

Responses to the Follow-up Questions of Senator Tom Coburn, M.D.
“Nominations”

United States Senate Committee on the Judiciary
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- 1. Since 2000, the Office of the Inspector General has continuously ranked grant management as one of the DOJ’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 DOJ?**

Transparency and oversight are among the Department’s highest priorities. If confirmed, I am committed to ensuring that grant award decisions at the Office of Justice Programs (OJP) are transparent and that OJP is held accountable for effective grant management. I will ensure that OJP posts all its award decisions on the OJP website, including the type of award, the recipient, and the award amount.

In addition, I will build on steps OJP has taken to improve the quality and completeness of grant monitoring across the agency. OJP has already embraced the Office of the Inspector General’s (OIG’s) February 2009 report entitled, “Improving the Grant Management Process,” and implemented many of its recommendations. OJP has also implemented OIG recommendations relating to grant program development, application and award processes. If confirmed, I will work to ensure that at every possible opportunity, OJP is implementing agency-wide corrective actions in response to OIG grant-related and program-specific audit recommendations.

Lastly, OJP’s Office of Audit, Assessment, and Management (OAAM) is dedicated to the oversight of OJP monitoring activities and the assessment of grant program performance. If confirmed, I will support OAAM in continuously evaluating the quality and level of monitoring of grants and conducting OJP-wide assessments of program initiatives and operations to measure performance, enhance internal controls, and identify opportunities for improvement.

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

Yes. OJP already has a strong process in place to identify such grants, which OJP staff refers for high-risk designation. OJP staff refers grantees for high-risk designation when they become aware of serious programmatic or financial noncompliance issues. Such issues are detected through fiscal integrity reviews;

programmatic and/or financial monitoring; OIG audit resolution activity; single audit resolution activity; OIG investigations; referrals from other Department of Justice grant-making components; referrals from other Federal grant-making organizations; and the media. Grantees designated as high risk are provided with enhanced oversight and monitoring. Special conditions are also imposed on awards to high risk grantees, including mandatory OJP-sponsored training on financial management and the prevention and detection of fraud, waste, and abuse.

In addition, OJP program offices and the Office of the Chief Financial Officer (OCFO) systematically assess risk associated with grants and grantees in the development of their monitoring plans. Monitoring efforts are coordinated within and between bureaus and program offices, as well as with the OCFO and their financial monitors. With enhanced coordination, OJP has been able to establish a more comprehensive, coordinated oversight effort.

Lastly, if confirmed, I will direct that OJP work closely with the DOJ Inspector General to provide information and assist in ongoing audits and investigations of grantees.

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

I am, and always have been, very concerned that all spending of taxpayer dollars at OJP, whether through grant programs or otherwise, be as efficient and free of waste as possible. As described above, the career staff at OJP work diligently to review and monitor the performance of grantees. Much of this effort is accomplished through annual desk reviews of grants and on-site monitoring. Desk reviews include a comprehensive review of materials available through the grantee file to determine administrative, financial and programmatic compliance, as well as grantee performance. On-site monitoring serves to verify grantee activity and address any issues identified during the desk review. On-site monitoring is the most intensive form of monitoring and can be helpful for gathering information in addition to documentation submitted by the grantee.

In addition, the Office of Audit, Assessment, and Management conducts program assessments of OJP grant programs to measure performance against intended outcomes and assess compliance with applicable regulations and statutes. Program assessments, much like performance audits, provide OJP leadership with valuable information on the short- and medium-term performance of grant programs and grantee compliance. Assessment reports also contain targeted recommendations for making program improvements or enhancing grant oversight practices.

At this point, I am not aware of a particular grant or program that is ill-considered. Among the approximately 16,300 grants currently administered by OJP, there is likely

some waste, despite the agency's best efforts. If confirmed, it will be my responsibility to minimize such waste and, when brought to my attention, to address it promptly. I commit to doing so.

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

As described above, OJP administers thousands of grants at a time. For this reason, it is not feasible for any one person to review each grant. I do, however, commit to you that, if confirmed, I will review all of OJP's policies and practices for eliminating waste and arrange a time to brief you in person on the results of that review.

- 3. 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."¹**

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

If confirmed, I am committed to working toward continuous improvement in OJP's oversight and monitoring of grantees and grant programs. I will strengthen the efforts OJP has already begun to establish common procedures and guidance to improve the quality and completeness of monitoring across the agency, as well as providing effective tools to its grants managers to properly document desk reviews and on-site monitoring, formally communicate with grantees through the system, and track the resolution of open issues. OJP's Office of Audit, Assessment, and Management will also continue to oversee the monitoring activities of OJP program offices and assess and report on the adequacy, level, and quality of monitoring conducted.

