FLAWED ENFORCEMENT

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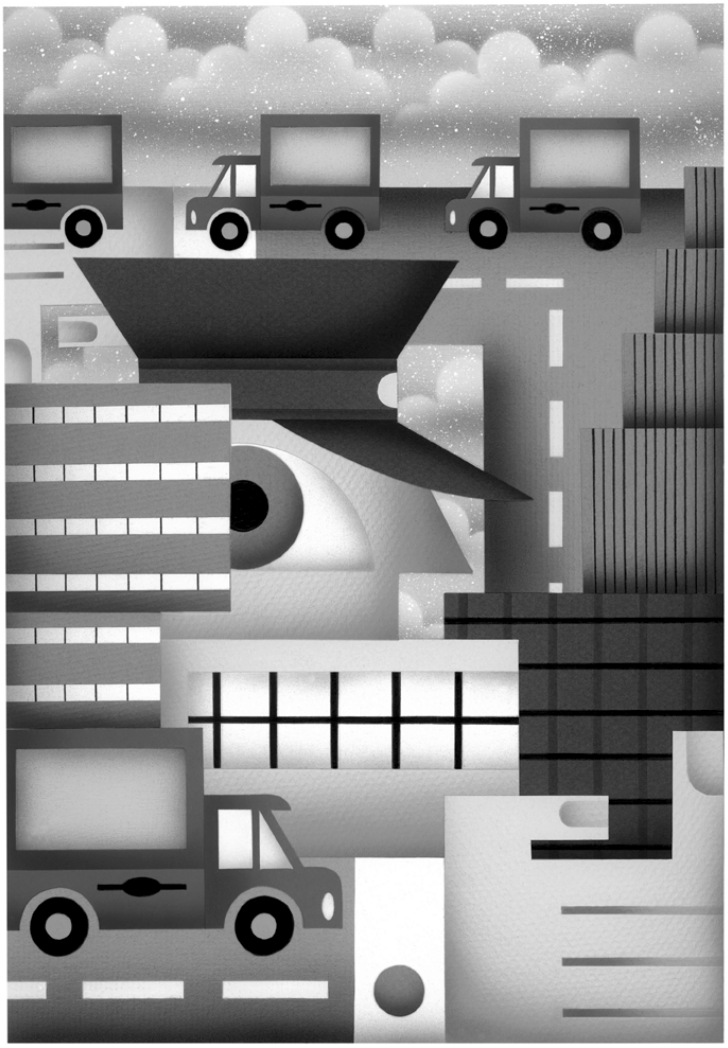
Why drug task force highway interdiction violates rights, wastes tax dollars, and fails to limit the availability of drugs in Texas



The mission of the ACLU of Texas is to defend and enforce the Bill of Rights and American civil liberties, and to preserve them for each generation. The ACLU Foundation of Texas is a 501(c)(3) first chartered in San Antonio in 1936.

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Executive Summary:

Flawed Enforcement

Texas' system of regional narcotics task forces, financed through the federal Edward Byrne Memorial State and Local Law Enforcement Assistance Program ("Byrne grants"), has been a source of scandal and management imbroglios over the last several years, most notoriously in the case of the internationally publicized drug stings in Tulia.

ACLU studied these task forces' traffic interdiction activities in depth. We found patterns of unnecessary searches, a failure to perform basic law enforcement functions, and a general lack of oversight and accountability. ACLU also found that Byrne grant money can be spent on many other types of criminal justice initiatives besides narcotics task forces, some of which address Texas' most immediate criminal justice funding needs. This report encourages state leaders to divert Byrne grant money to those other, more desirable options.

Findings:

- Byrne-funded task forces are designed to fail because of structural flaws, misguided priorities, and fundamentally unaccountable management and hiring arrangements.
- Task forces perform searches at traffic stops much more often than regular police and sheriffs departments.
- In some task forces, 98% of task force searches at traffic stops are discretionary searches where the officer searches the car with the driver's verbal "consent," but has no other legal authority to do so.
- Texas law allowing arrests for fine-only-traffic offenses creates a coercive environment for discretionary so-called "consent searches."
- Unlike most traffic enforcement, up to 99% of traffic stops by some task forces result in no citation. Along with the high ratios of discretionary searches, this indicates task force officers in highway interdiction programs routinely trump up excuses to stop drivers who are committing no crime.
- Task forces were more likely to search blacks than whites in eight of nine task forces that supplied sufficient data to calculate search rates by race. Latinos were searched more often than whites by seven of nine task forces reporting race data on searches.
- The Texas Department of Public Safety (DPS) provided little guidance or oversight regarding racial profiling data collection and analysis.
- If it had reviewed task-force racial profiling data, DPS would have discovered that task forces are violating DPS policy and possibly federal law.
- Byrne task forces are driven by budget pressures to pursue unreasonable traffic interdiction techniques so they can generate asset forfeiture income.

Recommendations

As a result of this study, ACLU offers the following recommendations regarding management and oversight of Texas' Byrne-grant funded regional narcotics task forces:

State

- The Governor should divert federal Byrne dollars to more effective methods of combating drug abuse, and other Texas priorities. Texas should quit using federal Byrne money for narcotics task forces and spend it on treatment programs, drug courts, homeland security, crime lab upgrades, evidence-based law enforcement training or other allowable programs detailed on p. 5.
- If Byrne money is not diverted to other uses, DPS should require task forces to report all Tier 1 and Tier 2 racial profiling data for all stops to DPS as part of their outcome measures.
- Drug interdiction patrols should be limited to officers' home employing jurisdiction so that motorists are stopped by officers who appear to be operating within their own jurisdiction, and can protest their ticket, if necessary, to a nearby magistrate.
- The Texas Legislature should ban discretionary consent searches statewide, or at least require officers to tell motorists they do not have to consent to a search.
- Alternatively, DPS should ban consent searches by task force interdiction officers and state troopers.
- Task force asset forfeiture income should be divided among the general funds of participating counties and cities, or designated to help fund local public schools.

Federal

- Multijurisdictional narcotics task forces should be eliminated from the list of allowable funding items for Byrne grants or any successor program.
- Alternatively, the four-year limit on other programs funded by Byrne grants should be applied to narcotics task forces.
- The Tulia Rule: Federal funding for undercover drug work should require states to provide corroborating evidence for any testimony by undercover officers or confidential informants.

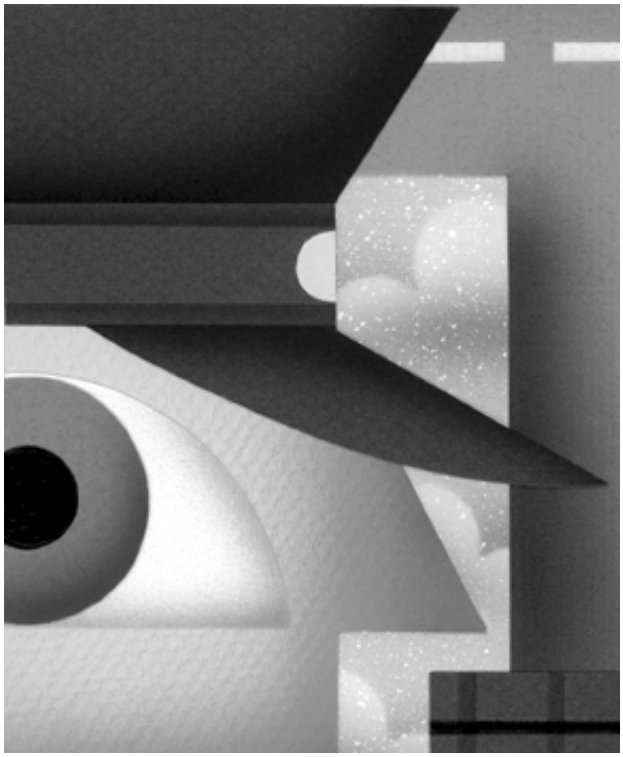
Flawed Enforcement

Why drug task force highway interdiction violates rights, wastes tax dollars, and fails to limit the availability of drugs in Texas

BY SCOTT HENSON

Introduction: Time for Byrne Narcotics Task Forces to Go

Texas' system of "regional narcotics task forces" (RNTFs) came under intense scrutiny after the internationally publicized Tulia drug busts in 1999. Sixteen percent of black people in that small West Texas town were convicted on the uncorroborated word of an undercover officer named Tom Coleman, who has since been indicted for perjury in the case. Governor Perry pardoned 35 of the 39 convicted Tulians in 2003.



The Tulia task force was one of hundreds nationally funded by the Edward Byrne Memorial State and Local Law Enforcement Assistance Program, a federal block grant program named after a slain New York undercover officer. Created in 1988, Byrne grants may finance about 30 different specific criminal justice issue areas, of which multijurisdictional narcotics task forces are just one (see list on page 5).

The Governor of each state has discretion as to how that state's Byrne money is spent. Nationally, task forces make up about 40% of all Byrne grant funding, while historically in Texas nearly 90% of all Byrne grant funds go toward task forces.[1]

Statewide, various prosecutors have alleged RNTF agents have tampered with evidence, falsified documents, stolen money, stolen drugs, dealt drugs, transported drugs, and gave drugs and alcohol to minors.

