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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
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October 14, 2011

Via Electronic Communication

The Honorable Patty Murray
Co-Chair
Joint Select Committee on
Deficit Reduction
448 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Jeb Hensarling
Co-Chair
Joint Select Committee on
Deficit Reduction
129 Cannon House Office Building
Washington, D.C. 20515

Dear Chairwoman Murray and Chairman Hensarling:

I write today regarding potential savings that can be achieved in the federal budget through administrative restructuring, the reduction of duplicate and overlapping programs, and unnecessary and wasteful programs under the authority and jurisdiction of the Senate Committee on the Judiciary (Committee). As the Ranking Member of the Committee, I have conducted an initial review of the expenditures among the Department of Justice (DOJ), Department of Homeland Security (DHS), the Office of National Drug Control Policy (ONDCP), and all the sub-components of these agencies that fall within the jurisdiction of the Committee. This review has yielded a number of recommendations that I believe will assist the Joint Select Committee on Deficit Reduction (Deficit Committee) achieve its goal of reducing the federal budget deficit. While not an exhaustive list, the following recommendations represent a starting point for making significant reductions in the budgets of DOJ, DHS, and ONDCP. I have instructed my staff to continue to work through the budgets of these entities to determine where additional savings could be achieved.

I. Administrative Savings

The Department of Justice has 42 individual components, over 111,000 employees, and an annual operating budget over $27 billion.[1] Generally, DOJ's annual budget submission includes only top line items and does not provide certain, specific expenditures that would reveal duplication and overlap that currently exists. For example, funding at DOJ is often requested and allocated to specific funding categories. Some of these categories line up with agencies at DOJ, such as the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), and the Federal Bureau of Prisons (BOP). Further, some of the categories represent component entities within DOJ such as the National Security Division, Civil Division, and Criminal Division. However, some of the categories in the DOJ budget do not correspond to any particular component and instead reference general pools of funding that cover a number of sub-components such as funding for General Administration and General Legal Activities. These general pools of funding often mask the significant duplication, overlap, and general inefficiency

[1] DEP'T OF JUSTICE, FISCAL YEAR BUDGET PAGES, 1, 3 (2011).

that exist. Based upon staff research assembled through various sources, including a review of these general pools of funding at DOJ, I offer the following recommendations to the Deficit Committee in seeking to save American taxpayer dollars.

(1) Defund the Office of Legal Policy

The Office of Legal Policy (OLP) at DOJ is supposed to "develop and implement the Department's significant policy initiatives, handle special projects that implicate the interests of multiple Department components, coordinate with other interested Department components and other Executive Branch agencies, and serve as the primary policy advisor to the Attorney General and Deputy Attorney General."[2] OLP is also tasked with vetting candidates for federal judgeships and assisting with the confirmation process.

However, in recent years the proliferation of policy staff throughout various individual DOJ components and coordinate agencies has rendered the office duplicative and unnecessary. Recently, I asked Assistant Attorney General Lisa Monaco how many employees handling legal policy issues were employed in the National Security Division (NSD) at DOJ. Assistant Attorney General Monaco replied that NSD employs approximately 30 full time equivalent employees at NSD. This number of policy employees in one component entity of DOJ is nearly as many as the entire OLP (which employs somewhere between 25-30 full time employees). This phenomenon is not unique to NSD and in fact, policy staff permeates virtually every other coordinate office at DOJ including the Criminal Division, Civil Division, and Civil Rights Divisions, among others.

This wholesale increase in the number of policy staff at DOJ components has effectively rendered OLP unnecessary and duplicative. Further, the existing functions of OLP can easily be transferred to the component entities policy staff and the judicial nomination function could be returned to the Office of the Attorney General. Already in this Administration, DOJ attorneys outside OLP have conducted some of the vetting responsibilities that were formerly performed only by OLP attorneys. This corresponding cut to OLP will result in a net reduction of over 30 full time equivalent employees at DOJ. Defunding and eliminating OLP is the only way to stop the proliferation of policy staff at DOJ given it would be nearly impossible to cut policy staff at all component entities.

(2) Consolidate the two Offices of Professional Responsibility with the Office of Inspector General

Another area of duplication and overlap that can offer administrative savings is the oversight of law enforcement agents and attorneys at DOJ and the FBI. Currently, there are three separate entities that oversee internal investigations for wrongdoing by employees of DOJ and the FBI. Those entities are the Office of Inspector General (OIG), the DOJ Office of Professional Responsibility (DOJ/OPR), and the FBI Office of Professional Responsibility (FBI/OPR).

DOJ/OPR was created in 1975 "as a response to the revelations of ethical abuses and misconduct by Department of Justice officials during the Watergate scandal."[3] DOJ/OPR has

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[2] DEP'T OF JUSTICE www.justice.gov/olp/ (last visited Oct. 7, 2011).
[3] DEP'T OF JUSTICE www.justice/gov/opr/about-opr.html (last visited Oct. 7, 2011).

exclusive jurisdiction to investigate "allegations of misconduct involving Department attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice."[4] FBI/OPR was originally part of the FBI's Inspection Division, but was reorganized into a freestanding entity reporting directly to the FBI Deputy Director in March 1997.[5] FBI/OPR is tasked with investigating misconduct of FBI agents and is also tasked with proposing and deciding certain disciplinary actions against FBI agents. The third leg of oversight of agents and attorneys is the OIG. The DOJ OIG is tasked with detecting waste, fraud, abuse, and misconduct involving DOJ programs and personnel.[6] The OIG also has jurisdiction to review "the programs and personnel of the FBI, ATF, BOP, DEA, USAO, USMS, and all other organizations within the Department, as well as contractors of the Department and organizations receiving grant money from the Department."[7] Despite this broad authority, the OIG is statutorily prohibited from investigating certain misconduct at DOJ. For example, the OIG is required to "refer to the Counsel, Office of Professional Responsibility of the Department of Justice, allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice, except that no such referral shall be made if the attorney is employed in the Office of Professional Responsibility."[8] All other allegations made against DOJ attorneys and investigators fall to the OIG. However, OIG does maintain the right of first refusal of cases of non-frivolous allegations of misconduct regarding FBI personnel, with cases not selected by OIG then being referred to FBI/OPR.[9]

Each office employs a significant number of staff to investigate allegations of misconduct and often times reports are issued jointly by overlapping offices.[10] In fact, one of the stated policy reasons for expanding the jurisdiction of the DOJ OIG over FBI cases was to "ensure integrity within FBI's disciplinary process through outside supervision."[11] However, in the "vast majority of cases, DOJ/OIG elects not to intervene and FBI/OPR investigates the matter without any further reporting requirements."[12] As a result, there are no less than three entities inside DOJ that oversee allegations of wrongdoing and misconduct.

