

Statement For The Record

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Before the Committee on the Judiciary

**Subcommittee on Crime, Terrorism, and Homeland Security
and
Subcommittee on the Constitution, Civil Rights, and Civil Liberties**

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Chairmen Scott and Nadler, Ranking Members Forbes and Franks, members of the Sub Committees, thank you for offering me the privilege of testifying before you on the important topic of law enforcement confidential informant practices.

My name is Ronald Brooks and I am the President of the National Narcotic Officers' Associations Coalition (NNOAC) which represents forty-four state narcotic officers' associations with a combined membership of more than sixty thousand law enforcement officers from throughout the nation.

I am an active duty thirty-two year California Law Enforcement Veteran with more than twenty-four years spent in drug, gang and violent crime enforcement. I have served as the primary investigator, supervisor or manager for thousands of drug investigations and enforcement operations ranging from street level buy programs in neighborhoods plagued with drug related gang violence to multi-national investigations targeting sophisticated drug trafficking organizations.

I have written and implemented policies and procedures for managing undercover operations and confidential informant policies for several local, regional and statewide law enforcement agencies. In my capacity as a narcotic unit supervisor, manager or executive, I have been responsible for enforcing policies (including those regulating informant use), investigating employee misconduct and participating in the disciplinary process for officers that do not follow relevant laws or policies.

For more than twenty years I have developed curriculum for and taught courses in drug investigation and the management of drug enforcement operations for the Drug Enforcement Administration, California Department of Justice, California Narcotic Officer's Association and the United States Department of Justice-Bureau of Justice Assistance. My instruction has included sections addressing: ethics, integrity, policy development, risk assessment, undercover operations and informant management. More importantly, I have learned about narcotic enforcement the hard way - by witnessing firsthand, the despair, death, disease, violence and devastation that illicit drug use brings to individuals, families and communities across our great nation.

Thanks to the leadership provided by the United States Congress, there is considerable good news to report to the American public regarding the fight against drugs and drug related violent crime. In recent years, the White House Office of National Drug Control Policy (ONDCP) has reported significant reductions in overall drug use. Moreover, our nation has experienced dramatic reductions in both violent and property crime as part of a multi-year trend. This is in part a result of law enforcement's success in battling drug abuse, gangs and drug related crime.

Many of us look with pride on the accomplishments brought about by the implementation of a balanced and comprehensive drug strategy, but these successes would not have occurred had it not been for aggressive law enforcement. Efforts that included using all of the legal and generally accepted investigative techniques available to America's law enforcement officers including court authorized wire taps, surveillance, interviews of

suspects, victims and witnesses, review of documentary evidence, undercover operations and utilizing information and access provided by confidential informants working under the direction and control of law enforcement officers.

The mere thought of using an informant is distasteful for many persons. The use of informants by government entities including law enforcement agencies evokes thoughts of “Big Brother”, political spying during the “red scare” of the 1950’s and the government’s efforts to undermine the anti-war movement during the Viet Nam war. Despite these negative connotations it is important to understand the reality of conducting criminal drug, gang, violent crime and terrorism investigations.

Drug trafficking organizations, criminal gangs, domestic and international terrorist organizations and other organized crime groups are closed and violently guarded societies. The persons who participate in these vicious and disruptive criminal activities are professionals in their own right and much like legitimate businesses, protecting their corporate secrets; they use the cloak of secrecy combined with violence, fear and intimidation, to inoculate themselves against intrusion by law enforcement which could mean incarceration, loss of contraband or assets and in some cases deportation or even a death penalty sentence. The tradecraft employed by modern career criminals is often as sophisticated as that employed by law enforcement professionals or even the intelligence community. To avoid detection and arrest, drug traffickers and other criminals are guarded with their identities and information and are very cautious about whom they meet, transact business with or allow into the inner circle of their violent organizations.

I have worked undercover on hundreds of occasions. Posing as a criminal, I have purchased and sold illegal drugs, precursor chemicals, firearms, explosives and stolen property. I have witnessed the planning of violent crimes including murder and have infiltrated criminal tax evasion and money laundering schemes. My undercover efforts have resulted in the arrest of serious criminals, the seizure of significant quantities of drugs, assets, clandestine drug labs and weapons; and have prevented several violent crimes. In almost every case where I was the undercover officer, and in the vast majority of the thousands of other drug, gang and firearms investigations that I have conducted, supervised or managed, we would not have reached a successful conclusion had it not been for the information provided or access gained through the use of a confidential informant.

There has long been a saying in law enforcement, “good informant – good case, bad informant – bad case, no informant – no case”. That saying truly sums it all up. When we appropriately manage informants, great cases, ones that make our community safe are the result. When informants are improperly used, the results can be devastating. But without the ability to freely use informants, law enforcement would have very few significant investigative successes, organized criminals would operate with impunity and the safety of our nation would be in jeopardy.