It's not just Texas, though. *USA Today* reported recently that "Investigations into possible misconduct by members of such task forces are underway in nine states."[3]

The continuing saga of misconduct arises from the lack of accountability inherent in the RNTF structure. Federally funded, state managed and locally staffed by officers from several different police departments, government officials claim they are not even law enforcement agencies *per se*. They exist on paper, with no direct control by any elected official or governing body. In 2003, the Texas Department of Public Safety (DPS) attempted to assume "command and control" of Byrne task forces, but DPS still maintains that local governments are responsible if anything goes wrong.

In the end, though, someone has to be responsible, and for the first time local officials in Texas are beginning to realize that it's probably them. Participation in RNTFs can bring communities more liabilities than benefits.

For the city of Amarillo, that was a $5 million dollar lesson.

As this study was being published, attorneys for the wrongfully convicted victims of the Tulia drug sting just finished negotiating a nearly $7 million settlement with agencies participating in the Panhandle Regional Narcotics Task Force.

Unaccountable task force practices put the communities they serve at risk. Today, Texas must weigh whether potential liabilities from Byrne-funded task forces outweigh purported benefits. Amarillo City Attorney Marcus W. Norris told the *New York Times* that "many drug task forces in Texas were poorly organized and governed. That led, he said, to poor supervision of Mr. Coleman in Tulia, a lack of accountability and catastrophic misjudgments. 'There's a lesson here,' Mr. Norris said, 'that cities should be very careful about these alliances.'"[4]

Because local departments contribute officers to the task force, supervisors have little or no control over personnel decisions. "This was not an [Amarillo Police Department] operation, and it was not consistent with APD standards," said Mike Loftin, an attorney who represented the city of Amarillo in the Tulia case. "The city of Amarillo did not feel comfortable standing behind an agent who has been discredited numerous times and who is not the caliber that would be employed by the city of Amarillo."[5]

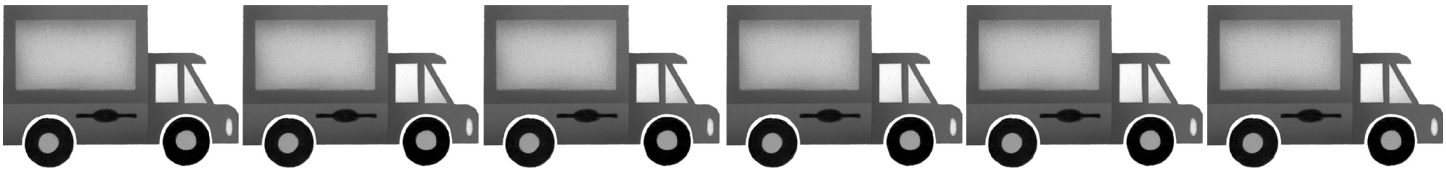
Texas Should Divert Federal Byrne Funds to Other Programs

Even though drug treatment is the highest priority in President Bush's 2004 National Drug Control Strategy, and criminal law enforcement is the lowest, in Texas those priorities are reversed. The Governor's Criminal Justice Division chooses to spend almost all of Texas' $31 million in federal Byrne funds each year on regional narcotics task forces, with drug courts and homeland security both lower priorities.

The Governor should divert Byrne funds away from task forces and into other allowable uses. Texas cities or counties receiving Byrne funds for a narcotics task force should improve their criminal justice programs by applying for money in one of these other authorized funding areas. Texas cities or counties not presently receiving Byrne funds are not getting their fair share of federal dollars!

Although pending federal legislation could change these priorities, other allowable programs that local communities can fund with Byrne grant money include:

➔ demand reduction education programs in which law enforcement officers participate;
➔ improving the quality, timeliness, and credibility of forensic science services for criminal justice purposes.
➔ developing or improving in a forensic laboratory a capability to analyze deoxyribonucleic acid (hereinafter in this chapter referred to as ''DNA'') for identification purposes;
➔ antiterrorism training programs and equipment procurement for use by local law enforcement authorities;
➔ enforcing child abuse and neglect laws, including laws protecting against child sexual abuse, and promoting programs designed to prevent child abuse and neglect;
➔ special programs that address crimes committed against the elderly and for rural jurisdictions;
➔ disrupting illicit commerce in stolen goods and property;
➔ improving the investigation and prosecution of white-collar crime, organized crime, public corruption crimes, and fraud against the government with priority attention to cases involving drug-related official corruption;
➔ developing and implementing antiterrorism plans for deep draft ports, international airports, and other important facilities;
➔ career criminal prosecution programs including the development of proposed model drug control legislation;
➔ financial investigative programs that target the identification of money laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation, financial investigative training, and financial information sharing systems;
➔ improving the operational effectiveness of the court process, by expanding prosecutorial, defender and judicial resources, and implementing court delay reduction programs;
➔ programs designed to provide additional public correctional resources and improve the corrections system, including treatment in prisons and jails, intensive supervision programs, and long-range corrections and sentencing strategies;
➔ providing prison industry projects designed to place inmates in a realistic working and training environment which will enable them to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution;
➔ providing programs which identify and meet the treatment needs of adult and juvenile drug-dependent and alcohol-dependent offenders;
➔ developing and implementing programs which provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes;
➔ developing programs to improve drug control technology, such as pretrial drug testing programs, programs which provide for the identification, assessment, referral to treatment, case management and monitoring of drug dependent offenders, enhancement of State and local forensic laboratories, and
➔ criminal and justice information systems to assist law enforcement, prosecution, courts, and corrections organization (including automated fingerprint identification systems);
➔ innovative programs that demonstrate new and different approaches to enforcement, prosecution, and adjudication of drug offenses and other serious crimes;
➔ addressing the problems of drug trafficking and the illegal manufacture of controlled substances in public housing;
➔ drug control evaluation programs which the State and local units of government may utilize to evaluate programs and projects directed at State drug control activities;
➔ providing alternatives to prevent detention, jail, and prison for persons who pose no danger to the community;
➔ programs that address the need for effective bindover systems for the prosecution of violent 16- and 17-year-old juveniles in courts with jurisdiction over adults for the crimes of - murder in the first degree; murder in the second degree; attempted murder; armed robbery when armed with a firearm; aggravated battery or assault when armed with a firearm; criminal sexual penetration when armed with a firearm; and drive-by shootings;
➔ establishing or supporting cooperative programs between law enforcement and media organizations, to collect, record, retain, and disseminate information useful in the identification and apprehension of suspected criminal offenders; and
➔ improving the criminal and juvenile justice system's response to domestic and family violence, including spouse abuse, child abuse, and abuse of the elderly.



The high price paid by the Panhandle for the Tulia bust should serve as a wake-up call. Now, all Texas communities must reconsider whether joining a Byrne-funded task force is worth the risk. "'In all honesty, we didn't get that much out of the task force anyway. That's what's kind of frustrating about this,' [Oldham County Sheriff David Medlin] said of the settlement. 'We get drug into that suit and really didn't get much work out of them. Basically, you got sued because you had a signature on a piece of paper. That was your involvement in it.'"[6]

Other communities face similar risks, all because the task force system is poorly designed and unaccountable. In Hearne, the District Attorney, local task force officers and participating cities and counties are currently involved in an intense legal battle with ACLU regarding alleged corruption and mismanagement at the South Central Texas Regional Narcotics Task Force

Worse, Byrne task forces are ineffective; in 17 years they haven't measurably limited drug availability in Texas. They don't focus on big time drug dealers or track sales "up the ladder" to catch big importers. Instead they rely on low-level undercover buy busts in minority communities to generate arrest numbers and on highway interdictions for asset forfeiture opportunities.

traffic interdiction by Byrne task forces wastes taxpayer money on ill-focused fishing expeditions.

This report argues that task force traffic interdiction programs are just as problematic as Tulia-style undercover operations, wasting taxpayer dollars on blithely ineffective programs that violate the spirit if not the letter of the Fourth Amendment to the US Constitution barring unreasonable searches and seizures. This report continues where *Too Far Off Task* left off, analyzing the bureaucratic mechanisms by which the task forces' multijurisdictional structure creates inherent and insurmountable barriers to reform.

Texas should quit throwing good money after bad and focus its scarce resources on more effective programs like those highlighted on page 5.

Highway Interdiction Focus of Study

The two primary activities of Byrne grant-funded regional narcotics task forces (RNTFs) are undercover drug sting operations and highway interdiction. This study focuses for the first time on problems associated with Texas RNTF traffic interdiction programs.

Of the 45 regional narcotics task forces in Texas that are funded through the federal Byrne grant program, 25 conducted traffic interdiction programs in 2003.[7]

In compiling this report, the ACLU of Texas examined data acquired from individual task forces under the *Texas Public Information Act*, and used that data to evaluate RNTF efforts to intercept drugs on major Texas highways. Through open records requests and several months of research, the ACLU of Texas has learned that the overwhelming majority of RNTF interdiction efforts amount to fishing expeditions that contribute little to traffic safety. Instead, interdiction permits task force officers to pull over and search thousands of innocent Texans each year as well as to seize vehicles, cash, and other forms of personal property. Furthermore, records documenting RNTF interdiction activities reveal patterns of racial disparity in how frequently officers search vehicles.

