

1 INTERBRANCH COMMISSION ON JUVENILE JUSTICE  
PUBLIC HEARING

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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: NOVEMBER 10, 2009, 8:57 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. We are about to  
2 begin now the second day of hearings here in Wilkes-Barre of  
3 the Interbranch Commission on Juvenile Justice. I am John  
4 Cleland. I'm a judge of the Superior Court of Pennsylvania,  
5 and I am chairman of this Commission.

6           The other members of the Commission seated here at  
7 table with us are Tod C. Allen, Director of Court Advocacy  
8 of the Crime Victim Center of Erie County; Valerie Bender,  
9 who was a senior research associate at the National Center  
10 for Juvenile Justice in Pittsburgh; Ken Horoho of  
11 Pittsburgh, attorney and former president of the  
12 Pennsylvania Bar Association; Magisterial District Judge  
13 James A. Gibbons from Lackawanna County; Jason J. Legg, the  
14 District Attorney of Susquehanna County; Robert L.  
15 Listenbee, the Chief of the Juvenile Unit of the Defender  
16 Association of Pennsylvania; George D. Mosee, Jr., Chief of  
17 the Juvenile Division and Deputy District Attorney,  
18 Philadelphia; Judge John C. Uhler, a judge of the Court of  
19 Common Pleas of York County and former President Judge of  
20 that Court; Ronald P. Williams, Regional Director of the  
21 Pennsylvania Department of Agriculture; and Judge Dwayne D.  
22 Woodruff, a juvenile court judge from Allegheny County.

23           We're also joined at the table by Darren Breslin,  
24 attorney and counsel to the Commission.

25           We begin this morning's testimony with Judge David

1 Lupas. And Judge Lupas, if you'd come forward, please, to  
2 be sworn.

3

4 JUDGE DAVID W. LUPAS, called as a witness, being  
5 duly sworn, testified as follows:

6

7 CHAIRMAN CLELAND: Please be seated, sir. Judge  
8 Lupas, the way we've been handling this questioning is to  
9 divide it up among the members of the Commission, and  
10 questioning will begin with Judge Uhler.

11 BY JUDGE UHLER:

12 Q Good morning, Judge Lupas.

13 A Good morning.

14 Q And welcome, and thank you for your voluntary  
15 appearance before the Commission this morning. If I may  
16 begin by asking some background information surrounding your  
17 career. When were you admitted to the bar?

18 A In 1989.

19 Q And after that point when did you first become  
20 involved with the District Attorney's Office?

21 A In 1992 I became a part-time Assistant District  
22 Attorney.

23 Q What was your role as a part-time Assistant  
24 District Attorney?

25 A I was assigned to -- basically as a trial attorney

1 to handle trials in adult criminal court, anything,  
2 misdemeanors, felonies, numerous homicides. I was -- held  
3 that position for eight years.

4 Q Who was the District Attorney at that time?

5 A Peter Paul Olszewski, Jr. was the District Attorney  
6 at that time.

7 Q Now, you indicated that your initial assignment as  
8 a part timer was primarily in the adult court division; is  
9 that correct?

10 A That's correct, yes.

11 Q Was -- did you give any consideration into engaging  
12 in juvenile prosecution?

13 A No. It was never really offered to me in the  
14 position that I held. Most of the part-time Assistant DAs  
15 were strictly handling adult criminal cases, handling trial  
16 lists, and assigned to special cases, homicides and the  
17 like.

18 Q The high profile type cases?

19 A Yes, yes. Usually it was one of the full-time  
20 Assistant DAs who handled juvenile court matters.

21 Q Attitudely as a culture within the office was the  
22 juvenile -- was juvenile prosecution actively sought out by  
23 the prosecutors?

24 A Do you mean did -- did certain Assistant DAs --

25 Q Correct.

1           A     -- seek to hold that position?

2           Q     Was that a high profile position that they would  
3 seek out?

4           A     I don't know. I think it was just, you know, one  
5 or more of the Assistant DAs were assigned those duties by  
6 the District Attorney. I don't know that -- whether or not  
7 it was something that any particular Assistant DA sought out  
8 or not.

9           Q     Were you aware of any training that was offered to  
10 the Assistant DAs at that time while you were Assistant DA  
11 regarding juvenile prosecution?

12          A     When I was -- I could probably speak more to when I  
13 was the DA. I don't know.

14          Q     We'll get to that, but I'm --

15          A     When I was an assistant I -- I know that full-time  
16 Assistant DAs were given opportunities to obtain their CLE  
17 credits. Often times -- and typically it was done through  
18 courses provided by the Pennsylvania District Attorney's  
19 Association or DA's Institute.

20                 So I know that there were trainings, and obviously  
21 a lot of on-the-job training as well. Typically a newly  
22 hired Assistant DA would sort of shadow or tag along with  
23 someone who had more experience to kind of learn the ropes,  
24 so to speak, and in that regard.

25          Q     Was that in juvenile court, or was that in adult

1 court?

2 A I -- since I didn't really handle juvenile court  
3 matters, I really couldn't comment on -- on what District  
4 Attorney Olszewski's policies were at the time.

5 Q When -- can you -- you just answered you couldn't  
6 comment on his policies. Do I gather then that that was not  
7 a major component of his prosecution philosophy, that  
8 juvenile crime was not high on the priority list?

9 A No. I think it was on equal footing with -- with  
10 anything on -- on the list. I know -- I think that David  
11 Zakosky (phonetic), if I recall correctly, was an Assistant  
12 DA who handled a lot of juvenile court matters at that time,  
13 and he was experienced and did it for a number of years.

14 So I guess my role at the time, you know, I was a  
15 part time, and I was handling the cases that were assigned  
16 to me in the adult criminal court. So I wasn't necessarily  
17 observing what Mr. Zakosky or the Assistant DAs were doing  
18 in juvenile court because that wasn't -- wasn't what I was  
19 employed there for at that time.

20 Q If you know, was it known who -- what of the judges  
21 or which of the judges was handling juvenile court on behalf  
22 of Luzerne County at that time when you were employed as an  
23 Assistant DA, if you know?

24 A I'm trying to remember what years. Going back I  
25 know at one time Judge Muroski handled juvenile court. I

1 know at one time, I believe, Judge Augello handled juvenile  
2 court. And then obviously Judge Ciavarella handled juvenile  
3 court.

4 Q Attitudely within the law enforcement community did  
5 you get a sense as to what the impression of -- of the  
6 business of juvenile court was about? Was it -- was it --  
7 was it deemed a kiddie court from a law enforcement  
8 perspective and police officers?

9 A I'm not sure what you mean by kiddie court.

10 Q It was a lessor court?

11 A I don't know if it was lessor court. It may have  
12 -- there may have been some of those attitudes.  
13 Unfortunately I see some of those -- I still see some of  
14 those attitudes today as a judge. There are times -- and,  
15 again, this is going to be something I'd bring up in my  
16 closing remarks, but there are limited resources.

17 There are times where a public defender,  
18 unfortunately they have big case loads, and they're assigned  
19 to adult criminal court matters. And there have been times  
20 where I've been convening juvenile court, and we'd have to  
21 wait because the -- the public defender was handling another  
22 case in another courtroom perhaps.

23 So there -- there, I guess, are times, because of  
24 lack of resources, that it maybe didn't get the priority  
25 maybe that it should have. And I think that's, you know,



1 probably one of my recommendations that I was going to talk  
2 about at the end.

3 Q Okay.

4 A I think that -- that that atmosphere should be  
5 instilled, that it should be on equal footing with -- with  
6 every other court.

7 Q Now, when -- you ran for District Attorney when?

8 A I ran in -- I'm sorry, 1999. And I took office in  
9 the year 2000.

10 Q At that time were you sensitive at all to  
11 indicators of high placement in either private resource  
12 providers or the detention center?

13 A I think under Judge Ciavarella's tenure handling  
14 juvenile court everyone was aware that he sort of leaned  
15 toward placement and did place a lot of juveniles. That  
16 seemed to be his philosophy. And I know you've heard a lot  
17 already about zero tolerance and those types of issues. I  
18 think everyone was aware of that, yes.

19 Q How did you become aware of that?

20 A It was just known, you know. Again, I think it was  
21 reported in the newspapers. It was talked about in the  
22 community. Schools talked -- you know, school officials  
23 talked about it. There, I think, was an article written at  
24 one time, and I think he discussed his philosophy that he,  
25 you know, utilized placement and zero tolerance for offenses

1 that occurred on school property and things of that nature.

2 And, you know, I think he felt that it was his way  
3 of getting attention and what he felt was appropriate  
4 dispositions for those cases.

5 Q Now, when you ran for District Attorney I recognize  
6 you had virtually limited role in -- in fact, no role in the  
7 juvenile court as an ADA. Did you emphasize juvenile  
8 prosecution or juvenile crime in any fashion in your DA  
9 campaign? And if so, how?

10 A I don't know specifically in my -- my political  
11 campaign or my campaigning for the position that juvenile  
12 court was specifically a major topic or a major issue that I  
13 can recall.

14 Q Now, Judge Ciavarella was handling the juvenile  
15 court at that time; was he not?

16 A I believe so, yes.

17 Q Were you -- do you recall being asked anything  
18 surrounding Judge Ciavarella's get tough policy and whether  
19 or not you would be subscribing to that as -- as District  
20 Attorney?

21 A I don't recall whether that specific issue came up  
22 or was mentioned. I know there were times -- and, again,  
23 this probably helps explain some of the zero tolerance type  
24 policy that Judge Ciavarella had with the Columbine  
25 incident.

1           There were a lot of issues with school bullying and  
2 things of that nature. And I think there was sort of this  
3 atmosphere created to -- to get tough and handle those types  
4 of school issues. And I think that's what Judge Ciavarella  
5 was kind of doing. At least that was the perception  
6 obviously that we were getting, I think the community was  
7 getting, at that time.

8           Q     Now, as I understand you do not recall any  
9 particular emphasis in your campaign surrounding juvenile  
10 justice.

11           What was your philosophy with regard to juvenile  
12 justice upon attaining office? Did you have any policy with  
13 regard to how the juvenile justice system should operate  
14 within the context of your office?

15           A     Well, we basically designated a certain Assistant  
16 District Attorney to handle juvenile court matters. There  
17 was generally one main person who had that responsibility,  
18 and usually another sort of back up person who, if he or she  
19 was unavailable, would also handle juvenile court matters.

20           They were expected to sort of specialize, if you  
21 will, in the juvenile area by making sure they're familiar  
22 with the Juvenile Act, the Rules of Juvenile Court  
23 Procedure, attending trainings and seminars involving  
24 juvenile court matters.

25           I know the District Attorney's Association had a --

1 I think it was called a juvenile prosecutors network. I  
2 believe they met on a quarterly basis, if I'm not mistaken.

3 And I think Mr. Delaney may have appeared before  
4 the Commission before. He may have had some involvement  
5 with that. So we would get information from them dealing  
6 with juvenile court matters. That would be assigned to that  
7 juvenile court Assistant DA.

8 Q When you say --

9 A They would be encouraged to try to attend those  
10 meetings when their schedules permitted so that they could  
11 keep abreast of current developments.

12 Q Do you know whether or not they did attend?

13 A I believe they attended some. I don't know how  
14 often due to their -- their scheduling. I couldn't tell you  
15 specifically.

16 Q How many members of your staff did you have, at the  
17 time when you were elected, in your DA's Office who were  
18 attorneys?

19 A Over 20, 25 or so. It varied over the -- you know,  
20 the course of my eight years in the office. The size of the  
21 staff varied, but somewhere around -- I'm saying in the 20s,  
22 25 or so Assistant DAs.

23 Q Who was designated, if you recall, as the primary  
24 juvenile delinquency prosecutor?

25 A I know Tom Calino was for -- for quite a bit of

1 time. I can remember early on Tony Ross, Paula Radick,  
2 might have been Sam Sanguedolce. Those are the major --  
3 Frank McCabe did some work in juvenile court.

4 Q You've enumerated a number of ADAs who were  
5 involved. Did you have a rotation schedule?

6 A No. There was -- there was basically the one  
7 designated person, but I'm going over an eight year time  
8 span.

9 Q Okay.

10 A And we have sometimes turn over in the DA's Office.  
11 Oftentimes assistants work for a few years, and then they  
12 leave the office, and I guess for economic reasons go work  
13 in the private sector where the salaries are -- seem to be  
14 much higher and better. So, you know, sometimes if one  
15 left, then someone else would be designated to assume those  
16 duties.

17 Q So it would be by attrition that you'd have a  
18 change in the assignment as opposed to a rotation?

19 A Correct.

20 Q Is that what you're saying?

21 A Yes, yeah.

22 Q And that attrition was dependent upon how long that  
23 person wished to remain in the juvenile unit, or did they  
24 move on to the adult sector within the office?

25 A They remained -- usually what happened, if they

1 left the office all together, and I can't recall if there  
2 were times where maybe we shifted maybe -- maybe shifted  
3 duties where someone maybe just switched and did adult court  
4 matters and someone else filled the spot in juvenile court.

5 Q Who supervised the prosecutors in the -- who were  
6 involved with the juvenile unit?

7 A The supervisors would have been myself and the  
8 First Assistant District Attorney.

9 Q Okay.

10 A They were the main soup -- we were the main  
11 supervisors in the office. There were some Senior Assistant  
12 DAs who did some supervisory roles, such as, you know, doing  
13 some of our daily scheduling for court and things of that  
14 nature.

15 Q Were the prosecutors in the juvenile unit deemed  
16 junior deputies or otherwise were they of lessor status than  
17 your more senior that you've just referred who would review?

18 A I don't think so, no. I think they were -- they  
19 were equal. There were more senior people. Sometimes the  
20 way our office was some of the more experienced senior  
21 people happened to be the part time folks who -- who were  
22 handling some of the more serious felonies and homicides.

23 Again, I attribute that a lot to financial reasons.  
24 Someone with a lot of experience who was making more money  
25 in a private practice would work in the DA's Office on a

1 part-time basis, but they had a lot of experience and skills  
2 that would enable them to handle homicides and some more  
3 serious cases.

4 But as far as the regular full-time staff, I would  
5 think that those in juvenile court were on -- on a bit of an  
6 equal footing with the other Assistant DAs who were  
7 handling, you know, the driving under the influence cases,  
8 the other trial lists, and the like.

9 Q The -- the supervision that you've referenced by  
10 yourself as well as the First Assistant -- and who was that  
11 First Assistant by the way?