Informants are motivated by many things, but most frequently by: greed - the desire to be paid for their services, or fear - the desire to trade information for leniency in prosecution

or sentencing. Informants may also be motivated by a desire to protect their community, eliminate competition, seek revenge or sometimes, by the perverse desire to be a front seat participant in the dangerous world of criminal investigations. I can safely say that most of these informants would not qualify as productive members of society and you probably would not want them as your next-door neighbor. Just as you would not want the criminals that they are assisting to investigate residing next door. But it is for precisely that reason that these confidential informants are indispensable investigative assets. Confidential informants, most working for pay or legal consideration based upon their truthful and honest cooperation with law enforcement, have the bona-fides that allow them access to criminal organizations.

There have been many instances, including several well known cases where informants, in an effort to seek favorable consideration from law enforcement, receive payment for services, destroy competition or settle grudges, have lied or provided inaccurate information that resulted in the arrest of innocent persons or other inappropriate law enforcement actions.

Some of these cases have achieved significant notoriety including the recent Atlanta Police Department shooting death of 88 year old Kathryn Johnston in a case where at first blush, improper informant management and wanton disregard for standard law enforcement practice appears to have caused or contributed to this terrible tragedy. Or the 1999 arrest of forty-six persons in Tulia Texas in what has rightfully been called one of the worst miscarriages of justice in recent memory. These arrests were based upon the

work of a rogue mercenary law enforcement officer and his informant working under the legal authority of a small town sheriff without the benefit of generally accepted policies or adequate training and supervision. There are certainly other cases where improper use of informants, corruption, and a lack of adequate policies, training or supervision has resulted in serious miscarriages of justice. But like most other professions, law enforcement and the use of confidential informants by police officers should not be judged or condemned simply because of a relatively few instances of mismanagement or wrongdoing.

Unfortunately, cops are easy to take for granted. We often underestimate the significance of the security around us because we become accustomed to living in a relatively safe environment. But taking the life-and-death role of drug law enforcement officers for granted, especially at this time in our history, would be a terrible mistake. Instances of police misconduct are immediately reported in the press and rightfully so. After all, we live in a free and transparent society where our public servants are held to a high standard. Unfortunately, what rarely appears in the media is the good work of the more than 870,000 sworn law enforcement officers serving in Federal, state, local and tribal law enforcement agencies throughout the United States as they struggle against the tide of drug abuse, gangs and violent crime. The overwhelming numbers of these officers serve honorably and are willing, if necessary to lay down their lives in the service of their communities and this great nation. For those officers charged with investigating terrorism, drugs, gangs and other organized crime, using confidential informants is an important, valuable and necessary tool in crime suppression, the maintenance of safe

communities and the protection of our homeland. It is the use of confidential informants, as part of a comprehensive investigative and enforcement strategy that has helped to keep our communities safe and has contributed to the recent reduction in drug, property and violent crime. I have supervised thousands of undercover operations and I know from experience, that even the most skilled undercover officer would not be able to penetrate most organizations were it not for confidential informants who have earned the trust of the members of that criminal enterprise.

Since September 11, 2001, the focus of federal assistance to state and local public safety agencies has shifted to protecting the homeland from terrorist activities and equipping first responders. This is appropriately the top priority right now. However, the shift has now come at the expense of traditional law enforcement missions, such as drug enforcement, which not only impacts communities on a daily basis, but are directly tied to the Global War on Terror. In shifting resources to homeland security, we must not lose our focus on drug enforcement and prevention. In fact, protecting our homeland MUST mean protecting citizens from drug traffickers and violent drug gangs.

The damage created by the abuse of illegal drugs has not been erased by the events of September 11th. Probably more than most Americans, the members of the NNOAC understand the danger that illegal drugs pose to the fabric of our society. We lost almost 3,000 Americans on September 11th. In contrast, more than 30,000 Americans die each year - as a direct result of illicit drug abuse and its related effects. In addition, ONDCP estimates that illicit drug use costs our society \$160 billion each year. I believe that the

loss of 30,000 lives annually and a cost of \$160 billion each year means that drug trafficking is a form of home-grown terrorism in America.

Since September 11th, no child on U.S. soil has been injured or killed in a foreign-organized terrorist attack. But almost every child, regardless of race, gender or economic background will be asked by friends or acquaintances to try dangerous illegal drugs. Each child will struggle with a choice that has the real potential to ruin their life, a choice that – wrongly made – will cause them to sacrifice their health, mental state, education, and family. Stumbling into the world of drugs will likely force them to be estranged from family, friends and faith, far too often robbing them of life itself. Unfortunately, many of our nation's young people will make that life-altering choice this year – a choice with devastating results. But we know that we can reduce that risk when we reduce the availability of drugs, increase costs, make a strong social statement that drug use won't be tolerated and reduce the influence of gangs and other thugs on impressionable teens.

