

Testimony of
The Honorable Glenn A. Fine

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Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice
before the
Senate Committee on the Judiciary
concerning
Oversight of the Department of Justice's Forensic Grant Programs

I. Introduction

Mr. Chairman, Senator Specter, and Members of the Committee on the Judiciary:

I appreciate the opportunity to testify before the Committee as you examine the Department of Justice's (Department or DOJ) oversight of grant programs funded by the "Justice for All Act." Among other provisions, this Act established the Paul Coverdell Forensic Science Improvement Grants Program, which provides grants to state and local governments to improve the timeliness and quality of their forensic science and medical examiner services and to eliminate backlogs in the analysis of DNA and other forensic evidence. The Department's Office of Justice Programs (OJP), through one of its bureaus, the National Institute of Justice (NIJ), distributed almost \$15 million in fiscal year (FY) 2006 Coverdell program grants and almost \$16.5 million in FY 2007.

For many years, the Office of the Inspector General (OIG) has examined the work of OJP in awarding and monitoring the \$2 to \$3 billion in grant funds it awarded each year. In two recent reports, the OIG examined in particular OJP's role in administering the Coverdell grant program. Our first report, issued in December 2005, focused on the external investigation certification requirement enacted as part of the Justice for All Act. Pursuant to this requirement, Coverdell grant applicants must certify that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of forensic results.

This certification requirement was designed to address negligence and misconduct in forensic laboratories, including false testimony by some forensic laboratory staff, which has led to wrongful convictions in several states. Independent external investigations of allegations of laboratory wrongdoing can provide an important safeguard to reduce problems created by inadequate forensic analysis.

Our December 2005 report found that OJP had not effectively enforced or exercised effective oversight over this external investigation certification. For example, we found that OJP's 2005 Coverdell grant program announcement did not give applicants necessary guidance on the certification requirement, did not provide examples of the types of government entities and

processes that could meet the certification requirement until after we began our review, and did not direct applicants to provide the name of the government entity that could conduct investigations into allegations of serious negligence or misconduct.

In our view, OJP's response to our 2005 review was not encouraging or appropriate. After significant discussion, OJP only reluctantly agreed to implement some of the report's recommendations, including providing examples in the program announcement of types of government entities that could meet the certification requirement and requiring that the applicant name the government entity in future grants. OJP did not agree to require each applicant to submit a letter from the government entity acknowledging that it had the authority and process to conduct independent external investigations.

Because we were concerned by OJP's response, and because of the importance of having qualified entities in place to investigate serious negligence or misconduct in forensic laboratories funded by these grants, we decided to conduct a follow-up review, which was issued last week. This follow-up review examined the effectiveness of OJP's administration of the external investigation certification requirement for FY 2006 Coverdell program grant recipients.

Our follow-up review found continued deficiencies in OJP's administration of the Coverdell program. We found that although OJP has complied with the minimum terms of the statute to obtain certifications from grant applicants, OJP is still not effectively administering the external investigation certification requirement. For example, we determined that despite the certifications, not all forensic laboratories that received Coverdell program grant funds have identified a government entity with the authority and capability to independently investigate allegations of serious negligence or misconduct. Further, OJP's guidance does not require that allegations of serious negligence and misconduct be referred to the government entities for independent investigation.

In sum, after two reviews we remain concerned about OJP's administration of the Coverdell grant program. Equally troubling is OJP's narrow, legalistic responses to our reviews. These responses, however, mirror OJP's position when other OIG audits identified deficiencies in its administration of other grant programs. Moreover, this attitude is consistent with OJP's slow response to a 2006 congressional directive to establish an office to monitor grantees who received the more than \$2 billion in total grant funds awarded by OJP each year. For these and other reasons, in our view OJP has not taken sufficient responsibility to ensure that its grant programs are effectively administered and monitored.

The remainder of my written statement provides further details on these conclusions. First, it summarizes the findings of the OIG's two reviews of the Coverdell grant program. It then briefly discusses other OIG audits that address OJP's monitoring of grant funds.

II. OIG Reviews of Coverdell Grant Program

A. Background

OJP is responsible for developing programs to increase the nation's capacity to prevent and control crime, improve criminal and juvenile justice systems, increase knowledge about crime,

and assist crime victims. OJP is divided into five bureaus that provide training, collect and disseminate crime statistics, support technology development and research, and administer DOJ grants.