12 A For, I believe, my first term in office it was  
13 Joseph Carmody, and then it was Jackie Musto Carroll.

14 Q Who is, I gather, the current District Attorney?

15 A She is the current District Attorney, correct.

16 Q What was the level of engagement that you had with  
17 the Juvenile Prosecution Unit in a supervision role?

18 A Basically similar to -- to the rest of the staff.  
19 You know, they were made known what was expected of them.  
20 You know, we didn't appear in juvenile court. I can say I  
21 can't recall that I had ever.

22 Again, as an Assistant DA those weren't my  
23 assignments. I didn't appear personally in juvenile court  
24 in front of Judge Ciavarella. Those attorneys would be  
25 consulted with on a periodic basis. How are things going?

1 Any issues, any concerns, any problems in juvenile court?

2 We would have periodic staff meetings with the  
3 entire staff of Assistant District Attorneys. Again, ask  
4 whether there are any issues or any problems or any concerns  
5 going on in juvenile court. And, you know, we really -- I  
6 didn't get any feedback that there were concerns or  
7 problems, just everything was going well.

8 Again, it was known that there were a lot of  
9 placements. That was made known. But, you know, the other  
10 concerns that I know have been raised about waiver of  
11 counsel and things such as that were never brought to my  
12 attention by any of the assistants.

13 Never had any of them come to me and say, we think  
14 the judge is engaged in criminal activity, or we think  
15 there's something going wrong here. None of that ever  
16 occurred. It was always advised that, you know, things are  
17 going well. We're handling the case load.

18 And there was no indication of any -- any problem  
19 related to me from any of the assistants who were appearing  
20 in juvenile court. There would be times perhaps there was a  
21 -- you know, maybe a particular case that they wanted to  
22 discuss or consult with myself or the first assistant about.

23 Sometimes maybe there was a serious sexual assault  
24 involving a young child, and they may have asked, can we  
25 assign one of the other ADAs in the office? You know, we



1 had ADAs who had some experience and specialized in handling  
2 serious sex crimes involving young children and the like.

3           So they would have perhaps asked that we ask  
4 another Assistant DA to handle that type of case, and we  
5 would. But that was basically it.

6           Q     What were the expectations that you sought from  
7 your ADAs who were entering juvenile court? You indicated  
8 that you -- they did know what was expected of them?

9           A     Well, they were given their case load. The cases  
10 were assigned, their list of cases for a scheduled juvenile  
11 court date. They were expected to review the cases, be  
12 prepared, discuss and review them with police officers,  
13 victims, just like with any other case, and to be prepared  
14 to present those cases in juvenile court.

15          Q     What involvement, if you know, did the DA's Office  
16 have in the -- in the -- in the processing of the cases  
17 coming before the juvenile court?

18          A     Most of the processing in the juvenile system is  
19 set up that way, and I think -- I know even Mr. Delaney or  
20 someone who appeared before you before even noted the fact  
21 that I think under the rules or under the Act District  
22 Attorney's aren't even required to appear in juvenile court.

23                 But the system itself was built around a strong,  
24 and at least in Luzerne County, emphasis by the court and by  
25 the Juvenile Probation Department. They would schedule the

1 cases, and we would be notified of, you know, the list of  
2 cases and when they were scheduled. And then we would  
3 appear for those hearings.

4 So most of the processing and scheduling was done  
5 by -- through the court and the Juvenile Probation  
6 Department.

7 Q Was the DA's Office involved in any fashion with  
8 regard to the -- the approval or preparation of allegations?

9 A We would be consulted perhaps by the police in --  
10 in whether they wanted to file a particular charge at times,  
11 if they wanted to review the facts of the case with an  
12 Assistant DA to try to ascertain whether -- you know, is it  
13 a simple assault or an aggravated assault, or what type of  
14 decisions they would make in filing their written  
15 allegations. That would occur at times.

16 But most of the time I think the allegations were  
17 filed by the police or the Probation Department. And then  
18 when the matter was scheduled, the District Attorney's  
19 Office would -- would be present in court.

20 Q It's been indicated by other witnesses that the  
21 allegations that resulted in detention were at the call of  
22 the -- of the police officers as opposed to the Probation  
23 Department. The deference was given to the police officers  
24 discretion. Were you involved at any point as a District  
25 Attorney's Office with the detention decisions?

1           A     Not really, no.  That was handled typically through  
2     the Probation Department.  They would -- they would -- as  
3     far as I know, I don't know how -- whether they deferred to  
4     the police or not.  But, you know, there were -- I don't  
5     recall many instances where the DA was involved in that  
6     decision making process.

7           Q     Were you aware of the petition process, the -- the  
8     charging document, if you will, that's involved with the  
9     individual juvenile case?  Who prepared that?

10          A     It's my understanding --

11          Q     The petition?

12          A     It was prepared by the police departments and in  
13     consultation with the Probation Department.

14          Q     That's distinct from the allegation?

15          A     The allegation -- there were issues with the  
16     petition.  I've come to learn since -- the JCJC came in and  
17     made some recommendations because it was -- there were some  
18     issues with the Probation Department should be signing off  
19     on the actual petitions.  And I think there was an issue and  
20     a concern as to whether or not that was being done.

21          Q     And that was -- was that --

22          A     I've learned about that since I became a judge.  I  
23     wasn't involved in reviewing or processing any of those  
24     documents while District Attorney.

25          Q     You're referencing Keith Snyder's letter, I think,

1 of July or August of this year?

2 A Correct, correct, yes.

3 Q And what -- indeed were the petitions being  
4 prepared by the police as opposed to the Probation  
5 Department?

6 A I think they were to my knowledge back at that  
7 time, yes.

8 Q And -- and has that been corrected?

9 A Yes, it has.

10 BY MR. LEGG:

11 Q Judge Lupas, thank you for being here.

12 A Thank you.

13 Q We're kind of dividing the questioning up, so I'm  
14 going to at this point ask you a series of questions as  
15 well.

16 A Sure.

17 Q I'm curious about the way that your office, when  
18 you were District Attorney, handled the juvenile matters.  
19 In particular, last night Sandra Brulo testified that there  
20 was a policy and, in fact, it was in the policy manual, that  
21 detentions were determined based on the good judgement of  
22 the police officer.

23 And as you're aware, even if there's a detention,  
24 there's always right to a 72 hour hearing so that a judge  
25 can review that particular detention. Did your office have

1 a particular policy with respect to those 72 hour hearings?

2 Was there a deference given to what the Juvenile  
3 Probation Department was recommending, or did you -- did  
4 your office take an active role in terms of if the police  
5 officer determined detention was appropriate, that was the  
6 way that we followed? I mean, how was that occurring? Do  
7 you know?

8 A I wasn't there. I can't specifically say what --  
9 you know, again, it might be beneficial, I would think, for  
10 the Commission to speak to some of the Assistant DAs who  
11 were actually in that court who can give you some better  
12 firsthand knowledge of what was occurring in the courtroom.

13 But I think they were to look at each situation and  
14 take a position, whether they felt further detention was  
15 warranted or not, gathering information, I guess, from the  
16 police department and whatever background information they  
17 could get regarding the particular juvenile and what  
18 information perhaps the Juvenile Probation Department would  
19 add on the issue, whether they had some background  
20 information, whether this person had appeared and had a  
21 history with the Juvenile Probation Department, things of  
22 that nature.

23 Q So you agree with me that it should have been more  
24 individualized based upon the individual needs of that  
25 child?

1 A Certainly.

2 Q And --

3 A Yes.

4 Q You don't know whether or not your assistants were  
5 doing that?

6 A I can't say specifically, no.

7 Q When you became District Attorney did you establish  
8 any policies regarding informal adjustments, consent  
9 decrees, diversionary programs for juveniles, things of that  
10 nature?

11 A No. Informal adjustments were typically handled by  
12 the intake people in the Juvenile Probation Department, what  
13 they would recommend or not. Consent decrees, typically  
14 certain policies that we didn't recommend them necessarily  
15 for drug offenses or serious felonies or things of that  
16 nature.

17 Q When you say drug offenses, are you speaking about  
18 felony drug offenses or possession offenses?

19 A Typically felonies. There may have also been  
20 possession. I know in adult court we have a policy not to  
21 allow ARD for those types of offenses, and I think we  
22 typically took a position with the same type of position  
23 with consent decree in juvenile court.

24 Q So your consent decree mirrored your ARD policy  
25 more or less?

1           A     Not totally, but -- but in that regard they did.

2           Q     So your assistants would have had some type of --  
3 wouldn't just be based upon which assistant looked at the  
4 file? It would be based upon some consistent policy in  
5 terms of what the District Attorney's Office did with  
6 respect to consent decrees?

7           A     Yes.

8           Q     Last night Sandra Brulo testified that the District  
9 Attorney's Office's decision on consent decree was generally  
10 made at the time of the hearing itself. Would you believe  
11 that that would be accurate?

12          A     Well, probably. Because at the time of the  
13 adjudication hearing perhaps that would be negotiated, you  
14 know, before court commenced with the Assistant DA. That's  
15 when they would often times review and talk about some of  
16 the cases with defense counsel.

17          Q     Do you know in your county whether the Assistant  
18 District Attorney who was handling juvenile matters was  
19 having any interaction with the Juvenile Probation  
20 Department prior to the adjudication hearings?

21          A     Well, I mean, they had -- I'm not sure specifically  
22 in what regard they would have -- they had an ongoing  
23 relationship. Obviously they worked hand in hand with the  
24 Juvenile Probation Department.

25          Q     Well, your ADAs really weren't making charging

1 decisions in the vast majority of cases, right?

2 A The charging decision, no.

3 Q And so they wouldn't be involved with the police  
4 officer in terms of what was charged? They weren't involved  
5 in the intake process?

6 A No.

7 Q Is that fair? Okay. And when would be the first  
8 point that a prosecutor would become involved in this  
9 particular procedure, at the hearing itself, or the file  
10 would have been provided to the prosecutor weeks in advance?  
11 Do you have any idea how that was done?

12 A They would get some paperwork in their list of  
13 cases in advance of the particular scheduled list or date.  
14 And, again, would prepare the cases as I mentioned and were  
15 expected to prepare the cases in consultation with police,  
16 victims, witnesses.

17 And perhaps they might, I don't know, get some  
18 information from the Probation Department that might, you  
19 know, lead them to know or ascertain if the juvenile perhaps  
20 had a prior consent decree. Then they wouldn't be eligible  
21 for a consent decree this time, things of that nature.

22 Q How often was juvenile court held in Luzerne County  
23 when you were District Attorney?

24 A Once a -- I believe once a week typically, and then  
25 I think some other days as needed. But I believe there was



1 generally once a week, and then there would be the 72 hour  
2 detention hearings would be scheduled as they came up.

3 Q As they were needed?

4 A Yes.

5 Q So how was this protocol for receiving the files?  
6 Would it be on a weekly basis they would get the new files?

7 A I don't know specifically whether they got them a  
8 week in advance or two weeks in advance. I just know that  
9 Probation Department would send to our office a list and  
10 copies of the written allegations, the paperwork, and our  
11 Assistant DA would have them in preparation for the day they  
12 were to appear and handle those cases.

13 Q While you were District Attorney approximately how  
14 many juvenile cases was your office handling a year?

15 A I'm not -- honestly not good on numbers or  
16 statistics. Several hundred I -- I'd estimate. I don't  
17 know if it was 500 or so per year. I'm -- I don't -- don't  
18 hold me to it.

19 Q Okay. Because Judge Grim had indicated that he's  
20 expunging, I guess, close to 6,000 cases over a four year  
21 span. So I'm extrapolating that that would be --

22 A Maybe 1,000 then. That's maybe more accurate,  
23 yeah. That's probably accurate.

24 Q Was there ever any concern about the number of  
25 cases in terms of how many prosecutors were assigned to

1 handle those cases?

2 A No, no. No one ever, you know, raised it with me.  
3 No one ever raised a concern that they were overburdened or  
4 overworked. And as I said, there were times that, other  
5 than the chief designated person, other assistants would  
6 help out with serious, you know, arsons or serious child sex  
7 assault cases. Often times someone else in the office would  
8 handle those particular cases.

9 Q You indicated that your first assistant was also  
10 assigned to supervise the juvenile division?

11 A Correct. Both of us had an open door policy for  
12 the assistants to come to us with any issues or concerns.

13 Q Was it -- I guess would it be fair to say it was  
14 more reactive supervision as opposed to proactive? In other  
15 words, they come to you with questions if they had them?  
16 And if there were no question raised, there was an  
17 assumption that things were going well?

18 A Well, no. We would raise issues with them at  
19 times, you know, when I would see those assistants. Or  
20 they'd come back from juvenile court on a particular day, I  
21 would inquire, did everything go okay? Are there any  
22 problems? How did it go? At staff meetings we would ask  
23 them, how did it go? You know, just like I would consult  
24 with my appellate attorneys. How's the appellate division  
25 doing? Any concerns or issues or things of that nature? So

1 we would -- we would inquire ourselves.

2 Q And basically you're relying upon them to provide  
3 you reliable information or to raise the issues that needed  
4 to be addressed?

5 A Certainly, certainly. Because, again, as I said,  
6 we weren't the ones in the courtroom. They were. And if  
7 anything was amiss, I would expect that they would let us  
8 know.

9 Q I take it that your juvenile prosecutor would have  
10 had full discretion to negotiate any -- any resolution of  
11 any of the cases?

12 A No. I mean, if they were going to drop serious  
13 felonies, they would consult with myself or the first  
14 assistant.

15 Q But the vast majority of cases I take it they would  
16 have some type of independence?

17 A For the most part, yeah, they would.

18 Q Did you and your first assistant ever discuss the  
19 juvenile division in terms of did she ever or he ever raise  
20 any issues with you that were brought to them by their ADAs?

21 A No. Just the types of things I've already brought  
22 up, but nothing that -- that she brought to me saying that  
23 an Assistant DA raised a particular concern or suspected  
24 something wrong was happening, no.

25 Q You did reference that there was a understanding

1 that there was a high placement rate?

2 A Yes.

3 Q What was that understanding?

4 A Basically that Judge Ciavarella had a philosophy  
5 that he seemed to lean toward placement a lot. And, again,  
6 zero tolerance issues with -- in the schools. You know, it  
7 was written about. I think one time he was touting that he  
8 felt placement worked well, and he used to point to low  
9 recidivism rates and statistics to back that up.

