

**Response of Denise Ellen O'Donnell
Nominee to be Director of the Bureau of Justice Assistance
to the Written Questions of Senator Tom Coburn, M.D.**

- 1. If you are confirmed, will you commit to being responsive to requests from Congressional offices for information on various programs administered by the Bureau of Justice Assistance (BJA)?**

Response: Yes, I believe it is important for BJA to be responsive to requests for information from Congressional Offices, subject to compliance with applicable OJP and DOJ disclosure policies and relevant privacy laws.

- 2. What will your priorities be as Director of BJA?**

Response: If I am fortunate to be confirmed as Director of BJA, my priorities would be to administer BJA's grant awards process in a fair, effective and transparent manner that avoids waste, fraud and abuse. A second priority would be to continue to support innovative programs for state, local and tribal law enforcement who are in the front line in our crime fighting efforts, and to support the Attorney General's officer safety initiative to prevent line of duty deaths and injuries. An additional priority is to support evidenced-based public safety programs and strategies that work, and to transfer knowledge about effective programs to our state and local partners.

- 3. If you are confirmed, do you have any plans for significant restructuring and/or changes to the current organization of BJA? If so, how will that increase the efficiency of the grant-making process.**

Response: I am not currently in the Department of Justice and do not have sufficient information to fully answer this question. In the past, my practice when assuming a new leadership position has been to allow an initial period of time to observe and learn about the organizational structure and staff of the agency before making changes to its structure or operations. If confirmed, I intend to carefully review the grant-making process at BJA and to work collaboratively with the staff to continue to make the process more efficient and effective.

- 4. Since 2000, the Office of the Inspector General has continuously ranked grant management as one of the Justice Department's top management challenges every year. In fact, at Attorney General Holder's confirmation hearing, he recognized that this must be treated as a "consistent priority" to prevent problems.**

a. What specific steps do you plan to take to improve grant management at the Justice Department?

Response: Because I am not currently at BJA, I do not know to what extent BJA has implemented the recommendations from past audits of the Inspector General and Government Accountability Offices. If confirmed, I intend to carefully review the grant-making process at BJA, and the extent to which past audit recommendations have or have not been implemented. I plan to work with the staff at BJA and OJP to ensure that past deficiencies have been corrected, and that sound grant management policies are in place.

b. Are there any particular grants administered by BJA that you believe deserve particular attention and review?

Response: There are not any specific grants of which I am aware that merit particular attention and review more than others. I would begin my review with past audit reports from the Government Accountability Office and the Inspector General to determine whether past deficiencies identified in audit reports have been corrected.

5. I assume you have spent some time reviewing the grant programs you will oversee at BJA. Can you give me some specific examples of waste at BJA that you intend to clean up (i.e., any egregious grants about which you have read, or know of any bad practices, etc.)?

Response: Since I am not currently at BJA, my information about past problems in grant administration at BJA comes solely from review of publically available IG and GAO reports. Most of those findings date back a number of years. Some past findings that caused me concern were findings of missing monitoring plans, failure to document monitoring activities, failure to require progress reports, and problems with performance measures required in BJA contracts.

I am hopeful that improvements instituted by OJP under the current Administration have corrected many of the longstanding deficiencies cited in IG and GAO reports. If I am confirmed as Director, I am committed to ensuring that those reforms continue, and that sound grant management policies are in place at BJA.

One specific example of a practice that should be improved was identified in a recent GAO review of Byrne/JAG Recovery Act grants to state and local governments.¹ While observing favorable results regarding the procedures utilized by localities to share successful program results, GAO nevertheless identified problems with the performance measures utilized by BJA in the grant solicitation. GAO found that the performance measures lacked key attributes of successful performance measures such as clarity, reliability, a linkage to strategic or programmatic goals, objectivity and measurability of targets. The GAO report indicates that BJA and OJP are working to revise the performance measures. If I am confirmed, I intend to closely monitor

¹ Government Accountability Office, *Department of Justice Could Better Assess Justice Assistance Grant Program Impact*, GAO-11-87, October, 2010.

ongoing efforts at BJA to implement meaningful performance measures to measure the effectiveness of programs funded with BJA funds.

a. If confirmed, will you commit to review all of BJA's grants for such examples, and get back to me as soon as possible with your results?

