

---

**Memorandum**

To: HSGAC Minority

From: Coburn HSGAC Staff

Date: September 8, 2014

Re: 9/9 Hearing: Federal Programs Which Equip State and Local Law Enforcement

---

**What:** Prompted by the surprisingly militarized police response to protests and civil unrest in Ferguson, Missouri, last month, HSGAC is holding a hearing to examine the federal programs which have helped state and local law enforcement equip themselves with paramilitary weaponry, equipment and vehicles.

Those programs include:

- **The Department of Defense “1033” transfer program**, which has provided over \$5 billion in surplus military vehicles, weaponry and equipment to state and local agencies since 1997;
- **DHS Preparedness Grants**, including the State Homeland Security Grant Program (SHSP) and the Urban Area Security Initiative (UASI), post-9/11 programs which have handed out close to \$40 billion to states and urban areas for purported counterterrorism expenditures, and are often used for law enforcement enhancements;
- **The Justice Department’s Byrne Justice Assistance Grant Program** (Byrne JAG), which has distributed over \$4.4 billion since 2005 to state and local agencies, for broad categories of expenditures to support law enforcement and criminal justice efforts.

All three programs are statutorily mandated, and generally operate according to parameters established by Congress. That said, they share deficiencies: documented histories of insufficient oversight, concerns over mismanagement, and an inability to know how or for what purpose the money or equipment they distribute is actually used.

**Background:** The Federal government has taken on an unprecedented role, perhaps unconstitutional, to equip and fund state and local law enforcement, often with paramilitary equipment, weaponry and vehicles whose routine use undermines the government’s interest in supporting community-oriented policing.

Public concerns about these programs center around the support they provide local police tactical groups like SWAT teams, which often receive the most advanced (and expensive) weaponry and vehicles, as well as the Constitutionality of the Federal government taking on such a direct role in local law enforcement.

Once a rarity among law enforcement, most police departments now have Special Weapons and Tactics (SWAT) units, and deploy them more and more frequently every year. The DOD's 1033 program in particular has been criticized for sending thousands of weapons and hundreds of armored vehicles to police departments across the country. It has sent more than 600 MRAPs to local communities – including one to Muskogee, Okla. DHS and DOJ grant programs have also fed billions of dollars to state and local agencies which have used the funds to purchase weaponry, tactical equipment, advanced crowd control technology and other paramilitary gear.

Combined, these programs have provided billions of dollars in funding and equipment to law enforcement agencies (LEAs), having a direct impact on the militarization of state and local LEAs, and the increasing dependence on SWAT units at all levels of government. Within state and local LEAs, the number of SWAT units has grown from two in the 1960s to “thousands” today. An outgrowth of the Los Angeles Police Department's inability to respond to the 1965 Watts riots, these units were originally envisioned as an elite capability to respond to crisis situations—today they are commonly used to serve routine drug warrants, breach illegal gambling halls and raid bars suspected of serving underage drinkers.<sup>1</sup>

As a predictable result of this windfall, training for law enforcement officers has been modified to similarly incorporate military tactics and terminology into standard law enforcement training curricula. A Department of Justice (DOJ) investigation into a “rash of officer-involved shootings” by the New Mexico State Police and the Albuquerque Police Department between 2010 and 2013 was attributed to the appointment of a former Army colonel as the state's Director of its Law Enforcement Academy.<sup>2</sup> With his appointment, the academy curriculum was redesigned to mirror military training, with a military-style physical fitness test and use-of-force techniques that include live-fire vehicle stops. The ACLU analyzed training documents in its investigation that used the terms “warrior mindset” and “battlemind” with no reference to the need to limit such training to use in terrorism situations.

Research by Prof. Peter Kraska has documented the increasing militarization of law enforcement, in which he says “emphasizes the exercise of military power, hardware, organization, and

### **Federal SWAT Units**

The proliferation of SWAT teams isn't just a state and local issue. Federal agencies have been adding them as well. Once the domain of enforcement agencies like the Secret Service and the Bureau of Prisons, federal SWAT teams have been formed within the Department of Agriculture, the U.S. Fish and Wildlife Service, the Food and Drug Administration (FDA), the Department of Education (DOE), NASA, and even the Consumer Product Safety Commission, agencies for which such a capability is much harder to justify.

The DOE reportedly uses its SWAT team in investigations of financial aid fraud, while the FDA's SWAT team has been used in a raid of a farmer shipping unpasteurized milk across state lines.<sup>1</sup>

<sup>1</sup> <http://online.wsj.com/news/articles/SB10001424127887323848804578608040780519904?mg=reno64-wsj>

<sup>2</sup> [http://www.santafenewmexican.com/news/local\\_news/police-academy-director-defends-new-training-that-puts-fewer-limits/article\\_4ad9bdf1-f301-591c-ad09-e5fb6731c6d1.html](http://www.santafenewmexican.com/news/local_news/police-academy-director-defends-new-training-that-puts-fewer-limits/article_4ad9bdf1-f301-591c-ad09-e5fb6731c6d1.html)

technology as its primary problem-solving tools.”<sup>3</sup> He notes as empirical evidence of police militarization the:

- “significant erosion of the 1878 Posse Comitatus Act...which...prohibited the military involvement in internal security or police matters, except under the most extreme circumstances...”
- “...unprecedented cooperative relationship between the US military and US civilian police at both the highest and lowest level of organization, including technology transfers, massive military weapons transfers, information sharing between the military and police targeted at domestic security, a close operational relationship in both drug control and terrorism control efforts, and a high level of cross training in the area of special weapons and tactics team (SWAT) and counter-civil disturbance, counterinsurgency, and antiterrorism exercises”