Highway interdiction offers task forces their best opportunity for lucrative asset forfeiture cases, even though the success rate is extremely low. Undercover buy busts in poor communities generate few forfeiture opportunities, while busts made on the highway could let task forces seize vehicles, cash, or more.[8]

While stories of lucrative asset forfeitures make occasional headlines, in daily practice, traffic interdiction by Byrne task forces wastes taxpayer money on ill-focused police fishing expeditions while contributing little to traffic safety. Byrne-funded traffic interdiction allows the government to pull over and search thousands of innocent Texans each year. Most task forces were substantially more likely to search minorities than whites after they'd been pulled over, even when officers had no probable cause for a search.

To analyze task force interdiction activities, ACLU of Texas requested racial profiling data that state law and DPS rules require each officer to gather. Of those 25, only 17 responded to our open records request with some form of racial profiling data, while 10 provided data sufficient to calculate search rates for traffic stops, and just 9 could be analyzed by race. (Two others appealed the request to the Attorney General, who had not decided the cases at the time of publication.[10] In several cases, task forces sent ACLU bundles of individual tickets. In those instances, ACLU calculated their search rates.

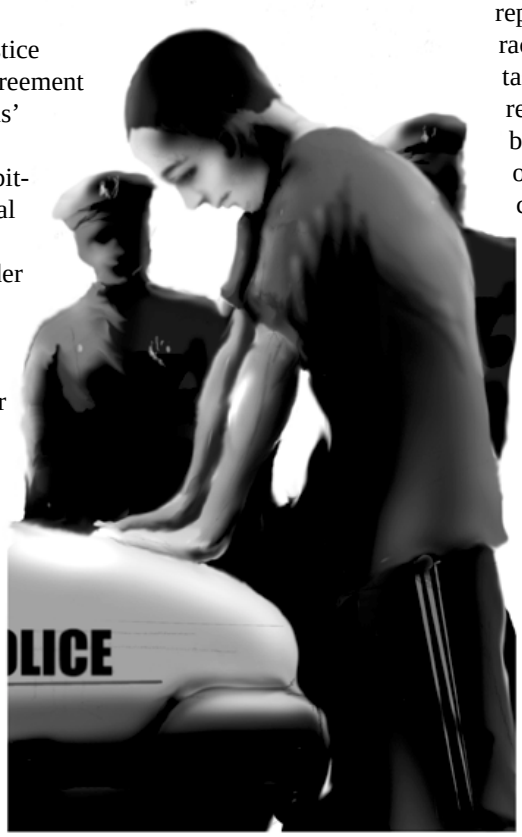
It's impossible to know whether task forces are engaging in racial profiling because the agency exercising 'command and control' over them, i.e., DPS, doesn't monitor their racial profiling data.

DPS Doesn't Track Racial Profiling Data at Task Forces

In 2002, the Governor's Criminal Justice Division and DPS entered into an agreement for DPS to assume oversight of Texas' RNTFs. As part of that agreement, DPS created new rules, including rules prohibiting racial profiling and establishing racial profiling data collection that task forces would be required to comply with in order to receive funding.[11]

At the time, ACLU congratulated Governor Perry and DPS specifically for requiring racial profiling data collection from task forces, calling it a "dramatic improvement" and recommending that the requirement be replicated for all drug interdiction units making traffic stops.[12]

As it turns out, that praise was premature. In practice, DPS interpreted its own rule in the narrowest possible way. The rule requires "all agencies" to adopt policies against racial profiling and begin to collect profiling data as required under the *Texas Code of Criminal Procedure.*



Art by Paul Wilson

But state officials claim that Byrne task forces are not law enforcement agencies in a legal sense, but instead are structured as collaborative agreements between multiple counties. Lawsuits against task forces proper have been dismissed, while individual counties and cities that entered into collaborative agreements have been held responsible for task force misconduct, as in the Tulia case.[13]

Since task forces are not legally "agencies," DPS reasoned, they should not be required to produce racial profiling reports, nor even to adopt "strict written policies that prohibit racial profiling."[14]

In practice, DPS does not require task forces to report racial profiling data to the supervising DPS captain, even though the agency in 2003 assumed "command and control" over the task forces.[15] In quarterly reports to the DPS Narcotics Division, obtained under the *Public Information Act*, DPS captains reported that they spot checked to see if racial profiling data were being gathered on task force tickets. However, DPS did not require the results of that data collection to be either compiled at the task force level or reported to DPS as part of the agencies' outcome measures.[16]

Instead, each task force officer reports his or her data to their own employing department, and that department includes the officer's data in its own aggregate, local department report.[17]

It's impossible to know whether task forces are engaging in racial profiling because the agency exercising "command and control" over them, i.e., DPS, doesn't monitor their racial profiling data.

At a minimum, it's fair to say that racial profiling data was unavailable for supervisors to use as a management tool. As will be seen below, that tool could have told DPS a lot about whether task forces are complying with the new rules.

Similarly, to this day DPS has never before gathered even statistical data regarding the racial makeup of suspects targeted in undercover task force drug stings.[18]

This study found that task force interdiction officers' search patterns differ considerably from regular law enforcement agencies, and thus merit independent inspection. DPS should require task forces to compile complete racial profiling reports for their interdiction officers so those patterns may be explored.

Lumping RNTF data in with local law enforcement figures obscures many of the lessons that could be learned from gathering and analyzing racial profiling data specifically from RNTFs.

Table 1: Percentage of Drivers Stopped by Byrne Task Forces Subjected to Searches

Task Force	Percentage of Drivers Searched at Traffic Stops
North Central Texas Drug Task Force	15.5%
Trans Pecos NTF	36.3%
North Texas Drug Task Force	35.2%
Central East Texas NTF	5.6%
West Central Texas Interlocal Crime Task Force	2.7%
Panhandle Regional NTF	28.8%
25th Judicial District NTF	20.9%
South Texas Specialized Crimes NTF	33.0%
Brazos Valley NTF	22.0%
STOPP NTF	18.0%

Task Forces Search Motorists More Often than Regular Police

Data submitted by regional narcotics task forces to the ACLU of Texas show that these task forces are much more likely to search people at traffic stops than regular Texas police and sheriff departments.[19] In Austin, for example, local police officers searched drivers at 4.8% of traffic stops. Drivers were searched at 5.9% of stops in Dallas, 2.1% in Fort Worth, and a whopping 8.4% in Houston.[20]

ACLU considers some of those search rates to be too high, but they seem low compared to the search rates for drivers stopped by narcotics task forces. Only 10 task forces provided enough data to calculate search rates at traffic stops. Of those, all but two searched drivers at rates higher than the largest Texas cities' police departments.

The Panhandle Regional Narcotics Task Force, for example, which was responsible for the notorious Tulia drug busts, searched cars at 28.8% of traffic stops. The North Texas Drug Task Force searched at 35.2% of traffic stops, and the Trans Pecos task force topped out the list at 36.3% of stopped motorists searched. See Table 1 for the complete list for all task forces supplying data.

These high search rates should raise a red flag for supervisors and policymakers. The focus on making so many more searches than other officers indicates that these stops are merely pre-texts to search the vehicles for drugs or contraband. Anecdotal evidence bears that out.

The legal and practical pressures on motorists to allow officers to search their vehicles amount to coercion.

In Nacogdoches, NAACP president John Morrison told the *Daily Sentinel* "'we have received a lot of complaints about the [Deep East Texas narcotics] task force stopping people on the northwest loop,' he said. 'A lot of people who are stopped, especially on holidays or weekends say they are being searched for no good reason.'"[21]

Critics alleged that agents at the West Central Texas Interlocal Crime Task Force "bullied people into searches and threatened to obtain search warrants when people didn't comply." "A lot of times they'll stop people for insufficient probable cause," Colorado City attorney Pat Barber told the *Abilene Reporter-News.* "I think their theory is to search as many people as they can and maybe they'll stumble across something. People shouldn't be searched unless there's a good reason."[22]

Discretionary Consent Searches Overused

Many types of police searches are not discretionary searches. Examples include when officers see articulable probable cause for a search, or when they conduct inventory searches of abandoned or impounded vehicles. If an officer has a warrant or probable cause to believe a crime has been committed, he or she can search without asking an individual's permission.

"Consent searches" are discretionary searches where an officer asks permission to search but has no legal authority to do so unless the driver gives consent. Once an individual consents to a search, that search is legally authorized and the officer will not have to justify why it was requested in the first place.

Consent searches are controversial because most motorists rightly feel they are not in a position to say "no." In practice, there's really very little consent involved in "consent searches."

