

**Questions for the Record from Senator Charles E. Grassley for
Andrea Coleman
U.S. Senate Committee on the Judiciary
Hearing on “Improving Accountability and Oversight of Juvenile Justice Grants”
Submitted on April 28, 2015**

1. Resistance and Retaliation

- a. Which officials at OJP or OJJDP resisted your efforts to bring compliance issues to light or retaliated against you for such efforts?

Prior to OJJDP’s reorganization in 2013 Mr. Greg Thompson, Senior Advisor to Administrator Bob Listenbee and Ms. Chyrl Jones, Deputy Administrator for Programs, resisted my efforts to bring compliance issues with Disproportionate Minority Contact (DMC) to light. They did so in their previous roles as Associate Administrator and Deputy Associate Administrator of the former State Relations and Assistance Division (SRAD). Mr. Thompson’s primary reasoning for resisting my efforts is that DMC does not have numerical standards or quotas similar to other JJDP Act core requirements (Deinstitutionalization of Status Offenders (DSO), Separation, and Removal of Juveniles from Adult Jails and Lockups). While Mr. Thompson is correct that there are no numerical standards or quotas therefore OJJDP cannot hold states out of compliance for the *extent* of DMC, Section 223(a)(22) of the Juvenile Justice and Delinquency Prevention (JJDP) Act clearly says that states must implement delinquency prevention and systems improvement strategies to reduce it. Moreover, 28 CFR 31.303(j) provides specific requirements of what states must do to achieve and maintain compliance with the DMC core requirement.

Although Mr. Thompson and Ms. Jones resisted my efforts to bring recommendations of DMC non-compliance to light, there was no formal retaliation via reassigning my job duties to another staff member. Conversely, I am being retaliated against by Administrator Bob Listenbee and Chief of Staff Shanetta Cutlar because I consistently make recommendations of non-compliance for states that do not meet the requirements of Section 223(a)(22) of the JJDP Act and 28 CFR 31.303(j) and (k). I also believe the retaliation is occurring because I question why states will continue to receive a “blanket pass” for DMC compliance in 2015 and possibly 2016. The retaliation even occurred after the April 21st Senate Judiciary Committee Hearing despite Senator Chuck Grassley’s statements and requests regarding retaliation against whistleblowers. Ms. Cutlar engaged in retaliatory behavior by singling me out at OJJDP’s Compliance Policy and Procedures meeting on April 28, 2015 by attempting to hold me responsible for states receiving the “blanket pass” in 2014 because I am the DMC Coordinator (See Attachment A: OJJDP’s Compliance Policy and Procedures Meeting Summary). As a result of this retaliation Mr. Listenbee is designating Chief of staff Shanetta Cutlar to oversee all DMC activities that includes reassigning existing duties to Ms. Tina Borner who is considerably less experienced. Additionally, I am excluded from meetings that

are directly related to my job duties such as facilitating the redesign of the DMC website; Ms. Cutlar also assigned this task to Ms. Borner.

Because of the retaliation I believe me and/or Ms. Rumsey were not considered for the Acting or permanent Associate Administrator position in the new Core Protections Division. On March 20, 2015 Mr. Listenbee told compliance staff we would be moved to the new Division and Ms. LeToya Johnson, Senior Advisor to AAG Karol Mason, would serve as Acting Associate Administrator. Ms. Rumsey asked Mr. Listenbee if I or she were considered because we are the most senior compliance staff and he stated: "No you were not because we need someone who is already a GS-15." When I asked why there would be an acting Associate Administrator when the job position was posted and closed Mr. Listenbee responded it would take 3-6 weeks to hire a permanent Associate Administrator (See Attachment B: Email from Elissa Rumsey-Follow-Up to March 20 Meeting). To my knowledge no further action has occurred to interview for the permanent position. Though I have no supporting documentation, I believe Ms. Rumsey and I qualified for the position and OJP/OJJDP did not want to interview us because they believed or knew we were whistleblowers.

b. What did your job duties consist of prior to Administrator Listenbee's tenure?

My job duties as OJJDP's DMC Coordinator prior to Administrator Listenbee's tenure were:

- Reviewed states and U.S. Territories annual DMC Compliance Plans.
- Developed the DMC Compliance Determination Assessment Instrument (CDAI) and managed the testing and validation process.
- Prepared reports to the President and Congress on DMC.
- Wrote expert Senate testimony on minority overrepresentation at arrests and in secure juvenile detention and adult facilities as a result of school-based policies.
- Assisted with revising Formula Grant Consolidated Regulation 28 CFR Part 31.
- Served as the Co-Chair for the Coordinating Council on Juvenile Justice's Racial and Ethnic Disparities Team with Bryan Samuels, former Administrator of Health and Human Services' Administration for Children, Youth, and Families (ACYF).
- Served as a peer reviewer for the Department of Justice's National Institute of Justice (NIJ).
- Developed and managed the DMC and Community and Strategic Planning (CASP) Project.
- Managed large scale research under the DMC Field Initiated Research and Evaluation (FIRE) Program.
- Wrote DMC technical reports, publications, and concept papers.
- Conducted DMC presentations at various national, state, and local conferences and trainings in over 25 states and localities.
- Provided and facilitating training and technical assistance on various juvenile justice issues.
- Started to manage the Smart on Juvenile Justice's Technical Assistance to End Racial and Ethnic Disparities.