Prof. Kraska’s research has “yielded definitive data” showing a “mainstreaming” of paramilitary police units (PPUs). He is currently updating his data and will be able to discuss his more recent findings at the hearing, but his previous research showed that as of the late 1990s, 89 percent of LEAs in U.S. cities with populations greater than 50,000 and 80 percent of LEAs in towns with populations between 25 and 50,000 had a PPU, as compared to 20 percent in the mid-1980s.<sup>4</sup> He has also documented a 1,400 percent increase in PPU deployments between 1980 and 2000, which he traces to the start of the war on drugs. He found that more than 80 percent of the PPU deployments were for proactive drug raids, and that a high percentage of these units engaged in routine patrols for high crime areas. He draws the distinction between the more common *proactive* use of force, in which LEAs are choosing to use “extreme and highly dangerous tactic[s]”, and *reactive* situations that would legitimately require the use of such tactics, such as the Columbine shooting, and points to the response to Hurricane Katrina, more “massive security operation” than “humanitarian relief”, to demonstrate how the proactive use of PPU there “delayed and complicated the humanitarian relief effort considerably.”<sup>5</sup>

So it is reasonable to conclude that these programs have accelerated the presence of paramilitary units among state and local police agencies, and that rise has in turn driven up the frequency of PPU deployments. Absent this rise has been a commensurate increase in oversight by the Federal government to ensure these 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.

Is distributing such equipment (and funding for such equipment), and overseeing its use, an appropriate role for the Federal government to play? Is it acceptable to most Americans – and to the principles on which the country was founded? Is it putting Americans at greater risk, rather than making us safer? Despite the billions spent on these programs, these are questions that have not been closely examined by Congress.

---

<sup>3</sup> <http://cjmasters.eku.edu/sites/cjmasters.eku.edu/files/21stmilitarization.pdf>

<sup>4</sup> <http://cjmasters.eku.edu/sites/cjmasters.eku.edu/files/21stmilitarization.pdf>

<sup>5</sup> Ibid.

*Case study: Albuquerque, New Mexico.* Like many police agencies, the Albuquerque Police Department has benefited from these federal programs. In the last few years it has received over \$5 million worth of equipment and funding through the three key programs.

In late 2013, the Albuquerque Police Department received a 14-foot-tall, 45,000 pound Mine-Resistant Ambush Protected vehicle from the DOD 1033 program.<sup>6</sup> The vehicle costs \$600,000 new, but under the program APD – like hundreds of other departments – got the MRAP for whatever it cost to transport it to their headquarters. Once there, it was transferred to the APD’s SWAT team.<sup>7</sup>

The Department also received funds from DHS and DOJ, which it used to beef up its armament of weaponry. Since 2009, the DHS State Homeland Security Grant program has fed \$2.5 million to the Albuquerque Police Department, for “a variety of items for tactical teams, scope mounts and range finders, etc.”<sup>8</sup> And the Department of Justice Byrne JAG program gave Albuquerque over \$2 million since 2010, which the city said it would use to buy rifles, including long-range rifles; protective equipment; a license plate recognition system; “breaching packs”; surveillance equipment; an “iRobot radio”; motorcycles and more.<sup>9</sup>

But it is fair to say that the APD has not been an effective steward. Since at least 2010, the city’s police had been the subject of misconduct allegations and even public protests, accusing its officers of using excessive force and unreasonable deadly force.<sup>10</sup> Since that time, the city has paid out over \$23 million in settlements in police misconduct lawsuits.<sup>11</sup> In November 2012, the Justice Department opened an investigation into the department’s use of force.<sup>12</sup> In April 2014, the DOJ investigation concluded that its officers’ unnecessary use of force had violated the Constitutional rights of the residents its members had sworn to protect. Specific to the APD SWAT team, DOJ found it lacked the leadership and accountability to prevent the unnecessary use of deadly force by its members.<sup>13</sup>

In other words, the Federal government has been equipping with weapons, armored vehicles and other equipment a force that it suspected – and now has confirmed – was wrongfully killing its

---

<sup>6</sup> Boetel, Ryan, “APD is getting rid of its MRAP,” Albuquerque Journal, July 30, 2014, <http://www.abqjournal.com/437498/news/apd-is-getting-rid-of-its-mrap-has-other-armored-vehicles.html>, accessed September 4, 2014.

<sup>7</sup> Ibid.

<sup>8</sup> Coleman, Michael, “MISSION CREEP: Feds help militarize police agencies,” Albuquerque Journal, April 29, 2014, <http://www.abqjournal.com/391339/news/feds-help-militarize-police-agencies.html>, accessed September 4, 2014.

<sup>9</sup> Data provided by US Department of Justice, “FY 2011-2014 JAG Document Request,” received September 4, 2014.

<sup>10</sup> Albuquerque Journal, “APD Under Fire: Timeline,” 2014, <http://www.abqjournal.com/apd-under-fire#timeline>, accessed September 5, 2014.

<sup>11</sup> Albuquerque Journal, “APD Under Fire: Cost to the City,” 2014, <http://www.abqjournal.com/apd-under-fire#cost>, accessed September 4, 2014.

<sup>12</sup> News Release, “Justice Department Launches Investigation of the Albuquerque, NM, Police Department’s Use of Force,” November 27, 2012, <http://www.justice.gov/opa/pr/2012/November/12-crt-1415.html>, accessed September 5, 2014.