Texas drivers who refuse to allow an officer to search their car can be placed under arrest. The US Supreme Court ruled in *Atwater vs. City of Lago Vista* that, under Texas law, officers have discretion to arrest drivers at traffic stops, even for Class C misdemeanor offenses where the maximum penalty is only a fine. In the dissenting opinion to that 5-4 decision, Justice Sandra Day O'Connor wrote, "As the recent debate over racial profiling demonstrates all too clearly, a relatively minor traffic infraction may often serve as an excuse for stopping and

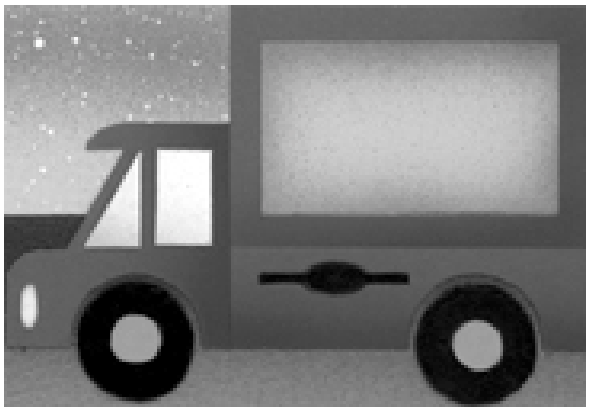
Table 2:
Percentage of Discretionary Task Force Searches at Traffic Stops

Task Force	Consent Searches As Percent of Total
Trans Pecos NTF	98.2%
North Texas Drug Task Force	63.2%
West Central Texas Interlocal NTF	67.1%
Panhandle Regional NTF	97.0%
South Texas Specialized Crimes NTF	93.0%
Brazos Valley NTF	81.1%

harassing an individual. After today, the arsenal available to any officer extends to a full arrest and the searches permissible concomitant to that arrest."[23]

In other words, Texas officers can legally tell a motorist pulled over for, say, a missing front license plate, "Let me search the car, or I'll arrest you and search the car when I impound it." That's hardly a consensual arrangement.

Another tactic is to force drivers who refuse to let their car be searched to wait until a K-9 unit arrives, or to threaten to wait for a search warrant.[24] Since this process can frequently take a long time, many motorists simply relent.



Such tactics violate the spirit, and possibly the letter, of the Fourth Amendment to the U.S. Constitution.[25] The legal and practical pressures on motorists to allow officers to search their vehicles amount to coercion, and Byrne task forces' over-reliance on consent searches means they exercise those coercive tools more aggressively than their counterparts at their home law enforcement agencies.

The six Byrne-funded narcotics task forces that supplied ACLU with discretionary search data reported massively disproportionate use of consent searches. More than 98% of searches at traffic stops by the Trans-Pecos task force were consent searches, compared to 97% at the Panhandle task force, 93% at the South Texas Specialized Crimes Task Force, and 81% at the Brazos Valley task force. Only two task forces reported a consent search rate for 2002 less than 81% — the North Texas and West Texas Interlocal narcotics task forces, where consent searches made up 67% and 63% of total searches, respectively.

The consent search rates in Table 2 are far higher than those recorded at most local Texas law enforcement agencies, where the vast majority of searches at traffic stops relate to arrests, probable cause, inventory searches, or some other type of non-discretionary search.

Houston, for example, reported that 22.4% of searches at traffic stops were consent searches. In Dallas, consent searches made up 31.4% of searches at traffic stops, compared to 16.6 % in Austin, 21.1% in Fort Worth, and 8.7% in San Antonio.[26]

Increasingly the practice of asking for consent to search at traffic stops has been called into question. Already, courts in New Jersey, Minnesota and Hawaii have banned consent searches statewide based on search and seizure restrictions in their state constitutions.[27]

Last year, the California Highway Patrol eliminated consent searches as part of a statewide racial profiling lawsuit settlement.[28]

ACLU believes requests for consent to search a vehicle at a traffic stop should be banned by statute unless police have probable cause. But if the Legislature decides to let the practice continue, at a minimum, DPS should begin tracking consent searches as part of task forces' outcome measures, and the Legislature should reconsider and pass legislation restricting arrests for traffic offenses, or the whole idea of consent is abrogated. Governor Perry vetoed such legislation in 2001 and 2003.[29]

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The Future of Regional Narcotics Task Forces?

Until now, almost all attention on Byrne-funded drug task forces focused on undercover drug operations like the one in Tulia. That's understandable, given the spectacular nature of the cases and how many have occurred.

In Floresville, 81st Judicial District Narcotics Task Force Officer Albert Villareal, like Tom Coleman, set up innocents who were later freed and was alleged by prosecutors to have protected drug dealers, stolen confidential funds, coerced a witness, and delivered pot to a minor.[1]

In Hearne, 17 people were freed in 2001 after a confidential informant paid by the South Central Texas Narcotics Task Force lied about setting up drug deals.[2]

As Governor, George W. Bush cut off funds to the Permian Basin Drug Task Force amid "allegations ranging from evidence tampering and fraudulent reports to bribery and theft."[3]

Even outside of Texas, most discussions of task force reform occur after faulty undercover operations. In May 2003 Missouri task force officer Michael Isenberg was charged with three counts of perjury after allegedly testifying that he was present during three drug buys when he wasn't. Isenberg testified in at least 150 cases; so far, at least 35 defendants convicted on the former deputy's word have been released from prison or probation.[4]

There are more such cases, in Texas and across the country, and they deserve the scrutiny they've received. The US House Judiciary Committee reportedly will hold hearings later this year regarding Byrne task forces' undercover drug enforcement activities.[5]

In 2003, the Texas House of Representatives passed legislation that would have diverted federal Byrne dollars to other uses, and prohibited spending Byrne grant money on narcotics task forces. (See the sidebar on page 5 for a list of programs that can be funded through the Byrne grant program.) That part of the legislation was deleted in conference committee.[6]

At the federal level, President Bush proposed abolishing the Byrne fund entirely in his first three presidential budgets. Last year, Senators John Cornyn and Kay Bailey Hutchison voted to get rid of Byrne grants altogether.[7] In the current federal budget Republicans have proposed merging the fund with two other programs, and slashing their overall funding nearly in half.[8]

Even former task force supporters are beginning to concede that regional narcotics task forces are a failed experiment. "I think the task force concept throughout the state is probably DOA," Randall County Criminal District Attorney James Farren told the *Amarillo Globe-News.* "I don't think the state is going to continue to assist in funding these types of task forces. What I'm seeing on the political horizon is, even if our regional task force hadn't come to an end, I think they all would have come to an end eventually."[9]

[1] Court records obtained by ACLU from Wilson County courthouse. Villareal was convicted in October 2002.
[2] ACLU's Drug Policy Litigation Project is presently litigating this case. *Regina Kelly et al v. John Paschall, et al*, Civ 02-A-02-CA-702 JN, in the United States District Court for the Western District of Texas.
[3] Blakeslee, Nate, "The Law West of the Pecos," *The Texas Observer,* 12-10-99.
[4] Willett, Justin, "Charges stun drug task force," *Columbia* (MO) *Daily Tribune,* May 15, 2003.
[5] Parker, *USA Today,* March 30, 2004.
[6] Unsigned "Political Intelligence" item, "Busted Keel," *Texas Observer,* 7-4-03.
[7] Both Texas US senators voted to table an amendment by Iowa Senator Tom Harkin that would have re-attached Byrne funding to President Bush's 2003 budget bill, which had zeroed out that program. The Senate voted January 17, 2003, by a margin of 52-46, to back President Bush's proposal to end the Byrne grant program entirely. Funding was replaced in the House-Senate conference committee.
[8] President Bush's FY 2004 budget proposal would consolidate the Byrne fund, the Local Law Enforcement Block Grant Program, and the Community Oriented Policing Services (COPS) program into a single funding stream called the Justice Assistance Grant (JAG) program. The President's 2004 budget would allocate $600 million total for the program, about half the funds allocated to those funds last year. House Judiciary Committee Chairman Rep. James Sensebrenner filed HR 3036 this spring which would also merge Byrne grants with these other the two programs, but would keep the combined funding at about $1.075 billion. Rep. Sensebrenner's bill would end the requirement that grantees contribute matching funds, and would change the funding formula so that the Department of Justice will grant 40% of funds directly to local governments, while 60% would continue to go to the governors for distribution.
[9] Cunningham, Greg, "Choosing options for fighting drugs," *Amarillo Globe-News,* 3-13-04.

Most Task Force Stops Result in No Ticket

Thousands of motorists are stopped by Byrne-funded task force officers on Texas highways each year. By law, officers must have observed a traffic offense to have probable cause to pull someone over. What's more, according to RNTF rules established by DPS: "All officers making interdiction stops should take appropriate enforcement action when violations are encountered."[30] That means that when officers pull over motorists they're supposed to write a ticket.

Unlike traffic enforcement at local police and sheriff's departments, though, task force interdiction officers write few tickets, but instead hope to use traffic stops as a pretext to interview the driver, look inside the car, and in many cases ask for consent to search the vehicle.

This process was described plainly by the Combined Governmental Drug Enforcement and Special Crimes Task Force, a Byrne-funded task force in the Rio Grande Valley: "Officers attempt to 'look past the traffic stop' to determine if the traffic violators are involved in any criminal activity. They attempt to identify motorists involved in the smuggling of narcotics or proceeds of drug trafficking (sic)."[31] In other words, traffic enforcement is not the point – before they've even pulled the driver over, task force officers are looking "past the stop."

