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IMPROVING ACCOUNTABILITY AND OVERSIGHT OF JUVENILE
JUSTICE GRANTS

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TUESDAY, APRIL 21, 2015

United States Senate,
Committee on the Judiciary,
Washington, DC

The Committee met, pursuant to notice, at 10:01 a.m.,
Room 226, Dirksen Senate Office Building, Hon. Charles E.
Grassley, Chairman of the Committee, presiding.

Present: Senators Tillis, Durbin, Whitehouse, and
Franken.

1 OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.
2 SENATOR FROM THE STATE OF IOWA, CHAIRMAN, COMMITTEE ON
3 THE JUDICIARY
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5 Chairman Grassley. In 1974, Congress passed the
6 Juvenile Justice and Delinquency Prevention Act with two
7 goals in mind; first, to prevent at risk youth from
8 entering the criminal justice system; second is to help
9 minors already in the system become valuable members of
10 society.

11 To help States achieve these goals, the JJDP
12 authorizes the Justice Department to award Federal grants
13 to States. However, the law says that the Federal money
14 comes with strings attached. It specifically state must
15 comply with four core requirements in order to qualify
16 for grants.

17 First, States must not imprison children for
18 committing offenses that would not be unlawful if they
19 were committed by adults; truancy, as an example.

20 Second, juveniles must not be detained in adult jails
21 unless some narrow exceptions apply.

22 Third, when children are held in adult jails, they
23 cannot be housed with adult inmates or next to adult
24 cells.

25 Fourth, States must address the disproportionate

1 contact of minority youth with the justice system.

2 These four requirements are the bedrock of the system
3 that Congress designed to help juveniles, and Judge Teske
4 and Mr. Soler are here to explain why these protections
5 are so important.

6 To ensure States' compliance with these requirements,
7 the Act created the Office of Juvenile Justice and
8 Delinquency Prevention, or the OJJDP. By law, that
9 office is supposed to cut a State's funding for the
10 following year by 20 percent anytime States fail to
11 satisfy one of the four requirements in a given year.

12 In other words, Congress designed these grants to be
13 earned each year, not to be handed out as an entitlement.

14 Today we will examine whether the Justice Department
15 has been doing its job to make sure States qualify for
16 Federal funding.

17 Last year, multiple whistleblowers contacted me about
18 the Justice Department's failure to follow the law. The
19 whistleblowers allege that it is common knowledge among
20 the States that the Justice Department did not take
21 compliance with the four core requirements very
22 seriously.

23 The whistleblowers also claimed that States know the
24 Justice Department does not even check if they are
25 submitting accurate reports in their annual application

1 for grants. So many States allegedly report whatever
2 figures they want in order to keep money flowing, even if
3 the data is false or incomplete.

4 At the same time, States that submit honest data are
5 reportedly being penalized for having their grants
6 reduced as the law requires.

7 In January 2014, for example, the Inspector General
8 found that the department had failed to hold the State of
9 Wisconsin accountable despite an admission of fraud from
10 a State employee.

11 Of course, the true victims in all of this are the
12 children who come in contact with inadequate juvenile
13 justice systems.

14 So to get to the bottom of these allegations, I wrote
15 a letter to the department September last year. The
16 Office of Special Counsel expressed similar concern last
17 September and again in January. Special Counsel Carolyn
18 Lerner, who will be testifying here today, asked the
19 Attorney General to investigate these allegations.

20 Two separate whistleblowers had brought the
21 allegations to her office's attention, as well. The
22 Office of Special Counsel found that there is a
23 substantial likelihood that each of their allegations
24 reveal possible violation of law, a gross waste of
25 resources, and gross mismanagement of juvenile justice

1 grant funds.

2 For its part, the department initially responded to
3 my inquiry by standing by its practices. The department
4 also sought to downplay the allegations by blaming the
5 problem squarely on the shoulders of a single State
6 official in Wisconsin.

7 So I sent three more letters with allegations of
8 DOJ's widespread mismanagement in other States, including
9 Virginia, Tennessee, Illinois, Puerto Rico. I also
10 explained to the department how its own responses to my
11 initial letter revealed fundamental misunderstanding of
12 the law.

13 Now, to its credit, the department has now owned up
14 to its problems. The Justice Department admitted to
15 having a compliance monitoring policy in place since 1997
16 that is, quote, "not permitted under the statute,"
17 unquote.

18 The Justice Department has disbursed more than \$2
19 billion in the past 40 years to state and local
20 authorities under this act. Given the unlawful 1997
21 policy, there is a question as to how much of this was
22 granted to states that jailed young people in violation
23 of funding requirements.

24 To shed light on these issues, Ms. Karol Mason is
25 here to testify as Assistant Attorney General of the

1 office of Justice Programs.

2 I want to thank Ms. Mason for her leadership and
3 showing a commitment to accountability and beginning to
4 fix these problems at long last.

5 As they say, the first step to recovery is admitting
6 that you have a problem and it is encouraging that the
7 department has finally taken that step. But it should
8 not have taken 7 years and the intervention of Office of
9 Special Counsel or Inspector General or the Congress for
10 the department to take whistleblower allegations
11 seriously.

12 Whistleblowers are a linchpin to transparency and
13 accountability. They should be lauded for their efforts,
14 but are often treated like skunks at a picnic and subject
15 to retaliation, which we all know is illegal, but it
16 still happens.

17 So I want to thank Ms. Elissa Rumsey and Ms. Andrea
18 Coleman who are here to testify today. Both of them have
19 been trying to bring these issues to light since 2008.
20 Their testimony today will include accounts of resistance
21 and retaliation they experienced from agency officials
22 for simply trying to do their job in accordance with law.

23 In addition, I want to thank several whistleblowers
24 who will not testifying today, but provided valuable
25 information as part of the investigation. These

1 individuals made similar allegations of resistance and
2 whistleblower retaliation.

3 So I want to reiterate to Ms. Mason the need to
4 improve the treatment of whistleblowers.

5 Finally, I want to thank Professor Dean Rivkin, who
6 operates a public interest clinic that represents
7 juveniles in Tennessee. The professor will testify about
8 his efforts to alert the Justice Department about
9 discrepancies of data in Tennessee. He will also
10 contrast those official reports with a number of juvenile
11 incarcerations that he personally observed in court.

12 We must remember that the true victims in all this
13 are the young people, children who face an inadequate
14 juvenile justice system.

15 That is why my colleague here to my left, Senator
16 Whitehouse, and I introduced a bill in December to revise
17 and extend the statute, which has not been reauthorized
18 since 2002. The bill updates protections and extends
19 programs established in the act and authorizes funds for
20 the law for 5 years.

21 It also takes steps to improve the treatment of youth
22 under the act by bolstering core protections, improving
23 conditions for detained juveniles, incorporating new
24 science on adequate adolescence development, and
25 increasing accountability and oversight in administering

1 the law.

2 That last part is the subject of this hearing and I
3 hope that we will have a better idea of what can be done
4 legislatively to improve accountability and oversight.
5 Whatever measures we come up with, however, will be
6 useless if the law is not actually followed.

7 [The prepared statement of Chairman Grassley appears
8 in the appendix.]

9 Chairman Grassley. Now, I call on my friend,
10 Senator Whitehouse, for his remarks.

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1 OPENING STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S.
2 SENATOR FROM RHODE ISLAND

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4 Senator Whitehouse. Thank you, Chairman. Good
5 morning, everybody.

6 I first want to thank Chairman Grassley for holding
7 this important hearing and thank the witnesses who are
8 here today for their time and their testimony.

9 Let me particularly welcome Judge Teske, who has come
10 here all the way from Georgia. He brings with him the
11 high regards of our colleague, Johnny Isakson, and I know
12 Senator Isakson would want me to extend to you his best
13 wishes for being here; and, also, Mark Soler, who is the
14 Executive Director of the Center for Children's Law and
15 Policy, in addition to the witnesses who have already
16 been recognized by the Chairman.

17 I really applaud Chairman Grassley's efforts to
18 improve the juvenile justice system when it fails the
19 children that it is supposed to serve and I am very proud
20 to be working with him on legislation to reauthorize and
21 strengthen the Juvenile Justice and Delinquency
22 Prevention Act.

23 As the Chairman has pointed out, I am to the left of
24 him -- in more ways than one, I would add -- but we are
25 working very well together on this legislation and it is

1 a pleasure and a privilege to be working with him and his
2 staff.

3 The JJDPA celebrated its 40th anniversary last
4 summer, but it has not been reauthorized since 2002.
5 Since 2002, we have learned a lot about adolescent
6 development and about best juvenile justice practices.
7 So it is long past time to update the law governing the
8 Federal Government's role in reforming juvenile justice.

9 This hearing, of course, is about accountability and
10 I applaud Chairman Grassley for his efforts to improve
11 oversight over Federal dollars.

12 Thanks to the Chairman's efforts, the Department of
13 Justice has acknowledged the longstanding and systemic
14 problems in its Office of Juvenile Justice and
15 Delinquency Prevention's compliance monitoring program.
16 I have been encouraged by the department's response to
17 Chairman Grassley's inquiries and I look forward to
18 hearing more about how OJJDP will address compliance
19 issues going forward.

20 Through this Committee's oversight and legislation
21 the Chairman and I expect to introduce in the coming
22 weeks, we are poised to make significant improvements to
23 the Juvenile Justice and Delinquency Prevention Act.

24 The reauthorization Chairman Grassley and I
25 introduced last year contained important new provisions

1 to hold grantees accountable and provide incentives to
2 grantees that consistently pass muster.

3 The bill also contains strengthened transparency
4 requirements. I anticipate this year's legislation to
5 contain the same safeguards and I hope our witnesses will
6 be able to discuss, based on their own experiences, how
7 the new language will help improve program
8 accountability.

9 Before I conclude my remarks, I would like to take a
10 step back for a moment. It is because of JJDPA that, for
11 the most part, our children are not locked up in adult
12 prisons, that they are not placed in solitary
13 confinement, that they are not shackled for running away
14 from home or failing to attend school.

15 We need to reauthorize this statute and revive its
16 mission. And we also have to face the consequences of
17 Federal juvenile justice funding having been cut
18 dramatically in the last decade. Funding for the act's
19 main grant programs, Title 2 and Title 5, have been cut,
20 respectively, by 40 percent and 80 percent. At the same
21 time, OJJDP went for far too long with ineffective or
22 nonexistent leadership.

23 We should not spend scarce resources on states that
24 make no efforts to comply with JJDPA and we should never
25 tolerate fraud on the local, state or Federal levels.

1 At the same time, we must be mindful of creating
2 unfunded mandates and of the message we send when we fail
3 to update key legislation and cut Federal support for
4 programs that are proven to make a difference.

5 So thank you, Chairman Grassley, and I look forward
6 to today's hearing.

7 Chairman Grassley. I am going to give just a short
8 introduction and I will introduce all and then we will do
9 the testimony from my left to my right.

10 Elissa Rumsey is a compliance monitor in the Office
11 of Juvenile Justice and Delinquency Prevention at the
12 Department of Justice.

13 Steven Teske is Chief Judge, Clayton County Juvenile
14 Court, Georgia.

15 Dean Rivkin, Professor of Law at the University of
16 Tennessee College of Law.

17 Mark Soler is Executive Director of the Center for
18 Children's Law and Policy.

19 Andrea Coleman is the disproportionate minority
20 contact coordinator at the Office of Juvenile Justice and
21 Delinquency Prevention at the Department of Justice.