10 School officials, I know, were aware of that. I  
11 think a lot of people in the community and the media were  
12 aware of that. They wrote about it. I can recall when a  
13 lot of these -- this issue broke even -- and I don't have a  
14 copy of it. I was trying to find it.

15 But I recall even one of our community leaders, the  
16 president of our local branch of our NAACP commented on how  
17 he was well aware that there were a lot of placements and a  
18 lot of kids were being placed, and that he considered it  
19 Judge Ciavarella's tough love I think were the words he used  
20 that -- that -- but he had no indication or no suspicion  
21 that there was, you know, anything else going on as we all  
22 know is now being alleged.

23 So, you know, it was that type of atmosphere that a  
24 lot of people had, or understanding that a lot of people  
25 had. But to draw from that that there was, you know, monies

1 being exchanged or anything else, there was no -- no one was  
2 aware of any of that.

3 Q That was Judge Ciavarella's policy. What about  
4 your office? Was it your policy as well that zero tolerance  
5 was an appropriate -- an appropriate mechanism for the  
6 juvenile court, and that your prosecutors should pursue that  
7 vigorously in terms of zero tolerance and high placements?

8 A They weren't specifically told that, but the  
9 understanding that I got from them was that, you know, that  
10 disposition was basically at Judge Ciavarella's discretion,  
11 and he handed out whatever disposition he deemed  
12 appropriate, you know.

13 There were times -- not as often, but there were  
14 times where perhaps an Assistant DA was disappointed with  
15 the outcome of a case because he went the other way and  
16 maybe dismissed a petition or threw something out. So --  
17 but it was -- it was basically he -- he ran the courtroom.  
18 That was -- that was the way it was.

19 Q And I guess that's what I'm trying to get at.  
20 Within your office was it a sense of pride that you had such  
21 a high success rate in terms of placements for juveniles?  
22 Sometimes prosecutor's offices take pride in the amount of  
23 -- their incarceration rates and things of that nature.

24 Was that similar -- a similar feeling felt in your  
25 office with respect to the juvenile placements?

1           A     No.  It wasn't by me, no.

2           Q     In 2005 the juvenile rules -- or actually juveniles  
3 rules were enacted.  You're familiar with that?

4           A     Yes.

5           Q     In fact, there's a juvenile rule that allows for  
6 the District Attorney to elect to require an assistant or  
7 the District Attorney to sign the juvenile petition prior to  
8 filing?

9           A     Correct.

10          Q     And when that rule came into place in 2005 did your  
11 office determine at that point it was appropriate to have  
12 the District Attorney file or sign the juvenile petitions?

13          A     No, no.  There was, again, at that time no  
14 indication presented to us that there was anything wrong  
15 with the system as it was going.  And it had traditionally  
16 been that those filings were done by the Probation  
17 Department.  So we maintained it that way.

18          Q     And in fairness to your office, I mean, it's pretty  
19 common with criminal complaints for the officers just to  
20 file the criminal complaints in the adult cases.  So in a  
21 way they were doing the same thing in the juvenile cases  
22 that they were doing in the adult cases?  Would that be a  
23 fair statement?

24          A     That's fair to say.  And they knew that -- the  
25 police chief's meetings and the like they knew that if they

1 had a rape of a young child, they were to consult with the  
2 DA's Office before filing those types of offenses.

3 We had a policy in adult court that certain  
4 offenses couldn't be filed, as you're well aware, without  
5 the approval of the District Attorney, such as felony  
6 robberies, rapes, homicides, things of that nature.

7 So if they were going to file that type of  
8 allegation in juvenile court, they would need to consult  
9 with the Assistant DA for approval.

10 Q And did you have an Assistant DA who would have  
11 been on call for juvenile matters of that nature to be able  
12 to discuss them with the police and make those decisions?

13 A They would either discuss it with the so-called  
14 juvenile ADA, or the on call. Each week we would have, on a  
15 rotating basis, an Assistant DA on call, 24 on call duty.

16 So if something happened after business hours, they  
17 would typically be calling that Assistant DA, again, to  
18 review the circumstances of a case to -- to make sure they  
19 were filing the appropriate charges.

20 Q Did you ever become aware or did you ever hear that  
21 any of the juvenile proceedings were occurring without an  
22 assistant present?

23 A Without an Assistant DA present? No, that was  
24 never brought to my attention.

25 Q Were any of your -- did any of your assistants

1 indicate to you that the juvenile probation officers seemed  
2 to be running the adjudication hearings or the proceedings  
3 themselves?

4 A Not that they were running the proceedings  
5 themselves, but it was -- again, they were making the  
6 recommendations. I think Ms. Brulo was -- had a title of --  
7 I'm sorry, Deputy Director of Forensic Programs, and she  
8 would be providing dispositional recommendations to the  
9 court.

10 And I was aware, again, that -- it was the word  
11 strong. It was strongly -- a system strongly run by the  
12 court, by the court higher ups. And that, again, I think  
13 the judge was going to do what the judge wanted to do in  
14 many cases. So I don't know how the Assistant DA's voice  
15 was or wasn't being heard in those proceedings.

16 Q What about your colleagues in the Public Defender's  
17 Office? Did any of them ever approach you as District  
18 Attorney to say, hey, something strange is going on in  
19 juvenile court, we're worried about the rates of these kids,  
20 and maybe together collectively we should sit down with  
21 Judge Ciavarella and have a discussion about what's going  
22 on?

23 A No, no, I don't recall anyone ever coming to me.  
24 My understanding of the Public Defender's Office was that  
25 they had somewhat of a designated public defender who was



1 assigned to juvenile court. And it wasn't, again, until  
2 after all this surfaced and came out was when I was first  
3 aware of the issues with the waiver of counsel.

4 It was always my understanding and belief that  
5 there was an assistant public defender assigned to juvenile  
6 delinquency court and present at all proceedings that I  
7 assumed would have been representing the vast majority of  
8 these juveniles. And I was quite surprised when it surfaced  
9 and came out that so many were waiving counsel.

10 Q And your assistants never brought that to your  
11 attention about this waiver issue?

12 A No, no.

13 Q What about members of the defense bar? We've had  
14 some testimony that -- I mean, it's hearsay, it's through  
15 third persons, but testimony that parents would go to  
16 private attorneys, and the attorneys would indicate to them,  
17 don't bother because I'm not going to be able to say  
18 anything in Judge Ciavarella's courtroom. Was anyone from  
19 the defense bar coming to you as the chief law enforcement  
20 officer and saying there's a problem here in Ciavarella's  
21 courtroom, and, you know, maybe it's something we need to  
22 address?

23 A No.

24 Q No complaints at all?

25 A No.

1 Q No complaints from the private bar about what your  
2 assistants were doing in the courtroom?

3 A No, none that I can recall. I mean, I always got  
4 complaints sometimes from defense attorneys that they didn't  
5 -- you know, they butted heads with Assistant DAs, and  
6 sometimes things would happen. But nothing along the lines  
7 of --

8 Q Nothing about constitutional rights being violated?

9 A No, no.

10 Q Nothing of that nature?

11 A No.

12 Q If you had received complaints like that, you would  
13 have acted?

14 A Certainly.

15 Q Did you -- were you aware of the high cost to  
16 Luzerne County in terms of what the county was spending on  
17 placements?

18 A Again, not at that time. I have -- since I am. As  
19 District Attorney I wasn't privy to, you know, those types  
20 of budgetary matters. That was out of the realm of my role  
21 as District Attorney.

22 Q In my county, you know, our office often times  
23 butts heads in terms of with juvenile probation or otherwise  
24 because of the limited amount of dollars. That wasn't  
25 happening at all in terms of we don't have the money to do

1 this?

2 A No.

3 Q No one from the Commissioner's office was coming to  
4 inquire as to why we were spending so much money in the  
5 juvenile system?

6 A No, no.

7 Q And that wasn't --

8 A As DA I was always asking the Commissioners for  
9 more money for the DA's Office, which sometimes fell on deaf  
10 ears. But those were -- yeah, but nothing that revolved  
11 around juvenile.

12 Q In fairness to your office, the budgeting for the  
13 detentions and things like that wouldn't be part of your  
14 budget itself?

15 A No, it was not.

16 BY JUDGE UHLER:

17 Q Let me go back to 2005 when the new rules of  
18 juvenile court regarding delinquency matters took affect.  
19 Do you recall any different manner of treatment by your  
20 offices with juvenile prosecutions as a result of those new  
21 rules? Were you made aware of them in the first instance?

22 A Yeah, I was made aware of them. And, again, the  
23 Assistant DA who was, I believe, Mr. Calino at the time who  
24 was chiefly handling juvenile court was instructed to make  
25 yourself familiar and study and abide by all the Rules of

1 Juvenile Court Procedure.

2 Q Were you aware of any joint effort of the -- of the  
3 prosecution, the defense, the court to -- to develop  
4 internal policies addressing those new rules?

5 A Not -- not in particular. Just the issue that --  
6 that was previously asked about whether or not we would take  
7 over the charging function that was discussed. And I  
8 discussed that with the Assistant DA handling juvenile court  
9 and made a decision to continue allowing the juvenile  
10 probation to do it as they had been.

11 Q Now, the new rules explicitly dealt with in court  
12 issues of waiver of counsel and the colloquy surrounding  
13 waiver of a right to trial.

14 Did any of your assistants discuss those issues  
15 with you and the mandates of those rules?

16 A I really don't recall them ever -- ever raising  
17 those particular issues or saying that there was a specific  
18 or particular issue along those lines, no.

19 Q Now, with regard to the waiver of right to counsel,  
20 you have a form, I believe, that's to your far right, which  
21 I asked the Commission to mark as the appropriate exhibit  
22 number. I'm not up to speed with what number we're  
23 currently on. Which I believe is identified as a waiver of  
24 right to counsel. Do you recognize that form at all?

25 A No, I do not.

1 Q Do you know whether or not that was the form  
2 utilized by the juvenile court up until at least you became  
3 involved -- actively involved with the juvenile court?

4 A I'm not sure. Once I became involved with the  
5 juvenile court actually I was made aware of a different  
6 form.

7 Q Okay.

8 A I don't know if you have that. But I --

9 Q You've not seen this form before?

10 A No, no.

11 Q If you have the additional form, we'd love to have  
12 -- have it be made part of the record.

13 A Sure. Let me -- here's a form that had been  
14 provided to me after I took over the juvenile court as  
15 judge.

16 Q Very well. Do you know who provided you that form?

17 A Not specifically. I believe it was probably  
18 someone from the Juvenile Probation Department. It may have  
19 been Mr. Johnson, John Johnson, or someone who had shown me  
20 that.

21 Q Very well. You referenced engagements with the  
22 police chief's quarterly, or somewhat regular meetings with  
23 them. Did the District Attorney's Office take part in those  
24 meetings?

25 A We did periodically. If there was issues or things

1 that needed to be done, we would have a meeting with police  
2 chiefs.

3 Q Were there ever any concerns articulated during  
4 those meetings while you were District Attorney surrounding  
5 the juvenile court or juvenile court processing by the  
6 police chiefs?

7 A I can't think of anything off the top of my head.  
8 I know sometimes I think there might have been issues with  
9 transportation to detention. Sometimes I know there were  
10 issues that sometimes the police would make the transports.  
11 Sometimes someone from the Juvenile Probation Department  
12 would.

13 Just things of that, logistical things that maybe  
14 came up where there were issues. But nothing -- nothing  
15 that comes to mind as far as any major complaints or issues.

16 Q As the chief prosecutor in Luzerne County did you  
17 have any exasperation or frustration with the less zealous  
18 investigation by law enforcement -- the law enforcement  
19 community with regard to juvenile court matters?

20 A No. It wasn't really indicated to me that they  
21 were less zealous or -- with regard to juvenile matters.

22 Q Are you suggest -- you're saying that at least in  
23 Luzerne County there's not a -- a kiddie court perception  
24 within the law enforcement community surrounding juvenile  
25 court matters?

1           A     I'm sure there may be some officers that --  
2 probably a lot of officers who -- who uphold that feeling  
3 unfortunately.

4           Q     And that has a negative impact on the processing of  
5 cases in juvenile court; does it not?

6           A     Sure, certainly, certainly.

7           Q     Let me -- you referenced engagement with victims.  
8 Do you have a victim's assistant or advocate within the --  
9 did you have within the confines of the District Attorney's  
10 Office while in office?

11          A     Yeah, we would -- I believe we had two. I believe  
12 they were grant funded under the VOJO, Victim of Juvenile  
13 Offender Grants. We had two victim/witness coordinators who  
14 were assigned to juvenile court matters.

15          Q     Now, do you have any sense as to the interplay of  
16 those victims advocates or assistants with the juvenile  
17 prosecution unit and how did that work, if you know?

18          A     Well, they would be expected to work hand in hand  
19 with the Assistant District Attorney to ensure that victims  
20 were notified of court dates and to be available, to be  
21 prepared with Victim Impact Statements for the court,  
22 restitution information that the court would need.

23                         So they would work hand in hand with the juvenile  
24 probation officials and the Assistant District Attorney.

25          Q     You've assumed the juvenile court role. Let me --

1 I'm sorry. Let me -- before I start with that line of  
2 question, did -- you were in office as DA when the detention  
3 center was closed; is that correct?

4 A Correct.

5 Q Did you have any position on the closure of the  
6 detention center from a prosecutorial standpoint?

7 A No, I had no -- I had no involvement whatsoever  
8 with that.

9 Q I gather then you did not get involved with any of  
10 the debate over that closure?

11 A No, I did not.

12 Q When the Columbine occurred, which was also during  
13 your tenure as DA, did you make any public statement with  
14 regard to the zero tolerance policy or anything other --  
15 otherwise suggesting an embracing of that which is a policy  
16 of detention as opposed to treating the cases individually?

17 A I don't recall any -- any such statement other than  
18 I'm sure I would have made statements, as everyone was,  
19 that, you know, issues of school violence, you know, needed  
20 to be taken seriously to avoid, you know, a repeat of such a  
21 tragedy.

22 And as I said, I know there were some instances of  
23 school bullying that became a -- an important issue in our  
24 community. And, again, that -- those needed to be taken  
25 seriously because there were, again, Columbine fatalities



1 and serious repercussions.

2 So it was -- there was some obviously dialog with  
3 law enforcement, schools, everyone who was concerned about  
4 those issues. I think that was probably a nationwide  
5 sentiment at the time.

