaster operations.

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. The recent ambush murder of Pennsylvania State Police Corporal Byron Dickson and shooting of Trooper Alex Douglass makes it real as to the weaponry, in this case a .308 caliber rifle, criminals are using against our finest, the men and women of law enforcement. I trained Corporal Dickson, its personal.

The 1033 program has provided the necessary equipment to protect our brave officers and provide security and effective response to our communities. 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)ⁱ, 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 (RTLTL)ⁱⁱ, 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 RTLTL 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)ⁱⁱⁱ. 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.

State and local law enforcement agencies have done a remarkable job of building out the seven team types mentioned above in the RTL. 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.

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.

In conclusion, the DOD's oversight of surplus equipment issued is adequate in the sense that an annual inventory is conducted at the state level and recipient agencies are held accountable. The initial application and screening process that determines which agencies receive equipment could be improved. It would reasonable to have applying agencies demonstrate an articulated need based on current threat assessment matrices and that

appropriate training and agency policies exist, based on national standards, prior to receipt of such equipment.

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 Subcommittee has.

ⁱ Target Capabilities List - <http://www.fema.gov/pdf/government/training/tcl.pdf>

ⁱⁱ Resource Typing Library Tool - <https://rtlt.ptaccenter.org/Public/Combined?q=law+enforcement>

ⁱⁱⁱ DHS Grant Authorized Equipment List - <https://www.llis.dhs.gov/knowledgebase/authorized-equipment-list-ael>