Similarly, West Central Texas Interlocal Crime Task Force Commander Billy Schat told the *Abilene Reporter-News,* "all of

RNTF officers are using their own discretion to search minorities more frequently.

his agents' stops begin with simple traffic violations. Agents then ask questions and look for drugs they may see in plain view or for probable cause to search, he said."[32]

The South Texas Specialized Crimes and Narcotics Task Force declared in its grant proposal, almost nonsensically, that it will reduce the supply and demand for illegal drugs by "making traffic contacts and targeting traffic violators in an effort to upset the flow of narcotics on these major thoroughfares, thereby reducing the supply of illegal drugs."[33] That's a nearly senseless logical leap – there's no reason to believe traffic contacts lower the drug supply unless the intent of traffic stops is not traffic enforcement, but creating a pretext for investigating other crimes for which officers have no probable cause.

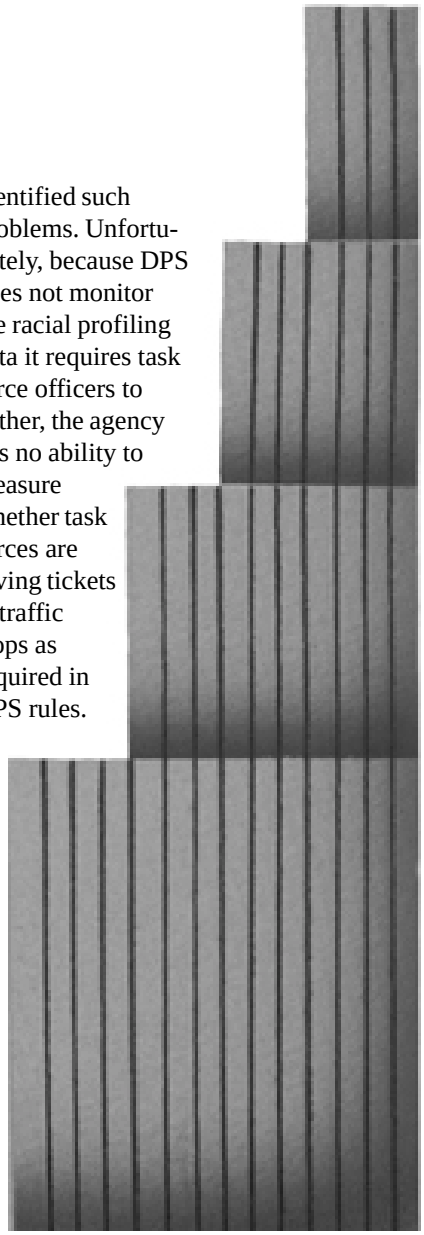
Task forces let nearly everyone off with a warning who isn't caught with drugs.

The most prolific task force engaging in interdiction, the Trans-Pecos Drug Task Force based in Pecos, reported that 99.3% of its 3,433 traffic stops resulted in warnings – in other words, drivers were nearly all let go without a ticket.[34] The West Central Texas Interlocal Task Force, based in Abilene, reported 2,600 traffic stops in 2002, but only 56 total traffic citations – the other 98.7% were warnings.[35] Task forces with smaller interdiction programs produce similar patterns. The Brazos Valley Narcotics Task Force in Bryan reported 313 interdiction stops in 2002, issuing warnings 97.4% of the time.[36]

For what reasons do task forces pull drivers over? Though comprehensive data on this subject has not been gathered nor analyzed by anyone, including DPS, available evidence indicates that task force interdiction officers pull drivers over for the least serious traffic offenses.

At the Brazos Valley Narcotics Task Force, for example, just over half of traffic stops were for speeding (163 out of 313). But the next largest category of stops was for having no front license plate or an obscured license plate (72). Other common categories of violations included "failure to signal lane change," "following too closely," and "driving in the passing lane." In nearly all these instances, no ticket was written unless contraband was discovered.[37]

Supervisors monitoring racial profiling data from interdiction officers could have identified such problems. Unfortunately, because DPS does not monitor the racial profiling data it requires task force officers to gather, the agency has no ability to measure whether task forces are giving tickets at traffic stops as required in DPS rules.



Task Forces Fail to Fulfill the Purpose of Federal Byrne Funds

Federal law requires that Byrne funded programs emphasize "violent crime and serious offenders."[1] Virtually no Byrne funds in Texas are spent to address violent crime. Byrne funded traffic interdiction in Texas fails to emphasize serious offenders, instead focusing on verbal warnings and randomly searching vehicles based on consent, not probable cause.

Most task forces don't even pretend to focus on violent crimes or serious offenses. In a deposition earlier this year with ACLU attorneys, the commander of the South Central Texas NTF said the primary focus of the task force was "people that are selling small amounts of drugs out in the streets, in their houses, you know, small quantities . . . ."[2] Similarly, the Rural Area Narcotics Task Force in Lampasas targets "'Street' and mid-level narcotics traffickers."[3] The 63rd Judicial District Task Force in Del Rio affords "special attention to the street level drug dealer."[4] Reading through 2002 and 2003 task force grant applications obtained under the *Public Information Act*, these examples are typical, not anomalous.

[1] See 42 USC §3751(b). While detailed arrest data is not available for Byrne funded undercover operations, about 90% of all drug arrests in Texas are for possession, not manufacturing or distribution.

[2] *Regina Kelly et al v. John Paschall, et al*, Civ 02-A-02-CA-702 JN, in the United States District Court for the Western District of Texas.

[3] Rural Area Narcotics Task Force Byrne Grant Application, Date stamped January 13, 2003.

[4] 63rd Judicial District Narcotics Task Force Byrne Grant Application, Date stamped April 11, 2003.

Federally Funded, State Managed, Locally Staffed and Doomed to Fail

Byrne funded task forces' problems stem from structural flaws, not just misconduct by one or two officers. Consider the structural barriers task forces would have to overcome to be successful:

- To qualify for funding for an RNTF, local governments must form and contribute to a multijurisdictional task force, instead of using those funds to hire officers and keep them under their own agencies' command. (Meanwhile, the local government is missing out on other types of programs that they could fund with Byrne grant money in their local area. See the full list on page 5.)
- Texas DPS claims to exercise "command and control' of all task force officers in the state, even though each local participating agency hires and formally employs the officers it contributes.
- Although local government is the official employer of a task force officer, it has no supervisory control, which instead is exercised by the task force commander, who himself answers to a DPS captain and a local governing board at the same time.
- If task force officers engage in misconduct, local participating governments are liable, even if the misconduct was committed by someone they didn't hire.
- Finally, while local government takes on all financial liability for task force misconduct, task forces keep any income generated through asset forfeiture proceedings, and fail to write tickets that could generate local income.

These competing demands on task forces make them ungovernable, and hence, ungoverned. The result has been the litany of scandals recounted in the 2002 ACLU report, *Too Far Off Task*, and updated on page 13.

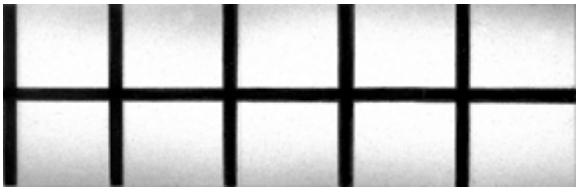
Amarillo City Attorney Marcus Norris recently explained why his city would pay $5 million for task force misdeeds: "The attorneys on both sides of this case valued the potential liability at $53 million or higher. A verdict of that magnitude would have had a devastating impact on every city and county in the Texas Panhandle, perhaps leading to the insolvency of many of the smaller cities and counties."

Norris and the City of Amarillo found out first hand what it's like to pay the bill for misconduct by officers they never hired or supervised. "All task forces are under the direction of the Texas Department of Public Safety," Norris wrote in a March 11, 2004 memo accompanying a press release regarding the Tulia settlement. "However, when a task force case goes awry the State distances itself from all liability, saying it is a problem for local participants."

Norris sees little reason to cling to the task force system in light of this reality. "It is in the best interests of the citizens of this community to have no further participation in the PRNTF or any other alliance that poses the same governance issues and liability risk," he wrote.

Jurisdictional Confusion, Desired Cooperation May Explain Lack of Tickets

The failure of RNTFs to give traffic tickets at most of their stops might be explained by posing the obvious question, "To what court would you pay the ticket?" DPS prefers that task force interdiction officers use ticket books from their home agency,[38] though there is no formal policy and at least a few task forces have printed their own.[39] That means tickets given by most task force officers require the offender to appear in the county or city employing the officer writing the ticket, *not* the jurisdiction where the ticket is given.



For example, say an officer from the Amarillo Police Department, while assigned to the Panhandle Regional Narcotics Task Force, gave a ticket to a motorist in Dalhart 86 miles away. If the officer used an Amarillo PD ticket book, the motorist must pay the fine or appear in court in Amarillo, not Dallam County. To add to the Dalhart motorists' confusion, consider that task force officers must perform traffic interdiction, by DPS rule, in a vehicle and uniform with his home agency's insignia.[40]

One can easily imagine motorists' dismay at receiving traffic tickets from law enforcement agencies stationed nearly 100 miles away. Such logistical problems might explain why task forces violate DPS rules and give warnings, not actual tickets, at highway interdiction stops.