6 Q As a precursor to your becoming an ADA and then  
7 District Attorney had you ever appeared in juvenile court  
8 before?

9 A No.

10 Q You've now assumed the role as -- as juvenile court  
11 judge. When was the first time that you recall you fully  
12 focused on the Juvenile Act and all of its mandates? Was it  
13 at that time, or was it earlier?

14 A I had some familiarity with it obviously earlier as  
15 District Attorney. I was familiar with it and reviewing the  
16 Rules of Juvenile Court Procedure.

17 Obviously when I received the assignment in May of  
18 -- the end of May, 2008 to become the juvenile court judge I  
19 -- I buckled down and really learned a lot more about it so  
20 I could be -- be up to speed on what I needed to do as the  
21 judge handling those matters.

22 Q As a member of the court are you aware of any of  
23 your predecessor colleagues overseeing the juvenile court  
24 taking part in any juvenile justice symposiums, training, or  
25 otherwise?

1           A     Any of the prior judges?

2           Q     Any of the prior judges?

3           A     Not that I'm aware of.  They may have.  I don't  
4 know.  I don't know one way or the other whether they did.  
5 I've tried to since I've become the judge.

6           Q     What -- what -- when you took over the role as  
7 juvenile court judge what did you find?  How -- what was the  
8 practice in keeping with the rules of court?  Was the  
9 practice in keeping with the Juvenile Act?  And if not, what  
10 did you do to correct it?

11          A     Well, there were a lot of issues.  The waiver of  
12 counsel issue.  Again, knowing that the rules require an on  
13 the record colloquy, I wouldn't accept the written colloquy  
14 forms that I think I have provided you.  And basically took  
15 steps to make sure counsel was provided for basically all  
16 juveniles as far as -- I can't remember the last time any  
17 had waived counsel since I've been handling juvenile court.  
18 If they don't have counsel, then I appoint counsel for them,  
19 typically the Public Defender's Office.  So that's been  
20 done.

21                   One of the first things I did when I took over the  
22 juvenile court was I had a meeting, assembled all of the  
23 members of the Juvenile Probation Department to basically --  
24 and, again, this is in hindsight at this point knowing that  
25 there were all of these issues with waivers of counsel and

1 other matters, to basically let them know that the way I was  
2 going to run things was, you know, by the book and you  
3 needed to make sure the rules and the Juvenile Act were  
4 followed.

5 I had learned -- you know, basically in looking at  
6 it I had left them know that I'm not -- as the judge didn't  
7 have any zero tolerance policies, that each case had to be  
8 looked upon based upon the needs of that particular case,  
9 the needs of that particular juvenile.

10 I came to learn that perhaps in the past juvenile  
11 court proceedings ran rather rapidly, and that they better  
12 get used to the fact that the way I'm going to do things,  
13 your day in court might be a little bit longer, and you  
14 better get used to that as well.

15 Q Excuse me. What do you mean ran rather rapidly?

16 A Well, obviously if colloquies weren't being given  
17 or things of that nature, then it's my understanding that  
18 the court day perhaps was shorter. I don't know  
19 specifically, but I know the first day I handled court we  
20 went well into the late afternoon, and perhaps some people  
21 didn't like that because it made their day go a bit longer.  
22 But so be it.

23 Q Had you ever sat in for Judge Ciavarella while he  
24 was vacationing or otherwise while he ran juvenile court?

25 A No.

1           Q     With regard to your oversight of the juvenile court  
2     sessions, when -- when do you receive the evaluations or  
3     recommendations as has been referred to from the Probation  
4     Department?

5           A     The dispositional recommendations?

6           Q     Yes.

7           A     After adjudication. That was a concern that I came  
8     to learn, that it appeared that -- I don't know if it was  
9     all the time or much of the time, recommendations were being  
10    given to the court prior to adjudication.

11                    When I took over -- in fact, I know Ms. Brulo tried  
12    to give me some recommendations. I recall e-mailing her  
13    saying it's not appropriate for me to get that information  
14    at this time, and that we need to ensure that I don't  
15    receive that type of information until after adjudication.

16           Q     Are you aware whether or not the recommendations  
17    were given in advance to -- well, I'm flipping back to your  
18    District Attorney years -- to your DAs in advance of the  
19    disposition hearing?

20           A     Not to my knowledge, no.

21           Q     Testimony has been offered that indeed those were  
22    generally presented at the hearing itself and handed to  
23    court and/or DA and defense counsel if one's present. Is  
24    that your understanding, that the --

25           A     At that time?

1 Q Um-hum.

2 A I've since come to learn that apparently that --  
3 that material was being given to Judge Ciavarella, yes, yes.

4 Q Did any --

5 A Again, I've stopped that practice.

6 Q Okay. Did any of your ADAs express any concern of  
7 having uncounseled, unrepresented parties provide  
8 perfunctory admissions to the court and immediate  
9 disposition resulting in detention?

10 A No, no.

11 Q With regard to ethics training, where did your ADAs  
12 receive the ethics training, if you will?

13 A As part of their CLE training. Most of them, you  
14 know, we provided funding for the --

15 Q Excuse me. Continue on.

16 A The full-time Assistant DAs were -- we had money  
17 budgeted for training. So typically through the -- most of  
18 the time they would go to training sponsored by the District  
19 Attorney's Association, and I believe that included their  
20 ethics requirements, their yearly number of credits they  
21 needed to obtain.

22 Q Do you recall the Code of Professional  
23 Responsibility surrounding prosecutors and their obligation  
24 to assure unrepresented parties awareness of their right to  
25 counsel? Are you aware of that?

1           A     Yes.

2           Q     On reflection, looking back on your practice as --  
3     as District Attorney, as a judge, would you have any  
4     recommendations to make to the District Attorney as to how  
5     that party should manage the DA's Office from a judge's  
6     perspective?

7           A     I don't understand the question.

8           Q     I'm asking --

9           A     As the judge currently?

10          Q     You're a judge.

11          A     Right.

12          Q     But you were also DA.  Is there any different way  
13     that you would have handled your management of the DA's  
14     Office with regard to the juvenile prosecution of cases from  
15     a judge's perspective looking back?

16          A     Well, looking back if -- if what's alleged was  
17     occurring and the judge wasn't following the mandates of the  
18     Juvenile Act and the Rules of Juvenile Court Procedure,  
19     certainly I would want that assistant to raise those issues.

20                 I don't know if the assistant -- again, I'm  
21     surmising.  Whoever felt that way, perhaps because there was  
22     the written colloquy, I believe the ADAs probably assumed  
23     that the juveniles appearing were made aware of their right  
24     to counsel and were waiving it.  Albeit the judge wasn't  
25     abiding by the rules by giving the on the record colloquy,

1 but there was this written document that was being utilized.

2 I can't speak for whether they felt that that  
3 sufficed or not. You'd have to ask those particular people  
4 who were in that courtroom at the time.

5 Q Okay. Juvenile court judges are indeed duty bound  
6 to have an understanding of the placement resources and --  
7 and available resources at the different private and public  
8 placement resources. Is that not a fair statement?

9 A Yes, I would say so.

10 Q And as a new juvenile court judge you've begun that  
11 process and by attending seminars and visiting some of these  
12 structures; is that correct?

13 A Yes. I've -- again, just last week was at, as you  
14 know, I think I saw many of you there, at the Pennsylvania  
15 Conference on Juvenile Justice. I've attended that the past  
16 two years.

17 The JCJC has come up to meet with me. And if  
18 issues arise, we don't hesitate, one of my law clerks, to  
19 call them to consult on issues that we may need help with.  
20 So we're trying to avail ourself of all those resources.

21 Q In your role as District Attorney had it been made  
22 available for you to attend any promotional dinners or galas  
23 by either PA Child Care or Northwestern?

24 A No.

25 Q No dinners or otherwise?

1           A     No.

2     BY MR. LEGG:

3           Q     Judge Lupas, I just have a few more questions, if  
4     you'll bear with me.

5           A     Sure.

6           Q     I want to just touch on Judge Uhler's hindsight  
7     question, the old knowing what I know now question. Do you  
8     think looking back in hindsight that there may be a value to  
9     having the prosecutor or the District Attorney's Office  
10    involved sooner in the process rather than later on?

11                    In other words, the rules allow for a prosecutor to  
12    require their signature on the juvenile petitions prior to  
13    filing. That's not a mandatory rule. That's an election.

14                    Do you think there's a value to that, having the  
15    prosecutor actually review the petitions prior to them being  
16    filed, or do you think it would just be too cumbersome?

17           A     It -- it may or may not. I don't know. Once, you  
18    know, the police make the allegations, whether the probation  
19    office is filing the petition or the District Attorney,  
20    either way that matter then comes to the District Attorney  
21    to handle at the hearing. So I'm not sure how much of a  
22    difference it would make.

23                    You know, it's an option that's available,  
24    certainly, you know. Perhaps future District Attorneys can  
25    -- can reconsider and decide whether they feel that would be



1 appropriate or not.

2 Q And you indicate -- indicated that you have done  
3 away with the zero tolerance policies that Judge Ciavarella  
4 had maintained?

5 A Correct.

6 Q What type of culture have you encountered or  
7 resistance to that back in May of 2008? Was it -- has it  
8 been an easy transition from zero tolerance back to a more  
9 balanced and restorative justice approach?

10 A It's been a transition. I think there was -- that  
11 policy was so ingrained in the system that I even found when  
12 I took over some of the recommendations were still coming  
13 zero tolerance. And I wouldn't -- you know, they may have  
14 been recommending placement because an incident occurred in  
15 school, in a school setting. And when I reviewed and viewed  
16 the whole situation I didn't follow that recommendation  
17 because I didn't feel it warranted a placement situation.

18 But I think the juvenile probation staff has  
19 adapted to the changes. And, you know, there are a lot of  
20 good, hard working -- a lot of good people who do work in  
21 Luzerne County and who are there to do what's right for the  
22 children and right for the juvenile justice system.

23 And, you know, unfortunately the actions of a few  
24 have affected many. And many of those people still come to  
25 work every day and are doing and trying to continue to do

1 the right thing. And I've seen that.

2 So I -- there's been a great spirit of cooperation  
3 from our probation staff since I've taken over, you know. I  
4 thank them for that. And, again, they -- they, I think,  
5 realize things are different. And my style -- I think every  
6 judge has different styles, and certainly my style is  
7 probably a lot different than my predecessor. And they've  
8 got to get used to that, and I think they are.

9 Q President Judge Muroski testified back in October,  
10 and he gave you great praise for what you have done since  
11 May of 2008, and I would join him in commending you for your  
12 efforts. It's my understanding --

13 A Thank you.

14 Q -- your placement rates have dropped substantially?

15 A Correct, yes.

16 Q Can you tell us as you're sitting here  
17 approximately what percentage of juvenile offenders now are  
18 being detained or placed?

19 A Well, some of the numbers I was given, if you bear  
20 with me. I think in June 2nd of 2008 I'm told there were  
21 148 in placement. As of October 1st of '09 there are --  
22 there were 65 in placement, which is, I think, a significant  
23 drop.

24 I think, again, not that it's appropriate, but it  
25 may be an indicator of dollars and cents. I know the budget

1 -- the amount being budgeted is two and a half million  
2 dollars less for what's being requested in the upcoming  
3 year's budget than it was in the prior year's budget.

4 Q Do you know what those figures are in terms of what  
5 you're requesting this year or what is being requested?

6 Because at one point this Commission was told that Luzerne  
7 County was spending around \$12 million give or take in the  
8 delinquency side.

9 A Give me a moment. I did have a -- we can give you  
10 one -- one number from July -- let me see. I know I have a  
11 document that has some of those figures, if I can.

12 Q I think, Judge Lupas, President Judge Muroski  
13 provided that, and it was a substantial reduction.

14 A Oh, okay.

15 Q Is it fair to say that you -- this particular year  
16 your approach is saving the taxpayers a substantial amount  
17 of money?

18 A Yeah. I want to say it drops somewhere from the  
19 area of 7 million to 3 million, something along those lines.

20 Q And in terms of the effectiveness, have you seen  
21 any -- I mean, are you seeing results despite taking this  
22 different approach?

23 A No. I think the results are -- here's some  
24 numbers. I'm sorry. In 2008 approximately 9.5 million was  
25 budgeted for juvenile placement, but only 7.7 million was

1 expended.

2 In 2009 6.5 million was budgeted, and as of this  
3 date in October about 2.6 million had been expended. For  
4 2010 they're budgeting \$4 million for juvenile placement  
5 costs. They're estimating a projected actual savings of 4  
6 -- about 4.2 million in placement costs in 2009 over 2008.  
7 That's some of budget figures that were given to me.

8 Q And despite spending that much less money, are you  
9 still seeing good results?

10 A I believe so, yes. No one's indicating to me that  
11 they feel there's a major difference or problem.

12 Q There's been some testimony from a number of  
13 witnesses about the schools' involvement in this zero  
14 tolerance policy throughout Luzerne County.

15 Have you received any backlash in terms of changing  
16 the approach to juvenile justice in Luzerne County from the  
17 schools or the school administrators?

18 A No one has approached me or advised me of any  
19 backlash. I know that the Juvenile Probation Department, my  
20 and Judge Muroski's instruction had made sure that they got  
21 the word out to the schools to let them know that there is  
22 no zero tolerance policy.

23 And as I said, when I first met with the Juvenile  
24 Probation Department that's when I -- I let them know that  
25 my dispositions are going to be based on, again, getting

1 input from everyone involved, you know.

2 And, again, my court hearings pretty much allow  
3 everyone ample opportunity to address the court, the  
4 juvenile, their parents, their counsel, the victim, the  
5 Assistant DA, and the Probation Department. And I think  
6 there's -- I tried to let the Probation Department know the  
7 probation officers, that their voice would be heard in my  
8 courtroom along with all of those other parties I've  
9 mentioned.

10 Because it was kind of explained to me that  
11 sometimes they felt that their opinions or recommendations  
12 maybe didn't matter, that things were already either  
13 predetermined or -- or that the judge would just do whatever  
14 the judge wanted and didn't really pay heed to their  
15 recommendations.

16 And I told them that their role in the process is  
17 very important because they're -- they're the ones doing the  
18 intake. They're the ones who know these children and can  
19 provide some recommendation and good solid guidance to me as  
20 the judge in handling those matters.

