



**Comments to the Law Enforcement Equipment Working Group
on behalf of
the National Sheriffs' Association, the Major County Sheriffs' Association,
and the Western States Sheriffs' Association**

Opening Statement

Presidential Executive Order 13688, which addresses Federal Support for Local Law Enforcement Equipment Acquisition, is an overreaction by the federal government towards law enforcement nationally and the recommendations pursuant to the Order are vague and incomplete. The Executive Order was issued in response to civil unrest incidents in Ferguson, Missouri, where media falsely reported that law enforcement officers utilized equipment obtained from the Defense Logistics Agency (DLA) through the Law Enforcement Support Office (LESO). Some federal officials suggest the use of LESO equipment gives the perception to the general public that law enforcement has been “militarized” and, because of this perception, the federal government must remove the ability for law enforcement to obtain these items from LESO and federal grant programs. However, the equipment used in Ferguson belonged to the National Guard, not the local law enforcement agencies on the scene. In addition, the Executive Order¹ and the Recommendations of the Working Group² established by the President state that specific equipment from these programs should be controlled and that law enforcement should only receive these identified items after having completed federally mandated training.

History

According to the Defense Logistics Agency's (DLA) website, the DLA began administering the military surplus program in October 1995. The Law Enforcement Support Office (LESO) in Battle Creek, Michigan, oversees the program. More than 8,000 Federal, State, and local law enforcement agencies from all 50 states and the U.S. Territories support this program. This program began because many believed it was a good idea to allow law enforcement agencies to utilize surplus equipment – equipment that had already been purchased by the taxpayer. Prior to the program, surplus equipment worth millions of dollars was destroyed despite the fact that law enforcement entities still needed and could have utilized this equipment for the safety of their officers and their communities. The equipment being destroyed ranged from office furniture and printer cartridges to rifles and armored vehicles.

¹ Exec. Order No. 13688, 80 FR 3451 (2015).

² *Recommendations Pursuant to EXECUTIVE ORDER 13688*, THE WHITE HOUSE, (May 2015), https://www.whitehouse.gov/sites/default/files/docs/le_equipment_wg_final_report_final.pdf.

Bank of America Shootout

Numerous situations in the recent past have shown where the absence of necessary equipment or ability to respond confidently has resulted in loss of life, destruction of property, mass theft, and harm. The 1997 North Hollywood bank robbery is a prime example of a turning point in American law enforcement response. Two men, Larry Eugene Phillips Jr. and Emil Decebal Matasareanu, robbed a North Hollywood Bank of America then engaged responding officers with high powered weapons. There were approximately 15 officers and citizens injured in the incident.³ Responding officers were completely outgunned; they had handguns and shotguns versus the high power weaponry of the two bank robbers. It wasn't until officers commandeered rifles from a local gun store that they were able to appropriately respond and ultimately stop the threat to themselves and the community. They used standard issued squad cars to rescue wounded officers and civilians still in the line of fire. There was no armor capability available to them at that time. Ultimately, one of the bank robbers was killed by law enforcement and the other bank robber took his own life. This violent confrontation is just one example of how the criminal element has become more violent toward law enforcement in the past two decades and demonstrates the need for law enforcement in America to change its tactics and weaponry. In fact, the recent shootout between outlaw motorcycle gangs in Waco, Texas, show that violent confrontations continue to this day. More than 300 weapons have been accounted for including AK-47 assault rifles, military-grade body armor, various handguns, and multiple knives—a number that is sure to rise.

The access to military surplus rifles and armored vehicles through the LESO and federal grant programs has leveled the playing field for thousands of law enforcement agencies nationwide. A Bank of America-type of incident today would be handled very differently because law enforcement officers now have the right equipment to stop lethal threats directed at citizens and law enforcement alike. Equipment obtained through the LESO and federal grant programs has given state, local, and tribal law enforcement agencies the critical tools they need to enhance public and officer safety, strengthen homeland and national security, and to more effectively enforce the law—including assisting Federal authorities. It is also important to note that the most sought and acquired rifle through this program has been a .223 semi-automatic platform. This is the most sold rifle in America to civilians with an estimated 3.5 million in circulation.