The National Institute of Justice (NIJ), one of OJP's five bureaus, is the Department's primary research, development, and evaluation agency. NIJ awards grants to state and local governments, nonprofit organizations, individuals, and certain for-profit organizations. One of these grant programs is the Coverdell program.

The Paul Coverdell Forensic Science Improvement Grants Program, administered by OJP through NIJ's Investigative and Forensic Science Division in the Office of Science and Technology, provides funds to state and local governments to:

- (1) improve the quality and timeliness of forensic science and medical examiner services, and
- (2) eliminate backlogs in the analysis of forensic evidence, including controlled substances, firearms examination, forensic pathology, latent prints, questioned documents, toxicology, and trace evidence.

To request a Coverdell program grant, an applicant must submit, in addition to all other required documents:

A certification that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount.

This external investigation certification became a requirement on October 30, 2004, as a result of the Justice for All Act of 2004, which amended the Omnibus Crime Control and Safe Streets Act of 1968.

Negligence and misconduct in forensic laboratories can undermine the criminal justice system, and have led to wrongful convictions in several states. For example, in 2006 Marlon Pendleton was exonerated after serving 10 years for rape and robbery. The faulty analysis of DNA evidence by a Chicago Police Department Crime Laboratory analyst contributed to his conviction. In 2007, Curtis Edward McCarty was exonerated after serving 21 years for murder. McCarty was convicted and sentenced to death based on the false testimony of an Oklahoma City Police chemist, whose misconduct contributed to at least two other convictions later overturned by DNA testing.

B. OIG December 2005 Review

The OIG first evaluated OJP's implementation of the Coverdell program's external investigation certification requirement in 2005. The OIG report concluded that OJP did not adequately enforce the certification requirement during the application process or exercise effective oversight of this aspect of the program. Specifically, the OIG found that NIJ did not provide necessary guidance

to applicants and did not require applicants to submit the information necessary to permit OJP to evaluate their certifications.

For example, the FY 2005 Coverdell grant program announcement did not provide examples of the types of government entities and processes that could meet the certification, or specify a particular format for submitting the certification, such as a standard form, template letter, or narrative description. Rather, OJP simply informed potential applicants that a certification was required by statute. The announcement also did not require applicants to provide a statement naming the government entity that would conduct the independent external investigations. In evaluating these certifications, we found it important that the applicants' grant applications contain enough information to evaluate the validity of the certification and to support sanctions if applicants' certifications were later determined to be false.

Yet, when we asked OJP why the announcement did not require applicants to provide the name of the government entity that would conduct any external investigation, OJP responded that it was the applicants' responsibility to determine whether it met the certification requirement. Moreover, OJP told us that it would accept the applicants' certifications without requiring them to provide the name or other information identifying the government entity responsible for conducting independent external investigations. However, our review determined that the certifications submitted by many applicants for FY 2005 Coverdell grants were missing or incomplete, and that OJP did not adequately review the certifications.

As a result of the deficiencies that our review uncovered, the OIG's 2005 report recommended that OJP:

- (1) provide guidance to applicants regarding the external investigation certification;
- (2) require that each applicant provide the name of the government entity that could conduct independent external investigations of serious negligence or misconduct related to forensic laboratories; and
- (3) consider requiring each applicant to submit a letter from that government entity acknowledging that it had the authority and process to conduct independent external investigations.

In response, OJP initially suggested that it did not have the legal authority to implement the OIG's recommendations to require the applicant to submit the name and a letter from the government entity. However, the OIG pointed out that the plain language of the statute granted OJP the authority to enforce the certification requirement. Moreover, OJP's actions on other grant programs demonstrated that it had the authority to implement our recommendations.

Eventually, OJP agreed with the first recommendation to provide guidance to applicants on independent external processes and did so in the FY 2006 Coverdell program announcement. However, OJP continued to resist implementing the second recommendation to require each applicant to provide the name of the government entity that could conduct independent external investigations. After much discussion with the OIG on this issue, OJP agreed to implement this recommendation for FY 2007. However, OJP still declined to implement the third

recommendation that would require a letter from the government entity identified in the grant application signifying that it was prepared to conduct independent external investigations if needed.

