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Statement for the Record
House Judiciary Committee, Subcommittee on Crime
“Oversight of the Office of Justice Programs”
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Mr. Chairman, Members of the Subcommittee:

Thank you for inviting me to share my perspective and suggestions for the Office of Justice Programs within the Department of Justice. My name is Ron Brooks and I am president of the National Narcotic Officers' Associations' Coalition, also known as the NNOAC. I represent 44 state narcotic officers associations with a membership of more than 69,000 law enforcement officers nationwide. I also wear several other hats, including serving as the Director of the Northern California High Intensity Drug Trafficking Area (HIDTA), Director of the Northern California Regional Intelligence Fusion Center, and Vice Chairman of the Criminal Intelligence Coordinating Council and Global Intelligence Working Group, both federal advisory committees that advise the Attorney General on information and intelligence sharing policies. I also serve on the Narcotics and Dangerous Drugs Committee of the International Associations of Chiefs of Police (IACP), and I am on the Board of Directors of the National HIDTA Directors' Association. I retired as Assistant Chief at the Bureau of Narcotics Enforcement in the California Department of Justice after 32 years of service.

Throughout my career I have worked closely with the Office of Justice Programs, primarily with the Bureau of Justice Assistance, as a public policy partner, program beneficiary, and grant recipient. OJP and its subordinate bureaus play a critical role in translating federal policies down to the state and local levels through the grant programs it administers. Many of these programs provide much needed assistance to state, tribal, and local law enforcement agencies through training, grant funding, policy development and technical assistance programs. Because of OJP grants and other assistance, the state, local and tribal law enforcement officers that according to the National Institute of Justice (NIJ) account for 98% of all arrests and prosecutions in America have increased resources and

are able to work more effectively. In short, our communities are safer today because of the assistance provided through the many programs and grants supported by OJP.

Critics of OJP have suggested that there is room for improvement. With most government-run programs, there is always room for improvement; however, as an end user of OJP's service, I can tell you that the many successes that law enforcement has achieved with the assistance of OJP far outweigh the negative aspects of the program. I have some specific suggestions for improving OJP but first, I first want to highlight the most important OJP program from the perspective of America's narcotic officers: the Byrne Justice Assistance Grant, or JAG program.

Edward Byrne Justice Assistance Grant (JAG) Program

Byrne JAG is the cornerstone of multi-jurisdictional drug and gang enforcement in America. It provides incentives for state and local agencies to work together, pool resources, share information, and pursue larger organizational targets in gang, firearm, money laundering and drug trafficking investigations. Without multi-jurisdictional taskforces, where agencies have the ability to share resources and information, law enforcement would revert to working within their own stovepipes and arresting targets of opportunity rather than focusing on organizational targets that have a disproportional impact on the problem. Drug enforcement would revert back to the days when I first started working narcotics in 1978 when because of a lack of resources and training, we worked within our own teams without cooperating or using intelligence to lead us in drug trafficking investigations.

It is essential, and yet it is threatened. The White House has zeroed it out in the President's budget the past four years. To the credit of many members of this subcommittee and this House, Congress has resisted each time. Last year Congress' will was tested and we sustained a major blow, but we are confident that many of you understand the unintended consequences of the cuts, and we are hopeful that the FY 2009 agreement will be favorable. And – thanks entirely to this subcommittee and the full committee chair Mr. Conyers – Byrne JAG reauthorization passed the House in June and

President Bush signed the bill into law in July. On behalf of the members of the NNOAC, I want to thank you for your leadership on this, Mr. Chairman, Ranking Member Gohmert, and members of the subcommittee.

The Office of Justice Programs has a tough job. The programs it administers are large and multi-purpose. Grantees are numerous and geographically dispersed. And it must do it all over again every 12 months, often with varying funding levels. It is a real management challenge, and yet given the number of balls in the air, I think OJP has managed to function very well.

While discussing OJP reform from the perspective of a narcotic officer, central to any consideration of improvement must be measurement - meaning quantifiable and defensible performance measures. How are the funds that are administered by OJP spent through various programs? Are reasonable and useful measures being tracked? Are those measures being analyzed and reported? And are improvements being made based on the analysis? I will give you my thoughts through the lens of the Byrne JAG program, since it is one of the largest and most important programs the office administers.

From the point of view of my organization – the NNOAC – and many of our colleagues in public safety, substance abuse prevention and treatment, and criminal rehabilitation, the Byrne JAG formula program is the cornerstone of OJP. I want to emphasize to the subcommittee – and to the whole Congress – that the ***Byrne JAG program is a formula program***. The Byrne Discretionary program is not the same thing – it is nearly all earmarked. The Byrne JAG program is the one that can be measured over time, and it should be the focus of any performance measurement effort.