Response: If confirmed, I intend to carefully review the grant administration process at BJA and to work with the OJP Office of Audit, Assessment and Management to continue to make the process as efficient and effective as it can be. I would be happy to report back to you on what I have learned.

6. In describing the problems with the Justice Department's grant management process, the OIG noted this included "maintaining proper oversight over grantees to ensure the funds are used as intended." The OIG further stated that "recent OIG audits of grant recipients demonstrated a continuing need for improved grant oversight by the Department."²

a. What changes, if any, do you plan to make to BJA's grant oversight process and/or BJA staff assigned to review grant applications?

Response : If confirmed, I intend to carefully review the operations of BJA with an eye toward continuing to make its operations more efficient and effective. Because I have not had an opportunity to review BJA's operations first hand, I cannot state with particularity what changes I would recommend to staffing or to the grant oversight process. In the past, my practice, when assuming a new leadership position, has been to allow an initial period of time to observe and learn about the organizational structure and staff of the agency before making changes to its structure or operations.

b. Do you believe BJA should have mechanisms in place that provide for a review of past grant recipients and monitor the use of federal funds to avoid waste, fraud and abuse?

Response: Yes. I believe it is critical for BJA to have effective procedures in place to monitor the use of federal funds to avoid waste, fraud and abuse. It is my understanding that OJP has instituted significant reforms in this area through the Office of Audit Assessment and Management, to strengthen the grant oversight process for all OJP components, including BJA.

i. Should that include a requirement that grantees report on how they use federal funds in order to receive a grant?

² *Top Management and Performance Challenges in the Department of Justice-2008*, Office of the Inspector General, available at <http://www.usdoj.gov/oig/challenges/2008/index.htm#8>.

Response: Yes. Generally speaking, I believe it should be a requirement that grantees report how they use federal funds as a condition of receiving federal grant awards.

ii. What role, if any, do you believe these results should play in making future grant awards?

Response: As a general principle, I believe a grantee's record of performance on prior grants should carry substantial weight in the award of future discretionary grant funds. However, in some circumstances, grantees benefit from technical assistance and improve their capacity to administer grant funds. Those factors should be taken into consideration, as well.

7. In your prior positions as United States Attorney and in the government of the State of New York, it appears you oversaw administration of programs funded by grants from the Bureau of Justice Assistance.

a. Were you also involved in applying for those grant awards? If so, how?

Response: Yes. The Division of Criminal Justice Services, acted as the State Administrative Agency responsible for applying for grants from the Bureau of Justice Assistance. I was involved in approving the types of projects proposed for funding.

b. Please detail the types of BJA grants you managed in your various positions, including the dollar amount and the purpose of the grant. In addition, please comment on the success and/or failure these programs.

Response: During my tenure as Commissioner of the Division of Criminal Justice Services I directed federal dollars to both innovative and evidence-based programs. I recognize the value of investing in innovation as a way to develop new approaches to crime reduction, but I also respect and appreciate how research can assist us by identifying proven approaches which can be implemented in various jurisdictions.

One specific example of an innovative program supported with Byrne JAG funds during my tenure at the Division was Operation Impact, which received JAG funding to establish a network of local crime analysis centers throughout the state. That program proved so successful after the initial two year period of JAG funding that DCJS was able to secure state general revenue funds to continue the centers in operation permanent. Byrne JAG funding was the principle source of funding for a number successful public safety programs in New York during the time I was Commissioner.

A listing of BJA grants awarded to the State of New York while I was Commissioner of DCJS, the dollar amounts and purposes of the grants is attached as Appendix A. This list was provided to me by DCJS and is complete to the best of my knowledge and belief.

c. As State Administrator for the State of New York, you managed a very large portfolio of federal grant funds. What did you do in that capacity to prevent waste, fraud, and abuse by grantees?