22 Would you proceed, Ms. Rumsey?

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1 STATEMENT OF MS. ELISSA RUMSEY, COMPLIANCE MONITOR,
2 OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION,
3 U.S. DEPARTMENT OF JUSTICE

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5 Ms. Rumsey. Thank you, Chairman Grassley and
6 members of the Committee.

7 My testimony concerns illegal conditions in states
8 that incarcerate children not charged with a crime,
9 sometimes with adult felons, falsify reports that enable
10 the receipt of millions in Federal grant dollars, and
11 benefit from DOJ's coverup of this fraud.

12 I will illustrate this misconduct through two States
13 that have been particularly brazen, Wisconsin and
14 Virginia.

15 My name is Elissa Rumsey. I am the compliance
16 monitor in the DOJ's OJJDP. My job is to enforce the
17 JJDP Act.

18 I have monitored jails in over half of the United
19 States, which I think gives me a pretty clear picture of
20 what is happening to kids in jails.

21 This testimony is in response to the Committee's
22 request and is submitted in my personal capacity alone.

23 As Senator Grassley noted, the JJDP Act provides that
24 jails should not be detaining children who are not
25 charged with a crime. DOJ regulations do allow States

1 some very minor exceptions in this area, but only in
2 juvenile-only facilities.

3 Wisconsin, on contrast, began submitting data in
4 2005, 2006 and 2007 that showed detention rates nearly 10
5 times higher than allowed by our regulations. In fact,
6 these data showed such a dramatic increase from years
7 prior that OJJDP did, in fact, restrict Wisconsin's
8 funding in 2007.

9 The State protested this finding of noncompliance.
10 My superiors responded to me by preventing me from
11 assessing the situation on-site in Wisconsin. But it
12 turns out I did not really need to go to Wisconsin,
13 because internal e-mails later obtained by our own
14 Inspector General made clear that Wisconsin was
15 falsifying reports in return for millions of dollars in
16 Federal grants.

17 Wisconsin officials wrote e-mails that include the
18 following admissions, and I am going to quote to you from
19 these e-mails because I found them so striking when they
20 were provided to me.

21 Quote, "Our complete lack of a compliance monitoring
22 system is what has set us back."

23 From a different Wisconsin employee, quote,
24 "Wisconsin DOC assures us we will find enough violations
25 on all core requirement areas, like an adult inmate and

1 children being held together in jails, that we will not
2 receive Federal funds."

3 And finally, from the State agency administrator in
4 Wisconsin who is tasked with overseeing millions in DOJ
5 grant funds, he wrote the following in an e-mail, quote,
6 "We supply the evidence that convicted us and now want
7 DOJ to forgive us. Every time I think we have a good
8 case, I learn of another flaw on our end. Elissa knows
9 her business and is not inclined to back off."

10 These are Wisconsin's own words. Back in 2007 when
11 they were writing these e-mails, of course, I did not
12 know about it and I tried to learn more about why this
13 dramatic increase in illegal detentions in Wisconsin, but
14 I was blocked at every turn. The State officials denied
15 there was a problem.

16 After almost a year of back-and-forth with the State,
17 I asked one of the officials to call me. He did. He
18 said Wisconsin is faking the data. He also said watch
19 your back.

20 Within weeks of this warning, I reported the
21 allegations to our Inspector General. Subpoenas were
22 issued. OIG staff went to jails in Wisconsin and saw the
23 fraud themselves. They even got two confessions from
24 Wisconsin State officials.

25 Unfortunately, the retaliation back at the office for

1 me mounted. As Senator Grassley noted, I really was the
2 skunk at the company picnic for a number of years.

3 I had to file a lawsuit. I had to hire an attorney.
4 And fortunately, the MSPB, the court in this
5 jurisdiction, did find in my favor in 2013. And, of
6 course, more cause for hope when Chairman Grassley showed
7 his interest and wrote letters to DOJ asking what is
8 really happening here.

9 Finally, there was a report that the OIG posted in
10 late September which says the fraud did, in fact, occur.

11 I remain concerned about other States like Virginia,
12 where I have seen adult inmates walking freely in
13 juvenile facilities among children. I have heard
14 officials from Virginia say that State compliance
15 officials know that DOJ will accept false data and still
16 find compliance.

17 I can also speak to OJJDP's failure to hold other
18 jurisdictions, like Puerto Rico, accountable despite
19 years of noncompliance with funding requirements, as well
20 as issues like this in other States.

21 I welcome questions from the Committee on these
22 issues and I thank Chairman Grassley so much for his time
23 and attention to this matter. Thank you.

24 [The prepared statement of Ms. Rumsey appears in the
25 appendix.]

1 Chairman Grassley. Thank you, Ms. Rumsey.
2 Now, Judge Teske?
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1 STATEMENT OF HON. STEVEN C. TESKE, CHIEF JUDGE, CLAYTON
2 COUNTY JUVENILE COURT, GEORGIA

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4 Judge Teske. Good morning, Chairman Grassley,
5 Ranking Member Whitehouse, and members of the Senate
6 Judiciary Committee. Thank you for having me here to
7 testify today about improving accountability and
8 oversight of juvenile justice grants.

9 In addition to my judicial duties, I have served on
10 the Federal Advisory Committee for Juvenile Justice and
11 have the pleasure of serving for former Governor Sonny
12 Perdue and our current governor, Nathan Deal, on our
13 State advisory group.

14 I co-chair the Oversight and Implementation Committee
15 of our Reform Commission and I can appreciate why we are
16 here and the oversight role of this distinguished body to
17 bring transparency to the accountability and oversight of
18 juvenile justice grants.

19 I, like my colleagues at the National Council of
20 Juvenile Family Court Judges, am a supporter of the
21 reauthorization of the JJDP A because it is a strategic
22 act of Congress that has helped to bring consistent use
23 of those practices that go to the core of effective
24 juvenile justice, what the JJDP A refers to as the four
25 core protections.

1 It goes without saying that because JJDPAs have
2 assisted States to make significant improvements in their
3 local juvenile justice systems, imagine how much more
4 effective those systems will become with improved
5 accountability and oversight measures.

6 To illustrate my point, I will take just a moment to
7 point out some Georgia examples. When I took the bench
8 in 1999, my county was inundated with high commitment
9 rates to State custody, of which most were kids of color
10 and nonviolent offenses.

11 In search of ways to improve our system, I found the
12 Annie E. Casey Foundation Juvenile Detention Alternative
13 Initiative, which inspired me to create a number of
14 programs using Federal funding. These programs, ceded by
15 JJDPAs funds, have accomplished the following in my
16 county: an 83 percent decrease in the average daily
17 detention population; a 75 percent reduction in the
18 average daily population of minority youth; 77 percent
19 fewer commitments to State custody; 70 percent fewer
20 commitments of minority youth; yet -- get this -- a 62
21 percent decrease in juvenile arrests.

22 Our statewide reforms, also ceded by JJDPAs formula
23 moneys, has resulted in a 62 percent reduction in
24 commitments to State custody, which included the removal
25 of the valid court order exception for status offenders.

1 To improve upon what is already effective, I have
2 noted some accountability and oversight issues of
3 attention and offer some solutions.

4 Notwithstanding any findings that may be made that
5 grants were fraudulently obtained, to which serious
6 controls must be contemplated to preclude future fraud, I
7 am here to speak to another dimension of accountability
8 and oversight deficiencies that are just as serious, but
9 may be overlooked, and that is the compliance process.

10 It came to my attention in 2007 during a FACJJ
11 meeting that some States were audited using more
12 restricted criteria than others. As the conversation
13 evolved, I learned from juvenile justice specialists
14 around the country the following: the DMC compliance
15 manual itself is 389 pages in length and extremely
16 difficult to follow.

17 Guidelines contained in this compliance manual lack
18 specificity. The rules continuously change without
19 notice in an opportunity to provide feedback. Audit
20 findings were delivered to States up to 2 years after the
21 audit. For example, our last audit in Georgia occurred
22 in 2010. We did not receive the findings until 2012.
23 But we were expected to respond to their letter within 60
24 days, and we did, having already addressed many of those
25 issues.

1 The compliance monitor did not reply until 2014, a
2 total of 4 years. And this is a widespread issue across
3 the country.

4 My concern then, and it remains a concern today, is
5 compliance findings that are made using subjective
6 criteria that can create tension externally between the
7 States and OJJDP and internally between compliance staff
8 and those administrators who may be acting to correct an
9 errant outcome due to subjective interpretation.

10 I recommend the following: standardize practices for
11 compliance monitoring; help States develop comprehensive
12 data collection systems; revise the compliance manuals;
13 provide State representatives notice and comment of
14 changes in compliance criteria; reauthorize the JJDP
15 with accountability provisions with the necessary
16 funding.

17 The time is right to reauthorize the JJDP and in so
18 doing make the changes necessary to improve the
19 accountability and oversight of juvenile justice grants.
20 I do not view this hearing as an obstacle to
21 reauthorization, but an opportunity to improve upon an
22 historical and strategic act of Congress that has
23 assisted States that, like mine, do the right thing for
24 our youth.

25 And to that end, Chairman Grassley, I want to express

1 my gratitude to you for bringing transparency to this
2 reauthorization process.

3 [The prepared statement of Judge Teske appears in the
4 appendix.]

5 Chairman Grassley. Thank you.

6 Now, Professor Rivkin?

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1 STATEMENT OF MR. DEAN RIVKIN, PROFESSOR/CLINIC LEAD,
2 UNIVERSITY OF TENNESSEE LAW SCHOOL, PUBLIC INTERESTING
3 LAWYERING PRACTICUM
4

5 Mr. Rivkin. Mr. Chairman, Senator Whitehouse,
6 members of the Committee, my name is Dean Hill Rivkin. I
7 appreciate the opportunity to testify today.

8 I am College of Law Distinguished Professor at the
9 University of Tennessee College of Law, where I have
10 taught since 1976. With the assistance of Community
11 Cooperating Attorney Brenda McGee, who is here with me,
12 and law students, I teach a course called the Public
13 Interest Lawyering Practicum.

14 Since 2009, we have represented in juvenile court
15 youth prosecuted by the State for the status offense of
16 truancy, which is not a crime in Tennessee. Youth in
17 status offense cases in Tennessee are not entitled to
18 counsel, which makes Federal and State oversight --
19 effective Federal and State oversight especially
20 critical.

21 A number of our clients had been locked up in the
22 juvenile court's secured detention facility following
23 their problematic pleas of guilty. These lockups range
24 from 24 hours to a week or longer.

25 In the juvenile jail, our clients were shackled,

1 indiscriminately drug tested, asked to strip, given orange
2 jail jumpsuits, and placed in a facility that held
3 serious juvenile offenders.

4 They were not screened for mental health problems
5 and, indeed, one of our clients threatened suicide
6 following her release from the detention facility and was
7 admitted to a psychiatric hospital through her parents.

8 We sought to halt these practices by urging our State
9 agency to exercise more vigilant oversight. Suffice it
10 to say that our questions and our questions about data
11 that we had obtained from the local juvenile court were
12 never satisfactorily answered.

13 After exhausting these efforts with the State agency,
14 we turned to OJJDP for assistance. In the spring of
15 2013, following the appointment of a new administrator,
16 we conveyed our concerns about the problems in Tennessee.

17 In July 2013, I received a telephone call from an
18 official of OJJDP who said he was following up in my
19 communication. In this conversation, I was informed that
20 OJJDP was preparing to conduct an audit of Tennessee, the
21 first full audit since 2005. I offered to send this
22 official the local detention data that we possessed and
23 to meet with the auditing staff to convey our catalog of
24 concerns.