LESO Program

The intent of the LESO program was simple: allow items already purchased by the American taxpayer to be refurbished, demilitarized, and reissued to law enforcement personnel at little or no cost to the requesting agencies. Items that were typically cost-prohibitive for law enforcement agencies were now available to law enforcement agencies to utilize. Items such as helmets, uniforms, night vision goggles, rifles, armored vehicles, and helicopters were made available to local entities and enabled them to save millions of dollars over the years – all while utilizing equipment that had already been paid for by the taxpayer. This program was a true cooperative effort between federal and local governments. Officers policing the ever changing environments

³ See Gregory J. Wilcox, Jaxon Van Derbeken, & Jeanette DeSantis, *North Hollywood bank heist erupts in gun battle; 6 civilians, 10 officers injured; 2 robbers killed: March 1, 1997*, LOS ANGELES DAILY NEWS (Sept. 24, 2010 12:01 AM), <http://www.dailynews.com/20100924/north-hollywood-bank-heist-erupts-in-gunbattle-6-civilians-10-officers-injured-2-robbers-killed-march-1-1997>; *Botched L.A. bank heist turns into bloody shootout*, CNN (Feb. 28, 1997 11:10 PM), <http://www.cnn.com/US/9702/28/shootout.update/>.

of their jurisdictions were better equipped and prepared to deal with criminal threats to themselves and their communities. The Working Group fails to understand that limiting access to this equipment may very well embolden criminals in their activities. It is simply not possible to eliminate or reduce criminal activity through this Federal overreach.

Federal Grant Programs

Other programs have been created in order to help fund law enforcement entities so that they can obtain equipment through private sources. Grant programs such as the State Homeland Security Program (SHSP) and the Urban Areas Security Initiative (UASI) work to address gaps in local agencies capabilities for responding to terrorist threats. Other programs such as the Edward Byrne Memorial Justice Assistance Grant Program (JAG) have a broader focus of providing critical funding to support a range of different program areas. These programs allow smaller or less-funded law enforcement entities to obtain the equipment necessary to protect and serve their communities without having to deplete funds for other community programs and infrastructure.

Defensive Equipment

While no one will deny that a grenade is offensive in nature, the majority of equipment that is obtained by law enforcement through the LESO and federal grant programs is defensive in nature. But in the hands of a law enforcement officer, who is bound by Use of Force policies and Oath of Office, the equipment can only be used to defend the life of the officer or someone else.

Armored vehicles are certainly an example of a piece of equipment that is critical to protect law enforcement officers and citizens from injury or death. Whether they are utilized to stop rounds being fired at the officers or used to deflect Molotov cocktails and debris being thrown at them during civil unrest, they are defensive in nature. Armor vehicles pull up every day to protect money at banks and stores across America. Why, then, does it not make sense that police would use one to protect people at those very locations should a robbery/hostage situation occur?

Militarization of Law Enforcement

The militarization of law enforcement is a perception that must be changed. Yes, the equipment that law enforcement utilizes is also used by the military; however, the National Sheriffs' Association (NSA) and the Major County Sheriffs' Association (MCSA) argue that this equipment does not necessarily "militarize" local law enforcement in the traditional sense, but allows for local law enforcement to react to situations with the efficiency of the military. If the LESO and federal grant programs were to end, and access to this military equipment was removed, the fact that law enforcement must have this equipment to perform their daily duties would still remain. They will still need gun belts, service weapons, high powered rifles, ballistics protection, armored vehicle protection, riot helmet/shield protection, gas launchers, and any other "military-style" equipment that is necessary to fulfill their duties. However, what will now happen is that millions of dollars of demilitarized equipment will be destroyed, and the exact same equipment will have to be purchased by local entities to protect their law enforcement personnel. These funds could be put towards community infrastructure or community programs that benefit all, but will instead be put towards purchasing equipment they could have received at no cost from the military surplus programs. Advancing the perception that law enforcement agencies are militarized must stop. Those who work in law enforcement often must confront violent situations. It isn't the equipment that is military, it is the situations in which the equipment is utilized in that is similar. A foreign

enemy who is attempting to kill a U.S. servicemen is no different than a person intent on killing a law enforcement officer or innocent civilian.