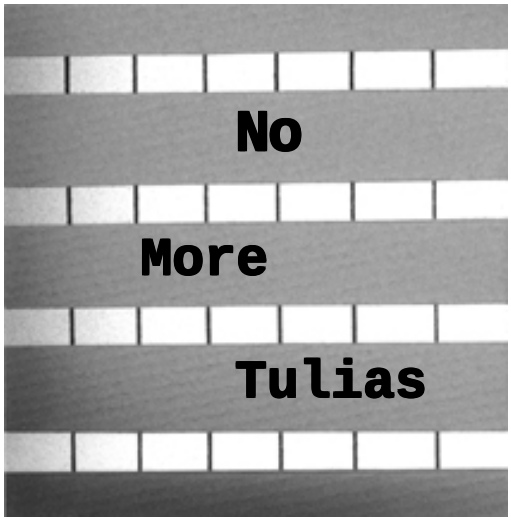
A former long-time task force officer offered another explanation – officers don't want traffic stops to be confrontational because then drivers are more likely to consent to searches. According to this theory, if an officer writes a motorist a ticket, the officer is less likely to gain consent to search because the person is angry.

A ticket can cost drivers a fine, go on their driving record, and increase insurance rates. By letting drivers go with a warning, drivers are more inclined to give consent to search their vehicles, the officer said, because they are trying to continue the appearance of being cooperative so the officer doesn't change his or her mind and write an expensive citation.

Bringing Disgrace to Texas, One Case at a Time

ACLU's December 2002 report on Byrne task forces, *Too Far Off Task,* documented 15 scandals at Byrne-funded task forces in Texas, and two more involving problems with state oversight the Byrne grant program. Since that time, more task forces scandals have exploded across the state. Here's a sample:

■ In Hearne, ACLU sued the South Central Texas Regional Narcotics Task Force after 17 people were convicted based on the false, uncorroborated word of a confidential informant. Case logs obtained recently through discovery indicate massive racial profiling: 86% of cases generated by the task force targeted black people.



■ Northeast Texas NTF investigator Blaine Shavers filed a whistleblower suit in December, 2003 claiming that task force Commander Jack Tully violated state law and department rules. Shavers accused Tully of: "racial discrimination, use of city and/or task force funds for personal gain, use of city and/or task force funds in order to convey property to others for personal gain, unauthorized use of city and/or task force equipment and damage to city and/or task force equipment while engaged in personal pursuits."

■ North Central Texas NTF Commander Brian Mankoff, who was Commander of the Year statewide in 1998, pled guilty to theft in December, 2002, after stealing task force money so he could buy a new car for himself.

■ Cross Timbers NTF commander Lt. Bryan Wright was placed on leave August, 2003, for "serious leadership problems accompanied by lax controls on the agents' daily activities and petty office jealousies that got out of hand," using task force vehicles for personal use, and dereliction of duty.

■ Two undercover agents were dismissed from the Cross Timbers NTF in August of 2003 for violating task force rules regarding the operation of task force vehicles, mishandling informants, harassment of acquaintances and informants, and insubordination. One of the officers, who served nearly 10 years as an undercover officer and field supervisor on the task force and had been "Officer of the Year for the Cross Timbers NTF" in 1996, is being investigated by the FBI and the US Department of Justice regarding allegations of civil rights violations against at least two informants, and has also been fired from his local police department.

■ The North Central Texas NTF literally sold light sentences to defendants who had enough money according to the *Dallas Morning News.* Using asset forfeiture, if the drug offender had money he got probation and if he didn't he had to go to prison. "If we don't have enough money by the end of the grant year, we're all out of a job," said task force prosecutor Denver McCarty in November, 2003.

■ DPS found that at the 25th Judicial District NTF, drug and non-drug evidence was missing in 20 percent of the files. Thirty files were missing altogether, logbooks were inaccurate, and the task force had "little contact or supervisory control" over some of its officers. Confidential informant files did not comply with established policy, the commander removed money from drug seizure funds without approval, the task force defied DPS requests to submit drug evidence to the state drug lab in Austin, and task force officers worked outside their jurisdiction without notifying DPS Captains, the *Sequin Gazette* reported in 2003. Law enforcement officials asked the task force to stay out of Goliad and DeWitt counties because of the task force's reputation for "unprofessional police activities." "That's the most disorganized task force I have ever seen. Tell them I still want the money they took from Goliad County," said Goliad County Sheriff Robert DeLaGarza.

■ First degree felony charges had to be dismissed against a two-time convicted felon in December, 2003, because evidence seized during his arrest was destroyed by members of the Agriplex Drug Task Force in McLennan County. The defendant was accused of manufacturing meth and had been facing a possible life sentence.

■ The Dogwood Trails NTF executed a search warrant in the wrong household. Task force officers allegedly forced their way into a family's back door with weapons drawn and handled the couple inside in an abrupt, assaultive manner, handcuffing and detaining them on the floor in their home for an unreasonable period of time. The resulting lawsuit was settled out of court in December, 2003.

■ At the South Texas Specialized Crime and Narcotics Task Force, two task force agents allegedly attempted to bribe a member of the asset forfeiture division of the Kleberg County District Attorney's office. When they were found out, the officers claimed it was a joke. "If all of this is true, two task force members were committing bribery. Even if this is a prank, it indicates a severe lapse of judgment," District Attorney Carlos Valdez said to the *Corpus Christi Caller Times* in 2003. "I think the whole task force is infected."

"If we don't have enough [forfeiture] money by the end of the grant year, we're all out of a job."
- former task force prosecutor

Table 3
Task Force Searches by Race as a Percentage of Total Stops By Race

Task Force	White	Black	Hispanic
North Central Texas Drug Task Force	13.6%	16.7%	18.0%
North Texas Drug NTF	37.5%	40.0%	30.0%
Central East Texas NTF	5.9%	12.4%	NA
West Central Texas Interlocal Crime Task Force	1.7%	3.1%	4.1%
Panhandle Regional NTF	24.0%	25.2%	44.4%
25th Judicial Distric NTF	20.2%	23.8%	19.6%
South Texas Specialized Crimes NTF	15.0%	NA	30.2%
STOPP NTF	12.6%	23.3%	23.9%
Brazos Valley NTF	24.8%	19.1%	29.8%

That same officer said task forces are not interested in writing traffic tickets because their primary duties relate to drug enforcement. Unlike asset forfeiture cases, fines from tickets generate no income for the task force, and traffic cases tie up officers in traffic court, taking them away from their focus on finding drugs or money on the highway.

If that's the case, it's a shortsighted view that subjects thousands of Texans to pointless stops and searches and costs local jurisdictions hundreds of thousands of dollars in revenue.

At the Trans Pecos task force, for example, where 99.3% of its 3,433 traffic stops resulted in warnings, counties participating in the task force had to forego more than $300,000 in 2002 ticket revenue.[41] Such hidden costs are seldom considered in local governments' cost-benefit analysis deciding whether to participate in Byrne task forces.

In any event, state and local officials should question whether taxpayer dollars are best spent on traffic enforcement where no tickets are written 98% of the time.

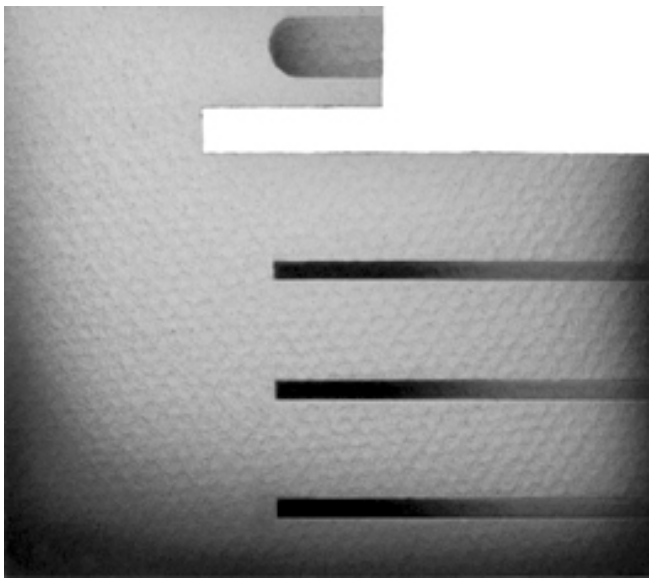
Racial Disparities in Task Force Searches

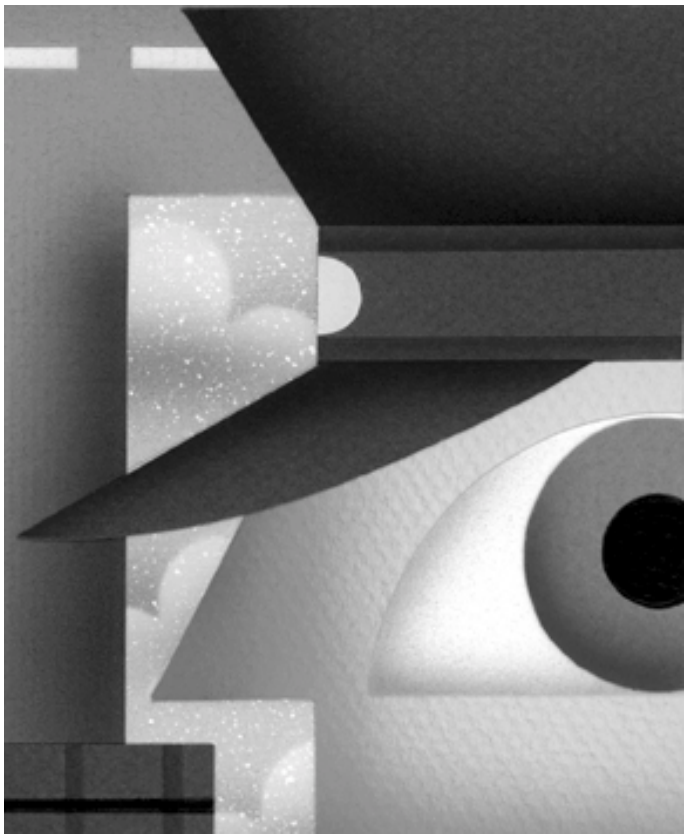
The drug stings in Tulia and Hearne highlighted the problem of racial disparities in drug enforcement practices by RNTF undercover officers. For the first time, this study demonstrates that RNTF traffic interdiction also exhibits racial disparities, particularly in search rates.

