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Law Enforcement and the 1033 Program

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ABSTRACT

Law enforcement agencies are faced with situations and circumstances within the communities they serve that if they had specialized equipment, they could resolve those situations more effectively. However, because cost is a determining factor, departments are unable to purchase items that would otherwise assist them with performing the variety of tasks their communities expect from them. Some of these roles may be from a tactical perspective such as providing ballistic protection for officers involved in an active shooter event or that of a search and rescue role during a natural disaster.

An ever present argument from those in the citizenry that oppose law enforcement agencies acquiring military equipment is the perception that police agencies are no longer police, but rather military in appearance. To offset this often negative perception by the public, it would necessitate that agencies should not only engage in educating their communities as to how these resources would be utilized by the agency, but also how these resources would serve the citizens in the event of critical incidents. Agencies that choose to participate in the Law Enforcement Support Office (LESO) or the 1033 program as it is frequently referred are choosing a more cost effective method to acquire specialized equipment and are also exercising forward thinking strategies to serve their communities.

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INTRODUCTION

Law enforcement agencies are no different than businesses in that they both face budget constraints. However, law enforcement has partnered with the military through the Law Enforcement Support Office (LESO) or hereafter referred to as the 1033 Program. The 1033 Program was so designated in 1997 by virtue of the National Defense Act to assist law enforcement with the war on drugs and to combat terrorism (Johnson, 2011). As a result, this created the Department of Defense Excess Property Program or 1033 Program, as it has become to be known, to allow the federal government to transfer excess military resources from the Department of Defense (DOD) to law enforcement agencies at little or often no cost to the those participating agencies (Defense Logistics Agency, n.d.). Prior to the creation of what is now known as "1033," the program was known as the 1208 Program. The program has provided over 17,000 agencies with an opportunity to receive surplus military items in the war of drugs (Moore, 2008).

An agency that has applied for and been approved to take part in the program works with the assigned state coordinator for the state in which the agency is located; following this, the agency then completes a single document and subsequently receives a catalog listing everything that is available to them (Moret, 2014). There are specific parameters that each agency must meet, and those criteria can be found by contacting the Defense Logistics Agency (Defense Logistics Agency, n.d.). Items that an agency can receive may range anywhere from clothing, to furniture, or equipment utilized for rescue purposes, as well as small arms, first aid kits, and vehicles (Defense Logistics Agency, n.d.). All of the aforementioned items are available to approved law

enforcement entities at no cost. To acquire resources through the 1033 Program, agencies must complete an application and attach a justification for the items requested, and, following approval by the state coordinator, be used within a year of taking ownership of the asset. Those items acquired through 1033 are audited once a year and reported each year by December 1 (Defense Logistics Agency, n.d.).

If it were not for the 1033 Program, law enforcement would have to come up with less-effective or costlier solutions simply because the agencies could not afford the most-effective resources. The communities that law enforcement serves have an expectation that when they call, law enforcement will come, no matter the circumstances, no matter the conditions. With the various roles that law enforcement performs, be it search and rescue in the aftermath of a natural disaster or providing protection for its own or the lives of others, this simply could not be accomplished without law enforcement's participation in the 1033 Program.

Providing ballistic protection for officers as they approach a structure of a violent armed subject who has taken refuge with the structure would take something more than the protection a patrol car has to offer. The only entity outside of law enforcement that possesses vehicles that offer ballistic protection is the military. An armored vehicle that offers ballistic protection for officers charged with encountering an armed suspect who has taken a fortified position can be invaluable, and, more often, just the sight of an armored recovery vehicle can end a situation peacefully (Weiss, Davis, & O'Brien, 2012). In the event a police Special Weapons and Tactics team, hereafter referred to as SWAT, is needed to rescue an injured officer or citizen in the immediate vicinity of an active shooter, a ballistic delivery vehicle would provide sufficient protection to do so.