25 The official told me that he was not interested in

1 the data and left the impression that OJJDP would conduct
2 the audit without meeting with us. They did not.

3 The audit was released in January 2014. It failed to
4 consider the information that we possessed and other
5 information about Tennessee's compliance practices.

6 Significantly, the auditors only looked at 4 months
7 of TCC-wide data from our county, despite the data that
8 we had that showed many more lockups. This was 2012.

9 Also, the audit failed to mention the large number of
10 lockups under OJJDP's so-called 24-hour exception. This
11 exception, which finds no grounding in the absolute ban
12 on secured detention in the act, allows courts to jail
13 status offenders for up to 24 hours before and after,
14 excluding weekends.

15 In our county alone, 237 non-DSO lockups were
16 reported in 2012. We believe that this was an abuse of
17 this exception and OJJDP turned a blind eye by not
18 meeting with us about this.

19 The audit also failed to reconcile the sizable
20 discrepancies in valid court order youth in Tennessee.
21 There were 212 reported in the audit for 2012, despite
22 the fact that the State statistics showed the number of
23 DCO referrals to be 889 for 2012.

24 Based on our experiences, we believe that the
25 compliance system as it is currently administered is one

1 of the least transparent of any Federal program that I
2 have encountered. Public access is limited. The
3 bureaucratic language is mind-boggling.

4 Without greater transparency and clarity,
5 accountability, which is the touchstone of this act,
6 suffers.

7 In conclusion, the need for a strong Federal
8 presence, with adequate funding, to prevent vulnerable
9 children from being incarcerated for non-crime is even
10 more important today than it was in 1974. We believe --
11 I believe Congress should proceed with a fortified
12 reauthorization of the act in light of the evidence
13 presented here.

14 Thank you for inviting me.

15 [The prepared statement of Mr. Rivkin appears in the
16 appendix.]

17 Chairman Grassley. Thank you, Professor Rivkin.

18 Now, Mr. Soler?

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1 STATEMENT OF MR. MARK SOLER, EXECUTIVE DIRECTOR, CENTER
2 FOR CHILDREN'S LAW AND POLICY

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4 Mr. Soler. Mr. Chairman and members of the
5 Committee, my background is summarized in the bio that I
6 submitted, but I think it suffices to say I have worked
7 on juvenile justice reforms around the country for the
8 last 37 years.

9 I want to start by thanking you, Mr. Chairman, and
10 you, Senator Whitehouse, for introducing S.2999 in the
11 last Congress. As you know, the act has been essentially
12 unchanged since 1992. Yet, every year, some 1.3 million
13 young people enter the juvenile justice system in this
14 country, more than the entire population of the 20
15 largest cities in the State of Iowa, more than the entire
16 population of the State of Rhode Island, and that is just
17 arrests, which is only one way that young people get into
18 the system.

19 For a statute that affects millions of children and
20 their families every year, it is long past time for an
21 update.

22 S.2999 includes critical revisions to the act and I
23 urge you to keep them in the legislation when you
24 introduce it in this session. Particularly important are
25 the provisions to keep youth awaiting trial in criminal

1 court out of adult jails; to enforce the prohibition on
2 locking up status offenders by phasing out the valid
3 court order exception; to support the elimination of
4 solitary confinement and dangerous restraints in juvenile
5 facilities -- and I particularly want to thank Senator
6 Durbin for your interest in that and work on that issue;
7 and, finally, to provide much needed guidance to the
8 States on how to reduce racial and ethnic disparities in
9 the system.

10 These important reforms and others in 2999 will
11 improve OJJDP's ability to help States ensure that the
12 juvenile justice system is fair, safe and effective.

13 The Juvenile Justice and Delinquency Prevention Act,
14 however, has already proved its value many times over and
15 I have seen its impact firsthand.

16 When I first started this work in 1978, 4 years after
17 passage of the act, there were 500,000 children held in
18 adult jails in this country for some period of time. I
19 worked with many jurisdictions around the country to help
20 them remove children from adult jails pursuant to the
21 core requirements of the act.

22 I also brought litigation to protect children in
23 adult jails when local authorities ignored the mandates
24 of the act. For example, I represented a 15-year-old
25 girl in southeast Ohio who was held in the county jail

1 for staying out overnight and was subsequently raped by a
2 jailer.

3 I represented youth held in the Boise, Idaho jail,
4 where a boy was put in jail for not paying \$73 in parking
5 tickets and was beaten to death by other inmates over a
6 14-hour period.

7 I worked on the case of a teenaged girl in California
8 who was jailed for curfew violation for being in the town
9 square at night and then hanged herself in her cell.

10 I represented the family of a young boy in La Grange,
11 Kentucky who hanged himself in his cell on the second
12 floor of the jail while the jailer sat in his office on
13 the first floor.

14 I have seen the needless tragedies that occur when
15 the mandates of the Juvenile Justice Act are not
16 followed. This statute saves children's lives and
17 prevents physical and sexual abuse. We would all want
18 our own children or our nieces and nephews, if they got
19 in trouble, to have the protections of this act.

20 The Office of Juvenile Justice and Delinquency
21 Prevention has had a mixed track record over the past 20
22 years. During the second half of the 1990s, it was a
23 leader in the field. For much of the last 15 years,
24 however, until recently, OJJDP did not keep up with
25 advancements in the field or provide strong leadership.

1 It did not help that appropriations for system
2 improvements were but by 80 percent or that the Obama
3 Administration did not name a permanent administrator for
4 the agency until 4 years after he took control of the
5 Executive Branch of government.

6 The vacuum in leadership was partially filled by the
7 Annie E. Casey Foundation through its successful Juvenile
8 Detention Alternatives Initiative to reduce unnecessary
9 use of detention without jeopardizing public safety and
10 by the John D. and Catherine T. MacArthur Foundation,
11 whose Models for Change initiative supported important
12 reforms in mental health services, representation by
13 counsel, reduction of racial and ethnic disparities,
14 aftercare, and other areas.

15 But even large foundations cannot replace the
16 authority and resources of a Federal agency and some
17 foundations eventually leave juvenile justice and move on
18 to other areas of social reform, as the MacArthur
19 Foundation has recently done.

20 I applaud Bob Listenbee for his efforts over the last
21 2 years to engage OJJDP more effectively on the critical
22 issues in our field. He has brought energy, commitment
23 and intelligence to a difficult and complex task.

24 To fully realize its role as a leader, OJJDP needs to
25 continue to reform itself. Fortunately, there are two

1 recent reports from the National Research Council to
2 provide guidance.

3 First is "Reforming Juvenile Justice: A Developmental
4 Approach," a really superb compendium of recent research
5 in the field and its relevance to the mission and goals
6 of OJJDP.

7 The second report, "Implementing Juvenile Justice
8 Reform," published last year, was commissioned by Mr.
9 Listenbee soon after he took over as administrator of
10 OJJDP. It lays out a thoughtful, detailed, 3-year plan
11 for OJJDP to implement the findings of the earlier
12 report, ensure that juvenile justice reforms are grounded
13 in knowledge about adolescent development, and support
14 his role as a leader in the field.

15 I urge the Committee to support Mr. Listenbee and
16 OJJDP as they seek to follow that plan.

17 Thank you.

18 [The prepared statement of Mr. Soler appears in the
19 appendix.]

20 Chairman Grassley. Thank you, Mr. Soler.

21 Now, Ms. Coleman?

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1 STATEMENT OF MS. ANDREA COLEMAN, DISPROPORTIONATE
2 MINORITY CONTACT COORDINATOR, OFFICE OF JUVENILE JUSTICE
3 AND DELINQUENCY PREVENTION, U.S. DEPARTMENT OF JUSTICE
4

5 Ms. Coleman. Good morning. I would like to thank
6 the Senate Judiciary Committee for allowing me to speak
7 today. My name is Andrea R. Coleman and I am the
8 Disproportionate Minority Contact, or DMC, Coordinator
9 for the U.S. Department of Justice Office of Juvenile
10 Justice and Delinquency Prevention, or OJJDP.

11 Prior to joining the department in 2007, I served as
12 the DMC coordinator for the great State of Kentucky. I
13 have over 15 years of experience working with at-risk and
14 delinquent youth in various settings.

15 In 2009, I received the Assistant Attorney General's
16 award in recognition of outstanding contributions to the
17 mission and goals of the U.S. Department of Justice's
18 Office of Justice Programs.

19 As a subject matter expert in this area, I have
20 worked to help State and local efforts to reduce the
21 disproportionate number of minority youth who come into
22 contact with the juvenile justice system pursuant to
23 Section 223(a)(22) of the Juvenile Justice and
24 Delinquency Prevention Act, or the JJDP Act.

25 OJJDP is a distinctive Federal agency because it has

1 the statutory duty to hold States accountable for
2 violations of the DMC, or disproportionate minority
3 contact, requirement by withholding a portion of their
4 Title 2 formula grants.

5 Unfortunately, based on my years of experience in
6 reviewing DMC compliance plans submitted by all States,
7 55 States, territories, and the District of Columbia, I
8 have often wondered how OJJDP, in good conscience, can
9 allow certain States to receive full funding despite
10 clear evidence of violation of this core requirement.

11 For example, Illinois has continued to receive full
12 funding even though I made several recommendations of
13 noncompliance starting in 2008. I made these
14 recommendations because Illinois' submitted DMC plans did
15 not even meet the program requirements such as not
16 submitting enough data to determine whether DMC even
17 exists, which is part of the regulatory requirement.
18 However, my supervisors overturned my recommendations and
19 gave the State full funding.

20 Unfortunately, this practice of not holding States
21 accountable continued even after Mr. Robert Listenbee
22 became administrator of OJJDP in 2013.

23 I and other OJJDP staff members recommended findings
24 of noncompliance against Illinois and other States.
25 However, Mr. Listenbee overturned these recommendations

1 without providing any substantive information in support
2 of that decision and per a brief meeting with the head of
3 the Office of Justice Programs' Office of General Counsel
4 or OGC.

5 Even further, Mr. Listenbee and his leadership team
6 announced that all States would get a, quote, "pass" for
7 their compliance with the DMC core requirement with
8 respect to their funding for fiscal year 2014.

9 As recently as last week, OJJDP staff were told that
10 this blanket, quote, "pass" would be issued again for
11 fiscal year 2016's Title 2 formula grant funds.

12 This means that States like Illinois that have not
13 met the funding requirements will receive grants in the
14 same manner that States that have met or even exceeded
15 those requirements, such as Connecticut, Iowa and Utah.
16 This strikes me as unfair.

17 Other States have flatly admitted to me over the
18 years that they will not even attempt to achieve
19 compliance with the DMC core requirement as stated in the
20 JJDP Act or in the regulations because they know that
21 OJJDP will not enforce them. This decades old failure
22 continues because Mr. Listenbee has focused more on his
23 relationships with advocacy groups rather than on the
24 States and compliance with the DMC core protections and
25 the first three of the JJDP Act.

1 For example, Mr. Listenbee did not want States to
2 participate in a stakeholders meeting in March 2014 until
3 I forced the issue. When he finally relented, Mr.
4 Listenbee wanted me to invite DMC officials who were
5 minorities, which would have excluded the juvenile
6 justice specialist for the State of Connecticut, who has
7 worked over 35 years to elevate the State's DMC work to
8 national recognition.

9 According to a letter that was sent to Chairman
10 Grassley in October, which the staff never saw, including
11 me, the reason that no State will be found out of
12 compliance with the DMC core requirement is because a new
13 compliance monitoring tool is being developed. However,
14 I was the one who developed this tool way back in 2011.
15 This tool is called the Disproportionate Minority
16 Compliance Determination Assessment Instrument, or the
17 CDAI.

