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INTERBRANCH COMMISSION ON JUVENILE JUSTICE  
PUBLIC HEARING

BEFORE: HONORABLE JOHN M. CLELAND, CHAIRMAN  
TOD C. ALLEN, MEMBER  
VALERIE BENDER, MEMBER  
HONORABLE JAMES A. GIBBONS, MEMBER  
KENNETH J. HOROHO, ESQUIRE, MEMBER  
JASON J. LEGG, ESQUIRE, MEMBER  
ROBERT L. LISTENBEE, ESQUIRE, MEMBER  
GEORGE D. MOSEE, JR., ESQUIRE, MEMBER  
HONORABLE JOHN C. UHLER, MEMBER  
RONALD P. WILLIAMS, MEMBER  
HONORABLE DWAYNE D. WOODRUFF, MEMBER

DATE: DECEMBER 8, 2009, 9:00 A.M.

PLACE: BEST WESTERN MOUNTAIN INN  
WILKES-BARRE, PENNSYLVANIA

APPEARANCES:

BY: DARREN BRESLIN, ESQUIRE  
FOR - COMMISSION

DONNA E. GLADWIN, REPORTER  
NOTARY PUBLIC

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1           CHAIRMAN CLELAND: Good morning. I think we're  
2 about ready to begin. This begins our fourth day of  
3 testimony here in Wilkes-Barre. It seems like we left this  
4 room only a few hours ago having worked late last night, but  
5 we will begin this morning with the State Court  
6 Administrator of Pennsylvania, Zygmunt Pines.

7           Mr. Pines, would you come forward and be sworn,  
8 please?

9

10           ZYGMENT PINES, called as a witness, being duly  
11 sworn, testified as follows:

12

13           THE WITNESS: I do.

14 BY CHAIRMAN CLELAND:

15           Q Please be seated, Mr. Pines. Good morning.

16           A Good morning.

17           Q You are Zygmunt A. Pines. You're the Court  
18 Administrator of Pennsylvania?

19           A Yes, that's correct.

20           Q What is the Court Administrator of Pennsylvania?  
21 What do you do?

22           A The Court Administrator of Pennsylvania is a  
23 constitutionally prescribed officer. I would view it as  
24 probably the chief administrator of the Unified Judicial  
25 System.

1 Under the Rules of Judicial Administration  
2 basically the Court Administrator is responsible for the  
3 prompt and proper administration of justice for all 60  
4 judicial districts.

5 Q Are you appointed to that position? How do you get  
6 to have a job like that?

7 A You are appointed. And the Rules of Judicial  
8 Administration say that I serve at the pleasure of the  
9 Supreme Court.

10 Q So you're appointed by the Supreme Court?

11 A That's correct.

12 Q You're their chief administrative officer in  
13 effect?

14 A I -- I often times view myself as the chief cook  
15 and bottle washer.

16 Q How long have you served in that position?

17 A I was appointed in 2000.

18 Q And what did you do before that?

19 A I was the -- in 1990 I was appointed, again by the  
20 Pennsylvania Supreme Court, as the chief legal counsel. The  
21 thing that I want to -- chief legal counsel at the  
22 Administrative Office of Pennsylvania Courts.

23 What I would like to mention is that the AOPC is  
24 considered to be the administrative arm of the Pennsylvania  
25 Supreme Court. So that the Supreme Court obviously has

1 supreme judicial authority, but it also has constitutional  
2 administrative authority. And we are its arm to assist the  
3 Court in that endeavor.

4 Q So you don't have any responsibilities with regard  
5 to the decisions, the judicial decisions, the Court makes?

6 A None whatsoever.

7 Q It's the administrative oversight of Pennsylvania's  
8 judiciary?

9 A That's correct.

10 Q So as general counsel what -- what were your  
11 responsibilities there?

12 A Basically to provide representation to the judicial  
13 officers of the Unified Judicial System. Sometimes people  
14 are very surprised to know that judges are sued and sued in  
15 their administrative capacity. It's aside from criminal  
16 prosecutions obviously.

17 We do not represent judges in criminal  
18 prosecutions. But they are sued for decisions that they  
19 have made, for administrative acts they have taken. And so  
20 the primary responsibility of my legal office at AOPC was to  
21 provide representation to the judges.

22 We also provided legal guidance and assistance on  
23 various matters. We are involved in all contracting aspects  
24 of our judicial business. We provide assistance in  
25 preparation of the budget and so forth, things that a

1 general law firm would do.

2 Q Okay. Your client just happens to be judicial  
3 districts and judges?

4 A That's correct.

5 Q Who -- who supervises you? Do you report directly  
6 to the Chief Justice, to the entire Court, or how does that  
7 work?

8 A I report to the Chief Justice and the entire  
9 Supreme Court. So I am accountable to them.

10 Q When we talk about the Unified Judicial System what  
11 does that mean? What is the Unified Judicial System?

12 A The Unified Judicial System was created in -- by  
13 constitutional amendment in 1968. If I had to do an  
14 analogy, I would think that the judicial system pre-1968 was  
15 sort of like the Articles of Confederation. You had 60  
16 judicial districts -- actually you had 67 counties that  
17 basically operated with a considerable degree of autonomy.

18 And in 1968 the voters of the Commonwealth  
19 established what we considered to be a more cohesive and  
20 integrated judicial system called the Unified Judicial  
21 System comprised of 60 judicial districts with the Supreme  
22 Court as the supreme judicial authority, along with the  
23 Courts of Common Pleas, the Appellate Courts and Magisterial  
24 District Judges.

25 Q So you're responsible not only for the Courts of

1 Common Pleas, you're also responsible for the Magisterial  
2 District Justices?

3 A From top to bottom.

4 Q Okay. And there are, I think you said, 60 judicial  
5 districts?

6 A There are -- we have 67 counties, but there are 60  
7 judicial districts. For example, Luzerne County is  
8 considered a judicial district. And it's -- it's based on  
9 its class size. I think Luzerne County is a Class 3 county.  
10 You would have -- Philadelphia County would be a Class 1  
11 county and so forth.

12 So there are 60 judicial districts. Obviously  
13 there are a couple judicial districts that comprise more  
14 than one county who have like, for example, two counties.

15 Q Now, these individual judicial districts, how are  
16 they administered? Do you administer those judicial  
17 districts, or does someone -- someone else do that?

18 A The -- the manager of the judicial districts is  
19 really the President Judge of that judicial district. He or  
20 she is responsible for the business of the courts in that  
21 judicial district.

22 Q And does the President Judge do that him or  
23 herself, or does he or she have staff to assist in that?

24 A In many ways the operation of the courts at the  
25 local level is very similar to the operation of the courts



1 at the state level. You have a President Judge who is  
2 assisted by a staff, usually with a district court  
3 administrator and some deputies, and also assisted obviously  
4 by his or her colleagues on that court.

5 Q Now, we've talked about this term President Judge.

6 A Yes.

7 Q What is a President Judge?

8 A The President Judge is also another constitutional  
9 officer. I think if you look at Article 5, Section 5 it  
10 specifies that each judicial district shall have a President  
11 Judge. And so the President Judge is the chief judicial  
12 officer of that district.

13 And we have 60 President Judges who are responsible  
14 for the business of the courts. Also, if you look in the  
15 Judicial Code, and I think that's Section 325, it identifies  
16 the President Judge as the chief operating officer  
17 responsible for the management of the business of the courts  
18 in that district.

19 I think he or she is responsible for supervising  
20 the court's business, responsible for assignment of judges,  
21 responsible for promulgating administrative regulations, and  
22 also responsible for assigning personnel.

23 Q How is the President Judge selected, elected,  
24 appointed? How does that person get that office?

25 A It really depends upon size. For those judicial

1 districts that have less than eight judges, it is based on  
2 seniority. For those judicial districts that have eight or  
3 more judges, for example, I think Luzerne County obviously  
4 has, I think, ten, those -- in those judicial districts the  
5 President Judge is elected by the colleagues.

6 Q And is there a term of office?

7 A The term of office is five years. Prior -- well,  
8 let's see. Probably in the 1990s President Judges could  
9 succeed themselves. For example, successive five year  
10 terms.

11 Sometime in the 1990s the Supreme Court amended the  
12 Rules of Judicial Administration specifying that no  
13 President Judge could succeed himself or herself.

14 Q You touched a little bit on the administrative  
15 powers of the President Judge. Would that include, for  
16 example, developing a budget for the court?

17 A Yes. A President Judge is responsible for  
18 preparing the budget and working with the County  
19 Commissioners.

20 Q How about administering the budget? Is that done  
21 by the County Commissioners or done by the President Judge?

22 A I don't quite know what you mean by managing the  
23 budget.

24 Q Once the county appropriates money to the court,  
25 who controls that money?

1           A     It all depends. I mean, basically the court is  
2 responsible for its fiscal operations. So the President  
3 Judge, as the chief operating officer of that district,  
4 would normally be responsible for the administration of that  
5 budget making sure that, for example, the court is operating  
6 within its budget, operating efficiently and economically.

7                     Whether it also involves control of funds, I think  
8 that depends upon the judicial district. Obviously there  
9 are some judicial districts that -- in which the courts are  
10 a custodian of their funds and -- and make all the major  
11 decisions.

12           Q     How about personnel issues, hiring, firing,  
13 discipline? Does the President Judge have authority in that  
14 area?

15           A     The President Judge has the responsibility under  
16 the Judicial Code to assign and hire personnel. But, again,  
17 in many ways I think the judicial districts operate almost  
18 like a corporation or a business. Those -- many duties are  
19 delegated.

20                     And that's why, for example, we have an  
21 administrative staff in each of the judicial districts. The  
22 administrative staff may be responsible, for example, for  
23 hiring some personnel, probably subject to the approval of  
24 the President Judge.

25                     However, let me just point this out. That, for

1 example, with regard to the personal staff of judges, they  
2 are normally responsible for hiring and firing their  
3 personal staff.

4 Q Personal staff, you mean secretary, law clerk, tip  
5 staff?

6 A Precisely.

7 Q How about the -- the power of the President Judge  
8 to transfer staff? Can a President Judge move a person from  
9 one office to another?

10 A We have no specific guidelines for the delineation  
11 of authority as to the duties of a President Judge, but I  
12 would think that as the chief operating officer in the  
13 judicial district the President Judge would have that  
14 authority and probably has exercised that authority.

15 Q So we've talked about the authority of the  
16 President Judge with regard to employees and staff of the  
17 judicial district. How about authority over other judges in  
18 the judicial district? Can the President Judge control how  
19 a judge decides -- another judge decides a case?

20 A I don't think a President Judge can interfere in  
21 the decisional authority and responsibility of a judge.  
22 However, a President Judge is involved in the administration  
23 of the court system, which would include, for example,  
24 assignment of duties, assignment of cases, also assignment  
25 of personnel, transfer of personnel.

1           Q     So a President Judge can't overrule a judicial  
2 decision of another judge of the court?

3           A     Could not.

4           Q     Okay.  But could a President Judge move a judge  
5 from one division to another division?  Could he move a  
6 judge from the juvenile court to the criminal court, for  
7 example?

8           A     That's a very common responsibility exercised by  
9 President Judges throughout our 60 judicial districts.  
10 There is someone who is needed to assign judges to specific  
11 divisions or to hear specific cases.  So ordinarily a  
12 President Judge will exercise a responsibility of assigning  
13 judges to divisions or in certain cases.

14          Q     How about administering and controlling the time of  
15 the -- of the court in terms of calendars, days off, court  
16 closings, those sorts of things?  Does the President Judge  
17 have authority over that?

18          A     Again, I can only say that as a general statement  
19 generally yes.  The one thing that I think that you have to  
20 recognize is that Pennsylvania, the Commonwealth, is a very  
21 diverse state.

22                     York County or Luzerne County or Philadelphia  
23 County, Allegheny County, they're all very different.  They  
24 vary in size, location, case load, resources, and policies.  
25 So I don't think that you can state invariably that one --

1 that all counties do a certain -- you know, have a certain  
2 procedure or practice.

3 But generally I think that they can assign  
4 personnel and assign cases and so forth.

5 Q Would it be fair to say that when we talk about a  
6 Unified Judicial System we're not talking about a uniform  
7 judicial system?

8 A Precisely. I think that's a very good way of  
9 putting it.

10 Q So that these systems and administrative mechanisms  
11 vary from county to county based on the culture and  
12 tradition of that county?

13 A Exactly. Approximately, I think, maybe ten years  
14 ago there was an attempt by the Pennsylvania Conference of  
15 State Trial Judges to identify and outline the various  
16 duties and responsibilities of President Judges throughout  
17 the Commonwealth.

18 And I think they made it very clear in that  
19 statement that there is no one way -- no cookie cutter  
20 approach to the powers and responsibilities of the President  
21 Judge. But in many of the things that you are mentioning  
22 right now are the duties and responsibilities that were  
23 mentioned that are typical of a President Judge.

24 Q Let's talk specifically about some more specific  
25 powers of the President Judge. Would the President Judge,

1 for example, have authority to enter into contracts that  
2 would bind the county?

3 A I think, yes. We conducted a survey at AOPC, I  
4 think, probably two years ago as to what the practice is  
5 among our judicial districts regarding courts and the  
6 President Judge's authority for signing contracts.

7 And I think at that time we came up with the fact  
8 that there were ten judicial districts that were solely  
9 responsible for signing contracts on behalf of their court  
10 system. There were ten judicial districts that had nothing  
11 to do with signing such contracts. And the rest of the  
12 judicial districts sort of were an amalgam, that they sign  
13 contracts in cooperation with or in conjunction with the  
14 County Commissioners or whoever had fiscal authority. So,  
15 again, it's a mixed bag.

16 Q So there is -- involvement of the County  
17 Commissioners and the President Judge and how that  
18 relationship is worked out varies from county to county?  
19 There's no statewide uniform standard?

20 A Not to my knowledge, no.

21 Q Would a -- we've heard testimony that here the  
22 President Judge surrendered a license issued to the county  
23 without consulting the County Commissioners with regard to  
24 its detention center. Would you envision that a President  
25 Judge would have the authority to surrender a county

1 license?

2 A I precisely don't know what that means,  
3 surrendering a license. If, for example, the court were a  
4 designee in a contract, and in which the President Judge or  
5 the court system could rescind or revoke the contract, then  
6 perhaps that President Judge would have the authority.

7 But I'm -- I know nothing about the details of that  
8 situation, and I don't know exactly what it means to, quote,  
9 surrender a license. I would think that if something like  
10 that were to have been done, it would have been done in  
11 consultation with the Commissioners and/or the colleagues of  
12 the court.

13 Q What control, if any, do the County Commissioners  
14 have over the operationally administrative functions of the  
15 Court of Common Pleas?

16 A The -- the County Commissioners are responsible for  
17 providing the goods and services of each judicial district.  
18 They are, I guess, akin to a legislative body in that they  
19 have to appropriate the necessary funds for the business of  
20 an independent branch of government. So they are basically  
21 responsible for providing the necessary financial sustenance  
22 for the judicial branch.

23 Q When you talk about an independent branch of  
24 government, what does that mean?

25 A There are three branches of government, obviously,



1 the executive, the judicial, and the legislative. Each  
2 operates in many ways, at least theoretically,  
3 independently.

4 They are responsible for their own business. The  
5 courts obviously are responsible for the judicial business  
6 of the courts. And so the courts are responsible for  
7 adjudicating and also for administering their judicial  
8 system, without necessarily interference from the other  
9 branches of government.

10 For example, a legislator would not interfere in  
11 the decision making of a judge. Nevertheless, as a  
12 practical reality there must be some interdependence among  
13 the branches of government.

14 The judicial branch obviously depends on the  
15 legislative branch to provide the necessary funds. So that  
16 while they are separate and apart, there is some  
17 interdependency between the branches of government. There  
18 needs to be some cooperation in order for each branch to  
19 survive.

20 Q And inherent in that cooperation would also be some  
21 tension about where the boundaries are within that  
22 authority? Would that be a fair statement?

23 A Precisely, right.

24 Q Now, let's talk about the President Judge and his  
25 relationship or her relationship with the other judges on

1 the court. What is the Board of Judges?

2 A The Board of Judges is basically all of those  
3 judges in the judicial district. For example, in The Court  
4 of Common Pleas, all of the judges on that court would  
5 operate as the Board of Judges.

6 In Philadelphia County you have a Board of Judges  
7 of approximately, I think, maybe 90 or more in which they  
8 periodically meet, convene, discuss business matters, and --  
9 and sometimes, I would think, also make decisions.

10 Q Is there any requirement, statutory or  
11 constitutional, that the President Judge exercises authority  
12 after consultation with the Board of Judges?

13 A I don't think there is any requirement that there  
14 be a Board of Judge -- Board of Judges or that there be  
15 consultation. As a practical matter I think many judicial  
16 districts operate in a very collegial way, and either  
17 formally or informally meet and discuss with their judges.

18 Q So the -- the President Judge would have  
19 administrative authority over assignments, hiring, firing  
20 with regard to the other judges of the court, except for the  
21 personal staff?

22 A Exactly.

23 Q But the President Judge has no responsibility to  
24 consult with the other judges in exercising that authority?

25 A There is no requirement the President Judge

1 consult.

2 Q If -- if a judge of the court believes that the  
3 President Judge has abused his or her authority or exercises  
4 it improperly or misused that authority, what's that judge's  
5 recourse?

6 A If you look at the -- the Canons of Judicial  
7 Conduct, it may be Canon 3, 3-B, there is a responsibility  
8 of every judge, if he or she -- if he or she sees improper  
9 actions, to report that judge to the proper authority. In  
10 Pennsylvania it would be the Judicial Conduct Board.

11 So that as a ethical matter the judge and also  
12 attorneys have a responsibility of reporting conduct that is  
13 either criminal or unethical. As a practical matter they  
14 can also contact various sources, I think, within the  
15 Unified Judicial System to bring it to their attention.

16 Obviously it could be brought to the attention of  
17 the Pennsylvania Supreme Court if there were concerns. It  
18 certainly can be brought to my attention. In fact, there  
19 have been instances since I have been court administrator in  
20 which such matters have been brought to my attention, and I  
21 have followed up on that.

22 So there are ways of dealing with that. And then  
23 obviously the most public example is by, for example,  
24 presenting that information to the press, to the public.

25 Q Is it an unusual circumstance among the 60 judicial

1 districts, of course some of those only have one or two  
2 judges, but is it an unusual circumstance that there would  
3 be tension between the President Judge and one or more  
4 members of the Board of Judges?

5 A I think it's human nature. I mean, we can't get  
6 along with everyone.

7 Q Nothing unusual about that?

8 A No, absolutely not.

9 Q And in your 20 years now with the -- with the  
10 Administrative Office how many times would you suppose those  
11 kinds of issues have been brought to your attention?

12 A Many, many times.

13 Q A dozen, two dozen?

14 A In 20 years?

15 Q Yeah.

16 A Oh, maybe 50.

17 Q Okay. So it's not an unusual circumstance? And  
18 judges having the temperaments that they have are not shy  
19 about making complaints, finding out where complaints ought  
20 to be made?

21 A Absolutely not.

22 Q Can the Board of Judges remove a President Judge?  
23 They elect the President Judge, correct?

24 A Yes, that's correct.

25 Q Can they remove a President Judge?

1 A No, they cannot.

2 Q Can the Supreme Court remove a President Judge?

3 A Absolutely. They have the authority under the  
4 Constitution.

5 Q And how would that be done?

6 A There is a disciplinary process. You have heard  
7 testimony from the Judicial Conduct Board. Often times  
8 things are referred to the Judicial Conduct Board. They are  
9 prosecuted. They --

10 Q I'm sorry. I don't mean for judicial misconduct,  
11 but for -- for administrative misconduct? Is there a -- can  
12 the Supreme Court preempt early removal of a President Judge  
13 without going through the JCB process?

14 A Yes, I think so.

15 Q Okay.

16 A And, in fact, it has done so in the past.

17 Q So there is precedent to do that?

18 A There is.

19 Q What is a district court administrator?

20 A District court administrator is in many ways the  
21 counterpart to my position at the -- at the local level.  
22 It's the chief administrative officer for -- non-judicial  
23 administrative officer in the judicial district. He or she  
24 is responsible, again, for the prompt and proper disposition  
25 of the court's business in that judicial district.

1           Q     And who selected -- selects and hires the district  
2 court administrator?

3           A     There is a process that is delineated in the Rules  
4 of Judicial Administration. By and large the responsibility  
5 for hiring the district court administrator is that of the  
6 President Judge, often times in consultation with the  
7 Administrative Office of Pennsylvania Courts, specifically  
8 the court administrator.

9                     Ultimate approval for those positions, and we have  
10 approximately, I think, 200 positions throughout the state,  
11 is the Supreme Court's.

12          Q     So theoretically the Supreme Court can control each  
13 judicial district through its supervision of the President  
14 Judge as well as your supervision of the district court  
15 administrator?

16          A     That's correct.

17          Q     And am I correct that the -- that the AOPC is now  
18 working with the President Judge here to hire a new court  
19 administrator, or maybe that's already been done actually?

20          A     They are in the process, I think, of interviewing.  
21 And someone eventually will be hired. And this is also very  
22 typical of the -- what I consider to be sort of a management  
23 team approach for all of our judicial districts.

24                     We try to work in tandem with the judicial  
25 districts, specifically the President Judges, on various

1 administrative matters.

2 Q If the Supreme Court has the power to administer  
3 any particular judicial district and has the power to  
4 control the court administrator, either to hire or discharge  
5 that court administrator, would the Supreme Court have the  
6 authority to, in fact, put a judicial district -- I'm not  
7 even sure what the term is, in receivership under its  
8 custodial control and administer that court?

9 A Again, there is nothing specific either in the  
10 Constitution or in the Judicial Code, but since the Supreme  
11 Court has supreme administrative responsibility to making  
12 sure that the judicial districts operate efficiently and  
13 effectively. I would think that would be within their  
14 purview.

15 And, in fact, I can recall an instance sometime in  
16 the 1990s in which the Supreme Court did, in fact, step in  
17 in a judicial district that truly was, in my view, very  
18 dysfunctional. And I think what the Supreme Court did, not  
19 necessarily establish a receivership, but it appointed a  
20 well-respected, I think, senior jurist to administer the  
21 judicial district for probably two or three years until  
22 matters were resolved.

23 Q So there's precedent for that extraordinary sort of  
24 exercise of power?

25 A Correct. I wouldn't call it receivership, but it

1 was something akin to that.

2 Q Okay. Could you briefly summarize for us what the  
3 involvement of the AOPC has been in Luzerne County in  
4 attempting to address the issues here?

5 A Well, we've tried to provide logistical support to  
6 the Commission. I -- you have one of our fine attorneys  
7 from our office assisting you, Darren Breslin.

8 When I heard about what had happened in Luzerne  
9 County one of the things that I was immediately concerned  
10 about was the involvement of the district court  
11 administrator, who I had very, very little dealing with.  
12 But I was -- I was made aware that there was financial  
13 improprieties.

14 And so one of the things that I immediately did was  
15 to contact our auditors. The Unified Judicial System has a  
16 team of auditors that we work with on a yearly basis. And  
17 what I asked them to do was to immediately conduct an audit,  
18 financial audit, of exactly the court administrator's office  
19 with regard to how funds were being controlled and handled,  
20 how monies were being disposed.

21 I asked for a report from my budget office last  
22 week to see where we were in that process. And so I'm told  
23 that we've conducted the first phase of that audit, and  
24 there are probably -- I've signed a contract for, I think,  
25 two or three more phases.



1           So I thought that was a very important aspect of  
2 what was going on in Luzerne County, and so we're proceeding  
3 on that front. In addition, we're obviously assisting  
4 President Judge Muroski, who I think has done an admirable  
5 job thus far, assisting him in terms of the management of  
6 the court, and specifically the appointment of a district  
7 court administrator.

8           So those -- those are the various issues that we  
9 have been involved in. We have not been involved in any  
10 matter with regard to the criminal prosecutions.

11           CHAIRMAN CLELAND: Okay. I want to make sure I  
12 leave time for questioning. So anybody want to ask  
13 questions? Mr. Williams. I would assume Commissioner  
14 Williams would have some questions.

15 BY MR. WILLIAMS:

16           Q     You stated that the President Judges can sign  
17 contracts without Commissioner approval?

18           A     I think that they can sign contracts on behalf of  
19 the court system. I think other judicial districts have  
20 done so.

21           Q     But have they done so with Commissioner approval?

22           A     I don't know whether it's been with or without  
23 Commissioner approval. I know that according to a survey  
24 that we conducted about two years ago we were told that  
25 there were approximately ten judicial districts that

1 exercise sole responsibility for signing contracts on behalf  
2 of the court system. Whether there was formal or informal  
3 approval, I do not know.

4 Q Okay. According to the County Code County  
5 Commissioners are the only ones that can sign contracts for  
6 the county for county business. And, of course, that's  
7 taught in the Academy of Excellence of County Government,  
8 which is taught by the County Commissioner's Association.  
9 And I attended for two years.

10 And I know working with Judge Hanson in Wyoming and  
11 Sullivan County, but Wyoming County in particular, that he  
12 never expended a dime without coming before the  
13 Commissioners first, which I feel is the proper way to do  
14 things, and it should be done.

15 I don't think it was done in this situation here in  
16 Luzerne County. I think the Commissioners were bypassed.  
17 And we'll speak to them later. But I --

18 A I will tell you, Commissioner, that in my  
19 conversations with other President Judges I think they  
20 certainly would prefer not signing contracts on their own.  
21 And I think that probably represents the prevalent practice  
22 throughout the judicial districts.

23 MR. WILLIAMS: Okay. Thank you.

24 BY CHAIRMAN CLELAND:

25 Q Did you receive any complaints from any of the

1 members of the Board of Judges of Luzerne County about any  
2 administrative abuse of power by either Judge Conahan or  
3 Judge Ciavarella?

4 A The only matter that has ever been brought to my  
5 attention were the difficulties that Judge Lokuta faced in  
6 the judicial district. And I remember that going back to  
7 the 1990s when I was chief counsel.

8 That was the only time or times in which I was  
9 personally made aware of administrative difficulties in the  
10 judicial district.

11 I was never made aware of anything with regard to  
12 the disposition of juveniles in Luzerne County.

13 Q Could you characterize the attitude of the Supreme  
14 Court or the balance between allowing President Judges to  
15 operate throughout a judicial district and the oversight, if  
16 any, provided by the AOPC? Let me rephrase that question.

17 Is it the AOPC's responsibility to provide  
18 oversight over how judicial districts are administered?

19 A In my view, yes.

20 Q Okay. Did that break down in the oversight of  
21 Luzerne County?

22 A It broke down only in the sense that obviously we  
23 were not made aware of criminal conduct. We were not made  
24 aware for whatever reason of how juvenile cases were being  
25 disposed of in Luzerne County.

1           So to that extent, yes, there was a breakdown.  
2       Because obviously you cannot rectify a problem that you're  
3       not made aware of.

4           Q     Would you have a suggestion as to how that system  
5       should be improved or enhanced so that someone on the  
6       Supreme Court or in the Administrative Office would become  
7       aware of that?

8           A     Well, I think that the important thing with regard  
9       to judicial administration is to make sure that there is  
10      involvement of the AOPC with the judicial districts. And we  
11      have been trying to do that for, I think, the last ten years  
12      in various fronts.

13                 In 2000 obviously there were 200 new court  
14      administrators that were appointed throughout the state.  
15      And what we've tried to do is to work in tandem with the  
16      local court administrators to provide guidance and  
17      assistance to them in various areas, technology, education,  
18      personnel, so that that enables us to be more aware of what  
19      is going on out in the field.

20                 So that with regard to our involvement at the AOPC  
21      level it is certainly with respect to the district court  
22      administrators. The other thing that I think is very  
23      important, and it's something that I've pursued for the last  
24      ten years, is the importance of collaboration and  
25      communication with our President Judges.

1           I think that AOPC has a fine working relationship  
2 with the President Judges and has been -- that has been  
3 increasingly so I would say in the last five years. For  
4 example, the Chief Justice of Pennsylvania meets twice a  
5 year with the President Judges at our judicial education  
6 programs, our judicial conferences.

7           So there is an opportunity there for the Chief  
8 Justice to be made aware of any particular problems or  
9 issues that may be facing President Judges. Collaboration  
10 and communication is very important whenever there's an  
11 issue that may affect the judicial districts and the judges.

12           We have not hesitated to communicate with our  
13 President Judges, for example, through e-mail or at the  
14 conferences. And our education programs is also another  
15 good opportunity in which we are able to share issues and  
16 problems with our President Judges.

17           So I think the important thing is the two seeds,  
18 communication and collaboration constantly with our  
19 President Judges and with our district court administrators  
20 throughout the Commonwealth.

21           CHAIRMAN CLELAND: Mr. Listenbee.

22           BY MR. LISTENBEE:

23           Q     Yes. Mr. Pines, what factors do you look to to  
24 determine whether or not there is a -- a system that's in  
25 trouble? For example, there were a series of newspaper

1 articles in Luzerne County indicating that there was a  
2 problem with the juvenile court.

3           Would you look to newspaper articles as a source of  
4 information to alert you that -- that there's a problem in a  
5 county?

6           A     Certainly reports in the media are helpful. And if  
7 -- if there are particular problems such as you mentioned,  
8 we would take a look at it. But I can tell you that that  
9 matter was not brought to our attention specifically.

10           It was brought to the attention in a legal context  
11 in which we were not involved in.

12           Q     Well, the newspaper articles were in Luzerne  
13 County?

14           A     That's right.

15           Q     Do you have anyone who looks through the media to  
16 determine whether there are problems going on in your courts  
17 based upon a media survey?

18           A     Based on a media survey, no.

19           Q     There was an appeal coming out of Luzerne County  
20 back, I believe, in 2000, 2001 indicating that the juvenile  
21 court judge was -- had large numbers of waivers of the right  
22 to counsel, and he was advised that he should not have  
23 hearings without -- with children who -- where the right to  
24 counsel was waived. Were you aware of that opinion when it  
25 occurred?

1           A     I know my legal department was aware of the  
2     opinion. I don't know whether we were involved in --  
3     actually in the litigation. But I think we viewed that as a  
4     litigation matter that was in -- in our Supreme Court, and  
5     that it was handled, and it was resolved.

6           Q     However, the Juvenile Court Judges Commission  
7     continued to report after that that there were large numbers  
8     of cases in this county where children were waiving the  
9     right to counsel.

10                   We've been told that during the period that we've  
11     studied from 2003, 2008 that 54 percent of the cases involve  
12     children who were waiving the right to counsel. So clearly  
13     the issue that had been raised by the appeal was still  
14     manifesting itself both in terms of JCJC reports and  
15     throughout the county and in newspaper reports.

16                   Would you take a look at something like that to  
17     determine whether or not there was a problem in the county?

18           A     You know, I don't like to act on the -- on the  
19     basis of a news report. I can tell you, however, that if,  
20     for example, the JCJC had come to me; or if, for example, a  
21     judge had come to me and said, look, we have a specific  
22     problem here in Luzerne County, I can tell you that I would  
23     have pursued the matter.

24                   I would probably have taken it up with the Chief  
25     Justice and with the Supreme Court. But I do not

1 necessarily operate on the basis of news reports.

2 Q We've talked to representatives from JCJC. They  
3 certainly have the wherewithal to produce the data, but it  
4 does not appear that there is a person responsible for  
5 analyzing it and reporting it to your office at the AOPC or  
6 to other administrative offices.

7 Do you think that that would be an area that would  
8 need to be developed in order to prevent this from ever  
9 happening again?

10 A I think that's an excellent point. I've been  
11 listening to the testimony, and I am well aware of the fact  
12 that there was very important data that was collected that  
13 perhaps indicated a problem. The extent of the problem or  
14 why the problem existed is another matter. But what  
15 concerned me was that while we were collecting this data it  
16 seemed to be that we were not doing anything with it.

17 And we were not doing anything with it perhaps  
18 because there was not anyone analyzing what the data  
19 signified. And so I think anything that we can do to  
20 collect data and to analyze data is very important in the  
21 administration of justice.

22 Q Do you have any suggestions to us as to which  
23 agency should have the responsibility for analyzing that  
24 data and reporting it to you and other -- other appropriate  
25 organizations?