<sup>13</sup> Lohmann, Patrick, “DOJ zeroes in on SWAT in several shootings,” Albuquerque Journal, April 16, 2014, <http://www.abqjournal.com/384687/news/doj-report-zeroes-in-on-swat.html>, accessed September 14, 2014.

own residents, using excessive force and violating the Constitution. There was no process in any of the three programs to check whether the APD used its equipment responsibly, even as complaints grew and DOJ opened a formal investigation. In fact, DOJ and DHS have very limited visibility into how APD spent the grant funds they received, apart from a sparse description in a grant application. There would be no way for them to know, for instance, if a gun used by an officer to kill a suspect had been purchased with federal funds.

The Department of Justice announced in late July that Albuquerque had agreed to begin instituting significant reforms, and to allow an independent monitor and courts to track its progress.<sup>14</sup> (A week after DOJ's announcement, Albuquerque police announced they would scrap the MRAP they received from the Pentagon less than a year earlier. A police spokesperson said it had never been used in the field, and the department had other vehicles which could serve the same function.<sup>15</sup>)

Albuquerque's police continue to qualify for the same federal programs which provide them with weapons, vehicles, and grant funding, along with roughly a dozen other law enforcement agencies who have been the subject of similar Justice Department findings.<sup>16</sup>

Also qualifying for continued aid under these programs are any police departments which active DOJ investigations into improper use of force or alleged civil rights violations.<sup>17</sup> As many as 20 law enforcement agencies have fallen under investigation by the Department of Justice under the Obama Administration, but have continued to be eligible for federal grant and equipment programs, including those which provide them with equipment and supplies relating to lethal force and less-than-lethal force.<sup>18</sup>

Here is more detail on those federal programs:

**DOD 1033 Program:** Established in 1997, DOD's 1033 program extended and expanded an earlier program that had been established in 1990 to facilitate transfers of excess defense equipment to law enforcement agencies (LEAs) for use in counter-drug activities to include use in counterterrorism activities. It is called the 1033 program because it appeared in section 1033 of the FY 1997 National Defense Authorization Act (Public Law 104-201).

---

<sup>14</sup> Erdman, Shelby Lin, "Albuquerque, Justice Department reach deal over police brutality," July 24, 2014, <http://www.cnn.com/2014/07/24/justice/albuquerque-police-brutality-federal-reforms/>, accessed September 4, 2014.

<sup>15</sup> Boetel, Ryan, "APD is getting rid of its MRAP," Albuquerque Journal, July 30, 2014, <http://www.abqjournal.com/437498/news/apd-is-getting-rid-of-its-mrap-has-other-armored-vehicles.html>, accessed September 4, 2014.

<sup>16</sup> Apuzzo, Matt, and Manny Fernandez, "Justice Dept. Inquiry to Focus on Practices of Police in Ferguson," New York Times, September 3, 2014, <http://www.nytimes.com/2014/09/04/us/politics/justice-dept-to-investigate-ferguson-police-practices.html?>, accessed September 4, 2014. Ferguson, Missouri, is not included in those numbers.

<sup>17</sup> Apuzzo, Matt, "Federal Inquiry of Ferguson Police Will Include Apparent Racial Profiling," New York Times, September 4, 2014, <http://www.nytimes.com/2014/09/05/us/racial-profiling-by-ferguson-police-to-be-part-of-federal-inquiry.html>, accessed September 5, 2014.

<sup>18</sup> Apuzzo, Matt, and Manny Fernandez, "Justice Dept. Inquiry to Focus on Practices of Police in Ferguson," New York Times, September 3, 2014, <http://www.nytimes.com/2014/09/04/us/politics/justice-dept-to-investigate-ferguson-police-practices.html?>, accessed September 4, 2014. Ferguson, Missouri, is not included in those numbers.

The program is managed by the Defense Logistics Agency's (DLA) Law Enforcement Support Office (LESO) through a network of State Coordinators in each state appointed by the state's governor who approve LEA applications for participation in the program. According to LESO, more than 17,000 federal and state LEAs participate in the program. Once an LEA has been approved for participation in the program by a State Coordinator and the LESO, a representative from the LEA visits the local DLA Disposition Services Site to screen property and place requests for specific items. Item requests receive final approval by the LESO, and LEAs must cover all transportation costs for property transfers.

Law enforcement personnel frequently cite the ability to obtain the "free" equipment through the 1033 program as a good deal for taxpayers because it enables LEAs that couldn't afford to purchase these items outright to utilize equipment that may otherwise be disposed. But the characterization of this equipment as "free" is misleading, as the LEAs must pay to maintain the equipment in working order, and the use of this equipment and associated tactics to conduct ordinary law enforcement activities carries a tangible, and often high cost for the communities in which they are deployed.

Material accountability is maintained through the State Coordinators. Each LEA must sign a Memorandum of Agreement (MOA) that details responsibilities for records management and retention as well as property and inventory control. The State Coordinators keep property accountability records, investigate alleged misuse of property, and report violations of the MOA to DLA. An LEA can be suspended or terminated from the program for violations of the MOA or misuse of property. LESO conducts annual compliance reviews of state coordinators to ensure property records are properly maintained. The statute does not require regular reports to Congress on the program, and DLA maintains authority to determine the types of excess property that can be transferred through the 1033 program.

Of particular concern, the current 1033 MOA requires participants to use any equipment received within one year of receipt, creating an incentive for LEAs to use the equipment even if they have no situation in which the deployment of such equipment and tactics would be appropriate. The ACLU recently documented that 79% of the SWAT deployments it investigated were to execute search warrants, most commonly for drug offenses. Only 7% of the deployments were for hostage or active shooter scenarios cited by LEAs as rationale for obtaining the equipment.