Significant savings could be achieved by restructuring the oversight apparatus at DOJ to eliminate duplication and overlap by consolidating all investigative responsibilities at DOJ in the OIG. While DOJ does not provide separate budget line items for DOJ/OPR and FBI/OPR, each office costs tens of millions of taxpayer dollars annually. For example, DOJ/OPR is funded as part of the Executive Support/Professional Responsibility portion of DOJ's budget, which also includes OLP and the Office of Dispute Resolution (ODR), Office of Information Policy (OIP),

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[4] *Id.*
[5] DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL A REVIEW OF ALLEGATIONS OF A DOUBLE STANDARD OF DISCIPLINE AT THE FBI, CHAPTER TWO (2002).
[6] DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, SEMIANNUAL REPORT TO CONGRESS, Oct 1, 2010 – March 31, 2011 *available at* http://www.justice.gov/oig/semiannual/1105/final.pdf (last visited Oct. 11, 2011).
[7] *Id.*
[8] 5 U.S.C. App. At 8E.
[9] *See* GRIFFEN B. BELL & LEE COLWELL, STUDY OF THE FBI'S OFFICE OF PROFESSIONAL RESPONSIBILITY (2004) at 10.
[10] *See e.g.* DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, OFFICE OF PROFESSIONAL RESPONSIBILITY, AN INVESTIGATION INTO REMOVAL OF NINE U.S. ATTORNEYS IN 2006, SEPTMEMBER 2008; *see also* MONICA GOODLING ET AL., AN INVESTIGATION OF ALLEGATIONS OF POLITICIZED HIRING (2008).
[11] *See* Study of the FBI's Office of Professional Responsibility, *supra* note 9 at 13.
[12] *Id.*

and the Professional Responsibility Advisory Office (PRAO) which collectively received over $12.7 million in FY2011. The DOJ OIG was funded at nearly $84.4 million in FY2011.[13] While FBI/OPR funding numbers were not specifically included in a line item, it is likely that some savings would be achieved through consolidation of FBI/OPR as well. One entity, focusing directly on overseeing the conduct and operation of DOJ and the FBI would simplify the administration of oversight and save taxpayer dollars; however amendments to section 8E of the Inspector General Act of 1978, as amended, would be required to implement these changes.

(3) Defund the National Drug Intelligence Center

The National Drug Intelligence Center (NDIC) was first proposed in 1990 and opened in 1993.[14] The NDIC was designed to be a resource for federal, state, and local law enforcement working to stop the flow of illicit drugs into the United States by coordinating and resolving duplication problems.[15] The Government Accountability Office (GAO) issued a report in 1993 that found that the NDIC was one of nineteen intelligence centers focusing on drug control. However, over time NDIC has come to duplicate significant operations that occur at existing facilities such as the Drug Enforcement Administration's (DEA) El Paso Intelligence Center (EPIC). As a result, in 2005 the White House recommended slashing the NDIC's budget to facilitate "the shutdown of the center and transfer of its responsibilities…to other Department of Justice elements."[16] However, in FY2011, the NDIC received nearly $44 million and continued to employ over 230 personnel.[17] The current FY2012 budget submitted to Congress by President Obama recommends a 43% reduction in funding for NDIC to $25 million while, "DOJ is developing a role for NDIC that will make the best use of NDIC's personnel and resources."[18] The House of Representatives has already decided, in a bi-partisan 262-169 vote, to cut funding for NDIC in FY2012 voting on an amendment to cut the NDIC's proposed $34 million budget for FY2012 and using those resources to pay down the national debt.[19] The Deficit Committee should accelerate the effort and defund the NDIC by consolidating activities of NDIC at the DEA's EPIC center and other components saving nearly $44 million a year.

(4) Restructure the Office of National Drug Control Policy

Significant savings can be achieved by returning the Office of National Drug Control Policy (ONDCP) to its original mission of coordinating national drug control policy and drug control budgets, by removing grant administration from ONDCP, by significantly reducing or eliminating the National Youth Anti-Drug Media Campaign funding, and reducing the size of ONDCP.

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[13] DEP'T OF JUSTICE, FISCAL YEAR BUDGET, *available at* http://www.justice.gov/jmd/2012justification/pdf/fy12-oig-justification.pdf.

[14] *See* U.S. GOV'T ACCOUNTABILITY OFFICE, DRUG CONTROL: COORDINATION OF INTELLIGENCE ACTIVITIES (1993) *available at* http://archive.gao.gov/t2pbat6/149104.pdf.

[15] *Id.*

[16] Bret Schulte, *A Drug War Boondoggle,* U.S. NEWS & WORLD REPORT, May 1, 2005, *available at* http://www.usnews.com/usnews/news/articles/050509/9ndic.htm

[17] DEP'T OF JUSTICE, Budget and Performance Summary, FY2012, page 38.

[18] *Id.*

[19] Daniel Malloy, *Johnstown Drug Intelligence Center Targeted for Closure*, PITTSBURGH POST-GAZETTE , Feb. 18, 2011.

The Anti-Drug Abuse Act of 1988 created the Office of National Drug Control Policy for the purpose of implementing a national strategy on drug-control and certifying federal drug-control budgets.[20] ONDCP's mission was further expanded in 1994 as part of the Violent Crime Control and Law Enforcement Act of 1994 to include an assessment of budgets and resources related to the National Drug Control Strategy.[21] Subsequent authorizations, including the Drug Free Communities Act of 1997,[22] the Drug Free Media Campaign Act of 1998,[23] and the Office of National Drug Control Policy Reauthorization Act of 1998,[24] and 2006[25] expanded the jurisdiction and added additional requirements to ONDCP's statutory mandate. Further, additional duties were placed on ONDCP through Executive Orders, such as Executive Order 13165.[26]

The original 1988 authorization creating ONDCP also included the High Intensity Drug Trafficking Areas (HIDTA) program which was designed to facilitate cooperation among federal, state, local, and tribal law enforcement agencies to share information on enforcement activities.[27] The goal of the HIDTA program was to provide resources to the areas hit hardest by the trafficking and use of illegal drugs. The HIDTA program was also subsequently expanded in the ONDCP Reauthorization Act of 2006. For FY2011 ONCDP was anticipated to allocate nearly $209 million to various federal, state, local, and tribal law enforcement agencies in the 28 designated HIDTA regions.

In addition to general coordination and evaluation of the entire Federal Government's drug control policy budget, ONDCP is tasked with issuing the National Drug Control Strategy and with approving any change in national drug policy. ONDCP requires heads of federal agencies to notify ONDCP in writing prior to any proposed change in drug control policy.[28] These core missions of drug control budget and policy oversight are worthwhile endeavors. However, over the years, the additional duties and mandates placed upon ONDCP have deviated ONDCP from its core budget and strategic government-wide drug control policy mission.

The expansions began as ONDCP's grant funding authority was expanded beyond the HIDTA program in 1997 with the passage of the Drug Free Communities Act which created the Drug Free Communities (DFC) Support Program.[29] Reauthorized in 2001 and 2006, the DFC

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[20] OFFICE OF DRUG CONTROL POLICY, AUTHORIZATIONS LANGUAGE, *available at* http://www.whitehouse.gov/ondcp/authorization-language

[21] *Id.*

[22] Pub. L. No. 105-20, 111 Stat. 224, codified at 21 U.S.C. § 1521 et seq.

[23] Pub. L. No. 105-61, 111 Stat. 1272, codified at 21 U.S.C. § 1801 et. seq.

[24] Pub. L. No. 105-277, 112 Stat. 2681-670, codified at 21 U.S.C. § 1701 note.

[25] Pub. L. No. 109-469, 120 Stat. 3502, codified at 21 U.S.C. § 1701 note.

[26] Exec. Order No. 13165, (2000), *available at*http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000_register&docid=fr14au00-144.pdf.