Let me also emphasize that I and many others in the community share the concern of the subcommittee with regard to the need to improve performance measurement within the Byrne JAG program. In fact, three years ago I approached OJP suggesting that they develop performance measures for the largest portion of Byrne JAG funds: multi-jurisdictional task forces. Members of my association know the results the program generates, yet we have been frustrated for years that the results have not been

systematically collected, analyzed, and reported. Subsequent to that meeting, we convened several focus groups with major stakeholders in the Byrne JAG program to discuss the development of performance measures.

OJP, through the Bureau of Justice Assistance, took our suggestion, commissioned a research organization to conduct significant research and analysis on measurement possibilities and related issues, and a report was provided to OJP. I don't know what happened with that report, but I do know that it was never acted upon. It is quite possible that the White House, the Office of Management and Budget (OMB) or other senior leadership in the administration stopped this project so that we would not be able to demonstrate the effectiveness of Byrne JAG-funded task forces. After all, why would the administration want to institute performance measures that demonstrate the effectiveness of a program that it is trying to kill?

Measuring law enforcement effectiveness – particularly drug enforcement, and even more specifically federally funded drug enforcement task forces – is not new. As a HIDTA director, I participated in an effort to develop performance measures specific to the HIDTA program three years ago in response to efforts by the administration to dismantle the program. The effort was tough and time consuming, but we now have an active, successful performance measurement system employed throughout the HIDTA system. The information from the HIDTA performance measurement program has been used extensively by members of the House and Senate to support the program. The end result of that performance measurement project is the program annually reports on metrics that matter to ONDCP, our federal agency partners, and the Congress. The measures helped lead to the reauthorization and increase in FY 2008 funding for HIDTA. I would encourage the committee members and staff to review this performance measurement system by visiting your nearest HIDTA.

The White House and others - including the pro drug-legalization movement - believe that the federal government shouldn't be in the business of financially supporting state and local law enforcement or drug enforcement efforts – one of the main reasons the

administration has tried to eviscerate the Byrne JAG Program for the past four years. But the administration's actions toward this mature, proven program should be tested against a simple question – is the drug trade not dangerous to America's communities, workplaces, families, and individuals? Is the drug problem – including production and drug-smuggling - not intra-state and international in nature? Does the federal government not have a responsibility to help state and local law enforcement when it fails to secure borders and ports through which the majority of drugs are transshipped? To me it is clear that the federal government *does* share the responsibility to contribute to true multi-jurisdictional enforcement efforts - Byrne JAG is the primary program that does that. It is absolutely critical to maximize its support.

An example of how the drug problem in America is an international problem is highlighted by the federal focus on methamphetamine in recent years. Due in large part to the federal focus on methamphetamine, busts of meth labs and meth super labs – those labs that produce 10 lbs or more of methamphetamine – have decreased dramatically over the past several years. However, methamphetamine use and supply hasn't declined. Why? Because the drug traffickers have adapted to the increase in enforcement by moving meth super labs into Mexico for mass production of the drug, then transport the finished meth through our porous southern border into America's interstate highway system. As long as our international borders remain as a revolving door for drug traffickers, the federal government will bear some responsibility for helping state and local authorities.

Byrne funds multi-jurisdictional task forces that don't replace state and local funds, but rather provide the incentive for local agencies to cooperate, communicate, share information, build good cases, and pursue organizational and regional targets rather than just the individual pushers that local agencies typically deal with. Both enforcement targets are valid and necessary, but without Byrne, law enforcement would revert to catching street-level dealers. We would go back to working within our own stovepipe without regard for working cooperatively and using intelligence to lead us in investigating drug trafficking organizations. I started working narcotics enforcement in 1978 when drug law enforcement was hampered by mistrust, the inability to share information and a lack of

understanding of how best to target organizations. We have come along way since then, but those hard earned improvements in our profession will vanish if federal resources are not available to help continue the multi-jurisdictional task force model and the concept of intelligence-led policing.

Even as Byrne JAG stakeholders and OJP were mulling JAG performance measures late last year, we were all thrown against the wall in December by a massive and unjustified cut in last-minute omnibus negotiations between leadership and the White House. Byrne JAG was cut from \$520 million to \$170 million in the dark of night. The field responded. A coalition of more than 30 organizations – from the National Sheriffs' Association to the Drug Courts, from the National Association of State Alcohol and Drug Abuse Directors to the Legal Action Center – quickly weighed in to urge restoration of funds.