18 Even after the CDAI was piloted, no senior leader
19 would grant final approval. A proposal was submitted to
20 Mr. Listenbee and his senior leadership team in June 2013
21 and again in February 2014, in addition to other status
22 inquiries, but all to no avail.

23 When Mr. Listenbee was appointed to be administrator
24 in March 2013, I, like many other staff members, were
25 excited that he would bring his expertise and vision to

1 OJJDP, particularly with addressing DMC. However,
2 compliance monitoring issues have been exacerbated under
3 his tenure and individuals who speak up suffer
4 retaliation.

5 After I made recommendations of noncompliance in 2013
6 and voiced concerns in 2014 and 2015, my job duties were
7 reassigned to another staff member, even though I still
8 hold the title as OJJDP's DMC coordinator.

9 These experiences have been extremely difficult to
10 me, to say the last, but I do not want to get lost in all
11 of this is the unfair treatment of youth, regardless of
12 their race and ethnicity, who have come into contact with
13 our Nation's juvenile justice system and that is why I am
14 here to testify today. I want to make sure that the
15 agency that I proudly work for achieves this mission on
16 behalf of our Nation's youth.

17 So I want to thank you for giving me the opportunity
18 to testify today and I look forward to answering any of
19 your questions.

20 Thank you.

21 [The prepared statement of Ms. Coleman appears in the
22 appendix.]

23 Chairman Grassley. Thanks to all the panel. We
24 will have 7-minute rounds of questions, unless there is
25 objection.

1 By the way, does the Senate Minority Whip need to go
2 early because you have other responsibilities? Because
3 if you do, I will let you go.

4 Ms. Rumsey, as you noted in your opening, it is
5 disturbing that the department has been handing out
6 grants to States despite admissions of noncompliance with
7 these requirements.

8 In my January letter to the department, I asked about
9 allegations that the Office of General Counsel for the
10 Office of Justice Programs approved handing out money to
11 States that failed to meet the statutory requirements.

12 Briefly, what can you tell us about this allegation
13 that the General Counsel's office signed off on the
14 practice that the department now admits is inconsistent
15 with law?

16 Ms. Rumsey. Thank you, Chairman Grassley. It is my
17 understanding they wrote the memo which creates that
18 practice, the secret legal memo which essentially
19 authorizes or sort of retrospectively authorizes what
20 Wisconsin was doing.

21 So, in fact, there was an e-mail with the subject
22 line "Wisconsin" which has a legal opinion attached to
23 it, which essentially allows Wisconsin to do what they
24 are doing, which is lock up non-offenders.

25 So it is my understanding that they actually wrote

1 the memo that allows this practice.

2 And I just want to add, quickly, too, this came to
3 light because of the dogged work of the DOJ/OIG special
4 investigator who worked this case for over 1 year and a
5 half and was abruptly removed in late 2009, at which
6 point the Wisconsin case went dormant.

7 Chairman Grassley. Thank you.

8 Now, Professor Rivkin, you wrote to the department
9 November 2013 asking why the department was not
10 interested in receiving the data that you had concerning
11 compliance issues in your State.

12 The letter will be submitted to the record, without
13 objection.

14 [The letter referred to follows:]

15 *****COMMITTEE INSERT*****

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1 Chairman Grassley. The department needs to improve
2 its handling of such reports. So my question: why was
3 the department uninterested in hearing about violations
4 and do you have any recommendations for improving the
5 department's management of the Justice grants?

6 Mr. Rivkin. Chairman Grassley, asking me why they
7 did not accept it would only lead to speculation. This
8 audit, the audit that was done in September of 2013 was
9 the first audit since 2005, 8 years.

10 In terms of recommendations, I believe there needs to
11 be more frequent audits than once every 8 years. There
12 needs to be greater collection of data and the integrity
13 of that data. This is a time of great sophistication in
14 data collection and yet the data does not appear to be as
15 robust as it should be.

16 There should be much greater transparency in this
17 agency rather than guidance documents and compliance
18 regulations that go on and on. And I think there needs
19 to be greater public participation among people in the
20 States when audits take place and when OJJDP comes in.

21 Those are some recommendations, Mr. Chairman, that I
22 think would be prudent.

23 Chairman Grassley. Ms. Coleman, some in the
24 juvenile justice community have sought to blame States'
25 noncompliance issues on reductions in the budget of the

1 program. Yet, the department policy that unlawfully
2 rewarded noncompliant States with Federal money existed
3 long before those budget cuts.

4 You noted in your statement that in my home State of
5 Iowa and other States, like Connecticut and Utah, have
6 not only met the core funding requirements, but exceeded
7 them.

8 How much funding in juvenile justice grants do these
9 compliant States get more or less than other States?

10 Ms. Coleman. Yes. So funding is actually an issue
11 and as others have noted, the funding has dropped
12 precipitously over the last decade. But these States
13 actually are our minimum States.

14 So over the last couple of years, Connecticut, Iowa
15 and Utah have received roughly around \$400,000 annually
16 in Title 2 formula grant funds to carry out various
17 functions of the JJDPA. So they have actually been able
18 to exceed the core protections of the JJDP Act.

19 And particularly with the DMC core requirement, we
20 have done a study that is soon to be released and even
21 though they have received the minimum amount of funding,
22 they have really been able to exceed the core
23 protections.

24 So although funding is really an issue, they have
25 really been able to come up with some resourceful ways to

1 exceed the core protections and do really well and we
2 have seen this through their data.

3 So although funding, again, is an issue, it is not
4 the only issue and they have been very resourceful in
5 being able to exceed the core protections and work and do
6 really well.

7 Chairman Grassley. I want to ask you another
8 question about blanket pass.

9 Ms. Coleman. Sure.

10 Chairman Grassley. The Justice Department sent me
11 a letter in October that confirms your allegations that
12 the department issued a blanket pass to States regarding
13 disproportionate minority contact requirements.

14 This letter will be submitted to the record, without
15 objection.

16 [The letter referred to follows:]

17 *****COMMITTEE INSERT*****

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1 Chairman Grassley. In your view, how does this
2 blanket pass square with the requirements in the statute?

3 Ms. Coleman. It does not square at all. OJJDP is
4 required annually to make annual determinations of
5 requirement with all the four core protections of the
6 act, including DMC, pursuant to Section 223(a)(22) and
7 its accompanying regulations. And so the letter that was
8 sent in 2014, that will also be sent this year for 2016
9 funds, is unprecedented.

10 Since DMC has been a core requirement in 1992, this
11 has never occurred. States have never been given, quote,
12 "a blanket pass" for funding. It has never happened.
13 Under this administration is the only time it has ever
14 occurred. So it does not square with the law.

15 Chairman Grassley. Senator Whitehouse?

16 Senator Whitehouse. I am going to be here through
17 the entire hearing. So let me yield to my distinguished
18 senior colleague, the Senator from Illinois.

19 Senator Durbin. Thanks, Mr. Chairman, and thank
20 you, Senator Whitehouse, for accommodating my schedule a
21 little bit here.

22 Ms. Coleman, we took a closer look at your testimony
23 involving my State, obviously, with great interest and I
24 might say at the outset that one of the gentlemen on the
25 Juvenile Justice Commission in Illinois is retired Judge

1 Timberlake, whom I greatly respect, who has been a leader
2 in the areas of juvenile justice.

3 It appears that the first notification Illinois had
4 that it was out of compliance was in 2012. They were
5 also notified that they had the right to appeal, which
6 they did. And during the course of the appeal, I think,
7 according to Judge Timberlake's letter, they answered the
8 data collection issues which were raised in the 2012
9 notice and by 2013 they were given a notification that
10 they were going to continue to receive funding and that
11 they were in compliance.

12 So they were not ignoring it. When they were
13 notified, they moved on it and I am glad they did. We
14 want to gather this information.

15 I think most of us would concede that on a national
16 basis we have disproportionate minority contact in
17 virtually all aspects of our justice system and we
18 certainly want to make sure that we, as a Nation, address
19 it and particularly among children.

20 I had a hearing in another subcommittee 1 year or 2
21 ago on the school-to-prison pipeline. Many of the
22 offenses which these young people are accused of and then
23 incarcerated because of, God forbid they would have been
24 doing the same thing when I was in school, I might not be
25 sitting here today. But it is a reality.

1 Mr. Soler, if I have pronounced your name correctly,
2 you have highlighted some of the most egregious examples
3 of students who, for what was considered a disciplinary
4 infraction when I was in school, is now viewed in the
5 criminal context with disastrous results personally and
6 on the reputations of these individuals.

7 Judge Teske, I remember when you testified at that
8 hearing. You were as impressive then as you are today.
9 And I will tell you the thing that struck me the most in
10 your testimony is when you waved 389 pages of Federal
11 jargon on how these agencies are supposed to comply with
12 all of the things that we can dream up.

13 I would like to ask you -- you gave some specific
14 examples, but how can we simplify this so we serve the
15 cause of justice, put limited resources -- incidentally,
16 this program has been cut by 80 percent in funding over
17 the last 10 years -- put these limited resources to work
18 to remedy the injustice that has been described?

19 Judge Teske. Senator, first of all, regarding the
20 compliance matter, let me just say there is actually a
21 great deal of good information in here. However, I think
22 that it can be divided up separately. And when we talk
23 about a compliance manual, let us talk about only those
24 rules and regulations that the States need to comply and
25 then make reference to some other separate document.

1 The other problem is that -- and it is kind of a
2 perfect storm that is coming about here, and that is why
3 I was hoping in my testimony to bring another dimension
4 to what Ms. Rumsey and Ms. Coleman are sharing with us,
5 which are egregious situations, no doubt about it.

6 But thanks to them in bringing this about. Let us
7 explore the entire universe. And what I mean by that is
8 that we have -- this perfect storm includes not only the
9 80 percent reduction in funding, but at the same time,
10 there was an expansion of the monitoring universe, and
11 the States were pushing back.

12 We were asked to start inspecting shopping malls,
13 going into group homes. I have a letter here, 2014, that
14 says it from a compliance monitor and Georgia is pushing
15 back, saying wait a minute, the JJDP does not
16 specifically expressly say that. Why is this going on?
17 That is creating more expense to us when, in fact,
18 funding is going down.

19 So when you have that happening, that is creating
20 tension between States and OJJDP. That is a dynamic
21 happening.

22 And then I think we are witnessing another part of
23 the dynamics going on internally within OJJDP, as well.
24 Now, that is not withstanding egregious and flat-out
25 fraud like Wisconsin. That is a whole separate issue.

1 But there are other issues going on that we need to take
2 a look at.

3 Now, let me close by saying that in terms of the
4 programs, like what we did in Clayton County, Governor
5 Deal, in the March 5, front page, *Atlanta Journal*
6 *Constitution*, lead story, titled "Clayton County Program
7 Model for State." Governor Deal put me on the Reform
8 Commission for a reason. He wanted to know how can we
9 take the 77 percent reduction in commitments and do it
10 statewide.

11 And to Governor Deal's credit, he turned to our State
12 advisory group and he said how can we use these formula
13 moneys, how can we use moneys that we need to be reducing
14 DMC and do it effectively. Well, let us look at
15 statewide reform. And because of using these formula
16 moneys on a statewide basis, attacking the most
17 egregious, highest commitment counties in the State of
18 Georgia, we have reduced commitments by 62 percent, most
19 of them kids of color, in one fell swoop.

