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TESTIMONY OF HILARY O. SHELTON

*Director, NAACP Washington Bureau &
Senior Vice President for Policy and Advocacy*

**Before the Senate Committee on
Homeland Security and Governmental Affairs**

On

**“Oversight of Federal Programs for
Equipping State and Local Law
Enforcement”**

Tuesday, September 9, 2014



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Good morning, Senator Carper, Senator Coburn, Senator McCaskill, and esteemed members of this panel. Thank you so much for inviting me here today to testify and for soliciting the input of the NAACP on this very important topic.

Founded more than 105 years ago, in February of 1909, the National Association for the Advancement of Colored People, the NAACP, is our nation's oldest, largest, and most widely-recognized grassroots-based civil rights organization. We currently have more than 1,200 active membership units across the nation, with members in every one of the 50 states.

My name is Hilary Shelton, and I am the Director of the NAACP Washington Bureau and the Senior Vice President for Policy and Advocacy. I have been the Director of the NAACP Washington Bureau, our Association's federal legislative and political advocacy arm, for over 17 years.

Let me be clear: The NAACP deeply appreciates the needs of local governments, including law enforcement agencies, to secure equipment as cost-effectively as possible. The NAACP has supported increased resources and personnel for local police departments. Over the last couple of decades, given shrinking state and federal budgets and oftentimes increasing demands, the communities represented and served by the NAACP seem to have suffered disproportionately from reduced State and local funding. Thus, we commend and would encourage the transfer of functioning items from the federal government to state and local entities, especially non-lethal tools including clothing, construction equipment, fire control equipment, and medical supplies among other items.

Our concerns, and they are indeed deeply-held concerns which we have harbored and expressed for many years now, are when military equipment, weapons of war which are commonly used to fight an avowed enemy of our country, are transferred to local domestic law enforcement agencies with little or no oversight, training, or specific and clear integration when and how they are used in civilian circumstances. They have no place in our cities, towns, suburbs, streets or our communities.

The tragic killing of Michael Brown in Ferguson, Missouri, the ensuing protests and the resulting shows of force by local law enforcement brought the attention of many to a heretofore little known policy by which the federal government transfers excess military equipment from the Department of Defense to state and local law enforcement agencies. The primary program through which this is done is the Department of Defense “1033” program, but there are programs within the U.S. Department of Justice and the federal Department of Homeland Security which also contribute to the militarization of local law enforcement. While many Americans were rightfully upset by the apparent militarization of a local law enforcement agency, it is a sad commentary on race in America that this is not a new phenomenon to most Americans of color.

HISTORY

One of the key tenets of American democracy has been our national tradition to maintain a distinct separation between federal military force and civilian law enforcement. The primary exception to this rule occurred about 150 years ago when federal troops were used to enforce order during the years immediately after the Civil War, primarily on the Southern states. In 1878, Congress enacted the *Posse Comitatus Act* (18 U.S.C. §1385) to ensure that this practice would come to an end. With a few notable exceptions, this line between the national military and local law enforcement was distinctly retained for over 100 years¹.

Then, in 1989, Congress included provisions in the Department of Defense (DoD) authorization law to greatly expand the role of the DoD in the national “war on drugs.” It was in the following Department of Defense Authorization Act, building on this ever-expanding role of the DoD in the “war on drugs,” that Congress created a pathway for the DoD to directly transfer excess equipment to federal, state and local law enforcement agencies for use in counter-drug activities. Although the initial program was subject to a sunset date after 5 years, the program was extended in 1992 and then made permanent; expanded to extend priority in property

¹ Else, Daniel H. The Congressional Research Service, “The “1033 Program,” Department of Defense Support to Law Enforcement”, August 28, 2014

transfers to fight terrorism as well as the “war on drugs”; and renamed the “1033” program in the Department of Defense Authorization Act of 1997.

THE IMPACT OF THE “1033” PROGRAM AND THE PROGRAM TODAY

It is of no surprise to most when I say the “war on drugs” has been predominantly waged against racial and ethnic minorities, and specifically in African Americans communities. Currently, two-thirds of all persons in prison for drug offenses are people of color² despite the fact that according to the National Institute on Drug Abuse, 60% of those who sought professional treatment for drug abuse in 2008 were white³. Furthermore, 91% of individuals arrested in drug sting operations by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in the past decade have been racial minorities – nearly all black or Hispanic⁴.

Given that for nearly a quarter of a decade, since 1989, military equipment has been used by law enforcement agencies to fight “the war on drugs,” it should be no surprise, then, that racial and ethnic minorities, especially African Americans, unfortunately, have grown accustomed to seeing weapons of war in our communities, on our streets, and even entering our homes. In June, 2014, the American Civil Liberties Union released an important report entitled, “War Comes Home: The Excessive Militarization of American Policing⁵.” In their report, they found that paramilitary styled *Special Weapons And Tactics* squads (“SWAT”) teams “were often deployed – unnecessarily and aggressively – to execute search warrants in low level drug investigations...⁶” They went on to find that “Overall, 42 percent of people impacted by a SWAT deployment to execute a search warrant were Black and 12 percent were Latino⁷.” They concluded that, “The use of paramilitary weapons and tactics primarily impacted people of color⁸.”