21 MR. LEGG: Thank you, Judge Lupas. I have no  
22 further questions, Mr. Chairman.

23 BY CHAIRMAN CLELAND:

24 Q I have just a couple questions, and then I'll open  
25 it up to others.

1           A     I apologize for having my back to the rest of you  
2     too, but I was facing that way.

3           Q     That's okay.  We're --

4           A     I just noticed that.  I apologize.

5           Q     That's all right.  That's not a problem.  We heard  
6     evidence from Judge Grim who testified that absolutely no  
7     question on the record evidence of deprivation of juvenile  
8     constitutional rights, violation of the juvenile rules,  
9     violation of the Juvenile Act that went on for years.

10                     And your testimony was that you never heard it  
11     discussed among any of your Assistant DAs, defense lawyers,  
12     public defenders, or anyone involved in the system.

13                     We heard testimony from Mr. Massa that over this  
14     same time period involving 6,000 cases he had, as he phrased  
15     it, zero complaints filed involving children.

16                     Now, either there was incredible incompetence,  
17     which I find it hard to believe among that many lawyers and  
18     professionals, or there was an awful lot of intimidation  
19     about reporting and discussing what was going on.  Which was  
20     it?

21           A     That's the question.  I think that's the very big  
22     question.  And I think the individuals who were present in  
23     that courtroom probably need to answer that question.  I can  
24     only surmise that the judge was the judge.  The judge was in  
25     charge.  The judge handed down kind of his policies, and

1 everyone followed those -- those policies.

2 Q Would it be fair to say that there was an  
3 atmosphere in the courthouse that extended beyond Judge  
4 Ciavarella?

5 A I don't know as far as --

6 Q Judge Ciavarella, we have testimony in the record  
7 that even when he was President Judge, referred to Judge  
8 Conahan as the boss. Would that be the general feeling  
9 around the courthouse, that it was really Judge Conahan that  
10 was the power?

11 A I don't know as far as characterizing the two of  
12 them like that. Obviously they each served as President  
13 Judge, and everyone felt that at least under the tenure of  
14 those two judges as President Judge that they were the boss  
15 during each of their respective tenures as the PJ in the  
16 County.

17 And obviously they, I guess, wielded the power and  
18 influence. And, again, I can only surmise that people who  
19 were in that courtroom felt that, you know, he's the judge.  
20 It's his responsibility to make sure his courtroom is being  
21 run properly. And, you know, I'm only guessing maybe that's  
22 why they didn't question him further.

23 Q A case here, a case there, maybe. But 6,000 cases  
24 over year after year after year three days a week of  
25 juvenile hearings, and no Assistant District Attorney,

1 public defender, or defense lawyer ever raised a question?

2 A No one ever specifically came to me with any  
3 concern, no.

4 Q Did you attend Mr. Massa's program that he  
5 testified that he put on for the Luzerne County Bar  
6 Association about reporting judicial misconduct in 2003,  
7 2004?

8 A I don't recall. If that was -- was that part of a  
9 bench bar conference? I could have been in attendance. I  
10 don't recall it specifically.

11 Q Would you agree that a DA might have a  
12 responsibility to appeal a judge's ruling even though it was  
13 in favor -- arguably in favor of the District Attorney but  
14 was legally incorrect?

15 A Perhaps, yeah. That's possible. I mean, the DA's  
16 responsibility is to seek justice.

17 Q Okay. Were you aware of any -- lay aside the  
18 political pay offs, which I concede probably certainly you  
19 didn't know about. Lay aside the question of whether zero  
20 tolerance is or is not an effective political philosophy --  
21 juvenile philosophy.

22 But we do have to concede that there was total  
23 depravation of constitutional rights and violation of the  
24 rules.

25 A We know that now.



1           Q     We knew it at the time, right? I mean, you had  
2     DA's in the courtroom?

3           A     I didn't. I didn't know that at the time I was the  
4     DA.

5           Q     Okay. I don't mean to say that you did, but your  
6     office, the public defender, the defense bar, this whole  
7     legal community knew that this was going on, and nothing  
8     happened, and I can't understand why. And can you explain  
9     it to me?

10                  Put it in some sort of context of atmosphere of the  
11     courthouse or traditions of the bar, or something. Because  
12     we need to understand that to make -- make rules that are  
13     effective to make sure it doesn't happen again. And I can't  
14     understand it.

15           A     I think -- and I used the waiver of counsel as an  
16     example. I think that those in the courtroom probably were  
17     of the feeling that the juveniles were waiving their  
18     counsel. Albeit they advised that it was a written form  
19     that was being completed and filled out. And I've been told  
20     that the juveniles had been advised of their right to  
21     counsel numerous times before coming to court and have, in  
22     fact, apparently filled out that written paperwork.

23                  And, again, while that does not comport or comply  
24     with the actual wording of the rules which require the  
25     colloquy and the waiver to be on the record, perhaps they

1 were just accepting that because the judge, who was the boss  
2 of the courtroom and the man in charge, was accepting that.

3 I -- again, and a lot of what I'm doing here  
4 unfortunately is speculating, trying to put myself in the  
5 mind of those parties who were in that courtroom. But I --  
6 I think that was the atmosphere, that -- that it was a very  
7 strong-minded judge who ran things his way. And over time  
8 that atmosphere was created where he was -- he was going to  
9 run things his way.

10 CHAIRMAN CLELAND: Okay. Mr. -- Judge Woodruff.

11 BY JUDGE WOODRUFF:

12 Q Good morning, Your Honor.

13 A Good morning.

14 Q First of all, I just want to get a few dates  
15 correct on my notes here. You began as an Assistant DA what  
16 year?

17 A 1992.

18 Q Okay. And then you became the DA in 2000?

19 A Correct.

20 Q And how long were you the DA?

21 A Until 2008. I came on the bench in 2008.

22 Q Okay. And sorry to -- you know, some of these -- I  
23 only have a couple questions. Some of them are a little  
24 repetitive. When you were the Assistant DA you were mostly  
25 in adult criminal court?

1 A Yes. That was my assignment, adult criminal court.

2 Q Okay. Okay. And I just want to phrase a similar  
3 question in a different fashion. How many cases did you  
4 have, or about how many cases did you have in adult criminal  
5 court where the defendant was not represented?

6 A It was --

7 Q Was it a large number?

8 A No. Very rare, very rare, yes.

9 Q Pretty small number?

10 A Pretty small, very small, yeah.

11 Q Just -- just in regard to your -- if you were -- if  
12 that number had been large, the number of adult defendants  
13 that did not have an attorney as they should and were not  
14 given colloquy in regard to representation, what would be --  
15 what would you do? What would your reaction be? Would you  
16 report it to anyone, and who would you go to?

17 A Well, I would probably talk to the judge and  
18 probably let the judge know that he's not following  
19 procedure and should be -- you know, along with probably my  
20 superior I would probably go to first who -- while I was an  
21 assistant.

22 Q That would be the DA?

23 A Go to the DA and talk to him or her.

24 Q Okay. We've heard testimony and seen statistics  
25 that in juvenile court approximately 54 percent of those

1 juveniles were not represented, nor was there an admission  
2 colloquy given to them in regard to the admissions as well,  
3 And there was an Assistant DA that was present.

4           It's my understanding, as you've testified here  
5 today, that there would have been an Assistant DA there for  
6 every adjudication hearing?

7           A     Correct.

8           Q     Okay. Would you not expect them to come to you if  
9 these juveniles, these kids, were not represented or  
10 admission colloquy was not given? I understand that they  
11 didn't, but would you expect them to?

12          A     On its face as you're saying it, yes. But I think  
13 I can understand, like I explained the situation with the  
14 written colloquy, where perhaps they didn't perceive that.

15                Again, I'm only trying to put myself in their mind,  
16 but perhaps they didn't see that so much as being a  
17 deprivation of their right to a waiver because they were  
18 waiving it, although they were doing it in writing not on  
19 the record by a oral colloquy from the judge.

20          Q     Okay.

21          A     So perhaps they didn't see the need to raise it. I  
22 don't know. I'm only surmising.

23          Q     Are you aware of anyone explaining to them what  
24 they were signing when they signed the waiver of counsel?  
25 Are you aware of any explanation that was given to juveniles

1 or their family?

2 A No. Just after the fact that apparently some of  
3 the probation people were. I believe the ones probably  
4 providing them with that document.

5 Q Okay.

6 A And this is all stuff, again, that -- to put in  
7 context that I've learned after the fact, as we're all  
8 learning after the fact.

9 Q Okay. If there were a second hearing, whether it  
10 was continued or for disposition hearings when they came  
11 back, it's my understanding as has been testified here  
12 before that that waiver of counsel form was not presented at  
13 that time. And particularly after 2005 I would think your  
14 -- the Assistant DAs would be aware that waiver of counsel  
15 has to be done at each and every hearing?

16 A Correct.

17 Q And so in these cases it was not. Would you expect  
18 your Assistant DAs to discuss that with you at all?

19 A And, again, I don't know if it was or wasn't. I  
20 guess I'm taking your word for it that it wasn't presented.  
21 And I know the rules require that a waiver be done at each  
22 and every proceeding.

23 Q Okay.

24 A So --

25 Q I guess my question is, again, would you expect

1 your Assistant DAs to discuss that with you, or would that  
2 be something that as a DA you would want to know?

3 A Yeah. If the rules weren't being followed,  
4 certainly I would want to know.

5 Q Okay. I guess the most important question, and  
6 maybe it's been asked before. You know, I see this as a  
7 blatant violation of juvenile's rights, and I would think  
8 your DAs saw that as well.

9 What do you think the reason was that they did not  
10 even discuss it with you, either in their individual meeting  
11 with you or the staff meetings when you asked about what was  
12 going on in juvenile court?

13 A Again, I hope those individuals are asked those  
14 questions. I'm only surmising it could be one of a number  
15 of reasons. Either, again, they -- maybe they didn't want  
16 to challenge the authority of the judge. Maybe -- maybe  
17 they didn't -- maybe they didn't recognize, as we all do  
18 now, what was occurring.

19 Again, as I said with the waivers, maybe they felt  
20 that what was being done was an adequate waiver by some.

21 Q Let me ask this question of you. While you were  
22 the District Attorney and you had these individual meetings  
23 with the assistants or the staff meetings, was there ever  
24 any issues, any problems that any of your Assistant DAs  
25 brought up in any court? And if so, what would they be?

1           A     There would be some minor things.  There might be  
2 something with consent decrees.  Sometimes the Assistant DA  
3 would -- you know, again, they'd voice that, you know, maybe  
4 they wanted to offer someone a consent decree and the  
5 Probation Department, you know, was opposed to that.  And  
6 they got in a little bit of a argument over that.  Or, you  
7 know, issues such as that.  Or concerns with police.

8                     You know, we always had issues sometimes with  
9 police maybe not responding to their subpoenas.  You know,  
10 there's always issues that arise.

11          Q     Let me rephrase.

12          A     But specific problems here weren't brought to  
13 light, no.

14          Q     Let me rephrase my question.  In any court,  
15 juvenile or adult, were there any discussions or any  
16 problems that any of your Assistant DAs had with the judge  
17 in any courtroom?

18          A     Yes, yeah.

19          Q     What would some of those things be?

20          A     Oh, sometimes there were issues, you know, they  
21 felt with the demeanor of a particular judge.  Sometimes  
22 there were issues with a judge, you know, not granting them  
23 a continuance when their witnesses were unavailable, and  
24 they thought it -- you know, perhaps the judge didn't act  
25 appropriately.  You know, I mean, it could be a whole host

1 of issues.

2 Q So those things would come up, but in regard to  
3 waiver and colloquies, those issues never came up?

4 A No, no.

5 JUDGE WOODRUFF: Okay. Thank you.

6 CHAIRMAN CLELAND: We had scheduled Judge Lupas for  
7 an hour and a half. I don't want to preclude any  
8 questioning, but I'll just ask you if you do your  
9 questioning that you keep that in mind. Because we also  
10 promised Judge Lupas an opportunity to make a closing  
11 statement. So Mr. Mosee.

12 BY MR. MOSEE:

13 Q Your Honor, you talked a little bit about how  
14 paperwork was provided to the ADAs in the courtroom. I want  
15 to know about file creation and the management of those  
16 files. Were full files created?

17 A In the DA's Office?

18 Q In the DA's office?

19 A Not a formal filing system. We would get those  
20 cases that the DA would maintain those records for  
21 themselves. The actual files would have been maintained by  
22 the Juvenile Probation Department or then the Clerk of  
23 Court's office.

24 So any of that documentation would be in their  
25 possession if it was ever needed for future reference.



1           Q     And I'm wondering what would happen with the  
2     various reports related to recommendations and evaluations  
3     that were received by the DA's Office?  Would they be  
4     maintained by that individual ADA as well?

5           A     To my knowledge, yes.  Or they may have just been  
6     returned to the Probation Department or kept in their files.

7           Q     Okay.  I don't want to -- I don't want to fail to  
8     disclose where I'm coming from.  I've been told that ADAs at  
9     dispositions didn't have files.

10          A     They didn't have individual files.  They had their  
11     file with their cases and their -- all of their written  
12     allegations for each of those cases, correct.  They didn't  
13     open up a separate file on each -- each juvenile at the  
14     time.

15          Q     What I'm saying to you is that I've been told that  
16     ADAs didn't have any information at their disposal when they  
17     were contemplating and discussing what the recommendation  
18     from the office should be?

19          A     You're talking about the disposition?

20          Q     That's correct.

21          A     Yeah, I'm not aware of that.  I think probably what  
22     was happening was they were handling the adjudication  
23     hearing.  And then my understanding, what I've come to  
24     learn, is Judge Ciavarella was then moving right to  
25     disposition.  And I don't know at that time whether those

1 reports were provided with the two -- the juvenile's counsel  
2 or the juvenile or the ADA or just the judge himself.

3 Q Okay.

4 A I don't know.

5 Q After 2005 when the Rules of Juvenile Court  
6 Procedure were implemented and there was an overture to DA's  
7 Offices around the Commonwealth to decide whether or not  
8 they wanted to certify that they wanted to receive the  
9 written allegation and/or prepare the petition, Luzerne  
10 County opted to maintain the status quo; is that correct?

11 A That's correct.

12 Q After making that decision did you, at the very  
13 least, receive information from probation about their  
14 decisions with regard to informal adjustments?

15 A I don't recall if we got that information with  
16 regard to informal adjustments.

17 Q Are you aware?

18 A At that time they may have discussed it with that  
19 juvenile ADA. I'm not privy to whether they did that or  
20 not.