We don't allow ourselves to fight terrorism with one hand tied behind our back. Altering law enforcement's ability to use confidential informants would tie the strong hand of state and local law enforcement behind its back by reducing the investigative techniques that are available to investigate drugs gangs and other crimes.

One example of a program that has truly been successful in addressing drug and gang crime and in protecting our communities are the multi-jurisdictional task forces funded through the Edward Byrne Justice Assistant Grant. These taskforces are collocated in

shared facilities with common policies and procedures, consistent supervision and governances provided by all of the participating law enforcement executives. This arrangement has increased the professionalism of drug enforcement and reduced the incidents of misconduct or wrongdoing including those associated with the use of informants. In 2004, Byrne Grant funds were used to help finance more than 400 multi-jurisdictional task forces nationwide. Based on the 2004 Annual Report submitted by the State Administrating Agencies those task forces alone reported:

286,000 drug arrests

\$259 million in cash and property forfeited

5,600 clandestine methamphetamine labs dismantled

55,000 weapons seized

1.8 million grams of powdered cocaine seized

278,000 grams of crack cocaine seized

73,000 grams of heroin seized

27 million kilograms of marijuana seized

75 million marijuana plants seized.

I can assure you, based upon my thirty-two years of law enforcement experience and regular conversations with NNOAC members across the country, that the vast majority of those cases were made with the assistance of confidential informants.

As citizens of a free society we should be concerned with the use of informants but we must not allow the improper actions of a relatively small number of informants or police officers to jeopardize a legitimate investigative technique that has helped protect our nation from terrorism, drugs and violent gangs such as the Crips and MS13.

Nationwide, drug abuse has been on the top of America's families concerns for over twenty years. In a poll conducted last year in the Central Valley of California, citizens listed the danger of methamphetamine and meth related crime as more significant concerns than the war in Iraq, terrorism, rising gas prices, and the economy. I am sure that those citizens are more than willing to allow law enforcement to use informants and other legal investigative techniques if it will help reduce the drug threat in their community.

On May 15th this year, I attended the National Law Enforcement Officer's Memorial Service on the steps of the United States Capitol. During that service President George W. Bush memorialized the sacrifice of more than 18,000 American law enforcement officers who paid with their lives since the founding of America to help make our country a safe place to work, live and raise our children. On June 8, 2006, I joined thousands of grieving family members at a candle light vigil lead by parents and the Drug Enforcement Administration to remember our nation's children who have been lost to drugs. These two memorial services serve as a reminder of the importance of drug enforcement and of the need to allow America's police officers to have the tools necessary to fight back against terrorism, drugs and gangs. As Americans, we must never give up our fight to

preserve, protect and defend this great nation from the scourge of drugs, gangs and violent crime. To do so, would dishonor the memory of my fellow police officers and those who have died as a result of drug abuse. It is solemn duty to do everything in our power to keep our nation's most precious treasure, our children safe and drug free.

While I know that as members of the Congress you each understand the impact of drugs and gangs on the safety of our communities, especially in your own districts. But often, discussions in Washington regarding public safety and drug policy can become academic and not grounded in reality. The truth is, for the 60,000 members of the NNOAC and for law enforcement officers, fire fighters, EMS workers, probation officers, drug court judges and treatment professionals, that these issues involve real-life tragedies.

From a personal point of view, my civilian friends are often concerned about the physical and emotional toll that thirty-two years of facing the danger of working undercover and conducting tactical operations against illicit drug dealers has taken on me. The truth is, as a police officer you learn to live with the danger, long hours and time away from family. What keeps me up at night is the death, fear, economic despair and ruined lives I see as a result of drug addiction, gangs and drug related violent crime. It is hard to watch generations of families succumb to the downward spiral of drug abuse and addiction. It is heartbreaking to carry children out of meth houses breathing the poisonous gas; it is a tragedy to see families like the Dawson family in Baltimore, Maryland who were subjected to the worst form of terrorism at the hands of drug dealers.

America's law enforcement officers are driven by a commitment to fight the scourge of drug abuse, by recurring images of innocent children lying in dirty diapers who are living in deplorable and dangerous conditions and suffering from malnutrition, with drug addicted parents who often abuse them and unable to care for them. My colleagues and I are driven to face the danger of drug enforcement by witnessing impressionable young lives ruined when they are lured into a culture of crime by adults promising quick money.