Furthermore, Congress authorized the 1033 program to fight the “war on drugs” and to pursue counterterrorism. But data collected by National Public Radio (NPR) and others does not confirm whether either of these public safety goals are, in fact, driving decisions about the current distribution of equipment⁹. Areas with large populations or high crime rates aren’t receiving more (or less) than their share of the items¹⁰.

² The Sentencing Project, <http://www.sentencingproject.org/template/page.cfm?id=122>

³ <http://www.drugabuse.gov/publications/drugfacts/treatment-statistics>

⁴ Heath, Brad. USA Today, “Investigation: ATF drug stings targeted minorities,” July 20, 2014

⁵ ACLU Foundation, “War Comes Home: The Excessive Militarization of American Policing,” June, 2014.

⁶ Ibid, p.31

⁷ Ibid., p. 5

⁸ Ibid, p. 35

⁹ Rezvani, Arezou, Pupovac, Jessica, Eads, David and Fishwer, Tyler, National Public Radio, “MRAPS and Bayonets: What we Know About the Pentagon’s 1033 Program” September 2, 2014

¹⁰ Ibid, and Cook, Lindsey, US News & World Report, “Which States Use the 1033 Program More?,” August 25, 2014

ADDITIONAL FEDERAL PROGRAMS

In addition to the Department of Defense 1033 program, there exist several other programs which have contributed to the militarization of local law enforcement officials. Specifically, the federal Justice Assistance Grant Program (JAG) and the Edward Byrne Memorial JAG (Byrne) Program within the Department of Justice and the Homeland Security Grant Program at the U.S. Department of Homeland Security, and its two components, the State Homeland Security Program and the Urban Areas Security Initiative provide funding to local law enforcement agencies which lead to their militarization .

JAG money (across both programs), is the primary vehicle for federal support of state and municipal law enforcement. As outlined in the 2013 ACLU report, “The War on Marijuana in Black and White¹¹”, the JAG program requires departments to account for how they are using any grants received. Thus, local law enforcement agencies are motivated to use "preferred" methods of accountability to secure continuing federal assistance for officer payments, etc. Further, because JAG reporting guidelines list "increased drug-related arrests" as one specific way to document putting the money to good use, departments are incentivized to increase the number of drug arrests each year they receive federal assistance. Given the relatively static level of drug activity, this likely drives increases in low-level drug arrests. Finally, because low-level drug arrests are stunningly racially disproportionate, this means that the JAG grant/reporting system contributes to the racial disparities we see in criminal justice outcomes.

Under the programs operated by the U.S. Department of Homeland Security, grant recipients are required to use at least 25% of their grant funds to pursue the ill-defined “terrorism prevention-related law enforcement activities.” By invoking images of war, aggressively funding the inherently flawed “War on Drugs”, and creating an overhyped fear of “evil” within our borders, the federal government is justifying, if not promoting, the militarization of local community law enforcement¹².

FERGUSON, MISSOURI

On Saturday, August 9, 2014, an unarmed African American teenager named Michael Brown was shot to death under very disturbing circumstances by a police officer in Ferguson, Missouri. What followed were protest marches and demonstrations by the residents of Ferguson and others, including many from neighboring communities. According to nearly every report, including those by NAACP national staff and Board members who were present, the protests began peacefully. The people were angry, admittedly outraged, but peaceful. They were met

¹¹ ACLU Foundation, “The War on Marijuana in Black and White,” June, 2013

¹² ACLU Foundation, “War Comes Home: The Excessive Militarization of American Policing,” June, 2014, pp. 17-18

by local law enforcement agents in warfare type mine-resistant, ambush-protected vehicles (MRAPs) with assault weapons trained on them. As a matter of facts, in at least one televised case, a police officer carrying a military styled assault weapon aimed at local U.S. citizen protesters screaming, "I will F***ing kill you".

According to some reports, upwards of 70 officers decked out not just in riot gear, but in equipment suited for foreign battlefields, took to the streets in an attempt to disperse the largely peaceful demonstrations organized to protest Brown's death¹³ also utilizing tear gas, rubber bullets and smoke bombs. CNN commentators compared the televised scene in Ferguson to war scenes in foreign countries.

The resulting impact on the people of Ferguson, and on people throughout America and the world who were watching the events on television and through the internet, is that these citizens were being marginalized, and that their concerns, their anger, and their protests were not being valued or respected by local law enforcement. The fact that the population of Ferguson is over 67% African American has not been lost on many of the protesters nor on the U.S. or international observers.