More than \$5 billion worth of equipment has been transferred through the program. While the number of items transferred has remained fairly constant over the past six years, the value of equipment transferred through program has increased, due in large part to the retrograde of equipment from Iraq and Afghanistan.

- FY08 - 30,268 Requisitions worth \$292,297,315
- FY09 - 33,712 Requisitions worth \$308,057,296
- FY10 - 32,751 Requisitions worth \$298,676,213
- FY11 - 30,142 Requisitions worth \$305,677,804
- FY12 - 29,907 Requisitions worth \$336,714,035
- FY13 - 27,461 Requisitions worth \$330,927,000

The Federal Supply Classification (FSC) is a commodity classification system used to classify all items of personal property. There are 645 total FSC classes used by the federal government, with each class made up of “a related grouping for supply management purposes.”<sup>19</sup> In May of this year DLA reported 529 FSCs were available for transfer through the 1033 program.<sup>20</sup> Most of the items available for transfer are innocuous, such as generators, trailers, and gym and office equipment, but LEAs also obtain “sensitive” equipment, such as military-grade weapons, Mine-Resistant Ambush-Protected vehicles (MRAPs) and other armored vehicles, demolition materials, aircraft and drones, and military clothing such as camouflage utilities and boots.

DLA’s annual cost for maintaining the 1033 program averages a little over \$2 million per year. Its budget in FY14 was \$2.1 million.

*Documented Accountability Issues.* Oversight reports on the 1033 program have consistently highlighted discrepancies in property records and systemic accountability and process control weaknesses. Only two hearings have been held on the 1033 program accountability issues, both by the House Committee on Government Reform Subcommittee on National Security, Emerging Threats and International Relations in 2005 and 2006.

A 2002 GAO report (GAO-02-75) and a 2003 Department of Defense Inspector General (DOD IG) report (D-2003-101) examined data discrepancies between the two systems of record DLA used at the time to record transactions. GAO reported these control weaknesses left restricted and hazardous excess property vulnerable to improper use, loss, and theft. The DOD IG reported that of the 148 property transactions it reviewed, only 26% could be reconciled with data in the DLA systems of record.

In 2005 GAO (GAO-05-277) documented for the first time the hundreds of millions of dollars of lost or stolen sensitive military items that had been transferred through the program. A subsequent GAO investigation in 2006 (GAO-06-943) GAO reported lax security controls over sensitive military items that resulted in lost and stolen items, but also items that should have been demilitarized or restricted to DOD use being sold to the public. GAO investigators posing as private citizens were able to purchase sensitive items that posed a national security risk, such as guided missile launcher mounts and chemical and biological items that should have been demilitarized or restricted for DOD-use only, or items that were new and unused and were still being ordered by military units, such as x-ray enclosures that cost DOD \$289,400, but were obtained by the GAO investigators for \$2,914.

A 2010 audit by the DLA Accountability Office (DAO-09-01) documented systemic issues in the administration and accountability of sensitive property:

- In 31% of transactions reviewed, LEAs received more weapons than authorized
- In 82% of transactions reviewed, LESO did not retain the appropriate Bureau of Alcohol, Tobacco, and Firearms (ATF) documentation required to document a weapon’s registration and current ownership

---

<sup>19</sup> <http://www.dispositionservices.dla.mil/sales/Documents/Sales/h2book.pdf>

<sup>20</sup> DLA noted that FSC eligibility is updated regularly, so items may have been previously transferred under an FSC that is no longer eligible for transfer

- One on-site inspection found an LEA had 48 weapons on-hand that lacked the proper authorization from the State Coordinator and LESO and had been transferred to that LEA by another LEA, in violation of the program terms
- The frequency of State Coordinator site visits were inadequate (the present range of review would have taken between 6 and 311 years to review all property) because the MOA between DLA and the States did not define the frequency and scope of reviews
- Of 60 LEAs in 11 states, only 91% of property physically inspected could be accounted for, and only 73% of LEAs reported on-hand quantities of equipment consistent with LESO records
  - Items unaccounted for included 6 vehicles, 16 weapons, and 2 aircrafts
  - LEAs inappropriately disposed of 7 items, including the unauthorized auction of a vehicle and the sale of 6 weapons to a local gun shop
  - An additional 96 items were found that were not documented in the LESO system of record, including 60 weapons, 34 vehicles, and 2 watercrafts
- Vehicle Identification Numbers (VINs) or serial numbers for weapons or aircraft were not required fields in the DLA system of record, so accountability was verified by item descriptions

A follow up audit by DAO in 2013 (DAO-12-26) found LESO had only implemented 7 of 15 recommendations from its 2010 report. Recommendations that remained open included the recommendations to require all LEAs perform a 100% inventory of all property received, to investigate each piece of unaccountable property reported, and to track serial numbers in the system of record.

In September 2013, the DOD IG issued a memorandum to the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L) citing its concern about “systemic weapons accountability deficiencies and inventory discrepancies” in response to a Report of Crime Vulnerability Assessment prepared by DLA that reported 125 weapons were then unaccounted for by LEAs. The DOD IG would not discuss the details of the criminal investigations that were initiated as a result of the investigation, but provided a DOJ press release announcing the indictment of the former Chief of the Rising Star Police Department, who allegedly sold items obtained through the 1033 program to unauthorized recipients. Such misuse of the 1033 program is not an isolated incident—an investigation by *The Arizona Republic* revealed the Pinal County Sheriff’s Office obtained more than \$7 million worth of equipment through the 1033 program with plans to sell the equipment at auction in an effort to balance the department’s budget, even while DLA was presenting the Sheriff with its “Superior Achievement in Fiscal Stewardship” award.<sup>21</sup>

DLA states that it reports all lost, stolen, and missing weapons to the DLA Office of the Inspector General (IG), which investigates the matter to determine the status of the weapon. If it is found that the weapon is lost or stolen the IG will contact the most appropriate law enforcement agency (FBI, ATF) for assistance recovering the weapon. If the weapon remains lost or stolen it gets entered into the National Crime Information Center (NCIC) and Criminal Justice Information Services (CJIS) databases for tracking with the FBI and other law

---

<sup>21</sup> <http://www.azcentral.com/news/politics/20120504pinal-county-surplus-military-equipment.html>

enforcement agencies. Transfers of weapons and other sensitive equipment to non-LEAs are not permitted under current LESO program procedures. Transfers of these weapons and other sensitive equipment directly between LEAs are allowed only when the transfer is facilitated by the State Coordinators with approval from LESO.