With the natural disasters that have struck the interior of the United States in the not too distant past, resources acquired through the federal government's 1033 Program have made search, rescue, and recovery efforts much easier. In Henderson County Kentucky, a river county, where the community experiences natural disasters such as flooding, tornadoes, and harsh winters, the sheriff's department used Humvees received as a result of the 1033 Program to deliver medical supplies as well as check on the welfare of the residents (Foreman, 2015). Because both police departments and sheriff's offices are increasingly asked to perform tasks that in the past they may not have been able to perform due to a lack of resources or that were too costly, is precisely the reason now that law enforcement should partake in the resources the 1033 Program has to offer.

POSITION

Law enforcement agencies operate on limited budgets and are therefore unable to purchase items that would otherwise make their numerous roles easier to perform. To offset the costs of resources only available to the military in times past, law enforcement now has the opportunity to receive certain assets through Section 1033 of the National Defense Act of 1997 (Dudley, 2014). The cost for items such as weapons, first aid kits, mobile armor, rescue equipment, etc. for any department would be significant, if not unreasonable, if agencies had to factor these items into their annual budgets. Following 9/11, law enforcement agencies all over the United States took advantage of the 1033 Program with the military providing police departments in the United States \$500 million in resources (Johnson, 2011) .

The benefits that agencies have reaped as a result of the 1033 Program are many in so far as the assets that can be obtained. According to the Texas Department of Public Safety's 2016 report, of 902 police departments and sheriff's offices that participated in contributing to the Uniform Crime Report (UCR), 31 of those agencies employed 200 or more sworn officers (Texas DPS, 2018). To give that some perspective, the Bureau of Justice Statistics in 2008 reported that there were 1,913 agencies (police and sheriff's offices) in the state of Texas (Reaves, 2011). The point being illustrated is that the remaining agencies, other than the 31 agencies with 200 plus sworn officers or more in the state of Texas, could benefit from the cost-free resources being given to law enforcement by the military to improve the many tasks police departments and sheriffs offices are expected to perform within their communities.

Agencies with SWAT teams have seen some of the benefits of the government's 1033 Program, some of which resources have been vehicles such as the mine resistant ambush protected vehicle (MRAP) that offer ballistic protection for personnel within the vehicle. In the current climate where agencies have experienced a rise in active shooter incidents, these otherwise big-ticket items have proven to be an asset for SWAT teams (Dudley, 2014). Being able to transport officers to the vicinity where an active shooter may be or to provide ballistic cover for officers during a citizen or officer rescue would be invaluable. In 2015, SWAT officers in the city of San Bernadino, California assisted with the capture of individuals who claimed to be ISIS sympathizers. After the original officers who stopped the suspects were pinned down with no ballistic protection other than their own vehicles, SWAT officers operating an armored vehicle

moved in to provide protection for the officers while the suspects continued to fire at officers. The suspects, who were armed with rifles and contained within a vehicle, discharged some 80 rounds at the police before the armored vehicle arrived and provided protective cover for the same officers, effectively saving their lives (Mihalek, 2018).

In Marshall, Texas, the Marshall police department with approximately 47 sworn officers (Texas DPS, 2016), took advantage of the 1033 Program and obtained an armored response vehicle in 2016 for a variety of purposes, such as the protection it offered for its officers in the event of an active shooter scenario or that of a natural disaster such as flooding, the likes of which they experienced three years earlier when the department lost three vehicle as a result of the high flood waters (Brabham, 2016). Within the same article, Marshall Police Chief Eddie Campa, had this to say about acquiring the asset through the 1033 Program: "The vehicle is an \$800,000 piece of equipment. Through the military surplus program, the vehicle cost the city of Marshall zero dollars" (Brabham, 2016, para. 5).