Task forces are more likely to search blacks than whites in eight of nine task forces that supplied sufficient data to calculate traffic interdiction search rates by race. Latinos are searched more often than whites by seven of nine task forces reporting such race data.[42]

The existence of racial disparities in searches does not, by itself, prove racial profiling. But most task force traffic searches are discretionary consent searches, when officers ask permission to search without having probable cause. That means RNTF officers are using their own discretion to search minorities more frequently.

Even though federal law specifically prohibits racial discrimination in Byrne funded programs, and the penalty is suspension of grant funds to the state,[43] DPS does not gather information about race regarding either traffic stops or undercover activity, so it has no way to determine if task forces are in compliance.[44]





Asset Forfeiture: Driving the Train

Driving these seemingly pointless traffic contacts is a very real profit incentive – highway interdiction offers task forces their best chance to generate asset forfeiture income that sustains their programs.

A majority of Byrne-funded task forces view generating asset forfeiture opportunities as an important goal. According to a survey performed in 2001 by Sam Houston State University, 55%, or 27 out of (then) 49 Texas narcotics task forces listed generating asset forfeiture income as a high priority (either a 4 or a 5, on a scale of 1-5).[45]

Overall, asset forfeitures make up about 40% of task force matching funds used to draw down federal Byrne grant money in Texas. The other 60% comes from cash payments by local governments, with occasional assistance from DPS.[46]

The pressure to generate forfeiture income comes from many sources. For years, the Governor's Criminal Justice Division ranked Texas task forces competitively, though it has since discontinued the practice. One of the key measurements calculated was the ratio of asset forfeitures to the total Byrne grant income received by the task force. In the only example of these rankings ACLU has seen, only one task force reported more "program income," or forfeiture revenue, than its total Byrne grant funding for that year.[47]

A few task forces have made large scores that inspired their peers to focus more intently on asset forfeiture and traffic interdiction. For its first decade, the West Central Texas Interlocal Crime Task Force got by holding pancake breakfasts and local fundraisers to come up with its share of local matching funds. In 1997, though, a new task force commander took over who began to look to asset forfeiture and traffic interdiction to finance his program. "I thought we should let the drug traffickers fund our agency," he said. And they did. In 1999, a task force agent pulled over an 18-wheeler hauling almost $10 million in cash hidden in cases of instant soup. The task force received nearly $8 million of the money, eliminating the need for local government to contribute matching funds, and instantly making it a role model for every other task force in the state.[48]

Many task forces rely on forfeiture money to make ends meet. According to the *Dallas Morning News,* the North Central Texas Narcotics Task Force struck deals for lighter punishments in exchange for cash, cars, motorcycles, jewelry and other property because the task force needed the money to stay in business. "If we don't have enough money by the end of the grant year, we're all out of a job," former task force prosecutor Denver McCarty told the *News*. "You kind of knew what kind of forfeiture money you needed to have, or everybody's going home." [49]

Letting task forces profit from forfeiture proceedings creates perverse incentives. Since task forces, according to officials, are not government agencies, it makes little sense for them to keep forfeiture money when their agents are involved with a case. That money should be divided among the general funds of participating counties, or designated to help fund local public schools.

For More Information Visit:

http://www.aclutx.org

Recommendations

As a result of this study, ACLU offers the following recommendations regarding management and oversight of Texas' Byrne-grant funded regional narcotics task forces:

State

- The Governor should divert federal Byrne dollars to more effective methods of combating drug abuse, and other Texas priorities. Texas should quit using federal Byrne money for narcotics task forces and spend it on treatment programs, drug courts, homeland security, crime lab upgrades, evidence-based law enforcement training or other allowable programs detailed on p. 5.
- If Byrne money is not diverted to other uses, DPS should require task forces to report all Tier 1 and Tier 2 racial profiling data for all stops to DPS as part of their outcome measures.
- Drug interdiction patrols should be limited to officers' home, employing jurisdiction so that motorists are stopped by officers who appear to be operating within their own jurisdiction, and can protest their ticket, if necessary, to a nearby magistrate.
- The Texas Legislature should ban discretionary consent searches statewide, or at least require officers to tell motorists they do not have to consent to a search.
- Alternatively, DPS should ban consent searches by task force interdiction officers and state troopers.
- Task force asset forfeiture income should be divided among the general funds of participating counties and cities, or designated to help fund local public schools.

Federal

- Multijurisdictional narcotics task forces should be eliminated from the list of allowable funding items for Byrne grants or any successor program.
- The four year limit on other programs funded by Byrne grants should be applied to narcotics task forces.
- The Tulia Rule: Federal funding for undercover drug work should require states to corroborate testimony by undercover officers and confidential informants.

Flawed Enforcement Endnotes:

[1] Department of Justice Drug Demand Reduction Activities, Office of the Inspector General, Report No. 03-12, February 2003. The percentage of Byrne funds going to regional narcotics task forces in 2000 and 2001 was 39.4 and 42.3 percent of program funds, respectively.

[2] Henson, Scott, *Too Far Off Task: Why, after Tulia, Texas should re-think its Big Government approach to the Drug War, abolish narcotics task forces, and save $200 million this biennium*, ACLU of Texas, December 2002, p. 5. Available on the web at http://www.aclutx.org/news/NarcoticsTaskForceReport.pdf. The report examined systemic problems with task force management, arguing the problems were inherent to the entities pseudo-governmental, multijurisdictional nature.

[3] Parker, Laura, "Texas scandal throws doubt on anti-drug task forces," USA Today, March 30, 2004. On the web at http://www.usatoday.com/news/nation/2004-03-30-drug-program_x.htm as of 4-8-03.

[4] Liptak, Adam, "$5 million settlement ends case of tainted Texas sting," *New York Times*, 3-11-04.

[5] Cunningham, Greg, "Tulia suit settled for $5 million," *Amarillo Globe-News*, 3-12-04.

[6] McBride, Jim, "Task force demise unlikely to have major impact on area," *Amarillo Globe-News*, 3-13-04.

[7] Analysis of Task Force Quarterly Assessments by DPS Captains for final quarter, 2003. These are internal documents obtained under the *Texas Public Information Act*.

[8] DPS Narcotics Division Deputy Commander Pat O'Burke said that when the agency took over supervision of the task force system, some task forces were only targeting southbound traffic, hoping to seize cash, rather than northbound traffic which would mean they were looking to seize drugs. DPS has insisted that officers target traffic in both directions, he said. Source: 4-29-04 phone interview.

[9] Analysis of Task Force Quarterly Assessments by DPS Captains for final quarter, 2003. These are internal documents obtained under the *Texas Public Information Act*.

[10] Three more task forces appealed our requests to the Attorney General, and at least one, the 81st Judicial District Task Force, has sued the AG when General Greg Abbott ruled against them. Task forces are not unique among law enforcement agencies in their failure to respond to requests under the *Texas Public Information Act*. A study performed by the University of Texas at Tyler and two East Texas newspapers found that law enforcement agencies were much less likely to comply with open records requests than schools or city and county governments. ("Records-access study faults law enforcers," Associated Press, 12-30-02.) That failure is compounded by the fact that – to judge by the number of appeals to the Texas Attorney General, where requests to law enforcement agencies make up a majority of all appeals – most people seeking access to public records in Texas want information about criminal justice matters.

[11] DPS Rules for Texas Narcotics Task Forces, January 2002, Section XI., "Interdiction," p. 16.

[12] Henson, 2002, p. 11.

[13] See Alexander vs City of Rockwall, et. al., Civil Action 3:95-CV-0489-G, United States District Court, Northern District, Dallas Division. The court dismissed a task force from the case, leaving participating local governments as the only "jural entities" which can be held liable for task force misconduct.