In 2012, in response to the discovery of the missing weapons by the DAO reports, LESO instituted a moratorium on weapons transfers through the 1033 program pending a 2013 inventory of all issued firearms. According to DLA, the inventory identified a total of 440 unresolved lost, stolen, or missing weapons out of a total inventory of 91,361 weapons that have been transferred to LEAs since 1990. DLA downplays these as a small percentage of the total weapons transferred. Of particular concern, the DLA response to your request for data on these missing weapons showed that most of these weapons had gone missing several years before being reported to LESO.

As a result of the 2013 inventory, six states were found non-compliant, 1,691 LEAs were suspended, and 7 LEAs were terminated from the program—currently three states remain suspended. Though the moratorium was lifted in October 2013, DLA reports that no additional weapons have been issued since the moratorium was enacted and that it has been able to meet all requests received by LESO through approved internal weapon transfers.

DLA claims it has made the following changes to strengthen process controls (no follow up audit has been conducted to verify the efficacy of the changes):

- Increased DLA LESO Program Office staffing from 14 to 20 employees; used the additional six employees to staff a Program Compliance Team to conduct compliance reviews and property accounting functions, i.e., hands-on assistance to help non-compliant LEAs complete their required annual inventory.
- Revised the MOA between DLA and the States to require all states and territories to conduct an annual inventory of all controlled property received under the 1033 Program. Previously an annual inventory was required only for weapons, aircraft, and tactical vehicles.
- Implemented a new property accounting system, Federal Excess Property Management Information System (FEPMIS), which allows the LESO and LEAs to better manage and track inventory. Includes the ability to upload photos of serial numbers for high profile property such as weapons, tactical vehicles, and aircraft.
- Improved training to focus in State Coordinator responsibilities, program compliance, inventory requirements and property accounting, increased frequency of LESO training and assistance to State Coordinators and individual LEAs, and provided training to all 50 States and 3 U.S. Territories.
- Improved communication of inventory requirements with the States.

Sen. Coburn has previously submitted amendments to the NDAA requiring DOD to dispose all excess property through public sale instead of donation. Sen. Coburn also included DOD excess property in Back in Black, estimating DOD could save \$500 million over 10 years if it recouped just 25 percent of the value of the material it currently gives away (based on FY 2005 figures of \$200 million).

*Current Legislation Related to 1033.* Section 1072 of the FY 2015 House National Defense Authorization Act (H.R. 4435) amends Section 2576a of title 10, United States Code to include border security in the priorities for 1033 program transfers.

**DHS Preparedness Grants:** Since 2003, Congress has appropriated funds for DHS to distribute to help non-federal agencies address the threat of terrorism. Together with smaller grant programs including programs for non-profit agencies and the private sector, DHS grant programs have provided over \$38 billion in the name of terrorism preparedness.<sup>22</sup>

While as many as nine programs comprise the Preparedness Grant program, just two account for the bulk of the money the program distributes: the State Homeland Security Grant Program (SHSP), which directs funds to states, and the Urban Areas Security Initiative (UASI), which directs funds to a select group of major metropolitan areas. Combined, those two direct close to \$1 billion in funding annually to state and local agencies, out of a program total of \$1.6 billion in FY2014.<sup>23</sup>

The remaining funds move through grant programs to state and local agencies and private businesses for emergency management, port security, nonprofits, tribes, transit security, intercity passenger rail, emergency management, and border security enhancement.

*SHSP and UASI.* Funds are appropriated by Congress and allocated to states and urban areas based on a statutorily mandated, “risk-based” formula. Each state and urban area has designated an agency to act as administrator for the grant funds. Every year that administrator solicits proposals from its sub-grantee agencies for how they plan to spend next year’s grant allocation, and submits them to the Federal Emergency Management Agency (FEMA), which administers these programs. FEMA reviews and approves the project proposals, and disburses funds to the state or urban area’s designated administrator, which further disburses the funds to the subgrantees.

	2008	2009	2010	2011	2012	2013
<b>SHSP</b>	\$859,466,754	\$860,602,295	\$842,000,000	\$526,874,100	\$294,000,000	\$336,556,591
<b>UASI</b>	\$751,559,915	\$798,631,250	\$832,520,000	\$622,622,100	\$490,376,000	\$588,745,566

*Funding levels for SHSHP and UASI grants, 2008-2011<sup>24</sup>*

<sup>22</sup> “Testimony: FEMA Has Made Progress in Improving Grant Management and Assessing Capabilities, but Challenges Remain,” (3/19/2013), prepared by GAO, GAO-13-456T, p. 1, <http://www.gao.gov/assets/660/653122.pdf>.