Other 1033 assets useful to agencies with specialty units such as SWAT teams are protective Kevlar helmets, load bearing vests, small arms, red-dot rifle scopes for quicker site acquisition, night vision goggles, cold weather gear, and watercraft for waterborne search and rescue incidents just to name a few (Smith, 2010). The cost to supply a SWAT team with these items from an agency's budget would be significant, especially when speaking of the bigger items such as vehicles and boats. A vehicle built commercially to provide ballistic protection would cost approximately \$180,000 to \$350,000 (Cook, 2017). When one stops to consider that for agencies with limited

budgets, the cost to purchase necessary gear for their SWAT officers would be considerable.

During relief efforts following Hurricane Harvey, 1033 assets that had been given to law enforcement agencies were utilized to assist citizens in distress. Local agencies that assisted Harris County after its residents had sustained over 50 inches of rainfall were credited with saving over 10,000 people in areas that they could not have otherwise reached with conventional equipment such as patrol cars (Blakinger, 2017). In 2010, the city of Nashville, Tennessee experienced flooding to the extent that numerous residents had to be rescued from their homes. It was during those rescue efforts, that Nashville police officers used Zodiac boats that had been obtained from the military to retrieve those residents (Griffith, 2012).

In 2012, during Hurricane Sandy, life-saving equipment appropriated through the 1033 Program was used by police departments in Rye, New York, as were three High Mobility Multipurpose Wheeled Vehicles (Humvees) used to traverse high water to remove 64 people to safety during Superstorm Sandy (Congressional Digest, 2015). Law enforcement operated military surplus vehicles in 2016 during the 1,000-year flood that wreaked destruction in South Carolina (Thompson, 2016). Search and rescue for law enforcement has become a frequent expectation as current weather-related events have demonstrated. Natural disasters that are commonly associated with fire department duties stress their resources; therefore, police departments are expected and willing to provide a combined assistance with the rescue efforts. These catastrophic events will continue as weather patterns are unpredictable. The military resources like the vehicles will make those rescue and recovery efforts by law

enforcement agencies during weather events on a large scale achievable. The military vehicles, like the Humvees just by virtue of their design, are able to access locations where emergency service vehicles are unable to traverse such as was the case for Passaic County, New Jersey during Superstorm Sandy and Hurricane Irene when the storms were at their peak as was described in a report by the Fraternal Order of Police (Canterbury, 2014).

When considering the cost of obtaining military equipment such as vehicles that would be considered costlier items, the only cost to an agency is what it costs to travel to the location of the equipment and pick it up. To put that into perspective, a two-door Humvee for a sheriff's department in Summit County, Ohio cost the military approximately \$975,000 (Fernandez, 2015). In Pasco County, their SWAT team utilizes a MRAP obtained from the 1033 Program that when it was originally built, the vehicle itself was \$412,000 (Morel, 2018). Not only are the items received through the 1033 Program a cost savings to the agency, but it is also a cost savings to the taxpayer. If an agency is to represent its community, then it is incumbent upon said agency to be fiscally responsible because all government entities answer to its citizens.

COUNTER ARGUMENTS

With events that unfolded in Ferguson, Missouri in 2014 following the shooting incident of an African American male by a Ferguson police officer, the public perception of the police portraying their military counterparts was brought into the forefront by the media (Persinos, 2016). The public outcry in 2014 was widely publicized on major news outlets that the police were becoming militarized (Fox 5, 2014). President Obama, at the time, expressed the view that the appearance of military gear gave the impression

that there was an occupying force (Thompson, 2016). The term “militarization” has become popular in the media since the events following the Michael Brown incident in Ferguson, Missouri in 2014. When referring to militarizing the police, it often means associating the police with what has been seen as military items such as military-style weaponry, vehicles, and tactics used by the military (Ruth, 2017). When examining the role of law enforcement, it is easy to see where the public perception of the police could be viewed as negative when the citizenry sees its civil servants looking and behaving like the military. This has been a criticism of the federal government’s transfer of military resources to law enforcement through the 1033 Program. The most notable complaint from the public is that the public cannot discern the role of the police from that of the military (Timko, 2015). In the current climate, law enforcement can be perceived as adding to the confusion in their role and their domestic responsibilities if they look and act like the military. The Defense Logistics Agency (DLA) which manages the 1033 Program indicated that approximately only 5% of the assets received from the military were weapons and approximately 1% was vehicles that would be considered as tactical vehicles (Axe, 2017).