1           For example, there are still counties within the  
2 Commonwealth of Pennsylvania where there are, according to  
3 JCJC reports, large numbers of children who are waiving the  
4 right to counsel.

5           Now, admittedly the Rules Committee is working on  
6 some new rules. But setting that aside, given the issue and  
7 given the kinds of problems and concerns that we currently  
8 have, would you have a recommendation to us as to where that  
9 kind of person should be housed and what kinds of  
10 authorities that person should have?

11          A     I think that's something that probably should be  
12 pursued further. I don't have any magic formula as to how  
13 that would proceed. I think that probably future  
14 discussions with JCJC would be fruitful.

15           We have, in the AOPC, a very good technology  
16 department that knows how to interpret data. We have a  
17 policy and research department that would be able to, I  
18 think, analyze that data. And we also obviously have  
19 attorneys.

20           But let me point something out. Data is only  
21 helpful in certain respects. You don't need data to deal  
22 with the problem of blatant infringement of the rights of  
23 children in a courtroom, if that is occurring.

24           You don't need data in order to identify the  
25 problem and to take action. If we're talking about data as

1 to a disposition rate, that's very tricky. Obviously we  
2 have different judicial philosophies.

3 I know you've heard the term tough on justice.  
4 There are other judges who might be viewed as liberal. It's  
5 very delicate and difficult when you're dealing with the  
6 decision making process.

7 Obviously we try not to interfere in that decision  
8 making process. So data is very helpful, but you have to be  
9 very careful as to the nature of data that you're looking at  
10 and in terms of exactly what your options are for approving  
11 the administration of justice.

12 Q Mr. Pines, we've heard very, you know, eloquent  
13 testimony from parents and children who have been harmed by  
14 the injustices that were visited upon them here in Luzerne  
15 County. They were seeking a way to communicate to people in  
16 power as to how to change the system and to advise people  
17 that there were problems here in Luzerne County.

18 How would you have them reach out far enough to  
19 reach you and other people in power so that you could be  
20 alerted to the problem, and that you could address these  
21 problems sooner?

22 Because many of these -- obviously the Supreme  
23 Court has reached out and vacated and expunged 6,000 cases.  
24 So that's an extraordinary exercise of power by the court  
25 after the fact. But what would you have them do in advance

1 to avoid that kind of a problem from happening in other  
2 counties in the Commonwealth?

3 A I think there needs to be greater education on the  
4 public front. I think that the public needs to know that  
5 they can provide information to a number of sources  
6 privately, confidentially in order to identify a problem and  
7 rectify a problem.

8 The public needs to know that, for example, they  
9 can contact the Judicial Conduct Board if there is a concern  
10 or a problem. I think the public needs to know that they  
11 could contact the AOPC confidentially if there is a problem,  
12 and that we would -- we would follow up.

13 We receive correspondence from the public almost  
14 every day. And, in fact, when the Luzerne County matter  
15 came to our attention I asked my staff, please go back to  
16 our files and see whether we've received any correspondence  
17 that indicated a problem or a concern with regard to what  
18 was happening in Luzerne County. We had not received what  
19 we considered to be pro se correspondence from the public.

20 So I think there needs to be probably a greater  
21 educational effort to inform the public that there are  
22 avenues that they can pursue to provide information on a  
23 confidential basis.

24 I think there also probably needs to be greater  
25 attention paid to our educational efforts for attorneys and

1 judges. As I pointed out before, there is a responsibility  
2 by judges and attorneys to report misconduct whenever they  
3 see it, and sometimes we forget that.

4 Q Would you have attorneys -- would you have the  
5 establishment of a rule of juvenile court procedure that  
6 attorneys are required to report misconduct in a special  
7 way?

8 Would you have there be a hotline for children who  
9 go through the courts to contact you directly and let them  
10 know that there's going to be a response within 72 hours or  
11 within three days or four days?

12 What would you have people do so that we can  
13 restore the confidence in the judicial system?

14 A I think that we can make an effort, for example,  
15 through our website. We could provide information to the  
16 public that they can share their information to us, and that  
17 we would follow up. Generally we try to be very prompt in  
18 responding to public inquiries and concerns. There is no --  
19 we have no specific time line, but generally we try to do it  
20 within, I think, 30 days.

21 So, again, we could also pursue cooperative efforts  
22 with other agencies in order to get the word out that if  
23 there is a problem or a concern, it could be shared and  
24 brought to our attention.

25 CHAIRMAN CLELAND: Mr. Legg.

1 BY MR. LEGG:

2 Q Thank you, Mr. Chairman. Mr. Pines, you mentioned  
3 in response to Mr. Listenbee's question that the AOPC has  
4 gotten or gets correspondence from the public on a daily  
5 basis?

6 A Yes.

7 Q My question is what happens if that correspondence  
8 suggests an ethical violation by a judge? Would it be  
9 referred to the Judicial Conduct Board by the AOPC?

10 A Yes, it would. And, in fact, I have done so.

11 Q Would that be on your letterhead or a formal  
12 complaint, or how would that read?

13 A It would be on my letterhead.

14 Q Okay. And with respect to the budget process, are  
15 you involved in that at all in terms of the court system?

16 A In terms of the state funded court system, yes.  
17 Not in terms of the county based court systems.

18 Q And there was testimony that the Judicial Conduct  
19 Board, its budget, is under the court's budget? Is that  
20 accurate? It's a line item within the court's budget?

21 A We present it on behalf of the Judicial Conduct  
22 Board, but they formulate their budget separately.

23 Q Do you have any discussions with Judicial Conduct  
24 Board about their budget or how you're going to present it  
25 or anything in that regard?

1           A     I don't think we have any substantive discussions.  
2     If there were any discussions, it would be with my budget  
3     staff.  And I think probably the only -- the only type of  
4     discussion would be in the figures that were presented.  But  
5     we do not try to influence or interfere in the preparation  
6     of the Judicial Conduct Board's budget, at least in my  
7     knowledge.

8           Q     Well, in the past there's some testimony in earlier  
9     proceedings about the staffing of the Judicial Conduct  
10    Board.  Over the past five years have there been requests  
11    for additional staffing that have not been approved through  
12    the budgetary process for the Judicial Conduct Board that  
13    you're aware of?

14          A     Have we, for example, AOPC, disapproved any budget  
15    request?  Is that what you're saying?

16          Q     Or have you gone to Capitol Hill on behalf of the  
17    Judicial Conduct Board to get additional staffing?

18          A     Yes, we have.

19          Q     And that's been denied?

20          A     We're operating under fiscally austere times.  I  
21    don't remember what the last appropriation was.  I think  
22    everybody suffered an appropriation loss of approximately 10  
23    percent.  I don't recall what the Judicial Conduct Board's  
24    request was or its appropriation, but if it was like  
25    everybody else, they probably suffered a 10 percent loss.

1           Q     Would it be fair to say though your general  
2     recollection is that the Judicial Conduct Board has been  
3     indicating that they need more staff or more resources? Is  
4     that a fair statement?

5           A     Yes, that's correct.

6           MR. LEGG:   Okay.

7           CHAIRMAN CLELAND:   Judge Uhler.

8     BY JUDGE UHLER:

9           Q     Mr. Pines, you mentioned the word education. And  
10    we've noted and heard from a number of witnesses of indeed a  
11    lack of participation in educational modalities in their  
12    respective disciplines.

13                    Confirm, if you will, with regard to the  
14    Administrative Office of Pennsylvania Courts the educational  
15    availabilities of programs for judges specifically. We have  
16    two conferences every year?

17           A     Correct.

18           Q     And it's my recollection that in each of them  
19    conferences there is a juvenile judge's section, which has  
20    an educational format. There is, in addition, satellite  
21    programs that are put on by the AOPC from an educational  
22    standpoint.

23                    All of these programs are voluntary from the  
24    standpoint of the trial judge's participation. You also  
25    have a program for President Judges as well as court

1 administrators annually at the respective conference. And  
2 the Juvenile Judges Commission has an annual conference as  
3 well.

4           And I know that often times there's participants  
5 from the AOPC involved with that annual conference in  
6 Harrisburg, again, where educational programs are available  
7 to trial judges in the respective areas.

8           But for the President Judges and district court  
9 administrator's conference and each one of those that I've  
10 identified there is an educational program for juvenile  
11 court judges?

12           A     That's correct.

13           Q     If you remember, or are in a position to recall, or  
14 could provide information to this Commission whether or not  
15 President Judges Conahan and President Judges Ciavarella  
16 participated from the educational format or participated at  
17 all with any one of the annual conferences or semi-annual  
18 conferences as I've referenced?

19           A     That was one of the things that I was thinking  
20 about as I was driving this morning to this meeting. In the  
21 years that I have been involved with the judge's educational  
22 efforts I just do not recall either meeting Judge Ciavarella  
23 or Conahan at any of the judicial conferences.

24                     So based on my recollection I just -- I do not  
25 recall seeing them at conferences or their participating at



1 any of the conferences. That's -- that's not to say that  
2 they did not. Obviously we have approximately 1,200 jurists  
3 in Pennsylvania, and I do not know 1,200 jurists.

4 But I -- I tend to know the ones who exercise  
5 supervisory responsibility, such as President Judges. And I  
6 just don't recall seeing them or even interacting with them  
7 on judicial administration matters.

8 Q I referenced that the participation to date has  
9 been voluntary on the part of judges. And given the  
10 importance of education do you believe that the -- and I  
11 know you cannot speculate as to what the Supreme Court may  
12 or may not do.

13 Do you believe that this event, this deplorable  
14 event, may prompt reconsideration as to whether or not  
15 education is voluntary or mandatory?

16 A That issue, administrative issue, has been kicked  
17 around. But in my view I think what has occurred here is  
18 really not a matter of the mind. You do not need to educate  
19 judges that they are to comply and respect the law. You  
20 truly are dealing with matters of the heart.

21 And I am not aware of any education, educational  
22 effort or endeavor, that will deter someone from greed or  
23 malice. And so educational efforts are fruitful only to a  
24 certain degree.

25 Many of our judges throughout Pennsylvania have

1 seized the opportunity of learning more and doing more for  
2 the benefit of our citizens. But you can only go so far.

3 JUDGE UHLER: Thank you.

4 CHAIRMAN CLELAND: Judge Gibbons.

5 BY JUDGE GIBBONS:

6 Q Thank you. Mr. Pines, you talked about the  
7 interaction that you have with the Judicial Conduct Board  
8 with respect to budgetary matters. Do you have any other  
9 kind of interaction with them on a regular basis in terms of  
10 information sharing or something along those lines?

11 A The only information that we normally get from them  
12 would be the fact that charges have been filed. Now, we  
13 normally receive a copy of whatever's been filed with  
14 respect to such charges, and that's usually by e-mail or  
15 fax. That's the extent of, I think, our communication with  
16 the Judicial Conduct Board.

17 Q How about you indicated that you have forwarded  
18 charges in the past to the -- when you received complaints  
19 in your capacity. Is there a follow up? Do you have any  
20 type of investigatory interaction with them at that point?

21 A No. Normally when I do something like that it is  
22 by letter. It is not by informal communication. And I  
23 leave it in their hands.

24 MR. GIBBONS: Okay.

25 BY MR. LISTENBEE:

1           Q     Your Honor, if I could just follow up. Mr. Pines,  
2 you spoke about the -- you responded to Judge Uhler's  
3 comment about the difference between mandatory versus  
4 voluntary education for judges.

5                     Can we -- can you comment on the same issue  
6 relating to lawyers? Many of us believe that juvenile  
7 justice practices is a specialization that requires a great  
8 deal of training in order for lawyers to be properly  
9 prepared to handle the work.

10                    We believe that on the defense side. Some may  
11 believe it on the prosecution side as well. Has -- have you  
12 given any consideration to the idea that lawyers ought to be  
13 required to take a certain basic series of courses in order  
14 to be certified as juvenile attorneys?

15           A     You're really asking a question that's beyond my  
16 grade level or pay level. I'm sure that consideration has  
17 been given to that. I don't know what the practice is in  
18 other states with regard to judicial education in  
19 specialized area, but I certainly think that there are  
20 courses that are made available as part of the continuing  
21 legal education effort that provides specialized knowledge  
22 to practitioners so that they can take advantage of that.

23                    Whether you want to translate that into a  
24 requirement is another matter. There may be some benefit to  
25 that. There may be some administrative difficulties. I

1 don't know. But I could see where one would question where  
2 precisely do you draw the line?

3 I think there is a general policy, I may be wrong  
4 on this, but I think there's a general policy or rule that  
5 attorneys are not to hold themselves out as specialized  
6 practitioners.

7 Obviously there are attorneys who do specialize in  
8 areas. So that if we can provide educational programs that  
9 promote that specialization, I think that's fine. Whether  
10 you want to make that a requirement, I -- I certainly am not  
11 at liberty to -- or have the ability to discuss the pros or  
12 cons of that. It's probably worth taking a look at.

13 MR. LISTENBEE: Thank you.

14 CHAIRMAN CLELAND: Mr. Pines, thank you, very much  
15 for being here today. And we appreciate your participation  
16 and your support of this Commission and its work.

17 THE WITNESS: Thank you. I -- I would just like to  
18 say that I appreciate very much the efforts that you and the  
19 Commission members have done with regard to this -- this  
20 very difficult problem.

21 I know that in one of your statements you said that  
22 the -- I think the pursuit of justice is the essence of  
23 civic responsibility. And I think this effort here is a  
24 prime example, a shining example, of that civic  
25 responsibility being exercised.

1           And so I am very grateful to the work that you and  
2 the Commission members are doing on behalf of the citizens  
3 of the Commonwealth. Thank you, very much.

4           CHAIRMAN CLELAND: Thank you. We will be in recess  
5 until 10:30, about 20 minutes.

6           (Recess taken from 10:10 to 10:30.)

7           CHAIRMAN CLELAND: Good morning.

8           MR. MASSA: Good morning.

9           CHAIRMAN CLELAND: We'll come to order and begin  
10 the next segment of our hearing, which is the continuation  
11 of testimony from the Judicial Conduct Board.

12           We welcome this morning Mr. Klett, who is a member  
13 of the Judicial Conduct Board; Mr. Massa, counsel obviously  
14 to the Board who's testified here before, and Mr. Paul  
15 Titus, who is counsel to the Judicial Conduct Board for  
16 purposes of these proceedings.

17           As you know, as a Commission we have a statutory  
18 mandate which requires, among other things, that we evaluate  
19 the system of judicial discipline and make recommendations  
20 for its improvement.

21           The Judicial Conduct Board has repeatedly expressed  
22 its willingness to assist us in that. It has done so in  
23 personal conversations with Mr. Massa and with Mr. Klett and  
24 with Mr. Titus in numerous e-mails, in statements offered by  
25 the Judicial Conduct Board at our hearings here in

1 Wilkes-Barre last month, and as recently as yesterday in its  
2 press release.

3           At each turn, however, while we have been assured  
4 of the Board's cooperation in principle, we have been denied  
5 the Board's cooperation in practice. The JCB at the last  
6 minute prevented Mr. Massa from attending our October  
7 hearing, and when Mr. Massa was subpoenaed to attend our  
8 November hearing the Judicial Conduct Board filed a last  
9 minute King's Bench Petition with the Supreme Court seeking  
10 to quash our subpoena.

11           The Judicial Conduct Board has refused to  
12 voluntarily produce for questioning today one of its staff  
13 attorneys who was mentioned in Mr. Massa's testimony last  
14 month.

15           Apparently the Judicial Conduct Board  
16 misunderstands our statutory responsibility. In the  
17 statement issued yesterday the Judicial Conduct Board  
18 defined our task as investigating the judicial wrongdoing in  
19 Luzerne County.

20           We would submit that that is clearly wrong. It is  
21 not the task of this Commission to investigate judicial  
22 wrongdoing in Luzerne County. Investigating judicial  
23 wrongdoing in Luzerne County is the job of the Judicial  
24 Conduct Board.

25           It is one of the tasks of this Commission to

1 investigate whether the Judicial Conduct Board is doing its  
2 job. In our efforts to gather information from the Judicial  
3 Conduct Board we have asked for it formally. We have asked  
4 for it informally. We have asked for it on the record. We  
5 have asked for it off the record. And our requests for  
6 meaningful information have been met with an unyielding  
7 refusal to provide the information based on an assertion of  
8 constitutional confidentiality.

9 We know, however, that the Judicial Conduct Board  
10 has disclosed information to federal authorities. That  
11 apparently is not barred by constitutional confidentiality.  
12 We know the Judicial Conduct Board has disclosed information  
13 to the grand jury, and that apparently is not barred by  
14 constitutional confidentiality.

15 But when the Judicial Conduct Board is asked for  
16 information by this Commission created by all three branches  
17 of state government with a specific responsibility to  
18 evaluate our system of judicial discipline, when this  
19 Commission asks for information we are refused and told it  
20 is protected by constitutional confidentiality.

21 One is tempted to conclude that your definition of  
22 confidentiality is a definition of convenience. It is a  
23 definition which, to be absolutely frank, based on what we  
24 have heard here in Wilkes-Barre in four days of hearings  
25 sitting in a county with three judges under indictment, does

1 not inspire confidence in our system of judicial discipline.

2 If you can reveal information to the federal  
3 authorities, then surely you can reveal information to a  
4 statutorily-created state Commission charged with evaluating  
5 the system of professional and judicial discipline,  
6 especially since as you have so often reminded us you share  
7 our mandate to restore the public's confidence in the  
8 competency, honesty, and judgement of Pennsylvania's judges.

9 This morning we are hopeful that you will make good  
10 on those assurances. With that, I'll administer the oath,  
11 and we will begin the questioning. Mr. Massa, Mr. Klett.

12

13 JOSEPH A. MASSA, JR., called as a witness, being  
14 duly sworn, testified as follows:

15 MR. MASSA: I do.

16 EDWIN L. KLETT, called as a witness, being duly  
17 sworn, testified as follows:

18 MR. KLETT: I do.

19

20 CHAIRMAN CLELAND: By previous agreement with the  
21 Commission and Mr. Titus, Mr. Klett has agreed to absent  
22 himself from the room while Mr. Massa is questioned by the  
23 Commission, and we appreciate that cooperation.

24 MR. MASSA: You're welcome, Judge.

25 CHAIRMAN CLELAND: Mr. Legg.



1 BY MR. LEGG:

2 Q Thank you, Mr. Chairman. Good morning, Mr. Massa.

3 A Good morning, Mr. Legg.

4 Q And thank you for appearing again. And I know you  
5 testified at length in November, so I'm going to try to take  
6 this -- basically tighten up the testimony a little bit to  
7 make sure the Commission understands it as well as go  
8 through a few of the rules that you referenced at the last  
9 proceeding.

10 I wasn't prepared for that, so I wanted to make  
11 sure I understand where the Board is coming from.

12 A Okay.

13 Q Let me start at the last proceeding. You had  
14 indicated you were going to look into producing certain  
15 documents for this Commission. Do you recall that?

16 A I do.

17 Q And, in fact -- so those would have been records  
18 relating to either Conahan or Ciavarella that would be in  
19 the Board's possession?

20 A I understand that.

21 Q Okay. And, in fact, this Board -- this Commission  
22 sent the Board a letter indicating the types of documents  
23 that we were asking the Board to produce. Have you seen  
24 that letter?

25 A I have.

1           Q     As you sit here today with respect to the  
2 particular items, I believe all the Board has produced is  
3 two letters, one from Conahan's attorney, and one from  
4 Ciavarella's attorney, asserting the constitutional  
5 confidentiality that applies to Judicial Conduct Board  
6 proceedings.

7           A     Those have been produced, yes.

8           Q     And the second anonymous complaint would have been  
9 something that was produced or filed in the Lokuta matter,  
10 and that's a matter of public record?

11          A     Right.

12          Q     Correct?

13          A     The --

14          Q     Second anonymous --

15          A     -- September 28th, 2006 complaint, yes, sir.

16          Q     So aside from those three documents is it fair to  
17 say at this point in time the Judicial Conduct Board will  
18 not produce any other documents for our review?

19               MR. TITUS: I will object to the question as stated  
20 and indicate that I was the one who authored the letter  
21 indicating that we cannot produce records with respect to  
22 any investigation on a matter which has not resulted in  
23 charges. That's the requirement under the constitution, and  
24 that we cannot do that.

25          BY MR. LEGG:

1 Q Let me get a little more specific, Mr. Massa. The  
2 first anonymous complaint, you were confused at the point in  
3 time of the last hearing as to whether there were one or two  
4 anonymous complaints. Do you recall that?

5 A Yes, sir.

6 Q You indicated that you would look into it?

7 A Yes, sir.

8 Q Did you have a chance to look into it?

9 A Yes, sir.

10 Q Can you tell this Commission now whether or not  
11 there were one or two anonymous complaints?

12 MR. TITUS: Objection. On the same basis. There  
13 is a reference in the brief, and beyond the reference in the  
14 brief, which as we've said should not have been made, I  
15 don't believe the witness can testify as to that.

16 BY MR. LEGG:

17 Q Well, Mr. Massa, let me ask you. There is a brief  
18 that's been made a public -- as a matter of public record  
19 that the Judicial Conduct Board itself has filed, correct?

20 A Yes, sir.

21 Q Can you represent to the public whether or not the  
22 allegations and assertions in that brief are true and  
23 correct to your knowledge?

24 MR. TITUS: I'm going to let him answer as to  
25 whether what's been stated in the brief is true and correct,

1 but I'm not going to let him answer with respect to a  
2 reference which should not have been made to another  
3 complaint.

4 BY MR. LEGG:

5 Q Is the brief true and correct?

6 A By and large, yes, sir.

7 Q Well, when you say by and large, as the chief  
8 counsel for the Judicial Conduct Board it would be your  
9 responsibility to correct false information that was filed  
10 as a matter of public record?

11 A Yes, sir.

12 Q And have you taken any steps to amend or correct  
13 any false information that would have been included in the  
14 Lokuta brief filed by the Judicial Conduct Board?

15 A There's a minor error, sir.

16 Q Okay. Have you taken any efforts to correct that  
17 error so the public record is clear?

18 A As of the moment, no, sir.

19 Q Can you correct the public record at this point in  
20 time?

21 MR. TITUS: I'm going to object at this time. I've  
22 not had the chance to confer with Mr. Massa. I do not know  
23 whether that would involve discussion of matters that are  
24 confidential under the constitution.

25 MR. LEGG: Mr. Chairman, I don't think that Mr.

1 Titus's lack of knowledge is a valid basis for an objection.  
2 I don't think that's a legal objection at all.

3 CHAIRMAN CLELAND: I am inclined to simply allow  
4 the Judicial Conduct Board to state its objections, to make  
5 the record, and we'll address the legality or propriety of  
6 those objections in some -- in some future manner.

7 MR. LEGG: Without belaboring the point, Mr. Massa  
8 and Mr. Titus, it's fair to say that you've produced what  
9 you're going to produce at this point?

10 MR. TITUS: Yes.

11 MR. LEGG: And you'll assert the constitutional  
12 provision relating to confidentiality as to all other items  
13 that may be in the possession of the Judicial Conduct Board?

14 MR. TITUS: Yes.

15 MR. LEGG: That would include any other complaints  
16 that were received, any investigative reports, or any other  
17 documentary statements or evidence that the Board may have  
18 relating to Conahan and/or Ciavarella?

19 MR. TITUS: Yes, that's correct.

20 BY MR. LEGG:

21 Q Mr. Massa, let me then move on to the referral  
22 policy, if I may.

23 A Yes, sir.

24 Q In your previous testimony you indicated that you  
25 did refer certain documents to the US Attorney?

1           A     I did -- I did so testify, yes.

2           Q     And I reviewed your testimony. It appeared that  
3 that related to the second anonymous complaint, or what I'll  
4 refer to as the September, 2006 complaint?

5           A     That's correct, sir.

6           Q     Was that the only document that was referred to the  
7 US Attorney's Office?

8           A     Yes, sir.

9           Q     So the Judicial Conduct Board provided no other  
10 documentary evidence to the US Attorney's Office at no point  
11 -- at no time?

12          A     That's correct.

13          Q     I read a article in the Law Weekly where you were  
14 quoted as saying that the decision to give the items to the  
15 US Attorney was a bilateral one. Do you recall making that  
16 statement?

17          A     I don't -- I don't recall, sir, but I -- if you  
18 assert that it appears in print, I certainly don't doubt it.

19          Q     Just because it appears in print doesn't mean that  
20 you made it.

21          A     Sir, as we sit here, no, I don't recall.

22          Q     In your testimony you indicated the US Attorneys  
23 requested the information?

24          A     That's correct.

25          Q     How did that come about? Was it a phone call from

1       them to you, or did you initiate it, or how did that  
2       referral process begin with reference to whatever was  
3       referred to the US Attorney's Office?

4           A       It was initiated by the US Attorney's Office.

5           Q       Now, do you have the rules in front of you, sir?

6           A       You've provided them, or someone provided them.

7           Q       Okay. And I'm going to refer you to the Judicial  
8       Conduct Board Rule 18-C.

9           A       Yes, sir.

10          Q       And that rule provides information relative to  
11       violation of criminal laws may be disclosed to the  
12       appropriate agency?

13          A       That's correct, sir.

14          Q       Is it fair to characterize that rule as the  
15       referral policy of the Judicial Conduct Board?

16          A       Yes, sir. That's the rule that I followed.

17          Q       Okay. Now --

18          A       Or attempted to follow, yes.

19          Q       Would that be the rule that you relied upon in  
20       referring the second anonymous complaint to the US  
21       Attorney's Office?

22          A       The September 28th, 2006 complaint, yes, sir.

23          Q       And when we say violations of criminal laws, was it  
24       because the US attorney was interested in that complaint, or  
25       did you actually see violations within the complaint itself

1 that caused you to do the referral?

2 A I did not. I personally did not.

3 Q So you liberally construed this rule because there  
4 was a criminal investigation and they were seeking the  
5 information?

6 A That's correct, sir. And as I testified in my  
7 prior appearance, I did so as -- as a former prosecutor.  
8 That was my decision. I did not confer with the Board. I  
9 take responsibility for it. It was in the spirit of comity,  
10 C-O-M-I-T-Y.

11 Q Do the rules require you as chief counsel to get  
12 permission from the entire Board for doing a referral, or is  
13 it just something in the -- I guess in your discretion as  
14 chief counsel that you do on a routine basis?

15 A I believe it's in my discretion, sir.

16 Q Is there a report that you then prepare for the  
17 Board where they would know what occurred or have some type  
18 of knowledge what's being referred to different entities?

19 A It depends on the case by case basis, Mr. Legg.

20 Q This referral policy, is it fair to say that in the  
21 course of a Judicial Conduct Board investigation itself that  
22 if criminality was discovered, at that point it would be  
23 referred to the proper authorities?

24 A Are you speaking generally, Mr. Legg?

25 Q Generally, absolutely. So let's say you get an



1 ethical -- a purely ethical violation. In the context your  
2 investigators uncover criminal activity. Is a referral made  
3 at that point in time?

4 A It may or may not be depending upon the specifics  
5 of that particular case, the allegations, the degree of  
6 criminality that are alleged, and so forth.

7 Q More specifically, hypothetically again, in the  
8 context of Conahan or Ciavarella, if -- I'm not saying that  
9 you did, but if the Board had uncovered any criminality in  
10 the context of its investigation, would that have been  
11 referred to the US Attorney's Office?

12 A Speaking as chief counsel, that would have been my  
13 protocol, sir. Again, you're speaking hypothetically?

14 Q Correct. Let me speak concretely. Is it fair to  
15 assume based upon your representation that the only thing  
16 that the Board referred to the US Attorney's Office was the  
17 second anonymous complaint, the September, 2006 complaint  
18 that the Judicial Conduct Board, in its investigations, did  
19 not uncover any criminality?

20 A Yes. And, again, I emphasize, Mr. Legg, that I'm  
21 -- I made that determination in my discretion as chief  
22 counsel. The Board did not.

23 Q I understand that. And that's a policy and  
24 practice that you've been doing since you've been chief  
25 counsel?

1           A     That's correct.

2           Q     You make the call on the referral, not the Board?

3           A     I have.

4           Q     Now, that rule, you would agree with me as you look  
5     at it, Rule 18-C, indicates that you can make referrals to  
6     an appropriate agency?

7           A     Yes, sir.

8           Q     And I looked in the definitional section of the  
9     rules, the Judicial Conduct Board rules, and it doesn't  
10    define appropriate agency?

11          A     It does not.

12          Q     Would you agree that it's in your discretion you  
13    interpret what appropriate agency means?

14          A     Yes, sir. I would agree.

15          Q     Can you tell me whether or not you believe that the  
16    Interbranch Commission on Juvenile Justice, which was  
17    created specifically to not only review what occurred in  
18    Luzerne County, but review the judicial discipline system,  
19    would be an appropriate agency where referrals could be  
20    made?

21                MR. TITUS: I'm going to object. This is asking  
22    for a legal conclusion at this point. And this is a serious  
23    issue that you're raising. But we have concluded that we  
24    cannot publicly testify as to any complaints, information,  
25    and so forth received by the Commission.

1           We understand this is a statutorily-created  
2 Commission, but so was the Pennsylvania Crime Commission.  
3 The Pennsylvania Supreme Court and the Third Circuit have  
4 both said that the Board cannot disclose information  
5 publicly to the Crime Commission, which was statutorily  
6 created.

7           We think the same thing is true here. There's an  
8 importance to confidentiality, as you know. Because if  
9 people cannot be assured that what they report to the Board  
10 is kept confidential, how are we going to get the people to  
11 report what they suspect might be wrong? A secretary to a  
12 judge, a court reporter, a law clerk, a litigant.

13           This is the problem, and this is why we're being as  
14 rigid as we are. It is really to try to protect the system  
15 and protect the process so that judges can be disciplined  
16 and people can report without fearing retribution.

17 BY MR. LEGG:

18           Q     Well, a couple things. First, I'm not asking  
19 whether or not you'll disclose it. I'm asking whether or  
20 not the Board could interpret or whether this could be  
21 considered an appropriate agency? I haven't asked anything  
22 aside from that.

23           Mr. Massa, have you -- has the Board considered in  
24 the context of this rule whether or not, under your own  
25 rules, the Rules of the Judicial Conduct Board, whether or

1 not we could be considered an appropriate agency? And if  
2 not, why?

3 A Sir, I defer to counsel. He speaks on behalf of  
4 the Board.

5 Q Well, you've indicated in the past chief counsel  
6 has made the calls on referrals to appropriate agencies?

7 A I have.

8 Q Have you ever contacted the Judicial Conduct Board  
9 or counsel to determine what the appropriate agency is for  
10 your referral?

11 A I have not. I'll point out that this is the first  
12 time in my tenure that the Board has -- has retained special  
13 counsel such as in this instance.

14 Q And Mr. Titus indicated that one of the reasons  
15 that the confidentiality provision exists is to protect  
16 informants or people who make complaints?

17 A That's one of the reasons.

18 Q Now, Article 5, Section 18, Subsection 8 actually  
19 gives the Board the discretion upon the dismissal of a  
20 complaint against a judicial officer to disclose to the  
21 judicial officer the complaint; isn't that true?

22 A Yes, sir.

23 Q So the constitution itself allows for the Judicial  
24 Conduct Board to basically out the very people who make the  
25 complaints?

1           A     No. That's -- it doesn't work that way, sir. It's  
2 a very -- under the premise that you have stated, the  
3 respondent judicial officer is simply, in very basic terms,  
4 advised, No. 1, a complaint is received against him or her.  
5 It's been considered by the Board and dismissed. Often --

6           Q     Let me just read the language, because I think it  
7 should be in the record. Again, Article 5, Section 18,  
8 Subsection 8.

9                     And I quote, in acting to dismiss a complaint for  
10 lack of probable cause to file formal charges, the Board  
11 may, at its discretion, issue a statement or report to the  
12 complainant or to the subject of the complaint which may  
13 contain the identity of the complainant.

14          A     Yeah.

15          Q     Would you agree with that?

16          A     Yes.

17          Q     So when you say that the constitutional provision  
18 with respect to confidentiality is intended to protect the  
19 complainant, why would the same constitutional section allow  
20 the Board itself to identify the complainant?

