

RESPONSES

to

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

Question 1 (Wisconsin)

- a. What led you to believe that Wisconsin submitted fraudulent compliance data?
- b. Who from OJP made the strongest effort to ensure that Wisconsin received grants to which it was not entitled?

Response:

- a. There were a number of indicators that Wisconsin submitted fraudulent compliance data. For example, as I indicated in my testimony on April 21, 2015, Wisconsin submitted compliance data that showed detention rates as much as nearly ten times higher than allowed by OJP regulations. Then, suddenly, those data dropped to legally acceptable levels, and in my professional experience in dealing with the justice system, such a precipitous drop in the previously unacceptable detention rates was not credible and warranted review. After significant resistance from Wisconsin State officials about back-up data, I received data from an official, who stated in substance – as he handed me the purported data – that “If I were you, I would not believe these data either.” There were many other indications of that State’s submission of fraudulent data, noted both contemporaneously and subsequently found in the DOJ’s OIG investigation.

b. I am not privy to all communications within my agency about efforts to ensure that Wisconsin received grants to which, in my opinion, it was not entitled, but it is my belief and impression that the strongest efforts were by the following people, with their job titles in the 2007-08 period in parentheses:

- J. Robert Flores (OJJDP Administrator)
- Gregory C. Thompson (Associate Administrator for SRAD)
- Nancy Ayers (Deputy Administrator for Policy)
- Rafael Madan, Esq. (OJP General Counsel)
- Charles Moses, Esq. (OJP Deputy General Counsel)
- Chyrl Penn Jones (Deputy Associate Administrator for SRAD)
- Julie Herr (State Representative)

Question 2 (Virginia)

What led you to believe that Virginia was out of compliance, despite data submissions that indicated compliance?

Response:

There were a number of strong suggestions that Virginia was out of compliance even though data submissions indicated otherwise. For example, the data simply did not make sense when fewer lockups were reported statewide than I believe exist in northern Virginia, where I reside. And rather than explaining and/or correcting these data, I got substantial objections and lack of cooperation from State officials when I questioned them. And, as I testified before the Committee on April 21, 2015, I have seen adult inmates walking freely in juvenile facilities among children, something that is neither permitted by the statute nor reflected in that State's reports to my agency.

I also note that in recent months that I have personally heard a former Virginia State compliance official say that his State's compliance officials know that DOJ accepts false data yet still finds compliance.

Question 3 (Puerto Rico)

What led you to believe that Puerto Rico was out of compliance?

Response:

As with my comments about other jurisdictions, there was a complex of reasons for believing that Puerto Rico was out of compliance. For example, that jurisdiction was reviewed in 2000, and multiple statutory violations were found *although not reported*. That Commonwealth subsequently reported no statutory violations (a small, perhaps *de minimus*, number are permitted), a claim that is simply not believable in my professional experience.

Question 4 (Other Jurisdictions)

Can you give me some examples of other jurisdictions that you believe have been out of compliance?

Response:

There are a number of such jurisdictions. Idaho, Arkansas, South Carolina and the Virgin Islands immediately come to mind. For example, when I questioned a report from Idaho, the data provided was changed, but when I enquired about the backup for that data change, I was told by an Idaho State official that there was none, that the data had been fabricated.

Question 5 (Compliance Monitoring Practices in General)

- a. Do you have suggestions about how your agency could better monitor states' compliance with the statutory core protections?
- b. Has compliance improved in recent years – or has it become more problematic?
- c. Have questionable compliance monitoring practices continued? Can you give me examples?

Response:

- a. In my opinion, my agency's monitoring of States' compliance with statutory requirements could be materially improved with the hiring of compliance and grant personnel with a more substantial background in criminal justice system issues and providing them with better training. It would also be helpful that there be follow-through by OJJDP when a State's compliance report is not credible on its face.
- b. I do not have enough of an overview of nationwide compliance to know whether it has improved, although my sense is that statutory compliance continues to be problematic with respect to many jurisdictions. I do want to emphasize, though, that there are a number of jurisdictions that are almost certainly accurately reporting data that show that they are in compliance; not all States and other jurisdictions are acting improperly.
- c. Questionable compliance monitoring practices have, I am sorry to report, continued. For example, I was recently ordered to head the team to go to Wisconsin next month to review its currently asserted statutory compliance. However, the person most knowledgeable about that State's recent compliance history was taken off the team, over my objection, and replaced by a number of people with neither the professional background nor experience necessary to perform such a review. Indeed, I have been told that someone from the OJP's General Counsel's office will be assigned to the team, but even though s/he has already been selected, agency management refuses to tell me who s/he is.