I have been a police officer my entire adult life. While serving as the President of the NNOAC, I have spoken at law enforcement conferences and met with narcotic officers from throughout the United States. I have known very few police officers who have set out to break the rules, create a scandal, or do anything that would discredit themselves, their family or our profession. Unfortunately I do know of officers who unwittingly, because of insufficient policies, a lack of supervision, inadequate or non existent training have made poor decisions involving the use of confidential informants. Some of these regrettable decisions have resulted in unnecessary injuries, the arrest of innocent persons or other unwarranted police action. The answer to this challenge of reducing the risk of using informants lies not with mere regulations but with teaching agencies sound informant policies and providing officers, supervisors and managers that must work in this high risk, high liability field of drug and gang enforcement with the information they need to do their job in a professional and credible manner.

During the past twenty years in my own state of California there have been very few instances of scandals, corruption, injury or death attributed to the improper use of

confidential informants. This is due in part to standard policies and procedures adopted by law enforcement agencies throughout the state to regulate the use of informants. These policies include regulations mandating the need to adequately identify and approve informants, avoiding the use of those informants who pose a higher than acceptable risk, the requirement for supervisory and management oversight when informants are used and many other regulations that are based upon past experience. The professionalism surrounding the use of informants is also directly attributable to the high standards imposed by the California Commission on Police Officer Standards and Training (POST) and the availability of free or inexpensive high quality drug enforcement training through the California Narcotic Officers Association and the California Department of Justice. Training classes that focus on the appropriate control and management of informants, the assessment and management of risks associated with the use of informants and undercover operations, and integrity and ethics training that is designed to instill a culture of ethical conduct among California's law enforcement officers. This training, when used in conjunction with well written policies and effective supervision has demonstrated that a professional environment and adequate supervision can dramatically reduce the potential for the abuse of law enforcement authority or the misuse of confidential informants as an investigative tool.

Unfortunately, many states do not have standardized policies, training mandates or even funds available to provide drug enforcement training. Luckily, a very successful example of a training program that can dramatically mitigate the risk of using confidential informants is available free of charge to state, local and tribal police officers from

throughout the United States through the Bureau of Justice Assistance, Center for Task Force Training (CenTF). Since 2001, this program has trained more than 2,300 narcotic supervisors and managers at 60 Narcotic Task Force Commanders Workshops and 5,366 investigators at 106 Methamphetamine Investigation Management workshops held at locations throughout the United States. The intensive three day Commanders Workshop dedicates most of its time and curriculum on the development and implementation of sound policies and procedures, assessment and management of risk, management of informants and how managers can establish an ethical culture within their law enforcement unit. The training also provides many articles, sample policies and other reference materials for use in effectively managing a drug investigation unit or informant program.

I would encourage the members of this committee and your colleagues in the Congress to understand the continuing threat to the security of our nation that is posed not only by foreign born terrorists but by drug traffickers, drug related violent criminals and the continued growth of street gangs. I hope you will recognize that America's law enforcement officers including those represented by the NNOAC are risking their lives each day to protect their communities and the nation from our own homegrown terrorism – drugs and gangs. While I agree that it is important to strive to improve law enforcement's professionalism and to reduce the instances where innocent persons suffer because of improper law enforcement conduct, the answer is not to regulate or hinder the appropriate use of confidential informants, the solution is to provide adequate resources and training to allow law enforcement officers to carry out their sworn obligation.

America's law enforcement professionals need all of the tools currently at their disposal including the highly successful multi-jurisdictional task forces funded by the Byrne Grants and the ability to use legal and acceptable investigative techniques such as confidential informants in their never ending fight against crime. Law enforcement has registered encouraging success in the battle against drugs and violence.

We have also prevented attacks on our homeland from foreign or homegrown terrorists using information or access obtained through confidential informants. Earlier this year, it was a confidential informant who assisted the FBI by acting under their direction and control to infiltrate a New Jersey based terrorist cell. This informant gathered critical evidence for use in prosecution and more importantly assisted in thwarting a planned attack on Fort Dix. And it was an informant, arrested on drug crimes that provided the information that disrupted a planned attack on the fuel farm at JFK Airport.

These cases have national and international significance in the global war on terror, but they are no more significant than a case involving a planned gang murder if the person's who's life was saved was that of a loved-one. These types of investigations and thousands of others, big and small will not be made without the techniques and resources including the use of informants that we now rely upon.

I would urge the members of the House Committee on the Judiciary and especially the members of these two subcommittees to work with the NNOAC to continue to fund the Byrne Program and to increase funding and availability for BJA's CenTF program so that

every law enforcement officer who needs training receives it, so we can continue to improve the professionalism and efficiency of America's law enforcement programs.

Thank you for inviting me to testify and for taking the time to listen to my presentation. I have submitted my full comments for the record and I will be happy to answer and questions that you might have.