21                     MR. TITUS: I -- I'm going to object again. We're  
22 getting into a legal argument. This is the language that  
23 was approved by the legislature and adopted by the voters as  
24 the language for this provision of the constitution.

25                     And why that was done, you know, may be the subject

1 of a legal debate we'll have to have. But it's a very  
2 limited provision, as you can see from the language. And it  
3 certainly does not undercut anything else in the section  
4 into public disclosure.

5 BY MR. LEGG:

6 Q Well, can you explain to me, Mr. Massa, how it is  
7 that the referral policy implemented under Rule 18, not only  
8 the referral for criminal acts, but also I believe it allows  
9 for ethical violations to appropriate agencies; is that  
10 correct? So there are two separate referral provisions in  
11 Rule 18?

12 A Well, 18-C that you have referred to, Mr. Legg,  
13 specifically states information related to violations of  
14 criminal law.

15 Q And 18-D refers to?

16 A Yes, sir, violations of rules of professional  
17 conduct.

18 Q So that would be ethical violations against  
19 lawyers?

20 A That's a fair interpretation, yes.

21 Q So you would refer those to the Disciplinary Board?  
22 Would that be a fair statement?

23 A That's an exact -- fair example, yes.

24 Q And that would be the appropriate agency?

25 A The Disciplinary Board, yes.

1           Q     What I'm trying to understand is how Rule 18, as  
2     implemented by the Judicial Conduct Board, complies with the  
3     constitutional interpretation that the Board is now  
4     asserting with respect to confidentiality? How is it that  
5     if everything is confidential, that the Board can still  
6     implement rules that allow referrals to criminal justice  
7     entities as well as ethical entities?

8           MR. TITUS:  Again, I think we're getting into a  
9     legal area.  The question is can you interpret the rules in  
10    a manner that permits the Board to do something that the  
11    constitution forbids?  And I don't believe they can  
12    interpret it in that manner.

13           Law enforcement agencies, as you know, have  
14    subpoena power.  You have subpoena power also.  But for  
15    example, US Attorney's Office, you have -- you have a number  
16    of issues, including the issue of preemption, the federal  
17    jurisdiction, and the fact that grand juries are  
18    confidential.

19           So that confidential information is going to a  
20    confidential agency or going to law enforcement where  
21    they'll be held confidentially.

22           MR. LEGG:  So, Mr. Titus, is it fair to say -- and  
23    we've done research that this Commission could seal  
24    confidentially any records from the Judicial Conduct Board.  
25    Would that alleviate the concerns of the Judicial Conduct

1 Board if we were -- apparently that is the concern that you  
2 would be willing to release these things to entities that  
3 can maintain confidentiality? And if the Commission  
4 provided assurances that, in fact, we would seal all of the  
5 records the Judicial Conduct Board gave us so that we can  
6 make an effective evaluation and determination of the  
7 Conduct Board, would that alleviate the Board's concerns  
8 about releasing these documents?

9 MR. TITUS: I have not had an opportunity to review  
10 that with the Board. But that certainly is something that I  
11 think could and ought to be -- if -- if there were an offer  
12 and discussions could and ought to be considered.

13 We understand the importance of your work. We  
14 understand that, because we understand the problems of  
15 judges who don't act as they should. I mean, we're very  
16 concerned about that.

17 BY MR. LEGG:

18 Q Mr. Massa, just let me hit this referral just a  
19 little more, and then I'm going to move on. You did testify  
20 before a federal grand jury?

21 A I did.

22 Q You were subpoenaed?

23 A I was.

24 Q Did that subpoena require you to produce any  
25 documents?



1           A     No, sir.

2           Q     So, again, the only thing you would have produced  
3 to the federal government would have been the September,  
4 2006 anonymous complaint?

5           A     That's correct, sir, as I previously testified.

6           Q     Let me see if I can just set the parameters here  
7 for this confidentiality on what we agree on and what we  
8 don't agree on, if that would be fair.  And, Mr. Titus, can  
9 interject as we go.

10                   Can we agree that that confidentiality privilege in  
11 the constitution is created to protect the judge, the  
12 accused judge?

13           A     That's one -- one of the reasons for the  
14 confidentiality.

15           Q     Okay.  And can we agree that the constitution  
16 allows the accused judge to waive confidentiality?

17           A     It does, for a limited purposes.

18           Q     Okay.  Well, let me read you into the record, and  
19 I'll read you the sentence out of Article 5, Section 18,  
20 Subsection 8.  Quote, all proceedings of the Board shall be  
21 confidential except when the subject of the investigation  
22 waives confidentiality, period.

23           A     You're reading word for word, yes, sir.

24           Q     Okay.  So where is the -- where is the limited  
25 nature?  Because that seems pretty broad to me in its plain

1 language. How is the Board interpreting that to be limited  
2 in any way beyond where the -- it says everything's  
3 confidential except or where confidentiality is waived,  
4 which seems to me to mean that when -- as a legal mind when  
5 confidentiality is waived it no longer exists.

6 So my question would be when you look at that --  
7 that sentence and in its strict construction, how could we  
8 interpret it any other way than to say that if a judge  
9 waives confidentiality, it's gone?

10 A I would, again, refer you, sir, to the rule of  
11 procedure that you have quoted on several occasions, Rule  
12 18-B and C, which indicates that if a judicial officer  
13 waives confidentiality, then the Board is limited to what it  
14 -- how can it respond to that and what information can be  
15 given to the public. That's my interpretation, sir.

16 Q And I'm glad -- that's exactly what I wanted to get  
17 to. Because I wanted to actually get to 18-A because I  
18 think we should do A before B and C. Because the Judicial  
19 Conduct Board, when it drafted its rules, actually made a  
20 distinction between waivers and permission where stuff has  
21 been made public. Would you agree with that?

22 In other words, Subsection A of the rule, of Rule  
23 18, actually deals with waivers?

24 A It does.

25 Q Would you agree that that is separate than

1 Subsection B? In other words, stands -- it's a provision  
2 that stands on its own, that they're different in context?

3 A They're separate sections of Rule 18, yes, sir.

4 Q Okay. And just for the record, 18-A-1 indicates a  
5 judicial officer who is the subject of a complaint made  
6 pursuant to these rules may request in writing that the  
7 matter be made public or may waive confidentiality for a  
8 particular purpose specified in writing?

9 A You're reading from the rule, yes, sir.

10 Q So that would be the waiver. And then A-2 actually  
11 indicates what the Board does in response to that waiver,  
12 correct?

13 A Yes. The Board may make those disclosures if the  
14 Board deems appropriate.

15 Q And that's what I wanted to get to. The Board --  
16 it doesn't say how the Board makes that decision. It's just  
17 whatever the Board deems appropriate?

18 A That's -- that's the language, yes, sir.

19 Q Then Subsection B actually goes into situations  
20 where the judge is requesting disclosure because things have  
21 been made public?

22 A That's my interpretation as well.

23 Q That section isn't termed waiver, is it?

24 A The word waiver does not appear in that section.

25 Q In other words, your own rules, the Judicial

1 Conduct Board rules, actually deal with waiver, and that's  
2 18-A?

3 A That's where it's stated.

4 Q 18-B deals with requests by judicial officers to  
5 basically clarify the public record?

6 A Yes, sir.

7 Q Would you agree that they're somewhat different?  
8 In other words, if I find out as a judge that there's been a  
9 complaint filed and the public may know about it, I might  
10 want the Board to make a public statement?

11 A Yes, sir.

12 Q We investigate, if we find charges, things of that  
13 nature?

14 A As are listed one through four under Subsection B,  
15 yes, sir.

16 Q And would you agree with me that that type of  
17 request is markedly different than a judge saying I waive  
18 confidentiality?

19 A I would agree.

20 Q And your rules recognize that?

21 A They do.

22 Q So would you agree with me there's different  
23 classes of disclosure?

24 A I wouldn't disagree with it.

25 Q So if a judge waives confidentiality, will the

1 Judicial Conduct Board at that point release documents?

2 A No, sir.

3 Q If a judge -- in this case, hypothetically if Judge  
4 Ciavarella or Judge Conahan gave this Commission a written  
5 waiver of confidentiality, would the Judicial Conduct Board  
6 at that point in time release its files to this Commission?

7 A Under my interpretation, no, sir.

8 Q Okay. And that's what I'm trying to get at. Is it  
9 because you would say the Board no longer deems it  
10 appropriate to release that information under Rule 18-A-2,  
11 or what -- what are you relying upon at that point in time?

12 A Both the constitution and the rules.

13 Q Okay. And what in the constitution would prohibit,  
14 upon a waiver of confidentiality, the Board from releasing  
15 documents to this Commission?

16 A Again, my interpretation, sir, is that the  
17 confidentiality is and should be sacred.

18 Q So just so the record's clear, it's going to be the  
19 Board's position that the confidentiality provision applies  
20 not only to the accused judicial officer, but is the type of  
21 privilege that must be waived also by the Conduct Board?

22 MR. TITUS: That is, as I understand it, the  
23 position that has been taken. We are in an area where this  
24 provision of the constitution has not been interpreted, and  
25 I think there is room for fair discussion of that.

1           MR. LEGG: Is there anything in the constitution  
2 that indicates the Conduct Board can give a waiver?

3           MR. TITUS: That the conduct Board can give a  
4 waiver?

5           MR. LEGG: Yes.

6           MR. TITUS: Nothing that I see.

7           MR. LEGG: So why would it be the Board's position  
8 that somehow the privilege also protects them as opposed to  
9 just the judicial officer?

10          MR. TITUS: Well, the Board cannot disclose  
11 information which it has received in confidence. The  
12 questions have been with respect to two of the judges here,  
13 and with respect to their records and so forth. Very  
14 clearly they have not waived.

15                 They've written letters to us saying to the  
16 contrary. They do not waive. There have been no public  
17 charges. We simply cannot, under the constitution, disclose  
18 anything with respect to that.

19          MR. LEGG: If there were formal charges filed, you  
20 could?

21          MR. TITUS: Not necessarily. We could -- whatever  
22 is in the formal charges, whatever evidence is produced  
23 publicly, is obviously open to the public. But not unlike  
24 law enforcement and prosecution, not all information  
25 possessed by law enforcement officers or the prosecution

1 becomes public by virtue of charges.

2           It may involve other people. It may involve  
3 further investigations. There may be other reasons why law  
4 enforcement keeps information confidential. The Board may  
5 have the same considerations. But that -- clearly the  
6 charges are public. The evidence that comes out is public.  
7 There's no doubt about that.

8 BY MR. LEGG:

9           Q     Mr. Massa, let me just ask you some general  
10 questions about complaint preparation. And I want to get to  
11 the rules again. Rule 25, if you could just look at that  
12 briefly. And I'm going to ask you if you're familiar with  
13 that?

14          A     Yes, sir.

15          Q     You testified in the November hearing about the  
16 Board seeing every complaint. Is that -- or at least seeing  
17 a report that you would have prepared with reference to that  
18 complaint?

19          A     I -- excuse me. I didn't mean to interrupt.

20          Q     In other words, they would have seen -- everything  
21 that's filed, some type of report or the complaint itself  
22 goes to the Board?

23          A     That's correct. I personally am -- see every  
24 complaint. The Board does not, except they see a synopsis  
25 prepared by counsel.

1           Q     And that's what Rule 25 seems to suggest that. In  
2 other words, you get a complaint filed by a citizen,  
3 whatever the Board sees would be prepared by chief counsel  
4 or deputy chief counsel?

5           A     Or legal staff, yes, sir.

6           Q     So the Board isn't actually seeing the handwritten  
7 document or the e-mail or whatever you may have received?  
8 They would actually see whatever was prepared by counsel  
9 through the investigative process?

10          A     I would say 98 percent of the time, yes, sir.

11          Q     Okay. And 25-A-1 indicates that when you have a  
12 named individual, that you'll get a verified complaint? In  
13 other words, you'll get it signed?

14          A     We have a complaint form, sir. And as a matter of  
15 fact, it's available on our website, I think in the annual  
16 report.

17          Q     It's on the back of the annual report, I believe.

18          A     I believe it is.

19          Q     So would this form -- I guess I'm holding it up. I  
20 think this is already part of the record, this  
21 confidentiality request for investigation. Would you fill  
22 this report or form out for the complainant, and they would  
23 sign it; or you would send it to them and have them fill it  
24 out?

25          A     Well, the vast majority of complaints that we



1 receive are received from the complainants on that document.

2 Q Okay.

3 A There are occasions when we receive -- an example  
4 would be from a prisoner.

5 Q Okay.

6 A At a state correctional institution where they  
7 write 10, 12 pages without a complaint form. Under those  
8 circumstances we would forward that to them and ask that it  
9 be verified.

10 Q And the complaint form itself would not be given to  
11 the Board? There would be some type of -- something  
12 prepared by counsel that would be given to the Board?

13 A Correct.

14 Q Now, I want it refer you to Rule 25-A-2, and that  
15 indicates that information received from other sources other  
16 than a named individual?

17 A Yes, sir.

18 Q And it indicates, and I'll read, when the Board  
19 receives information from any other source, if chief counsel  
20 concludes that the matter should be investigated, chief  
21 counsel shall prepare a written complaint and notify the  
22 Board at its next periodic meeting?

23 A You read that accurate.

24 Q Okay. What I'm going to ask you, is that the  
25 protocol that you're following at the JCB?

1           A     For example, I believe Mr. Pines just testified  
2     that on occasion, not often, but on occasion we would  
3     receive a complaint from AOPC or another judge who does not  
4     wish to be, quote, the complainant, close quote. Under  
5     those circumstances I would open up the complaint.

6           Q     Okay. In those circumstances would you decide, as  
7     the rule indicates, that chief counsel -- if chief counsel  
8     concludes the matter should be investigated, it would  
9     proceed?

10          A     Yes, sir.

11          Q     So you really are the gate keeper in that  
12     situation?

13          A     I think I am, yes. That's a good -- a fair -- a  
14     fair determination.

15          Q     Would an anonymous complaint fall under that  
16     category that we're talking about?

17          A     I see the anonymous complaint, and you're specific  
18     question is?

19          Q     Well, an anonymous complaint isn't from a named  
20     individual?

21          A     That's correct.

22          Q     So I'm assuming it falls under Rule 25-A-2, which  
23     indicates that you would determine whether or not it needed  
24     to be investigated?

25          A     Yes. There are also internal rules that are a

1 little more specific.

2 Q You have an internal policy as well?

3 A Yes, sir.

4 Q Is that something that can be released to this  
5 Commission?

6 A I believe it has been, sir, under the rules.  
7 Again, I would double check. What the protocol indicates is  
8 that when chief counsel -- again, this has been a matter of  
9 conversation, analysis by the Board. May I proceed?

10 Q Yes. Absolutely.

11 A And the protocol generally has been and stated that  
12 chief counsel should -- should, shall forward the anonymous  
13 complaint to the Board for its consideration.

14 Q So that protocol would be a little different than  
15 A-2?

16 A Still -- still it would come to my attention, and I  
17 would make the determination, sir.

18 Q Okay. So would you have an investigation done and  
19 then refer the anonymous complaint, or would it be just  
20 referred?

21 A More likely referred.

22 Q Would you agree with me that the constitution  
23 mandates that every complaint will be investigated?

24 A It does.

25 Q Okay. So is an anonymous complaint investigated?

1           A     It may or may not be, sir.

2           Q     So there are times when the Board does not follow  
3 that constitutional mandate in terms of investigating every  
4 complaint?

5           A     Well, in -- again, I'm not trying to mince words.  
6 It depends upon your definition of investigation.  
7 Investigation could be legal analysis by counsel to  
8 determine whether or not it falls within the jurisdiction.  
9 It doesn't necessarily mean investigation would mean  
10 investigators going out and interviews being conducted and  
11 so forth.

12          Q     Well, let's use the second anonymous complaint that  
13 was filed in September of 2006 as an example, because that's  
14 a public record. Hypothetically that comes to your desk,  
15 that would be investigated?

16          A     Hypothetically it would be.

17          Q     Okay.

18          A     I think I've explained that. I've tried to explain  
19 that, sir.

20          Q     Well, would that actual anonymous letter itself go  
21 to the Board, or would a -- some type of review, statement,  
22 report go to the Board that you prepared?

23          A     The latter, sir.

24          Q     Okay. So something you prepared would go to the  
25 Board?

1           A     Yes, sir.

2           Q     If you can go to Rule 26 with respect to screening.  
3 Rule 26-A indicates that counsel may conduct an  
4 investigation, quote, to determine whether grounds exist to  
5 believe the allegations and the information received.

6           A     Yes, sir.

7           Q     That's part of the screening process?

8           A     We call that preliminary investigation.

9           Q     Okay. It's the may language. Should it be more  
10 readily indicated as shall? Because we can agree the  
11 constitution requires some level of investigation?

12          A     Yes, sir.

13          Q     Okay. Can you agree with me that perhaps that  
14 language is -- doesn't really adhere to what the  
15 constitutional mandate is?

16               MR. TITUS: I'm going to object to that and suggest  
17 that, in fact, it does adhere to it. Because you may  
18 conduct interviews or examine evidence, but you may also on  
19 the face of the complaint determine that there's no  
20 jurisdiction, which wouldn't require an interview or an  
21 examination of evidence.

22 BY MR. LEGG:

23          Q     Well, Mr. Massa, it's fair to say that some level  
24 of investigation is conducted on every complaint, whether  
25 it's just a determination that no jurisdiction exists, that

1 it's patently frivolous, that in your discretion as chief  
2 counsel, some level of investigation occurs?

3 A I think the examples that you gave I would  
4 interpret as investigation, preliminary investigation.

5 Q In other words, it just didn't come in, you don't  
6 read it, you throw it in the trash? That wouldn't be  
7 investigation?

8 A You're absolutely right.

9 Q But you look at everything. You make professional  
10 judgements on everything, and that would at -- be some level  
11 of investigation? We can agree on that?

12 A I agree.

13 Q And 26-B deals with jurisdiction. My question is  
14 we agreed that you have jurisdiction over judges, right?

15 A We do. Pennsylvania judges.

16 Q Yeah, Pennsylvania. Good point. What I'm  
17 wondering is does that also involve suspended judges, if  
18 it's an interim suspension?

19 A If a judge has already been suspended by the time  
20 we receive a complaint, is that your question?

21 Q Well, if it's not a final suspension? Let's say in  
22 the context of someone having criminal charges and there's  
23 an interim suspension, would the Board still have  
24 jurisdiction to pursue ethical violations if the suspension  
25 itself was not final?

1           A     If the -- if the allegations involved activity that  
2 were committed by the judge during his judicial service and  
3 prior to interim suspension, yes, sir.

4           Q     What about a retired judge?

5           A     Again, I would -- I would give the same general  
6 question, but take it a step further.  If your follow-up  
7 question is would the Board in all instances investigate --  
8 continue to investigate a judge who's been retired,  
9 personally speaking, most often not.  Because the --

10          Q     That's -- that's a policy issue though.  My  
11 question --

12          A     It's a policy issue.

13          Q     Jurisdictionally it's your view that as long as  
14 they're a judge and they committed the conduct while they  
15 were judge, the Board has jurisdiction over them?

16          A     As a general statement, yes.

17          Q     Time limitations, that four year -- and I think  
18 it's -- you referenced it.  It's in the rules.  There's a  
19 four year statute of limitations?

20          A     Yes, sir.

21          Q     Go ahead.  I know it's not really a statute of  
22 limitations because the Board can determine that for good  
23 cause shown to extend it?

24          A     Specifically -- I'm sorry.  I didn't mean to --

25          Q     No, go ahead.  Specifically --

1           A     If the Board determined or the investigation showed  
2     that there were a pattern of conduct that would have  
3     extended back beyond the four years, an ongoing pattern of  
4     misconduct.

5           Q     So the good cause only relates to patterns then?  
6     Would that be a fair statement? Or is that how the rule's  
7     interpreted?

8           A     It includes that.

9           Q     Well, you know in our office, the prosecutors, we  
10    deal with Rule 600 a lot and the one year period for  
11    bringing prosecutions?

12          A     Yes.

13          Q     And we have internal, I guess, clocks that tracks  
14    cases to make sure things don't fall through the cracks.  
15    What does the JCB have in place to make sure that something  
16    doesn't get stuck somewhere and not looked at? Or let's say  
17    you're waiting for the feds to do something, how do you make  
18    sure that you don't go beyond the statute of limitations  
19    inadvertently?

20          A     Well, the underlying premise of your question is a  
21    very fair one because it's important, I think -- it's  
22    important for complaints to be resolved -- to be resolved in  
23    a timely fashion. We do have internal mechanisms, time  
24    tables, et cetera, which are, again, mainly my  
25    responsibility but are shared with the Board.



1           We make an earnest and honest effort to assure that  
2 nothing falls between the cracks. I -- I can't say in my  
3 tenure of eight years and over 5,000 complaints being  
4 received that that may not have happened, but we make an  
5 earnest attempt that it doesn't.

6           Q     Can you give us an idea of when a complaint comes  
7 in what's the time table at that point? Does it depend upon  
8 the complexity of the complaint, or are there different  
9 tracks that you assign them to?

10          A     The -- I believe I shared with the Commission in my  
11 first testimony that about 92 percent of our complaints are  
12 dismissed after preliminary investigation. They're  
13 dominimous or outside the jurisdiction. Those are readily  
14 reported and dismissed by the Board.

15                 However, depending upon the case load and our  
16 resources, that determines how -- how our case load is  
17 handled. Certainly -- obviously as in your office, I'm  
18 sure, certain matters are given priority, or should be given  
19 priority as to --

20          Q     Well, and I guess do you have any benchmarks or  
21 goals that you try to hit? In other words, these simpler  
22 complaints we try to get done within 60 days, 90 days?

23          A     Six months.

24          Q     Six months?

25          A     We have a six month, nine month, 180-day time

1 table.

2 Q And that's basically they get put and you try to  
3 get them off the list basically, and the ones that are --

4 A Sure, exactly.

5 Q All right. Is the Board given that information too  
6 in terms of what's been pending nine months, what's been  
7 pending six months, things of that nature?

8 A Yes, sir.

9 Q The deferral policy, I couldn't find anything in  
10 the rules that define that policy. In other words, waiting  
11 for a criminal prosecution to conclude. Is that an  
12 unwritten policy, or would that be something in your  
13 internal rules that you referenced?

14 A I think it's unwritten policy, sir.

15 Q This is going to elicit an objection, Mr. Titus,  
16 I'm sure, but I'll ask it anyway. The constitution says  
17 that the Board shall receive and investigate complaints  
18 filed by individuals or initiated by the Board.

19 As chief counsel do you believe that the referral  
20 policy complies with the constitutional mandate of the  
21 Conduct Board to investigate complaints?

22 MR. TITUS: You are right. I am going to object.  
23 You're really asking for a -- a legal conclusion.

24 BY MR. LEGG:

25 Q Well, let me -- he's chief counsel. Let me ask you

1 this. Do you believe that the constitution requires the  
2 Board upon finding probable cause of an ethical violation to  
3 file formal charges?

4 A I'm sorry. Would you repeat that?

5 Q Is it your interpretation of the constitution, in  
6 particular Article 5, Section 18, that it's mandatory upon  
7 the Board upon finding probable cause for a judicial  
8 violation or an ethical violation to file formal charges?

9 A I do not agree that it's mandatory. There have  
10 been instances, for example, when there is probable cause in  
11 lieu or short of filing formal charges before the Court of  
12 Judicial Discipline a judicial officer has resigned. That's  
13 as an example.

14 Q Well, and I guess you referenced letters of caution  
15 and letters of counsel?

16 A Yes.

17 Q Would there be probable cause in those situations,  
18 or are those cases where you don't feel the case is strong  
19 enough?

20 A Yeah.

21 Q How did that internal operating procedure come into  
22 place, and how does that play in the context of the  
23 constitution's requirements?

24 A In letters of caution they would almost fall --  
25 rise slightly above the letter of dismissal after

1 preliminary investigation. There's no probable cause.  
2 There wouldn't be any probable cause to file those types of  
3 instances or complaints before the Court of Judicial  
4 Discipline.

5 I, chief counsel, with the recommendation of the  
6 Board in all instances of letters of caution or letters of  
7 counsel make the determination that either the matter's  
8 dominimous or the judicial officer's been on the bench for  
9 10, 20 years and we've never received a complaint. That  
10 would be an example of a letter of caution.

11 Letter of counsel, the Board has determined -- our  
12 letter of counsel, our notice that goes out to the judicial  
13 officer, specifically states that after full investigation  
14 it's been determined that probable cause may exist. And  
15 under those circumstances it may or may not proceed to the  
16 level of filing formal charges before the Court of Judicial  
17 Discipline.

18 Q So it's your interpretation that in Article 18 --  
19 or I'm sorry, Article 5, Section 18, Subsection, I think, 8  
20 indicates that the Board shall determine whether probable  
21 cause to file formal charges against the justice, judge, or  
22 justice of the peace, the conduct prescribed by this  
23 section, and present the case in support of charges before  
24 the Court of Judicial Discipline?

25 A The --

1           Q     You believe there's discretion there in terms of  
2 whether or not you're actually going to proceed to the Court  
3 of Judicial Discipline?

4           A     Yes, I believe there is discretion.

5                   MR. TITUS: Just for the record, that was  
6 Subsection 7.

7 BY MR. LEGG:

8           Q     Was it 7? So the letters of counsel and the  
9 letters of counsel, there's nothing in the constitution that  
10 -- that created those? Those are created by the Conduct  
11 Board itself?

12          A     That's right.

13          Q     And they predate your -- your tenure as chief  
14 counsel?

15          A     That's correct. As do the Rules of Procedure.  
16 You'll note that they were adopted in March.

17          Q     '95, was it?

18          A     1995.

19          Q     Yeah. And I'm almost done, Mr. Massa, so bear with  
20 me.

21          A     I will.

22          Q     We had an attorney testify last night about -- and  
23 I forget the name of the case, contending that there's been  
24 some type of cooling affect on attorneys reporting judges  
25 because an attorney who made allegations against a judge was

1 suspended for five years. He made those allegations  
2 apparently in some public filings in a brief, not anything  
3 to the Judicial Conduct Board.

4 My question is, and for the public to know is, if  
5 an attorney makes a complaint to the Judicial Conduct Board  
6 you're indicating that you guard that pretty -- pretty  
7 seriously?

8 A Absolutely.

9 Q By virtue of what you're doing today and how hard  
10 you fought our efforts?

11 A That's right. Well, no, I don't --

12 Q That's not a personal thing. It's just a  
13 constitutional thing?

14 A Exactly.

15 Q Right. I'm not saying it's a personal thing. I'm  
16 just saying you're doing what you believe is right?

17 A That's right.

18 Q Can attorneys rest assured that if they make  
19 reports of judges of who they perceive to be violations of  
20 the judicial ethics, that their identities will be  
21 protected?

22 A From my standpoint, absolutely, sir.

23 Q The complaint form itself has a verification on it?

24 A It does.

25 Q Which indicates that false statements may be

1 prosecuted?

2 A Yes, sir.

3 Q If it was determined that an attorney made a false  
4 statement on a Judicial Conduct Board complaint and verified  
5 it, what would the Conduct Board do?

6 A It could -- it could refer it to a proper -- proper  
7 criminal investigation.

8 Q It could be both criminal and ethical at that  
9 point?

10 A Correct.

11 Q It could go to D. Board as well as --

12 A That's right.

13 Q And we wouldn't want attorneys making false  
14 allegations, obviously?

15 A Absolutely. Or complainants for that matter.

16 Q There was also testimony last night from a  
17 gentleman who indicated that he made a complaint in 2007 to  
18 the Conduct Board via the internet on the website. Does  
19 your website allow for people to submit complaints?

20 A No. We highly discourage that. I'm not sure that  
21 -- the instance that you're talking about is foreign to me.

22 Q I guess my question is can a complaint be filed via  
23 the internet through your website?

24 A Our website contains that complaint form, and  
25 that's what we want.

1           Q     Can they fill it out on your website and hit a  
2 button and click it and off it goes to the Judicial Conduct  
3 Board or --

4           A     They can do that, but we want the signature.

5           Q     Okay. Well --

6           A     Not an electronic signature.

7           Q     Not necessarily what you want, but can they do it?

8           A     They attempt to do it. I believe that's not  
9 proper.

10          Q     Okay. If they attempt to do it, does it reach you?

11          A     Yes.

12          Q     Okay. So if this gentleman, and I don't know that  
13 he did, but if he did do it via the internet, that  
14 information, if he did it properly, would have been received  
15 by the Conduct Board?

16          A     If you're asking a theoretical basis, yes. I have  
17 no recollection of that ever happening.

18          Q     Well, I remember in your previous testimony you  
19 indicated that the website was one of the things that you  
20 were proud of because it provided more ease and more  
21 information to the public?

22          A     Right.

23          Q     Okay. As you sit here today are you indicating  
24 that you don't want people reporting via the internet? You  
25 want actual mailed to you with a signature, or is it okay to



1 report the internet, and then you'll send them something to  
2 sign?

3 A Correct.

4 Q Okay.

5 A We welcome any information from any source, but  
6 yes, we -- we want -- you've answered the question with your  
7 example.

8 Q And just to finish up, and these are the last few  
9 questions, so I'm almost done. If a formal complaint were  
10 filed, would you agree that the JCB could provide more  
11 information to this Commission?

12 MR. TITUS: Excuse me, I --

13 BY MR. LEGG:

14 Q If a formal complaint were filed against Conahan  
15 and Ciavarella, would you agree that that would alleviate  
16 many of the concerns that have been raised here?

17 A If a formal complaint were charged before the Court  
18 of Judicial Discipline?

19 Q Yes.

20 A I think Mr. Titus has answered that question, but  
21 anything that is contained in that public document, the  
22 charging document, would be public knowledge and could be  
23 shared with this Commission.

24 Q But the -- the information that would be subject to  
25 discovery would not be? In other words, could we see what

1 the defense attorney for the judge saw?

2 A That would be on a -- on a theoretical basis. I  
3 believe so.

4 Q Well, it couldn't be confidential at that point in  
5 time, right? I mean you're sharing it with the defense  
6 attorney, right?

7 A Certain information, as you know as a prosecutor,  
8 is -- is never discoverable.

9 Q Well, police reports are, victim statements are,  
10 witness statements are?

11 A Right.

12 Q The bulk -- as a prosecutor the bulk of what we  
13 have is discoverable?

14 A Right.

15 Q And most prosecutors that I know generally have an  
16 open file policy, as we do?

17 A Right.

18 Q Because we don't want to hide the ball?

19 A As we do. As we do.

20 Q And that's what I thought you said. So my question  
21 would be that if -- if formal charges were filed and you  
22 open up your files to defense counsel, would you open up  
23 your files to this Commission so that we could --

24 A If formal charges were filed.

25 Q So is it fair to say at this point in time the only

1       impediment to us getting these documents is the Board's  
2       decision not to proceed with formal charges against Conahan  
3       and Ciavarella?

4             A       No formal charges have been filed.

5             MR. LEGG:  No further questions, Mr. Chairman.

6             CHAIRMAN CLELAND:  Thank you, Mr. Massa, and I'm  
7       going to preclude questioning because we're on a very tight  
8       schedule today, unless there's a burning question that  
9       someone needs to ask, because we still have Mr. Klett to  
10       testify.

11            MR. TITUS:  I'd like to take a minute to go get Mr.  
12       Klett, if that's all right.

13            CHAIRMAN CLELAND:  Just a second.  Just one  
14       clarification.  If there was a -- an allegation, a complaint  
15       of judicial misconduct made to the Disciplinary Board, would  
16       that be referred to the Judicial Conduct Board and  
17       investigated by the Judicial Conduct Board?

18            THE WITNESS:  Yes, sir.

19            CHAIRMAN CLELAND:  Okay.  All right.

20            THE WITNESS:  Again.  Thank you, very much for the  
21       opportunity to appear before you.  Do you want me to be  
22       excused?