[27] OFFICE OF DRUG CONTROL POLICY, HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM, *available at* http://www.whitehouse.gov/ondcp/high-intensity-drug-trafficking-areas-program

[28] In August 2011, ONDCP issued a revised circular to all Heads of Executive Departments and Establishments regarding policy coordination. This circular revised a 2007 circular and requires heads of agencies to "notify the Director [of National Drug Control Policy] in writing regarding any proposed change in policies relating to the activities of that agency under the National Drug Control Program prior to implementation of such change." The revised circular is available at http://www.whitehouse.gov/sites/default/files/ondcp/about-content/2011_policy_coordination_circular.pdf and cites 21 U.S.C. § 1704(b)(2006).

[29] OFFICE OF DRUG CONTROL POLICY, GRANT PROGRAMS, *available at* http://www.whitehouse.gov/ondcp/grants.

program provides funding to local communities in all 50 states recognizing that local problems need local, community-based solutions.[30] The DFC program requires funded coalitions to employ strategies aimed at reducing drug use and is uniquely structured to ensure effectiveness, outcomes and sustainability. It requires a community to demonstrate local commitment before becoming eligible to receive federal funds. All grantees are required to provide a dollar-for-dollar match in non-federal funds, up to the maximum grant amount of $125,000 per year. The required emphasis on local data collection, community buy-in, and participation among multiple sectors, including schools, law enforcement, parents, media, and business, improves a coalition's outcomes and sustainability. For FY2011, ONDCP awarded $12.3 million in new DFC grants to 86 communities in addition to over $76 million to 607 currently funded DFC programs.

The National Youth Anti-Drug Media Campaign created another expansion for ONDCP, but with questionable results considering the large amount of taxpayer dollars spent. The Drug Free Media Campaign Act of 1998, specifically tasked ONDCP with conducting a national media campaign for the purpose of reducing and preventing drug abuse.[31] However, after years of operating the campaign, a GAO report issued in 2006 concluded that an evaluation of the campaign did not find the Youth Anti-Drug Media Campaign effective at reducing youth drug use.[32] Since inception, the national media campaign has spent over $1.5 billion and has achieved mixed results at reducing drug behavior among American youth.[33]

The original mission of ONDCP—to coordinate a national strategy to combat illegal drug use—is working. The continued issuance of the National Drug Control Strategy and coordination of drug policy programs and budgets by ONDCP is a laudable mission and one that should be continued. However, given the high profile problems associated with the Youth Anti-Drug Media Campaign, and the potential for duplication and overlap among grants issued by both ONDCP and DOJ, ONDCP should be restructured to effectuate savings to taxpayers.[34]

Specifically, the Deficit Committee should restructure ONDCP to meet the original mission: the coordination of policy and budgets for the U.S. Government's efforts against illegal drugs. The Deficit Committee should remove from ONDCP's authority direct administration of federal grant programs impacting drug policy that have significant overlap with other grant programs. For example, the HIDTA program has significant overlap with drug prevention grants to law enforcement issued by DOJ under the Byrne Justice Assistance Grant program (Byrne/JAG). Similarly, DFC funding could be easily administered by DOJ and would provide direct linkage to a comprehensive grant making strategy at DOJ focusing on drug enforcement and drug demand reduction. By consolidating grant making programs at DOJ and removing them from ONDCP, savings could be achieved by consolidating offices awarding grants. Further, this consolidation would provide ONDCP the opportunity to focus on its core mission without the need for oversight and continued maintenance of grant awards.

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[30] *Id.*

[31] U.S. GOV'T ACCOUNTABILITY OFFICE GAO-06-818 *YOUTH ANTI DRUG MEDIA CAMPAIGN available at* http://www.gao.gov/new.items/d06818.pdf

[32] *Id.*

[33] Donna Leinwand, *Anti-drug Advertising Campaign a Failure, GAO report says*, USA TODAY, August 29, 2006 *available at* http://www.usatoday.com/news/washington/2006-08-28-anti-drug-ads_x.htm

[34] ONDCP's annual budget has remained consistent over the years. However, for FY2012 the current administration proposed a significant reduction to the ONDCP budget by proposing $23.4 million, which was down significantly from the FY2010 enacted budget of $29.5 million.

Finally, the Deficit Committee should consider significant reductions in funding for the National Youth Anti-Drug Media Campaign. For years, the Media Campaign was funded at significant levels. However, following negative evaluations from external sources and a negative review from the Government Accountability Office, the Media Campaign has faced significant cuts in funding. Most recently, the Media Campaign was zeroed out by the House and Senate Appropriations Committee. The Media Campaign is authorized funding at $210 million per year, with the authorization expiring in FY2011. The Media Campaign was funded at $35 million in FY2011, but past appropriations have funded the Media Campaign at $45 million in FY2010, and $70 million in FY2009. Significant and long-term savings could be achieved by reducing or eliminating funding for the Media Campaign and returning ONDCP to its core mission of coordinating national drug policy and overseeing the national drug policy budget, especially since the evidence shows that the Media Campaign has not achieved the goal of reducing youth drug use that it was established to advance.

(5) Merge Grant Awarding Offices

The Office of Justice Programs (OJP) is a component of DOJ that focuses on providing resources to federal, state, local, and tribal justice systems across the United States. OJP was created in 1984 and was the successor to the Office of Law Enforcement Assistance which existed from 1965-1968, and from 1968-1984 the successor to the Law Enforcement Assistance Administration (LEAA) which was established by the Omnibus Crime Control and Safe Streets Act of 1968. Various components of OJP were last reorganized as part of the Justice System Improvement Act of 1979 which created the Bureau of Justice Statistics (BJS). The last significant overhaul of OJP occurred during its creation in 1984 which merged.

OJP works in "partnership with the justice community to identify the most pressing crime-related challenges confronting the justice system and to provide information, training, coordination, and innovative strategies and approaches for addressing these challenges."[35] Headed by an Assistant Attorney General, OJP's mission is to "increase public safety and improve the fair administration of justice across America through innovative leadership and programs."[36] In a nutshell, OJP is essentially the arm of DOJ that is focused on providing federal resources to state, local, and tribal governments—mostly through the issuance of grants and justice related research.

Specifically, OJP divides its mission into nine related subtopics: (1) American Indian & Alaska Native Affairs, (2) Corrections, (3) Courts, (4) Juvenile Justice, (5) Law Enforcement, (6) Research, Statistics & Evaluation, (7) Substance Abuse & Crime, (8) Technology to Fight Crime, and (9) Victims of Crime.[37] These subtopics are split among six bureaus and offices of OJP that oversee the administration of DOJ programs. Those six bureaus and offices are Bureau of Justice Administration (BJA), BJS, National Institute for Justice (NIJ), Office of Victims of Crime (OVC), Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Each of these bureaus and offices at OJP has specific programs that authorize them to administer grants to state

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[35] DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, *available at* http://www.ojp.usdoj.gov/about/about.htm
[36] DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, *available at* http://www.ojp.usdoj.gov/about/mission.htm
[37] *Id.*

and local governments as well as third party grant recipients such as non-governmental organizations and private entities. For example, one entity, OJJDP, has eight funding opportunities including: Drug Court Discretionary Grant Program, Enforcing Underage Drinking Laws, Formula Grant Program, Gang Resistance Education and Training Program (GREAT), Juvenile Accountability Block Grant, Secure Our Schools, Incentive Grants, and Tribal Youth Program. This list goes on and on for each of the Bureaus at OJP.

