

TESTIMONY OF ELISSA RUMSEY
BEFORE THE SENATE JUDICIARY COMMITTEE
APRIL 21, 2015

Chairman Grassley and members of the Senate Judiciary Committee, thank you for requesting my testimony today about the Juvenile Justice and Delinquency Prevention Act (JJDP)¹. This law was first passed by Congress in 1974 and as you know, reauthorized numerous times since. I sincerely thank you for taking steps to enhance the beneficial impact of this important law, specifically discouraging waste, fraud and abuse in federal grants to individual States.

My name is Elissa Rumsey. I am the Compliance Monitoring Coordinator in the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, known as OJJDP. I have held this position for ten years. This testimony, in response to the Committee's request, is submitted in my personal capacity alone. It is not a statement on behalf of OJJDP, whom I appreciate for honoring my right to speak as a private citizen.

I am proud to serve in achieving this law's benefits. However, I am deeply concerned that failure to act against false state compliance records has sustained funding for activities that directly undermine both it and the law's purpose – helping foster children who are mistreated. To the contrary, there is significant evidence that funding persists despite practices of regularly mixing foster children,

¹ 42 U.S.C. § 5601 *et seq.*

caught after running away from domestic violence or sexual abuse, in jails with adult prisoners. The purpose of funding with controls is so that these type abuses will not occur. Serious enforcement must be restored.

My responsibilities have given me unique experience to recognize alarm bells when the program is not working in practice. They have included analyzing custody data sent to DOJ by State governments wishing to receive an annual formula grant commensurate with each State's compliance with four "core requirements" or "core protections". These protections were designed for our most at-risk youth: those under arrest. Part of the data analysis I do involves onsite inspection of facilities, primarily adult jails and lockups, to examine circumstances in which people, including children, find themselves after arrest. I have monitored law enforcement facilities in over half of the United States. In its 40-year history, the JJDP Act has been enormously successful in reducing levels of crime by juveniles, and by inference, crime by the adults that they will shortly become.

Nevertheless, severe challenges remain due to lack of enforcement. Thus, in my testimony today I will focus on three jurisdictions in which children still do not receive the full benefit of the JJDP Act: Virginia, Puerto Rico and Wisconsin.

But, first, I want you to know a bit about my background (such that you will see my qualifications to do this work): I grew up as the daughter of a corrections official; my mother worked in the Sacramento County, California Jail. I myself

have worked in the Alameda County, California, Jail; and I currently do volunteer work in the Arlington County, Virginia, Adult Detention Center. And, in my current position, as noted, I oversee data collection and on-site monitoring of facilities, in particular adult jails and lockups, covered by the JJDP Act.

If helpful, I can prepare a detailed overview of the four core protections enshrined in the JJDP Act and which you, our Congress, decreed must be enforced by DOJ. In short, I will note that all core protections involve juveniles detained by police whether under arrest or not. The statute effects those protections not by ordering the individual States to comply but rather by providing funds to achieve and maintain compliance with the law. One of the core protections is to separate foster children who run away from sexual abuse or domestic violence from adult criminals in adult jails, when the children are caught and detained.

As noted earlier, I am a civil servant and my job is to analyze and assess compliance data submitted by state governments to determine if participating states qualify for an annual federal grant from DOJ/OJJDP. In late 2007, I was provided evidence that the State of Wisconsin had submitted fraudulent compliance data to DOJ/OJJDP and that State agency managers were covering it up.

I disclosed to my superiors my concern that the State of Wisconsin had submitted false data and was thus committing fraud by receiving federal grants it was not entitled to. Initially I felt confident the problem would be resolved when it

was brought to light. I also tried to work through the State of Wisconsin. But in late 2007 a Wisconsin State government official, an attorney and former prosecutor, told me that Wisconsin was submitting false compliance data to DOJ, and knowingly taking federal grant funds that the State was not eligible to receive. This same Wisconsin official had a warning for me -- "watch your back." At the time, I found such a statement perplexing, and quite frankly, I did not take the warning seriously. My mistake. When I disclosed my concerns about Wisconsin's possible fraud to the DOJ's Office of Inspector General, in early 2008, as DOJ staff are trained to do, I felt some comfort that the problem would be fixed. Again, my mistake.

Within six months of reporting the suspected Wisconsin fraud to DOJ/OIG, I learned that the Wisconsin State employee was right, that I needed to watch my back. Without warning, I was stripped of many of my professional responsibilities, especially my compliance monitoring duties, and prohibited from conducting a compliance audit in the State of Wisconsin, which was scheduled for the spring of 2008. At the same time, my performance evaluations were adversely affected. In addition, my disclosing of the submission of fraudulent data from Wisconsin was a contributing factor to the cancellation of my telework agreement, which set precedent in the federal employee case law. Specifically, the Merit Systems Protection Board (MSPB) formally found that one performance evaluation and the

cancelation of my teleworking agreement constituted prohibited personnel actions in violation of the Whistleblower Protection Act² and ordered corrective action.³ And the Department of Justice has adamantly refused to reimburse me for the more than \$250,000 dollars in legal fees, even though the Whistleblower Protection Act requires it.⁴ Winning, thus, has become like losing, at least in terms of the financial impact blowing the whistle has on my family.

Soon after I reported Wisconsin's alleged use of fraudulent compliance data to the Department of Justice's Office of Inspector General, the OIG began a careful investigation which involved subpoenas requiring Wisconsin State government officials to turn over data. The OIG, led by Special Agent Jill Semmerling, also conducted site visits to Wisconsin jails, in order to validate the fraud. There was frequent communication between me and Special Agent Semmerling, most done over the phone as she was based in Chicago. Throughout her investigation there was a sense of vindication that officials were acknowledging the problem and that the unsafe practices in Wisconsin would be corrected.