23            CHAIRMAN CLELAND:  You're welcome to stay, Mr.  
24       Massa.  Mr. Legg, are you handling this?

25            MR. LEGG:  No, sir.

1 MR. HOROHO: I am.

2 CHAIRMAN CLELAND: Go ahead, Mr. Horoho.

3 BY MR. HOROHO:

4 Q Mr. Klett, welcome. Good morning. Can you state  
5 your full name for the record, please?

6 A Edwin L. Klett.

7 Q And this is the first time you've appeared in front  
8 of us, and we welcome and thank you for doing so. I would  
9 like to note a couple things on your biography.

10 A It would be helpful to me if you could keep your  
11 voice up also.

12 Q Will do. The microphone will pick up in a second.  
13 What's your current position in your law firm?

14 A I am of counsel, I guess, would be the proper  
15 description. I have a employment contract with the firm of  
16 Buchanan, Ingersol & Rooney.

17 Q And where did you receive your legal education?

18 A At the Dickinson School of Law.

19 Q And you earned your degree, according to your bio  
20 attached in the JCB information, in 1962?

21 A Correct.

22 Q And former president of the Allegheny County Bar  
23 Association?

24 A Correct.

25 Q And as far as locally, you were a former member of

1 the Board of Trustees of Bucknell University?

2 A Correct.

3 Q When did you begin your term? What is your -- what  
4 is your position with the Judicial Conduct Board?

5 A Did you ask me when I began?

6 Q Well, first of all --

7 A Or when I completed?

8 Q What is your current position with the Judicial  
9 Conduct Board?

10 A What is my current position? I'm a member of the  
11 Board of the Judicial Conduct Board.

12 Q Okay. And when did you begin your term?

13 A I was appointed mid-August of 2006.

14 Q Okay. And when will that term end?

15 A Mid-august, 2010.

16 Q And can you serve a second four year term?

17 A If appointed, and if I take a one year hiatus.

18 Q Okay.

19 A As I understand. It's a policy matter.

20 Q Now, I understand with the information that has  
21 been previously provided to the -- to us, the appointments  
22 either come from -- the appointments to the Board come  
23 either by the Governor or by the Supreme Court?

24 A Correct.

25 Q And who were you appointed by?

1           A     The Supreme Court.

2           Q     Now, do you have any office or leadership position  
3 on the Board?

4           A     I do not.

5           Q     And can you explain your duties and  
6 responsibilities?

7           A     My duties and responsibilities are found in several  
8 authorities, beginning with the Constitution of  
9 Pennsylvania. There are also statutory authorizations.  
10 There are rules of the Judicial Conduct Board. There are  
11 rules governing the conduct of individual members of the  
12 Board.

13                     Additionally, over time there are protocols that  
14 have been established, which I -- I would add gratuitously,  
15 my lawyer probably is shuttering, but we are at the moment,  
16 and have been for several months, engaged in a project to  
17 create internal operating procedures.

18                     And we are probably a couple months away from  
19 completing that project. And, again, I will say  
20 gratuitously, that we would be happy to share that finished  
21 project -- project with you as soon as it is final.

22           Q     What prompted that?

23           A     It was prompted initially by what I described as  
24 the internal protocols, which were kind of carried over by  
25 word of mouth to have those protocols reduced to writing so

1 that the guidelines would be there for Board members into  
2 the future.

3 Q Now, what specific protocol or changes are you  
4 considering making?

5 A Again, keep in mind that this is not final. This  
6 is --

7 Q I understand that.

8 A We had a Board meeting yesterday, as the Commission  
9 members will note, and we spent two hours in Executive  
10 Session yesterday reviewing a draft. And we were -- we will  
11 soon respond to those, share those again with the Board and  
12 with chief counsel, and hopefully adopt them.

13 The -- they were -- they were prompted for the  
14 reasons I indicated. Certainly influenced by what has  
15 transpired over the last six months or so. They are --  
16 they're probably 20 pages of specifics.

17 If I could describe generally. Over time chief  
18 counsel and us staff have filled a void of direct control  
19 and participation by the members of the Board. I don't  
20 fault staff. I don't fault chief counsel. I'm just telling  
21 you what I see.

22 In these internal operating procedures, as I said,  
23 there's 18, 19 pages. But in generality the Board is  
24 reclaiming all of its authority with the exception of  
25 authority that it specifically delegates to its chair, its

1 vice chair, or its chief counsel, or to certain committees  
2 of the Board. I'm sorry. That was a lengthy answer.

3 Q No, no. When you say what has transpired over the  
4 last six months, were you referring to what has transpired  
5 in the last six months in Luzerne County?

6 A Yes.

7 Q Okay. We -- Mr. Massa, as you know, testified both  
8 today and in previous testimony, and I don't necessarily  
9 want to be duplicative and review all that as it relates to  
10 what he talked about as far as the Board is concerned. But  
11 I did want to have you comment on certain things.

12 He did mention on -- on page 90 of his transcript  
13 that the Board consists of 12 members, three judges, three  
14 attorneys, and then half of the Board consists of  
15 non-lawyers and non-judges. Is that -- was that testimony  
16 accurate?

17 A Correct.

18 Q And if a judge or lawyer or a non-lawyer or  
19 non-judge would have an interest on serving on the JCB, how  
20 would they be considered by either the Governor or by the  
21 Supreme Court?

22 A I am absolutely clueless.

23 Q Okay. Now, last evening we heard some very  
24 concerning testimony from some of the children that were  
25 involved with -- in Judge Ciavarella's courtroom. And a



1 very bright, mature young, I think she's 16 or 17 year old,  
2 when asked by one of the Commissioners is there anything you  
3 think we can improve as far as the system is concerned, she  
4 talked about, well, the panel that reviews judges and  
5 lawyers are -- are comprised of judges and lawyers.

6           So how -- is that a concern by the JCB, the  
7 perception that the JCB is controlled, and even though there  
8 are six non-lawyers and non-judges, that you have lawyers  
9 and judges, 50 percent, that that is controlled by the  
10 judiciary and lawyers?

11          A     Again, I've never thought about it. I recognize  
12 who the appointing authorities are. They -- certainly the  
13 Governor has lots of responsibilities, makes lots of  
14 appointments. The Supreme Court, likewise, has lots of  
15 responsibilities and makes lots of appointments.

16           And do I think they appoint qualified people? I  
17 do. Some of their appointments seem to have a -- an  
18 objective of creating balance. And -- but from my  
19 experience in serving on the Board I think they -- the Board  
20 functions very well.

21          Q     Well, what would -- what recommendations would you  
22 make, and maybe you can think about this and provide to the  
23 Commission, to address that perception?

24          A     Well, the only other option is some kind of an  
25 electoral process. And I can't imagine anyone wanting to

1 run for a position on the Judicial Conduct Board.

2 Mr. Pines was here, and he talked about his pay  
3 grade. I have no pay grade, nor does -- does anyone else on  
4 the -- on the Board.

5 Q Are the non-lawyer voices on the Board given the  
6 same weight and input as far as the voices from lawyers and  
7 judges?

8 A Say it again, please.

9 Q Are the non-lawyer's voices and input during your  
10 deliberations on the Board given the same weight?

11 A They are. I think the lawyers and the judges begin  
12 their service on the Board with more confidence about being  
13 able to address issues. But my experience is the -- the lay  
14 members pick up steam very quickly.

15 Our current chair is a lay person and controls the  
16 agenda of the Board. So I have -- I have nothing but  
17 admiration for the lay members of the Board and their  
18 service.

19 Q Now, Mr. Massa also testified regarding the  
20 policies and procedures that are in place, and he talked  
21 about the Judicial Conduct Board Rules of Procedures and the  
22 judicial conduct members Code of Conduct.

23 And they were -- I think the Rules of Procedure  
24 were enacted March of '95?

25 A Correct.

1           Q     Now, when you talk about the -- the Board is now  
2     deliberating on making changes, would those changes affect  
3     the Conduct Board Rules of Procedures and the -- and also  
4     the conduct -- the Code of Conduct?

5           A     Correct.

6           Q     Okay. Mr. Massa also talked about the jurisdiction  
7     that the Board has and has to do with all members of the  
8     Pennsylvania judiciary. He went through all of that. Does  
9     the JCB still have jurisdiction over a judge who has been  
10    suspended by the Supreme Court, but the suspension has not  
11    been finalized?

12          A     Well, I think we still have jurisdiction. We may  
13    not have a remedy at that point because our responsibility  
14    is to bring charges before the Court of Judicial Discipline.  
15    And it would be fool hearted to bring charges after the  
16    judge has been removed.

17          Q     Do you have -- or does Mr. Titus have your 2008  
18    annual report by any chance?

19          A     I do not.

20                   MR. TITUS: I do.

21                   BY MR. HOROHO:

22          Q     Let me -- and I'm going refer back again to the  
23    testimony of Mr. Massa when I asked him about a statement  
24    that was made under the overview of the Board. And the  
25    statement in the 2008 report states, it is undoubtedly fair

1 to state that the Pennsylvania judiciary has become more  
2 sensitive to its ethical obligations and that public  
3 confidence in the judiciary has consequently improved.

4 Now, do you believe, after the conduct of the  
5 former judges of Conahan and Ciavarella, as well as the  
6 conduct I guess of a -- of another judge here, and all the  
7 circumstances surrounding what's happened in this county  
8 over the last six to eight months, that that statement is  
9 still accurate today?

10 A Well, I -- I think -- this is my view. I did not  
11 write that provision, but I've been around for a while. So  
12 I will share with you my perception. There -- in round  
13 numbers there are approximately 1,000 judges. Approximately  
14 something less than 200 senior judges.

15 In terms of longevity and exposure to the  
16 judiciary, I've seen messes equal to Luzerne County in Blair  
17 County. We've had incidents in Allegheny County. But  
18 overall I think it would -- we would do a disservice to the  
19 bench generally to say that Luzerne County is symptomatic of  
20 a pervasive problem among judges in the Commonwealth.

21 Q Talk about perception. Let me tell you what the  
22 perception that we have received from people that have  
23 testified in front of us. I have a judge who told us that  
24 instead of reporting alleged judicial misconduct to the JCB,  
25 he went to the FBI. He testified that he was concerned that

1 the JCB would just simply write a letter or slap on the  
2 wrist.

3 We heard from a District Attorney who didn't really  
4 think that reporting to the JCB was much of an option,  
5 although we didn't really understand why she didn't do that.  
6 We heard from a probation officer, court administrator, that  
7 was engaged in the juvenile court system, knew nothing about  
8 the JCB.

9 Lawyers have -- the Bar Association Executive  
10 Director in Luzerne County reports to me that there were not  
11 -- there was not one complaint that he would receive, and he  
12 was the -- he is the gate keeper here to distribute  
13 information to the lawyers to get to the JCB, not one  
14 complaint was -- has been filed.

15 And you've been on the Board since 2006. In  
16 retrospect, and there were, let me see, 597 complaints in, I  
17 think '06, 620 in '07. Do you think in retrospect you could  
18 have done -- the Board could have done something or the  
19 staff could have done something in how they analyzed,  
20 investigated, and disposed those complaints to change the  
21 perception?

22 A Well, again, with all due respect, there were 640  
23 odd complaints filed in '08. There were -- those 600 and  
24 some odd complaints were addressed by the members of the  
25 Board or the staff. There are only so many resources that

1 the Judicial Conduct Board has.

2 And as was pointed out this morning, our budget, as  
3 well as the budget of other state agencies, is shrinking and  
4 will continue to shrink. So if anything, the outreach  
5 program, which was instituted a couple of years ago to  
6 educate judges and court administrators and other service  
7 agencies to bring matters to the Board may have to be  
8 discontinued or limited.

9 At our Board meeting yesterday we appointed our  
10 chair and vice chair to figure out for the February meeting  
11 how we are going to be able to continue to provide our  
12 services through the end of this year.

13 Mr. Massa and I were invited to Washington County  
14 for a CLE program that the Washington County Bar is hosting  
15 in early February, and we debated a lot yesterday whether we  
16 could afford to underwrite Mr. Massa's travel to Washington  
17 County.

18 So absent -- absent the ability to have an outreach  
19 program and educate, I think that the symptoms that you  
20 reference will continue to grow rather than diminish.

21 Q And I'm referring to the statement that the Board  
22 issued, I think, yesterday or this morning. And I think you  
23 issued it even as a press release Tuesday, December 8th.

24 It states, in carrying out its mission the Board  
25 relies heavily on complaints and other information submitted

1 to it voluntarily by concerned citizens. These citizens  
2 unsurprisingly are often litigant lawyers or judicial branch  
3 employees. A few others would have the necessary  
4 interaction with judges to learn of potential malfeasance.

5 Now, there might be a lot of complaints being  
6 lodged in 66 of the 67 counties, but what we're hearing is  
7 despite all the complaints that you indicate have been  
8 raised, they're not being raised in this -- in this county.

9 And we're -- in retrospect, and maybe it goes back  
10 to some of the changes you're making, potentially make, have  
11 the -- has the Board -- has the staff made any mistakes over  
12 the last couple years since '06 in how they've handled the  
13 -- the investigation and analyzing of the complaints to  
14 cause this perception?

15 A Well, let me ask you the question this way. If we  
16 are Monday-morning quarterbacking, knowing what we know now,  
17 I think that the Board, staff, prosecutorial authorities  
18 would have been all over this earlier. But that's  
19 Monday-morning quarterbacking.

20 If you're asking me in retrospect given what we  
21 knew when we learned it, would we have done it differently?  
22 I don't think so.

23 Q You realize that the statistics that you provide to  
24 us -- you've provided to us that in 2009 17 complaints that  
25 were lodged, two and a half to three percent resulted in

1 letters of counsel -- or letter of caution, only two percent  
2 letter of counsel, and a half a percent of only resulted in  
3 formal charges.

4 Do you think that -- that -- is there any concern  
5 about the lack of -- of --

6 A Enforcement?

7 Q -- discipline, the lack of discipline?

8 A I think not. I've been very impressed with the  
9 wisdom that the members of our Board, both judicial, lay,  
10 and attorneys, bring to bear on the issues. Perhaps  
11 everyone on this Commission has made a mistake somewhere  
12 along the line. And the -- the point for the Board is to  
13 decide how material that mistake is.

14 Is it aberrational if we overpenalize a particular  
15 judge, we will turn that judge into a bad judge. And so we  
16 have to be sensitive to providing wake up calls. And if a  
17 judge has been on the bench for 20 years and there is a  
18 complaint about unprofessional conduct in the courtroom, we  
19 will probably, as part of the preliminary investigation or  
20 issuing a letter of inquiry, very low key, say, judge, it's  
21 been alleged that you were unprofessional in the courtroom.

22 And more often than not we get back a response, I'm  
23 glad you brought it to my attention. I am -- I'm happy to  
24 reflect on what you've said. And, again, more often than  
25 not that little wake up call is all that is required.



1           It's not our mission to destroy the judiciary of  
2 Pennsylvania. We're there to exercise judgement with  
3 respect to leniency or wake up calls for the judges that  
4 that's -- that is all that's required. We prosecute others,  
5 and judgement goes into that also as to how many resources  
6 we have to prosecute in the Court of Judicial Discipline.

7           Just -- I know I'm on a role here, but a Judicial  
8 Conduct Board case requires a lawyer and an investigator and  
9 back office help, plus costs of prosecution, transcripts,  
10 and all of that. It takes -- it takes approximately 30 or  
11 40 percent of our manpower when we take a case to the Court  
12 of Judicial Discipline.

13           So, again, we have only limited resources, and we  
14 have to be very good managers of those resources.

15           Q     Okay. Let's talk about how to maybe be good --  
16 better managers. One of the concerns that we have as far as  
17 your policies has to do with a deferral or the referral  
18 policy to other agencies.

19           In reviewing the JCB rules Mr. Legg and I could not  
20 find any formal statement of a deferral policy or any  
21 written procedures as to what is to occur when a complaint  
22 is referred. Would you agree with that? There isn't any  
23 written policy?

24           A     Yes and no.

25           Q     Okay.

1           A     Our new rules of -- of internal procedures deal  
2 directly with that, and I would agree with you that certain  
3 of the policies have developed as -- as word of mouth  
4 policies.

5                     I've also told you that I thought that way too much  
6 discretion has been placed in the staff rather than with the  
7 Board. And so these internal operating procedures are  
8 intended to reclaim all of that authority, including --  
9 including whether or not a particular matter is referred to  
10 another agency.

11           Q     Okay. And maybe as we go through this series of  
12 questions you can let me know the old policy versus the new  
13 policy. The current policy, which is right now, is that  
14 there aren't any written policies as far as the -- as the  
15 referral of -- to other agencies?

16           A     Well, let me -- again, and this is by memory. My  
17 recollection is that the -- that the rules of the Judicial  
18 Conduct Board state what relief the Board can provide. And  
19 the last one is referral to an outside agency. You have it  
20 in front of you.

21           Q     Right.

22           A     I do not. Am I correct or incorrect?

23           Q     Right. And we reviewed that with Mr. Massa. And  
24 Mr. Massa indicated on page 122 of the transcript that --  
25 and he indicated today that the referral to another agency

1 has been his call to this point?

2 A It's not only referral to an agency, the  
3 investigation, the preliminary inquiries, the management of  
4 staff, the development of pleadings, all of that has been  
5 left to the staff. And that's why I'm trying to emphasize  
6 that the Board, as a committee of the whole, is pulling back  
7 all of that process.

8 Q But Mr. Massa did indicate that when queried about  
9 that, who makes that determination, you or the Board, Mr.  
10 Massa stated that the Board, upon his recommendation. So he  
11 does -- he has indicated to us previously that he does come  
12 to you with recommendations. Is it your testimony --

13 A Eventually, eventually.

14 Q Is it your testimony that that's not -- that's not  
15 happened, is not happening?

16 A It -- it generally -- that is a -- another area of  
17 concern of the Board, that staff in exercising judgement  
18 that has been placed with them over time will exercise that  
19 judgement a certain way. And we don't know anything about  
20 it until after the fact. Sometimes we know about it before  
21 the fact, but that's probably the exception to the policy.

22 Q Okay. Currently, right now, before this new policy  
23 comes into affect, hypothetically if a complaint is received  
24 from the JCB, contains criminal allegations and also ethical  
25 allegations, and if it's deemed appropriate by the Board to

1 defer or refer the criminal allegations to either the US  
2 Attorney's Office or the District Attorney's Office, does  
3 the Board continue to investigate the alleged ethical  
4 violations?

5 A In practice, probably not.

6 Q And why is that? Don't you have a mandate under  
7 the constitution to do that?

8 A I -- mandate is a pretty strong term, and I would  
9 ask you to point to language to that affect. I don't think  
10 there is language to that affect, but there may very well  
11 be. I'm here to tell you how it works in practice, and to  
12 some extent how it works in theory. We have --

13 Q Let me just interrupt you. Section 18, Paragraph  
14 7, it says the Board shall receive and investigate  
15 complaints regarding judicial conduct filed by individuals  
16 or initiated by the Board. And then the -- also the other  
17 mandate or directive, determine whether there is probable  
18 cause to file formal charges against the justice, judge, or  
19 justice of the peace and present the case in support of the  
20 charges before the Court of Judicial Discipline.

21 So if you get a complaint, and it has both criminal  
22 allegations of criminal misconduct and ethical misconduct,  
23 don't you -- don't you interpret your directive, your  
24 constitutional directive, to continue to investigate those  
25 ethical allegations to the point where you either file a

1 complaint or not file the complaint?

2 A No.

3 Q Okay. Why not?

4 A That's what I was about to tell you.

5 Q Okay.

6 A Because it is not as -- a simple matter in most  
7 cases to separate ethical from criminal. They just don't  
8 come departmentalized that way. We have concerns that if we  
9 continue down our investigative road, that we will come in  
10 conflict with a -- an investigation being conducted by a  
11 criminal agency.

12 It is also of import to us that with our limited  
13 resources when we continue to investigate ethical  
14 violations, be they subordinate in terms of impact to the  
15 criminal violation, we may be wasting our valuable  
16 resources.

17 So our tendency would be to let the investigation  
18 go forward by the particular agency, continue to monitor as  
19 best we can what is happening with that particular  
20 investigation. We will put the Judicial Conduct Board  
21 investigation in a continued status by keeping it on a -- a  
22 logging track so that we know that there is an open case  
23 that's been continued because it has been referred to a  
24 particular agency.

25 I'm almost done. There are -- there are grand jury

1 investigations about which we become aware where a judge is  
2 being investigated and nothing ever comes of it through the  
3 grand jury, concludes that there is no criminality or an  
4 insufficient evidentiary trail to support a prosecution.

5           So in those cases, again, to the extent we're able  
6 to do so, if the -- if what has been investigated is very  
7 close to what is involved with the matter before us, we  
8 would have the option to dismiss it at that point, or we  
9 might kick up our investigation at that -- it's a  
10 complicated series of considerations, some of which relate  
11 to use of our resources.

12           Q     All right. So let's say hypothetically you  
13 received a complaint that had criminal -- alleged criminal  
14 and ethical violations, and you deferred that to the US  
15 Attorney's Office in 2006. How long are you -- would you  
16 wait until, as you say, kick up your investigation again?

17           A     Again, it's -- I would be speculating. It's --  
18 it's not lost in the shuffle. It is maintained on a log.  
19 The reason for the deferral of the investigation is before  
20 us at every meeting.

21           Q     Mr. Klett, convince us that the --

22           A     I'm not going to convince you of anything. I'm not  
23 an advocate. I'm here to respond to your questions.

24           Q     I understand. Can you try to convince us that the  
25 second anonymous complaint that was received in the Lokuta

1 matter that was referred to the US Attorney's Office has not  
2 been lost in the shuffle?

3 MR. TITUS: I'm going to object to the question  
4 again. This will get into discussion of handling of  
5 specific complaints. We simply can't, for the reasons I've  
6 said before. We're not -- I'm not going to have the witness  
7 answer the question.

8 THE WITNESS: Let me answer the question this way.  
9 Until the summer of '09, this past summer, I never saw a  
10 copy of the '06 complaint.

11 BY MR. HOROHO:

12 Q The Board never saw it?

13 A Correct.

14 Q When was the first time the Board saw that  
15 complaint?

16 A I think when I asked for it. It was distributed to  
17 other Board members in the summer of '09.

18 Q Okay. Do you know when the -- when your chief  
19 counsel received it?

20 MR. TITUS: I'm going to object to the question.

21 BY MR. HOROHO:

22 Q Let me -- and this has already been -- this has  
23 already been attached as an exhibit and filed of this record  
24 and the record in the Lokuta matter. But the brief that was  
25 filed in the Lokuta matter, September 10th of 2009, attached

1 as an exhibit the second anonymous complaint. And I don't  
2 know if we have it, but I think the stamp is your stamp, the  
3 JCB stamp, September 28th of 2006.

4 A Is there a question?

5 MR. TITUS: That document speaks for itself.

6 BY MR. HOROHO:

7 Q Okay. You're not disagreeing with that, that that  
8 is when the JCB --

9 A I have no basis for agreeing or disagreeing.

10 Q Now, when this was received is it your testimony  
11 that the first time any Board member saw this was the summer  
12 of 2009?

13 A Let me say, I obviously don't know what other Board  
14 members saw or didn't see. My belief, however, is that no  
15 Board member saw it prior to the summer of '09. I -- let me  
16 tell you why. I was monitoring newspaper articles, and I  
17 saw a reference to the '06 anonymous complaint. And I was  
18 -- I was confused in my own mind with the '06 complaint and  
19 what may have been described as the '08 complaints, which,  
20 again, I've never seen as such.

21 But I -- in my own mind I was trying to understand  
22 what was being revealed in these newspaper articles, and I  
23 asked for copies of both. I was given a copy of the '06  
24 complaint, anonymous complaint. I never seen what was  
25 delivered in '08 because I understand there were multiple



1 contacts and attachment of newspaper articles.

2 Q Okay. And I know you're not speaking just on  
3 behalf personally, but you're speaking today and  
4 representing the Board as a whole?

5 A I'm representing the chair.

6 Q Oh, okay, fine.

7 A To the subpoena.

8 Q What did Mr. Massa tell the Board after he received  
9 the September 28th, 2008 anonymous complaint?

10 MR. TITUS: I'm going to object to the question.  
11 This gets into internal Board discussions, internal  
12 investigations, and I don't believe we should testify to  
13 that under the constitution.

14 BY MR. HOROHO:

15 Q Well, I think this is probably, again, asking for  
16 the procedure of what happened to this complaint when it  
17 came in, not necessarily what the Board did to the  
18 complaint. I mean --

19 A Can I -- can I answer the question by telling you  
20 what generally happens? And I'll even volunteer what we are  
21 proposing to do in the new IOPs.

22 What generally happens is that chief counsel or a  
23 member of the staff will analyze, we call it a preliminary  
24 inquiry, which means that they will try to put the  
25 particular complaint into a pigeonhole and will try to

1 analyze it factually as well as legally. And then the Board  
2 will receive, and in due course, a write up of this  
3 preliminary inquiry along with recommendations as to whether  
4 it gets dismissed at that point, dismissed -- I'm -- can I  
5 finish?

6 Q No. I just want to clarify if there was -- if  
7 there's a different approach with a verified complaint and  
8 an anonymous complaint?

9 A I'll come to that.

10 Q Okay.

11 A Now, current practice is it doesn't matter. The --  
12 whether it's anonymous or there is a proper -- properly  
13 filled out form. It gets to the point where the staff  
14 conducts a preliminary inquiry and then does a write up for  
15 the Board. And depending on the nature of the matter, the  
16 write up could be a page, or it could be 15 pages.

17 Obviously the -- the more information that the  
18 complainant provides, the better start staff has, because  
19 you've got a -- you've got a ready witness, if you will, to  
20 provide information. In the case of a -- an anonymous  
21 complaint the staff has to begin at square one and try to  
22 separate out the weak from the chafed, if you will. Some of  
23 -- some of these are unintelligible.

24 Q Okay.

25 A Some of them will attach a 300 page transcript and

1 you go find whether there's -- the judge did anything bad in  
2 there because I'm in -- in the penitentiary, and I shouldn't  
3 be here, and so something bad happened to me, I know.

4 Now, coming to me our new internal operating  
5 procedures we separate out the complaints that come in in a  
6 proper format from the anonymous complaints. The anonymous  
7 complaints in whatever form, scrap of paper, memo, writing,  
8 newspaper article, whatever it is that will come to the  
9 Board. And the Board --

10 Q How will that come to the Board, through your chief  
11 counsel?

12 A Through staff. I don't pretend to tell you how it  
13 moves from the desk where it's received to the Board, but  
14 the idea is that the Board and not staff will focus on the  
15 anonymous complaints, and the Board will exercise the  
16 judgement as to whether the anonymous complaint has  
17 sufficient substance to warrant opening a file and an  
18 investigation.

19 We also couple with this a -- what we call an  
20 intake and status log. So that nothing --

21 Q This is going to be the new -- new Board -- the new  
22 rules, right?

23 A Correct.

24 Q Okay.

25 A We'll have an intake and a status log that will

1 record every scrap of paper that comes in. It will be  
2 assigned a date, number, if it's goes to a staff member, and  
3 will be recorded.

4 That intake and status log will be updated  
5 currently as the matter progresses through staff and through  
6 Board. And that will be on the agenda of every meeting of  
7 the Judicial Conduct Board.

8 Q Now, are you going to put a time limit on the time  
9 period from the receipt of the complaint to the turning over  
10 to the Board? Because apparently that -- you don't have  
11 that now.

12 A Again, let me -- let me try to answer this way.  
13 The published rules of the Board reference 180-day rule,  
14 perhaps you've seen that, for -- for one of a better term is  
15 a timely prosecution. We carry that over into our new  
16 internal operating procedures. But additionally we have a  
17 general standard for staff that each and every complaint is  
18 to be investigated, processed, brought to the attention of  
19 the Board, especially -- especially those complaints which  
20 could adversely affect the administration of justice or have  
21 a timeliness factor associated with them, such as a  
22 complaint arising out of a primary or general election and  
23 so forth.

24 If we don't act promptly before the -- you know,  
25 while the plate is still hot, if the -- if the loser is the

1 entity or the person that was charged, we have no  
2 jurisdiction if they have not secured the judicial position.

3 Q Now, you would agree with me that 180-day rule you  
4 referred to was not followed with this -- this second  
5 anonymous complaint that was received by the staff September  
6 28th of '06?

7 A I don't know that one way or the other.

8 Q Do you contemplate any new rule changes as relates  
9 to matters that consider juvenile judges or that affect the  
10 juvenile justice system?

11 A No.

12 Q Any specific --

13 A No.

14 Q Any discussion about considering doing something  
15 like that?

16 A Our -- our responsibility is to deal with judges  
17 generally, and those in the minor judiciary. And, again, we  
18 don't draw a distinction. They -- they come in. We've had  
19 complaints against judges on the appellate courts, including  
20 the Supreme Court, all of the various courts of common  
21 pleas.

22 They can -- they can come from the criminal  
23 division or the civil division or juvenile. They could come  
24 from various different segments of the judiciary.

25 Q Okay. Let's go back to now your process both old,

1 and I'll compare it with the potential new rule changes.  
2 What happened -- how often does the Board meet as a whole?

3 A Another good -- another good question. You're  
4 feeding me a lot of good basis for response. We meet  
5 ordinarily every other month beginning in February. Because  
6 of budgetary constraints we tend not to stay overnight. We  
7 tend to drive from Pittsburgh leaving at 5 a.m. to get to  
8 Harrisburg and then drive back.

9 We -- under our new rules we intend to supplement  
10 those meetings by having special meetings via  
11 teleconference. A good -- I would say a good 30 or 40  
12 percent, maybe 50 percent of our prep time and our --  
13 probably less than that of our meeting time is allocated to  
14 dismissals.

15 And we, on our own, go through those proposed  
16 dismissals, and we raise questions about a dismissal or a  
17 dismissal with a particular tag to it, and then we discuss  
18 those. But those -- the bulk of those could probably be  
19 handled via telephone -- telephone conference. Because of  
20 budgetary constraints we may have to move from meeting every  
21 other month to meeting quarterly.

22 Q Right now is there any sort of conference calls  
23 between meetings?

24 A There are -- there's nothing to discuss routine  
25 business. What I have described to you as conducting

1 routine business of a character which probably doesn't  
2 matter whether you're face-to-face or not would be  
3 indicated.

4 Q So then what happens to the complaint -- let's go  
5 over to your process currently. The chief counsel then  
6 provides a synopsis of every complaint? Is that accurate  
7 right now? That's what Mr. Massa's indicated.

8 A So far as I know.

9 Q Okay. And it's at these meetings then that -- the  
10 Board meetings to determine what should happen to any of  
11 those complaints?

12 A Well, it's not quite as simple as you describe it.  
13 In the -- in advance of every face-to-face meeting we  
14 receive packets. And the packets normally consist of --  
15 they may be -- for example, one of the meetings it took  
16 about two days to get through all of this material. But  
17 normally the proposed dismissals are about two inches thick.

18 Then there is counsel's administrative report,  
19 which reports on dispositions of pending matters. And then  
20 finally there is a -- another booklet which contains the  
21 materials assembled by chief counsel and his staff, which  
22 represent the dispositions other than dismissals.

23 And we -- we typically will go through the  
24 dismissals first dealing in bulk with most of them. If  
25 there's an issue, we discuss the dismissals. We then -- we

1 then move to the other matters which -- which do not involve  
2 dismissals, and we spend the bulk of our time on those  
3 matters.

4 Q And typically if a matter is going to be deferred  
5 to a different agency, that would be the typical  
6 deliberations and time it would be decided?

7 A Again, do you remember what I said before?

8 Q Yeah.

9 A It may be a fait accompli by the time we see it.  
10 It may be the chief counsel reporting that he has appeared  
11 before a grand jury, or he has met with the US Attorney, et  
12 cetera.

13 Q And right now the way your rules are set up now he  
14 can do that without Board approval?

15 A I think not. I think the -- I think the  
16 responsibility lies with the Board. There's no -- no  
17 responsibility assigned to chief counsel under the  
18 constitution or anywhere else other than to manage the  
19 administrative affairs. And so --

20 Q Well, Mr. Massa testified that he did testify in  
21 front of the grand jury. Did he come and seek the  
22 permission of the Board for that?