20 And so last year, January 2014, Bob Listenbee comes
21 down and meets with me and my juvenile justice
22 specialist, Joe Vignati, at CDC. He says, "How did you
23 all do it?" We explained to him. And then not too long
24 later, he comes back with the SMART grant. He says, "Let
25 us see if we can help States be more effective in

1 reducing DMC by taking it on statewide instead of all
2 this piecemeal, patchwork stuff that is going on in the
3 States, which are good in that piece, patchwork way, but
4 let us really sock it, let us do the knockout."

5 Senator Durbin. I have to reclaim because I am
6 running out of time here. But, Mr. Chairman, I
7 understand this program has not been reauthorized for a
8 long, long time, 2002, and I hope that this hearing is an
9 indication of our sentiment that it should be. And I
10 hope that we will keep an eye on the key goals that
11 started us down this path.

12 But I think Judge Teske's experience, again,
13 impresses me so much, that he has results to show and we
14 should be encouraging States to either look for better
15 programs or at least to follow your example in the
16 approach you are taking.

17 So thank you for this hearing and thanks to all the
18 witnesses.

19 Chairman Grassley. I think a long time before I
20 became Chairman, Senator Whitehouse and I had agreed on a
21 basic format and we are ready to move forward.

22 Senator Durbin. Great.

23 Chairman Grassley. And hope you will follow.

24 Senator Durbin. I would be happy to. And I also,
25 as Mr. Soler mentioned, focusing on aspects such as

1 isolation, segregation and solitary confinement for
2 children in America, come on. We are better than that
3 and I hope that some aspects of that will be included.

4 Thank you.

5 Chairman Grassley. Thank you.

6 Senator Tillis?

7 Senator Durbin. I would ask that these two letters
8 be made part of the record, without objection.

9 Chairman Grassley. Without objection, so ordered.

10 [The letters referred to follow:]

11 *****COMMITTEE INSERT*****

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1 Senator Tillis. Thank you, Mr. Chair.

2 Ms. Rumsey, before I go into a couple of questions, I
3 was just curious. As Judge Teske was commenting, you
4 seemed to have a reaction to a few things. Do you want
5 to expound on that?

6 Ms. Rumsey. I have never monitored shopping malls
7 as part of my job.

8 Senator Tillis. But it sounds like at least in one
9 case, we had somebody on the ground who was asked to.

10 Ms. Rumsey. Specifically, they may have been asked
11 to monitor police departments which exist in shopping
12 malls, which is not very common and, again, in my over 10
13 years doing this work, I have never once monitored a
14 shopping mall.

15 Senator Tillis. I do know down in North Carolina,
16 particularly in the urban areas, that is increasingly
17 common in terms of police presence. So maybe that
18 explains it, maybe not.

19 But, Judge Teske, I wanted to come to you. You are
20 from down in Clayton County and on the face, it sounds
21 like you all are doing are good things in Clayton County
22 and producing positive outcomes.

23 You have lifted up that procedure manual which has --
24 or the policy manual which has some 300 or 400 pages in
25 it, but there was something interesting that you said.

1 You lifted up the 300 or 400-page document and then you
2 said "but now we need some more specifics."

3 So one question that I had, though, goes back to the
4 problem that I have -- I came from State government to
5 the Federal Government -- is that we spend so much time
6 dictating precisely what you do, we do not spend enough
7 time measuring what you accomplish.

8 So as we are going back and looking at
9 reauthorization, to what extent should we be looking at
10 measuring outcomes and having interventions based on --
11 we have got baseline information -- measuring outcomes
12 and intervening and affecting funding as a result of a
13 failure to meet what we believe are reasonable outcomes,
14 which may have to vary from State-to-State or region-to-
15 region based on the circumstances, the demographics?

16 But what are your thoughts on that?

17 Judge Teske. I completely agree, Senator. First of
18 all, in my domain of being a judge, specifics means
19 reducing, not expanding.

20 Senator Tillis. Good. It does not mean that up
21 here, by the way.

22 Judge Teske. So there is kind of the data
23 definition there. But directly to your point, as you
24 recall, initially, in my testimony, I made reference that
25 I chair the Oversight and Implementation Committee of our

1 Criminal Justice Reform Commission. Yet, again, another
2 great of Governor Deal, he wanted to make sure that we do
3 not do what other States have done in the past, including
4 our own historically, where we have reformed something
5 and then we pat each other on the back and we walk away
6 without thinking, well, did we just enact something that
7 really works. We need to measure it.

8 So, in fact, in our second year, what we did in my
9 committee is we brought in researchers and analysts to
10 help us develop an outcome and performance measure
11 document.

12 We are now creating a centralized juvenile data
13 system. What we are doing is collecting that data, using
14 that document, plugging the data in so that we can
15 measure whether it is working.

16 Governor Deal said let us keep the commission going
17 so we can continue making changes and recommending to the
18 legislature. So you are absolutely correct.

19 Senator Tillis. Well, I hope that we will focus on
20 that because I think the way you get to a more reasonable
21 document that is more likely to be complied with is to
22 start looking at this a different way in terms of
23 measuring outcomes.

24 Ms. Coleman, you seemed to react to the question, so
25 I was going to come to you next.

1 Ms. Coleman. Thank you, Senator. I want to note
2 the document that he is referring to is the
3 Disproportionate Minority Contact Technical Assistance
4 Manual and we are -- actually, it has gone through
5 several reiterations over the years and I was actually --
6 that is part of my job duties and responsibilities and we
7 were actually working to reduce that.

8 That is one of my job duties and responsibilities
9 that I was actually working on before it was actually
10 reassigned to another staff member. And the purpose of
11 that document actually is guidance for states to
12 implement the DMC reduction model.

13 And, yes, it is a mammoth monster and I always say
14 that if you cannot sleep at night, you should pick up
15 that manual, you should read it. So that was actually
16 one of the things that I was working on is actually
17 shortening that guidance and condensing it.

18 And currently, if you do go online, you can actually
19 take it into pieces. You do not have to take the whole
20 manual. So if you want some assistance on data
21 collection, you can just print out the first chapter and
22 take that. If you want to look at evidence-based or best
23 practices on interventions, you can just printout that
24 section.

25 So you do not have to print out that mammoth

1 document. You can take it in pieces. But as I was
2 stating in my testimony, those were one of the duties
3 that were actually reassigned to another staff member
4 that I am no longer able to work on.

5 Senator Tillis. Thank you. And I should have
6 mentioned to begin with, Ms. Coleman and Ms. Rumsey,
7 thank you for your courage in stepping up and identifying
8 some things that you think are problems and I am sorry
9 for the financial burden that you and your family are
10 facing in what I think was doing the right thing.

11 I have a question for both of you all and it has more
12 to do with -- do you feel that there were people in the
13 OJJDP that intentionally misread and applied the statute
14 or is this just an example of careless application of it?

15 I will let both of you respond in my remaining time.

16 Ms. Rumsey. Yes is the short answer.

17 Senator Tillis. I can ask a follow-up. You can
18 continue.

19 Ms. Rumsey. And a lot of this is hindsight. As I
20 said in my testimony, I was provided some e-mails --

21 Senator Tillis. Well, maybe I should ask just a
22 follow-up. Is it a systemic problem or is it just an
23 example of maybe certain sections or certain people not
24 actually doing their jobs?

25 Ms. Coleman. I will go ahead. It is hard to see

1 you at the other end of the table.

2 I think it is a combination of factors. I think
3 sometimes folks are put in place of content areas in
4 which they have no background and experience and I do not
5 think that is a DOJ problem. I think sometimes it is a
6 government-wide problem.

7 We have some senior leaders that have no background
8 in criminal or juvenile justice that are placed in
9 positions of leadership. So sometimes that is difficult.
10 So then you have staff, such as myself and Ms. Rumsey and
11 others, that do have the experience and then we are
12 trying to basically train them on the job. And so that
13 is somehow difficult. And then you do just have people
14 that will not enforce the law, as we have stated in our
15 testimony today, and so then that creates the situation
16 that Judge Teske says, that we go and we do these onsite
17 audits and then you get a report 4 and 5 years later,
18 which I think is just a disservice not only to kids in
19 these systems, but to the American people when you expect
20 a report and it comes 4 or 5 years later.

21 So it is a lack of enforcement of the law, much to
22 our protesting over and over, and it is just that people
23 will not do it, for whatever reasons.

24 Senator Tillis. Thank you. Thank you, Mr. Chair.
25 Chairman Grassley. Senator Franken?

1 Senator Franken. Thank you, Mr. Chairman.

2 Professor Rivkin, as you noted in your testimony,
3 OJJDP's compliance monitoring system has historically
4 lacked transparency and accountability.

5 As an advocate with a wealth of experience navigating
6 the juvenile justice system, you nonetheless found it
7 incredibly difficult to report your observations to the
8 body tasked with program oversight. And once you
9 connected with OJJDP, your offer to submit data to
10 document noncompliance was rebuffed.

11 In your view, what were the consequences of OJJDP's
12 decision to disregard your data not just in terms of
13 taxpayer dollars, but particularly to young people in the
14 criminal justice system?

15 Mr. Rivkin. By failing to look at the local
16 detention data, as I said, the statistics that we had and
17 our experience with our clients, there was an absence of
18 on-the-ground understanding of what was happening to kids
19 when they were being locked up in our community for non-
20 crimes, for these status offenses.

21 And I have to say I was -- and I am not often this
22 nonplused. After 45 years, almost, of a legal career, I
23 was nonplused that they said to me they were not
24 interested in trying to reconcile these numbers. And as
25 a result, the integrity of the entire process was

1 significantly reduced.

2 Kids continued to be locked up and, as I mentioned,
3 the DSO violations in our county may have reduced,
4 although the integrity that the data is in question, but
5 instead the whack-a-mole sort of situation is that mostly
6 runaways are being locked. The default is to lock up, to
7 arrest and then to lock up a runaway under this, I think,
8 legally dubious 24-hour exception and bring them to jail,
9 and that is an issue that we very much would have wanted
10 to raise if we had a chance to meet.

11 We did not even know when the auditors were coming.
12 So there is real human cost. There is efficiency cost.
13 One way of getting a simpler system, frankly, would be
14 for Congress to make it very clear that the language that
15 they adopted in Section 223 in 1974 that says that States
16 cannot lock up kids in secured detention for status
17 offenses, which is as plain as day, as far as I can tell,
18 would be the law and forget about the exceptions or phase
19 the exceptions out, if Congress so wishes.

20 It would make compliance a whole lot easier and my
21 hunch is that there would be a significant reduction in
22 these lockups.

23 Senator Franken. Thank you. I want to talk about
24 mental health. Among the compliance failures you
25 identified in your testimony, you mentioned that juvenile

1 clients that your students represented were not screened
2 for mental health conditions and one of the consequences
3 was that one of your clients threatened suicide after
4 being released and was subsequently admitted to a
5 psychiatric facility.

6 Mr. Rivkin. Yes.

7 Senator Franken. One of the issues that I have been
8 most focused on is how to improve the ways in which
9 people of mental health conditions interact with the
10 criminal justice system and I have just reintroduced a
11 bill, with a number of my colleagues on both sides of the
12 aisle, that would assist in training law enforcement on
13 how to recognize and how to respond appropriately to
14 individuals who have mental health issues or are
15 experiencing mental health crises.

16 And that would invest in mental health courts so that
17 people with mental health issues are directed or diverted
18 to treatment rather than incarcerated, because right now
19 we are really using our criminal justice system as a
20 substitute for a fully functioning mental health system
21 and that has to stop.

22 Based on your experience representing juvenile
23 offenders, how would you characterize the juvenile
24 justice system's ability to adequately protect young
25 people with mental health issues and conditions?