C. OIG January 2008 Follow-up Review

Because of the importance of the issue, and because of OJP's resistance to taking action to ensure the validity of the certifications, the OIG decided to conduct a follow-up review to further examine the effectiveness of OJP's administration of the external investigation certification requirement. The OIG's follow-up review was completed and released last week.

For this review, we obtained from OJP the names of all 87 agencies that had received Coverdell grants in FY 2006, and we conducted telephone interviews with officials regarding the external investigation certifications for all 87 agencies to determine whether they had identified a government entity with a process in place and the capabilities and resources to conduct independent investigations of negligence or misconduct in forensic laboratories as their certifications attested. Some grantees submitted a single certification that applied to the grantee and its sub-grantees, other grantees submitted multiple certifications for themselves and each of their sub-grantees, and one grantee failed to submit any certification.

The OIG then conducted telephone interviews with officials regarding the external investigation certifications from all 87 grantees. These officials identified 233 government entities in response to the external investigation certification requirement (some officials referred to more than one investigative entity). The OIG then conducted telephone interviews with representatives from 231 of the 233 government entities to assess whether these entities had the authority and ability to conduct independent external investigations as indicated by the certifications.

The OIG found that at least 78 of these entities (34 percent) did not meet the external investigation certification requirement because they lacked either the authority, the capabilities and resources, or an appropriate process to conduct independent external investigations into allegations of serious negligence or misconduct by forensic laboratories that received FY 2006 Coverdell program funds.

For example, one entity named by a certifying official told us that it conducted financial audits and had no authority to conduct investigations of negligence or misconduct in forensic laboratory work. An official from another entity told us that his entity did not have the capabilities and resources to conduct investigations involving DNA analysis and would have to request funds from the state legislature to contract for DNA expertise if it received such an allegation. More than half of all entity officials we contacted told us that they had not even been previously informed that their entities had been named to conduct independent external investigations as required by the Coverdell program.

The OIG identified other shortcomings in OJP's administration of the FY 2006 external investigation certification that allowed the deficiencies with the certifications to occur. First, OJP still did not require applicants to confirm to OJP that they had identified an entity with the capabilities and authorities to conduct independent external investigations of forensic laboratories. In fact, OJP could not ensure that the applicants had identified an entity at all. For

example, five certifying officials told the OIG that when they completed the certification they did not have a specific entity in mind - they merely signed the template certification that OJP provided.

Second, we found that OJP did not adequately review the information it obtained to assess whether the certifications submitted by the grantees were properly completed and sufficient. For example, each certification must contain specific statements and be signed by a knowledgeable official authorized to make certifications on behalf of the applicant agency. Our review identified certifications from 38 grantees that were signed by individuals who did not appear to be from the applicant agency. Yet, OJP still awarded grants to these agencies without further inquiry to the grantees.

Third, during our review we examined whether OJP's guidance directed grantees and forensic laboratories to refer allegations of negligence and misconduct to the certified entities for investigation. When we asked OJP about its guidance regarding handling allegations of negligence and misconduct by grantees who received Coverdell grant money, we found that OJP has advised one grantee (and the grantee advised forensic laboratories) that it did not have to refer allegations of serious negligence and misconduct to the entity it had certified to conduct independent investigations. Moreover, OJP's General Counsel stated to the OIG his belief that, while the reporting of allegations is "consonant" with the statute, the statute does not "require" that allegations actually be referred to the entity certified to conduct such investigations.

Overall, we concluded that OJP needs to improve its administration of the Coverdell grant program. Although OJP has complied with the basic statutory requirement to obtain certifications from applicants, in our view OJP has failed to take the additional steps necessary to ensure that the external investigation certification requirement has the intended effect of ensuring that applicants identify entities that can conduct independent investigations, and that allegations of serious negligence or misconduct are actually referred for investigation.

Beginning with the FY 2007 Coverdell program, OJP has agreed - after significant prodding by the OIG - to require grant applicants prior to receiving grant funds to provide the name of the government entity on which the certification is relying. Obtaining the names of the entities is a step forward and will ensure that applicants do not submit certifications when they have not actually identified an entity to independently investigate misconduct or negligence. In addition, having the name can also help support sanctions if a certification is later found to be false. However, as our review demonstrated, requiring only that an applicant provide the name of an entity is insufficient to ensure the entity has the resources or expertise to conduct the independent investigations of forensic laboratories. In addition, we are still concerned that current guidance and procedures do not ensure that allegations of serious negligence or misconduct will actually be referred for an independent investigation by the certified entity. We believe that OJP can further enhance the effectiveness of the Coverdell program for ensuring the integrity of forensic analysis by requiring that allegations of wrongdoing at forensic laboratories be referred to the certified entities for independent investigation. We believe that OJP's minimal actions to date undermine and diminish the utility of the Coverdell program for improving the oversight of forensic laboratories.