21 Q The rules required that they at least provide that  
22 information?

23 A That they do. They do. I -- I think there was --  
24 actually recently I've instructed in going through the rules  
25 now in my role as juvenile court judge. Mr. Johnson's

1 basically heading up the Juvenile Probation Department to  
2 ensure that he is providing that written notice to the  
3 District Attorney's Office.

4 I think that was also a recommendation when we had  
5 the JCJC come in, and they came in to do some technical  
6 study of the system. That was also one of their  
7 recommendations, and we implemented that to make sure that  
8 that's being done and abided by.

9 Q Related question, and this time I'd like you to  
10 answer from the perspective of being the judge for family  
11 court. What is your attitude about diversion, youth aid  
12 panels and community-based programs?

13 A I welcome them. It's something that I think -- I  
14 sat in on a couple of workshops last week at the -- at the  
15 juvenile justice conferences. One of them I sat in on dealt  
16 with diversionary programs, youth school -- youth justice  
17 panel or school justice panels. I'm not sure if I'm using  
18 the right terminology.

19 I also -- one of the other workshops I attended  
20 dealt with Dauphin County's neighborhood reporting center,  
21 and I've had discussions with Mr. Johnson that I think our  
22 county -- that's one of the things that I was actually  
23 talking to some people at the conference, that scenario,  
24 that I think our county needs to develop more.

25 Q Are there more meetings now? We were told that

1 Judge Ciavarella rarely met with anybody? In particular the  
2 stakeholders in juvenile justice?

3 A I've met numerous occasions with -- had convened  
4 meetings with probation, the DA's Office, the Public  
5 Defender's Office. We met about two weeks ago, and we  
6 basically decided we're going to formalize our meetings and  
7 have a formal meeting once a month.

8 Some of the folks recommended that. And I was all  
9 for it that we meet once a month similar to what Justice  
10 Baer has implemented on the dependency side with the round  
11 table meetings. We're sort of having a round table meeting  
12 every month on the delinquency side so that we can discuss  
13 not specific cases, but discuss procedures and the process  
14 and how we can improve it. I think our next meeting is  
15 scheduled for the 17th.

16 Q Okay. Judge Woodruff asked you about admissions  
17 colloquies, and I think your response frankly was about  
18 waiver of counsel colloquies. What was happening in Luzerne  
19 County with regard to admissions when you were the DA?

20 A When I was the DA? I could tell you I don't know  
21 if the colloquies were given. I wasn't in the courtroom,  
22 you know. I assumed that the judge was -- would be doing  
23 what he should have been doing as the judge. If he wasn't,  
24 it wasn't brought to my attention that he wasn't.

25 I know as the judge presiding there now I don't

1 accept an admission without giving the colloquy.

2 Q What was happening in adult court with regard to  
3 guilty pleas?

4 A Colloquies were given. I do recall a couple  
5 incidents. I think there was a case of Judge Conahan's that  
6 came back on appeal because -- and a guilty plea was  
7 reversed because I don't think he gave a proper colloquy.  
8 You know, that issue came up in adult court at one time. I  
9 remember one of the cases on appeal.

10 Q All right. Are -- and by the way, you realize that  
11 it is okay to have a written colloquy for an admission, that  
12 the rules actually provide for that?

13 A Correct. And then I think there has to be some  
14 oral follow up on the record.

15 Q That's correct. You have to authenticate that the  
16 juvenile actually executed the written colloquy and  
17 understood it?

18 A Correct, right.

19 Q Okay. Are juveniles still waiving the right to  
20 counsel?

21 A No, they're not.

22 Q Okay. That is prohibited in Luzerne County, or it  
23 just hasn't happened?

24 A It's really not happening. I think we're trying to  
25 make sure that those who don't have counsel get to the

1 Public Defender's Office and obtain their services. On the  
2 rare occasion where someone appears without counsel I  
3 inquire of them as to what they've done. Do they have any  
4 problem if I were to appoint the public defender to  
5 represent them? And they've accepted the services of the  
6 public defender in those cases.

7 Q I was handed this waiver of counsel form. I  
8 believe this is the one that you were provided. Maybe you  
9 can't see it from there.

10 A Yes.

11 Q I see that it has a line for the parent or guardian  
12 signature?

13 A I see that, yes.

14 Q If a juvenile contemplated waiving counsel, would  
15 it be sufficient for the parent or guardian to execute this  
16 form and cause the waiver to be effectuated?

17 A No. I think it's up to the juvenile to waive  
18 counsel. I'm not utilizing this form, just for the record.  
19 This is a form --

20 Q I'm sorry. Maybe you better clarify exactly where  
21 --

22 A No. This is a form that had been given to me, and  
23 I was advised that this is a form that Judge Ciavarella had  
24 used in the past. I don't utilize this form. This is a  
25 form that I understood --

1 Q Okay. I misunderstood.

2 A It was a form that I understood he used.

3 Q I just wanted to make sure that we're all clear  
4 that the parent cannot waive for the juvenile?

5 A Certainly.

6 MR. MOSEE: Okay. Thank you.

7 CHAIRMAN CLELAND: Any other brief questioning.

8 Mr. Horoho.

9 BY MR. HOROHO:

10 Q We had the opportunity to hear testimony from the  
11 vice chairperson of the Pennsylvania Disciplinary Board who  
12 confirmed that the Rules of Professional Conduct applied for  
13 prosecutors as well as defense counsel and private counsel.  
14 You would agree with that?

15 A Yes.

16 Q And they apply equally in juvenile court matters as  
17 in adult court matters?

18 A Yes.

19 Q He also confirmed, and I think you are aware of,  
20 the Rule 3 point, the special responsibility of a  
21 prosecutor. That rule in professional conduct, which is a  
22 -- one of the few rules of special responsibilities for a  
23 prosecutor or specific counsel who specialized in the  
24 practice of law. And he also confirmed that although it  
25 says a prosecutor in a criminal case shall, and indicates

1 the obligations, he -- the vice chair confirmed that this  
2 would also apply to prosecutors in juvenile court matters.  
3 You would agree with that?

4 A I wouldn't disagree with that, no, no.

5 Q Okay. The rule says specifically that the  
6 prosecutor shall refrain from prosecuting a charge that the  
7 prosecutor knows is not supported by probable cause, make  
8 reasonable efforts to assure that the accused has been  
9 advised of the right to and the procedure for obtaining  
10 counsel, and not seek to obtain from an unrepresented  
11 accused a waiver of important pretrial rights.

12 And it also has an explanatory comment. It goes on  
13 to say that a prosecutor has the responsibility of  
14 administrator of justice and not simply as an advocate. The  
15 responsibility carries with the specific obligations to see  
16 that the defendant is accorded procedural justice and that  
17 guilt is decided upon the basis of sufficient evidence.  
18 Precisely how far the prosecutor is required to go in this  
19 direction is a matter of debate and varies in different  
20 directions.

21 When you were the chief prosecutor of this county  
22 what direction did you go regarding this rule? How did you  
23 interpret this rule, and how did you communicate that to  
24 your Assistant District Attorneys?

25 A They were instructed and advised and expected to



1 always abide by those professional responsibilities.

2 Q Were there any internal policies that you had then  
3 that you implemented to ensure that this rule was being  
4 complied with by your office?

5 A There's no official written policy per se. These  
6 are all individuals who have graduated college, law school,  
7 passed the bar exam, and are expected, as every lawyer is,  
8 to know what their rules of professional responsibility are.

9 Q But this is --

10 A And it's expected and understood that -- that they  
11 know those. They're also -- nearly every Assistant DA would  
12 go to the basic prosecutor's school sponsored by the  
13 District Attorney's Association. And as part of their  
14 yearly training would also have ethics training whereby they  
15 would -- they would be advised of those specific rules.

16 Q How about any in-house training? Let's say when a  
17 new ADA starts. Any particular focus on this rule or the  
18 Rules of Professional Conduct for your prosecutors that you  
19 reminded them during this period of time?

20 A I think they were reminded in general what their  
21 role is as a prosecutor. They were told that, you know,  
22 again, their role wasn't simply obtaining convictions, but  
23 to seek justice.

24 Q Did you ever feel that -- that your obligation or  
25 the Assistant District Attorney's in your office ethical

1 obligations were being outweighed by what I call this civil  
2 rule of tough love policy?

3 A I'm not sure -- can you repeat the question? I'm  
4 not sure what you mean.

5 Q Yeah. Did you ever feel or did your Assistant  
6 District Attorneys ever feel that the ethical obligations  
7 that they had were being outweighed by the Ciavarella tough  
8 love policy that you talked about?

9 A No. No one ever came to me that said that they  
10 felt that way.

11 Q We have interviewed -- is it Sam Sanguedolce?

12 A Sanguedolce, yes.

13 Q And he confirmed for us that -- a couple of  
14 different things. Everybody in the courtroom knew and the  
15 case involved an unrepresented juvenile was making an  
16 admission there were never any colloquies. The juvenile was  
17 simply asked by the judge, did he or did he not want a  
18 lawyer, and made a brief discussion.

19 There was never a presentation of the facts that  
20 form the basis of the charges in the pleadings; that the  
21 court appeared to have been aware of the recommendation and  
22 had decided on the disposition very quickly or prior to the  
23 hearing.

24 And this gentleman felt that his focus was not on  
25 the rights of the juvenile as much as on the court's tough

1 approach that was needed in many cases.

2 Now, you've previously said that none of your ADAs  
3 came to you complaining about what obviously they felt  
4 during this period of time, correct?

5 A Correct.

6 Q So did you feel that -- or did you think your --  
7 the people that worked under you felt that their ethical  
8 obligation to come to you to complain about this judge was  
9 being outweighed by the tough love policy of Judge  
10 Ciavarella?

11 A I don't know that I can answer that. I think those  
12 people have to answer that. You're asking me to guess as to  
13 what another person was feeling or thinking. I don't --

14 Q Well, did you give --

15 A I don't know how to answer that.

16 Q Did you give the indication to your ADAs that your  
17 office acquiesced to this zero tolerance policy to the point  
18 where it really didn't help the ADAs to complain about it?

19 A No, I don't think I did.

20 Q Did you ever -- I assume now that you don't agree  
21 with the zero tolerance policy because you've made some  
22 changes personally?

23 A Correct. That's my philosophy.

24 Q In -- when you were the chief prosecutor did you  
25 personally think the same thing? Did you agree personally

1 with the zero tolerance policy?

2 A Did I personally agree with it? Probably not. I'd  
3 have to see each and every case to see whether -- whether  
4 the placement would be appropriate or not in that case. But  
5 probably not. But it was -- it was the judge who was  
6 handing down those dispositions.

7 Q Many --

8 A It was his policy.

9 Q Many District Attorneys, many people, many people  
10 of the bar view the rule of the District Attorney as a  
11 leader, somebody that kind of sets policies, gets community  
12 groups together.

13 Did you, because you felt -- because of the way you  
14 felt of the zero tolerance policy during the time that you  
15 were the DA, ever seek input from the schools, input from  
16 the community, ever get -- ever get these groups together in  
17 a town meeting and decide, well, is this right? Is this the  
18 best thing for our children?

19 A There were probably about -- a couple of school  
20 violence or school type forums that I attended. And I don't  
21 know that specifically. You know, the feedback I always got  
22 was the schools liked the policy, saw nothing wrong with the  
23 policy.

24 No one ever expressed any displeasure with that  
25 type of policy that the judge was utilizing. That seemed to

1 be the consensus. And I know you've previously been  
2 provided with letters to the editor from school officials  
3 and others who didn't see a problem with that policy.

4 I referenced Mr. Felton earlier, who I recall him  
5 quoted in the paper as, you know, seeing this as a policy  
6 that, again, went along with this tough love type of  
7 philosophy of the judge.

8 And I think a lot of people looked at the  
9 dispositions of the judge different from the adult court  
10 where you have sort of a sentencing guideline to tell you --  
11 put you in a range of a sentence. In juvenile court things  
12 are different.

13 The judge seems to have the discretion, so to  
14 speak, as to how he handles his dispositions.

15 MR. HOROHO: That's all the questions, Your Honor.

16 CHAIRMAN CLELAND: Okay. At this point I think  
17 we'll take a recess until 11:00, and we'll begin our next  
18 witness. But I'm -- I'm sorry, wait. Before we do that,  
19 Judge Lupas, I apologize. I offered to give you a closing  
20 statement, and I'll certainly afford you that opportunity.

21 JUDGE LUPAS: Thank you. And you've put me in the  
22 difficult position of --

23 CHAIRMAN CLELAND: I'm sorry. I didn't mean to do  
24 that.

25 JUDGE LUPAS: I'm the only guy standing between

1 everyone and their break right now.

2 CHAIRMAN CLELAND: I didn't mean to do that. So go  
3 ahead and take as much time as you want.

4 JUDGE CLELAND: But really I want to thank Your  
5 Honor and all the members of the Commission for inviting me  
6 to appear here today. I was born and raised in Luzerne  
7 County, and I chose to serve the people of Luzerne County.  
8 And my wife and I choose to raise our four children here in  
9 Luzerne County.

10 And I'm not unlike all of the other citizens of  
11 this county who are greatly disturbed by what has occurred  
12 here and what's going on in this county. And while we can't  
13 erase the past and erase what has occurred, I think what we  
14 can do is analyze and examine what happened, how it  
15 happened, and what we can do to ensure that something like  
16 this never happens again.

17 And I know that is the mission of this Commission,  
18 and I thank all of you for giving of your time to -- to be  
19 members of this Commission and analyze this situation. What  
20 can't be lost, as I've stated previously, is that there are  
21 a lot of hard working, dedicated people in Luzerne County,  
22 and unfortunately the actions of a few are affecting the  
23 many.

24 But day in and day out I see these people coming to  
25 work continuing to try to do the right thing, to do their

1 jobs. I hope that I can play a role in restoring confidence  
2 in our juvenile justice system given -- given the position  
3 that I've been placed in to preside over juvenile court.

4 I can just tell you on a personal level during the  
5 latter part of my tenure as District Attorney I was  
6 contacted by the FBI and aware that there was an ongoing  
7 investigation into members of our court. Not that I was  
8 given all the particulars, but made aware that there was  
9 something ongoing.