Despite the various bureaus and offices at OJP and the extensive experience OJP has in issuing grants, Congress decided to create separate offices outside of OJP. Specifically, in 1994, Congress passed the Violent Crime Control and Law Enforcement Act[38] which created the Office of Community Oriented Policing Services (COPS), a freestanding entity within DOJ. COPS was tasked with administering community oriented policing grants to state and local jurisdictions across the country. COPS was originally authorized funding for FY-1995-FY2000 in the following increments: FY1995 $1.332 billion, FY1996 $1.85 billion, FY1997 $1.95 billion, FY1998 and FY1999 $1.7 billion, and FY2000 $268 million. COPS continued to receive funding but was not expressly reauthorized until 2005.[39] Congress significantly overhauled the COPS program in 2005 restructuring the various grant programs authorized under the initial 1994 Act into one grant program. Despite this statutory change to the COPS program, Congress has continued to fund specific grant programs annually under COPS.[40] COPS authorization again expired in FY2009.

Congress also created another standalone grant writing entity, the Office of Violence Against Women (OVW) as part of the Violence Against Women Act of 1994 (VAWA). OVW was created in 1995 as a standalone entity within DOJ in "recognition of the severity of crimes associated with domestic violence, sexual assault, and stalking."[41] OVW administers financial and technical assistance to state and local law enforcement and other eligible entities across the United States focusing on ending domestic violence, dating violence, sexual assault, and stalking. OVW "administers three formula-based and 18 discretionary grant programs, established under VAWA and subsequent legislation."[42]

Based upon a review of both COPS and OVW, it appears that the primary purpose of both entities is to award funding for the purposes Congress outlined in each of the programs authorizing legislation. However, OJP is also tasked with the primary purpose of distributing grants and authoring justice related research. While it is understandable that Congress has prioritized some programs at DOJ, given the current fiscal situation the Federal Government faces, the purpose Congress intended in elevating community oriented policing and violence against women can be achieved without the need for standalone entities in DOJ. Administrative savings could be achieved by moving COPS and OVW into the existing OJP structure. COPS has continued to receive budgetary and personnel increases over the last four years. Specifically, COPS received $37 million in FY2011 and FY2010, for salaries and expenses, up from $30 million in FY2009. This money supported 188 authorized FTE positions in FY2011, up from

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[38] Pub. L. No. 103-322 (Sept. 13, 1994).
[39] Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109162, 119 Stat. 2960 (Jan. 5, 2006).
[40] CONG. RESEARCH SERV AUTHORIZATION AND APPROPRIATION HISTORY FOR THE DEPARTMENT OF JUSTICE GRANT PROGRAMS, (2011).
[41] DEP'T OF JUSTICE, ABOUT THE OFFICE, *available at* http://www.ovw.usdoj.gov/overview.htm
[42] *Id.*

166 in FY2009. Similarly, OVW received $16 million in FY2011, up from $14 million in FY2009; and OVW has sought a significant increase to $23 million in FY2012. This funding has supported 70 FTE positions in FY2011, up from 65 FTEs in FY2009.

It is likely that significant savings could be achieved by returning the functions managed by COPS and OVW to OJP. Reduction of duplication and overlap would result from such a restructuring, leading to administrative savings. Further, removing duplication and overlap among various grant writing entities at DOJ could lead to savings in grant funding given that the potential for duplication and overlap exists when multiple agencies issue and award similar grants. Such a change would require statutory changes to address the restructuring and could be part of any possible reauthorization of such programs given that both authorizations have currently expired.

II. Reform Department of Justice Grant Programs

(1) Background and Support for Grant Reform

Each year the Department awards billions of dollars in grants to state, local, and tribal governments, in addition to interested entities such as non-governmental organizations, non-profit organizations, and other similar entities. Despite the volume of federal taxpayer dollars that are awarded annually, DOJ has been woefully deficient in the exercise of oversight and accountability of federal grant spending. For the past decade, grant management has been one of the DOJ Inspector General's Top Management and Performance Challenges at DOJ.[43] In 2009, the OIG increased scrutiny over grant management as DOJ increased the amount of taxpayer money expended on federal grants, which resulted from the American Recovery and Reinvestment Act (aka the President's Stimulus bill). The OIG had serious concerns given DOJ was tasked with awarding $4 billion in grants under the Stimulus bill at the same time it was tasked with awarding $3 billion in grant funding under DOJ's annual appropriations.[44]

To remedy these concerns, the OIG issued a report in 2009 called *Improving the Grants Management Process* which made recommendations to DOJ on how to strengthen the oversight of grant programs. While DOJ "responded positively" to these recommendations, subsequent audits have continued to reveal problems with grants. For example, a May 2010 review of the COPS program found that COPS used "inaccurate formulas in developing scores and ranks of applicants, which resulted in the allocation of grants to 45 entities that should not have received grants."[45] The OIG found similar problems with the calculations in grant awards to grantees by OVW.[46] Further, despite the OIG pointing out problems with grants, all too often, the entities at DOJ that provide grants are slow to recoup any taxpayer dollars that have been awarded, misused, and then questioned by the OIG. In one instance, OVW failed to follow-up with the OIG regarding nearly $37 million in questioned costs that occurred in 2006—they were still open as unresolved nearly 4 years later.[47]

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[43] *See* DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL TOP MANAGEMENT AND PERFORMACE CHALLENGES IN THE DEPARTMENT OF JUSTICE, (Nov. 9, 2010) at 18.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id* at 20.

I share the OIG's serious concerns about DOJ's lackluster administration and oversight of grant programs and its ability to award grant funding in an accurate manner. In this Congress, as the Committee has sought to reauthorize grant funding for various programs, I have reviewed relevant OIG audits of both DOJ programs and individual entities awarded funding under those DOJ programs. Shockingly, nearly every time a DOJ program or individual grantee is reviewed, the OIG finds faults with the general management of the grants or some serious deficiency with the grant program. For example, at a recent hearing on the pending reauthorization of the Trafficking Victims Protection Act (TVPA), my staff reviewed all audits conducted by the OIG on individual grant recipients awarded funding from DOJ under the TVPA. Not surprisingly, these grants spanned a multitude of programs at DOJ that were awarded from various offices from OJP to OVW. The one commonality of these programs was the propensity of these grant recipients to get things wrong.

My staff reviewed nine individual grant audits—the total number of grantees audited by OIG in the last five years—related to TVPA grantees and each of the nine reviewed had some form of unallowable costs, failed matching requirement, or other deficiency.[48] Specifically, the OIG found "grantees had not met or were not accomplishing one or more project goals", grantees were not maintaining "adequate accounting records to determine if the funds were drawn down appropriately", and making expenditures were "either not authorized; not properly classified and supported; not accurately recorded; not reasonable, allocable, or allowable; not necessary to the project; or not in accordance with applicable laws, regulations, guidelines, and terms and conditions of cooperative agreements."[49] As an example, at a hearing on the reauthorization of TVPA, I asked the Principal Deputy Assistant Attorney General for OJP about one audit which questioned nearly $1.3 million out of $1.7 million awarded, including all salaries and fringe benefits of those employed by the grantee. The response was that the grant in question constituted a failure and that OJP was working to correct these abuses in the future.