- b. Do you believe OJP 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?**

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

OJP has a rigorous application screening process. During that process, the Office of the Chief Financial Officer and program offices review prior grantee performance, which can be a major factor in consideration for future funding.

¹ *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>.

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

I support OJP's current practice of taking into consideration whether grantees have appropriately managed past grant award funding prior to making new grant awards.

4. What will your priorities be as Assistant Attorney General for OJP?

If I am confirmed as Assistant Attorney General, I envision three key priorities:

First, I would strengthen strategic partnerships with state, local and tribal partners, working to continue an ongoing dialogue with the criminal and juvenile justice field to address crime.

Second, I would integrate evidence-based approaches into the work of the Office of Justice Programs. We can learn so much more from science about how to prevent crime and how to effectively address crime when it occurs. A "What Works" Clearinghouse could better share that information with busy practitioners and policymakers.

Third, I would work closely with the Office of the Inspector General to ensure that OJP's grant funds are spent in a way that avoids waste, fraud and abuse. It is imperative that OJP be a good steward of taxpayer dollars.

a. According to your testimony, you believe there should be "strong accountability to guard against waste, fraud and abuse." If this is "one of your highest priorities," how will you work with the Office of the Inspector general to clean up waste, fraud and abuse at OJP?

There are a number of ways in which OJP can work closely with the OIG in addressing grantee issues identified in grant audits conducted by the OIG and audits conducted in accordance with OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. For example, OJP has streamlined audit follow-up activities to ensure that outstanding audit recommendations are tracked and promptly addressed, which has lead to closure of a significant number of older grant and single audit reports. OJP's audit follow-up process with grantees ensures that issues identified by the OIG are timely resolved by either repaying unallowable grant expenditures, providing further support that substantiates the grantees' expenditures, or developing appropriate procedures to ensure future compliance. If confirmed, I will ensure that work of this kind continues.

This year over 500 OJP staff attended OIG-led trainings on detecting and preventing fraud. OJP also works with OIG staff to coordinate grant fraud training at OJP-sponsored conferences and meetings. Additionally, a grant fraud

component has been included in the OCFO Regional Financial Management training seminars.

Finally, since the enactment of the American Recovery and Reinvestment Act (Recovery Act), OJP has worked closely with the OIG to proactively collaborate on methods to prevent the risk of waste, fraud, and abuse in the grant application and award process. For the duration of the Recovery Act post-award period, OAAM will meet routinely with the OIG to discuss programmatic progress and implementation issues, as well as to discuss strategies for improving grant program management. OAAM will also coordinate its activities to maximize effectiveness and eliminate overlap with OIG efforts. If confirmed, I will support the continuation of these productive, collaborative efforts.

- 5. What is your view of earmarks? Do you believe that funds earmarked in accounts you manage at OJP 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?**

Earmarks restrain the ability of OJP to target funds based on evidence of success or need. Earmarks are not subject to peer review before being awarded, unlike grants made through the competitive process. While it is clear that earmarks should never be used as a vehicle for waste, fraud or abuse, it is ultimately for Congress to decide whether earmarks should, or should not, be awarded using OJP funds. That said, earmarks should be subject to the same monitoring and performance standards as any other grant.

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

As with any OJP grant, I commit to thoroughly vetting earmarked grants and reporting to Congress when OJP's assessment shows they should not be awarded.

- 6. With our federal debt at \$11.8 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?**

I agree that matching requirements can help to ensure program stability when grantees contribute their own resources into their projects. This stability can make it more likely that a project can continue after federal funding has ceased. The goal at OJP is to work in partnership with states, local governments, tribes, and community organizations, and matching requirements are consistent with this goal. Matching requirements may not be

effective with every program, however. For example, for programs designed to serve communities with few resources, strict matching requirements might prevent support from going to areas and populations in critical need.

- 7. 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.”²**

- 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 at OJP?**

Yes. If confirmed, I will commit to upholding the same level of openness advocated by the President. Transparency and accountability are among this Administration’s top priorities. If confirmed, I will work continuously to promote transparency. A number of initiatives have already been undertaken at OJP in this regard. In Fiscal Year 2009, OJP posted all award decisions on its website, listing the type of award, the recipient, and the award amount.

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

- 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?**

Yes. If confirmed, I will commit to promptly responding to requests for information from this Committee or any Member of Congress consistent with the Department’s responsibilities.