This perception of militarization can be changed through community education by government entities and by showing the value, intent, and impact of the LESO and federal grant programs. Technical distinction is an area that requires mention, as a confusion of nomenclature and inaccurate equipment descriptions has promoted negative perceptions, making it difficult for law enforcement agencies to explain the justification for procurement, maintenance, and deployment of controlled equipment. Termination of a successful program and weakening the ability of law enforcement to effectively respond to community threats due to lack of communication, education, and false perception is not the answer.

There are many similarities between the military and law enforcement. Law enforcement protects us from within and serves locally. The military protects our shores and serves overseas. Law enforcement takes an oath to protect, serve, and defend the Constitution of the United States; the military takes an oath to protect, serve, and defend the Constitution of the United States. Law enforcement has a rank structure and chains of command, which the military has as well. American law enforcement wears a uniform to identify themselves to their communities; the military wears uniforms to protect and identify them as U.S. military.

If members of the public feel that a certain uniform is too intimidating, then they as citizens have recourse through their local elected officials to decide how they want their law enforcement officers to look in public. In most cases, their SWAT team has been wearing that camouflage uniform for many years and the public is fine with it. If they were not, the local governing entity would have heard about it and made decisions accordingly. The federal government has no business deciding whether a local SWAT team should wear camouflage uniforms or not when they deploy. The jurisdiction where they work should decide what they wear and why they wear it. The fact the jurisdiction received the items at no cost from the federal government is irrelevant. If they want that type of uniform for their officers, they would have purchased it anyway. That they received it at no cost from the federal government is a bonus to the jurisdiction, not a means for the federal government to control local personnel.

The Working Group's Recommendations

The Recommendations of the Working Group established by the President are riddled with generalizations and vague terms. These Recommendations state that law enforcement agencies must meet certain standards, but do not specify what those standards are or who decides if those standards have been met. Phrases such as “general policing standards” and “specific controlled equipment standards” are used often. The Recommendations merely state that these standards will be defined further in future Federal agency guidance, but there is no indication of who will define these terms or when they will be defined.

Other terms such as “planned use” and “detailed justification” seem specific on their face, but, in actuality, raise more questions than they answer. For example: how “planned” does the use have to be? If an officer requests the use of equipment, but changes his mind before staging, is it still covered under this phrase? How detailed is detailed? Will samples of appropriate justifications be provided? Will determining the validity of these justifications be up to the individual Federal

agencies or the Working Group? If up to the individual Federal agencies, how will consistency of approval and denials be ensured? General terms are also used to describe categories of equipment such as “grenade launchers,” but these terms are never defined. The term “grenade launcher” could refer to a device that is specifically designed and made for the purpose of launching grenades or it could refer to all devices that have the capability of launching grenades. These questions and many others are never answered by the Order or the Recommendations pursuant to it.

The Working Group also fails to address a variety of other issues that arise from its Recommendations such as who will be responsible for providing the federally mandated training (i.e. FLETC, individual law enforcement entities, the Federal agency granting the equipment, etc.). Many of these issues are also cost related (i.e. who will absorb the costs of returning prohibited equipment and obtaining substitutes if previously granted equipment is recalled? Who is responsible for paying for the training?).

According to its Recommendations, the Working Group will become permanent in order to maintain the list of prohibited and controlled items. The future decisions of the Working Group will impact law enforcement greatly, yet the members of this group have little to no expertise when it comes to law enforcement and thus will not be able to accurately take into consideration the consequences of their decisions.

NSA and MCSA’s Recommendations

1. No evidence, beyond that of strategically selected anecdotes and sensational news stories, has been given to support the claim that the general public believes local law enforcement is overly “militarized” or that the general public believes the federal government needs to change this. When the safety of law enforcement officers and citizens is at stake, we cannot and should not manage by perception, but instead by evidence and data. The NSA and MCSA recommend that the Working Group create a data-development strategy using the resources that organizations such as the NSA and MCSA already have in place for obtaining this data.