Unfortunately, this is not an isolated problem with grants authorized under TVPA. Any review of both the programmatic audits and external audits of individual grantees conducted annually by the OIG produces a stunning picture.[50] If OIG's random selection of audited grantees universally uncovers unauthorized expenditures and other errors, then there must be a larger problem with the operation of the grant-making process and the grantees' use of the funds in general.

For example, a similar review of VAWA grants conducted by my staff in preparation for a recent Committee hearing determined that 21 of 22 grant reviews from 1998-2010 revealed some form of significant violation, including unauthorized and unallowable expenditures, sloppy record keeping, and failure to report in a timely manner. Shockingly, one of these audits questioned nearly 93% of spending on a $900,000 grant.[51] Another audit questioned $500,000 of

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[48] *See generally* DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, MANAGEMENT OF THE OFFICE OF JUSTICE PROGRAMS' FOR TRAFFICKING (July, 2008).

[49] *Id.* at xi.

[50] The reports are broken down by DOJ entity and external audits by program, *available at* http://www.justice.gov/oig/reports/index.htm.

[51] *See* DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, OFFICE OF VIOLENCE AGAINST WOMEN LEGAL ASSISTANCE PROGRAM ADMINISTERED BY THE COMMUNITY LEGAL AID SOCIETY, INC. WILMINGTON, DELAWARE (July 2010) at i.

$680,000.[52] Taken together the problems encountered on TVPA and VAWA are representative of nearly every audit of grantees awarded funding by DOJ. Accordingly, it is imperative that any review of funding and expenditures from DOJ must include a review of grant expenditures and grant management. Moreover, the existence of these problems in grant programs authorized by OVW supports the conclusion that that entity's functions could be rolled into OJP without reducing the actual assistance that is provided through VAWA grants.

(2) Eliminate Grant Programs Appropriated but not Authorized

One simple solution the Deficit Committee could utilize to bring an immediate impact to DOJ grant programs is to address the divide between programs that are authorized by the Committee and those funded by the Appropriations Committee. My staff has reviewed grant programs that received appropriations in FY2010 that were not authorized and identified nearly $1 billion in annual expenditures. These programs have not been revisited by the Committee yet receive substantial amounts of taxpayer dollars. In failing to reauthorize programs, the grant programs continue to receive funding without the review by the Committee to determine whether the programs original goals have been met, whether the program achieved the results that were expected, whether proper oversight has been conducted over entities receiving grant funds, whether continued funding is necessary to achieve the program goals, and whether changes or the elimination of the program is necessary.

The Deficit Committee should give serious consideration to disallowing the Appropriations Committee from approving spending on any new or expired programs without prior action of the relevant authorizing committee. Given that many significant programs are included in the list of unauthorized but appropriated programs, the Deficit Committee should consider allowing a grace period of one Congress prior to enacting the ban on appropriating unauthorized programs. This grace period would afford the authorizing committees the opportunity to review programs and determine whether they should be reauthorized. It would also ensure that the authorizing committees have had an opportunity to determine if applicable restrictions, limitations, and oversight mechanisms are in place.

(3) Consolidate Duplicative or Overlapping Grant Programs

A more difficult, but necessary option for the Deficit Committee would be to consider a program by program review of grants administered by various entities at DOJ and defund duplicative or overlapping programs. For example, one area of structural duplication and overlap at DOJ was pointed out by the Congressional Research Service (CRS). In a June 1, 2011 report titled, *Community Oriented Policing Services (COPS): Current Legislative Issues*, CRS discussed the overlap and duplication between COPS and OJP. Citing a 2003 OIG audit of the COPS program, CRS determined that "some of OJP's and COPS' grant programs could be used for the same purpose."[53] CRS also found that "it appears that state and local governments could use JAG [Justice Assistance Grants administered by DOJ] funds for the same purpose as COPS."

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[52] *See* DEP'T OF JUSTICE, OFFICE OF INSPECTOR GENERAL, OFFICE ON VIOLENCE AGAINST WOMEN GRANT TO ENCOURAGE ARREST POLICIES AND ENFORCEMENT OF PROTECTION ORDERS AWARDED TO ASOTIN COUNTY, WASHINGTON (March 2009).

[53] NATHAN JAMES, CONG. RESEARCH SERV., COMMUNITY ORIENTED POLICING SERVICES (COPS): CURRENT LEGISLATIVE ISSUES\(2011)

The COPS office defended the potential duplications by informing CRS that "law enforcement agencies want to have different grant programs to apply to because it provides them with a wider variety of funding options, which allows them to implement programs that reflect their vision of policing."[54] CRS concludes its review by questioning whether COPS should become part of OJP for the administration of grants, and whether Congress should consider amending authorizing legislation to ensure state, local, and tribal governments do not use duplicate funding for the same purpose.[55] Given the significant federal expenditures on both the COPS program (nearly $792 million in FY2011) and Byrne/JAG grants (nearly $ 430 million for FY2011) significant savings could be achieved by reducing this potential duplication and overlap. While this one example highlights the duplication and overlap that currently exists, there are many other examples of duplicative funding that could also render significant savings.[56]

(4) Enact Statutory Changes to Ensure Grantee Accountability

Perhaps the single most effective way to ensure that taxpayer dollars are protected by federal grant programs is to provide significant oversight and accountability provisions in law. As annual audits have continually pointed out, waste, fraud, abuse, and mismanagement of federal grant programs continue to run rampant, particularly in grants provided to state, local, tribal governments and non-governmental and non-profit organizations. For example, the OIG recently issued a report regarding shocking conference expenditures at DOJ that found grants awarded by DOJ components were utilized to pay for outrageous conference expenditures. The OIG found that DOJ authorized the expenditure of taxpayer dollars on conferences with virtually no accountability, which led to taxpayers picking up the tab for $16 muffins, $32 crackerjacks, beef wellington appetizers, and $5 sodas. Perhaps more shocking than the expenditures was the brazen attitude of DOJ employees interviewed by the OIG. When questioned by OIG officials as to why a conference was held at the four-star JW Marriott hotel in Washington D.C., the official from the Executive Office of U.S. Attorneys stated that "they selected the J.W. Marriott hotel because it was the only four or five star venue that bid for the contract. The EOUSA official also told [OIG] that only a four or five star hotel was capable of providing the level and quality of services expected by senior executives and other political appointees."[57] This arrogant view of the taxpayer dollars that senior government officials believe they are entitled to spend on themselves is likely behind the increase in conference expenditures under the current administration. Conference spending has nearly doubled since the new leadership took over in 2009 from $47.8 million on conference expenditures in FY2008 to $91.6 million in FY2010.

Reigning in conference expenditures is only one small part of holding grantees and the managers at DOJ accountable. Recently, on legislation reauthorizing TVPA, I put forth a ten point grant oversight and accountability package designed to reign in waste, fraud, and abuse in grant programs. This package includes the following provisions: (1) 10% annual audit requirement of grantees by the OIG, (2) mandatory 2-year exclusion for any grantee found to

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[54] *Id*,

[55] *Id* at 28.