1 Mr. Rivkin. From our observations, very poorly, and
2 this legislation I think would be very promising.

3 What we were able to do with our clients was to
4 stabilize their school experience. We were doing truancy
5 cases. And many of our clients had either identified
6 educational disabilities or the school system had not
7 screened them very well.

8 I have to say that our school system, over the course
9 of the last 6 years, through a lot of advocacy and school
10 meetings, has done a much better job of using the
11 Individuals with Disabilities Education Act to screen
12 individuals before filing petitions.

13 And I am really happy to say that in our county, the
14 number of petitions -- and in our State, there is a State
15 prosecutor there with a kid -- the number of petitions in
16 our county dropped from hundreds and hundreds each year
17 to 26 last year and the major part of it was the
18 screening done by the school system for largely mental
19 health-related issues.

20 Senator Franken. In the SCA markup, we included
21 more mental health in schools.

22 Mr. Rivkin. I think it would be really helpful to
23 keep kids, as we say, in school and out of court.

24 Senator Franken. I see some nodding. Would anybody
25 else like to comment briefly on that? Yes, Mr. Soler?

1 Mr. Soler. I think the provisions in the act, in
2 2999, to include trauma-informed care and trauma
3 considerations are really critically important. Many of
4 the children we see in the system live lives in trauma
5 all the time. They live in violent communities. They
6 may live in violent families.

7 Many, many of them, an enormously high percentage are
8 exposed to trauma and by putting this into 2999, putting
9 it into the legislation, it will assist in having more of
10 a focus on this issue to make sure that there are the
11 right kinds of training for personnel in the juvenile
12 justice system and also that people will understand that
13 young people who have been traumatized do not react to
14 things in the same way that children who have not.

15 They may react in ways that cause behavior -- cause
16 problems inside of juvenile facilities, but it is not
17 because they are being wilfully disobedient to the staff
18 in there. These kids are traumatized and they are acting
19 it out.

20 Senator Franken. Thank you.

21 Judge Teske. Senator, I just wanted to say
22 traumatized people traumatize people and we need to keep
23 that in mind and why it is there. The JJDPA and what it
24 provides and what Mark is saying is so important because
25 what we do not need to do is put kids in a system,

1 detaining them unnecessarily, that traumatizes them more.

2 Senator Franken. Thank you.

3 Chairman Grassley. Now, Senator Whitehouse?

4 Senator Whitehouse. Thank you, Chairman.

5 Let me just take a moment of my time to thank Senator
6 Franken for his work in the education bill on the mental
7 health issue. I am on the Health Committee with him and
8 I think we made really good progress in that area.

9 Let me also say that for those who are skeptical
10 about Washington's ability to get things done and sense
11 too much partisanship around here, under the very expert
12 leadership of Chairman Alexander and Ranking Member
13 Murray, we did a very significant piece of legislation in
14 a hotly contested issue area that cleared the Committee
15 22-0. So I hope that Chairman Grassley and I can match
16 that on the JJDPA reauthorization here in the Judiciary
17 Committee.

18 Ms. Coleman and Ms. Rumsey, both of you exhibited
19 considerable frustration with the failures at the State
20 level that were being accommodated rather than addressed
21 and I have to believe that that frustration is founded in
22 a sense of purpose and value to the underlying JJDPA
23 program, and clearly this is an area in which two very
24 talented people have dedicated your professional skills.

25

1 Could you say something, just briefly, about the role
2 of the Juvenile Justice and Delinquency Prevention Act
3 and why it is that you are so committed to having that
4 enforced and why that is your career?

5 Ms. Coleman and then Ms. Rumsey.

6 Ms. Coleman. Thank you so much for the question,
7 Senator Whitehouse. My dedication to this actually
8 started before I became a Federal Government employee.

9 Before I came to the Department of Justice, I did
10 this work in the State of Kentucky. Go Cats, go Cards,
11 had to get that in there for my folks in Kentucky who are
12 watching.

13 This started long before I got here, my investment in
14 the JJDP Act. Again, I did this work there, serving as
15 the disproportionate minority contact coordinator and
16 also working on the juvenile accountability block grant,
17 serving as the Title 5 coordinator, working long ago
18 under the serious violent offender reentry work.

19 I mean, I have done this JJDP Act work for so long,
20 being with the JJDP Act, sort of feeling like it is my
21 baby, so to speak.

22 Senator Whitehouse. And you have seen the
23 difference that it makes.

24 Ms. Coleman. I have seen the difference. I
25 remember when Kentucky was a nonparticipating State. We

1 were with Wyoming. So when OJJDP would have its national
2 conference, we would actually have our own little table
3 because we were sort of the bad children. We had some
4 very serious challenges in Kentucky.

5 So I have seen where it has come and I have seen the
6 impact on the ground in the weeds. So this legislation,
7 I can attest to what everyone has said here, saw some
8 very awful things happening to children in the Bluegrass
9 State.

10 So it is very, very important that this act gets
11 reauthorized.

12 Senator Whitehouse. Ms. Rumsey?

13 Ms. Coleman. And so coming to the Federal level and
14 seeing it at the sort of 30,000-foot high level, that is
15 my commitment. And so this is more than a job to me when
16 I go and visit the facilities and do the work with Ms.
17 Rumsey and other staff.

18 I mean, this almost sort of brings an emotional --
19 this is emotional for me. Seeing what happens to these
20 children in the facilities and seeing the minority over-
21 representation, that is why I am here today. It is not
22 really to point fingers. It is really to ensure that we
23 hold States accountable, that we protect these children
24 and that we make sure that taxpayer dollars are being
25 spent wisely.

1 So that is my commitment to the JJDPa and why the
2 reauthorization is so important.

3 Senator Whitehouse. Ms. Rumsey?

4 Ms. Rumsey. Thank you. The best way to describe
5 why I do what I do is to actually go into jails and see
6 where these kids are being housed. And if I may
7 recommend one very close to here, the Baltimore City
8 Detention Center, BCDC, you have probably heard of it
9 because it made the front page of the *Washington Post* a
10 year or so ago.

11 And if you go into that facility, you will see
12 children in isolation in the most extreme circumstances
13 that are shocking and unbelievable and disgraceful. And
14 I do the work I do because the impact it has is that
15 changes are made often after the Justice Department shows
16 up.

17 For example, there was a 16-year-old girl in
18 isolation in BCDC, which is a 1,000-bed adult jail, so
19 very few juveniles there, thankfully, but if they are
20 there, it is not a good place. Right? A 16-year-old
21 girl there, should not have been there. There was an AAG
22 with me there, along with a number of other staff.

23 We were told within an hour she was moved out because
24 we all saw this girl in a circumstance she should not
25 have been in. We expressed our concerns as politely as

1 we could and the good news is she was moved to the
2 juvenile justice system almost immediately.

3 So that is why I do what I do, because I think the
4 power of this law is the change that we can bring to
5 children's lives can be immediately.

6 Now, quickly, I want to say, too, I think oversight
7 is still so important here, because you are going to hear
8 from Carolyn Lerner later today that she has ordered a
9 reinvestigation of sorts of the Wisconsin case and our
10 OIG is handling that. That began about 7 months ago and
11 they still have not talked to me.

12 So in some ways, I am still the skunk at the company
13 picnic. They are reluctant to talk to me for some
14 reason. I am not sure why. But hopefully I will get the
15 chance at some point to share what I know in hopes of
16 actually fixing the problems which I believe still exist
17 in Wisconsin.

18 Thank you.

19 Senator Whitehouse. Judge Teske, you come at this
20 as a former prosecutor, as someone with a background in
21 corrections. You are from the enforcement part of law
22 enforcement.

23 The numbers that you gave showed substantially
24 reduced engagement and intervention with the criminal
25 justice system. Just remind us why that is a good thing.

1 Judge Teske. We cannot let appearances fool us.
2 The get tough rhetoric can be convenient, it can be
3 quick, but the problem is that we are now armed with so
4 much research over the last 40 years that we know that if
5 we do not do it right, be right on crime, smart on crime,
6 that we do not do those things that make us look soft, if
7 we get the courage, we are going to find out in the end
8 that we are going to have better safety in the community.
9 We are going to improve community safety.

10 I remember the days in Clayton County we had drive-by
11 shootings every week. I cannot remember the last one
12 now. I cannot remember the last one. And we are the
13 poorest county in all metro Atlanta.

14 The AJC education reporter wants to know how come our
15 graduation rates are going up, how come we are beating
16 the trend, the research, when our graduation rates should
17 be going down because we are the poorest county; but the
18 other ones are either steady or going down and they are
19 wealthier than we are.

20 Well, I will tell you why. It is because we
21 collaborate, because we have a backbone agency, a private
22 and public -- we took the research, we put it together,
23 we followed it, and, most important of all, we were able
24 to cede it with Federal money because of the JJDP.

25 You can have all the research you want, but until you

1 get something to at least get it going, like my daddy
2 said, in the old carburetor, "Son, when you go fill it up
3 when you run out of gas, because I know you are going to,
4 because, you know, kids are neurologically wired to do
5 stupid things, make sure you do not pour all the gas out
6 in that tank, just leave a little bit to pour in the
7 carburetor, it just takes just a little bit," and that is
8 what JJDPA is all about.

9 We just need that little bit to help us States get
10 going.

11 Senator Whitehouse. For what it is worth, my wife
12 would probably say that it is men who are neurologically
13 wired to do stupid things, it is not kids. But that is
14 after 30 years of marriage to me.

15 [Laughter.]

16 Judge Teske. Well, Senator, actually, women are
17 ahead of us. Their prefrontal lobe cortex is developed
18 at 23, ours is 25.

19 Senator Whitehouse. So let me thank all the
20 witnesses. Let me thank the Chairman. I think this has
21 been a very, very useful hearing. And I think the point
22 that Judge Teske closed with is one that we have already
23 accepted and agree with on this Committee at the adult
24 level with the Second Chance Act and with some of the
25 criminal justice reform legislation that we are working

1 on.

2 I have seen it in my home State of Rhode Island, in
3 which we address some of the issues related to
4 incarceration, reduced incarceration rates, got people
5 exited better out of the prison sooner, and saw our crime
6 rate go down, not up, in coordination with that.

7 So I am very pleased that the Committee I think is
8 going in the right direction here and I hope that we can
9 make real progress, and I think the witnesses have been
10 terrific in helping to guide us in that direction.

11 So a great hearing, Mr. Chairman, and thank you.

12 Chairman Grassley. And I associate myself with your
13 remarks.

14 Before the panel goes, thank you all for your
15 participation and particularly, as whistleblowers in this
16 town know, I consider whistleblowers patriotic citizens
17 who just want to do their job and have government do what
18 government is supposed to do, and I thank you for that.

19 Before you leave, I would like Ms. Coleman and Ms.
20 Rumsey to know that I am going to ask this first question
21 of Ms. Mason after she testifies: can I have your
22 commitment that the department will not engage in any
23 prohibited personnel practices against Ms. Rumsey and Ms.
24 Coleman for their testimony here today or for their
25 previous communication with this Committee?

1 I thank all of you and you are dismissed now.

2 Would the next panel come, please? Well, you cannot
3 come until they leave, but they are going to leave.

4 [Pause]

5 Chairman Grassley. Thank you all for being here. I
6 am going to give a short introduction.

7 Karol Mason is Assistant Attorney General for the
8 Office of Justice Programs at the Department of Justice.
9 The Office of Juvenile Justice and Delinquency Prevention
10 is a component of the Office of Justice Programs.