[14] DPS responded to a 2003 ACLU open records request stating that no responsive documents exist because DPS does not gather this data from task force. DPS Narcotics Division Deputy Commander Pat O'Burke confirmed that continuing practice a 4-29-04 phone interview. He said DPS advised task forces not to prepare their own racial profiling reports, but instead to report officer-specific data to their employing agencies.

[15] Memorandum of Understanding between DPS and Governor's Criminal Justice Division, "Coordination of Drug Law Enforcement Efforts," 2003.

[16] Quarterly reports for the final quarter of 2003 obtained by ACLU under the *Texas Public Information Act.*

[17] Quite a few task forces (of those that responded to ACLU's open records request) compiled a racial profiling report despite the DPS recommendations, though not all of them contained all the data elements required under state law. For three of the task forces, ACLU acquired copies of actual tickets or ticket-level data and compiled their racial profiling report ourselves manually.

[18] When ACLU requested this data we were told the information was not gathered and that it would require up to $1,200 of programming time to accumulate. We have offered to purchase the information, which should be forthcoming. ACLU Public Information Act Requests dated April 9 and April 14, 2004.

[19] For this report, ACLU has analyzed racial profiling data only related to search rates by task forces. Because task forces operate across multiple jurisdictions, and because interdiction activities take place mostly on highways where drivers are passing through, it would be impossible to calculate a "baseline" for traffic stops that would accurately represent the driving population encountered by task force officers. By the same token, traffic stop data provides an appropriate baseline for comparing search data, because by definition, from a statistical perspective, all such searches are a subset of the total number of traffic stops.

[20] Calculated by the author from March 2004 racial profiling annual reports gathered under the *Texas Public Information Act* by the Texas Criminal Justice Reform Coalition as part of a statewide study.

[21] Johnson, Johnny, "Racial profiling: Issue not all black and white," *Nacogdoches Daily Sentinel,* 3-28-04. The Deep East Texas Narcotics Task Force did not respond to ACLU's *Public Information Act* request.

[22] Sheehan, Jason, "The Eyes and Ears: With kudos and controversy, task force tries to keep drugs out of West Texas," *Abilene Reporter-News,* 2-14-04.

[23] *Atwater vs. City of Lago Vista,* decided by the US Supreme Court April 24, 2001.

[24] E.g., "Some of the complaints [local NAACP President John] Morrison has heard are that officers tell the motorists that they don't need a warrant to search their vehicle, or that 'yes, you have the right to wait for a warrant, but we may be here a few hours before we get it.' Hearing that, motorists consent to the search." *Nacogdoches Daily Sentinel,* 3-28-04.

[25] We should find out soon if this practice is constitutional. The US Supreme Court has elected to address the issue in *Illinois vs. Roy Caballes, No. 03-923.* The case will likely be decided in Fall 2004. See the UPI story, Kirkland, Michael, "Court to rule on drug sniffing dogs," The *Washington Times,* April 5, 2004, on the web at http://washingtontimes.com/upi-breaking/20040405-103242-4216r.htm as of 4-20-04.

[26] Calculated from data retrieved under the *Texas Public Information Act* as part of the February 2002 study, "Racial Profiling: Texas Stops and Searches."

[27] On New Jersey and Hawaii, see Mansnerus, Laura, "High court in New Jersey strictly limits auto searches," *New York Times,* 3-5-02. On Minnesota, see Associated Press, KSTP TV, "Minnesota Supreme Court: Police need reason to ask for search," 5-2-03, on the web at http://www.kstp.com/article/view/95454/ as of 4-28-04.

[28] Foo, Rodney, "CHP settled profiling suit," San Jose Mercury News, 2-28-03. As of 4-22-04 this article was on the web at http://www.mercurynews.com/mld/mercurynews/news/local/5283727.htm?1c.

[29] In 2001, Texas Governor Rick Perry vetoed SB 730, which would have forbidden arrests for fine-only offenses except in a handful of cases like alcohol-related offenses and where suspect behavior placed others in danger. In 2003, Governor Perry vetoed SB 1597, which would have merely required police supervisors to review arrests for fine-only offenses and force departments to create local policies addressing when such arrests could be made.

[30] Texas Department of Public Safety Narcotics Task Force Rules, IX, F.

[31] Grant application, Combined Governmental Drug Enforcement and Special Crimes Task Force, January 15, 2003, see part 6, "Project Summary." Documents obtained under the Texas Public Information Act.

[32] Sheehan, Jason, "The Eyes and Ears: With kudos and controversy, task force tries to keep drugs out of West Texas," *Abilene Reporter-News,* 2-14-04. What Commander Schat didn't mention was that more than 2/3 of

searches by his task force at traffic stops were consent searches, not based on any probable cause. See the chart on page 9detailing the ratio of consent searches to the total number of searches conducted.

[33] Grant Application, South Texas Specialized Crimes and Narcotics Task Force, January 2003.

[34] "Racial Profiling Summary Report: Total stops from 01/01/02 to 12-31-02," Reeves County Sheriff's Department summaries of task force stops. Documents obtained under the Texas Public Information Act.

[35] Compiled by counting cases listed in "Traffic Stop Data Report: Year 2002" by the West Central Texas Interlocal Crime Task Force," undated. Documents obtained under the *Texas Public Information Act*.

[36] In response to an open records request, this task force sent ACLU actual tickets and/or racial profiling slips for all stops between May and December 2003 in response to an open records request for racial profiling data. Totals were calculated by categorizing and counting individual tickets.

[37] This level of data is not available for most task forces, but the Brazos Valley Task Force supplied ACLU with copies of all tickets written by their traffic interdiction officers between May and December 2003, in response to a *Public Information Act* request.

[38] Interview, DPS Deputy Commander Pat O'Burke, 4-29-03.

[39] ACLU was given copies of individual tickets written on a Brazos Valley Narcotics Task Force ticket book as a result of an open records request. DPS Deputy Commander O'Burke said only a handful of task forces use task force ticket books instead of ones printed by the officers' employing agencies. He said DPS discouraged the practice, but had no formal policy against it.

[40] DPS Task Force Rules, 2002, p. 17. "All officers initiating vehicular traffic stops shall be in an appropriate, readily identifiable uniform that … displays the badge or patch of his/her employing law enforcement agency," and stops shall be made in "vehicles bearing the official markings of a participating law enforcement agency and equipped with emergency lights."

[41] Approximately $340,900, estimated at an average of $100 per ticket. The Trans Pecos task force wrote 3,433 tickets, 99.3% of which were warnings.

[42] Racial profiling forms for some local agencies lump Hispanics in with white people when reporting racial profiling statistics, even though state law demands they include a Hispanic category. This practice sometimes causes Latino stop and search rates to appear artificially low or non-existent. In addition, anecdotal evidence indicates many Latinos are listed as white on traffic tickets, even where the officer has an option to identify the correct ethnicity. This results in some bizarre outcomes. The Laredo Multi-Agency Narcotics Task Force, for example, reported stopping only white people – no blacks and no Latinos. This despite the fact that some of the persons stopped were named Estanislao Garcia, Jorge Meza, Eduardo Almanza, Ernesto Gonzales, etc. In response to ACLU's open records request, Laredo Task Force commander Armando Rodriguez wrote on November 14, 2003, "Effective immediately our race column will be changed to H (Hispanic), C (Caucasian), A (Asian), and AA (African American)." That task force reported stop data only, sending us a complete list of tickets including names of those receiving citations, but apparently did not gather or report search data, so its results were not included in this report.

[43] See 42 USC §3789d(c)(1)

[44] Because ACLU of Texas requested the data under the *Public Information Act*, and agreed to pay $1,200 for it, a private company will soon be paid to program DPS' computer database to produce the information for the first time ever. DPS Narcotics Division Deputy Commander Pat O'Burke said DPS does not and has no plans to begin gathering data about the race of task force arrestees for its own purposes. Source: 4-29-04 interview, DPS Narcotics Division Deputy Commander Pat O'Burke.

[45] SHSUresearchers placed their raw data on the internet, along with a copy of the survey sent to task force commanders. To the author's knowledge, though, the results of this survey were never published. As of 4-20-04 the data was available on the web at http://www.shsu.edu/~icc_cmf/policy/TNPC/TNPC.xls. As of the same date, the survey from which the data was generated is at http://www.shsu.edu/~icc_cmf/policy/TNPC/PolicyProblem.doc.

[46] Henson, 2002, p. 8. In 2002, "just over $7 million of a total $17.3 million in local matching funds was covered by forfeited funds."

[47] Governor's Criminal Justice Division, Narcotics Task Force Rankings, final quarter, 2001.

[48] Sheehan, Jason, "The Eyes and Ears: With kudos and controversy, task force tries to keep drugs out of West Texas," *Abilene Reporter-News*, 2-14-04.

[49] Krause, Kevin, "Criminals' assets help fund drug task force: DA denies it but others say property is traded for leniency," *Dallas Morning News*, 11-9-03.

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We Couldn't Make This Stuff Up ...

No, these aren't the finalists from the Subcommandante Marcos look-alike contest. The Tri-County Narcotics Task Force proudly features this photo on their web site of task force officers posing with masks and heavy weaponry. DPS rules enacted in 2002 forbid task force officers from wearing masks during encounters with the public. But they're still allowed to dress up in their offices.

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