23 A I don't think so.

24 Q Okay. When he testified that he deferred the  
25 anonymous complaint to the US Attorney's Office, did he come



1 to the Board to seek approval of that?

2 A I'm fairly certain that he did not. I think he --  
3 I think he took that to the US Attorney, or met with the US  
4 Attorney in June or July of '08. We had a Board meeting  
5 scheduled in August, and I think the materials that were  
6 given to us in August reported on that.

7 Q And was that the first time that was reported to  
8 the Board?

9 A I believe so.

10 Q Did he report to the Board what happened to the  
11 first anonymous complaint that was received from the JCB?

12 MR. TITUS: I'm going to object to that question  
13 again. We're getting into matters that I believe are  
14 confidential under the constitution.

15 THE WITNESS: May I also point out in our IOPs that  
16 there's an obligation now imposed on Board members, staff,  
17 chief counsel to advise the Board of any request to appear  
18 before a grand jury, a US Attorney, even participating in a  
19 educational seminar, that that has to come to the Board for  
20 approval.

21 BY MR. HOROHO:

22 Q Now, what is the interplay once the complaint is  
23 deferred to a -- let's say, for example, hypothetically the  
24 US Attorney's Office? What's the interplay between the JCB  
25 and that agency as it relates to the status of things?

1           A     It -- currently?

2           Q     Currently.

3           A     Currently the only interplay is between staff and  
4 whatever relationship staff develops with that particular  
5 agency.

6           Q     In your experience since you've been on the Board  
7 has any agency ever contacted the JCB and told them not to  
8 do any further investigation of any ethical complaints that  
9 have been before the JCB?

10          A     I don't know that, but I wouldn't be surprised  
11 given the sensitivity of many prosecutors and -- and US  
12 Attorneys.

13          Q     Are you aware that the US Attorney and the second  
14 anonymous complaint contacted the Board and told them not --  
15 to do nothing further with the -- with the complaint from  
16 the ethical violation -- ethical allegations in the  
17 complaint?

18          A     I'd have no knowledge.

19          Q     You received no correspondence from the US Attorney  
20 regarding that?

21          A     I don't believe so.

22          Q     Okay. Is the anonymous complaint on any future  
23 agenda of the Board to determine whether or not you're going  
24 to make a determination as to whether or not you're going to  
25 file charges?

1           MR. TITUS:  If you're asking about the specific  
2 anonymous complaint, I'm going to object to that question as  
3 to what the Board will be doing or not doing with respect to  
4 that.

5 BY MR. HOROHO:

6           Q     Well, again, back to the perception in this county  
7 and the perception that we've received.  How long do you  
8 think the Judicial Conduct Board should wait on anonymous  
9 complaints before --

10          A     I'm sorry.  I interrupted you.

11          Q     Yeah, before they proceed to file formal charges?

12          A     Statute of limitations is four years, and I think  
13 depending on circumstances the Board could act earlier or  
14 later or not at all.  And it could depend a lot on what  
15 happens to the judicial officer in the grand jury.

16                 If a -- if a grand jury indicts and the Supreme  
17 Court removes that particular jurist, it is highly unlikely  
18 that we will waste resources pursuing non-lethal remedies.  
19 Because that's about the worst thing that can happen to a  
20 judge is to lose his -- his or her Commission and then  
21 suffer jail as well.

22                 MR. HOROHO:  Mr. Chair, I -- I don't know how long  
23 we can -- you want to go.

24                 CHAIRMAN CLELAND:  I'd like to get this wrapped up  
25 by 12:40.  That's about 10 minutes from now.  And there are

1 other members who, I think, want to ask some questions.  
2 Perhaps we'll have to ask Mr. Klett to come back in a future  
3 meeting or hearing if that's necessary. But, otherwise,  
4 we're going to throw the whole afternoon schedule off. But  
5 we could do that. We just -- how much more time do you  
6 think you need?

7 MR. HOROHO: Probably another half hour.

8 CHAIRMAN CLELAND: I don't think we've got that  
9 time now. So would -- Mr. Klett, would you be available to  
10 come back at some future hearing if need be?

11 THE WITNESS: It depends on what my counsel advises  
12 me.

13 CHAIRMAN CLELAND: He's been cooperative so far.  
14 I'm sure we can work that out.

15 BY MR. HOROHO:

16 Q By the way, when will the rules that you're talking  
17 about, the new rules, what's the anticipation of when those  
18 new rules are going to come into play, because that would be  
19 helpful if --

20 A As I mentioned earlier, I think we're shooting for  
21 approval at the February, 2010 meeting. The process right  
22 now is that the Board is trying to develop a consensus. We  
23 will then ask chief counsel and his staff to review it and  
24 provide feedback. And eventually, hopefully, develop rules  
25 that are -- that accomplish the objectives that we want to

1 accomplish.

2 MR. HOROHO: Mr. Chair, maybe it makes sense for  
3 the -- Mr. Klett to return in late January, early February,  
4 and talk about those -- those --

5 CHAIRMAN CLELAND: Those IOPs will be public  
6 document?

7 THE WITNESS: They certainly -- I don't know who  
8 would be interested in them, aside from the Commission.

9 CHAIRMAN CLELAND: Well, yeah.

10 THE WITNESS: We would volunteer to share those  
11 with you.

12 CHAIRMAN CLELAND: Rephrase that. You would make  
13 those available to us?

14 THE WITNESS: Yeah. Well, there might be a fee of  
15 some sort. May be a best seller, but I suspect not.

16 MR. TITUS: We might explore whether -- because I  
17 also have both the time of Mr. Klett and also the -- all of  
18 the other things that the JCB has to do with a very small  
19 staff and a very small budget. Perhaps some of it might be  
20 done through written questions and written answers, which  
21 would be part of the public record?

22 CHAIRMAN CLELAND: Well, of course we have a very  
23 small staff and a minimal budget as well. So I'll want to  
24 preserve resources. With that.

25 BY MR. HOROHO:

1           Q     Mr. Klett, maybe one question before you leave.  If  
2 we secure a waiver from Judge Conahan at this point to  
3 disclose the requested documents to the Commission, would  
4 you agree that the JCB must release that information at this  
5 point?

6           MR. TITUS:  Objection.

7           THE WITNESS:  I'm relying on advice of counsel.

8           MR. TITUS:  Objection.  I'm -- that's a legal issue  
9 that we would determine based on the waiver.

10          CHAIRMAN CLELAND:  Based on the waiver?

11          MR. TITUS:  Reading the waiver.  Because what we  
12 have right now is just the opposite.

13          CHAIRMAN CLELAND:  What would you require the  
14 waiver to contain?

15          MR. TITUS:  Perhaps I can review that with counsel.  
16 Because I --

17          MR. HOROHO:  We would even consider if you want to  
18 draft that waiver, to review it.

19          THE WITNESS:  Let me also point out that there --  
20 in my view that there is a very important privilege that  
21 exists among members of the Board to deliberate freely with  
22 respect to judicial conduct matters.  It's kind of like  
23 Judge Cleland and his associates on the Superior Court.

24                 If -- if an agency such as yours wanted -- wanted  
25 to find out how the Superior Court deliberated with respect

1 to a particular issue, you would be asserting privileges.

2 BY MR. HOROHO:

3 Q Mr. Chair.

4 A And we too feel compelled to assert privileges to  
5 protect the deliberative process held by other members of  
6 the Board.

7 CHAIRMAN CLELAND: The difference is that our  
8 deliberative process becomes a public record once it's  
9 completed.

10 THE WITNESS: Oh, does it now? Does it now?

11 BY MR. HOROHO:

12 Q Mr. Chair. I'm not sure -- we're looking for the  
13 -- your notes from the deliberative process. We are looking  
14 for, as we have been advised, of investigative reports that  
15 have been prepared and submitted to the Board, things that  
16 would clearly be -- that were -- have been prepared in  
17 anticipation for analysis of the complaint submitted by --  
18 prepared by chief counsel.

19 A With all due respect to everybody, we're -- the  
20 Board is represented by counsel. The counsel -- our counsel  
21 has advised us -- as a witness I'm perfectly willing to  
22 cooperate 100 percent with you. But I see a higher calling,  
23 which is to protect the process of the Judicial Conduct  
24 Board.

25 As -- as merit laden as your assignment is, ours is

1 also merit laden. And I'm on the Board, not on the  
2 Commission. So my responsibility is to exercise the  
3 responsibilities as a member of the Judicial Conduct Board.

4 But I personally, if -- if there are no privileges  
5 asserted, somebody says you're wrong, you got to testify,  
6 I'm perfectly willing to share chapter and verse with you.  
7 I'm not -- I'm not somebody that needs to carry water that I  
8 don't have to carry. I've got enough baggage in my life.

9 CHAIRMAN CLELAND: Mr. Williams, you wanted to ask  
10 one final question?

11 BY MR. WILLIAMS:

12 Q Yes. Mr. Klett, last night we heard from several  
13 parents that were here, and several of them stated that they  
14 had filed complaints with the Judicial Conduct Board. Do  
15 you remember any complaints coming in on Judge Ciavarella?

16 A I -- I'm sorry. I interrupted you. I am unaware  
17 of any complaints from anyone about what I'll describe as  
18 the juvenile justice debacle in Luzerne County. I think  
19 that it was reported to the Board as some point that the US  
20 Attorney was involved with those matters. The press  
21 certainly had picked it up. But to my knowledge no one,  
22 including parents or otherwise, told us chapter and verse as  
23 to what was happening.

24 Q You received no written complaints at all?

25 A No.



1 Q And nobody on your Board knew what was going on in  
2 Luzerne County?

3 A How would I answer that?

4 Q Well, you have a member on your Board from Luzerne  
5 County.

6 A But how would I --

7 Q I'm just asking you if they had mentioned it in one  
8 of your meetings?

9 A I don't know what you're talking about.

10 Q Board members usually talk about problems within  
11 the state, right?

12 A No, we don't. We have --

13 Q Oh.

14 A We address complaints when they come in. That's  
15 our agenda. Let me make one other point too. This -- this  
16 process is appropriate and honorable and well-intentioned.  
17 I hope somewhere along the line you will give credit to the  
18 many, many members of the judiciary out there who day in and  
19 day out perform extremely well.

20 Black clouds can taint a -- a judiciary for years  
21 and years and years, like in Blair County as an example. So  
22 why the electorate elected these individuals to serve on  
23 your bench is beyond me. You've -- you folks will know more  
24 about that than I do.

25 I don't know if the bar has a vetting process to

1 rate those who are pursuing office. In Allegheny County we  
2 have a Judiciary Committee that spends lots of time doing  
3 that.

4 So maybe -- maybe it's a matter of having the local  
5 bar or those interested in this particular matter vet the  
6 credentials of those that are going on the bench, someone  
7 who has a -- has a proclivity to violate the basic rules of  
8 honesty did not develop those after they came on the bench.

9 Those -- I submit that whatever tendencies were  
10 there were there previously. And you notice Judge Toole was  
11 a partner and associate in the same firm. I -- I think  
12 there is -- you're a local official. Perhaps some of this  
13 should come to roost at the local level as to how much  
14 vetting you're doing of your judicial candidates.

15 Q And I totally agree with you. We do have an awful  
16 lot of honest judges out there.

17 A Absolutely. And they --

18 Q And Blair County has a cloud. So does Luzerne  
19 County. But the bigger cloud is over the children that were  
20 injured through this process.

21 A Well, I've heard -- I've heard a lot about  
22 children. But believe me, there are lots of other judicial  
23 work in this Commonwealth, much of which is conducted at the  
24 district justice level, where they too handle important  
25 personal issues. Domestic relations, for example, can have

1 major impacts on families. It's just not the juvenile court  
2 that affects families. So --

3 Q That's understood also. That's understood also.

4 A Yeah, I appreciate very much. I'm on a soap box,  
5 and I apologize. And I appreciate you giving me an  
6 opportunity to say a few words.

7 CHAIRMAN CLELAND: Thank you. And we'll look  
8 forward to having you back to say a few more words later in  
9 the winter. And with that we'll be in recess until 1:00.

10 (Recess.)

11 CHAIRMAN CLELAND: Good afternoon. We're ready to  
12 begin. I apologize to those of you who were here at 1:00  
13 expecting that we would be started right then. We have --  
14 our earlier hearing or witnesses extended longer than --  
15 than we thought they would. And we tried to not only get  
16 something to eat, but conduct a little business over the  
17 noon hour too. So we apologize for that delay, but we  
18 appreciate your patience.

19 We turn now to the Luzerne County Commissioners,  
20 and we appreciate very much their willingness to come here  
21 and to offer their suggestions and incites and ideas. And,  
22 Ms. Petrilla, you're going to begin. Are you going to go  
23 first?

24 MS. PETRILLA: Yes.

25

1           MARYANNE PETRILLA, called as a witness, being duly  
2 sworn, testified as follows?

3

4           THE WITNESS: I do.

5           CHAIRMAN CLELAND: Thank you. Our practice, Ms.  
6 Petrilla, is to have one of the Commissioners ask the  
7 questions, and then the other Commissioners will chime in at  
8 the end. And Mr. Gibbons -- Mr. Williams, you're going to  
9 do the questioning. Thank you. Go ahead.

10 BY MR. WILLIAMS:

11           Q     Welcome, Ms. Petrilla.

12           A     Thank you. Thank you, very much.

13           Q     Can you first start by telling us what your  
14 relationship was like with Judge Ciavarella and Conahan?

15           A     Well, personally my relationship with both judges  
16 was friendly at first, and then turned somewhat tumultuous  
17 as time went on. And, you know, I could certainly elaborate  
18 on some of the instances that I've had with them over the  
19 years.

20           Q     And such as?

21           A     Well, the -- the first being Judge Conahan  
22 obviously was a problem as President Judge, the sitting  
23 judge, when I became county controller. And when I later  
24 was elected as County Commissioner I -- I made a decision --  
25 after some scandals that had started to unfold in the

1 county, I made a decision prior to being -- prior to being  
2 sworn in, actually between election day and prior to being  
3 sworn in, I made a decision that I felt that we needed to go  
4 in a new direction with our -- the main personnel in the  
5 administration, namely the chief clerk, county manager's  
6 position.

7           And I talked to my former running mate,  
8 Commissioner Skrepenak, and said that I really believed with  
9 everything that was unfolding that we needed to go in a  
10 different direction with that position, and that decision  
11 was met with great resistance.

12           And I -- I recall New Year's weekend of 2008 when I  
13 was inundated with probably anywhere from 40 to 60 phone  
14 calls from friends, who were what I believed to be friends  
15 of mine politically throughout my campaigning, and they had  
16 received calls from Judge Conahan and told me that, you  
17 know, Judge Conahan had really wanted me to reconsider my  
18 replacing the chief clerk, county manager. And I -- I told  
19 everyone that I just felt that that was something that I  
20 could not do.

21           Q     Would that be Mr. Guesto?

22           A     Mr. Guesto, yes.

23           Q     Thank you.

24           A     So as -- as the weekend went on I finally then did  
25 receive a call from Judge Conahan himself. And the

1 conversation was not what I would call a friendly phone  
2 call. He said that I could not replace Mr. Guesto. And I  
3 said that because of everything that was unfolding, I felt  
4 it was important for the county to go in a new direction.

5           And his final words to me were, Maryanne, if you do  
6 this, you will be finished. And I said, well, with all due  
7 respect, Judge, I -- you know, I'm not going to tell you how  
8 to run your courts, and I would really ask that you respect  
9 this decision because I think it's the best decision going  
10 forward for our administration.

11           And as it turned out we did replace the county  
12 manager, chief clerk. Commissioner Urban supported that  
13 decision.

14           Q     Where did Mr. Guesto go?

15           A     At the time he was terminated.

16           Q     Um-hum.

17           A     And then he -- he later was hired by the court  
18 administration to be the specialty court administrator.

19           Q     When you put together your human service budget --  
20 I'm not sure, from Wyoming County we have it all on one. Do  
21 you have a separate human service budget and a general  
22 budget or both in one?

23           A     A general fund and a human services budget.

24           Q     Thank you. When putting together your human  
25 service budget are placement costs for foster care and

1 juvenile detention separate or listed as one?

2 A They are listed as one.

3 Q As one. The new juvenile facility, was that built  
4 in response to an inspection by the Department of Welfare of  
5 the old facility? Did they declare the old facility  
6 uninhabitable?

7 A I was not a Commissioner at the time, but it's my  
8 understanding that the Department of Welfare said that it  
9 was fit for occupation.

10 Q It was fit?

11 A That's my understanding. Commissioner Urban may be  
12 able to better clarify that.

13 Q Okay. Did the -- do you know -- you probably don't  
14 know this question then either. Did the Commonwealth offer  
15 land to Luzerne County to build a new facility?

16 A I am not aware of that. I am not. I got involved  
17 with the Commonwealth after the -- the final draft audit was  
18 released from the Department of Children and Youth, Public  
19 Welfare -- Commonwealth of Public Welfare.

20 And upon reading that audit, and in the audit, it  
21 said that the county would be faced with reimbursing the  
22 state upwards to \$2 million a year because we were being  
23 overbilled for the juvenile placements.

24 So I immediately contacted the principals of PA  
25 Child Care and said we have to terminate this lease.

1 There's no way that the county could afford to go back to  
2 the -- go back -- pay the State of Pennsylvania back \$2  
3 million every year for the years that it's been in  
4 operation.

5 And fortunately the principals were in agreement to  
6 sit down and try to renegotiate the contract, and we were  
7 successful in that. We ended the \$58 million 20 year lease,  
8 and we entered into a lease that allowed us to use beds as  
9 needed for us at that rate.

10 Q How did that new facility come about? Was that the  
11 County Commissioners? Did they bid that out, the  
12 construction of that, or --

13 A I was not a County Commissioner at the time, but  
14 just from the publicity that went on at that time, the  
15 facility was built. The county-owned facility was closed.  
16 And then they entered into the \$58 million 20 year lease  
17 with the PA Child Care principles.

18 Q Oh, okay. So the county didn't build the facility?

19 A No.

20 Q Okay.

21 A They did not. They leased it after it was built.

22 Q After it was built?

23 A Yes.

24 Q When that facility was built the first managers  
25 were Northwestern; am I correct, or am I wrong on that?



1           A     Yes.  Northwestern, and then it changed over to a  
2     -- a corporation called Mid-Atlantic.

3           Q     Okay.  And were you -- did you have a hand in  
4     hiring Northwestern?

5           A     No.  I was not a Commissioner at the time.

6           Q     Okay.  But were you a Commissioner when they hired  
7     PA Child Care?

8           A     No.

9           Q     So you don't know about the contracts that they  
10    would have had with Mr. Powell or PA Child Care?

11          A     I'm aware of the contracts only in that, you know,  
12    we had the contracts as part of our trying to break the  
13    lease and establish a new contract.

14          Q     Were you controller when that happened?

15          A     I believe that that lease was signed even prior to  
16    my becoming controller.  As a matter of fact, I know it was.  
17    I was not the controller then.

18          Q     And do you know if Mr. Conahan and Mr. Ciavarella  
19    had any part in the construction end of this?

20          A     I was not aware of it until reading media reports.

21          Q     During the years in question, 2002, 2008, which you  
22    would only know about probably 2006 and 8, right?

23          A     Right, six through eight.

24          Q     Did you, as a Commissioner, see any red flags that  
25    should have indicated to the Commissioners increased costs

1 for juvenile placements?

2 A Well, I -- I totally felt that the \$58 million  
3 lease was very extravagant. And when -- fortunately we had  
4 some ammunition once the audit had been released by the  
5 State of Pennsylvania. And that's when we established our  
6 great working relationship with -- with some of the deputies  
7 and -- and the chiefs down at the Department of Welfare  
8 where we worked to come up with a rate that was reasonable.

9 The state felt that a reasonable rate for daily  
10 detention was around \$264 -- \$232 a day. Whereas the \$58  
11 million lease obviously was -- was much, much more than  
12 that.

13 So we just worked with them, worked with the  
14 principals, to terminate the lease and to come up with a  
15 lease that was acceptable. And we certainly didn't need to  
16 lease all the beds because we didn't have that many children  
17 in detention.

18 Q Did you ever have the opportunity, or your county  
19 administrator have the opportunity, to sit down with the  
20 judge in question and talk to him about the placement costs?

21 A We -- we didn't really have access to Judge  
22 Ciavarella in that regard. I mean, he -- he pretty much had  
23 himself isolated. And any negotiations were strictly  
24 between myself, the members of the Department of Public  
25 Welfare, the principals, which Mr. Powell had pretty much

1 terminated his -- his dealings with them at the time. So  
2 most of my dealings were with Mr. Zappala to come up with a  
3 acceptable new term.

4 Q So your dealings were with Mr. Zappala then?

5 A Yes.

6 Q Did you receive complaints or even comments from  
7 the Juvenile Probation Department, Public Defender's Office,  
8 or Children and Youth Office as to the -- the way the courts  
9 or the juvenile court was run?

10 A I did not.

11 Q You had no complaints at all?

12 A I had no complaints from anyone in the -- in the  
13 court administration. I did have complaints -- I had two  
14 complaints that people had come to me out of concern. One  
15 was a state legislator, and she said that one of her  
16 constituents was a young -- a young Boy Scout with a bright  
17 future, and he got in trouble with a rock incident, and he  
18 was immediately sent to the detention center. And she was  
19 -- she was appalled by the fact that when he came back from  
20 the detention center he was definitely a different person,  
21 traveling with the wrong crowd. And it was clearly  
22 something that had disturbed her.

23 I -- I talked to her about it. And I said that,  
24 you know, it's important that she would reach out to federal  
25 authorities to discuss her concerns.

1           And I -- my second encounter was of a lawyer who  
2 was a friend of mine. And he called me one day, and he just  
3 said it's ridiculous what's going on. These kids are --  
4 these kids are going to jail for chewing gum in school.

5           And I said, you know, the rumors are rampant,  
6 obviously, and I think it's important that anyone who has  
7 any specific complaints should go to the federal  
8 investigators.

9           At the time I probably said federal authorities  
10 because I did not know an investigation was going on.

11          Q     Did the -- did anybody from the courts have a --  
12 have a role in formulating the budget, or did they formulate  
13 a budget on their own?

14          A     Well, my encounter with Judge Ciavarella and the  
15 kind of dictatorship that he tried to portray was last year  
16 when we had such a budget deficit. There was a tremendous  
17 amount of borrowing in the county over the -- over the  
18 previous four years to the tune of a quarter of a billion  
19 dollars of borrowing.

20                So the philosophy was borrow, spend, borrow, spend,  
21 borrow, spend. So last year's budget obviously we were  
22 pretty much at a point where we could not borrow any more  
23 money and -- and sustain what it would cost us to pay that  
24 bond proceed back every year in our budget.

25                So we -- we made a decision that we were going to

1 have a major budget cut. And we had budget hearings with  
2 every -- every department, court and non-court. And Judge  
3 Ciavarella did not come himself. He sent his -- his court  
4 administrator.

5           The court administrator sat down and said -- you  
6 know, we had several questions for him like, you know, we  
7 talked about reducing your budget 10 percent. There's no  
8 reductions in here. You know, we asked some specific  
9 questions. He said he did not have the answers to any of  
10 those questions.

11           So we terminated the budget hearings and asked for  
12 Judge Ciavarella to come. At that time Judge Ciavarella  
13 came to the budget hearings, and it was what I would call a  
14 pretty tumultuous encounter with Judge Ciavarella. He said  
15 that he needs the money to run his courts. I can't tell him  
16 how to run his courts. And he will do his budget, and we  
17 will fund his budget.

18           And I said, well, quite frankly, Judge, we can't.  
19 We don't have the resources to fund your budget. And he  
20 said, well, then I'll sue you. And I said, well, Judge, if  
21 that's what you have to do, that's what you have to do. And  
22 that's what he did.

23           Q     Were you aware of the contract for services for Dr.  
24 Vita?

25           A     Well, after we -- after I became a Commissioner we

1 began to look at all the contracts that were established by  
2 the county. And our new solicitor -- we have a new  
3 solicitor now. And the new solicitor came in to the county  
4 and advised the Commissioners that it was not his opinion,  
5 his professional opinion, that any other departments beside  
6 the Commissioners should enter into contracts because the  
7 Commissioners had the ultimate responsibility of  
8 administering the budget.

9           So it was at that time that the Dr. Vita contract  
10 had come out that there was no contract. There was no --  
11 and that was one of the things that was pretty alarming to  
12 me as a first-time Commissioner was the fact that the courts  
13 did not bid out -- they did not participate in any of the  
14 county policies that had been established.

15           That being even if it's a professional service, we  
16 put out an RFP to make sure that we get the right -- a fair  
17 price, as well as people with the right credentials to do  
18 these jobs in the professional service end.

19           That was a county established policy, and they did  
20 not abide by it. And the Dr. Vita contract was the perfect  
21 example of that. They just issued the contract, and there  
22 was no RFP put out. There was no motion made by the Board  
23 of Commissioners. And it was just something that came --  
24 was exposed later on.

25           Q     Mr. McGarry was here yesterday, and he testified

1 that this was a fee for service, and he had the right to --  
2 to go ahead and have a fee for service contract drawn up.

3 Of course, I argued the same point that you just  
4 made with him, and it didn't appear to me that any of the  
5 Commissioners even knew about that.

6 A That's correct. None of the Commissioners knew  
7 about it. And it's just indicative of the philosophy that  
8 they had that they did not have to abide by the other county  
9 policies that other departments had to abide by.

10 Q They created bills for the county, but didn't have  
11 any way of paying those bills?

12 A Well, they just did their own things and sent the  
13 bills to the county to be paid.

14 Q Something like a blank credit card?

15 A It was. And that's what put us in the position we  
16 were in.

17 Q Exactly.

18 A Over five years I think their budget raised \$21  
19 million. And that's when I said, look, the bleeding just  
20 has to stop. We cannot continue to inflate the personnel  
21 cost in the courts, which, you know, it's been well known  
22 that the nepotism and the cronyism in the courts is what has  
23 -- and the disparity in the salaries as well is what is --  
24 is creating hundreds of thousands, if not millions, of  
25 dollars of financial problems for the county right now.

1           Q     Who is responsible for hiring the juvenile  
2 probation officers? And is there a process in place, or  
3 what qualifications are required, et cetera?

4           A     Well, that's a process that I have worked with  
5 Judge Muroski on, our new President Judge. And I believe  
6 that the courts, as well as all other departments, all other  
7 departments do need to follow the county policy. And that  
8 is you advertise for the position. You interview for the  
9 position with -- with a team of people, not just one on one,  
10 and you hire the most qualified person for that position.

11                     That, I think, alleviates the nepotism and the  
12 cronyism. And when you think about the wrongdoing that's  
13 been going on here, the people that were hired by the  
14 wrongdoers are beholding to those people. And as a result  
15 they -- they felt a need to remain silent to protect their  
16 jobs.

17           Q     I know you're in your first term, but do you feel  
18 that the -- that we need some kind of a training program for  
19 County Commissioners?

20           A     Well, I -- I had -- for me personally I had 20  
21 years of experience in municipal government -- in municipal  
22 and state government. So I felt I had some experience. I  
23 think that, you know, there is the County Commissioner's  
24 Association of Pennsylvania.

25           Q     Correct.



1           A     That has many, many conferences, three conferences  
2 throughout the year. I think a training program for new  
3 Commissioners would certainly be beneficial.

4           Q     They also have the -- the Pennsylvania Academy of  
5 Government For Excellence --

6           A     Um-hum.

7           Q     -- Program that was a two-year program. I don't  
8 believe they have it now, but they did have it.

9           A     Right.

10          Q     And at that time I attended it, and I had ten years  
11 experience, and I still learned an awful lot.

12          A     Right. I learn new things every day.

13          Q     And my opinion is I think it should be mandated, so  
14 many hours for County Commissioners. That's just my  
15 opinion.

16          A     I think that's a wonderful idea.

17                   MR. WILLIAMS: Thank you.

18                   THE WITNESS: Thank you.

19 BY JUDGE GIBBONS:

20          Q     Ms. Petrilla, thank you for coming here today. You  
21 mentioned you were county controller. Can you give us dates  
22 of -- you held that office?

23          A     I became a county controller in 2006, remained in  
24 office through 2007, and then became Commissioner in 2008.

25          Q     And county controller is an elected position?

1           A     Yes.

2           Q     Okay.  Can you briefly describe the duties and  
3 responsibilities of that position?

4           A     The county controller is responsible for -- for  
5 monitoring the finances of the county, making sure that when  
6 bills are paid that there are contracts to support those  
7 bills.

8                     And that was one thing that came out after I became  
9 a County Commissioner where we changed the policy that all  
10 department heads should not be -- and that was, you know,  
11 something that the new solicitor disagreed with the former  
12 solicitor, that other departments, other row officers, other  
13 department heads could enter into contracts.  That practice  
14 has stopped.

15                     We now make sure that all contracts are reviewed by  
16 the solicitor, are approved by the County Commissioners at a  
17 public meeting through the form of a motion.

18           Q     So in your capacity as county controller you  
19 interacted with the courts on a regular basis?

20           A     Well, not very often because the courts had their  
21 own little -- the courts had some of their own accounts that  
22 we had no control over or no knowledge of.  And when I  
23 confronted Judge Ciavarella about that -- excuse me, when I  
24 confronted him about that and this account that had a large  
25 amount of money in it should really be part of the general

1 fund to help the county run the whole courthouse, his  
2 remarks were that they did not have to turn that money over  
3 to the courts, that they could use that -- legally they  
4 could use that as a slush fund to fund their probation  
5 office. And so, therefore, we had no knowledge that these  
6 accounts even existed.

7 Q What was that account used for?

8 A It was used to buy computers for the probation  
9 officers, for cars for probation officers, for the rental of  
10 office space for Probation Department.

11 Q How is that account funded?

12 A I guess to be honest with you I'm not sure. I  
13 believe most of the fundings would have come from fines.  
14 The fines that offenders were paying would go into those  
15 funds.

16 Q And those fines weren't put back into the general  
17 fund?

18 A No, no.

19 Q Does that practice still exist today?

20 A It has improved. It has improved.

21 Q But it still exists?

22 A It still exists. There is a fund.

23 Q Can you tell me why?

24 A Well, I wish I had the answer. Because, you know,  
25 I believe that the money is -- money that is generated by

1     whatever, whether it's fines, whether it's fees for  
2     applications, whether it's permit fees, whatever fees the  
3     county collects I believe it should all go into the general  
4     fund so that we could run the entire county.

5             Some departments in the county are -- don't  
6     generate any money at all, but we still need those offices  
7     available for -- for our taxpayers. Other offices generate  
8     a lot of money.

9             So all money that comes into the county should be  
10    considered county money and should be not considered my pot  
11    of money, your pot of money. And that's kind of the  
12    philosophy that we're trying to break in the county right  
13    now.

14            Q     Have there been audits performed? Have these funds  
15    survived?

16            A     Those funds weren't audited because we didn't know  
17    they existed. But it wasn't until the Dr. Vita contract had  
18    come out that then we realized there were these separate  
19    funds out there that the courts maintained control of. And  
20    --

21            Q     And when was that?

22            A     That would be the after the Dr. Vita situation.

23            Q     Can you give me a time frame?

24            A     I want to say last winter, last winter. So early  
25    2008.

1 Q Okay. Is it your plan to allow that -- those  
2 circumstances to exist with separate funds? Do you have a  
3 plan in place to --

4 A I don't believe I have any legal recourse to stop  
5 it. I think that, if anything, we have worked with the new  
6 President Judge to make sure that that money -- any money  
7 that is not needed directly to run the probation office  
8 should be turned over to the county. And I believe that  
9 Judge -- now Judge Muroski is -- is feeling the same way.

10 Q The lease with the PA Child Care facility, do you  
11 know who signed that lease initially on behalf of the  
12 county?

13 A It's my understanding that that was signed by  
14 Commissioner Skrepenak.

15 Q By himself?

16 A That's my understanding, that it's signed by  
17 himself as Chairman of the Board. Sometimes the Chairman of  
18 the Board does have the authority to sign leases provided  
19 that the motion was approved by two or more of the  
20 Commissioners, if the motion is approved. There are certain  
21 contracts that I, as Chairman of the Board, now sign. But I  
22 would not sign that contract until after two or more  
23 Commissioners approve it at a meeting.