11 Carolyn Lerner heads the U.S. Office of Special
12 Counsel. She has been serving in that role since June
13 2011.

14 I will start with you, Ms. Mason.

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1 STATEMENT OF HON. KAROL MASON, ASSISTANT ATTORNEY
2 GENERAL, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF
3 JUSTICE

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5 Ms. Mason. Good morning. Thank you, Chairman
6 Grassley and Senator Whitehouse and distinguished members
7 of the Committee.

8 I am pleased to be here and grateful for the
9 opportunity to discuss the efforts of the Department of
10 Justice to improve our implementation of the Juvenile
11 Justice and Delinquency Prevention Act so that we achieve
12 the goals underlying the JJDPA to help our Nation's youth
13 to become productive citizens and the visionary leaders
14 that they are capable of becoming.

15 As Assistant Attorney General for the Office of
16 Justice Programs, which includes the Office of Juvenile
17 Justice and Delinquency Prevention, investing in our
18 youth so that we unlock their tremendous potential is one
19 of the primary reasons that I wanted to lead the Office
20 of Justice Programs.

21 Ensuring that we have an effective and fair juvenile
22 justice system is one of my top priorities. I believe
23 that the road to safe and healthy communities begins with
24 the assurance of opportunity for our young people,
25 especially those who come into contact with the justice

1 system.

2 Providing that opportunity to take responsibility, to
3 change behavior, and ultimately to become productive and
4 successful members of their communities lies at the heart
5 of the mission at the Office of Justice Programs and,
6 indeed, it is a fundamental moral obligation that we all
7 share.

8 This Administration and this Department of Justice
9 have devoted substantial attention and resources to
10 meeting the needs of challenged and justice-involved
11 youth. Efforts like the Supportive School Discipline
12 Initiative and our work with the Department of Education
13 to provide educational services to youth in correctional
14 facilities are designed to keep kids out of the juvenile
15 justice system and ensure that those who come into our
16 care are given the support, education and guidance they
17 need to get on the right path.

18 The provisions of the Juvenile Justice and
19 Delinquency Prevention Act and particularly the four core
20 protections set forth by the law provide a framework for
21 advancing this critical work. For more than 40 years,
22 the Department of Justice has used its grant-making
23 authority under the JJDPa to make a positive difference
24 in the lives of the young people who come into contact
25 with the juvenile justice system.

1 As you know, the act sets nationwide standards for
2 state-based juvenile justice systems and authorizes our
3 Office of Juvenile Justice and Delinquency Prevention to
4 award funds to assist States in improving their juvenile
5 justice systems.

6 While I can assure you that the leadership and staff
7 of OJJDP are committed to fulfilling the mandates of the
8 law, I am also aware of some of the serious problems in
9 the way the office has monitored compliance with the act,
10 problems that we have begun to address.

11 They arise from three overarching problems:
12 regulations that are outdated and inconsistent with the
13 law; vague standards that lead to subjectivity in
14 compliance findings; and, delays in making compliance
15 determinations.

16 While we are already developing new policies to
17 improve compliance with the statute and to avoid these
18 errors in the future, last month we created a new core
19 protections division in OJJDP, which, on an interim basis
20 will be led by an experienced auditor. The division will
21 develop guidelines that streamline the process for
22 submitting compliance data and it will create an online
23 tool that will allow States to submit data and enable us
24 to analyze that data in a more timely fashion.

25 We are also tightening the timeline for making

1 compliance determinations to ensure that States are held
2 accountable for compliance failures. We are developing
3 objective standards to guide our review and analysis and
4 we will make routine use of field audits to monitor State
5 compliance activity and identify areas where technical
6 assistance is needed.

7 Finally, we are reviewing all available options to
8 determine whether OJJDP can recover any of the funds that
9 were improperly awarded to States because of failures in
10 the compliance monitoring process. In fact, in response
11 to the Inspector General's recent report outlining
12 systemic failures in Wisconsin, we have frozen all of
13 that State's unspent formula grant funds and notified
14 officials of our plan to conduct an audit within the next
15 60 days.

16 We will be both thorough and expeditious in taking
17 these steps. Our goal and my pledge to you is to ensure
18 that our compliance monitoring efforts are consistent
19 with the law so that we fulfill our job of protecting our
20 youth and putting them on a path for success.

21 I am grateful to you, Senator Grassley, and to the
22 full Committee for calling these issues to our attention
23 and I applaud those who brought these serious matters to
24 light. I encourage anyone -- anyone -- who has knowledge
25 of error, waste or malfeasance in the administration of

1 OJJDP programs to come forward immediately. They will
2 continue to have my full support.

3 Thank you for the opportunity to speak to you today
4 and I will be happy to answer any questions you may have.

5 [The prepared statement of Ms. Mason appears in the
6 appendix.]

7 Chairman Grassley. Thank you, Ms. Mason.

8 Now, Ms. Lerner?

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1 STATEMENT OF HON. CAROLYN LERNER, SPECIAL COUNSEL, U.S.
2 OFFICE OF SPECIAL COUNSEL

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4 Ms. Lerner. Chairman Grassley, Ranking Member
5 Whitehouse, members of the Committee, thank you very much
6 for the opportunity to testify.

7 I also want to thank Chairman Grassley and this
8 Committee for your ongoing interest in whistleblower
9 issues and for your support of the Office of Special
10 Counsel in enforcing the Whistleblower Protection Act.

11 OSC is an independent Federal agency. We investigate
12 and prosecute on behalf of over 2 million Federal
13 employees. We fulfill this role with a staff of about
14 135 employees and one of the smallest budgets of any
15 Federal law enforcement agency.

16 OSC provides a safe channel through which Federal
17 employees may allege violations of law, rule or
18 regulations, gross mismanagement, gross waste of funds
19 and abuse of authority, or a substantial and specific
20 danger to public health or safety.

21 Unlike its role in retaliation and other prohibited
22 personnel practice cases, OSC does not have investigative
23 authority in disclosure cases. Rather, OSC first
24 evaluates whistleblower disclosures using a substantial
25 likelihood of wrongdoing standard.

1 In making this determination, we interview the
2 whistleblower and assess the reliability of their
3 information, among other factors. If this threshold
4 determination is made, I send the information to the head
5 of the appropriate agency, who is then required to
6 investigate.

7 When we receive the agency's report of investigation,
8 I assess whether the findings appear reasonable and are
9 complete. The assessment considers whether the findings
10 are credible and consistent based upon the facts in the
11 disclosure, the agency report, and the whistleblower's
12 input.

13 I then send the report with my determination and the
14 whistleblower's comments to the President and to
15 Congress.

16 This oversight role improves government operations in
17 three key ways. First, if an agency is reluctant to
18 investigate wrongdoing raised internally, OSC can compel
19 an investigation. Second, OSC provides an important
20 accountability and quality control function in the
21 investigative process. For example, the whistleblowers,
22 who are often the experts on the allegations, can comment
23 on the investigation and corrective actions. And OSC
24 also ensures that the actions taken by the agency are
25 reasonable.

1 Third and finally, the process is transparent as OSC
2 makes the results public.

3 The number of referrals to agency heads for
4 investigation varies by year, but is generally between 40
5 and 60 cases or about 5 percent of all disclosures
6 received annually.

7 In 2014 and 2015, OSC referred two cases involving
8 the Office of Juvenile Justice and Delinquency
9 Prevention, OJJDP, to the Attorney General for
10 investigation. The cases involve allegations that OJJDP
11 failed to ensure that States and localities complied with
12 the Juvenile Justice and Delinquency Prevention Act and
13 that despite documented noncompliance, States continued
14 to receive grants in further violation of the act.

15 OSC referred the cases to the Justice Department on
16 September 16, 2014 and January 13, 2015. The Justice
17 Department's Office of Inspector General is conducting
18 the investigations for DOJ.

19 In addition, OSC is also reviewing allegations that
20 an employee was retaliated against for reporting related
21 concerns about OJJDP.

22 Because all of these cases are ongoing, I cannot say
23 more about them at this time. Doing so would compromise
24 the ongoing investigation and my oversight of the OIG
25 investigation and department response. It could also

1 potentially prejudice our determinations in the reprisal
2 case.

3 I want to acknowledge the Committee staff who I
4 understand have communicated these limitations to the
5 members of the Committee.

6 Thank you again for the opportunity to testify. I
7 look forward to answering your questions.

8 [The prepared statement of Ms. Lerner appears in the
9 appendix.]

10 Chairman Grassley. Thank you, Ms. Lerner.

11 I will have four questions for Ms. Mason and one
12 question for you. I will start with Ms. Mason.

13 I want to make sure that there are no repercussions
14 against the two Department of Justice employees who
15 testified on our first panel. I am particularly
16 concerned about the allegations of past retaliation and
17 other misconduct that involved officials in your general
18 counsel's office.

19 So a simple question. Can I have your commitment
20 that the department will not engage in any prohibited
21 personnel practices against Ms. Rumsey or Ms. Coleman for
22 their testimony here today or for their previous
23 communications with the Committee?

24 Ms. Mason. You absolutely have my commitment,
25 Senator, and thank you for this opportunity to answer

1 that question. In fact, I welcome their input and as we
2 work through these solutions to the problems you have
3 identified, they are an integral part of our process to
4 fix this situation.

5 Chairman Grassley. My understanding is that the
6 department -- for you, Ms. Mason -- that the department
7 has not yet recovered any funds that were given to the
8 States under the unlawful policy.

9 Now, I would like to have today a ballpark estimate
10 of how much money has been unlawfully disbursed under
11 this policy. If you cannot give me that figure today,
12 could you commit to providing an estimate to the
13 Committee by a date certain?

14 Ms. Mason. Thank you for the question, Senator. As
15 we have mentioned in the past in our communications with
16 your staff and our briefings with your staff, because of
17 the subjectivity that is built into the current policies
18 and practices, we are having a difficult time being able
19 to determine on an objective basis, and re-create the
20 decisions.

21 So it is -- I could not give you a time limit as we
22 dig into this to try to figure out what moneys, if any,
23 need to be returned as a result of earlier decisions.
24 But I can assure you that going forward, we are going to
25 have a robust policy that is objective and transparent so

1 that everyone going forward knows what the rules are and
2 we will hold every State accountable going forward.

3 Chairman Grassley. I want to ask you a question
4 about blanket pass. In October, the department informed
5 me that since 2013, it has been telling States that they
6 will not be found out of compliance with the DMC
7 requirement pending the development of a new monitoring
8 tool.

9 Ms. Coleman testified that she developed this tool in
10 2011, 4 years ago, but could not even get status updates
11 about where it stands in the department's approval
12 process.

13 So to you, Ms. Mason. It is unclear whether the
14 administrator even has the authority to suspend
15 compliance determinations like this. I asked you this
16 question in my February letter, but have not received a
17 response.

18 Do you believe that the administrator has the
19 authority to suspend statutory requirements and, if so,
20 what is the basis for that authority?

21 Ms. Mason. Thank you for the opportunity to explain
22 what we are doing with our disproportionate minority
23 contact compliance process.

24 As we have explained to your staff, we have
25 determined that we do not have the adequate tool that

1 gives it the objectivity we need to determine compliance
2 with the disproportionate minority contact core
3 requirement. So we are using this time, in close
4 consultation with everyone involved at the Office of
5 Justice Programs -- excuse me -- OJJDP who is part of the
6 core compliance team.

7 We are also working closely with the Bureau of
8 Justice Statistics and others to develop a tool that will
9 withstand scrutiny and will be more objective.

