

**James Patrick Lynch, to be Director, Bureau of Justice Statistics
United States Senate Committee on the Judiciary
January 27, 2010**

- 1. Mr. Lynch, at your hearing, you committed not to let politics influence the data produced by the Bureau of Justice Statistics and I commend you for that pledge. However, I am concerned that some of your statements relating to the crime statistics of illegal immigrants may suggest a lack of impartiality and an inability to set aside your personal biases and produce an unbiased analysis of statistics. I'd like to give you the opportunity to explain some of these statements. For example, you wrote that, "Almost everyone who has examined this issue and is not an ideologue has come to the same conclusion . . . In the United States, immigrants engage in common law crime at rates lower than the native population." Do you believe that anyone who examined crime statistics and reached a different conclusion is an "ideologue?" Please explain your statement.**

Politics should play no role in production of accurate, timely and useful data by the Bureau of Justice Statistics (BJS). If I am confirmed as the Director of BJS, I firmly commit to maintaining the agency's credibility as an independent federal statistical agency.

With regard to the above-referenced quote, my recollection is that this quote was not taken from something I wrote but from a phone interview with a Newsweek reporter. This sentence summarized a lengthy discussion of the data available at the time, which in my professional view as a criminologist and statistician strongly supported the conclusion that immigrants had lower rates of involvement in common law crimes than native born Americans. While I concluded that only those strongly committed to the opposite position would not be persuaded by these data, the use of the word "ideologue" carries a connotation that was unwarranted. In retrospect, it was inappropriate to use this word in summarizing my position.

- a. Then, in another article you seem to contradict yourself stating: "The only prevalent type of crime for which the incarceration rate of immigrants exceeds that of citizens is drug offenses. Here, the incarceration rate of immigrants is about 237 percent higher than it is for citizens." You also state that: "Some data suggest that illegal immigrants have much higher rates of criminal involvement than legal immigrants. These same data indicate that rates of involvement in homicide and drug crimes are much higher for illegal immigrants than for citizens. But these data must be treated with some caution. . . . Some of the high rates of criminal involvement for illegal immigrants may be due to misidentifying legal immigrants and naturalized citizens as illegal immigrants. More importantly, the nature of drug enforcement may result in illegals being targeted for enforcement at much higher rates than other groups. Hence, the high rates of drug arrests and incarcerations for illegals may be due to enforcement policy rather than their disproportionate involvement in drug crimes." Can you please explain this seeming contradiction?**

The seeming contradiction appears to involve one statement that immigrants have lower rates of involvement in common law crime and another that

immigrants have high rates of drug crimes. I do not see this as a contradiction largely because drug offenses are not a common law crime. I refrained from making a definitive statement about drug offending because there was reason to believe that the drug incarceration rates for immigrants were artificially high and the extent of that overestimation could not be determined. I should note that these statements reflect my assessment and interpretation of data in my professional capacity as a criminologist and statistician, and are not influenced by my personal political positions or views.

- i. Do you believe that the reason the “incarceration rate of immigrants is about 237 percent higher than it is for citizens” is merely due to enforcement policy and not because more illegal immigrants are committing crimes than citizens?**

The quoted statement refers to the incarceration rate for drug crimes, not all crimes. No, I do not believe that the higher drug incarceration rates for immigrants are due merely, or even mainly, to drug enforcement policy.

- ii. Do you think there is enough misidentification to skew the results to a point where the data is unreliable?**

I do not know the precise volume of misidentification of immigration status that occurs in law enforcement generally.

- iii. Do you believe that illegal immigrants are committing a crime when they enter the country illegally?**

Yes.

- b. Mr. Lynch, you also have stated that: “drug enforcement, unlike the policing of other crimes, is largely discretionary. . . . Police choose their targets. A great deal of drug enforcement takes place at the border. Citizens are not searched or otherwise inspected at the border of the United States unless there is good reason to do so. Immigrants, however, are subjected to more extensive inspections at the border. These inspections increase the likelihood of finding drugs and charging immigrants with drug crimes.” Do you believe that it is unfair or unconstitutional to subject immigrants to more rigorous screening at the borders?**

I do not believe it is unfair to subject non-citizens to greater scrutiny than citizens at the borders. I am not an attorney and would defer to the professional judgment of others as to the constitutionality of our government’s border screening procedures.

- c. In your book, *Immigration the World Over*, you wrote that data showing crimes rates for illegal immigrants as higher than for citizens may be due to misidentification of legal immigrants and naturalized citizens as illegals. Do**

you think there is enough misidentification to skew the results to a point where the data is unreliable?

I do not know the precise extent of the misidentification of immigration status in law enforcement generally and specifically in the data that you refer to.