A bipartisan majority of the House – 218 members – and a bipartisan majority of the Senate – 56 senators – sent letters to appropriators and leadership to urge emergency supplemental funding to restore the cut. In the first effort by Congress to restore the funding earlier this summer, the funding didn't make it to the final bill - yet the administration and Congressional leadership agreed to include more than \$675 million in emergency funds for *foreign* law enforcement agencies around the world! Not a single law enforcement officer in this land understands why leadership in the Congress and the White House decided to take resources away from domestic law enforcement and give them to foreign countries.

This month Congress has an opportunity to remedy the situation. I urge you to support America's 870,000 law enforcement officers, who place their lives on the lines each day to protect our communities and who serve as our primary line of defense against violent crime, gangs and terrorism even at the cost of their own lives. Please show that support not only to our nation's cops but to the citizens they protect by standing up to the White House, standing behind the public safety and service provider communities, and ensuring that JAG funding is restored through FY 2008 emergency funding.

We all can agree that the program could benefit from real performance measures. What we do not want to see happen is for Congress or the administration to throw the baby out with the bathwater. I can tell you that people across the country in multiple areas of public safety – not just law enforcement – are very concerned about this. We all want accountability, but imposing a system of grant review and approval based on a numerical scoring system subject to the bias of a few individuals is a poor substitute for accountability. It doesn't take into account the real impact the programs are having on the ground over time. This is the heart of the matter – if performance measures were in place, OJP would have a much better handle on what to fund and what not to fund. They would know what is working.

We are very confident that the measures ultimately put in place will show success. We are so confident because we see these successes every day. We can give anecdote after anecdote of successes enabled by Byrne JAG. I am back here in Washington time and time again talking about the importance of programs like Byrne JAG and of the importance of drug law enforcement as part of a comprehensive strategy to reduce drug use and drug related crime. I can tell you that until we have a performance measurement program as part of the culture and routine practice at the OJP-DOJ level, we will continue to have to fight year-round to justify programs that we know can withstand the rigors of measurement and review. Now maybe that's what some of the panelists here at the table want. Maybe they – like the Bush administration – would prefer to kill any meaningful effort to institute performance measures because they know effective measurement will show that the program is generating important and powerful results across the country.

On March 7, 2008, the National Alliance of State Drug Enforcement Agencies (NASDEA), in partnership with the National Narcotics Officers' Associations' Coalition (NNOAC) announced the arrests of 4,220 individuals on drug-related charges following a national one-day operation conducted by 41 states. The operation, called *Operation Byrne Blitz* was a coordinated effort led by NASDEA to focus on drug related crimes and to stress the importance of the federally-funded Byrne-JAG program.

In addition to the arrests, the operation yielded the seizure of 20,851 pounds of marijuana, 2,886 marijuana plants, 1,749 pounds of cocaine, 120 pounds of methamphetamine, 6,973 pharmaceutical pills, 13,244 ecstasy pills and a variety of other drugs. Also seized were 105 methamphetamine labs, 666 firearms and \$13,463,832 in U.S. currency. In addition, 228 children were determined to be endangered and those cases were referred to the appropriate child protection agencies.

These results are real. They are quantifiable. They are defensible. And they indicate the power of using Federal dollars to leverage massive state and local investment in public safety. They also demonstrate what types of results can be measured by OJP if a proper measurement infrastructure was created and implemented.

Now, many on this panel disagree with these results and many believe that we are fighting a pointless drug war. To counter this argument, I would flip the issue around and challenge the naysayers to show how Byrne JAG is NOT working. They will suggest that horrific events like those that occurred in Tulia, Texas, Atlanta, Georgia and a handful of other places demonstrate that the program is not working and that law enforcement across the country is running amok and abusing federal assistance. What happened in Tulia was disgusting and shameful; however, it was not representative of 99.9% of Byrne JAG beneficiaries. If anything, Tulia demonstrates the importance and urgency of ensuring that proper training, clear communication of expectations, and meaningful performance management are instituted as soon as possible.

I realize that it is pointless to debate the effectiveness of a program that is not objectively measured. The way to deal with the issue is to task OJP with an effort to develop performance measures for some or all of the authorized uses under Byrne JAG. I would strongly suggest that they start with task force measurement because OJP did start with that component two years ago until the project ended unexpectedly and abruptly. I pledge my organization's support in any way we can be helpful, and also pledge my

organization's participation in a stakeholder coalition effort to identify and evaluate possible performance measures for the program.

Training and Information Sharing Programs

In addition to – and possibly as part of – performance measures for Byrne JAG, training and information sharing are critical to successful task force management. Together with task forces, these programs support and often enable each other - so if you hit one, you hit the entire function. The Regional Information Sharing System, or RISS, is absolutely indispensable to multi-jurisdictional task forces. This program assists law enforcement in effectively sharing information regarding criminal conduct and assists us with connecting the dots. RISS allows law enforcement officers across the country to deconflict case information, and build and maintain a culture of collaboration among disparate state and local law enforcement agencies while protecting privacy and civil liberties because of the safeguards that are mandated for the program by 28 CFR part 23.