An agency that is attempting to communicate their message as partners in their community while it is seen rolling down Main Street in a military vehicle can be seen as sending mixed signals. In 2014, Senator Rand Paul and many of his peers within the Senate, Republican and Democrat, argued that federal programs that allow the transfer of military equipment to law enforcement may very well be contributing to the decay in community relations between the police and the very citizens they are sworn to protect (McMichael, 2017). However, in an effort to resolve this issue, many law enforcement

agencies have attempted to mitigate this by instituting community partnership programs such as citizen police academies and teen police academies (Longview PD, 2017).

The goal of the citizen police academies at the Longview Police Department is to strengthen the partnership between the police and the community and to increase citizen awareness of what their police department does for them (Longview PD, 2017). An example within the Longview Police Department, in an effort to increase their awareness and decrease their fear of the unknown, agencies will have a session of the citizens' police academy dedicated to their SWAT team and the resources they use in their operations (Longview PD, 2017). One of the big draws is the equipment they received through the 1033 Program such as their vehicle(s) that offer ballistic protection. By explaining the usage of such a piece of equipment and allowing citizens to tour the apparatus, it not only increases the citizens' awareness of the resource and how it was received by the department, but it also decreases their uneasiness of the vehicles themselves, as well as the gear that the officers may be seen wearing when they are observed by the citizens conducting operations within their community, such as warrant services (A. Boone, personal communication, May, 2017).

An additional example of a way the Longview Police Department's attempts to mitigate any misconceptions the public may have about 1033 resources is displaying items like the department's armored response vehicle at public functions such as job fairs and other public events such as drug awareness programs where the armored response vehicle itself can be parked and displayed ("Drug take-back event," 2012). In 2017, alongside the city's fire department, the police department participated in the "Ride to School with a Cop" program wherein officers arrived at the home of a child and

transported him or her to school in the department's Lenco Bearkat (Kindelan, 2017). While the Bearkat is a commercially manufactured item not purchased through the 1033 Program, the participation in the program assists with increasing the public's support of the department's participation in the 1033 Program.

In an article written in 2014, five law enforcement agencies within the state of South Carolina have been reported as receiving armored vehicles and some of those agencies reported feedback that was negative in nature, referring to the militarization of the police. In response to the public's negative perception of the armored vehicles, Richland County Sheriff Leon Lott uses their ARV in parades and community events to mitigate the community's perception that they are intimidating ("Military Vehicles Invading").

One of the criticisms of the 1033 Program and the resources given to local law enforcement is the misuse or abuse of the resources received from the military (Cushing 2015). Agencies have been penalized for failing to keep track of the resources they have received from the federal government or using them for personal use. In 2013, Sheriff Sam Parker of the Chesterfield County Sheriff's Department was dismissed from office by South Carolina Governor Nikki Hailey for using items obtained through the 1033 Program for his own personal gain as well as other improprieties which resulted in his department's access to the 1033 Program being suspended (Phillips, 2013). Although the military resources such as weapons and MRAPS from the 1033 Program are technically on loan to the police and sheriff's departments that receive them, these and other items received through the program are audited by the

state coordinator at least annually to account for them, ensuring proper record keeping and accountability (Moret, 2014).