2. Last year, the National Resource Council of the National Academies produced a report entitled “Ensuring the Quality, Credibility, and Relevance of U.S. Justice Statistics,”¹ and that report mentions, particularly in reference to the National Crime Victimization Survey (NCVS) conducted by BJS, that BJS has a “problem of lengthy lag times between data collection and the release of results.”²

a. How often does the Bureau of Justice Statistics (BJS) issue reports?

I have not done a systematic assessment of the frequency with which BJS releases reports in a given year. From a quick examination of the website it appears that in a typical year BJS issues about 30 formal reports. The agency also releases data in a variety of other formats including spreadsheets, on-line analysis websites and archived data sets as well as memoranda and telephone responses to queries.

b. While some topics on which BJS writes are up to date, many are several years old. Congress relies on many types of information, including BJS reports. Do you believe current BJS publications are timely? Why or why not?

I have not systematically analyzed the currency with which BJS data are available. I presume that the timeliness of these data is affected by resources, the cooperation of respondents and the speed with which data can be processed, verified and disseminated. While lags due to these factors are often difficult to reduce, if I am confirmed as Director of BJS, I will work to make BJS reports and other statistical products more timely.

c. How does BJS choose what specific issues within its eight general topic areas on which to write?

I do not know how BJS has in the past determined the specific issues to report on. If I am confirmed as Director of BJS, I would strive to issue routine statistics for most major data series on a fixed schedule. Reporting on other subjects would be determined by the availability of the data, staff resources and the need of various constituencies, including Congress, to have this information.

d. Will your views expressed in past research and writing influence the topics on which you direct BJS to write? Why or why not?

¹ Robert M. Groves and Daniel L. Cork, ed., *Ensuring the Quality, Credibility, and Relevance of U.S. Justice Statistics*, National Resource Council of the National Academies, Washington, DC, 2009.

² *Id.* at 2.

If I am confirmed as the Director of BJS, the substantive views expressed in my past research and writing will not influence the topics addressed by the agency. As an academic researcher, I was free to write on topics of my choosing. As a federal statistical agency, BJS is required to report on topics defined by its mission statement. It also has the obligation to provide information on issues relevant to their various constituencies including Congress and the Department of Justice. This leaves very little room for the personal preferences of the agency director or staff to influence the choice of topics to be addressed.

3. 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. If confirmed, will you commit to upholding the same level of openness that President Obama has advocated? If so, how will you promote transparency at BJS?

Yes. If confirmed, I will be committed to upholding the level of openness that President Obama advocated. As a federal statistical agency, BJS is transparent in that it provides detailed documentation of the methods used to collect the data it reports. The data are made available in public archives so that other persons and groups can analyze these data to replicate and elaborate upon the analyses done by the agency. If confirmed I would continue these practices and explore other ways of increasing the transparency of BJS and its products.

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

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?

I will work to respond to any and all requests from Members of Congress to the fullest extent possible.

4. Since 2000, the Office of the Inspector General (OIG) has continuously ranked grant management as one of the DOJ’s top management challenges every year. In

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

fact, at Attorney General Holder's confirmation hearing, he recognized that this must be treated as a "consistent priority" to prevent problems.

- a. BJS oversees several grant programs within two major issue areas: criminal justice statistics and state, local and tribal assistance programs. What specific steps do you plan to take to improve grant management within BJS?**

While I am familiar with BJS' grant programs, I am not privy to the detailed information required to identify problems and to suggest solutions at this time. If I am confirmed as the Director of BJS, I will be able to access the appropriate information on this issue and to respond to this question.

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

While I am familiar with BJS' grant programs, I do not have the detailed information required to identify egregious grants or bad practices at this time. If I am confirmed as the Director of BJS, I will be able to access the appropriate information on this issue and to respond to this question.

- c. If confirmed, will you commit to review all BJS grants for such examples, and get back to me as soon as possible with your results?**

Yes.

- 5. In describing the problems with the Department's grant management process, the OIG noted that 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."⁴**

- a. What changes, if any, do you plan to make to BJS grant oversight process and/or BJS staff assigned to review grant applications?**

I am not aware of any specific criticisms of BJS' oversight procedures, but if I am fortunate enough to be confirmed and the review described in response to 4.c. above identifies problems requiring changes in oversight, I will make appropriate changes at that time.

- b. Do you believe BJS 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?**

⁴ *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>.

Yes.

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

Yes. In BJS' grant making process, grantees should report on how they used prior funds received from BJS.

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

Past performance on prior grants should be considered in making subsequent grant awards. All other things being equal, poor performance on prior awards should reduce the chance of receiving subsequent awards.