<sup>23</sup> Memorandum from Brian Kamoie, Assistant Administrator for Grant Programs, FEMA, August 6, 2014, “Subject: “Update to Information Bulletin #398 – Fiscal Year 2014 Preparedness Grant Programs Allocation Announcement,” [http://www.fema.gov/media-library-data/1407866144773-1f9f77229ce71e527c9247c442e2872d/Information%20Bulletin%20398a\\_Final\\_v508.pdf](http://www.fema.gov/media-library-data/1407866144773-1f9f77229ce71e527c9247c442e2872d/Information%20Bulletin%20398a_Final_v508.pdf), accessed September 5, 2014.

<sup>24</sup> FEMA, “National Awards Summary Report,” August 31, 2013.

To assist grantees in selecting expenditures, FEMA maintains an Authorized Equipment List (AEL), which is a list of categories of equipment which are authorized under these grant programs. As the 2012 PSI investigation reported, “HSGP funds can be used by states and urban areas for items as diverse as body armor, respirators, diving fins, mass casualty transport vehicles, reference databases, boats, planes, and refrigerators; for training on a wide variety of topics; for preparedness exercises; and for special event planning. Recipients can even use HSGP funds for costs like construction, physical security upgrades, rent and salaries, in proscribed circumstances.”<sup>25</sup>

They can also be used for equipment that may enhance a local police force’s paramilitary appearance and activities, including “battle dress uniforms,” boots, body armor, ballistic helmets, protective padding such as knee pads, ballistic shields, and even “tactical entry equipment,” “explosive entry equipment” and “portable explosive magazines,” although not the explosives themselves.<sup>26</sup>

Language in the AEL explains that its equipment is “not for riot suppression,”<sup>27</sup> however FEMA officials conceded they have no way to oversee or enforce that provision, as there is no way to know conclusively whether equipment used in response to civil unrest, such as in Ferguson last month, was bought with FEMA grant funds.<sup>28</sup>

Statute explains the programs are to assist high-risk urban areas and state, local, and tribal governments “in preventing, preparing for, protecting against, and responding to acts of terrorism.”<sup>29</sup>

The purpose of its preparedness grants, according to FEMA, is “to enhance the capacity of state and local emergency responders to prevent, respond to, and recover from a *weapons of mass destruction terrorism incident* involving chemical, biological, radiological, nuclear, and explosive devices and cyber attacks. (emphasis added.)”<sup>30</sup>

Despite those definitions, state and local agencies often use the funds for items that could have some a counterterrorism purpose but are more likely to be used in routine operations, including law enforcement. A 2012 investigation by the HSGAC Permanent Subcommittee on Investigations found recipients used funds to purchase Chevrolet Tahoe SUVs, flat-screen televisions, laptop computers and more.<sup>31</sup> In Sen. Coburn’s report, *Safety at Any Price*, he reported instances of the funds being used for a variety of gadgets and expensive toys like a

---

<sup>25</sup> HSGAC PSI, “Federal Support for and Involvement in State and Local Fusion Centers,” October 2012, p. 24, [http://www.hsgac.senate.gov/download/report\\_federal-support-for-and-involvement-in-state-and-local-fusions-centers](http://www.hsgac.senate.gov/download/report_federal-support-for-and-involvement-in-state-and-local-fusions-centers), accessed September 5, 2014.

<sup>26</sup> “DHS Authorized Equipment List,” [https://www.llis.dhs.gov/sites/default/files/AEL\\_PDF\\_Complete.pdf](https://www.llis.dhs.gov/sites/default/files/AEL_PDF_Complete.pdf), accessed September 5, 2014.

<sup>27</sup> Ibid.

<sup>28</sup> Interview with HSGAC Staff, August 22, 2014.

<sup>29</sup> 6 USC § Secs. 604, 605.

<sup>30</sup> “Preparedness (Non-Disaster) Grants,” FEMA.gov, last updated August 6, 2014, <http://www.fema.gov/preparedness-non-disaster-grants>,

<sup>31</sup> HSGAC PSI, “Federal Support for and Involvement in State and Local Fusion Centers,” October 2012, [http://www.hsgac.senate.gov/download/report\\_federal-support-for-and-involvement-in-state-and-local-fusions-centers](http://www.hsgac.senate.gov/download/report_federal-support-for-and-involvement-in-state-and-local-fusions-centers), accessed September 5, 2014.

hovercraft, electronic license plate readers, an underwater robot, digital cameras, as well as for routine costs like cell phone bills, salaries – even a roofing project.<sup>32</sup>

*Criticism.* In the decade that FEMA has administered the preparedness grant programs, watchdogs have said its process lacks accountability and transparency. FEMA doesn't know how the state and local agencies are spending taxpayer dollars, doesn't know if they're following through on promised programs, and cannot track whether the spending is making a difference in actually helping these states and cities prepare for a terrorist attack.

The 2012 PSI investigation concluded that FEMA does not keep authoritative itemized records of what its grant funds have purchased, nor does it require states to do the same. As a result, its efforts to identify agencies that bought specific types of equipment are at best educated guesses, based on keyword searches of unaudited, self-reported data from grantees.<sup>33</sup>

FEMA has also been criticized for relying on reports and monitoring visits to keep tabs on how its grantees are using funds that are insufficient. As a result, FEMA cannot reasonably say if an agency spent grant funds in line with its stated plans and goals, and therefore cannot take action to remedy shortcomings or misspending.<sup>34</sup>

In June 2012, the DHS Inspector General reported that “FEMA did not have a system in place to determine the extent that Homeland Security Grant Program funds enhanced the state’s capabilities” to prevent or respond to terrorist attacks or other emergencies.<sup>35</sup> In March 2013, the Government Accountability Office (GAO) reported that FEMA had made some progress in assessing the preparedness of its grantees, but challenges remained “that may reduce the usefulness of these efforts.”<sup>36</sup>

**DOJ Byrne JAG Program:** Congress created the Edward Byrne Memorial Justice Assistance Grant (JAG) Program in 2005 by combining two legacy grant programs. Byrne JAG is a formula grant program that directs federal funding to state and local law enforcement for equipment, training, technical assistance, and information systems to assist with the

---

<sup>32</sup> Coburn, Sen. Tom, “Safety at Any Price: Assessing the Impact of Homeland Security Spending on U.S. Cities,” December 2012, [http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File\\_id=b86fdaeb-86ff-4d19-a112-415ec85aa9b6](http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=b86fdaeb-86ff-4d19-a112-415ec85aa9b6), accessed September 5, 2014.