[56] *See generally* NATHAN JAMES, CONG. RESEARCH SERV., OFFENDER REENTRY: CORRECTIONAL STATISTICS, REINEGRATION INTO THE COMMUNITY, AND RECIDIVISM (2011) (discussing duplication, overlap, and expired funding sources for Federal Offender Reentry Programs and the overlap between DOJ, HHS, HUD, and DOL funding).

[57] DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, AUDIT OF DEPARTMENT OF JUSTICE CONFERENCE PLANNING AND FOOD AND BEVERAGE (September, 2011).

have unresolved audit findings outstanding for six months, (3) prioritization of grants to those without past negative audit findings, (4) reimbursement to the federal treasury by the Attorney General for funding any grantee that should be excluded, (5) matching requirements with limitations on in-kind contributions—providing skin in the game for grantees, (6) a cap on administrative expenses at DOJ, (7) a limitation on conference expenditures and requiring prior approval of conference expenditures by the Deputy Attorney General, (8) a prohibition on grantees lobbying Congress, DOJ or state, local, or tribal governments with grant money, (9) annual certifications to Congress by the head of the grant awarding agency, and (10) a restriction baring the Attorney General from providing grants to non-profit entities that hold money off-shore for the purposes of avoiding unrelated business income tax. While each of these provisions in the amendments seems minor, they each respond to a specific area of fraud that has come to light from OIG audit reviews.

Most notably, I will highlight the troubling practices that led to the inclusion of the limitation on non-profit charities holding money off-shore. This provision was the result of an investigation I conducted into the Boys and Girls Clubs of America (BGCA), the national umbrella organization for thousands of local clubs around the country. For a number of years, the BCGA was granted an authorization by the Committee providing direct appropriations. These authorizations expired back in FY2007, but funding has continued to flow to BGCA in the form of competitive grants from other DOJ programs. In 2010, the Committee considered legislation to reauthorize the grant program that essentially earmarked funds for BGCA.

Since these earmark funds would have been in addition to any funds obtained through the competitive process, I joined three Committee colleagues in asking a series of questions of the BGCA.[58] In responses to our inquiry, we found that the BCGA, despite closing hundreds of clubs nationwide, held nearly $222 million in investments, of which $54 million was in offshore investments and nearly another $54 million in partnerships.[59] When asked why the $54 million was held offshore, the BGCA responded that its offshore investments were utilized to "avoid issues with Unrelated Business Income Tax (UBTI) generated by hedge funds that use leverage." The BGCA continued that such utilization of offshore hedge funds was not uncommon among non-profit organizations.

While the Boys and Girls Club is correct that utilizing such a strategy is not a violation of federal tax law, it raises the question why an organization with hundreds of millions of dollars, tens of millions of which are held off–shore to avoid taxes, should receive priority for federal funds. Given the current fiscal crisis, non-profit charities holding substantial sums offshore should not be eligible for further federal grant funding. The Committee agreed and included legislative language prohibiting non-profit charities from obtaining grant funds on subsequent legislation brought up in the Committee reauthorizing the Second Chance Act. I believe such a requirement—along with the other nine restrictions and accountability provisions—should extend to all federal grant programs. While such requirements may not achieve direct savings, the derivative benefits of employing such accountability requirements across all federal grants would be significant.

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[58] *See* LETTER FROM SENATOR CHARLES E. GRASSLEY, TOM COBURN, JON KYL, & JOHN CORNYN TO ROBERT J. BACH, CHAIRMAN, BOYS & GIRLS CLUBS OF AMERICA. (March 10, 2012) (on file with author).

[59] *See* LETTER FROM ROBERT J. BACH, CHAIRMAN, BOYS & GIRLS CLUBS OF AMERICA SENATOR CHUCK GRASSLEY, TOM COBURN, JON KYL, & JOHN CORNYN. (April 19, 2010) page 2 and tab 44, 45 (on file with author).

III. General Budgetary Reductions

Another easy area to achieve significant results is in general reductions to the ever expanding budgets of the Federal Government. DOJ is no stranger to funding increases. Over the past five years, DOJ has received increases in funding nearly every year. Additional savings could be reached by returning the DOJ and its various components to FY2009 funding levels. In its FY2012 request, the DOJ asked for more than $30.3 billion.[60] This represents a 4.9% increase over the appropriated amount for FY2011 and a 9.8% increase over the FY2009 amount.[61]

Further savings could also result by comparing the FY2012 request for each DOJ component with the FY2009 appropriated level and choosing the lesser amount of the two. This simple exercise yields a surprising result: five of the thirty-three budgetary entities within DOJ requested less for FY2012 than they were awarded in FY2009.[62]

One of these five entities is the DEA, which requested $141.4 million less than it received in FY2009.[63] If a critical law enforcement component is successfully executing its mission with fewer funds, then it is reasonable to believe that other governmental agencies can likely do the same. By simply returning to the FY2009 appropriation level and by substituting the FY2012 amount for those entities which requested less than a FY2009 amount, Congress could save almost $1.6 billion annually.[64] This represents a 5.38% reduction in the DOJ's budget compared to this year, FY2011.[65]

IV. Additional Cost Saving Measures

(1) Eliminate Diversity Visa Program

The Committee also has jurisdiction over the Diversity Visa program, created in 1990, that offers 50,000 visas each year to natives of countries from which immigrant admissions are lower than that of other countries. To be eligible for a Diversity Visa, the Immigration and Nationality Act only requires two years of training or experience in an occupation. Until last month, there has been no fee to apply and recipients of a Diversity Visa are selected in a random drawing. It has been argued that the original intent of the program is no longer serving its purpose in that the U.S. is significantly diverse.

The Diversity Visa has been the subject of numerous reports detailing fraud and abuse within the system. Unscrupulous businesses and attorneys have falsely charged individuals a fee in exchange for a diversity visa. A 2007 GAO report detailed such an instance where "visa agents in Bangladesh ha[d] intercepted applicants' documents and charged ransoms of up to $20,000 or coerced applicants into sham marriages."

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[60] DEP'T OF JUSTICE, BUDGET AND PERFORMACE SUMMARY FISCAL YEAR BUDGET PAGES 2012, JUSTICE MANAGEMENT DIVISION, Feb. 2011, *available at* http://www.justice.gov/jmd/2012summary/ (last visited Oct. 10, 2011).
[61] See Chart 1.
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*

In addition to the rampant fraud, there are national security concerns related to the Diversity Visa, specifically the 2002 case of Hesham Ali Hedayet, an Egyptian diversity visa immigrant who shot and killed two people at Los Angeles International Airport. In 2004, the Department of State Deputy Inspector General stated the program "contains significant vulnerabilities to national security." A 2007 GAO report found that, at 6 out of 11 consular posts, "widespread use of fake documents, such as birth certificates, marriage certificates, and passports, presented challenges when verifying the identities of applicants and dependents. Difficulty in verifying identities has security implications because State's security checks rely heavily on name-based databases."

Eliminating the Diversity Visa program would also provide significant economic savings. In 2007, the Congressional Budget Office (CBO) projected that "eliminating [the Diversity Visa] program would reduce the number of visa holders by approximately 46,000 per year. By 2017, CBO projects that there would be almost 400,000 fewer diversity visa immigrants than under current law. Those reductions would diminish spending for Medicaid (by $940 million), food stamps (by $190 million), and other programs (by $40 million), CBO estimates."