Response: As State Administrator for the State of New York, I adopted a number of policies to prevent waste, fraud and abuse by grantees. The most important action I took immediately after my appointment was to strengthen the auditing program at DCJS, and to routinely reiterate the importance of the auditing program to the staff. I charged the auditing staff with preparing a detailed annual Audit Plan that was risk-based and designed to detect waste, fraud and abuse by grantees, as well as internally within the agency. The auditing staff significantly increased the number of grant contracts reviewed during the audit cycle. I encouraged and supported referrals of suspected waste, fraud and abuse to the Inspector General or Attorney General. Due to limitations on resources, I encouraged the monitoring staff to focus site visits and monitoring activities on open or recently closed grants to identify potential problems that could be remedied through training and technical assistance or where funds could be recovered if warranted. I believe these changes vastly improved oversight of grantees and were effective in preventing waste, fraud and abuse.

i. Did grantees apply directly for BJA funding or did you, as State Administrator, dole out funds from a lump sum received by the State of New York?

Response: In consultation with the Governor and the State Legislature, I determined the priorities for distributing both block grants and discretionary grants within the State. Those funds were distributed through multiple venues such as competitive Request for Proposals and direct awards.

As a matter of practice, statewide crime data was used to determine areas of concern, high risk and need. The DCJS Office of Justice Research and Performance worked directly with the grant and program offices to identify where funds were to be allocated based on crime data.

DCJS maintained a transparent procurement process by publishing all funding solicitations on the Division's website and the State Register. Applications for funding were reviewed based on the guidelines

established in the funding solicitation and through a merit-based review and selection process.

ii. If you evaluated grantees for potential receipt of BJA funds, what standards and metrics did you have in place for such evaluations?

Response: All grant contracts issued during my tenure at DCJS contained program work plans which outlined program activities, deliverables, and performance measures. Standardized work plans containing performance benchmarks were used to ensure performance measurement data was consistent for similar projects.

Some grant contracts were performance-based. Contract language was used to withhold payment if minimum deliverables were not met. For example, a grantee might receive only the first 90% of the grant funds until acceptable documentation the project has achieved the required outcomes is received.

DCJS required the routine submission of Quarterly Progress Reports for all grant award contracts. DCJS required grantees to utilize BJA's on-line Grants Management System (GMS) for Quarterly Progress Reports which required each performance measure outlined in the contract work plan to be addressed. Grants were monitored on a quarterly basis by trained staff, and subject to audit by the Office of Internal Audit and Compliance. Audits of grant programs were selected pursuant to a risk based annual audit plan.

8. What is your view of earmarks?

a. Do you believe that funds earmarked in accounts you manage at BJA can and should receive the same scrutiny as funds that are competitively bid? Or are your hands tied by Congress, such that you are obligated to award them, regardless of their merit?

Response: In general, I do not support earmarks. I do recognize that many worthwhile public safety programs have been supported by earmarks. My expectation is that any grant award, whether an earmark or not, should be required to meet the same requirements regarding use of funds and accountability.

b. How would the elimination of earmarks affect the distribution of monies in the control of the Director of the Bureau of Justice Assistance, if at all?

Response: Since I am not currently at BJA, I do not have the information necessary to answer a detailed question of this nature.

c. Would you have more leeway as to how the money is spent?

Response: BJA would have more options for how grant funds were spent if funds were not earmarked for specific programs and localities. I would expect that elimination of earmarks would increase funds available for competitive grant programs which would be extremely beneficial given the current fiscal crisis.

d. Will you commit to thoroughly vetting any earmarked requests and reporting to Congress when your assessment shows they should not be awarded?

Response: In deference to Congress, I would follow Congress's direction regarding funding of earmarks and administer earmarks in accordance with current OJP policies and directives. I would do my best to ensure that grants awarded by Congress through earmarks would be subjected to the same requirements regarding use of funds and accountability as other grants.

- 9. With our federal debt at \$14.3 trillion and skyrocketing by the day, coupled with Congress' inability to control and reduce federal spending on lower priorities, grantees should be very concerned about availability of future federal funding. No doubt grantees want future funding to be consistent. Requiring grantees to match federal grant funds will ensure more fiscal stability for them in the future by relying less on the federal government so they can stand on their own. In addition, as a grantee invests additional funds into its services, it is more likely to remain truly committed to developing new and innovative strategies to help those who benefit from these grant programs. Do you agree?**

Response: I believe that matching fund grant programs are effective for some grant programs. My concern is that imposition of matching fund requirements for public safety grants will prevent economically distressed communities that need funding the most from receiving it. That concern is magnified in the current economic climate where the strain experienced at the federal level is felt with equal or even greater strength at the state and local level. The economic crisis has similarly decreased the availability of matching funds from private sources. In addition, many successful programs are only able to obtain matching funds after they have demonstrated their success. Because the availability of matching funds is severely limited in the current economic climate, I am concerned that matching fund requirements could severely limit research and innovation in the criminal justice field. I would urge Congress to continue to fund successful programs like Byrne JAG, which do not require matching funds, but have been the principal funding source for new and innovative criminal

justice programs which in the long run save taxpayer dollars by reducing crime and victimization.