2. The NSA and MCSA recommend transition periods be implemented. This would allow law enforcement agencies to continue performing their duties to the fullest extent while working to meet any new training and policy requirements. The NSA and MCSA recommend a period of one year for controlled equipment and a period of two years for prohibited equipment. Without these transition periods, many essential task forces (i.e. counterterrorism, drug, etc.) may be forced to cease operations or risk violating the new training requirements. It takes time to organize the training of each officer on the task force, especially interagency task forces, who will have access to controlled and prohibited equipment.

3. The NSA and MCSA also recommend that a process be in place for complaints of alleged infractions. The NSA and MCSA recommend the Deputy Attorney General and the FBI Director jointly be the final arbiters. The NSA and MCSA also recommend that at least one member of the Permanent Working Group be required to have at minimum five years of law enforcement experience on the ground, five years law enforcement supervisory experience, and five years in a leadership role. The NSA and MCSA request that the Permanent Working Group fall under the Federal Advisory Committee Act (FACA) or equivalent open meeting statutes

4. The NSA and MCSA further recommend that the reporting requirements and application processes be uniform among the different transfer and grant programs. It has been said that the governing statutes prohibit uniform reporting; however, the language of the statutes does not touch on the application process for such transfers and grants.⁴ If the Working Group can be given power over what equipment these programs are allowed to cover without the consent of Congress, it follows that the Working Group can be given power over the application process.

5. The Working Group claims that communities have expressed concern over the “militarization” of local law enforcement and this is the reasoning behind the executive order. If this is factually true, why is the Executive Branch, which is tasked with enforcing the law, creating these regulations rather than the Legislative Branch? The NSA and MCSA recommend that, if this is something the American people truly want, any changes to the federal transfer and grant programs be codified in the language of the authorizing statutes by Congress.

6. The Working Group recommended law enforcement agencies provide approval or concurrence by the jurisdiction’s governing body for the acquisition of the requested controlled equipment. While the Working Group’s intent is to involve community representatives, it fails to recognize that Sheriffs are the chief executive. This blatant failure to acknowledge Sheriffs as independently elected officials is unacceptable. The Office of the Sheriff is not a department of county government; it is the independent office through which the sheriff exercises the power of public trust. There is a well-defined difference between Sheriffs and Chiefs that has yet to be articulated within the Working Group’s Recommendations. The voters who elected them hold sheriffs accountable - Chiefs are municipal employees appointed by a government entity. This specific recommendation needs immediate clarification so as not to be interpreted as the federal government meddling and inserting itself into the office of a democratically elected official. A position that in many states has a unique power articulation in the constitution.

7. The NSA and MCSA recommend that the Working Group address each of the financial issues, training questions, and definitional shortcomings prior to altering any program.

Conclusion

The current Executive Order states specific equipment will be prohibited; it also suggests that certain defensive equipment like armored vehicles, riot helmets, and shields cannot be deployed into situations where people are “exercising their First Amendment right to free speech.” Just because someone is exercising their First Amendment right, does not mean innocent civilians caught in the middle or law enforcement officers responding or monitoring should have to sacrifice their safety, or potentially their lives, because someone doesn’t like the look of an armored vehicle or a riot shield that has been staged in the area. The First Amendment gives all American citizens the right to peacefully assemble and protest. It does not give individuals the right to put other people in harm’s way, to assault law enforcement officers, or to damage property.

⁴ See 6 USC §§ 603-05 (Homeland Security Grant Programs); 10 USC § 2756a (Excess Personal Property: sale or donation for Law Enforcement activities); 42 USC §§ 3750 et seq. (Edward Byrne Memorial Justice Assistance Grant Program). None of these programs limit applications to certain forms, but give minimum application requirements or give discretion to the governing office (i.e. Secretary of Defense or Attorney General).