(2) Reform Medical Liability

The inefficiencies of the medical liability system, escalating and unpredictable awards, and the high cost of defending against lawsuits, contribute to the increase in liability insurance premiums, and add to the cost of health care each year. This situation results in higher government spending on Medicare, Medicaid, and other federal health benefits programs, and higher health insurance premiums for patients.

Reforming this system will save American taxpayers significant amounts. The Congressional Budget Office (CBO) estimates that implementing comprehensive medical liability reforms, including limits on non-economic damages, would reduce the federal budget deficit by $62.4 billion over 10 years.[66]

Proposals studied by the CBO, include: (1) a cap of $250,000 on awards for noneconomic damages; (2) a cap on awards for punitive damages of $500,000 or two times the award for economic damages, whichever is greater; and (3) modification of the - collateral source rule to allow evidence of income from such sources as insurance and workers' compensation to be introduced at trials or to require that such income be subtracted from awards decided by juries.[67]

In addition to the reforms envisioned by the CBO, similar reforms are contained in pending legislation, such as S.197, the Medical Care Access Protection Act (the "MCAP Act") and S. 218, the Help, Accessible, Low-cost, Timely Healthcare (HEALTH) Act. For example, under the MCAP Act, those reforms include:

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[66] Pub. No. 4212, "Reducing the Deficit: Spending and Revenue Options," Congressional Budget Office, March 2011, at 35.

[67] Congressional Budget Office, Letter to Senator Orrin Hatch, October 9, 2009, at 3 (available at http://www.cbo.gov/ftpdocs/106xx/doc10641/10-09-Tort_Reform.pdf). *See* Senator Thomas Coburn, Report, "Back in Black," at 229 (2011) (available at http://coburn.senate.gov/public//index.cfm?a=Files.Serve&File_id=bc1e2d45-ff24-4ff3-8a11-64e3dfbe94e1).

- Ensuring just compensation for injuries.
    - For non-economic damages, the MCAP Act uses the Texas stacked cap model. Under it, where a judgment is rendered against a healthcare provider, the non-economic damages awarded cannot exceed $250,000 for each plaintiff. Where a judgment is rendered against a single healthcare institution, non-economic damages cannot exceed $250,000 for each plaintiff. Where a judgment is rendered against more than one institution, the non-economic damages awarded cannot exceed $250,000 for each institution or $500,000 for all institutions.
    - For punitive damages, the MCAP Act limits an award to the greater of two times the amount of economic damages or $250,000.
- Maximizing patient recovery by limiting contingency fees. Under the MCAP Act, where an attorney is paid on a contingency basis, he is limited to 40% of the first $50,000 of an award; 33.3% of the next $50,000; 25% of the next $500,000; and 15% of any amount exceeding $600,000.
- Establishing a "fair share" rule under which each defendant is only liable for the percentage of the final award that is equal to his share of responsibility for the injury.

Accordingly, I urge the Committee to include medical liability reform in the final deficit reduction plan. In implementing this request, I ask the Committee to take into consideration the significant costs of frivolous lawsuits and any constitutional concerns.

(3) Eliminate Funding for Sanctuary Cities

Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373(a)) requires law enforcement entities to cooperate with the Federal Government when it comes to immigration law. Specifically, the provision states, "a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual."

States, cities, and localities that harbor illegal aliens are putting our country's national security at risk. When these entities explicitly—through ordinances, laws, or internal policies—prohibit officers from cooperating with the Federal Government on immigration matters, their federal funding should be withheld.

I respectfully request that the committee consider eliminating any funding disbursed by the Department of Justice and the Department of Homeland Security for any government or entity that has sanctuary city policies.

(4) Clarify Federal Funding for Legal Representation of State Prisoners in *Habeas Corpus* Proceedings

Federal law provides funding for attorneys to represent indigent defendants who are charged with a crime which may be punishable by death.[68] This representation is authorized either before judgment or after the entry of a judgment imposing a sentence of death, but prior to the issuance of the judgment.[69] This representation may include the appointment of multiple attorneys, upon a showing of good cause.[70] The attorney appointed is then authorized to

> [R]epresent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceeding and proceedings for executive or other clemency as may be available to the defendant.[71]

This representation is not limited to federal defendants but also is available to state defendants in death penalty cases. Further, the Supreme Court, in *Harbison v. Bell*, has stated that the plain language of the statute "authorizes federally appointed counsel to represent clients in state clemency proceedings."[72] However, the Supreme Court also stated in *Harbison*, "We do not read subsection [18 U.S.C. § 3559] (e)to apply to state-court proceedings that follow the issuance of a federal writ of habeas corpus."[73]

Despite the affirmative statement of the Supreme Court limiting the federal representation under section 3559(e) to proceedings up to, but not after, a federal writ of habeas corpus, it has come to my attention that federal representation under 3559(e) has continued in collateral state court proceedings. Specifically, in a July 7, 2011, letter to Senator Jon Kyl, Arizona Attorney General Tom Horne states, "The Arizona FPD [Federal Public Defender] has used its resources not only to handle federal habeas proceedings, but also to litigate successive post-conviction proceedings in state court."[74] A similar situation has arisen in Pennsylvania where the Chief Justice of the Pennsylvania Supreme Court issued a concurring opinion in *Pennsylvania v. Spotz*,[75] questioning the use of federal taxpayer dollars in a state collateral proceeding following the unsuccessful appeal of a federal writ of habeas corpus. The Chief Justice stated, "The federal courts – as well as other federal authorities and the Pennsylvania citizenry generally (who may not even be aware of this unusual federal activity in state courts) – may not be aware of just how global, strategic, and abusive these forays have become."[76]

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[68] 18 U.S.C. § 3599 (2006).
[69] 18 U.S.C. § 3599 (a)(1)(A)-(B) (2006).
[70] 18 U.S.C. § 3599 (d) (2006).
[71] 18 U.S.C. § 3599 (e) (2006).
[72] *Harbison v. Bell*, 556 U.S. 180; 129 S. Ct. 1481, 1484 (2009).
[73] *Id.* at 1488.
[74] LETTER FROM TOM HORNE, ATTORNEY GENERAL, STATE OF ARIZONA, TO SENATOR JON KYL (July 7, 2011) (on file with author).
[75] 18 A.3d 244 (Pa. 2011).
[76] *Spotz*, 18 A.3d 244, 230 (Pa 2011).

It is clear from these examples that representation under section 3559(e) in collateral state court proceedings following the unsuccessful writ of habeas corpus is occurring, despite the Supreme Court's statement that the law does not authorize such activity. Accordingly, the Deficit Committee should take action to modify section 3559(e) of title 18, United States Code, to ensure that federal representation for capital cases ends with the issuance or denial of a federal writ of habeas corpus. Such a statutory change would end erroneous applications of this section and save federal taxpayers millions of dollars a year.

V. Conclusion

Taken together, each of these areas offers the Deficit Committee an opportunity to significantly reduce federal expenditures while reforming core programs at DOJ, DHS, ONDCP, and other agencies. While not an exhaustive list, the recommendations set forth offer a roadmap to savings that can be achieved without dismantling core programs and services provided to American taxpayers. Some of these proposals may result in temporary administrative disruptions, but over time these reductions, consolidations, and reorganizations will result in stronger, more stable, and cost effective federal government programs. My staff is continuing to review these programs and is also preparing legislative language that will implement the various policies outlined here. Should you or your staff have any questions regarding this letter, the continuing review, or the legislative language being drafted, please feel free to contact [redacted] of my Committee staff at 224-5225. Thank you.

