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WRITTEN TESTIMONY FOR
THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND SECURITY,
AND THE SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS AND CIVIL LIBERTIES

**Joint Oversight Hearing on
Law Enforcement Confidential Informant Practices**

July 19, 2007
10:00 a.m. – 12:00 p.m.
2141 Rayburn House Office Building

J. Patrick O'Burke
Deputy Commander, Narcotics Service
Texas Department of Public Safety

Good morning, I would like to thank the honored committee members for inviting me to appear this morning.

In 2002 Texas Governor Rick Perry recognized significant problems that had occurred within the drug task forces that were funded thru the Edward Byrne Memorial Fund in Texas. In a sweeping reform Governor Rick Perry directed that the Texas Department of Public Safety undertake operational oversight of all Byrne funded drug task forces in Texas.

There have been other examples cited; however the problems that occurred in Tulia Texas most underscore the core issues that eroded public confidence in drug law enforcement in Texas. The Department of Public Safety Narcotics Service quickly identified factors such as poorly defined output measures for program management, a lack of standardized operating policies and procedures, and poor informant control and management as key contributors to Tulia and other similar failed drug enforcement efforts.

Measuring performance and success for police efforts in achieving the desired result of reductions or absence of crime, particularly violent crime, is a difficult task at best. The Department of Public Safety collaborated with Governor Perry's Criminal Justice Division to develop meaningful strategies and performance measures that could be directly linked to drug enforcement efforts.

It is necessary to have identified activity measures to determine if drug enforcement initiatives are producing a work product and working within the scope and mission of narcotics enforcement. These activity measures that record a volume of work should be defined as **OUTPUT MEASURES** to show that the effort produced work within the tasking.

For drug law enforcement these measures have normally been defined by the following.

- **The number of investigations and/or investigative reports written.**
- **The number of arrests for narcotics law violations.**
- **The amount of illegal drugs seized.**

However, the above **OUTPUT MEASURES** alone can not adequately gauge if any success is being achieved in actually disrupting the illegal distribution of drugs. To define success by measuring only the sheer volume of arrests would mean that more arrests would equate with greater achievement. This clearly does not move towards the goal of crime reduction. Arrest numbers also do not attach any quality to that work product when the arrest of one drug user equals the arrest of one drug "kingpin". Consequently, reliance on **OUTPUT MEASURES** alone for grant funding mechanisms or police performance

evaluations may actually cause drug enforcement initiatives to fail to seek out reductions in crime.

Consequently, the Narcotics Service worked to develop **OUTCOME MEASURES** that will more adequately define if we are achieving a desired result. In the past, there have been outcome measures for narcotics enforcement that have been tied to changes in overall crime rates, reductions of drug overdoses, changes in pricing or purity of illegal drugs and surveys of drug use by certain population groups. While these may be useful measures for globally evaluating drug control policy efforts that contain education, treatment and corrections components, along with law enforcement, they can not be uniquely linked to the individual law enforcement effort.

As such we should seek to define outcome measures that are clearly linked to law enforcement initiatives in identifying and disrupting illegal distribution of drugs. Law enforcement is uniquely suited to disrupting or eliminating drug distribution by prioritizing its efforts and directing them towards identified drug traffickers and trafficking organizations. The Narcotics Service defined a “**Drug Trafficker**” as a person who works to illegally sell drugs with profit or income as the primary motivation. A “**Drug Trafficking Organization**” was then defined as five or more drug traffickers who work to illegally sell drugs outside of their immediate conspiracy. The desired outcome measures would then identify how drug enforcement efforts collect intelligence, direct their resources and subsequently impact these criminal groups.

As such the desired **OUTCOME MEASURES** developed included the following.

- **Number of Drug Trafficking Organizations dismantled.**
- **Percentage of arrests defined as “targeted” Drug Trafficking Organization members and “targeted” Drug Traffickers who were successfully disrupted.**
- **Percentage of total arrests that are defined as “End Users”.**
This outcome measure seeks to track the lack of or reduction of “End Users” arrests as a desired result for law enforcement efforts.

The Narcotics Service defined the “**End User**” as a person who is the intended user of illegal drugs and generally motivated by addiction. Impacting the behavior of an “**End User**” may involve law enforcement actions, but are generally more effectively managed by treatment, corrections or rehabilitation options. As such directed investigations against these individuals should receive no priority from drug enforcement initiatives that seek to disrupt illegal trafficking.

This overall change in strategy in Texas was necessarily accompanied by standardized operational policies that mandated professional standards for drug

enforcement initiatives. These standards included background checks, ethical conduct standards, informant management requirements and protocols, and “*Best Practices*” for professionally conducting narcotics investigations. Finally a written measurement collection tool that accurately recorded key **OUTCOME MEASURES** along with other desirable measures was implemented for program evaluation and accountability.

It is timely and appropriate for us to clearly define the role of law enforcement in comprehensive drug control policy efforts to achieve reductions in drug abuse. Drug control policy efforts must view law enforcement as only a piece of comprehensive designs, complemented by drug education, treatment and rehabilitation, and community corrections as part of solutions to deter drug abuse. Partnerships with legislative bodies and law enforcement leadership are necessary to properly develop purpose driven enforcement strategies. These strategies must have appropriate management and oversight along with developing effective key **OUTCOME MEASURES** to positively identify and reward professional police efforts and provide for accountability. All of these elements are necessary to restore faith in the ability of law enforcement to positively impact illegal drug distribution and abuse in our communities which is absolutely an achievable goal.

J. Patrick O’Burke
Deputy Commander, Narcotics Service
Texas Department of Public Safety

ATTACHMENTS;

- 1) Drug task force operational polices.
- 2) Performance measurement tool.
- 3) Investigative violator code classifications.