10 When I got on the bench, knowing this not only  
11 having confirmed by the FBI to me when I was District  
12 Attorney, but everyone had known rumors circulating, it was  
13 very difficult to serve probably my first year or so  
14 waiting, as everyone else was, for when the allegations or  
15 the indictments or what have you were going to occur.

16 After only about five months on the job I was  
17 tasked and assigned to juvenile court. And, again, my time  
18 is limited, but I uncovered that there were a lot of things  
19 that had been done in the past that weren't being done  
20 properly.

21 I've tried to correct and implement measures to  
22 correct those wrongs, but it -- it's a task that is only  
23 done with the assistance of many others. And I'd be remiss  
24 if I didn't -- and I'll conclude shortly, but if I didn't  
25 thank everyone on this Commission and so many others who

1 have come to assist Luzerne County, the Juvenile Court  
2 Judges Commission, who have -- we welcomed to come up and do  
3 a technical study and offer recommendations.

4 Mr. Listenbee and the Juvenile Defender's  
5 Association have offered and we've accepted their help. And  
6 I know they're going to be putting on some trainings for  
7 public defenders and other counsel who represent juveniles.

8 And I think he used the word that in hopes of  
9 making Luzerne County become a model in that area. And it's  
10 with that type of attitude that I think we need to go on.

11 We need to not -- well, we need to look at the past  
12 to see how we can correct what was done, but we need to look  
13 toward the future.

14 So many others attending the conference last week  
15 who have offered assistance to our county, they're all --  
16 they're all thanked by me personally, and I think by others  
17 in our juvenile justice system.

18 What's difficult is -- and I think the difficult  
19 task that this Commission has is gathering the facts and  
20 what are the true facts and analyzing them to try to come up  
21 with recommendations and analyzing and spelling out what  
22 occurred and what recommendations can be made to improve the  
23 system.

24 It's the improvement of the system that I think the  
25 focus should be on. It's very emotional, and I hope that



1 everyone can somehow try to set aside those emotions and  
2 understand and look factually at what occurred here.

3           Just a few recommendations I would make. Some may  
4 be repetitive from some of your other witnesses, but I think  
5 we should explore having more transparent and more open  
6 proceedings in our juvenile court system, recognizing the  
7 need to protect the confidentiality of the juvenile.

8           We should explore mandatory counsel for all  
9 juveniles, whether that would be feasible. I think those  
10 are items that should be open for debate and discussion.

11           And something that I think is -- is very important  
12 and vital to the system, but unfortunately is difficult to  
13 achieve, and that's obtaining sufficient funding for the  
14 system. Sufficient funding for the public attorneys, the  
15 public defenders, the District Attorney's who serve in these  
16 courts.

17           As you know, their case loads are enormous, and  
18 we're always met -- and they're always met with the  
19 predicament that while their case loads are going up, it  
20 seems that county budgets are facing a crisis and a budget  
21 crunch, and they're being asked to do more with less  
22 resources. And that's the exact opposite direction we  
23 should be headed in.

24           We need to look at perhaps state funding as an  
25 alternative for public defenders and District Attorney's

1 offices so that they can have adequate resources, and  
2 attorneys with reasonable case loads so that the cases  
3 they're handling get the attention that they -- they  
4 deserve.

5 In closing, I want to commend all of you. I don't  
6 envy you with the -- with the difficulty and important task  
7 that you have ahead of you. But I want to offer, if there's  
8 any other questions or anything else that you need of me,  
9 I'm here to cooperate fully with you in your endeavor.

10 And that being said, I guess I'll cut off my  
11 remarks and let you enjoy your break. But, again, I can't  
12 say enough about all of those who have offered assistance.  
13 It wasn't easy in some respects being the judge from Luzerne  
14 County at the Pennsylvania Juvenile Justice Conference last  
15 week because obviously we're a topic of discussion.

16 But that's -- that's fine, and that's well. And we  
17 should be the topic of discussion. And as I said, we can't  
18 erase what was done, but we can't walk away from what was  
19 done. We must face it, and we must correct it, and we must  
20 improve the system that is so important.

21 And I think as I stated earlier, as Judge Uhler I  
22 think with his questions was insinuating, that the juvenile  
23 justice system should not be on a lesser footing with other  
24 divisions of the court. It should be on an equal footing at  
25 the very least with the other divisions of our court. And

1 we need to make sure that we view it that way, that the  
2 resources and the budgets that are utilized to fund that  
3 system also views it that way.

4 So with that, I would just conclude my remarks and  
5 thank you for having me. And good luck with your future  
6 endeavors in this Commission.

7 CHAIRMAN CLELAND: Judge Lupas, thank you for being  
8 here. And on behalf of the Commission we all extend our  
9 appreciation to the work that you've done to improve the  
10 juvenile court system in Luzerne County. Thank you.

11 JUDGE LUPAS: Thank you, very much.

12 CHAIRMAN CLELAND: We'll be in recess until 10  
13 after 11.

14 (Recess taken from 10:45 to 11:10.)

15 CHAIRMAN CLELAND: We'll begin our next session.  
16 Just so that you have some idea of our scheduling, our  
17 intention is to have concluded the testimony of the next  
18 witness by 12:30, and to reconvene then at 1:00.

19 And our tentative schedule is to be done sometime  
20 mid-afternoon, around 3. But, of course, there's no way to  
21 predict that with any accuracy. I would ask that those of  
22 you that have cell phones, pagers, Blackberrys and other  
23 assorted electronic devices to please turn them off or  
24 silence them or put them on vibrate or something so that we  
25 are -- we don't have that distraction. We'll appreciate

1 that very much.

2 Our next witness is Ms. Musto Carroll. Would you  
3 please come forward and take the oath?

4

5 JACQUELINE MUSTO CARROLL, Esquire, called as a  
6 witness, being duly sworn, testified as follows:

7

8 CHAIRMAN CLELAND: Please be seated.

9 THE WITNESS: Thank you.

10 CHAIRMAN CLELAND: Welcome. It's nice to have you  
11 here with us today. Our practice has been to turn the  
12 questioning over to one of the members of the Commission and  
13 then to afford you the opportunity at the end to make a  
14 closing statement, if that's okay with you.

15 THE WITNESS: Thank you, Your Honor. Yes, thank  
16 you.

17 CHAIRMAN CLELAND: Mr. Listenbee.

18 BY MR. LISTENBEE:

19 Q Good morning, Ms. Carroll.

20 A Good morning.

21 Q Ms. Carroll, we obviously have some questions about  
22 the issues that are central to what's been happening in  
23 Luzerne County, certainly the waiver of the right to  
24 counsel. But preliminarily I'd just like to find out a  
25 little bit about your background.

1           Can you tell me when you became a member of the  
2 bar?

3           A     1985.

4           Q     And when did you begin working with the District  
5 Attorney's Office?

6           A     I began as an intern in Luzerne County District  
7 Attorney's Office in 1983. And then I graduated from law  
8 school. There were no openings in the Luzerne County  
9 office, so I took a job in Lackawanna County with then  
10 District Attorney Ernie Preate.

11           I worked there for a year, and then I was invited  
12 to come down to Luzerne County by the new District  
13 Attorney-elect, Correale Stevens, in 1988. I -- I joined  
14 his office in 1988. He left to become a judge. I remained  
15 with the office as a full-time Assistant District Attorney  
16 and worked with Jerry Cohen who became the District  
17 Attorney. And then when he left Peter Paul Olszewski became  
18 the District Attorney, and I worked for him as well as a  
19 full timer.

20           So that's about six or so years. I then left and  
21 went into private practice for about seven years. I came  
22 back to work with District Attorney David Lupas in 2000 when  
23 he was elected. And at that time I came back as a part-time  
24 Assistant District Attorney.

25           I remained in that position, as I also had a

1 private practice. And then in 2004 I became the First  
2 Assistant District Attorney, and that was a full-time  
3 position which I held until 2008 when I then took the job,  
4 and I was luckily elected. In January, 2008 I became  
5 District Attorney.

6 Q Ms. Carroll, while you were in private practice did  
7 you have any area of specialty?

8 A Personal injury.

9 Q Personal injury. Very well.

10 A I practiced both defense and the plaintiff's  
11 personal injury cases.

12 Q Okay. How long were you practicing as a defense  
13 attorney?

14 A Exclusively probably for about three years. But  
15 other than that it was mostly the plaintiff's work. And I  
16 don't mind telling you that I enjoyed the plaintiff's work  
17 much more.

18 Q What kind of cases did you handle in your practice  
19 as a defense attorney?

20 A Essentially car accident cases, a little bit of  
21 medical malpractice, but not much. Slip and fall cases,  
22 those sorts of cases.

23 Q And as a defense attorney?

24 A Basically car accidents and slip and fall cases.  
25 Represented Nationwide Insurance Company, State Farm

1 Insurance Company.

2 Q During your work as an Assistant District Attorney  
3 did you ever practice in juvenile court?

4 A No, sir. In the almost 17 years that I was an  
5 assistant or the District Attorney I was never assigned to  
6 juvenile court.

7 Q During the time that you were first assistant  
8 starting in 2004 until the time that you became the District  
9 Attorney did you have supervisory responsibilities over  
10 attorneys that were practicing in juvenile court?

11 A Yes. The District Attorney obviously ran the  
12 office. I was the first assistant. I managed the office  
13 along with him. Not just the juvenile Assistant District  
14 Attorneys, but every other District Attorney in the office  
15 as well.

16 Q Okay. What type of supervisory procedures did you  
17 have for the attorneys that were in juvenile court?

18 A With the attorneys in juvenile court, going back as  
19 far as I can remember, even when I was an intern, there  
20 would normally be one Assistant District Attorney or maybe  
21 two assigned to handle duties in juvenile court. Sometimes  
22 they were exclusively in juvenile court.

23 And on the days that they didn't have juvenile  
24 court they would maybe handle preliminary hearings or  
25 something of that nature.

1           As I became -- as I was the first assistant we had  
2 individuals assigned to juvenile court, but they also were  
3 involved with the adult cases as well because we had to use  
4 our manpower as efficiently as possible since we didn't have  
5 an awful lot of attorneys.

6           Now, we're a third class county. We have 30  
7 attorneys, which may sound like a lot. But if you compare  
8 that to other counties, it's probably not. The supervisory  
9 role that I took, it was different for adult cases and  
10 juvenile cases.

11           In adult cases I ran the trial list. We would have  
12 maybe three -- anywhere from 300 to 7 or 800 cases on a  
13 trial list. I would assign those cases in adult court, and  
14 I would work with the attorneys in that regard.

15           But I realize our focus is on juvenile court. In  
16 juvenile court we would receive the petitions from juvenile  
17 probation. They would be given directly to the Assistant  
18 District Attorney handling juvenile court.

19           So we -- I never saw the cases that came in, and I  
20 think that was partly because that's the way it was always  
21 done, that they were given directly to the attorney. The  
22 other part of it, I think, is probably something to do with  
23 the confidentiality of the juvenile cases in that, you know,  
24 it -- there are cases where we're looking at the way to make  
25 the child better, the way to try to overcome what has



1 happened and put them in the system to help them, and then  
2 let them come out and hopefully be people who can function  
3 in society.

4 So it wasn't the sort of thing where I would get  
5 juvenile cases and review them. We had a daily book at our  
6 office for as long as I could remember. And in the daily  
7 book we would list what was going to happen as far as  
8 hearings that day.

9 For the juvenile hearings it would simply say  
10 juvenile court, and we would have a list of or a name who  
11 was going to be handling juvenile court. It was different  
12 with the adult cases. We may --

13 Q Ms. Carroll, if I may, for those juvenile cases,  
14 did you review the case files?

15 A No, sir, absolutely not, no. The --

16 Q Did you review the results out of juvenile court in  
17 terms of what happened with each individual case, whether  
18 the child was placed and went to trial within the  
19 adjudicatory hearing, or found not guilty? Did you review  
20 any of that?

21 A No, sir, not for the six District Attorneys I've  
22 worked for have I seen something like that done. And, again  
23 --

24 Q Just one second.

25 A Yes.

1           Q     As you're looking at -- thinking about those cases,  
2 you didn't review the files.

3           A     No, sir.

4           Q     Did you discuss the cases with the attorneys that  
5 were assigned to juvenile court?

6           A     It would depend.  If they had questions about the  
7 cases.  I can recall certain times when an assistant would  
8 come in and say there's a rape case that I don't feel  
9 comfortable to handle, or there's an arson case.  Then what  
10 I would do is reassign that specific case to someone in our  
11 office who handled those cases.

12                     So those sorts of discussions we would have.  But  
13 if you're asking me if -- if a juvenile attorney would then  
14 come in and say, these are the cases that I have, do you  
15 want to look at those?  No, that didn't happen.

16                     And it also -- given the seven or 800 cases we now  
17 see on trial lists, they don't -- the attorneys don't come  
18 in and say, do you want to review this case?  It's always  
19 whether or not there's an issue with the case that they want  
20 to talk about.

21                     Now, I think in a perfect world it would be  
22 wonderful if we had a few attorneys having these cases come  
23 in and review them and discuss them prior to them going to  
24 court.  But I think anyone who's been in the District  
25 Attorney's Office knows it's more of a situation that you're

1 -- you're assigned those cases. It is your responsibility  
2 as the Assistant DA to work those cases and to do the best  
3 job that you can.

4           Myself, having been in private practice and having  
5 been in the District Attorney's Office for quite some time,  
6 it's just a different atmosphere. In private practice you  
7 have the opportunity to take your case and let it go at the  
8 pace that you want.

9           But with juvenile court, with adult criminal court,  
10 the pace runs you. So you need to keep up with that. So --

11           Q     Did you conduct performance evaluations of the  
12 attorneys that were assigned to juvenile court?

13           A     Performance evaluations, no. We have a union now.  
14 Our Assistant District Attorneys are Teamsters. I would  
15 like to be able to call in each one of our Assistant  
16 District Attorneys and give them a performance review.

17           And I have been told by our union that we can't  
18 have something called a performance review. We can call  
19 them in, and we can evaluate them.

20           Q     Did you conduct evaluations?

21           A     Now I am. Now what I do --

22           Q     During the time from --

23           A     As first assistant no, sir.

24           Q     From 2004 to 2008 you did not?

25           A     Performance reviews, no.

1           Q     What kind of evaluations did you do of the work  
2     that they did in juvenile court?

3           A     If I were, as the first assistant, contacted by a  
4     judge, which at times I had been contacted by a judge, to  
5     say your assistant is not prepared or your assistant is  
6     habitually late, or maybe we would get a nice call from a  
7     judge to say, boy, this Assistant DA is really doing a great  
8     job. I want you to know that. There was that sort of  
9     communication.