10. When President Obama took office, he promised to usher in a new era of transparency and accountability in our government. In fact, in a January 21, 2009 Presidential Memo, the President stated, “[m]y Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.”³

a. In my estimation, the federal grant-making process, which awards billions of dollars in taxpayer money each year, has the greatest need for transparency and deserves the highest level of scrutiny. If confirmed, will you commit to upholding the same level of openness that President Obama has advocated? If so, how will you promote transparency and oversight at BJA?

Response: I feel very strongly about the importance of transparency and openness in government and strongly support the Administration’s Open Government Program. The best way to promote transparency and openness in the BJA grant process is to ensure that all grant solicitations and grant awards are widely disseminated to the public on the DCJS website. I believe this is the current practice for all OJP agencies and one that I would strictly adhere to were I confirmed as Director of BJA.

b. If confirmed, will you be forthcoming with this Committee when you see grant programs or practices that are not working the way Congress intended?

Response: Yes.

c. If confirmed, will you also commit to promptly providing this Committee and other Senators with any requests for information related to programs falling under your jurisdiction?

Response: Yes, I believe it is important to be responsive to requests for information from Congress subject only to compliance with applicable OJP and DOJ disclosure policies and relevant privacy laws.

11. BJA is one of seven OJP program offices that award and oversee grants at the Justice Department. A recent report by the Justice Department’s Office of the Inspector General (OIG) “found that OJP’s program offices and bureaus do not consistently and thoroughly assess the programmatic, financial, and

³ *Transparency and Open Government*, Presidential Memorandum, January 21, 2009.

administrative areas of the grants; nor do they retain adequate documentation to support their review work.”⁴ If you are confirmed, what specific recommendations do you have for remedying this critique by the OIG?

Response: I believe that it is critical that BJA carefully monitor progress reports on grants and retain adequate documentation of the monitoring process. It is my understanding that OJP has instituted significant reforms in this area through the Office of Audit Assessment and Management to strengthen the grant oversight process for all OJP components, including BJA. If confirmed as Director of BJA, I would do my best to ensure careful monitoring and documentation of BJA grants.

12. Earlier this month the Government Accountability Office (GAO) released a report outlining opportunities to reduce duplication in government programs. The report states, “according to Office of Management and Budget (OMB) estimates, federal grant awards to nonfederal entities, such as states and nonprofit organizations, increased from \$300 billion in 2000 to over \$500 billion in 2009. If even a small fraction of the federal government’s total grant funding is not spent in a prudent and timely fashion, it can prevent the reallocation of scarce resources or the return of funding to the United States Treasury. Undisbursed funding is funding the federal government has obligated through a grant agreement, but which the grantee has not entirely spent.”⁵

Furthermore, GAO notes, “closeout procedures help ensure grantees have met all financial requirements, provided final reports, and that unused funds are de-obligated. However, past audits of federal agencies by GAO and Inspectors General, and agencies’ annual performance reports have suggested grant management challenges, including failure to conduct grant closeouts and undisbursed balances, are a long-standing problem.”⁶

a. Do you agree that closeout procedures are important to effective grant management, as well as to the fiscal crisis in the United States? Why or why not?

Response: Yes. I agree that careful monitoring of grants requires strict adherence to close out procedures for the reasons stated in the GAO Audit report, namely, that funds not spent during the grant cycle should be reallocated for another permissible purpose or recovered by the U.S. Treasury. Moreover, failure to recover funds which have been allocated but not spent during the grant cycle can lead to misuse of grant funds and other forms of waste and abuse of government funds.

⁴ Department of Justice Office of the Inspector General, *Audit of the Office of Justice Programs’ Monitoring of Recovery Act and Non-Recovery Act Grants*, Audit Report 11-19, March 2011, at p. xviii.