But then the unthinkable happened: Ms. Semmerling was abruptly removed from case in October 2009, after investigating for a year and a half. The agent

² Whistleblower Protection Act of 1989, Pub.L. 101-12 as amended.

³ *Rumsey v. Department of Justice*, 120 M.S.P.R. 259, 263-64 & 271 (2013).

⁴ 5 U.S.C. § 1221(g)(2). A proceeding for reimbursement for my substantial legal fees and costs is pending within the Merit Systems Protection Board.

who took over for Ms. Semmerling did not communicate with me at all. And while I did meet him twice, he refused to subsequently discuss the matter with me. This I find troubling and quite frankly insulting, in part because the current IG has publicly stated numerous times how the Agency protocol is to support whistleblowers to treat them as colleagues with neutrality; to essentially keep whistleblowers in the loop. An example of the lack of communication is that when the final report regarding its investigation was issued by the IG last September, I found out about it like everyone else: the Internet. Seven years of my life devoted to this cause, and I don't even get a phone call regarding what was coming.

In a more positive vein, the OIG report concludes that the State of Wisconsin did in fact knowingly submit false compliance data to DOJ/OJJDP from 2001-2008, receiving tens of millions of dollars in return. According to the OIG, the criminal statute of limitations expired prior to the Department's ability to bring any criminal action even though the OIG's untimely final report does confirm the suspected fraud that I reported in Wisconsin. It is unfortunate that the OIG did not act before the statute of limitations expired.

I also wonder about enforcement against ongoing violations. Sadly, based on my review of available data, it is my belief that that fraud in Wisconsin continues. Wisconsin has vastly and knowingly underreported the number of police facilities

covered by the JJDP Act; lied about the number and nature of onsite monitoring it purported to have conducted; and locked up kids for “non-offenses” -- specifically for allegedly running away from foster homes.

That said, I have never been allowed to physically monitor on-site in Wisconsin. Everything I know I know from paper. Sadly, at least seven (7) of my current DOJ/OJJDP co-workers have in fact monitored all throughout the state of Wisconsin, and yet none of them, to my knowledge, reported the fraud. In their defense, it is my understanding the State of Wisconsin went to extreme lengths to hide the data from DOJ/OJJDP staff during the onsite tours. The next site visit is scheduled for next month; again, I will not be allowed to attend. Nevertheless, as noted, the compliance data currently submitted by Wisconsin are significantly problematic to the extent that I can estimate that the State remains noncompliance without leaving DC.

Virginia is another participating JJDP Act jurisdiction that appears to have submitted false compliance data to obtain federal grants for which the State was not qualified to receive. And, indeed, I have repeatedly heard one former State compliance official say, now employed by my agency, that State compliance officials have known for years that DOJ/OJJDP would accept incorrect data and improperly find compliance, and thus States did not need to take the requirements seriously.

My concerns with Virginia began in 2005. I instantly noted problems in the data set submitted by the State. When I raised concerns with Virginia State officials, I was met with hostility and an adamant refusal to correct the identified problems. When I subsequently conducted an audit in Virginia, in 2007, it was contentious and vitriolic to the extent that it was clear to me that the State was submitting false data and equally clear that my superiors had and would continue to tolerate this fraud. It was shortly after this audit that my performance evaluation was lowered and my compliance oversight duties removed.

Puerto Rico is a jurisdiction in which I have inspected law enforcement facilities on a number of occasions. I consider the conditions of confinement some of the worst existing in the world. In fact, based on my personal observations I am certain that children are endangered on a regular basis and that these children are thus on track for negative futures. It was in the year 2000 that DOJ/OJJDP decided to take a close look at Puerto Rico. The Commonwealth had been reporting compliance data that was deemed suspect by DOJ/OJJDP's, and I was asked by my then-supervisor Ms. Chyrl Penn Jones to travel to Puerto Rico and audit that Commonwealth's compliance efforts. Mr. Greg Thompson accompanied me on the audit and thus observed as I did -- children held in cells with adult inmates in clear violation of the JJDP Act; police facilities unconstitutional in operation and

quite frankly, terrifying; and government staff paid by federal grants funds who were unqualified to monitor facilities for compliance with custody requirements.

After working closely with Puerto Rican staff for a number of years to address the problems, other DOJ/OJJDP staff was assigned to work with Puerto Rico and thus my involvement became limited. Moreover, while Puerto Rico has been deemed noncompliant with two of the four core requirements, it is my contention, after review of the annual data sets submitted by Puerto Rico, that the Commonwealth is out of compliance with all requirements and should become a nonparticipating jurisdiction. This has not occurred.

In fact, that is the case with all the states in this testimony. The bottom line is that in each case there has been no accountability. The flow of funding was not even interrupted, despite evidence of concealing sustained consequences that are counterproductive for the children it is supposed to benefit.

Thank you for the opportunity to discuss the substantial benefits of the JJDP Act, and the material reductions it has already effected in juvenile crime rates. Before I conclude my testimony, I would like to answer a question I imagine is on everyone's mind, a question I hear all the time: Why did I blow the whistle and why do I stay at DOJ/OJJDP? I blew the whistle because it was my job to report suspected and alleged waste, fraud and abuse. I blew the whistle because I could not live with myself knowing that this crime was occurring against children and I

was not doing my job to fix the problem. I stay because I believe strongly in the agency's mission, to ensure that youth who come into contact with the justice system are treated fairly and the outcome of that contact is beneficial to society. I stay because I want to see this problem fixed, and I want to be part of the solution.

I would be happy to answer questions.

Thank you.