As a result, in our follow-up review we made three additional recommendations to OJP. First, we recommended that OJP revise the certification template to require that applicants name the government entities and confirm that the government entities have the authority, independence, a process in place, and the resources to conduct independent external investigations into allegations of serious negligence or misconduct by the forensic laboratories that will receive Coverdell program funds. Second, we recommended that OJP provide applicants with specific guidance that allegations of serious negligence or misconduct substantially affecting the integrity of forensic results are to be referred to the certified government entities. Third, we recommended that OJP revise and document the Coverdell program application review process so that only applicants that submit complete external investigation certifications are awarded Coverdell grants.

OJP's response to our follow-up review was again narrow and legalistic. While OJP agreed to implement two of the recommendations, it argued that its actions were consistent with the terms of the statute. OJP's position, in essence, was that the Coverdell statute required only a certification from the grantee, that OJP had complied with this requirement, and that therefore its oversight of the program was not deficient.

We are again troubled by OJP's narrow view of its responsibilities. We believe that OJP's responsibility extends beyond the bare minimum of compliance with the literal terms of the statute. Rather, OJP has a responsibility to ensure that the required certifications are meaningful and that grantees actually have the means and intention to follow through on their certifications. This is especially true when, as our reviews have identified, the certifications from current grant recipients are incomplete and inaccurate, and when the entities certified by the grantees report that they do not meet the certification requirement. In short, OJP has a responsibility to effectively monitor and oversee the grant program, which includes ensuring that the grantees' certifications are accurate and meaningful.

In response to our report, OJP has agreed to provide grantees with guidance to refer allegations to the certified government entities, and to prepare Coverdell program management guidelines to improve the application review process. However, based on its past actions, we do not have great confidence that OJP will effectively ensure that grantees who receive Coverdell funds actually have an entity in place to investigate allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results, or that such allegations are referred to these entities for investigation.

III. Other Concerns Related to OJP's Oversight of Grant Programs

Our concern with OJP's administration of the Coverdell grant program is exacerbated by OJP's spotty record of monitoring the approximately \$2 - \$3 billion of grants it awards each year. In our reviews, we repeatedly have found that OJP lacks adequate financial and programmatic oversight of its varied grant programs. Moreover, OJP has yet to develop consistent mechanisms to assess the success of its grant programs, raising questions about how effectively taxpayer grant funds are being spent.

OIG audits continue to identify a variety of management concerns regarding the OJP's oversight of grant programs, including problems in the grant closeout process, improper use of grant funds,

difficulties in meeting grant objectives, and poor measurement of grant effectiveness. While these are well known problems, we have not seen significant improvement over the past several years in how the Department manages these programs.

For example, our audits have found:

? A significant number of grantees either do not submit required financial and progress reports or do not submit them in a timely manner.

? Numerous deficiencies continue to be found in OJP's monitoring of grantee activities, such as not sufficiently reviewing supporting documentation for grant expenditures, not establishing performance goals for its programs, not ensuring that grantees submit performance data to demonstrate that grant monies are being used effectively and as intended, and not properly closing grants in a timely manner.

? Grant funds were not regularly awarded in a timely manner and grantees were slow to spend available monies.

? OIG audits of grants have also resulted in significant dollar related findings.

Therefore, the OIG has identified grant management as one of the Department's top management challenges for the past 6 years. While it is important to efficiently award the billions of dollars in grant funds appropriated by Congress annually, it is equally important that the Department maintains proper oversight over the grantees' use of these funds to ensure accountability and to ensure that these funds are effective and used as intended.

Yet, like with the review of the Coverdell grant program, the OIG has encountered a troubling attitude from OJP that it need only impose the minimum standards required by statute or regulation and that, in and of itself, discharges its responsibilities to ensure effective grant oversight. Moreover, too often the OIG has observed a misplaced emphasis by OJP on awarding grants and a lack of a commensurate emphasis on monitoring the grants awarded.