⁵ Government Accountability Office, *Opportunities to Reduce Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-318SP, March 2011, at 286.

⁶ *Id.*

- b. If you are confirmed, will you commit to review the grant programs managed by BJA to determine how effective closeout procedures are working?**

Response Yes.

- c. If yes, will you commit to reporting those results to Congress, specifically to the Committee on the Judiciary, as soon as possible after your confirmation?**

Response: I would be happy to report back to you and other members of the Judiciary Committee after my review of current close out procedures utilized by BJA, should I be confirmed.

- 13. I have seen evidence that outside individuals and groups increasingly try to pressure the Department to pay all manner of public safety officers benefits claims regardless of whether they are justified by the law. I am concerned that sometimes decisions are made with regard to these claims that are driven by this outside pressure rather than by the strict requirements of the law. What assurances can you give me that you will administer the Public Safety Officers Benefits (PSOB) law according to the legislative choices that Congress has made and are reflected in the law rather than because you are relenting to outside pressure?**

Response In my view, there is nothing more important than our commitment to our first responders who are disabled or killed in the line of duty and to their families. If I am confirmed as Director of the Bureau of Justice Assistance, I will do my very best to ensure that the PSOB program is administered in a fair and efficient manner in accordance with existing laws and regulations.

- 14. According to 42 U.S.C. § 3787, one of the many responsibilities of the Director of the Bureau of Justice Administration is to appoint hearing examiners or administrative law judges who can hear appeals of denials of benefits under the PSOB program. Can you explain the process you will employ when appointing these officers to ensure that they are neutral arbiters?**

- d. What evidence or input will you consider when determining whether they can be neutral arbiters?**

Response: I am not familiar with applicable laws, regulations and policies regarding the appointment of hearing examiners and ALJs to hear appeals under the PSOB program and lack sufficient information to answer this question at this time. As a general matter, I believe that all tribunals require hearing officers which are fair and impartial and would do my best, if confirmed, to ensure that those whom I would appointment would possess those characteristics.

15. According to the regulations, you may also review PSOB claims once the hearing examiner has made a determination. Can you explain the process you will employ when reviewing these claims?

a. What evidence will you consider when making your determination?

Response: I am not familiar with applicable laws, regulations and policies governing review of PSOB Program determinations and lack sufficient information to answer this question at this time. If I am confirmed as Director of BJA, I will fully review the administrative procedures governing the PSOB Program and do my best to ensure that the program is administered in a fair and effective manner. I would be happy to meet with you to discuss your concerns about the manner in which program has been administered in the past.

APPENDIX A

Grant Name	Agency	Annual Award Amount	Active Years and Expiration	Purpose
Byrne JAG	BJA	\$16.7 M	2007 - 9/30/11	JAG funds may be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and criminal justice information systems that will improve or enhance such areas as: law enforcement programs; prosecution and court programs; prevention and education programs; corrections and community corrections programs; drug treatment and enforcement programs; planning, evaluation, and technology improvement programs; crime victim and witness programs (other than compensation).
		\$15.8 M	2008 - 9/30/11	
		\$567,671	2008 - supplemental - 9/30/11	
		\$16.9 M	2009-9/30/12	
		\$15.6 M	2010 - 9/30/13	
Byrne JAG ARRA	BJA	\$67.2 M	2009 - 2/28/2013	Byrne JAG Recovery Act funds will support the enactment of the comprehensive Rockefeller Drug Law reforms to support local law enforcement and prosecution programs, reentry services, substance abuse treatment, probation, judicial diversion, alternative to incarceration programs, and the operation of drug courts. Projects are revisited annually to redirect funds based on need.
Prisoner Reentry Initiative	BJA	\$815,538	2006 -5/31/2011	Support a collaborative re-entry program that would identify and prepare inmates for entry into employment programs upon their release from incarceration.
		\$540,000	2008 -3/31/2011	

Residential Substance Abuse Treatment	BJA	\$341,599	2008 - 9/30/11	Assists state and local governments to develop and implement residential treatment programs in correctional facilities. Aftercare is also permitted.
		\$373,706	2009 - 9/30/12	
		\$1,051,217	2010 - 9/30/12	