Question 6 (Resistance and Retaliation)

- a. How much money in legal fees have you paid to win your job back?
- b. Did Professor Dean Rivkin give you any data from Knox County, Tennessee? If so, when, and what did you do with it?
- c. Which officials at OJP and OJJDP resisted your efforts to bring compliance issues to light or retaliated against you for such efforts?
- d. 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?

Response:

- a. I am out-of-pocket more than \$250,000 in legal fees and costs in prosecuting my successful Whistleblower Protection Act claims against my agency for its prohibited personnel actions. And that does not include the imputed fees of my present counsel, who is providing professional services on a courtesy, non-fee basis with a promise that any fee award I receive in connection with his services be given to charity, to the extent that I am made financially whole. I am a career federal government employee, currently with a GS-14 salary rating, and the financial impact of legally countering the prohibited personnel actions has had a catastrophic impact on my family and on me.

Having been successfully found the “prevailing party” by the Merit Systems Protection Board (“MSPB”), I commenced an Addendum Proceeding to obtain relief, especially reimbursement of attorneys’ fees and related costs. The DOJ has aggressively opposed any meaningful fee award on technical grounds, and I was awarded only \$7084 by the Administrative Judge in that Addendum Proceeding, even though I have had to expend more than \$250,000 in hard cash – raised by taking out substantial loans and distributing funds from retirement accounts, subject to early distribution income tax penalties. *Rumsey v. Department of Justice*, MSPB Docket

DC-1121-11-0466-A-1 (October 3, 2014). A Petition for Review has been filed before the Board in that matter, and we are awaiting decision.

It should be obvious that a preliminary award of only \$7084 in a matter in which more than \$250,000 has been expended is anything but the award of a “reasonable attorney’s fee” contemplated by the statute, 5 U.S.C. § 1221(g)(2). Moreover, the failure of a protected whistleblower to be properly reimbursed for out-of-pocket fees and costs constitutes as much a chilling effect on constitutionally protected whistleblowing speech as the impact of prohibited personnel practices.

- b. Prof. Dean Rivkin did give me incarceration data from Knox County, Tennessee, in January 2013. I reviewed it and gave to my second line supervisor, Janet Chiancone. She subsequently told me that the data was given to Will Bronson (my first line supervisor and Deputy Associate Administrator – Audit and Compliance) and Gregory C. Thompson, (Senior Policy Advisor), for review and appropriate action. I have no knowledge that they did anything with Prof. Rivkin’s submission.
- c. Nancy Ayers, my first line supervisor in the 2007-09 time period, was found by the Merit Systems Protection Board to have engaged in prohibited personnel practices by retaliating against me. *See Rumsey v. Department of Justice*, MSPB Docket DC-1221-11-0466-W-1, Opinion and Order of October 28, 2013. This decision is formally reported in 120 M.S.P.R. 259 (2013).

It is exceedingly difficult to obtain communications when federal government officials are engaging in prohibited personnel practices, and as a result, I will never know the identity of all of those that resisted my efforts to bring compliance issues to light or else participated in the resulting retaliation. However, it is my belief that,

among others involved with Ms. Ayers, were J. Robert Flores (then OJJDP Administrator), Rafael Madan, Esq. (OJP General Counsel), Charles Moses (OJP Deputy General Counsel), Gregory C. Thompson (then Associate Administrator for SRAD), and Chyrl Penn Jones (then Deputy Associate Administrator for SRAD).

d. As I discussed in response to Question 5(c), the Department's efforts to ensure statutory compliance continues to be problematic. This is particularly demonstrated by plans to conduct a review of Wisconsin's current compliance next month. While I have been named the team leader, the person most knowledgeable about Wisconsin's historic compliance issues has been taken off the team, notwithstanding my request for her. And on the team are several people with no meaningful background with these incarceration issues or experience in the conduct of reviews, as well as the head of the 2004 Wisconsin review team, which found no compliance issues notwithstanding the subsequent uncovering of many statutory violations and submissions of fraudulent compliance data.