- 8. Recently, you served as a board member of United Against Illegal Guns, which is an organization is affiliated with Mayors Against Illegal Guns (MAIG). Although MAIG is ostensibly supportive of the Second Amendment, it has taken a number of positions antithetical to the rights of law abiding citizens to own, possess and carry firearms. For instance: (1) in June of this year, MAIG opposed the Concealed Carry Reciprocity bill (“Thune Amendment”), which would have required states**

² *Transparency and Open Government*, Presidential Memorandum, January 21, 2009.

that grant concealed weapon permits to honor concealed weapon permits issued by other states; (2) MAIG opposed Senator Wicker's Amendment to the FY 2010 Transportation-Housing and Urban Development appropriations bill that required Amtrak to accept firearms in checked luggage; and, (3) MAIG vigorously opposes the "Tiahrt Amendment." The Tiahrt Amendment restricts the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATF) from releasing data from the Firearms Trace System database to anyone other than federal, state and local law enforcement agencies and prosecutors, and then only "in connection with and for use in a bona fide criminal investigation or prosecution." Further, the amendment makes such information inadmissible in any civil proceeding, other than one commenced by BATF. Both the Fraternal Order of Police (FOP) and the BATF support the Tiahrt Amendment.

- a. **Will you commit not to issue any grants or monies to organizations or entities such as United Against Illegal Guns and Mayors Against Illegal Guns that do not fully support the Second Amendment?**

The Office of Justice Programs' mission is to provide, "innovative leadership to federal, state, local, and tribal justice systems, by disseminating state-of-the art knowledge and practices across America, and providing grants for the implementation of these crime fighting strategies." Grants should be provided to organizations demonstrating that they can make the best and most appropriate use of federal grant dollars, in accordance with Congressional mandates. If confirmed, I commit to making grants within that mission, the laws of Congress, and the Constitution.

- b. **Will you commit not to issue any grants or monies to organizations or entities conducting studies of gun use that might later be used to restrict gun rights?**

OJP's research and statistics bureaus – the National Institute of Justice and the Bureau of Justice Statistics – are dedicated to conducting and funding objective scientific research, not studies aimed at furthering specific policy goals. I remain firmly committed to these values. As described above, I fully support transparency in government, which includes making research prepared with OJP funding available to the public through the OJP Website. In addition, it should be noted that objective research can be used in support of policy agendas unrelated to the researcher.

9. **As you may know, I am the ranking member of the Judiciary Committee's Subcommittee on Human Rights and the Law. I am concerned about the results of a 2008 audit of the management of OJP's grant programs for human trafficking victims. In that audit, the OIG found that, while these grants "were effective in building the capacity to serve victims of human trafficking...the programs were not effective in identifying and serving significant numbers of trafficking victims, ensuring that award amounts were consistent with the anticipated number of victims to be served, and ensuring that service providers and task forces reported**

accurate performance data on victims identified and served.” The OIG also found that “OJP had not established an effective system for monitoring service providers and task forces...”³

- a. **The focus of human trafficking grants should be to rescue innocent victims by providing assistance to help them restore dignity to their lives. The OIG found that there was a wide variation of funds awarded compared to the number of victims served by grantees, as well as inaccurate financial reports, questionable expenditures and poor monitoring of sub-grantees. The OIG made 15 recommendations for improved management of these grants. If confirmed, will you ensure that those recommendations are implemented?**

Yes. If confirmed, I will ensure that the recommendations contained in the 2008 OIG Grants for Human Trafficking Victims Report are implemented. The report made fifteen recommendations to improve the management of OJP’s trafficking programs, eleven of which have been resolved and closed. OJP continues to work closely with OIG to close the remaining recommendations.

10. Do you believe staff conducting grant application reviews should be experts in the individual policy areas addressed by each grant?

- a. **Specifically, the Justice and Mental Health Collaboration Program/Mental Health Court grants fund “projects that seek to mobilize communities to implement innovative, collaborative efforts that bring system-wide improvements to the way the needs of adult offenders with mental disabilities or illnesses are addressed.” Do you believe staff who review grants such as these should have expertise in the area of mental health in order to effectively evaluate the viability of various collaborations proposed by grant applicants?**

Peer review is required of all applications for OJP competitive discretionary funding. The Justice and Mental Health Collaboration Program (JMHCP) is one such program; therefore, all applications for JMHCP funding are subject to OJP’s rigorous peer review process. Peer review provides both objective, independent application review as well as subject matter expert evaluation of application strengths and weaknesses. While OJP staff members do not participate in peer review – it would be a conflict of interest as federal employees for them to do so – they are knowledgeable in their subject areas and experienced in program administration. If confirmed, one of my highest priorities will be to maintain the highest standards of fairness, transparency, and accountability in the review and selection processes for OJP grant programs.

³ *Office of the Inspector General Semiannual Report to Congress*, U.S. Department of Justice, April 1, 2008-September 30, 2008, at 29.