24 Q At a public meeting?

25 A At a public meeting.

1 Q Do you know if there was a public meeting to  
2 authorize Mr. Skrepenak to sign?

3 A Mr. Urban would be better to answer that, because I  
4 was not a Commissioner, nor was I controller at the time.  
5 And I was not in county government at all.

6 Q Okay. You talked about first becoming aware of  
7 situations involving juveniles in the courts, and you used  
8 the phrase that the rumors were rampant. Can you give us a  
9 time frame that you were referring to with that?

10 A Well, the rumors of investigations, and the rumors  
11 of people complaining about -- about children being  
12 incarcerated for minor infractions were -- were things that  
13 I heard about when I became controller, when I became  
14 Commissioner.

15 Q Okay.

16 A I had no direct knowledge other than the two  
17 complaints I received from -- from personal friends of mine.

18 Q Did you take any steps to gain any direct knowledge  
19 or further educate yourself on -- on the rumors?

20 A Well, I did not. First of all, juvenile cases were  
21 closed to the public, so I couldn't go up there and watch  
22 for myself. And I truly didn't have any authority to do my  
23 own investigating. So my advice to everyone that came to me  
24 with a complaint was to contact the federal authorities.

25 Q Okay. And you -- that was going to be my next

1 question. You said that earlier too. But then you said  
2 that you weren't aware that there was an investigation  
3 ongoing. So I'm curious as to why you would tell people --

4 A Well, I think when I talk about the investigation  
5 it would be more 2008 time frame rather than 2006 time frame  
6 when I became controller.

7 Q Okay. But why the federal authorities? Why would  
8 you -- why were you telling people to go to the federal  
9 authorities?

10 A Well, I'm saying the word federal authorities now.  
11 My exact wording may have been, you should go to the  
12 authorities.

13 Q Okay.

14 A The reason I may have said federal authorities now  
15 is because I know the federal authorities are involved. But  
16 back then I don't have complete recollection of my exact  
17 words. But they were probably, you should take it to the  
18 next level of authority.

19 Q Were you aware at the time that you first became a  
20 Commissioner of an entity referred to as the Judicial  
21 Conduct Board?

22 A No, I was not.

23 Q Okay. Did you become aware of such an entity?

24 A Only after this -- this whole situation became  
25 public.

1           Q     Okay. Looking back, and now looking forward,  
2     you've had an opportunity to reflect on, you know, what  
3     you've seen and what you've learned. Is there anything in  
4     the way of a recommendation that you think you'd like to  
5     make to this Commission with respect to the interplay  
6     between county government and county courts to try and avoid  
7     this type of situation happening in the future?

8           A     Well, as I said, you know, I think that -- I think  
9     that many of the -- many of the issues that went on in the  
10    courts were because there was an open checkbook. The courts  
11    hired family and friends, and as a result of the hiring of  
12    those family and friends those people who may have seen  
13    wrongdoing remained silent.

14                 That's my theory. I think that should we get into  
15    a situation where it is a mandated County Code or a law by  
16    the State of Pennsylvania where all hiring is done through a  
17    central office with central people with a team of people in  
18    place so that it would avoid the nepotism and the cronyism  
19    that went on in the courts, which I believe -- I believe it  
20    wasn't part of the problem, but I believe it was part of the  
21    silence, that those people that had been hired over the  
22    years by Judge Conahan and Judge Ciavarella owed their jobs  
23    to Judge Conahan and Ciavarella, and as a result remained  
24    silent.

25                 That's my personal opinion. So having all hiring



1 go through a central office in the county where there is  
2 complete accountability and full disclosure as to how the  
3 interview process goes and the credentials that these people  
4 have to get these jobs I think is paramount in us going  
5 forward and making sure that the best people are hired for  
6 the jobs, and that they have no connections, familial  
7 connections, to any of the judiciary.

8 Q Are you just limiting it to the judiciary, or are  
9 you --

10 A Well, no.

11 Q County government as a whole?

12 A County government as a whole.

13 Q Have you taken any steps, or do you have any plans  
14 in place?

15 A We have a policy in place, but it was -- we have a  
16 policy in place, and we have asked time and time again for  
17 all row officers and departments -- well, departments would  
18 be following those policies because they would report to the  
19 County Commissioners.

20 Row officers are elected officials. They have  
21 complete jurisdiction over their offices. We have asked and  
22 have had success in -- in how they operate their budgets,  
23 their budget planning, and their hiring, and their contract  
24 obligations, whether it's for a copy machine or whether it's  
25 for a legal service or for whatever that -- that service may

1 be.

2           The courts we have not -- we had not really had any  
3 luck with it at that time, but we are -- we are getting  
4 there now. Of course, all contracts come before the Board  
5 of Commissioners. So I think that the situation that's  
6 before us has at least given us the opportunity to encourage  
7 all departments and show them the importance of using a  
8 central office to avoid any -- any -- any conflicts.

9           JUDGE GIBBONS: Thank you, Mr. Chairman.

10           CHAIRMAN CLELAND: Any questions? Mr. Mosee.

11 BY MR. MOSEE:

12           Q I know he was hired well before your time as either  
13 controller or County Commissioner, but what was the process  
14 for hiring the Public Defender in Luzerne County? He  
15 informed us that the County Commissioners hired him.

16           A That would probably be the case, because he would  
17 -- he reports to the County Commissioners from an  
18 organizational chart standpoint. I would imagine that  
19 whenever he was hired he went through an interview process,  
20 but I have no direct knowledge of that.

21           Q I guess what I was asking is it -- is there a  
22 process layed out for hiring an official like that?

23           A Yes. Right now -- right now we have a human  
24 resource director position open. We have put out an  
25 advertisement through -- through various -- various media

1 outlets, through Monster.Com, through all publications that  
2 we -- we could advertise.

3 We give a time period for those applications to  
4 come in. We have a team in place who hires -- who looks  
5 over the applications. Before they could even get an  
6 interview they have to have the minimum years of experience.  
7 They have to have the educational background that's  
8 established in that job description. And to meet those  
9 criteria then you would be qualified for an interview.

10 We would go through a set of interviews with our  
11 chief of administration, and then they would round it down  
12 probably to the top five candidates, four candidates, who  
13 would then go before the Board of Commissioners.

14 Board of Commissioners then meet individually with  
15 all those candidates and make a decision through a point  
16 system of who is the best candidate. And the person with  
17 the most points is offered the job.

18 Q And after you find a well-qualified applicant, you  
19 hire that person, what is the process by which the County  
20 Commissioners maintain oversight over that position?

21 A Well, I -- I have daily interface with all our head  
22 managers. We have a monthly staff meeting where we meet  
23 with all the department heads, that the directors of each  
24 department just have dialog of what their -- their issues  
25 are. And I -- you know, I -- I meet with them almost, I

1 would say, on a daily basis I see them.

2 Q Does that include the Public Defender?

3 A I don't see the Public Defender as often. I meet  
4 with him on various -- for various reasons throughout the  
5 year though. I have a pretty steady interface with him, and  
6 he knows that I'm accessible to him, and he's accessible to  
7 me at all times.

8 Q I heard you make mention of a kind of budget  
9 process, and I guess that happens maybe once a year?

10 A That's right.

11 Q Okay. Does the Public Defender appear before the  
12 County Commissioners?

13 A Yes, he did.

14 Q And I guess it's at that time that he makes his  
15 plea for additional funding, or at least explains what he's  
16 been doing with the money that he receives --

17 A Yes, he has.

18 Q -- during the year? Was there any request for  
19 additional resources as you recall this past year?

20 A He has always said that, you know, we -- he needs  
21 more people. And we have said that we don't have any money  
22 right now to give you more people. He has never come to us  
23 and said that people's rights are being violated because of  
24 his lack of people. That was never, ever brought to our  
25 attention. It was just more he presented scheduling

1 problems. And when he would talk about, you know, how the  
2 budget would affect him, he would just say that, you know,  
3 he has scheduling problems and the like. But never told us  
4 that he felt that people's rights were being violated  
5 because of budget cuts.

6 Q Thanks for describing the process by which you  
7 would hire the Chief Public Defender. Does the same process  
8 apply to hiring Assistant Public Defenders?

9 A No. The assistant -- to my knowledge the Assistant  
10 Public Defenders have been hired by the Public Defender.  
11 But I certainly would be totally in favor of changing that  
12 process.

13 Q I --

14 A I'm not aware of too many being hired since I  
15 became Commissioner to be honest with you.

16 Q And I don't know that any have either, but it was  
17 explained to us that the County Commissioners hired the line  
18 staff as well?

19 A If they have, they haven't done it through my  
20 tenure.

21 MR. MOSEE: Okay. Thank you.

22 MR. LISTENBEE: If I may, Your Honor.

23 CHAIRMAN CLELAND: Mr. Listenbee.

24 BY MR. LISTENBEE:

25 Q Thank you again for coming in to meet with us.

1           A     You're welcome.

2           Q     You've indicated in your comments that you didn't  
3 take any steps to change the circumstances of what was going  
4 on in juvenile court because the court was closed. Is that  
5 accurate?

6           A     Well, at the time I didn't realize that there were  
7 so many things going on in juvenile court. I didn't realize  
8 -- what I'm reading in the paper today I certainly was not  
9 aware of back then.

10          Q     Just as a matter of clarification, since 1995 the  
11 courts have been open to the public for certain kinds of  
12 cases, certainly for felony type cases.

13          A     Um-hum.

14          Q     Not for dispositions in general, but they are open  
15 to the public. So it is a place that you can visit. Have  
16 you had occasion to visit the juvenile courts?

17          A     I have never visited juvenile court.

18          Q     Okay. Are you -- are you aware that there is, as  
19 it's been explained to us, one public defender handling all  
20 the juvenile cases that are coming into court at the present  
21 time, which we've been told is around maybe 800 to 1,000  
22 cases a year? Are you aware of that?

23          A     No.

24          Q     Just by point of information, the national  
25 standards for number of cases a public defender should

1 handle are about 200 cases a year, which would mean that the  
2 public defenders in your county are currently handling more  
3 than four times the national standards if the numbers --  
4 certainly many, many more than the national standards.

5 Is this an issue that would require or would --  
6 that the County Commissioners would be able to take a closer  
7 look at to determine what would be necessary in order to  
8 have the kind of a juvenile unit that would provide the  
9 kinds of protections that were anticipated by the  
10 Constitution?

11 A Absolutely. Those statistics were never brought to  
12 my attention.

13 Q Just, again, as a point of information. The  
14 Pennsylvania Commission on Crime and Delinquency is  
15 currently looking at your county in the hopes of developing  
16 a model juvenile unit so that it can replace what was in the  
17 past with something that would be stellar and also an  
18 example to the rest of the state.

19 You may not be aware of that, but I do want to  
20 bring that to your attention as well.

21 A I would welcome that.

22 MR. LISTENBEE: No further questions, Your Honor.

23 BY MR. HOROHO:

24 Q Commissioner, it sounds like you're a very active  
25 kind of government official. Thank you for that. I think

1 that's what this county needs. It sounds like you have a  
2 pulse on a number of important issues. And do you -- what  
3 experience have you had with the schools at least as it  
4 relates to the involvement with the schools and the juvenile  
5 justice system?

6 First of all, are you aware that Judge Ciavarella  
7 ran a courtroom that was zero tolerance? Did you hear that  
8 -- his courtroom described that way, or tough love type of  
9 courtroom?

10 A Well, it was -- I was aware that when he ran for  
11 election that he was, you know, very much in favor of a no  
12 tolerance.

13 Q And we heard testimony from a number of different  
14 sources that the local high schools pretty much were in  
15 favor of the zero tolerance policy, and in part used it --  
16 some described it as a way of getting rid of their bad kids.  
17 Their words, not ours. Did you hear rumors to that affect  
18 or comments to that affect?

19 A I did not hear any of those comments until after  
20 the case broke.

21 Q Do you believe in retrospect that there was any  
22 truth to those comments?

23 A I would hope that there is not. I -- I would hope  
24 that school officials would take advantage of every program  
25 out there to rehabilitate anyone who's having a problem,



1       whether it be with drugs or with anger management or  
2       whatever before getting rid of them through incarceration.

3           Q     Did you receive any complaints about the schools?

4           A     No, none, no.

5                   MR. HOROHO:  That's all the questions I have.

6                   CHAIRMAN CLELAND:  Judge Uhler.

7       BY JUDGE UHLER:

8           Q     With regard to -- with regard to the Public  
9       Defender, which I understand you interface with at least  
10      annually and then occasionally during the year, do you have  
11      any evaluative processes to how the Chief Public Defender is  
12      doing his job?  Is there an ongoing annual review?

13          A     Well, that's -- you talk about an annual review.  
14      That's been -- that's been a bone of contention of mine for  
15      quite some time since I became Commissioner.  I believe that  
16      unfortunately we were -- budgetarily we were unable to give  
17      management raises.

18                   And I have always said from day one that should we  
19      ever get into a financial position where the county can give  
20      back management raises -- and hopefully it will be next  
21      year, because it's been several years since our managers  
22      have had a salary increase -- but I believe that no manager,  
23      whether it's a department head or first line supervisor  
24      level manager should get a salary increase unless it's  
25      merit-based.

1           And as a result then, you know, you would have that  
2 merit-based increase, and that would give people incentive  
3 to do a good job rather than across the board increase that  
4 does not give people an incentive to do a good job.

5           Q     Have there been any tools developed to determine  
6 how well he is doing?

7           A     Not at this time, there has not. And that is  
8 something that I am looking forward to our new human  
9 resource director, and that will be a key part of the  
10 interview process, to make sure that policies such as that  
11 will be put in place immediately.

12          Q     You mentioned the audits. How did the audits come  
13 about, if you can share that with us?

14          A     Well, when I became controller audits had not been  
15 done for quite some time. I would say there was probably a  
16 good six years before any audits were done within the  
17 county. And I became a controller in 2006, and I  
18 immediately started a -- a cycle of audits of all the row  
19 offices and all the different departments that needed to  
20 have audits done.

21                 That took some time, No. 1, to establish, and we  
22 had one person -- one person with an assistant doing the  
23 audits. So over the course of the year I would say we got  
24 about 70 percent of them -- maybe not 70 percent, 60 percent  
25 of them done. But the goal was to at least every two years

1 get a cycle going so that all departments and the -- the --  
2 the accounts that they had were audited by the controller's  
3 office. And we were successful in getting a cycle going.  
4 One of the things that -- that was never audited was our  
5 hotel tax. I thought it was very important for us to audit  
6 the hotel tax because, you know, that would certainly give,  
7 you know, someone an incentive not to -- not to not report  
8 all the people in the hotels.

9 So that was something that I was very proud of as a  
10 controller that I was able to at least establish a cycle for  
11 auditing all of accounts through the row offices and the  
12 departments.

13 Q Was that cycle instrumental then in prompting the  
14 Department of Public Welfare to become involved with the  
15 audits of the PA Child Care as well as the other funding  
16 that evolved into the discovery of the issues with regard to  
17 Dr. Vita?

18 A No. With Dr. Vita, yes. We contacted the state  
19 and asked the state to come in and do that audit. The PA  
20 Child Care audit, no. The PA Child Care audit was initiated  
21 before I became a county official.

22 Q Was there any resistance from the courts in  
23 enabling those audits, if you know?

24 A Only what I read about the judge concealing the --  
25 the draft audit from -- the original draft audit from PA

1 Child Care.

2 Q And would you share that information you're talking  
3 about, the -- for purposes of the record?

4 A Well, what I read about that was that the -- the  
5 draft audit was out, and that the former county controller  
6 had asked that that be released. And Judge Conahan had  
7 managed to have it sealed, something about proprietary  
8 secrets or something like that.

9 And that was sealed for many years. And then after  
10 I became a Commissioner we finally received the final audit.

11 Q Were there any officials within the court system  
12 that were particularly helpful in that process or not  
13 helpful?

14 A No. We -- my interface was strictly with the state  
15 officials.

16 JUDGE UHLER: Okay. I have nothing further.

17 BY MR. LEGG:

18 Q Ms. Petrilla, Mr. McGarry testified yesterday, and  
19 he indicated that the county does have a anti-nepotism  
20 policy. He was asked by Judge Uhler about a certain  
21 anonymous complaint that had been given to the Judicial  
22 Conduct Board which suggested a very high level of nepotism  
23 in the -- I guess in the courts of Luzerne County.

24 His testimony yesterday, as I recall, was that that  
25 type of nepotism didn't exist, and that the nepotism policy

1 was followed in the Luzerne County.

2 In your experience as a Commissioner and as a  
3 controller, is that accurate?

4 A I disagree with that from the court's position.

5 Q So -- but there is an anti-nepotism policy?

6 A Yes.

7 Q And from your perspective it wasn't being followed  
8 in the courts?

9 A Absolutely it was not.

10 Q If you had to categorize it in terms of the level  
11 of nepotism, would you say it was a high level of nepotism?

12 A Extremely high.

13 JUDGE UHLER: Okay. That's all I have.

14 BY CHAIRMAN CLELAND:

15 Q Ms. Petrilla, I'm going to ask this question out of  
16 a sense of desperation.

17 A Okay.

18 Q And I'll make that acknowledgement up front. This  
19 is not a finger pointing question.

20 A I understand.

21 Q It's not a question looking back. It's a question  
22 to help us to look forward.

23 We've been here for four days now and heard  
24 testimony from probation officers, prosecutors, defense  
25 lawyers, governmental officials, victims, victim's families.

1 We've received statements, reviewed transcripts. We hear  
2 over and over again, I didn't know what was going on.  
3 Nobody told me. I only know what I read in the newspaper.

4 But by the same token we hear this was widespread.  
5 Everybody knew what was going on in the court systems,  
6 whether it's nepotism, whether it's procedures of the  
7 juvenile courts, whether it's budget, whether it's general  
8 tear any, and nobody did anything.

9 And what leads to my sense of desperation is we're  
10 expected to make some recommendations about how to prevent  
11 this from happening. There were rules, statutes, and  
12 policies in place statewide that nobody did anything about  
13 to enforce or report.

14 And can you help me understand what more could have  
15 been done to encourage lawyers, governmental officials,  
16 business leaders, ministers in the community to take some  
17 affirmative action to address what was a widespread problem?

18 A Well, I think a good example of that would have  
19 been my stance with Judge Ciavarella on his budget. And the  
20 fact that threatened lawsuits, screaming matches in private  
21 meetings, condescending conversations that don't even dare  
22 tell me how to -- how to fund my courts.

23 And we remained steadfast, and we stuck -- we stuck  
24 with it and said, look, we only have this much money, and  
25 you cannot have a blank checkbook with running your courts.

1 I believe that's one instance where I'm quite proud of the  
2 fact that we just remained steadfast and did not back down.

3 It cost the taxpayers a lot of money to fight that  
4 lawsuit, but we felt that if we didn't -- if we backed down,  
5 we would never be able to take control of the county funding  
6 and the county budget. So as a result we did that.

7 And another thing with the judge trying to  
8 strongarm me in picking the chief administrator. I said,  
9 you know, okay, you can tell me that I'm finished  
10 politically for doing such a thing, but I'm going to do it  
11 anyway because I am going to do what I think is right going  
12 forward in Luzerne County.

13 As far as juvenile's rights, I have never received  
14 a phone call from a parent who felt their child was put away  
15 unnecessarily. I -- I -- as I said, I had two people  
16 complain to me about it, and I was a controller at the time.  
17 I wasn't even a Commissioner at the time. I encouraged them  
18 to take it to the next level of authority.

19 And looking back I believe that now more than ever  
20 there should be a central source of hiring in the county.  
21 There should be no secret accounts that aren't accessible  
22 through the general fund. All funding should go through the  
23 general funds so that it's auditable and so that we're aware  
24 of the balances. And that is something that I am striving  
25 to do. And if I accomplish anything in my first four years

1 in office, that will be it.

2 Q I don't doubt your personal courage. Don't  
3 misunderstood me. And I wasn't directing at all --

4 A No, no, I understand.

5 Q I'm asking for a cultural question.

6 A I think --

7 Q This went on from at least 2001, 2002, and your  
8 testimony was that you stood up to Judge Conahan in 2008?

9 A Um-hum.

10 Q And, again, I'm not directing this question at you.

11 A No, no.

12 Q But we've got a huge county government. We've got  
13 several hundred thousand people in this county.

14 A Right.

15 Q And nobody did anything.

16 A That's why checks and balances is critical. And  
17 the only way to have checks and balances is that everything  
18 goes through one financial central office. Everything goes  
19 through one hiring office. And -- and it would stop the  
20 nepotism, the cronyism, and the -- the rampant spending of  
21 money.

22 Q It's been suggested by others, not by anyone in  
23 this Commission, but I want you to respond to this, give you  
24 an opportunity since you're a representative of the county,  
25 that the culture of corruption is so deeply ingrained here



1 that it cannot be fixed.

2 A I disagree with that.

3 Q Do you want to respond to that?

4 A I disagree. I think we're well on the way of  
5 fixing the corruption in Luzerne County. It's unfortunate  
6 that we've had this situation happen to us. I think people,  
7 myself mainly, have been saddened by it. But at the same  
8 time, as I've said many times, this will never be tolerated  
9 again.

10 I -- I don't believe anyone who knew of this who  
11 did remain silent would ever remain silent again. And if  
12 they did know it was going on, and they remained silent, I'm  
13 sure they regret it.

14 But I see this as a positive thing for Luzerne  
15 County. I'm embarrassed. I'm sad. I -- I -- I'm pained  
16 for those children that went -- were incarcerated  
17 unnecessarily. But I hope that the outcome of this is that  
18 this nationwide will never happen again. And I believe that  
19 it -- I really believe in my heart that it will.

20 CHAIRMAN CLELAND: Thank you, very much for being  
21 here today and answering some very difficult questions.

22 THE WITNESS: Thank you, very much.

23 CHAIRMAN CLELAND: But I hope that you feel  
24 confident that the 11 members of this Commission will  
25 certainly support whatever we can do to --

1 THE WITNESS: I appreciate that.

2 CHAIRMAN CLELAND: -- to support the efforts to  
3 reform the juvenile justice system. And we thank you for  
4 what you're doing in that regard as well.

5 THE WITNESS: Thank you, very much. Thank you all.  
6 Have a good day.

7 CHAIRMAN CLELAND: Mr. Urban.

8 MR. URBAN: Yes.

9

10 STEPHEN URBAN, called as a witness, being duly  
11 sworn, testified as follows.

12

13 THE WITNESS: I do.

14 CHAIRMAN CLELAND: Thank you, sir. Would you  
15 please have a seat?

16 THE WITNESS: Thank you.

17 CHAIRMAN CLELAND: Mr. Williams.

18 BY MR. WILLIAMS:

19 Q Welcome, Commissioner Urban.

20 A Thank you.

21 Q What was your relationship like with Judge  
22 Ciavarella and Judge Conahan?

23 A I -- I had no personal relationship with Judge  
24 Ciavarella or Judge Conahan. I did serve on the jury in  
25 1999, a civil case, where Judge Conahan was the trial judge.

1 I did serve as a Defendant in an action, along with a  
2 Retirement Board, where we sat in court with Judge  
3 Ciavarella for about four or five days on an injunction.

4 And I remember meeting with Judge Conahan one time  
5 over a prison issue in his office. And that's the only type  
6 of relationship that I had with these individuals other than  
7 working with them.

8 Q And working with them did you work on budgets with  
9 them?

10 A No, I didn't.

11 Q Talk to them about the judicial budget?

12 A The chief clerk and the Majority Commissioner that  
13 did that issue, they would never let me talk to the judge  
14 regarding budgets or anything like that until we had a role  
15 call or until individuals of the court actually came down  
16 and presented their budgets in person. I never had any  
17 discussion with the judge regarding budgets.

18 Q You were Commissioner when Northwest Childcare was  
19 hired, right?

20 A I was.

21 Q What process was used to hire them?

22 A There was an RFP that was -- that was, I think, put  
23 out. There was a motion brought before the Board, and I did  
24 not vote for that particular contract. I did not vote for  
25 the detention center. I think it was grossly excessive and

1     costly to the government, and it -- the size of the  
2     detention was way beyond our needs. So I did not vote for  
3     that item when it was presented.

4           Q     Can you tell us why they don't use Northwestern  
5     anymore?

6           A     No, I don't. We just -- there was a decision made  
7     that they were going to put another RFP out and another  
8     company received a contract, and that's as far as I know.  
9     It was never provided with any details.

10          Q     How did you vote on the PA Child Care contract?

11          A     I voted no on that contract also.

12          Q     Was there any kind of a contract guaranteeing how  
13     many beds had to be filled with anyone?

14          A     I was not aware of that. My first involvement in  
15     the county was -- I was elected Commissioner in 2000. At  
16     the time the county owned the juvenile detention center on  
17     North River Street. That detention center was -- was being  
18     inspected annually by the state, and it was passing  
19     inspection.

20                 There were some repairs that had to be made to it,  
21     or the detention needed to be improved. The cost of that  
22     was about 2 to \$4 million. I was prepared to go forward and  
23     repair that facility or to build a new facility in 2001.

24                 July of 2001 Commissioner Makowski dropped a copy  
25     of a proposed lease between an entity and the county to

1 lease a 36 bed -- 48 bed detention center -- I'm sorry, 36  
2 bed detention center for \$36 million for 30 years.

3 After my review of that lease we determined that  
4 that lease was not cost effective, and we made a decision  
5 that we proceed with building our own juvenile detention  
6 center in the county. It was Commissioner Makowski and I.

7 Q And the increased cost in juvenile placements in  
8 the detention centers, didn't that raise any red flags to  
9 find out why there was so many kids going to detention?

10 A I think the cost of -- the county cost when the  
11 kids were staying in the county run facility were about \$160  
12 a day for a bed, and they went up to about 260 a day. So  
13 that raised a red flag with me.

14 And then I kept on questioning those costs, as did  
15 Mr. Flood, the controller.

16 Q And nobody was listening?

17 A Nobody was listening. And I think they put  
18 stumbling blocks in place in the -- the PA Child Care lease  
19 was entered into and voted on in favor by Commissioner  
20 Skrepenak and former Commissioner Vonderheid in October of  
21 2004. Shortly after that Mr. Flood, who was the controller  
22 at the time and not -- we became outraged at the cost of  
23 this contract.

24 Mr. Flood, in 2005, actually subpoenaed myself and  
25 the other Commissioners to appear in front of him because

1 there were powers that he believed he had under the County  
2 Code to subpoena us and question contracts.

3 I appeared in front of the Commission and provided  
4 all the information that I had on record. Mr. Flood took a  
5 transcript -- a -- has a transcript of that proceeding. The  
6 other two Commissioners, Vonderheid and Skrepenak, sent a  
7 motion to quash the subpoena. I believe that was in March  
8 or April of 2005.

9 That motion to this day was never heard by the  
10 court. It has never been ruled on. So if -- I just want to  
11 jump ahead. If there's a recommendation that could be made  
12 it's that someone in the judiciary needs to look at motions  
13 to quash subpoenas and how long they should take before a  
14 judge actually has to act on that. Because we're talking  
15 here about four years now, and the motion has not been acted  
16 on.

17 And I think that that was a disservice not only to  
18 Mr. Flood, but to the people of this county. Because even  
19 if Mr. Flood did not receive a favorable response from this  
20 court, he would have appealed that decision to the  
21 Commonwealth Court and received some type of action that  
22 would outline whether he had the power to intervene here.

23 So I believe the court, by not hearing that motion,  
24 stopped his investigation of this. But he didn't stop  
25 there. There was some discussion made about the audit when

1 Mr. Flood released that audit to one of the papers. And  
2 it's my understanding he gave it to the FBI also because he  
3 was so determined that there was something wrong with this  
4 contract, that it was corrupt, and it needed to be looked  
5 into.

6 And I don't think him or I trusted the local  
7 agencies in the county, the District Attorney's Office or  
8 the State AG's Office to do anything with this matter.

9 Q Were you aware of the process that was used to hire  
10 Dr. Vita?

11 A No, I was not.

12 Q So you never saw the contract or the fee for  
13 service?

14 A Never saw the contract until I learned about it.

15 Q Or anything else?

16 A I went over and pulled a copy of the contract.

17 Q Did you receive any complaints from the parents of  
18 the juveniles or guardians, lawyers, or any other county  
19 employees about the actions of Judge Ciavarella?

20 A I received two complaints that I'm aware of. One  
21 about a parent whose daughter was being picked up for being  
22 outside curfew violations over employment, from another  
23 gentleman about his child who he said he was put in a  
24 detention center for about 70 days because he threw a piece  
25 of lunch meat at his wife's boyfriend.

1 Q And what did you do with those complaints?

2 A With those complaints and other complaints after  
3 Mr. Flood went in office I took all the information to  
4 federal authorities. I started to speak to them and explain  
5 to them what was going on in the county. And that was in  
6 2006.

7 Q And you didn't know about the Judicial Conduct  
8 Board then at that point in time?

9 A I was aware of the Judicial Conduct Board because  
10 an investigator came -- about the Judicial Conduct Board  
11 with these judges, no. I was not aware of anything with --  
12 with Judge Ciavarella or Judge Conahan, the Judicial Conduct  
13 Board or anything like that, no.

14 But I was interviewed by an agent from the Judicial  
15 Conduct Board probably in 2001 or 2002 regarding a hiring at  
16 the prison.

17 JUDGE UHLER: Regarding what?

18 THE WITNESS: A hiring at the prison, a hiring of  
19 an employee at the prison.

20 JUDGE UHLER: Okay.

21 THE WITNESS: That was a complaint that someone  
22 else made, and they came to me as a member of the Prison  
23 Board and asked me for information regarding the hiring.

24 BY MR. WILLIAMS:

25 Q I don't know if that would have been the Judicial



1 Conduct Board.

2 A I think it was. The individual involved was a  
3 magisterial judge.

4 Q Oh, okay.

5 A Yeah.

6 Q That's another issue, right?

7 A That's another issue.

8 Q And did you ever receive any complaints or comments  
9 from the Juvenile Probation Department, Public Defender's  
10 Office, or the Children and Youth office?

11 A No, I did not.

12 Q And Children and Youth Office never came to the  
13 County Commissioners with any problems?

14 A No. As a matter of fact, the Children and Youth  
15 Office tried to stonewall the release of an audit when I  
16 asked for the information about two years ago. They sent an  
17 e-mail to Mr. Guesto and said, what should I do? Should I  
18 give Mr. Urban the audit or not? And I finally ended up  
19 going to Mr. Frill down at the state, and he released the  
20 audit to me. So I was stonewalled by my own people in the  
21 county.

22 Q During this time period, 2002, 2008, how did the  
23 juvenile placement costs affect the programs of the Children  
24 and Youth? An example of that is did it delay the C and Y  
25 clients in receiving services such as parenting classes, DNA

1 counseling, et cetera?

2 A Yes. There was a letter that Judge Muroski wrote  
3 to the Commissioners during that time frame, and he was  
4 complaining that all this money was going to juveniles being  
5 placed in detention centers. And there was not enough money  
6 for parenting classes to be done in a timely manner, and  
7 good kids who have been removed from their home through no  
8 fault of their own were being forced to be placed in foster  
9 care and outside of the home for longer periods of time than  
10 were necessary.

11 So that was a letter that we received. And I --  
12 when I received that letter I -- I discussed in length with  
13 Mr. McGarry, head of human services, that that -- the  
14 content of that letter and made a recommendation to Mr.  
15 McGarry for corrective action.

16 Q And did Mr. McGarry make any corrective actions?

17 A I think he did. I think he went out and looked at  
18 the content of the letter. I think he sat down with the  
19 judge or -- one of the issues was that he just did not have  
20 enough providers, he said, in the system to provide the  
21 services to all the families that were in the system.

22 At some point sometime 6 to 700 kids had been  
23 removed from their homes in Luzerne County and that are in  
24 the hands of -- of the courts and in temporary placement.

25 Q I don't know if you're going to know the answer to

1 this question. Did you have any turf battles with the  
2 judges?