Washington Post reporter Radley Balko summed it up when he stated, "When you arm police like soldiers and outfit them with military weapons and train them on military tactics and tell them they're fighting a war, whether it's a war on crime or drugs or looters and rioters, they're going to start seeing themselves as soldiers, and seeing the people they serve less as citizens with rights and more as potential threats, and that's what we're seeing¹⁴."

RECOMMENDATIONS

As I stated earlier, we strongly support the transfer of non-lethal equipment to state and local law enforcement agencies.

The NAACP has long advocated for a change in the paradigm which has driven our criminal justice system. We need to move away from the failed scenario of declaring "war" on the American people, whether it be the "War on Drugs," or a "War on Crime," and law enforcement needs to be trained to stop stereotyping people based on what they look like, the clothes they wear, the color of their skin, and / or the neighborhoods in which they live. Above all, law enforcement at every level, local, state, and federal, should stop perceiving the citizens who they are hired to protect and serve as "the enemy."

¹³ Wing, Nick The Huffington Post, "Actual Military Veterans Say Cops In Ferguson Are Excessively Armed, Untrained Wannabes," August 14, 2014

¹⁴ <http://abcnews.go.com/US/ferguson-police-small-army-thousands-police-departments/story?id=24977299>

Thus, if the Department of Defense “1033” program is allowed to continue, we would strongly urge that it be restructured to emphasize non-lethal equipment and that the equipment be used not to pursue the flawed “War on Drugs,” the “War on Crime,” or civilian protest and demonstrations, but rather that it be used to promote the principle that law enforcement is designed to “protect and serve” the citizens who are within their jurisdiction.

The majority of law enforcement officers are hard working, courageous, men and women, whose concern for the safety of those they are charged with protecting and serving is often paramount, even when their own safety is on the line. Yet when you provide anyone with fancy new tools, and without the proper training on how – and when – to use them, it is human nature to want to utilize all equipment at your disposal. This reaction is only exacerbated by a lack of clear internal guidelines and policies.

Thus, the NAACP strongly recommends that all law enforcement agencies, whether they be federal, state, or local, should also develop their own internal policies calling for restraint whenever possible, and that proof of these policies should be a requirement before any equipment transfer or funding is made available. We recommend the adoption of the "use of force" principles incorporated in the "Law Enforcement Trust and Integrity Act", now being readied for introduction in the Congress. We also support a requirement that any law enforcement agency which receives any federal funding or participates in equipment transfer programs such as the DoD “1033” program show proof of annual training of all personnel on the appropriate use of force as well as the anti-racial profiling training as included in the End Racial Profiling Act of 2013, now pending before the U.S. Senate and the House of Representatives (S. 1038 / H.R. 2581).

The NAACP also calls for full transparency and disclosure. Not only should the Department of Defense be required to disclose what equipment they have given, and to whom, but state and local law enforcement agencies should also be required to publically share, on an annual or semi-annual basis, the equipment they have requested, and received, and the intended purpose for that equipment. They should also disclose any and all limitations on the use of the equipment, as well as what training goes along with the acquisition.

Finally, the NAACP would like to strongly advocate for more programs such as the Department of Justice “Community Oriented Policing,” or “COPS” program. The COPS program is the office of the U.S. Department of Justice that advances the practice of community policing in America’s state, local and tribal law enforcement agencies. COPS does its work principally by sharing information and making grants to police departments around the United States relating to best practices for law enforcement, and provides Problem-Oriented Policing Guides addressing

crime-related problems, and publications composed by subject matter experts within the federal government, academics, and law enforcement leaders. The COPS program offers free publications to local law enforcement agencies on topics ranging from bullying in schools to computer mapping¹⁵. The COPS program is intended as a way to incentivize better law enforcement practices through community engagement. It remains the primary vehicle by which the federal government rewards innovation and research on police transparency and accountability. The NAACP strongly supports the COPS program, and encourages additional funding for this crucial resource which can be seen as the antithesis to militarization.

SUMMARY

American policing has become increasingly militarized in the last quarter century through the acquisition and use of weapons and tactics designed for war. The lines between federal military force and civil law enforcement are becoming increasingly blurred. Sadly, heretofore, communities of color have borne the brunt of this obfuscation. We need to correct this problem, not just check it, if we are to continue to strive for a democracy under which all Americans can thrive.

History has shown us that nations in which the local authorities regard and treat the citizens they are charged with protecting and serving as "enemies" fail. Thus, on behalf of the NAACP and our members nationwide, I would strongly urge you to take corrective action sooner rather than later. It should never be acceptable for Americans to be considered "collateral damage" at the hands of our professional law enforcement officials. We should not allow any American community or government entity to be considered at "war" with any other.

I thank you again, Chairman Carper, Senator Coburn, Senator McCaskill, and the others who have gathered here for the time and attention you have given to this extremely important issue. I welcome your questions.

¹⁵ <http://www.cops.usdoj.gov/default.asp?Item=35>