- Answered DMC inquiries from states and juvenile justice system stakeholders.

Additionally, OJJDP formed a partnership with DOJ's Civil Rights Division in 2009 to conduct and/or facilitate statistical analyses for investigations and litigations of state and local criminal and juvenile justice systems pursuant to Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994. As OJJDP's DMC Coordinator I served as the Primary Point of Contact (POC) for investigations and litigations directly related to DMC. I carried out the following duties until August 2015:

- Provided interpretation of juvenile justice data from the Investigation of the Juvenile Court of Memphis and Shelby County at the press conference with Thomas E. Perez, Labor Secretary, and former Assistant Attorney General of the Civil Rights Division.
- Provided and/or facilitated training and technical assistance for the DMC Provisions in the DOJ Memorandum of Agreement with Shelby County, Tennessee that included but is not limited to: training juvenile justice staff, developing and implementing objective decision-making instruments and revising policies and procedures.
- Prepared quantitative reports and interpreted for several state and local criminal and juvenile justice systems that included Meridian, Mississippi, Franklin County and Hamilton County Ohio, and St Louis County, Missouri.

c. What do your current job duties consist of?

My current job duties as OJJDP's DMC Coordinator consist of:

- Reviewing states and U.S. Territories annual DMC Compliance Plans.
- Managing the DMC and Community and Strategic Planning (CASP) Project.
- Managing the DMC Field Initiated Research and Evaluation (FIRE) Program extension.
- Answering some DMC inquiries from states and juvenile justice system stakeholders.

Note: For any DMC activities to move forward they must be approved by Ms. Cutlar even though Ms. Johnson serves as the Acting Associate Administrator of the new Core Protections Division. This includes DMC training and technical assistance, publications, DMC presentations and/or trainings, etc.

d. When did your job duties change? Please provide a timeline of these events and describe each instance briefly.

My job duties begin to change in February 2014 (See Attachment C: Reassignment of Job Duties Timeline).

e. Are there any other concerns you wish to inform the Committee regarding how the Department responded to your efforts to do your job in accordance with the law, or how the Department is currently responding to those efforts?

I am concerned states will continue to receive a “blanket pass” for DMC funding because OJP/OJJDP will not approve the CDAI I developed in 2011. AAG Mason, OGC, and OJJDP say the “not out of compliance determinations” language meets the statutory threshold but the JJDP Act and the CFR clearly says will be found in or out of compliance with DMC. So, even if this language is used all states are in compliance because they will receive their DMC funding which indeed is a “blanket pass” even if their DMC Compliance Plans do not meet the statutory and regulatory requirements. To my knowledge this language is unprecedented and has not been used to make determinations of compliance since DMC was elevated to a core requirement by Congress in 1992.

I am also concerned that Mr. Listenbee’s relationship with the advocacy community is causing him to make decisions that may contradict Section 223(a)(22) of the JJDP Act and 28 CFR 31.303(j) and (k). For example, Mr. Listenbee, upon advice from the advocacy community, told compliance staff at a meeting in July 2014 the Relative Rate Index (RRI) will not be used because it does not properly capture the extent of DMC for Hispanic/Latino youth. When I stated that the lack of data for these youth has nothing to do with the RRI as a measure, he raised his voice and asked to explain why states do not have these data. I explained that 28 CFR 31.303(j)(6) does require states to collect these data but some states have better systems and resources to do so than others. Additionally, the basis of the RRI is in 28 CFR 31.303(j)(1) and OJJDP has allocated considerable funding since 2005 to develop the infrastructure via a Web-Based Data Entry System, providing training and technical assistance to states, and developing instructional materials. When I asked what the alternative measure to the RRI would be he did not answer and moved on to the next meeting agenda item. I asked him and Ms. Cutlar at follow-up meetings and the response was that it was going to happen but again no alternative measure was offered. The problem is that Mr. Listenbee is communicating with states that this will occur as Colorado, Montana, and Washington are having discussions with other states saying this was the guidance they received directly from Mr. Listenbee’s statement about the RRI shows a clear lack of understanding of the measure and what it was designed to do. Additionally, this continues a pattern and practice of Mr. Listenbee making decisions without statutory basis similar to the “blanket pass” for states.