Since the 1033 Program's inception in the late 1990's, over \$4 billion in military resources have been given to law enforcement agencies and since that time, nearly 150 agencies have been suspended from the program within a six year period for misuse or failing to keep tabs on the assets (Fabian, 2015). When situations come to be known by the LESO state coordinator that agencies are failing to keep proper records of the items that they receive through the 1033 Program dispersal, or that their resources have been misused or lost, there are consequences (Texas DPS, n.d.). This is due in large part to the fact that many of the items like that of vehicles and weapons will still have military relevance and according to law, cannot be transferred outside of the agency or sold in the open market (Else, 2014). If it is determined that an agency has operated outside of the rules according to the 1033 Program, LESO can suspend the agency's access to the program and an audit would be conducted by the state coordinator, following which the chief or sheriff of said agency and his or her program designee would be held accountable (Else, 2014).

To ensure compliance, the chief or sheriff of an agency or his or her designee should maintain contact with their state coordinator. In the simplest of terms, when he or she has a question related to acquisition, disposal, or transfer of 1033 Program resources, they need to ask their state coordinator to avoid suspension or termination from the program (Texas DPS, 2018). Each agency's state law enforcement agency will have available the rules and regulations on their website to ensure compliance, but

answers can also be found regarding the program by going to the Defense Logistics Agency website (Defense Logistics Agency, n.d.).

RECOMMENDATION

Within most agencies, not unlike businesses, budgets determine what can and cannot be purchased. Law enforcement agencies are no different when budgets and purchasing resources are considered, but what also must be taken into account are the taxpayers who ultimately flip the bill for the wants, needs, and desires of a municipal or county entity. Law enforcement has found a way to offset the costs of equipment that would give them greater range in accomplishing their many roles by participating in the 1033 Program. The federal government, in an effort to lighten their load, is permitted by federal law and within the parameters of the 1033 Program to give state and local law enforcement-approved resources. Therefore, in light of this opportunity, law enforcement agencies should take advantage of the 1033 Program not only to offset the cost to purchase equipment, but also to better equip their agencies to deal with natural disasters and incidents of escalated violence requiring specialized resources for law enforcement units such as a SWAT team.

During the aftermath of natural disasters, such as the flooding that occurred in 2015 in Hays County, the Hays County Sheriff's Office participated in the recovery efforts using resources such as military vehicles that had been modified for their specific needs which can still be seen on the media outlets (Live Satellite News, 2017). The military vehicle's capabilities to drive through the high water areas are due in large part to their design, such as higher ground clearance. These are advantages that civilian

vehicles with considerably lower ground clearances that are made to drive from point A to point B on a roadway with little or no obstructions just do not possess.

In critical incidents where officers are being shot at and have an opportunity to mobilize a military vehicle that offers ballistic protection and an object that does not offer such protection, the choice is clear; police personnel will likely want something between them and the assailant that will stop bullets from striking them. Traditional police vehicles such as the Ford Crown Victoria or the Chevrolet Tahoe used by many law enforcement agencies, currently do not offer ballistic protection, primarily because the cost to purchase such luxuries for agencies would be astronomical by any estimation. Speaking of cost, smaller items that can be obtained through the 1033 Program such as gear specific to the officers assigned to specialty units such as SWAT can be expensive and agency budgets are not getting any larger. Many agencies that have a SWAT team have come to depend on the resources that the 1033 Program can provide them in an effort to beat the cost to the agency to maintain duty capability (Griffith, 2017).

The LESO 1033 Program is an asset to law enforcement agencies that could not otherwise afford many of the items that the program provides. On the contrary, the United States is facing criticism that its police are becoming militarized more so following the events in Ferguson, Missouri in 2014. The 1033 Program can be an invaluable asset to law enforcement, but it can also be its enemy in the eye of those that do not understand its benefits to law enforcement. Law enforcement agencies can and should implement programs and opportunities to allay the public's concerns so that they too, can see a broader picture of the costs and changing roles that law enforcement in their communities face each day. By the same token and in the interest of increasing

the public's trust in law enforcement, agencies can do themselves a favor and be conscientious and prudent when considering what resources to obtain.

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