When law enforcement officers are called to a scene, they diligently and responsibly bring the appropriate equipment and stage it accordingly. If the protest is peaceful, controlled equipment will never be deployed; however, when protestors feel the need to attack, assault, and burn, law enforcement will then utilize the tools they have in their inventory to stop destructive and violent behavior. Whether or not an armored vehicle or a gas launcher was given to the responding jurisdiction by the LESO or federal grant programs, or was purchased independently by the jurisdiction, does not change the fact that it will be utilized based on the decisions and behaviors of the rioters and the looters, not the responding law enforcement entity. Law enforcement officers on scene have a duty to protect their communities, and a proactive and responsible community will ensure they have the equipment and training to do so. The LESO military surplus and federal grant programs are examples of a good partnership between the federal government and local government entities. It is fiscally responsible and assists in equipping our nation's law enforcement with equipment that saves lives. In areas of our nation that are fiscally stressed, it is potentially the only way their law enforcement officers would ever receive that type of support.

While perception can become reality, in this case, the perception of law enforcement being militarized in America should be dealt with through local community engagement and communication. As the only locally elected law enforcement leaders in the Nation, Sheriffs have a direct and daily understanding of the concerns of the communities they serve and protect. Sheriffs value and understand intimately the importance of civilian oversight and transparency as they, and their offices, are uniquely overseen by the civilian public. Failure to respond to the needs and priorities of the public can have direct consequences determined by the citizens themselves.

With those points in mind, Sheriffs are concerned that distortion, political posturing, and misinformation have led to erroneous assumptions and conclusions regarding the utilization of equipment and technology. Much of the controlled equipment used in worst-case scenarios is wholly impractical for day-to-day policing duties, and is only deployed when absolutely necessary to diffuse a dangerous situation, quickly neutralize a threat, detain a suspect, or restore stability and calm. It is also important to note that this equipment is used in emergency responses to tornadoes, floods, hurricanes, wildfire, snow, and other natural phenomenon. In many cases, it is the only equipment capable of response on those situations. Furthermore, State and local law enforcement is depended upon to be this nation's first line of defense against terrorism. In countless situations across this county—from the 1995 Oklahoma City bombing to the 2013 Boston Marathon attack—it is state and local officers who are first to respond to the crisis. Neither the National Guard nor Federal law enforcement can reasonably respond with alacrity in those situations.

There will be many lessons learned from the Ferguson, Missouri riots. As an American public, we must learn from those lessons and strengthen ourselves as a nation and as a people. If reform must be made, it should be well thought out, complete, and specific with law enforcement being directly involved in the decision making process. It should not be solved by the federal government inappropriately mandating based on one event that occurred in one jurisdiction in America.

Violent crime is on the rise. According to a *Wall Street Journal* article, gun violence in Baltimore is up more than 60% from the same time last year, homicides in Milwaukee are up 180%, Chicago shootings are up by 24%, shooting incidents in East Harlem are up by 500%, and shooting victims

in South Central LA are up by 100%.⁵ As it stands, the ultimate effect of this Executive Order and the Recommendations pursuant to it is to ask law enforcement to do less with less while facing more crime. The people harmed by this will not only be the law enforcement who will lose many of their necessary defensive capabilities, but every day citizens in the communities they serve.

Each and every day, more than 8,000 law enforcement agencies nationwide utilize the equipment they have received from the LESO and federal grant programs responsibly, and effectively, as they keep their communities safe. If the federal government unreasonably restricts the LESO and federal grant programs or hinders their effectiveness with vague and incomplete guidelines, threats to our communities or the threats to our law enforcement officers will not decline. We will instead reduce our officers' ability to protect themselves and our communities because we allowed one isolated incident to dictate an entire nation's perception of law enforcement and the equipment they use to respond to threats.

Let's all work together to learn and grow from this incident; let's not over react and weaken the ability of our nation's law enforcement officers to protect our communities. The LESO and federal grant programs have assisted in protecting America's law enforcement officers since 1995. We recognize and acknowledge that some equipment may never be needed at the state and local level. Let's work together, though, to develop lists that do not negatively impact the important work of our of state and local law enforcement. Let's continue to protect these heroes by maintaining this critical surplus program and the federal grant programs.

⁵ Heather MacDonald, *The New Nationwide Crime Wave*, WSJ (May 29, 2015 6:27 PM), <http://www.wsj.com/articles/the-new-nationwide-crime-wave-1432938425>.