3 A Well, I didn't believe the judges needed everything  
4 that they asked for. I didn't believe that they needed the  
5 -- this extravagant detention center. No. 1 was that the  
6 County Commissioners have a responsibility in the County  
7 Code to provide for a detention center and demand that  
8 detention center. And the first issue we came up with is  
9 that the -- the court -- the employees in the detention  
10 center were actually court employees and not county  
11 employees under the control of the County Commissioners.

12 The court -- McGarry came down to the budget  
13 hearing and said that Judge Conahan is not going to be  
14 sending any juveniles to the detention center that the  
15 county owned after, I think it was, December 31st, 2002.

16 And that happened to coincide with the opening of  
17 the detention center that Mr. Powell and Mr. Zappala had  
18 built. And so that was a battle there.

19 The court also turned in the license for the  
20 detention center. And I believe since the Commissioners  
21 under the County Code have the authority to operate the  
22 detention center we should have been the one that turned in  
23 the license and not the -- not the courts.

24 Also I think that the office of Children and Youth  
25 and Families, which is a state run agency, should not have

1     accepted that license from the courts, that they should have  
2     referred that license back to the County Commissioners. And  
3     only after a formal vote of the County Commissioners to  
4     close the detention center should that detention center have  
5     been closed.

6             And that is not the way things ran in the county.  
7     The judge said, we're not sending anybody there. The other  
8     two Commissioners then voted for a budget that defunded  
9     positions of the childcare workers.

10            Q     Which two Commissioners?

11            A     Commissioner Makowski and Pizano.

12            Q     Pizano?

13            A     Yes. And then they closed the facility, and the  
14     county was then forced to use the detention center that Mr.  
15     Powell and Zappala had built at the cost of about \$100 per  
16     day -- extra per day per bed that was costing us in our own  
17     facility. And that outraged me too because as a federal  
18     taxpayer I don't believe we should be ripping off the  
19     federal government.

20            And that's -- that's one of the clashes that I've  
21     had with them publicly. And this is done publicly and in  
22     the press with these gentleman.

23            Q     What are you doing with the old facility now? Is  
24     there anything being done there?

25            A     The old facility is still sitting up on River

1 Street. It has not been used since it was closed. It  
2 probably can be rehabilitated for 3 to \$4 million and turned  
3 into a detention center.

4 Q And how many did that one house?

5 A I believe that -- that was capable of housing 32 or  
6 so. Our needs at the time were for 36. That was another  
7 reason why I said we don't need a 48 bed facility or a 60  
8 bed facility. We had no need beyond the 36 bed capacity in  
9 the county.

10 And -- and even when they were using the PA Child  
11 Care facility I understand there was only ten beds that were  
12 detention, and 48 beds were treatment. The other issue was  
13 the Commissioners have no responsibility for treatment. Our  
14 responsibility under the law is to provide a detention  
15 center for short stay for children that cannot be released  
16 to their parents. And -- and in the case of -- of this PA  
17 Child Care facility there were treatment beds there.

18 I don't believe the Commissioners should be in the  
19 -- have the ability to run a treatment facility. And I just  
20 -- I just think it's wrong. It's not within our chart.  
21 It's not within our mission. Our plate's full enough. We  
22 don't need to take on extra responsibilities that are  
23 outside the scope of the County Code.

24 So if the law can be changed in such a way that --  
25 and the Supreme Court and the legislature looks throughout

1 the Commonwealth at other counties to make sure that they're  
2 following the letter of the law on the County Code and the  
3 Commissioners are given the responsibility to run the  
4 facility, and the employees of that facility are county  
5 employees and not court employees, we might be able to save  
6 some of this trouble that we went through in other counties  
7 throughout the Commonwealth.

8 Q In other words, you would recommend restructuring  
9 the -- the employees within county government as to who  
10 should -- who should report to the judiciary and who should  
11 report to the --

12 A Correct.

13 Q -- Commissioners?

14 A All those employees in that detention center in my  
15 opinion should be reporting to the Commissioners and not the  
16 detention center.

17 Q Such as county correction officers?

18 A Right, correct.

19 MR. WILLIAMS: That's all I have.

20 CHAIRMAN CLELAND: Mr. Gibbons.

21 BY JUDGE GIBBONS:

22 Q Thank you, Mr. Chairman. Mr. Urban, good  
23 afternoon. You indicated that you went to the federal  
24 authorities in 2006?

25 A Yes, sir.

1 Q Which authorities, US Attorney, FBI?

2 A FBI.

3 Q FBI?

4 A And I was asked to come back again and met with the  
5 FBI and the IRS.

6 Q Okay. Now, did you ever go to the Judicial Conduct  
7 Board?

8 A No, I did not.

9 Q Okay. Can you tell us why?

10 A I didn't believe there was any faith in the -- I  
11 didn't have any faith in the Judicial Conduct Board.

12 Q Can you tell us why?

13 A I just -- I didn't see anything that I believed  
14 they could do. I believe that the judges in this county had  
15 a good old boy network, and they looked after each other.  
16 And I just didn't look at that as an avenue that could --

17 Q Do you know if Mr. Flood ever went to the Judicial  
18 Conduct Board?

19 A I'm not aware of that. He never discussed that  
20 with me.

21 Q Okay. And you mentioned that you -- you didn't  
22 want to go to the Attorney General's Office?

23 A No. I think that this -- this had to be federal,  
24 that there was federal monies involved here, an awful lot of  
25 federal monies that were being wasted. And this was where

1 the jurisdiction rested in this case.

2 Q Did you ever go to your own District Attorney's  
3 Office?

4 A No, no, I didn't. Other than my comment to the  
5 paper I never went to the District Attorney's Office.

6 Q Why?

7 A I believe that the nepotism and the -- and the  
8 family affairs that take place in the courthouse are all  
9 intertwined, that I could not trust that system. The only  
10 system that I felt comfortable going to was the federal  
11 system.

12 Q And you -- you started your service as a County  
13 Commissioner in 2000?

14 A 2000, yes, sir.

15 Q Okay. And so it's fair to say that you lived  
16 through most of what we're talking about here?

17 A I did.

18 Q Looking ahead -- and you've given us a couple of  
19 suggestions and a couple of recommendations -- do you have  
20 any -- any other recommendations that you would offer?

21 A Well, first of all, I would say that the public  
22 defender -- I don't have much contact with the public  
23 defender, but when I do have contact with him he's always  
24 been very responsive to me. One thing that I would say that  
25 maybe needs to be looked at at the state level is that



1 public defenders should be full time and not have any  
2 outside business practices, that they should be in that  
3 office supervising their assistant public defenders on a  
4 daily basis. In the case of Mr. Russin, he has a law  
5 practice.

6 Q But he's hired by the county?

7 A He's hired by the county.

8 Q And he's been hired again and again by the county  
9 for close to 30 years, right?

10 A Well, no. He's been hired once as far as I'm  
11 concerned. He was on board before I got there.

12 Q But he told us that he was hired initially in 1980  
13 as the public defender, and is reappointed by -- by the  
14 Commission?

15 A I don't know of any reappointment process. I think  
16 when you're hired once, you're hired until you're -- until  
17 you leave on your own or you're terminated or your fired.  
18 We do an annual salary increase with the Salary Board, but  
19 I've never had the opportunity to go over his hiring or the  
20 dismissal anything like that.

21 Q You heard Judge Uhler talk to Ms. Petrilla about an  
22 annual review. Do you think something like that might be  
23 worth undertaking?

24 A I think it would be worth undertaking. Not only an  
25 annual report, but an annual report from his office on the

1 type of cases that he handles, whether they're DUI cases,  
2 whether they're juvenile cases, and comparing those cases to  
3 the standards.

4 Q Is there anything that prevents you from putting  
5 that system into place?

6 A No. I think we could -- should put that system  
7 into place, and it should be a statewide system also. I  
8 think we get back to though the budgeting in the office.  
9 This is -- this is not a wealthy county. 20 percent of the  
10 people in this county are -- are below the poverty level.  
11 It's one of the poorer counties in the country. And I think  
12 we need some help on the revenue side from the state here.

13 One of the things I would like to see the state do  
14 is the state live up to the responsibilities that they have  
15 a fully funded court system, not only in this county, but  
16 throughout the Commonwealth to fund not only the judges --  
17 they fund the judges currently, district magistrates, but to  
18 fund the -- fully fund the Probation Department, to provide  
19 some type of funding for the Public Defender's Office.

20 Right now that office is totally funded with county  
21 dollars. Also to fund the district justices. Their  
22 operation right now we receive about 1.15 million, and the  
23 cost is \$3.4 million. The Probation Department, we receive  
24 about a million dollars, and it costs us \$8 million. I  
25 mean, I think that the state has -- has failed not only this

1 -- the people of this county, but all the counties  
2 throughout the state by not fully funding the courts.

3           And, likewise, I think the Supreme Court needs to  
4 provide some supervision over the courts in this county and  
5 throughout the Commonwealth. I think when the Supreme Court  
6 reads about things, and I -- I hope I'm not naive in saying  
7 this, but when I was in the military I used to receive a  
8 report of all the clippings of all the articles that have  
9 been written about the military and the Pentagon and all  
10 those papers throughout the country.

11           And I would hope that someone down in Harrisburg in  
12 the administrative offices of the courts is looking at  
13 what's going on in the newspapers throughout this  
14 Commonwealth as it pertains to judiciary, and that they are  
15 taking those articles, and they're looking at them and  
16 saying, you think we need to go down and investigate this?  
17 You think there's something wrong in Luzerne County?

18           You know, and where is the Supreme Court in this?  
19 I believe that they have a supervisory role over the courts  
20 here. I don't think everything rests locally. I believe  
21 that the Supreme Court failed this county and the people of  
22 this state and the legislature by not fully funding the  
23 courts for over 20 years.

24           It failed the people of this county in the  
25 legislature in the time that the legislature and the

1 Governor acted.

2 MR. GIBBONS: Okay. Thank you, Mr. Chairman.

3 CHAIRMAN CLELAND: Thank you. Any other questions?

4 Mr. Listenbee.

5 BY MR. LISTENBEE:

6 Q Mr. Urban, thank you, very much for coming down to  
7 speak to us. And I appreciate your comments concerning the  
8 funding of -- of indigent defense. Pennsylvania is the only  
9 state in the United States that does not receive any state  
10 funding for indigent defense. So Pennsylvania stands alone  
11 in that regard.

12 But, again, you have the most famous juvenile court  
13 in the nation. Have you been over to take a look at it?

14 A No, I have not been in any juvenile proceedings.  
15 No, I have not.

16 Q Then I would encourage you to, first of all, take a  
17 look and see what you have. I think things have changed.  
18 But there is a need for further change. And to receive some  
19 support from the County Commissioners in that regard I think  
20 would be very helpful.

21 Again, I want to just point out that the standards  
22 for the number of cases that juvenile defenders are supposed  
23 to handle is about 200. That's the national standard.  
24 Clearly there's no statewide standard yet, but know I think  
25 your attorneys are handling there more than three or four

1 times the number.

2 Is that something that the County Commissioners can  
3 take a look at and perhaps address some time in the near  
4 future?

5 A We can take a look at it, and I'd be glad to sit  
6 down with Mr. Russin and go over all of the statistics and  
7 find out how many cases that each of his assistant public  
8 defenders have.

9 We do have a budget crisis though in this county at  
10 this point in time. So I -- I would hope that it's not  
11 dollars that drives justice, that it's justice that will  
12 prevail in the long run. But I also would hope that Mr.  
13 Russin would look at the possibility of bringing more full  
14 time public defenders on, people that do not have outside  
15 law practices, people that can dedicate their full time to  
16 their clients in the office and not part-time attorneys.

17 Because I sometimes question whether -- whether  
18 we're getting the best justice that the people deserve by  
19 using part-time public defenders who, I think, may put their  
20 private law practice ahead of their clients for the county.

21 Q Again, the issue's been raised as to whether or not  
22 that's something you can define here within your own county.  
23 Is it within the power and authority of the County  
24 Commissioners to determine whether or not public defenders  
25 are going to be full time or part time?

1           A     I believe it is, but we take the recommendation of  
2 the public defender. And I believe his current  
3 recommendation is that three, and that the others be part  
4 time. And I don't agree with that recommendation, but I'm  
5 only one of -- one of three votes.

6           Q     Um-hum. Very well. I would only add that the  
7 Pennsylvania Commission on Crime and Delinquency at a  
8 meeting we recently attended has expressed an interest in  
9 trying to provide some support for your indigent defense  
10 system here. So there are outsiders who are trying to find  
11 ways to help support the county.

12          A     Thank you.

13                   CHAIRMAN CLELAND: Mr. Mosee.

14 BY MR. MOSEE:

15          Q     Mr. Russin explained to us that when there's a  
16 conflict in a case, a situation where the public defender  
17 can't represent the juvenile, that there are attorneys  
18 available, attorneys who are already on salary to take those  
19 cases. Are you familiar with that?

20          A     Yes. They're called conflict counselors, and  
21 they're available in the courts, yes.

22          Q     And as I indicated, he told us that they're on  
23 salary?

24          A     Yes.

25          Q     Do you know what the salary is and how that works?

1           A     I think it's high 20 to \$30,000 salary range.  And  
2     I believe -- I believe they receive full pay and benefits.  
3     They're getting healthcare paid for, and they're in part of  
4     the retirement system, life insurance, everything else that  
5     all the county people get, all the benefits the other county  
6     people get.

7           Q     And how many attorneys have that arrangement?

8           A     I cannot say without having those numbers in front  
9     of me.  I would be glad to provide that to you though.

10          Q     All right.  And it's interesting to me that they  
11     get that salary whether they represent two juveniles in a  
12     year or 22 juveniles in a year?

13          A     That's correct.  I heard that before, that no  
14     matter how many cases they have, they continue to get paid.  
15     They're appointed by the court.

16                 MR. MOSEE:  Okay.  If I may, Your Honor, I think it  
17     would be good for the Commission to know how many attorneys  
18     are functioning under that arrangement and how many cases  
19     they have.

20                 CHAIRMAN CLELAND:  We can get that information.  
21     Judge Uhler.

22     BY JUDGE UHLER:

23          Q     Just two brief -- one comment, one question.  In  
24     dealing with Mr. Russin's budget in the Public Defender's  
25     Office there should be consideration given also to training.

1           It's very apparent with regard to the testimony  
2 that was offered to us that as I recall none of the juvenile  
3 defenders in that office had any specific training in that  
4 regard. And that's critical in this day and age.

5           A     I would say that all of those individuals in that  
6 Public Defender's Office, all the lawyers are union members,  
7 and I believe their union contract calls for them to be  
8 trained, and that training is paid for by the county.

9           Q     They're not making use of it.

10          A     It might be up to the public defender to actually  
11 direct that they receive certain type of training rather  
12 than training that they just want to take on their own.

13          Q     Okay. That said, that was just my comment.

14          A     Okay.

15          Q     You indicated that the Children and Youth Services  
16 Department stonewalled your audit request?

17          A     My request, yes, they did.

18          Q     And the focus of your audit was what?

19          A     Well, it wasn't my audit. It was the state's  
20 audit, the State Department of Public Welfare, which was  
21 doing an audit of the county PA Child Care facility.

22          Q     Okay.

23          A     And that audit, I believe, initially came out in  
24 February, 2007. I got wind of that around September of  
25 2007, and I started asking for copies of the audit. And I



1 didn't get them from the county. I finally got them from  
2 Mr. Frill, a state employee, who gave me the audit. And I  
3 did have an e-mail that came in my hands from someone that  
4 showed the director asking Mr. Guesto, the chief clerk at  
5 the time, you know, what do I do with the Commissioner's  
6 request?

7 Q If you know, the Children and Youth Services used  
8 the PA Child Care facility?

9 A No, they did not. Children and Youth, as far as I  
10 know, was not for housing kids that were in foster care, no.

11 Q Okay.

12 A Not as far as I know.

13 Q And did probation have any part to play in the  
14 stonewalling of that audit?

15 A I'm not aware that the Probation Department was in  
16 the audit.

17 JUDGE UHLER: Okay. I have nothing further.

18 CHAIRMAN CLELAND: Mr. Legg.

19 BY MR. LEGG:

20 Q Mr. Urban, I don't know if you heard my question  
21 earlier about Mr. McGarry's testimony yesterday. He  
22 indicated that the county does have an anti-nepotism policy;  
23 is that accurate?

24 A They do.

25 Q And he indicated that in the courts that

1 anti-nepotism policy is implemented and followed. Do you  
2 agree with that?

3 A I don't agree with that at all.

4 Q If you had to rate the level of nepotism in Luzerne  
5 County courts, would you say it was low, average, or high?

6 A I'd say high.

7 Q And were the County Commissioners approving the  
8 appointments of people in the court, or was the President  
9 Judge just appointing people?

10 A President Judge approved those appointments by  
11 court order.

12 Q Okay. So the President Judge wasn't sending down  
13 proposed employees to be approved at a County Commissioner  
14 meeting or anything like that?

15 A Not at all. The President Judge always appointed  
16 their own employees in probation, domestic relations,  
17 stenographers, juvenile probation.

18 Q Was the President Judge creating positions as well?

19 A At times he did, and I think that's another  
20 problem. I know at the end of my first term there were  
21 people in the county that were leaving. The chief clerk was  
22 leaving. One of the Commissioner's secretaries was leaving.  
23 And what seemed to be the case in the county is that as  
24 Commissioners turned over, some of their employees ended up  
25 going in the courts, and positions were created for them by

1 the court administration.

2 We have central court now with Mr. Torbic. He used  
3 to be the chief clerk during my first term, and he just left  
4 and went over to the courts. New positions were created.

5 Q So the Commissioners weren't controlling any of  
6 that, in other words?

7 A The only -- the only vote that the Commissioners  
8 had was on the Salary Board, and they put a stop to that.  
9 But I think the Commissioners -- at some point in time some  
10 of the Commissioners were working hand and hand with the  
11 courts to move people from the county government over to the  
12 courts.

13 Q What about this level of nepotism? Did it spill  
14 out to the courts into the other row offices or other county  
15 offices?

16 A I can't speak to other row offices because the row  
17 offices are really elected independently, and they have the  
18 ability to hire and fire their own people independent of the  
19 Commissioners. But I can -- I can speak to the courts by  
20 the names that -- that you see being hired in the courts.

21 Q So this anti-nepotism policy, are all departments  
22 expected to follow it, or is it just the Commissioner's  
23 Office?

24 A No, I believe that all departments are expected to  
25 follow it, but we have resistance from some of our officers

1 now in the county that don't believe they have to follow our  
2 personnel policies, don't believe they have to follow our  
3 vacation policies, our time off policies, or work policies.

4 MR. LEGG: That's all I have.

5 BY CHAIRMAN CLELAND:

6 Q So it's not just the courts that you've got your  
7 hands full fighting?

8 A It's not.

9 Q It's the -- all the elected officials are  
10 apparently making your life difficult?

11 A They are.

12 Q Okay.

13 A It shows. I had brown hair when I got this job.

14 Q Mr. Urban, is there anything else you'd like us to  
15 know?

16 A No, Your Honor.

17 CHAIRMAN CLELAND: Okay. Thank you, very much for  
18 being here today and answering our questions. And -- and  
19 I'll repeat to you what I said to your chairman, that we  
20 certainly hope that we can be of some help, and we will do  
21 our best to -- to try to address in some positive way the  
22 difficulties that you certainly endured in the last number  
23 of years.

24 THE WITNESS: Thank you, sir.

25 CHAIRMAN CLELAND: Thank you.

1           CHAIRMAN CLELAND:  Sir, please, Mr. Sangueldolce.  
2   Good afternoon.  Thank you for coming back and rearranging  
3   your schedule.  We appreciate it.

4           MR. SANGUELDOLCE:  It's a pleasure to be here, sir.

5           CHAIRMAN CLELAND:  I hope so.

6

7           SAM SANGUELDOLCE, called as a witness, being duly  
8   sworn, testified as follows?

9

10          THE WITNESS:  Yes, Your Honor.

11          CHAIRMAN CLELAND:  Thank you.

12          THE WITNESS:  For the Board, please feel free to  
13   call me Sam.  I know I have a difficult last name.

14          CHAIRMAN CLELAND:  I'm not sure who's going to be  
15   handling this.  Mr. Listenbee.

16   BY MR. LISTENBEE:

17         Q    Yes.  Good afternoon, Mr. Sangueldolce.

18         A    Good afternoon.

19         Q    Good afternoon, again, sir.  And thank you, very  
20   much for coming back.  We realize you had to change your  
21   schedule two days in a row.  We really appreciate it.

22         A    I'm glad to help the Commissioners.

23         Q    Sir, tell us when you were admitted to the bar.

24         A    I was admitted as a result -- well, I graduated  
25   from law school in June of 2001.  And I'm sure as the Board

1 is aware, the bar exam was held in July of 2001. And I was  
2 admitted as a result of that -- passing that exam. But that  
3 -- results did not come out until late October of that year.

4 Q Okay. When did you become an Assistant District  
5 Attorney?

6 A 2002.

7 Q And when were you assigned to juvenile court?

8 A Fairly early on. I was brought into the office --  
9 at that time we had about half as many attorneys as we have  
10 now with roughly the same case load. So we were really  
11 strapped, to say the least. But I was assigned to juvenile  
12 court within the first month, and actually was trying jury  
13 trials about one month after I began that office.

14 Q So you were trying jury trials on the adult side  
15 and handling juvenile court as well?

16 A Yes, sir.

17 Q Were there any other Assistant District Attorneys  
18 assigned to juvenile court at the same time?

19 A Yes. There was a senior attorney who I shadowed  
20 and assisted me. I assisted him, I should say, until  
21 eventually there were cases that he moved on to, and I  
22 filled in his spot as the primary juvenile court prosecutor.

23 Q And, sir, what type of training did you receive to  
24 prepare you for your assignment in juvenile court?

25 A As I said, I shadowed the senior attorney for a

1 while. I reviewed the Juvenile Act and the Rules of  
2 Procedure, and that was about the extent of the training.

3 Q Did you receive any CLE credits in juvenile -- in  
4 juvenile cases or juvenile training?

5 A With regard to my position as an Assistant District  
6 Attorney it's my recollection at that time that our District  
7 Attorney, now Judge Dave Lupas, had asked for funding to  
8 send us to certain CLEs. That, I think, was denied. So our  
9 ability to get CLEs through the county, I would say no. No,  
10 I did not take any training as far as juvenile matters were  
11 concerned.

12 The matters that I did get trained on generally  
13 resulted as a result of free CLEs that were either put on by  
14 the National District Attorney's Association, the Basic  
15 Prosecutor's Course, the Pennsylvania DA's Association, and  
16 as a result of going to the -- the mid-winter meetings and  
17 those type of things.

18 Q Where were those trainings held?

19 A The National District Attorney's Association held  
20 trainings. I went to two of them in Columbia, South  
21 Carolina. As a result of federal funding they were able to  
22 pay for our stay down there, our flight, our meals, which  
23 all took place in the National Advocacy Center.

24 The Pennsylvania CLEs, I know there was one. The  
25 mid-winter meeting was held in Philadelphia that I attended.

1 And the Basis Prosecutor Course was held in Harrisburg.

2 Q Okay. Thank you. As we -- I mean, we've heard a  
3 lot about waivers of the right to counsel.

4 A Yes, sir.

5 Q Can you tell us what you can about what was going  
6 on in Judge Ciavarella's court regarding waivers of the  
7 right to counsel?

8 A When I first began they had discussed these  
9 waivers, which is to say that they refer to them in open  
10 court. I had seen a few of them over the course of my two  
11 years or so in juvenile court.

12 And I'll have to ask you to forgive me, because  
13 Judge Ciavarella also used very similar waivers in adult  
14 court. So if I'm getting them confused, I apologize. It  
15 was my recollection that they covered not only the waiver of  
16 counsel, but what I would call in adult court your rights  
17 under -- undertaking a guilty plea, which would be, I guess,  
18 I suppose an admission in juvenile court.

19 They were approximately, if I recall correctly,  
20 seven pages long.

21 Q Seven pages long?

22 A Yes, sir.

23 Q So back in 2002 when you were first there there was  
24 a seven page colloquy for juveniles?

25 A If my recollection serves me correct, I believe it



1 was. I should -- I should clarify that.

2 Q Um-hum.

3 A I recall him referring to I'm showing you a copy of  
4 what is the seven page document. Is this your signature on  
5 the last page? I recall him very distinctly saying that.

6 Q Who actually conducted the -- the colloquies? Who  
7 showed the forms to the children and went over the questions  
8 on them?

9 A Because I didn't personally see it, I would only be  
10 speculating. But I believe it was a member of the Juvenile  
11 Probation Office.

12 Q Did that occur within the courtroom itself or  
13 outside?

14 A Because I was at the bench during the hearings, it  
15 may have occurred in the back of the courtroom or outside.  
16 I think there were tables set up. It didn't happen directly  
17 in front of me.

18 Q And as regards the colloquies for admissions, did  
19 those happen in the court on the record? Were they oral?  
20 Were they written? Or were there none at all?

21 A With regard to colloquies, it was my understanding  
22 that every juvenile making an admission had filled out the  
23 written colloquy. It was referred to by Judge Ciavarella.  
24 Whether or not that appeared in the transcript, I don't  
25 recall. And I can't say for certain five years ago that

1 every single one was referred to. But it was my  
2 understanding that every juvenile, along with their parents,  
3 sat with the juvenile probation officer and filled out that  
4 colloquy.

5 Q Now, also as regards admissions, was this the same  
6 procedure for other judges that were sitting in the court as  
7 it was for Judge Ciavarella?

8 A If I understand your question correctly, you're  
9 referring to adult court as well?

10 Q No, just juvenile court.

11 A I had never been in front of any other judge for  
12 juvenile court.

13 Q There were no other judges coming in for one or two  
14 days at a time for vacation, holidays, or other types of  
15 days?

16 A I cannot recall in my two years ever being in front  
17 of anyone but Judge Ciavarella for juvenile court.

18 Q Once the admissions were done in juvenile court  
19 when there was counsel present what happened immediately  
20 after the admissions? Did the judge move straight to  
21 dispositions?

22 A At times. There were times that a later  
23 disposition date was scheduled. But yes, there were  
24 dispositions immediately also.

25 Q And we understand that the judge had a -- a tough

1 love policy or a zero tolerance policy for cases coming out  
2 of schools, and just a policy of sending kids off even on  
3 first offenses and minor offenses to placement. Can you  
4 tell us what you know about that?

5 A I can. I suppose it depends on what you consider  
6 minor offenses. But zero tolerance was a word that was very  
7 frequently used. It was my understanding of the zero  
8 tolerance policy -- and if I can refer you back, this was  
9 not long after both Columbine and 9/11. And now that we've  
10 gotten some time between Columbine and now I know that sort  
11 of distance maybe has healed the wounds.

12 But I can recall the atmosphere in the courtroom  
13 that any time an incident happened in school -- because  
14 Columbine was not only the only incident -- any time there  
15 was a school shooting, it was widely reported that after  
16 school incidents would occur if they were referred to the  
17 police and came to the courtroom, that teachers would appear  
18 and other students would appear and the families of all  
19 other students would appear being widely concerned about the  
20 safety of students in the school.

21 I don't know when the zero tolerance policy was  
22 adopted. That's just what I recall as a prosecutor, being  
23 afraid that something might happen. It was my understanding  
24 of the policy that if an incident happened in school that  
25 was serious enough for the school staff to report to the

1 police, which would in turn get the juvenile into juvenile  
2 court, that they would then be sent away.

3 The ones that I distinctly recall would be any  
4 assault at school, whether a student or a teacher, and I had  
5 seen both, sexual incidents at school, weapons at school, or  
6 any kind of drugs at school.

7 Q So if there were a fight in school between two  
8 boys, and that would likely come into court?

9 A If it were reported to the police, yes.

10 Q And if it came into the court, the children would  
11 likely go into placement?

12 A Yes.

13 Q And for how long?

14 A Well, if I recall correctly, and I believe I do, if  
15 they were sent away, for example, to a place like Camp Adams  
16 when they would come back for review -- I should say it this  
17 way, no definite sentence was given. They would come back  
18 on a review. If the reviewing officer from that facility  
19 would tell the judge that this person was ready to come  
20 home, then he would be sent home. If they said, you know,  
21 he was not ready, then he would not be sent home.

22 Q Were there separate hearings for these reviews?

23 A Yes.

24 Q Were -- the children who had counsel, did counsel  
25 appear for those reviews?

1           A     I can't say in every case, but I remember counsel  
2 being there for reviews.

3           Q     Some of them, all of them, majority of them?

4           A     I couldn't -- I couldn't say that. I don't recall.

5           Q     Let's talk just briefly about the children who were  
6 without counsel. According to records we've received, as  
7 many as 54 percent of the children who appeared in court  
8 were without counsel. Is that pretty much an accurate  
9 number based upon your experience?

10          A     To be honest, I don't recall it -- that sounds high  
11 to me. I don't recall it being that high.

12          Q     But there were a substantial number of children who  
13 appeared without counsel?

14          A     Certainly.

15          Q     And they went through the process of waiving the  
16 right to counsel through the Probation Department to the  
17 best of your knowledge?

18          A     Yes.

19          Q     And when they appeared in court many of them  
20 entered into admissions; is that correct?

21          A     Yes.

22          Q     And you referred back to the waiver that was done  
23 outside by the Probation Department as being the waiver for  
24 the admission as well?

25          A     Yes.

1           Q     There was no oral -- no oral record made of the  
2 admission in court? Is that pretty accurate as well?

3           A     Certainly no formal oral record.

4           Q     Was there a presentation of the facts of the case?  
5 Was that pretty standard or no?

6           A     You mean a recitation of what would be the  
7 affidavit?

8           Q     Yes.

9           A     No, I don't recall.

10          Q     And without much ado after that children were often  
11 sent to placement without extensive discussions about the  
12 facts and circumstances surrounding their personal issues?

13          A     It was my understanding at the time -- and it had  
14 been referred to many, many times, so I believe this to be  
15 the case, that they would be evaluated by Dr. Vita and a  
16 recommendation would be made.

17          Q     Okay. And that recommendation, would that child  
18 come back into court for that recommendation?

19          A     Yes. I mean, that would be the disposition.

20          Q     Okay. What was your opinion about the practice in  
21 court? Was this a fair and impartial hearing given to the  
22 child on the facts and circumstances of the case, and then  
23 decisions made upon -- about their individual circumstances?

24          A     For the cases that were hearings, in spite of, you  
25 know, everything I've read in the paper, my recollection of

1 my time in juvenile court, I believe that they were fair  
2 hearings, which is to say when a lawyer appeared and the  
3 facts were presented and people were cross-examined, I can  
4 remember the charges being dismissed often times when I  
5 thought I had made the case, and I believe I recall  
6 convictions certainly.

7 Q And when there were no lawyers present for the  
8 Defendant?

9 A I can't remember having a hearing where -- which is  
10 to say where I presented witnesses.

11 Q Yes.

12 A Where a juvenile did not have a lawyer.

13 Q So is it fair to say that where they were without  
14 lawyers for the most part they entered admissions?

15 A I believe so, yes.

16 Q As you look back upon the process itself were there  
17 any problems or issues that you had with the proceedings  
18 that were taking place before Judge Ciavarella?

19 A Because I was new it was -- and I reference the  
20 testimony of Attorney Killino. Obviously I was present  
21 because I was called at that time. I read the newspaper  
22 articles. I recall it being fast paced. I should say that  
23 the life of a prosecutor is generally fast paced in the  
24 courtroom. And once I got acclimated to that pace and got  
25 some experience, I did get used to it. But there's no

1 question. It was fast paced.

2 Q Just one other question. When you were asked to do  
3 admissions were you required to have the Defendants admit to  
4 the highest charges?

5 A I heard that testimony yesterday, and I can say  
6 that in juvenile court I believed that I had extensive  
7 freedom to have them admit to the highest charge or change  
8 that charge. As a general rule the policy in the District  
9 Attorney's Office is if the highest charge fits, then he  
10 should plead to the highest charge.

11 If, however, as is the case many times, especially  
12 in juvenile court, there may be charges that were brought to  
13 the judge that the elements of those offenses just are not  
14 there. There is no probable cause to prove those. No one  
15 had ever questioned me or given me any problems about  
16 dropping the charge, amending the charge, or anything like  
17 that.