Sincerely,

Chuck Grassley

Charles E. Grassley
Ranking Member

Cc: The Honorable Max Baucus
Member, Joint Select Committee on Deficit Reduction

The Honorable Jon Kyl
Member, Joint Select Committee on Deficit Reduction

The Honorable John Kerry
Member, Joint Select Committee on Deficit Reduction

The Honorable Rob Portman
Member, Joint Select Committee on Deficit Reduction

The Honorable Jim Clyburn
Member, Joint Select Committee on Deficit Reduction

The Honorable Dave Camp
Member, Joint Select Committee on Deficit Reduction

The Honorable Xavier Becerra
Member, Joint Select Committee on Deficit Reduction

The Honorable Fred Upton
Member, Joint Select Committee on Deficit Reduction

The Honorable Chris Van Hollen
Member, Joint Select Committee on Deficit Reduction

Attachment

Chart 1

DOJ Compenent		Fiscal Year (in millions) 2012 *	2011	2010	2009	2008	MINIMUMS between 2012 Request and 2009 Appropriation Amount	Year
General Administration (GA)		$ 134.2 *	$ 118.5	$ 118.5	$ 105.8	$ 90.4	$ 105.8	2009
National Drug Intelligence Center (NDIC)		$ 25.0 *	$ 44.0	$ 44.0	$ 44.0	$ 39.0	$ 25.0	2012
Justice Information Sharing Technology (JIST)		$ 54.3 *	$ 88.3	$ 88.3	$ 80.0	$ 80.4	$ 54.3	2012
Office of the Federal Detention Trustee (OFDT)		$ 1,595.4 *	$ 1,438.7	$ 1,438.7	$ 1,295.3	$ 1,254.2	$ 1,295.3	2009
Law Enforcement Wireless Communications (LEWC)		$ 102.8 *	$ 206.1	$ 206.1	$ 185.0	$ 74.3	$ 102.8	2012
Administrative Review and Appeals (ARA)	Executive Office for Immigration Review (EOIR)	$ 329.8 *	$ 298.0	$ 298.0	$ 267.6	$ 238.3	$ 267.6	2009
	Office of the Pardon Attorney (OPA)	$ 2.8 *	$ 2.7	$ 2.7	$ 2.4	$ 2.3	$ 2.4	2009
	Office of the Inspector General (OIG)	$ 85.1 *	$ 84.4	$ 84.4	$ 77.7	$ 74.6	$ 77.7	2009
	U.S. Parol Commission (USPC)	$ 13.2 *	$ 12.9	$ 12.9	$ 12.6	$ 11.5	$ 12.6	2009
	National Security Division	$ 87.9 *	$ 87.9	$ 87.9	$ 83.8	$ 73.3	$ 83.8	2009
General Legal Activities (GLA)	Office of Solicitor General	$ 11.3 *	$ 10.8	$ 10.8	$ 10.4	$ 9.9	$ 10.4	2009
	Tax Division	$ 113.0 *	$ 105.9	$ 105.9	$ 101.0	$ 92.8	$ 101.0	2009
	Criminal Division	$ 200.6 *	$ 176.9	$ 176.9	$ 164.1	$ 149.0	$ 164.1	2009
	Civil Division	$ 310.1 *	$ 287.8	$ 287.8	$ 270.4	$ 250.1	$ 270.4	2009
	Environmental and Natural Resources Division	$ 117.2 *	$ 109.8	$ 109.8	$ 103.1	$ 99.4	$ 103.1	2009
	Office of Legal Counsel	$ 7.8 *	$ 7.7	$ 7.7	$ 6.7	$ 6.2	$ 6.7	2009
	Civil Rights Division	$ 161.8 *	$ 145.4	$ 145.4	$ 123.2	$ 114.5	$ 123.2	2009
	United States National Central Bureau (USNCB)	$ 33.5 *	$ 30.1	$ 30.1	$ 24.5	$ 23.3	$ 24.5	2009
	Office of Dispute Resolution (ODR)	$ - *	$ 0.8	$ 0.8	$ 0.6	$ 0.5	$ -	2012
Antitrust Division (ATR)		$ 166.2 *	$ 163.2	$ 163.2	$ 157.8	$ 147.8	$ 157.8	2009
U.S. Attorneys (USA)		$ 1,995.1 *	$ 1,934.0	$ 1,934.0	$ 1,836.3	$ 1,759.8	$ 1,836.3	2009
U.S. Trustee Program (USTP)		$ 234.1 *	$ 219.3	$ 219.3	$ 217.4	$ 209.8	$ 217.4	2009
Foreign Claims Settlement Commission (FCSC)		$ 2.1 *	$ 2.1	$ 2.1	$ 1.8	$ 1.6	$ 1.8	2009
U.S. Marshals Service (USMS)		$ 1,259.2 *	$ 1,152.4	$ 1,152.4	$ 954.0	$ 895.1	$ 954.0	2009
Community Relations Service (CRS)		$ 13.0 *	$ 11.5	$ 11.5	$ 9.9	$ 9.8	$ 9.9	2009
Assets Forfeiture Fund (AFF)		$ 1,352.2 *	$ 1,167.2	$ 1,167.2	$ 1,257.4	$ 1,305.6	$ 1,257.4	2009
Interagency Crime and Drug Enforcement (ICDE)		$ 541.0 *	$ 528.6	$ 528.6	$ 515.0	$ 497.9	$ 515.0	2009
Federal Bureau of Investigation (FBI)		$ 8,076.0 *	$ 7,848.5	$ 7,848.5	$ 7,301.2	$ 6,763.8	$ 7,301.2	2009
Drug Enforcement Agency (DEA)		$ 2,042.1 *	$ 2,019.7	$ 2,019.7	$ 2,183.5	$ 2,126.7	$ 2,042.1	2012
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)		$ 1,147.3 *	$ 1,120.8	$ 1,120.8	$ 1,054.2	$ 1,011.6	$ 1,054.2	2009
Federal Prison System (FPS or BOP)		$ 6,823.7 *	$ 6,185.4	$ 6,185.4	$ 6,171.6	$ 5,719.5	$ 6,171.6	2009
Office of Justice Programs (OJP)		$ 3,023.7 *	$ 3,148.7	$ 3,148.7	$ 2,852.6	$ 2,285.0	$ 2,852.6	2009
Fees and Expenses of Witnesses (FEW)		$ 270.0 *	$ 168.3	$ 168.3	$ 168.3	$ 168.3	$ 168.3	2009
Total:		$30,331.5 *	$28,926.4	$28,926.4	$ 27,639.2	$25,586.3	$ 27,370.3	

* denotes requested amount

Return to Fiscal Year:	2009
Annual Savings (as compared to FY2011):	$ 1,556.1
Percent Reduction:	5.38%

Data obtained from Budget and Performance Summaries for FY2008-2012, available at http://www.justice.gov/jmd/2012summary/ (last visited Oct. 10, 2011).