Another concern is the implementation of the Core Protections Division, which in my view, is also in direct retaliation against Ms. Janet Chiancone for concurring with my recommendations of non-compliance since 2013 that includes advocating for final approval of the CDAI, and trying to consistently enforce the JJDP Act and 28 CFR 31.303 which Mr. Thompson and Ms. Jones did not do in their roles in the former SRAD.

2. DMC Assessment Tool

a. What is the Relative Rate Index?

The RRI is the measure states are required to use to determine the extent of DMC which is based on the requirements in 28 CFR 31.303(j) (1), (2), and (6)¹. States are required to submit their most recent data minimally once every three years statewide and for at least three local jurisdictions where minority youth comprise at least 1% of the youth population ages 10-17². The statistical basis for the RRI is the chi square distribution test. For example, for a given decision (a finding of guilt/delinquency) it calculates the expected number of cases involving white (non-Hispanic) youth and minority youth that would be expected to have the targeted decision (guilt), if there were no differences in the rates of that decision. It then calculates how divergent the *actual* results are from that *expectation*, and compares the size of the divergence to what could be expected to occur by chance at a given significance level. The 'standard' significance level is $p=.05$, meaning that a divergence of this magnitude (or larger) might occur by chance in 1 of 20 comparisons ($.05 = 1/20$). For states that want to use a different level of significance, they have the option of choosing .10, .05, or .01. Simply stated, the chi-square test involves a comparison between what is observed and what would be expected to have occurred by chance.

The RRI is then based on the computation and comparison of rates. After this is computed a proportion is created that yields a single index number. Thus, an RRI of 1.0 for contact with all juvenile justice contact points (except for diversion and probation) means there is statistical parity (i.e. there is no DMC). An RRI of less than 1.0 for diversion and probation means there is DMC because minority youth are probably being processed formally instead of being diverted from formal processing and/or they are not probated at the same rates compared to white (non-Hispanic) youth. Thus, if the RRI is above 1.0 with identified variables (e.g. rates of offending/contact with the juvenile justice system, socioeconomic factors, equal access to programming for all youth, etc.) being equal then some phenomenon or phenomena are occurring that would not be expected to have occurred by chance.

b. What is the CDAI?

The CDAI is an objective tool I developed in 2011 with indicators to assist OJJDP with making annual determinations of compliance with Section 223(a)(22) of the JJDP Act, the requirements in 28 CFR 31.303(j) and (k), and guidance from the *Disproportionate Minority Technical Assistance Manual, 4th Edition*. OJJDP's Compliance Analysts are to complete the tool after they have reviewed a state's annual DMC Compliance Plan that includes RRI data, assessment and/or evaluation studies, and other supporting

¹ The RRI is the revised requirement in the CFR as it more accurately measures DMC pursuant to the 2002 reauthorization of the JJDP Act.

² Some states the age of criminal responsibility is aged 16 so the data would reflect ages 10-16. Furthermore about 36 states submit these data annually which exceeds OJJDP's minimum requirement of once every three years.

documentation. The tool is weighted and the determination of compliance is mostly based on the CDAI score. Since CDAI has not received final approval staff have been using the 2013 version with no scoring criteria as a guide to assist with making determinations of compliance.

I also developed the CDAI to address Mr. Thompson's consistent statements that finding states out of compliance with DMC would be nearly impossible because there are no numerical standards or quotas like the other three core requirements of the JJDP Act. After various revisions to the CDAI, per comments from OJP's Office of General Counsel (OGC), the states, and DOJ's Bureau of Justice Statistics, it still did not receive final approval. During the process OGC had additional questions which I responded to via memorandum (see Attachment D: Memorandum dated October 3, 2012: Response to OGC Request: DMC Compliance Determination Assessment Instrument (CDAI)). After Mr. Listenbee was appointed Administrator in 2013 Ms. Chiancone and I, immediately began to work to obtain approval. We submitted a timeline to Mr. Listenbee and his senior leadership staff that includes Ms. Cutlar in June 2013 and continued to follow-up all throughout 2014 (See Attachment E: CDAI Timeline and Next Steps-submitted to OJJDP leadership 6-27-13).

3. “Blanket Pass” or “Not out of compliance determinations”

- a. How have states responded to the “not out of compliance” notifications that the Department has been issuing to all states with respect to the DMC requirement since 2013?

Some states such as Arizona and Texas initially responded with confusion because they weren't sure whether they were in or out of compliance because OJJDP had never issued the “blanket pass or “not out of compliance determinations”. Oklahoma was “dismayed at the DMC wording” because the letter did not accurately reflect what activities they had addressed and did not believe it needed technical assistance as the letter suggested (See Attachment F: Oklahoma DMC Compliance). What Oklahoma and other states did not know when they received the letters in October 2014 but now know is that all states received the “blanket pass” that included recommending states seek training and technical assistance even if they didn't need it.