18 Q Did you ever make any complaints to the District  
19 Attorney at that time about the proceedings that were going  
20 on in Judge Ciavarella's courtroom?

21 A I don't believe so.

22 MR. LISTENBEE: Thank you, Your Honor. I have no  
23 further questions.

24 MR. MOSEE: Thank you.

25 CHAIRMAN CLELAND: Mr. Mosee.



1 BY MR. MOSEE:

2 Q Right here.

3 A I'm sorry.

4 Q This is a little confusing. We do this sometimes  
5 to confuse people. That's me. I want to clarify for the  
6 record your experience before becoming an Assistant District  
7 Attorney. Did you have any as an attorney?

8 A Before I joined the District Attorney's Office, if  
9 you recall earlier testimony, they referred to an attorney  
10 by the name of Jerome Cohen. Jerry Cohen was the District  
11 Attorney briefly when Judge Correale Stevens moved up to the  
12 Superior Court. He had been the District Attorney.

13 When I got out of law school, shortly thereafter I  
14 should say, some friends of mine have a firm on Public  
15 Square, and he had been looking for some help. I joined his  
16 office assisting him.

17 So for several months I had been following around  
18 and assisting. He -- his experience in the -- I actually  
19 never thought I would be a criminal prosecutor or be  
20 involved in criminal cases in law school, but I had a good  
21 experience with Jerry Cohen, who loves the District  
22 Attorney's Office very much.

23 And basically said it was -- it was a great  
24 experience, and it's something I should really do. So on  
25 his encouragement I applied to the District Attorney's

1 Office and was hired by David Lupas.

2 Q And you say that was a few months. Precisely how  
3 long was that?

4 A Probably six to eight months.

5 Q And what was the nature of your experience during  
6 that period of time?

7 A Nothing criminal. It was Social Security  
8 Administration work, some worker's comp. He had some civil  
9 bench trials that I would sit in on, but not participate in.  
10 Despite what people might think, I think law school doesn't  
11 really prepare you to practice law. It teaches you how to  
12 think like a lawyer.

13 So the first time I ever saw criminal information,  
14 which is actually the charges, is when I joined the District  
15 Attorney's Office and people referred to it, and I had no  
16 idea what it was. So there was some training, getting  
17 acclimated to what exactly happens in a procedure once I  
18 joined the office. But prior to that it was mostly civil  
19 stuff.

20 Q And you joined the office in 2002?

21 A Yes.

22 Q And you said about a month after joining the office  
23 you were trying jury trials?

24 A I believe I -- I joined the office -- I think I was  
25 on the trial list two months after my first day. So yes.

1           Q     All right.  And when did you begin going into  
2 juvenile court?

3           A     It was probably around -- when did I begin going,  
4 or when did I sort of take it over myself?

5           Q     That was my recollection, that you -- you initially  
6 went in for short periods of time, and then you took it over  
7 eventually.

8           A     I would be in there for the whole day watching the  
9 senior staffer.  Then I think at some point we started  
10 trading off every other case.  And so that happened pretty  
11 much right away.  I would say within three weeks I was  
12 watching juvenile court.  Maybe for a month after that we  
13 would trade.  And I would say by probably 2003 I had taken  
14 over juvenile court myself, if I recall it correctly.

15          Q     And throughout your time as either an infrequent  
16 visitor to juvenile court and the sole prosecutor in  
17 juvenile court you were doing these other things like jury  
18 trials and handling adult cases?

19          A     I think maybe I haven't been clear.

20          Q     Um-hum.

21          A     My appearances when I would go to juvenile court --  
22 my recollection is juvenile court happened Tuesday and  
23 Thursday.  So when I would go to juvenile court I would be  
24 there the whole time that juvenile court was going on.  So  
25 when juvenile court was finished for the day is when I would

1 leave.

2 I did also have other responsibilities. So, for  
3 example, if I were on a jury list, which is to say the  
4 manner in which our cases were you're assigned to a trial  
5 list. You are given a box of generally not less than 50  
6 cases, usually more. And those are your cases for that  
7 trial list. And you are called to trial in some order that  
8 the judges determine.

9 So if I were on a trial list and actually in trial,  
10 then there would be some replacement for me in juvenile  
11 court. I wouldn't be required to sort of hop back and  
12 forth.

13 Q What are you doing now?

14 A Right now I am a part-time Assistant District  
15 Attorney. So what I -- I generally am on four trial lists a  
16 year. I should say at least four trial lists a year, and I  
17 handle major cases. I think I'm assigned -- I just finished  
18 a homicide trial in October. I'm currently assigned to five  
19 open homicide cases.

20 Q When did you stop doing juvenile cases?

21 A I believe it was 2004.

22 Q Okay. I believe your testimony was that you read  
23 the Juvenile Act and the Rules of Juvenile Court Procedure?

24 A I know for certain that I read the Juvenile Act.  
25 It was a suggestion of one of the senior attorneys. I can't

1 say when I started that I even knew that it existed, of  
2 course, until I got into juvenile court and people told me.  
3 And I believe I also read the Rules, yes.

4 Q Okay. I just wanted to clarify for you that the  
5 rules weren't implemented until 2005.

6 A All of the rules?

7 Q Well, unless there were local rules.

8 A I don't believe there are local rules.

9 Q At this point we haven't been able to find any in  
10 Luzerne County.

11 A I don't believe there are any local rules. So it  
12 must have been shortly after they were implemented that I  
13 saw them.

14 Q Okay. Did you have occasion to work on consent  
15 decrees, to offer them, to confirm that they were  
16 appropriate?

17 A I did not have the occasion to, I would say, work  
18 on them. I was sometimes told someone would be getting a  
19 consent decree, at which point I would generally review it  
20 and see if I needed to make some objection to it.

21 For the cases where the defense attorney may have  
22 thought a consent decree was appropriate, very frequently he  
23 would come to me and ask about a consent decree. And I was  
24 told that I had to clear that with the Chief Juvenile  
25 Probation Officer.

1           Q     That surprises me, because consent decrees are one  
2 area where prosecutors rule. You can't get a consent decree  
3 without us saying that it's okay. So who was it that was  
4 telling you that the juvenile was going to get a consent  
5 decree?

6           A     It would be -- initially it would be a juvenile  
7 probation officer that would tell me. Or the defense  
8 attorney would come up to me and let me know, much to my  
9 surprise, that the juvenile was getting a consent decree, at  
10 which point I reviewed the rules and realized that I had  
11 some say in that matter. At which point I basically said  
12 that -- I required them to come through me, which is to say  
13 I didn't grant or deny them, but if the juvenile probation  
14 officer said they were appropriate, I would look. And  
15 sometimes I would say no.

16          Q     Okay. I apologize for not having a transcript, and  
17 what I'm about to do is I'm going to share with you a story  
18 that was told to us last night.

19          A     Okay.

20          Q     And what was told to us was that a young woman was  
21 accused. She didn't receive any instruction about waiver.  
22 She certainly didn't fill out any form. When she got into  
23 the courtroom it was a crowded scenario. They referred to  
24 it, I believe, as a meat market. And she indicated that  
25 there were people all over the courtroom, juveniles -- not

1 involved in her case, but there were juveniles all over the  
2 courtroom in shackles. Do you recall ever seeing that in  
3 juvenile court?

4 A During my time I can say that that's categorically  
5 not true, which is to say scattered all over the courtroom.  
6 The procedure, every single time I was in juvenile court,  
7 the juveniles were brought together from, I believe it was  
8 PA Child Care or whatever detention facility they might have  
9 been at.

10 They were brought together to the court. They were  
11 brought -- there was a back room, sort of a rear entrance.  
12 They would be held, I believe, in the Juvenile Probation  
13 Office. I didn't see where they were all held.

14 And then as their hearings would come up they were  
15 brought to sort of a holding room. It was just a room off  
16 the courtroom. It wasn't like a cell or anything. And then  
17 as their cases were called they would be brought in.

18 There were occasions that they would put them in  
19 the jury box, that, you know, they would sit all together in  
20 the jury box. Actually, now that I think about it, if there  
21 were several of them, they would usually be in the jury box.

22 Q In shackles?

23 A Some -- if they were incarcerated, I believe they  
24 were in shackles.

25 Q Okay. Just to continue with that story to make

1 some other points. She indicated that when she got into the  
2 courtroom it wasn't clear to her whether there was a  
3 prosecutor.

4 I guess there were a lot of people at the bar of  
5 the court, but no one ever was called as a witness against  
6 her. The judge never even articulated what the facts of the  
7 case were. But, nevertheless, found her guilty and sent her  
8 away.

9 A Without an admission?

10 Q Without an admission.

11 A It being five or so years ago, I could not recall  
12 -- I would be shocked to learn that that happened. I  
13 couldn't say that it never happened, but I don't believe it  
14 ever happened.

15 Q Did the judge ever sua sponte ask a juvenile  
16 whether or not they committed the offense?

17 A I believe the way that it usually happened was he  
18 knew in advance whether they were going to be admissions or  
19 not. I believe someone from juvenile probation would ask,  
20 you know, is it -- are we requesting a hearing, or what do  
21 you want to do? And I thought he had a list. Because my  
22 recollection was they would take the admissions first and do  
23 the hearings at the end.

24 Q Speaking of that list, is it your belief that that  
25 list also included the dispositional recommendations?



1           A     No, not usually. I had seen some that included  
2     recommendations. In other words, it would be in  
3     handwriting, sort of faded handwriting, because it was a  
4     photocopy, and it would say Camp Adams or probation or Glenn  
5     Mills. But usually it said nothing.

6           Q     Okay. Did you perceive that there was a chilling  
7     affect on zealous advocacy in Judge Ciavarella's courtroom?

8           A     A chilling affect on zealous advocacy? Can I ask  
9     you to clarify that? I don't know if you mean defense  
10    attorneys, prosecutors, or anyone.

11          Q     Well, I guess I'll get to you in a minute, but  
12    right now I'm talking about defense attorneys. We've been  
13    told that defense attorneys actually advised prospective  
14    clients that there's not much I can do for you in that  
15    courtroom. In fact, we've been told that the advice was  
16    when you go before Judge Ciavarella, your best bet is to  
17    plead for mercy, admit to the charges, and put yourself at  
18    the mercy of the court.

19          A     I can't help but wonder if that is a result of  
20    what's now been coming out. I can say that at the time I  
21    didn't believe that. As I said, you know, we had hearings  
22    where the children were found, you know, not delinquent. So  
23    I wouldn't say that -- there was nothing in the courtroom  
24    that happened as a result of a hearing that made me feel  
25    like I couldn't lose if I didn't present witnesses or

1 something like that.

2 I could say that largely for the cases that I  
3 handled generally there was an intake process. And many of  
4 the times the children had made admissions in the intake  
5 process. So very frequently I would get a case that would  
6 be -- the child had admitted to the officer with the parents  
7 there. Because officers are not permitted to speak to them  
8 obviously without a parent or guardian. They would go to  
9 the intake.

10 They would have made an admission there.  
11 And when they come to court, if they were faced with the  
12 police officers who had brought the witnesses, if that is  
13 the type of situation they're talking about, then I suppose  
14 I wouldn't be surprised for a lawyer to tell them to make an  
15 admission.

16 But I had had cases, for example, the school fights  
17 that we referred to earlier -- well, I think everybody knows  
18 what a school fight is like. You know, one guy says he hit  
19 me first. One guy says, no, I didn't. And there would be  
20 juveniles on both sides, you know, the witnesses to each  
21 case. And we would put them on and, you know, I had, I'd  
22 say, lost as much as I won.

23 Q And did it surprise you or was it concerning to you  
24 that in cases like that one or more of the juveniles might  
25 wind up in placement?

1           A     Did it surprise me that they would wind up in  
2 placement? Certainly not now having known that if you get  
3 in a fight in school, you're going to placement.

4           Q     All right. And is that something that you would  
5 attribute to the fact that you've never seen what happens in  
6 other jurisdictions? You've never had an opportunity to  
7 speak to prosecutors from other counties? I mean, would it  
8 surprise you to know that nobody gets placed for being in a  
9 mutual fight in Philadelphia?

10          A     I should say yes. And I feel that had I seen all  
11 these other courtrooms, that probably would have been very  
12 alarming to me. I can also say that when I first got to  
13 juvenile court I was surprised, not knowing anything about  
14 the law really, in how many juveniles had been taken away.

15                 But I can also say that when I went to juvenile  
16 court and had seen that -- and I think what I read in the  
17 paper, you know, there were people that testified yesterday  
18 after I had left here that said they don't know why we  
19 didn't see this? Why -- being involved in it why we didn't  
20 see it? And I spent a long time thinking about that, and I  
21 tried to take myself back there. And it had occurred to me  
22 that it wasn't just the school shootings that we were  
23 protecting -- trying to protect people against, the school  
24 violence and things like that.

25                 What we would see very frequently were people

1 coming to the courtroom where Judge Ciavarella was reciting  
2 a letter that he got from another juvenile. The parents and  
3 teachers would come to the courtroom and thank him and say  
4 things like, you know, I was addicted to pain killers, and I  
5 was traveling down the wrong road, and you saved me.

6 So when you see -- I should say when all you see is  
7 the benefits of how the system is working -- you know, we  
8 didn't have the juveniles' parents come to juvenile court  
9 later to say, my child is ruined. The only thing we saw was  
10 the success. So that is the reason I think it didn't alarm  
11 anyone.

12 Q Did you ever see any of those letters?

13 A He would bring them to court. I didn't personally  
14 read them, but he would read them aloud.

15 Q Would he hold that up like he held up that seven  
16 page colloquy?

17 A Yes.

18 Q Okay. But you never saw that either. Would it  
19 surprise you to know that you're the first person who's  
20 mentioned anything that comes near a seven page colloquy?

21 A That would surprise me to learn that I was the only  
22 -- I had seen it very frequently. The juvenile would be  
23 carrying papers that I would think was that colloquy. The  
24 seven page colloquy, I would think everyone had seen it, at  
25 least in adult court. They were piled up on the table.

1           Q     And you indicated that you might be mistaken as to  
2 whether that was a document from adult court or juvenile  
3 court?

4           A     Yes. But the written colloquy, I assumed, was the  
5 same kind of colloquy, yes.

6           MR. MOSEE: Okay. Thank you. I have nothing else.

7           CHAIRMAN CLELAND: Judge Uhler.

8 BY JUDGE UHLER:

9           Q     You mentioned Tuesdays, which I -- have been  
10 described as meat markets and cattle calls, I use that  
11 terminology, all scheduled at 9:00; is that correct?

12          A     Yes. And actually I didn't -- I don't think I used  
13 that terminology. I can better describe the courtroom, if  
14 you'd like.

15          Q     Would you, please?

16          A     Sure. When I would get -- I believe it was held at  
17 8:30. So when I would come to the courtroom there would be  
18 generally no less than five probation officers there. There  
19 would be Judge Ciavarella and his secretary and his tip  
20 staff. There would be usually no less than -- there would  
21 be always a public defender in the room at defense table.

22                   There would be -- obviously it varied depending on  
23 the number of private counsel. I would say anywhere from  
24 three to ten private counsel. And generally there would be  
25 people seated in the gallery. The juveniles would either be

1 held in a separate room or in the jury box of the courtroom.

2 At the bench would be --

3 Q You didn't have any walk-ins?

4 A Oh, yeah. We would have walk-ins also. I'm  
5 talking about the ones that were being detained.

6 Q Okay.

7 A The walk-ins would generally be in the back of the  
8 courtroom in the gallery unless, of course, the courtroom  
9 was closed for some reason. So there would be myself and  
10 usually a defense attorney up at the bench when, of course,  
11 there was an attorney.

12 Q Okay. Now, was Tuesday the day that typically  
13 adjudications and dispositions were undertaken?

14 A I believe so.

15 Q Thursdays, were they review days?

16 A Not solely. I believe they would have different  
17 kinds of hearings on Thursday. So in other words, if  
18 someone had come to court on Tuesday and maybe wasn't ready  
19 for a hearing or for whatever reason needed to come back, I  
20 would think they would come back on a Thursday.

21 Q All right. On a review hearing who would be  
22 present?

23 A Generally the juvenile and a person from whatever  
24 facility that person was being detained at and a probation  
25 officer.

1 Q What -- were these quick proceedings as well?

2 A I suppose quick is a relative term.

3 Q Well, we've heard quick. You were concerned about  
4 fast paced. Do these last 20 minutes, 30 minutes?

5 A No, no. They would last -- they could have lasted  
6 ten minutes. In other words, there may be a long list of  
7 reasons the child should either continue to be detained or  
8 not be detained.

9 Q Was there -- did you get the sense at any time that  
10 there was any questioning of the resource as to whether or  
11 not -- the placement resource as to whether or not there was  
12 a continuing necessity to use that resource if it wasn't  
13 working well for the child? Or was there a complete  
14 reliance upon what the case manager or the person from the  
15 placement -- was there a complete reliance on what they said  
16 as to how the kid was doing or how -- and what the progress  
17 was being made?

18 A Do you mean by the judge?

19 Q Yeah.

20 A Yes. Complete reliance on what they said.

21 Q No questioning as to whether or not any other  
22 alternative should be considered or otherwise?

23 A In -- in the cases where it didn't seem to be  
24 working, I can't say that anyone came forward to say maybe  
25 this is better or that's better. It was the judge who

1       seemed to suggest, all right, this isn't working. Send him  
2       to Glenn Mills.

3               And for repeat offenders I believe it was his  
4       policy that no one went to the same place twice. So if he  
5       had tried Camp Adams and that didn't work, you weren't going  
6       back to Camp Adams.

7               Q     Okay. So if I'm to understand, if the kid was  
8       blowing off the program, not doing well, the judge would say  
9       we'll go someplace else?

10              A     Right, correct.

11              Q     But if the kid was, per reports, doing well, needs  
12       some more time, there wouldn't be much questioning about  
13       that?

14              A     No. I think what would happen is if the kid were  
15       -- if the kid were not doing well, but the facility thought  
16       that he needed to stay, then he would stay.

17              Q     Okay.

18              A     If the kid -- excuse me, the juvenile were blowing  
19       it off, he may stay. There were circumstances, however,  
20       where it was just clearly not a fit. In other words, the  
21       juvenile might have needed some different kind of help that  
22       this facility could not offer. In which case they would go  
23       somewhere else.

24              Q     Thank you. I have nothing further. Oh, fines and  
25       costs. Were you ever in the fines and cost court, fines



1 court?

2 A What I recall -- the only recollection I have of  
3 fines and costs are the juvenile might come back if they  
4 hadn't paid it. So in other words, I think that was usually  
5 handled either for magistrate type fines.

6 Q Right, right.

7 A In other words, retail theft. Had they not paid,  
8 then they would come to Judge Ciavarella.

9 Q Did you ever act as DA in that proceeding?

10 A No.

11 JUDGE UHLER: Okay. Thank you.

12 CHAIRMAN CLELAND: Judge Woodruff.

13 BY JUDGE WOODRUFF:

14 Q Good evening.

15 A Good evening, Judge.

16 Q I have just a couple concerns in regard to your  
17 testimony thus far, and just want to try to clear it up at  
18 least in my mind.

19 A Okay.

20 Q During the two years that you were in juvenile  
21 court, and I believe that's from 2002 to 2004, were you  
22 there later than 2004?

23 A It could have run over into '05, but -- I'm going  
24 to say that I started in 2002, not long after I began in the  
25 office. It could have run over into 2005. I don't recall

1 exactly.

2 Q Okay. And you indicated that you had read the  
3 Juvenile Act?

4 A We get a book that is -- you know, it's a big West  
5 book. I think that that book I got not long after I was in  
6 the office. And I was referred to Title 42, which is the  
7 location of the Juvenile Act. So whatever was in that  
8 section of Title 42 from the beginning where, you know, the  
9 juvenile stuff began to the end is what I reviewed at the  
10 time.

11 Q Okay. And that would have been sometime in 2005?

12 A No, no. That would have been when I first began in  
13 juvenile court.

14 Q Okay. But you're aware the rules weren't enacted  
15 until 2005?

16 A I was under the impression that you were discussing  
17 what was in Title 42.

18 Q I'm only asking you questions in regard to the  
19 Juvenile Act itself.

20 A That's what I'm referring to. The Juvenile Act  
21 that appears in -- it's 42 Pa C.S., whatever it might be,  
22 that refers to juveniles. That section was pointed out to  
23 me by someone in the office and said basically review this.  
24 So that's what I read.

25 Q During the time that you were in juvenile court

1 were most of the juveniles represented by counsel?

2 A Most of them?

3 Q Um-hum.

4 A I wouldn't say most of them, no.

5 Q Okay. Would it surprise you that we have  
6 information that 54 percent of them were not represented by  
7 counsel?

8 A As I said earlier, it seems high to me. But no, I  
9 mean, I can say that I recall a lot of them not being  
10 represented by counsel.

11 Q Okay. I have a question in regard to the seven  
12 page waiver of counsel form that you referred to.

13 A Okay.

14 Q And just to be fair, I just want to indicate that  
15 we've had other Assistant DAs here, several of them in fact,  
16 also the probation officer that actually gave such waiver of  
17 counsel to juveniles on different occasions, both outside  
18 the courtroom as well as intake, and none of them to this  
19 point have ever mentioned anything in regard to a seven page  
20 waiver of counsel.

21 A Okay.

22 Q Can you explain that to me?

23 A Yes. Well, I mean, I can't explain it except to  
24 say that it was my recollection of Judge Ciavarella sitting  
25 on the bench and holding up a document. And he said -- he

1 would say, I'm showing you a seven page colloquy form, or  
2 have you filled out the seven page colloquy form? And have  
3 you -- is this your signature on the last page?

4 Q Okay. What about admissions? Was there admission  
5 written colloquy as well?

6 A I believe -- I believed it was part of the same  
7 document.

8 Q Okay.

9 A Like I said, I didn't review them, so I don't know.

10 Q And, again, no one that has come before this  
11 Interbranch Commission has indicated any such document  
12 exists. Are you aware of that?

13 A I am not aware of that.

14 Q Okay. In regard to the admissions of juveniles,  
15 was this admission colloquy or this seven page document that  
16 you referred to, was it always indicated to be signed by the  
17 juvenile when they admit to the charges?

18 A Whenever it was referred to. In other words, when  
19 the judge -- whenever he would actually refer to it and he  
20 would ask is this your signature, then yes, it was. But --  
21 then yes, it was always signed.

22 Q Okay. When there was an admission by a juvenile  
23 while you were the Assistant DA there in the courtroom did  
24 you provide a statement of the facts that would be proved to  
25 support such admission?

1           A     Never.

2                    JUDGE WOODRUFF:  Never.  Thank you.

3                    CHAIRMAN CLELAND:  Mr. Allen.

4  BY MR. ALLEN:

5           Q     I have just a couple questions.  What kind of  
6  paperwork were you provided prior to the -- prior to the  
7  proceedings?  And did you have files that you kept it in, or  
8  how did you keep them?

9           A     We didn't have files.  We would be faxed a -- the  
10  summary sort of list that I referred to earlier that someone  
11  asked me had there been any recommendations on it.  There  
12  would be a list that would -- on the left-hand side it would  
13  list the juvenile.  On the right-hand side, almost in a  
14  column form, there would be on the left-hand side the name.  
15  On the right-hand side it would be the charges.  I would  
16  also receive the petition and the supporting affidavit.

17          Q     Did you see any police reports or anything like  
18  that that were included in -- in that packet?

19          A     Generally the police report would be the sort of  
20  affidavit would be -- my understanding was it was created by  
21  the police officer.

22          Q     So there was no incident reports, for example, you  
23  know, the incident reports that you get?

24          A     Right.  For example, in adult court when you have  
25  an affidavit of probable cause you may see the police report

1 that's a copy and paste. The report is pasted into the  
2 affidavit. Did I ever see any separate incident reports? I  
3 did not.

4 I should -- I should clarify that. That was not  
5 what was sent to me. I might get a separate report or a lab  
6 report or something the day of the hearing from the  
7 officer's file.

8 Q Were you given any information about how the  
9 informal adjustments worked? For example, cases resulted in  
10 informal adjustments, were you asked for any input regarding  
11 that?

12 A I was never asked for input, no.

13 MR. ALLEN: That's all I have, Mr. Chairman.

14 MR. GIBBONS: Mr. Chairman.

15 BY JUDGE GIBBONS:

16 Q Mr. Sangueldolce, did you have any interaction with  
17 school officials in your capacity as Assistant DA?

18 A The interaction I would have with school officials,  
19 if they called me in my office regarding a case to --  
20 sometimes I would call in advance to give me a heads up that  
21 a major case had been coming to them.

22 There was one case in particular I recall. I  
23 believe a student had been duct taped in a wheelie chair,  
24 one like this I mean, and wheeled down the hall and hit a  
25 threshold and was tipped forward and pretty severely

1 injured.

2           So if there were severe things, things with major  
3 concerns to school officials, they would call me before or  
4 after in my office. Otherwise I would speak to them in the  
5 courtroom or outside the courtroom about the facts of the  
6 case that was going to a hearing.

7           Q     Are you familiar with Judge Ciavarella's zero  
8 tolerance policy?

9           A     Yes, I think so.

10          Q     Were the school officials strongly supportive of  
11 it, mildly supportive of it?

12          A     The ones that I had spoken to I think were strongly  
13 supportive of it. I think -- my understanding of the  
14 situation was that if it were severe enough for a school  
15 official to report it to the police, then yes, I think they  
16 were supportive of zero tolerance to that point.

17          Q     What about you? Were you supportive of it?

18          A     I should say that I was surprised by it. As a  
19 person who came in off the street, not being a lawyer, not  
20 acclimated to anything in juvenile court, I was surprised by  
21 it. And I am not uncomfortable saying that -- I'm sure that  
22 there's a better way to put this, but what exactly would the  
23 judge do if he had a policy that covered sort of in all  
24 circumstances what would happen?

25                 And I know there was a policy in the DA's Office

1 that -- in other words, there was a common misconception  
2 that there was a blanket policy. You always plead to the  
3 top charge. And I think that's a misnomer of the policy.

4 So in a situation where the judge, whose job it is  
5 to evaluate the facts of a case and determine what  
6 punishment should be doled out, if you have a policy that  
7 basically covers that, it sort of takes the responsibility  
8 off the judge's shoulders. So to that extent I did not  
9 support it.

10 MR. GIBBONS: Okay. Thank you, Mr. Chairman.  
11 Thank you.

12 BY MR. LEGG:

13 Q Sir, along that same line, Mr. Killino testified  
14 yesterday that he didn't advocate at the dispositional phase  
15 on behalf of the Commonwealth.

16 A He did not advocate?

17 Q He didn't advocate placement. He didn't advocate  
18 placement. He basically, for lack of a better word, voted  
19 present?

20 A 100 percent true.

21 Q What about you? When you were representative of  
22 the Commonwealth were you advocating a particular  
23 dispositional result, or were you going along with whatever  
24 the judge was essentially saying?

25 A Generally what would happen, once the juveniles



1 were adjudicated delinquent, whether by admission or after a  
2 hearing, there was a file present, whether it was that same  
3 day or whatever day it was rescheduled to. In that file, I  
4 believe, was an evaluation. And based on that evaluation, a  
5 recommendation of some people who were not me, who knew more  
6 about the juvenile.

7 In other words, I knew nothing about the juvenile  
8 except what was told me by the witnesses and what was in the  
9 affidavit. So that recommendation, I believe, was what  
10 Judge Ciavarella was following.

11 Just to say, I know sometimes he did not. I knew  
12 nothing about the juvenile, and thought -- not only did I  
13 not say anything about his -- where he should be placed, if  
14 he should be, I was not qualified to give an opinion on  
15 that. So I don't know what would be best for the juvenile.

16 Q Well, you said you were surprised by some of the  
17 placements as an outsider coming in?

18 A Right. When I first got there I was surprised at  
19 how many were sent away and what they were sent away for.

20 Q Did you ever think of looking at some of these  
21 files at the intakes and saying, does this kid really need  
22 to be placed for a bag of marijuana in school or a fist  
23 fight with another boy? Did you ever try to look a little  
24 deeper to figure out why are we sending this kid away?

25 A I did not. At that time it was a policy that was

1 in place. Those documents were not available to the  
2 District Attorney's Office.

3 Q Did you ever take any of those concerns to your  
4 superiors to say, hey, this seems a little severe? I'm not  
5 feeling comfortable with what's going on in that courtroom,  
6 that this zero tolerance, it's an abdication of judicial  
7 responsibility? Any of those types of concerns, did you  
8 take them to your superiors?

9 A I discussed it with other people in the office, and  
10 I think it was so well accepted and supported by other  
11 people. In other words, when -- when you kind of watch for  
12 so long success stories and see nothing but, I think it was  
13 accepted by everyone.

14 Q It was pretty well ingrained into the entire  
15 system, is that what you're saying, by the time you got  
16 there?

17 A I think by the time I got there really no one knew  
18 any different.

19 CHAIRMAN CLELAND: Thank you, very much for coming  
20 back here this afternoon and accommodating us by this  
21 additional testimony, sir. Thank you.

22 THE WITNESS: Thank you for the opportunity to be  
23 here, sir.

24 CHAIRMAN CLELAND: We are about ready to wrap up  
25 four days of testimony here in Wilkes-Barre, four full and

1 long days. Those of you that haven't sat through all of it  
2 or who may have seen some of it on television, the  
3 transcripts of all our proceedings, as well as some of the  
4 exhibits, are available on the -- on our website,  
5 PACourts.US. That's PACourts.US, and just click on for the  
6 public and get access to that.

7 Time has not permitted us to hear from everyone  
8 that we would like to have heard from in the time that we've  
9 been here, but we did hear from and appreciate the efforts  
10 of county officials, public defenders, the District  
11 Attorney, juvenile probation officers.

12 We heard graphic testimony last night from the  
13 victims and their families, and we have -- are negotiating  
14 arrangements now to accept more of that testimony from other  
15 victims. And we still hope to hear from the crime victims  
16 themselves to the extent that they're willing to tell us  
17 their stories.

18 There are some people that we had hoped to hear  
19 from that we did not. We extended an invitation to the  
20 local bar association. They did not accept our request to  
21 come and testify. But as we move forward in this process we  
22 welcome their incite, suggestions, recommendations, and  
23 other thoughts based on their unique experience and  
24 perspective.

25 We also have extended an invitation to Judge

1 Conahan and Judge Ciavarella to appear and testify, and  
2 through their attorneys both of them declined to appear.

3 And so now we move on to the next phase of our  
4 work. That is to develop recommendations and proposals to  
5 improve the administration of justice. Our meetings will be  
6 in Harrisburg in January and February.

7 In anticipation that we will have a report prepared  
8 for the Governor, legislature, and Supreme Court by the May  
9 31st deadline established by the legislature.

10 This is a daunting task that we now move toward.  
11 We're basically answering the question that Zygmunt Pines,  
12 the court administrator, asked this morning is how do you  
13 deter greed and malice? I have learned some lessons in the  
14 time that I've been here in Wilkes-Barre, and I appreciate  
15 very much what I've been taught.

16 I think one way that we deter greed and malice is  
17 the protection and promotion of a free press. The work that  
18 has been done by the newspapers in this community is  
19 astonishing. We have to acknowledge the occurrence of  
20 citizens who took responsibility to assure honest  
21 government. And finally, we deter greed and malice by  
22 devotion to the rule of law.

23 And I don't mean simply statutes, rules of court,  
24 administrative regulations. It is the devotion of a  
25 community to a sense of fair play and justice and the

1 protection of the weakest among us.

2           So for those lessons and other opportunities that  
3 we've had here in Wilkes-Barre in the last four days we  
4 thank you. We will do our best to try to help something  
5 positive come out of what has been a very tragic and  
6 difficult experience for all of you as well as all of us who  
7 care about the judiciary, the law, and good government.

8           And with that we are adjourned. Thank you.

9           (Whereupon, the hearing was adjourned at 3:39 p.m.)

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1                   I hereby certify that the proceedings and evidence  
2                   are contained fully and accurately in the notes taken by me  
3                   on the hearing of the above cause, and that this is a  
4                   correct transcript of the same.

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9                   \_\_\_\_\_ Date

\_\_\_\_\_ Donna E. Gladwin, RPR

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