The information sharing capabilities that began with the RISS program are being enhanced and refined by yet another successful OJP program, the Global Information Sharing Initiative. Through Global, especially the work of the Global Intelligence Working Group (GIWG) and the Criminal Intelligence Coordinating Council (CICC), much has been accomplished to improve criminal intelligence and information sharing capacity to allow more effective gathering and sharing of criminal intelligence between state and local law enforcement agencies and our federal law enforcement partners. Beginning with the publication of the National Criminal Intelligence Sharing Plan (NCISP) by BJA and Global, there has been a constant stream of outstanding publications and policies that have been offered for adoption by the Department of Justice, the Department of Homeland Security and state, local and tribal law enforcement agencies throughout the nation. The Global Justice Initiative and BJA have developed and published the Fusion Center Guidelines and are working on the development of baseline capabilities for information sharing fusion centers. Global has also worked closely with BJA on updating 28 CFR part 23, the federal regulations that govern information sharing for many federally

funded programs. The goal of the work on this project by members of the Global committee has been to ensure the protection of civil liberties and privacy while improving the information sharing environment.

The Center for Task Force Training (CenTF) - another OJP-funded program - provides the high-level training for task force managers to help them understand effective task force management. It helps ensure that procedures are followed, ethics are upheld, and risks are minimized. During my law enforcement career there have been many times when I have seen cops make honest mistakes - some leading to tragic results. I have made some of those mistakes myself. But rarely have I seen police officers intentionally set out to commit improper acts that would endanger the public or bring discredit to our profession. With few exceptions, the mistakes that I have seen were made under the difficult and fast-paced environment that requires police officers to make split-second decisions. While I won't try and justify any wrongdoing by my colleagues, I can tell you that many of those regrettable mistakes could have been avoided had we provided adequate sample policies for agencies to adopt and training that emphasized a culture of integrity, risk management and the safety of citizens and cops during enforcement operations. Through the CenTF program, OJP has successfully presented training that embraces those concepts to thousands of law enforcement officers across the country and has made that training available free of charge to encourage attendance even by officers from agencies that might otherwise not have the resources to attend training.

If you cut Byrne JAG, RISS or CenTF, you have attacked a system that has been in place for many years and has improved the fight against drugs and gangs while improving officer safety and allowing law enforcement to efficiently target criminal organizations rather than the low hanging fruit. Without funding and support for each of these programs, the others are less effective. The result is that you lose law enforcement information sharing, you lose opportunities to improve professional management of multi-jurisdictional task forces, and you even lose the task forces themselves. If what you want to do is weaken the ability of police officers and prosecutors to do their jobs, then this is what you want to do. If, on the other hand, you want to see these people work effectively, then do

the opposite: support task force funding as well as funding and policies for training and information sharing.

I think that my colleagues on this panel would agree that there are many worthy programs funded by Byrne JAG. We can't throw the baby out with the bathwater. Instead, I would suggest that the subcommittee consider taking four actions with regard to the Byrne JAG program: 1) decide once and for all to measure those components of the program that can be measured; 2) ensure that OJP/BJA has the resources necessary to develop and manage a performance measurement system; 3) ensure that OJP/BJA works with stakeholders to develop measures that are realistic; and 4) ensure that training and information sharing resources are available to JAG-funded task force managers. I've watched it work with the HIDTA program. It has the buy-in of many of the major stakeholders. OJP has already gotten a head start. It's time to move forward with this and we would greatly appreciate this subcommittee's support in this effort.

Another issue of concern to my organization's membership relates to the Public Safety Officers Benefits (PSOB) program. This critical program provides benefits to the families of police officers, firefighters, and emergency medical personnel who die or become permanently disabled in the line of duty. The Bureau of Justice Assistance has worked diligently over the years to ensure that claimant public safety officers or their survivors receive the benefits which the law confers upon them. But we are concerned about a proposed new "rule" that the Department of Justice issued on July 10, 2008. This proposed rulemaking contains language that is unclear and could potentially change the conditions under which survivors would qualify for benefits. I would encourage the subcommittee to request further clarity from the Department of Justice on what the proposed rule would mean in real terms to ensure consonance with congressional intent. DOJ should not issue final rules without these issues addressed.

Thank you again for inviting me, and I look forward to working with the committee to explore these and other ideas that will improve the effectiveness of the Office of Justice Programs in the years ahead.