<sup>33</sup> HSGAC PSI, “Federal Support for and Involvement in State and Local Fusion Centers,” October 2012, [http://www.hsgac.senate.gov/download/report\\_federal-support-for-and-involvement-in-state-and-local-fusions-centers](http://www.hsgac.senate.gov/download/report_federal-support-for-and-involvement-in-state-and-local-fusions-centers), accessed September 5, 2014.

<sup>34</sup> See “Testimony: DHS Improved its Risk-Based Grant Programs’ Allocation and Management Methods, But Measuring Programs’ Impact on National Capabilities Remains a Challenge,” (3/11/2008), prepared by GAO, GAO-08-488T; “Single Audit Improvements,” (3/13/2009), prepared by GAO, GAO-09-307R; “The Federal Emergency Management Agency’s Requirements for Reporting Homeland Security Grant Program Achievements,” OIG-12-92, at 9, (6/37/2012), [http://www.oig.dhs.gov/assets/Mgmt/2012/OIG\\_12-92\\_Jun12.pdf](http://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-92_Jun12.pdf); “Federal Support for and Involvement in State and Local Fusion Centers,” Staff Report, Permanent Subcommittee on Investigations, Senate Homeland Security and Governmental Affairs Committee, October 3, 2012, p. 64-71, <http://www.hsgac.senate.gov/download/?id=49139e81-1dd7-4788-a3bb-d6e7d97dde04>, accessed September 5, 2014.

<sup>35</sup> “The Federal Emergency Management Agency’s Requirements for Reporting Homeland Security Grant Program Achievements,” OIG-12-92 (6/2012), [http://www.oig.dhs.gov/assets/Mgmt/2012/OIG\\_12-92\\_Jun12.pdf](http://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-92_Jun12.pdf).

<sup>36</sup> “Testimony: FEMA Has Made Progress in Improving Grant Management and Assessing Capabilities, but Challenges Remain,” GAO-13-456T, (3/19/2013).

apprehension, prosecution, adjudication, detention and rehabilitation of offenders. Funds are awarded to localities based on a formula accounting for population and violent crime rates.<sup>37</sup>

Appropriated funds for the program have averaged around \$440 million a year, although they have trended steadily downward; in 2014 it received \$376 million. By contrast, in the late 1990s the legacy grant programs gave out over \$1 billion to state and locals each year.<sup>38</sup>

In addition, since 2006, the Congressional Research Service (CRS) stated Byrne has consistently received less funding than what has been authorized. While authorized in 2006 at \$1.095 billion per year, the most Congress appropriated for JAG was \$546 million in FY 2009, which is approximately 50% of the amount authorized.<sup>39</sup>

The program has many detractors. A diverse array of groups have called for ending the program, including the American Civil Liberties Union, the Drug Policy Alliance, and the National Taxpayers Union. The ACLU and DPA have both said the funds go to programs which receive little oversight, and the program may cultivate corruption. The Justice Department's Inspector General has repeatedly found fault with DOJ's grant programs generally, and the Byrne JAG program in particular. A 2010 audit discovered local grantees lacked documentation for purchases, or could not account for property purchased with the funds.<sup>40</sup>

In an interview with HSGAC staff, DOJ grant officials who administer the program acknowledged they have no process to track or account for how individual agencies spend grant funds.<sup>41</sup> Therefore, while they allow the purchase of guns, ammunition, and a variety of other lethal and less-than-lethal equipment, they have no capability to monitor how it is used, or track allegations or incidents of misuse. Thus they cannot take action against an agency which may have misused equipment, such as excessive use of force or even causing wrongful death.

In *Back in Black*, Sen. Coburn called for cutting the Byrne JAG program budget in half, saving \$2.88 billion over ten years.<sup>42</sup>

**Federally Provided Equipment Used in Ferguson:** This does not approach a complete review of equipment, vehicles and weapons deployed in response to civil unrest in Ferguson that appear to be paid for or transferred via the aforementioned programs. Given restraints of time and resources, this is a brief summary of major items mentioned in news accounts or captured by photographers for which we have identified relevant documentation suggesting they were or could have been obtained through these federal programs.

- **Lenco Bearcat armored vehicle – St. Louis County Police:** appears to have been purchased using \$360,000 in DHS UASI grant funds.<sup>43</sup>

---

<sup>37</sup> James, Nathan, "Edward Byrne Memorial Justice Assistance Grant (JAG) Program," Congressional Research Service, January 30, 2014.

<sup>38</sup> Ibid.

<sup>39</sup> Id.

<sup>40</sup> Coburn, Sen. Tom, "Back in Black: A Deficit Reduction Plan," July 2011, pp. 313-314.

<sup>41</sup> Interview with HSGAC Staff, August 28, 2014.

<sup>42</sup> Ibid, p. 314.