10 We expect to have that tool available to begin
11 testing and letting people know about it by the end of
12 the summer. So I think that it is in our best interest
13 to develop a tool that is fair and objective so that we
14 can hold States fairly accountable for the compliance
15 with that core requirement.

16 Chairman Grassley. Ms. Lerner, multiple witnesses
17 testified on the first panel that their job duties were
18 stripped away after reporting what they believed to be
19 waste, fraud and mismanagement within the department. To
20 me, that sounds a lot like retaliation and textbook
21 example of a prohibited personnel practice.

22 For the benefit of other whistleblowers in the agency
23 who may fear similar reprisal, would you please explain
24 what options are available to them for reporting
25 retaliation and prohibited personnel practices to your

1 office?

2 Ms. Lerner. Sure. A lot of whistleblowers start
3 internally. They can go to their IG office. They can
4 always come to this Committee or to Congress. But the
5 Office of Special Counsel is specifically there for
6 Federal employees who believe that they have been
7 subjected to a prohibited personnel practice and we will
8 take their case through our complaints examining unit.

9 We often can get a quick resolution through
10 mediation. We have a very robust alternative dispute
11 resolution program. So that if someone comes to us and
12 they suggest that something is happening to them that
13 should not be, we can get it into mediation quickly.

14 We can also get a stay of the personnel action. So,
15 for example, if someone is being threatened with
16 termination, someone is being threatened with a
17 relocation, we can often get a voluntary stay or pause on
18 that activity through the agency. If we cannot get it
19 voluntarily through the Department of Justice, we can go
20 to the Merit Systems Protection Board.

21 So there are a lot of tools in our arsenal that we
22 can -- or enough tools in our toolkit that we can use to
23 protect whistleblowers and we will do so very robustly.

24 Chairman Grassley. One last question for Ms. Mason.
25 I had a letter January 2015. I asked you to respond to

1 allegations of the Office of Justice Programs' Office of
2 General Counsel that it issued a secret legal opinion to
3 retroactively justify grants that were given to Wisconsin
4 in violation of the law.

5 According to whistleblowers, this opinion overturned
6 a decades old interpretation at the agency, a change that
7 should have involved public notice and comment. To date,
8 I have not heard from you regarding this allegation.

9 So would you be able to provide this Committee with a
10 copy of that legal opinion?

11 Ms. Mason. Thank you for the question, Senator. As
12 you know, this is part of an active investigation by the
13 Office of the Inspector General in response to the
14 inquiry from the Office of Special Counsel.

15 We would be happy to meet with your staff and give
16 them an opportunity to review that document.

17 Chairman Grassley. I would not think a legal
18 opinion would be so central to an investigation that you
19 could not give us the legal document without interfering
20 with the investigation, right?

21 Ms. Mason. As I have said, Senator, we will be
22 happy to provide that information to your staff.

23 Chairman Grassley. Thank you.

24 Senator Whitehouse?

25 Senator Whitehouse. Thank you, Chairman.

1 Two things. First, Chairman Grassley mentioned in
2 his opening statement that there had been, in response to
3 his inquiries about this, an original letter that came
4 back from the Department of Justice that I have not seen
5 yet, but that apparently said everything is fine, do not
6 worry, and then there was a --

7 Chairman Grassley. You can see that letter. We
8 will get it.

9 Senator Whitehouse. Great. And then there was a
10 follow-up when the questions got asked a little bit more
11 pointedly, in which the department said, oops, okay, yes,
12 you are right, and here are the problems. The follow-up
13 letter I think was the April 14 letter.

14 I have to say, as a former United States Attorney, as
15 somebody who thinks very highly of the Department of
16 Justice, as somebody who is very proud of the Department
17 of Justice, I am pretty concerned that that first letter
18 got out and I would be interested in your opinion on why
19 it is that adequate inquiries were not made in response
20 to a letter from, I guess, then the Ranking Member of the
21 Senate Judiciary Committee such that the department ended
22 up being put in a position where they sent out a letter
23 that proved not to be either accurate or complete and had
24 to be corrected after the fact.

25 That is not what we expect from the Department of

1 Justice. You guys are supposed to meet a way higher
2 standard than that.

3 What on earth happened?

4 Ms. Mason. Senator, thank you for the opportunity
5 to address your concerns.

6 I share your concerns about the way that we have been
7 operating our compliance process. I think what happened,
8 Senator, is that as we dug into this issue more deeply,
9 we discovered more issues and more problems.

10 And so I apologize for any miscommunication we may
11 have provided to you all, but we do acknowledge that
12 there is a problem. We acknowledge that things do need
13 to be corrected and we are in the process of doing that.

14 Senator Whitehouse. I hope that part of this review
15 will not just include what happened in Wisconsin or what
16 happened in Virginia, but will also look into how it came
17 to pass that an apparently inaccurate or at least
18 incomplete letter was sent about this to the Senate
19 Judiciary Committee.

20 Something misfired somewhere in the department and I
21 think an explanation of what went wrong is a worthy part
22 of your inquiry.

23 Ms. Mason. Thank you for that, Senator, but I want
24 to make sure that you all understand what we are doing to
25 correct the problem.

1 What we are doing is we have invited our Office of
2 Audit Assessment and Management, which is our own
3 internal audit and compliance division, to help us work
4 with the Office of Juvenile Justice and Delinquency
5 Prevention to develop a robust compliance process.

6 We take your inquiries, we take the concerns very
7 seriously, because our first priority is to protect the
8 children. So we are using all of the tools we have
9 available to us to figure out how do we develop a system
10 that will ensure that the States are complying with the
11 law and making sure that the protections that we need for
12 our young people are there.

13 Senator Whitehouse. Well, I do not want to get
14 ahead of my skis here, having not actually seen the
15 letter, but I will reserve the right to put in a question
16 for the record that I hope will focus on whatever went --
17 if something went wrong, what it was so that part of that
18 inquiry is to answer that question.

19 The second thing also comes out of the April 14
20 letter, in which the department says that OJJDP's
21 compliance monitoring program relied on regulations that
22 were outdated and inconsistent with the current version
23 of the JJDP Act.

24 OJJDP failed to update regulations to reflect
25 statutory revisions, the letter said. Many current

1 regulations remain unchanged from their initial
2 publication in 1981, the letter said, and no new
3 regulations have been released since 1996, the letter
4 said.

5 Now, developing administrative regulations is
6 something that is 100 percent within the purview of the
7 Executive Branch of government. That is something that
8 you control absolutely.

9 I am less interested in going back and trying to
10 figure out what went wrong such that regulations did not
11 keep track even with statutory changes, although I
12 suspect that ought to be a matter of interest to the
13 department and what the heck happened there, but I am
14 really concerned that if we go through the effort to
15 reauthorize the JJDPA and we get a good bipartisan bill
16 out, which I hope we will, and it makes some of the
17 changes that the previous panels and other people who
18 have been working with us implement, that you will be
19 quick off the mark to make appropriate administrative
20 regulation changes to follow through on what we will have
21 done.

22 I do not want to pass a new statute and have the
23 department wander off and not bother to update its
24 regulations again.

25 What kind of assurance do we have that that will not

1 happen?

2 Ms. Mason. Well, Senator, we actually need your
3 guidance. We are in the process now of revising the
4 regulations to update them because our goal is to make
5 sure that we are complying with the law.

6 So we would like some guidance from you all as to
7 whether we should hold back on that now and wait for the
8 enactment of the JJDPA or whether we should proceed with
9 the regulations. We will do whatever you direct us to
10 do.

11 But I can assure you that our number one priority is
12 to make sure that we are complying with the law because
13 it in our best interest, everyone's interest to protect
14 the children that the JJDPA is designed to protect.

15 And I would like to offer one clarification about our
16 response in January. I do not have the specific letter
17 in front of me at the moment.

18 Senator Whitehouse. Nor do I.

19 Ms. Mason. But I do not think that we sent a
20 message that there were no problems. We acknowledged
21 that there were issues with our compliance process. We
22 have always accepted responsibility in this
23 Administration, under my watch, for the errors that are
24 in place.

25 I have never pretended that everything is fine. We

1 know that there is a problem and we have been working to
2 correct these issues well before the letters came from
3 Senator Grassley and the Office of Special Counsel.

4 Once the problems came to our attention, we started
5 digging in to try to figure out what has happened, what
6 is happened and why it has happened, and began focusing
7 on how do we get ahead of this and prepare a robust
8 compliance process that satisfies the law.

9 Senator Whitehouse. Well, I am not in a position
10 to anticipate how quickly we will get our reauthorization
11 passed through the Senate, let alone through the House
12 and to the President's desk for signature, but I think it
13 is a very safe bet that it is at least going to be a
14 considerable number of months.

15 And my feeling is that the American public and the
16 organizations that work with you have the right to be
17 working with an agency whose regulations are up-to-date
18 and whether it is only bringing them up-to-date for those
19 few months until the bill comes along and then you have
20 to go back and do it again, I think that is part of what
21 your job is.

22 So I would encourage you to do both in the quickest
23 available timeframe under the Administrative Procedures
24 Act.

25 Ms. Mason. Thank you.

1 Senator Whitehouse. That is my personal sense of
2 it. I do not know if the Chairman has anything to add,
3 but I will yield back. Thank you.

4 Chairman Grassley. Before you go, thank you for
5 your testimony. What you show is good faith of changing
6 things. I hope they materialize. I hope that you can do
7 what you can to right things with the whistleblowers that
8 I think have been mistreated within your department.

9 Now, I am going to say something that I would say to
10 any department. Whistleblowers are patriotic people. We
11 could not do our job of oversight -- I do not see how you
12 can do your job as an administrator or any administrator,
13 because you have got so many people working under you.
14 If something is wrong and you cannot know everything that
15 is right and wrong, people come to you with a good faith
16 effort to point out something is wrong, it ought to be
17 treated with a priority if you did not know about it.

18 It reminds me of the first whistleblower I ever got
19 acquainted with, Ernie Fitzgerald, a long time employee
20 of the Department of Defense. He testified before
21 Congress that the wings were going to fall off of the C5-
22 A. Nixon said fire the SOB.

23 He was 10 or 12 years through the courts getting his
24 job back and when he got it back, he was in the attic of
25 the Pentagon, because I went over and saw what sort of an

1 attic he was in.

2 And just this week there was some testimony or
3 something on the news about some whistleblower at the VA
4 that has got some little closet office with no jobs to
5 do.

6 Those are messages that are sent that, by golly,
7 there is great peer pressure to go along to get along and
8 we do not appreciate anybody that is going to make our
9 agency look bad.

10 It just does not seem right. We are all working for
11 the same doggone -- I should not say doggone taxpayers --
12 we are working for the same taxpayers and we have got one
13 customer, the American public, and we all have got to
14 pull together.

15 And I just do not understand. You know, I told one
16 President one time -- well, I tell every President this,
17 but this is the answer one President gave me when I said
18 we need a Rose Garden ceremony to honor whistleblowers.
19 Then they will know from the top of the bureaucracy to
20 the bottom that that is a worthy thing to do if something
21 is wrong.

22 I am ashamed to say it was a Republican President.
23 One Republican President said, "Well, if we did that, we
24 would have 3,000 of the whistleblowers come out of the
25 woodwork."

1 Well, that is exactly what you should want to happen.
2 If there are 3,000 things that are wrong, we ought to be
3 getting on those 3,000 things and correcting them.

4 Now, I am yelling at you and you are just one person,
5 but we have got to change things in government generally.

6 This is not an Obama problem. It is a culture
7 problem within government that we have got to correct.

8 Thank you all very much. Meeting adjourned.

9 [Whereupon, at 11:55 a.m., the hearing was
10 concluded.]

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