For example, in addition to the Coverdell reviews, another concern about OJP's grant monitoring practices was identified by our December 2006 audit of the Department's grant closeout process. This audit found that the OJP substantially had failed to ensure that grants were closed appropriately and in a timely manner, thereby tying up hundreds of millions of dollars that could have been used to fund other programs or returned to the federal government's general fund.

In particular, our audit found that OJP, as well as the Office of Community Oriented Policing Services and the Office of Violence Against Women, failed to ensure that grants were closed in a timely manner. We found that only 13 percent of the Department grants we tested were closed within 6 months after the grant end date, as required by federal regulation and agency policy. Our audit also identified over 12,000 expired grants more than 6 months past the grant end date that had not been closed. Of these grants, 67 percent had been expired for more than 2 years. We also found that 41 percent of the expired grants we sampled did not comply with grant requirements, including financial and programmatic reporting requirements and local matching fund

requirements. We recommended that the Department improve the timeliness of grant closeouts, drawdowns on expired grants, and management of unused grant funds on expired grants.

OJP disagreed with our finding that its practice of allowing grantees to draw down grant funds long after the end date of the grant period violated federal regulations as well as prudent grant management practices. Rather, OJP's position was that as long as the expense was incurred during the grant period, it would continue to pay the grantee even if the request for funds was made years after the end date of the grant. We disagreed with that position as a matter of law and as a matter of sound grant management. From our perspective, the timely closeout of grants is an essential financial management practice to identify any excess and unallowable funds that should be returned by the grantee, as well as unused funds that should be deobligated and put to better use.

Since its initial response, OJP has made progress in its grant closeout practices. However, we believe it needs to focus additional significant attention on this and other grant monitoring issues.

Finally, in this regard we note that OJP has been slow to staff an internal office intended to monitor and assess its thousands of grants. In January 2006, as part of the Department of Justice Reauthorization Act of 2005, Congress gave OJP the authority to create an Office of Audit, Assessment, and Management (OAAM). The purpose of the office was to coordinate internal performance audits of grantees and to ensure compliance with the terms of the grant. The office was envisioned as an effective internal auditing entity that would complement the external auditing provided by the OIG. The Act provided that OJP could use up to 3 percent of all grant funds each fiscal year to fund this oversight office.

Unfortunately, OJP has made slow progress in staffing this new office and in ensuring that its efforts were effective in the 2 years since passage of the Reauthorization Act. While it moved around several existing positions within OJP to create the office, it has not fully staffed the office and to date has not hired a permanent director. OAAM is comprised of three divisions, each managed by a deputy director. Only one OAAM division, the Audit and Review Division, is close to fully staffed. As of last week, according to OJP, 15 of that Division's 18 planned positions are filled. The Program Assessment Division has vacancies in 6 of its 13 positions. In addition, OJP has not hired any of the three staff positions for the Grants Management Division.

Our assessment is that OJP has devoted insufficient effort to ensuring that this office is adequately staffed to oversee and monitor OJP grants, despite the congressional directive and the importance of OAAM's mission.

IV. Conclusion

In sum, our reviews of the Coverdell grant program's external investigation certification requirement found that OJP has not effectively administered this requirement. While complying with the minimum requirements of the statute - to obtain a written certification from applicants that a government entity is in place to investigate allegations of serious misconduct or negligence affecting forensic results - OJP has been reluctant to do more to exercise effective oversight over this important external investigation certification requirement. These deficiencies mirror other problems we have found over the years with OJP's administration of other grant programs,

including inadequate monitoring of grantees and failure to adequately staff its office that is intended to monitor and assess recipients' use of OJP grant funds. We believe that OJP must improve its oversight of grant programs to ensure that the billions of dollars appropriated for important grant programs are effectively administered and monitored.

That concludes my statement and I would be pleased to answer any questions.

1 See U.S. Department of Justice Office of the Inspector General, Review of the Office of Justice Programs' Forensic Science Improvement Grant Program, Evaluation and Inspections Report I-2006-002 (December 2005).

2 See U.S. Department of Justice Office of the Inspector General, Review of the Office of Justice Programs' Paul Coverdell Forensic Science Improvement Grants Program, Evaluations and Inspections Report I-2008-001 (January 2008).