- **LRAD sound cannon – St. Louis County Police:** emits painful blasts of noise to encourage crowd dispersal.<sup>44</sup> Grant documents indicate the county reported an intent to purchase an LRAD system using 2009 DHS grant funds.<sup>45</sup>
- **Ballistic shields:** Grant documents indicate the St. Louis urban area received DHS preparedness grant funds for ballistic shields in 2010.<sup>46</sup>
- **Helmets & Vests:** Grant documents indicate the city of St. Louis intended to purchase 6 ballistic vests and 6 helmets using 2008 DHS grant funds.<sup>47</sup>
- **Rifles:** DOD documentation indicates it transferred 39 M-16s and 18 M-14s to the Missouri Highway Patrol, and an additional 12 M-16s to police in St. Louis County.<sup>48</sup>
- **Night vision viewers:** DOD documentation indicates it transferred 2 night vision viewers to law enforcement in St. Louis County.<sup>49</sup>

**Panels:** The hearing will feature two panels: First, government witnesses representing DOD’s 1033 program, DHS’ Preparedness Grant program, and DOJ’s Byrne JAG program. Second will be a collection of non-governmental witnesses.

*Panel 1*

**Alan Estevez**, *Department of Defense, Principal Deputy Under Secretary of Defense for Acquisition, Technology and Logistics.* Confirmed October 2013. Earlier in his career Mr. Estevez held positions within the Office of the Secretary of Defense, the Department of the Army, and the Military Traffic Management Command.

**Brian Kamoie**, *FEMA, Assistant Administrator for Grant Programs.* Appointed April 2013. Prior to that he held positions with the White House National Security Staff, Secretary for Preparedness and Response, and the Office of Policy, Strategic Planning & Communications at the U.S. Department of Health and Human Services.

**Karol Mason**, *Department of Justice, Assistant Attorney General for Office of Justice Programs.* Confirmed April 25, 2013. Previously served DoJ as Deputy Associate Attorney General. In a cross-department initiative to address criminal justice issues in New Orleans, she led a team of representatives from each of the Department’s grant components, as well as the Civil Rights Division, the Office of U.S. Attorneys, the FBI and others.

---

<sup>43</sup> Press Release, “St. Louis County Police More Prepared for Major Incident with New Equipment,” St. Louis County Police Department, December 12, 2012, <http://www.stlouisco.com/LawandPublicSafety/PoliceDepartment/ResourcesforCitizens/PressReleases/Article/128/St-Louis-County-Police-More-Prepared-for-Major-Incident-with-New-Equipment>, accessed September 4, 2014.

<sup>44</sup> Voorhees, Josh, “Everything That Went Wrong in Ferguson,” Slate.com, August 21, 2014, [http://www.slate.com/articles/news\\_and\\_politics/politics/2014/08/ferguson\\_police\\_timeline\\_a\\_comprehensive\\_chronological\\_accounting\\_of\\_the.html](http://www.slate.com/articles/news_and_politics/politics/2014/08/ferguson_police_timeline_a_comprehensive_chronological_accounting_of_the.html), accessed September 4, 2014.

<sup>45</sup> “FY2009 Grant Application: HSRT – St Louis County,” produced to Committee Minority staff on September 4, 2014.

<sup>46</sup> FEMA Spreadsheet, “08182014 Missouri 2010 All BSIRS,” produced to HSGAC Minority on August 26, 2014.

<sup>47</sup> “FY2008 Grant Application: HSRT – St. Louis City,” produced to HSGAC Minority on Sept. 4, 2014.

<sup>48</sup> Based on data provided by DOD via FOIA request to the New York Times as well as data provided to HSGAC.

<sup>49</sup> Ibid.

*Panel 2*

**Jim Bueermann**, *President, Police Foundation*. Until June 2011 he worked for the Redlands Police Department for 33 years, serving in every unit within the department and as its chief. The Foundation is ambivalent on the issue of these programs. Bueermann has said, "just because we can get the equipment, it doesn't mean we should use it." He has also said, "... [T]he problem is once you create a SWAT team, you're going to want to use it, and once you acquire this piece of equipment, you're going to want to use it . . . so what can happen is the incremental normalizing of when this kind of equipment is utilized."

**Dr. Peter B. Kraska**, *Professor and Chair of Graduate Studies and Research, School of Justice Studies at Eastern Kentucky University*. Prof. Kraska has conducted extensive research and writing on the subject of police militarization. Kraska has defined "police militarization" as "the process whereby civilian police increasingly draw from, and pattern themselves around, the tenets of militarism and the military model."

**Mark E. Lomax** *Executive Director, National Tactical Officers Association*. Generally appears in favor of these programs, but wants additional training. "The police have to be one step ahead of the criminal element, have to be prepared for the worst-case scenario. You don't want a community to be taken over by one or many criminals... We're definitely for equipping our law enforcement officials out there properly, with proper training and proper policies."

**Wiley Price**, *Photojournalist, St. Louis (Mo.) American Newspaper*. Mr. Price shoots for the oldest African-American paper in St. Louis, and was present for much of the unrest in Ferguson following the shooting of Michael Brown. In a staff interview, he was critical of the militarized police response in Ferguson.

**Hilary Shelton**, *Director, Washington Bureau, National Association for the Advancement of Colored People (NAACP)*. Mr. Shelton is the NAACP's chief representative before Congress and federal agencies. His organization has had had representatives on the ground in Ferguson working with the community and law enforcement, and as a national group has tracked issues of police use of force particularly with respect to minority communities. In addition to his work with the NAACP, Mr. Shelton serves on the board of directors for the Coalition to Stop Gun Violence, the Leadership Conference on Civil Rights, and other groups.