10          Q     In juvenile court?

11          A     No. With our judges. And that was my next  
12     statement. I did not have that communication with Judge  
13     Ciavarella. I simply did not. He did not make those kinds  
14     of calls.

15                 But our Assistant DAs obviously are -- most of them  
16     are young. So when they come into the office they do go to  
17     the senior attorneys with questions, First Assistant  
18     District Attorney. They do have a lot of questions.

19                 And I think -- I don't mean to get off the track,  
20     but it seems as though in the DA's Office once someone  
21     becomes very experienced they want to go out into the world  
22     and either become a part-time Assistant DA so they can have  
23     a practice, start to make money, or they leave all together.

24                 So we traditionally have the younger sort of people  
25     in our office, as I think that's probably the same in most

1 DA's Offices unless they can pay more.

2 Q Ms. Carroll, did you send your young Assistant  
3 District Attorneys to training programs so they could learn  
4 what the basic practice was in juvenile court?

5 A Yes. They were obviously -- they had to come in  
6 with a law degree and a license. They went to CLE courses.

7 Q Any specific CLE courses that you can recall that  
8 you sent them to?

9 A Well, I -- I didn't make the final decision as to  
10 who would be sent to seminars. I would make those decisions  
11 along with the District Attorney. I don't want to give the  
12 impression that I made decisions then that I'm making now.  
13 But I did work hand in hand with the DA.

14 If we saw -- if we had literature from the  
15 Pennsylvania District Attorney's Institute or the District  
16 Attorney's Association that offered juvenile classes, we  
17 would tell our Assistant DAs, you need to go to these  
18 juvenile classes.

19 Or, for example, if we saw something on the Top Gun  
20 School dealing with drugs and guns, we know the Assistant  
21 DAs who want to handle those cases. We would send them to  
22 those.

23 Q Can you recall any specific trainings that you sent  
24 your Assistant DAs to between 2004 when you were first  
25 assistant and 2008 you became the DA?

1           A     No. I know that there were juvenile conferences  
2 held. I cannot -- I can't tell you any names. But I can  
3 tell you it was our general practice that if we saw  
4 something that came up that they would be able to handle  
5 that would be specific to the type of case law they handled  
6 or the cases, we would send them.

7                     For example, now as the DA whenever there are death  
8 penalty cases, I offer those seminars to our Assistant DAs  
9 who handle death penalty cases, myself included, to go to  
10 those cases or to go to those seminars.

11                    So we definitely kept up with the law as it changed  
12 and evolved. And our DAs knew that they had to know the  
13 law. There's no excuse for not knowing the law. They had  
14 to know.

15           Q     Did you keep any record of the trainings that your  
16 Assistant DAs went to regarding juvenile practice so that  
17 you could know that they were up to date on the law?

18           A     No, sir. But as the -- now the District Attorney I  
19 am making sure that we go to as many seminar as possible.  
20 But don't forget, there are also budget constraints. So I  
21 think there are probably some Assistant DAs who would love  
22 to be in seminars all day long. But we have 12 credits, as  
23 you know, that we have to keep up with.

24                    So we try to monitor the fact that, you know, if  
25 someone has 20 credits and someone else only has 8, well,

1 we're going to use our resources perhaps to send the person  
2 with the least amount of credits to these seminars.

3 So no, I did not -- I did not as the first  
4 assistant keep track of who went to what seminar, but they  
5 were always available. They definitely were.

6 Q Ms. Carroll, you're aware that there was a serious  
7 issue concerning the right to counsel. Judge Grim described  
8 it as one of the most egregious aspects of what happened  
9 here in Luzerne County.

10 A Yes.

11 Q That 54 percent of the children waived the right to  
12 counsel. Were you aware of that while it was going on?

13 A No, sir, I was not.

14 Q You're now aware of that I take it?

15 A Absolutely. Painfully aware.

16 Q Okay. During the -- now that you're aware of it,  
17 what procedures have you put in place to address this issue  
18 for your Assistant District Attorneys at the present time?

19 A Well, as far as the waiver of counsel, and I've  
20 testified -- or I've argued in front of Judge Grim on this  
21 issue, so I'll try to condense that very quickly.

22 After we found out -- after the judge became a  
23 criminal in the public eye and he was charged by the federal  
24 government, after that time, of course, everyone is now  
25 looking to say what went wrong and what could have been

1 done?

2           So the waiver of counsel, I had talked to our  
3 Assistant DAs now after the fact, the people who did appear  
4 in court, and asked them quite frankly, you know, what was  
5 happening, or what did you notice? And I was told by -- no  
6 one told me any differently, but they believed because there  
7 were waivers signed on a few different occasions, maybe  
8 three, four, or five different occasions by the juvenile and  
9 their parent prior to going up to the bench before the  
10 judge, I -- some of the DAs had said to me that they -- the  
11 kids would walk in with their waivers folded, and the  
12 Assistant DAs would be told, they waived counsel.

13           So I don't think they viewed that as an issue  
14 because -- you're saying 54 percent didn't have attorneys.  
15 Well, 46 percent did have attorneys. So there were  
16 attorneys in that courtroom representing some of those  
17 juveniles. But it was never brought to the attention of  
18 myself, or the DA at that time as far as I'm aware, that  
19 they thought that this was an issue.

20           They still -- you're going to call them here to  
21 testify, and I believe they're still going to tell you they  
22 thought that that issue was taken care of by the written  
23 waivers on several occasions before they went up to the  
24 judge.

25           Q     Ms. Carroll, you were aware that there were new



1 rules that went into affect on October 1st, 2005?

2 A Yes, sir.

3 Q Did you get a chance to review those rules?

4 A I probably reviewed them at the time. When  
5 anything new comes in, any Supreme Court rules or any  
6 changes, what we do, we would make a copy and would send  
7 that out to the all the Assistant DAs to make sure they're  
8 aware of these changes.

9 So, yes, I am very aware that at the time when this  
10 changed in 2005 that the judge had to give the colloquy on  
11 the record. That was not done. It was not reported to me  
12 that it was not done. I expected in every single courtroom  
13 in Luzerne County and every courtroom across the state that  
14 the rules are being followed. But in this case they were  
15 not.

16 Q So you're familiar with Rule 152 requiring that  
17 there be a knowing, intelligent, and voluntary waiver; and  
18 that it had to be conducted on -- colloquy had to be  
19 conducted by the court on the record? You were fully aware  
20 of that?

21 A I am aware of that, yes, sir.

22 Q But at the time, between 2005 and 2008, were you  
23 aware that that's what the rule said?

24 A Well, I reviewed the Juvenile Act as it changed at  
25 that point. So I would have to tell you that I believe at

1 that time that I reviewed that. Now, looking back four  
2 years or five years I can't tell you what day I sat down and  
3 reviewed those rules and I know the numbers of those rules.  
4 I can't tell you that.

5 Q Well, I'm not expecting you to know the numbers. I  
6 don't know the numbers myself.

7 A I wish I did.

8 Q I have the rule in front of me, so I'm looking at  
9 it. But I guess the question I really want to get at is  
10 these waivers were being prepared by the probation officers,  
11 not by counsel, not by the District Attorney's Office, not  
12 by the court?

13 A That's correct.

14 Q Did you believe that -- that with probation  
15 officers actually giving the waiver and discussing the  
16 waiver with the parent and the child that this would  
17 constitute, based upon your extensive experience as a trial  
18 attorney, a knowing, intelligent, and voluntary waiver?

19 A Well, I think -- I think that's a loaded question.  
20 Did I know at that time that they were not being done? No,  
21 I did not. You're asking me now if that would satisfy the  
22 rule that it had to be on the record? No, it does not  
23 satisfy the rule. It does not.

24 Q You've heard a lot of discussion certainly and  
25 concern about the zero tolerance policy?

1 A Absolutely.

2 Q Was that a policy that was supported by you?

3 A Absolutely not, never. I think zero tolerance is  
4 mindless. I have thought that way my entire life. If -- if  
5 you have zero tolerance, then you don't need for people to  
6 make decisions. Then people's experiences are not brought  
7 into this. Everyone is not looked at as an individual. I  
8 think zero tolerance is ridiculous.

9 Q Ms. Carroll, let me read you briefly a transcript.  
10 And it's ever so brief because it's a brief transcript of  
11 HT. And this was in the pleadings that were provided to you  
12 at the beginning of the litigation concerning Luzerne  
13 County.

14 A Yes.

15 Q All parties please step forward. Whereupon, all  
16 parties were sworn in. The court, you've been charged with  
17 harassment. How do you wish to plead? The juvenile,  
18 guilty. Based upon her admission I -- I'll adjudicate her  
19 delinquent. That's the court, Judge Ciavarella is the  
20 attorney.

21 A That's wrong. That's wrong. That is not the way  
22 it should have been done.

23 Q The ADA present in the courtroom is Thomas Calino.

24 A Yes.

25 Q Based upon her admission I'll adjudicate her

1 delinquent. What makes you think you have the right to do  
2 this kind of crap? The juvenile, I don't, sir. Why would  
3 you do this, the court? The juvenile, I have no rational  
4 explanation for that.

5 The court, did Ms. X ever do anything to you? The  
6 juvenile, not personally, no. I don't -- I didn't take into  
7 consideration that Ms. X is a person as opposed to just a  
8 school administrator -- school administration member at my  
9 school.

10 The court, how long have you been at Cresswood?  
11 The juvenile, a year and a half. The court, what grade are  
12 you in? The juvenile, I'm in my sophomore year, 10th grade.  
13 The court, where did you go before? The juvenile, Pocono  
14 Mountain East High School.

15 The court, you've been at Cresswood when I've been  
16 at Cresswood? The juvenile, yes. You've heard me speak?  
17 The juvenile, yes. The court, told you what type of conduct  
18 I expect from children in that school relative to the  
19 juvenile justice system? The juvenile, yes, sir.

20 The court, told you what conduct I expected from  
21 the students at that school relative to your conduct towards  
22 teachers? The juvenile, yes, sir. Is this acceptable? No,  
23 sir.

24 The court, what did I say would happen if you acted  
25 in an unacceptable way towards teachers and/or

1 administrators? The juvenile, I don't recall, sir. You  
2 don't recall? You don't remember me saying that if you did  
3 anything -- any of these things to a teacher, that I would  
4 send you away? You don't remember those words? The  
5 juvenile, no, sir.

6 The court, were you sleeping? The juvenile, no,  
7 sir. The court, you can't remember that? The juvenile, no,  
8 sir. The court, it's going to come back to you because I  
9 didn't go to that school, I didn't walk into that school,  
10 and I didn't speak to that student body just to scare you,  
11 just to blow smoke, just to make you think I would do that  
12 when I wouldn't. I'm a man of my word. You're gone. Send  
13 her up to FACT. Let her stay there until she figures it  
14 out. Thank you. Mother of the juvenile, no, that's not  
15 fair. That's not what the officer said. That's not what he  
16 said. The court, thank you. Whereupon, the proceedings  
17 were concluded.

18 A I'm familiar with that --

19 Q You're familiar with that?

20 A -- afterward, yes, yes.

21 Q Is there anything that you would expect that your  
22 Assistant District Attorney would be able to do in a  
23 proceeding like that different from what was done, which is  
24 to say not one word?

25 A Well, here's the problem. I think we're looking at

1 this now because of this scandal which has erupted because  
2 we found out that the judge is a criminal judge. But if you  
3 go back to those times before this occurred, and I don't say  
4 this lightly, we were faced with what occurred at Columbine.

5           Everyone became very aware of what could happen to  
6 kids when they're out of control or when there are problems.  
7 So while I do not condone zero tolerance, and I do not  
8 condone what the Judge Ciavarella did, in my looking at this  
9 and evaluating this I think he was probably trying to do the  
10 best that he could do because we -- we've seen-- you know,  
11 we heard that there were signs. We heard these kids were  
12 suicidal. We heard these kids had guns, and no one did  
13 anything.

14           So I think there was a reaction across the country  
15 and probably the world that you need to get tough with these  
16 kids. And the feelings before that where you just love your  
17 kids and you hope for the best, that apparently wasn't  
18 working. And a lot of people thought that wasn't working.  
19 So zero tolerance came into affect.

20           And I need to be completely honest here. I have  
21 heard many cases that say that Judge Ciavarella -- what he  
22 did was -- was helpful, and he saved a lot of these kids  
23 lives. Now, I know that that is not popular, and I know  
24 that no one wants to hear that. But I have heard people  
25 say, here's a Ciavarella success story. The kid was out of

1 control. The parents brought him into the courtroom. The  
2 teacher brought him into the courtroom and said, do  
3 something with this child, and he sent the child away.

4 I've heard stories where the kids have joined --  
5 joined wrestling teams at these different facilities, have  
6 gone on to get scholarships and have college degrees and  
7 come out -- have come out of those institutions and are  
8 better for it.

9 Q It sounds like you're supporting zero tolerance  
10 policies?

11 A I absolute -- no, I'm absolutely not. And that's  
12 so unfair for you to say that. What I am trying to say is  
13 we need to look at this totally, not just in a vacuum.

14 Right now from everything that's been said about  
15 what happened in that courtroom, you would honestly believe,  
16 and I've said this before Judge Grim, that someone was  
17 driving around snatching kids off the street because this  
18 animal of a judge had a -- an appetite to get kids before  
19 him, pure, innocent children.

20 Everything's been blown so far out of control. And  
21 I need to say this, sir. I think we have to look at  
22 everything. If -- if this -- the job of this Commission is  
23 truly to say what happened, let's go forward, let's -- I  
24 have three children myself. I would never want one of my  
25 children to be treated in a way that some of these kids were

1 treated. It breaks my heart.

2 But the point is let's look at where this came out  
3 of this zero tolerance. And I think you have to ask -- and  
4 I wish Judge Ciavarella would come in here, because here's  
5 the question. Was there zero tolerance because you wanted  
6 to make money off these kids? Or was there zero tolerance  
7 because you cared about the kids? I don't know the answer  
8 to that.

9 Q Ms. Carroll --

10 A But I don't condone what he did.

11 Q Ms. Carroll, one of the fundamental issues is that  
12 you are sworn to uphold the Constitution of the United  
13 States?

14 A Yes.

15 Q And the Constitution of Pennsylvania. The  
16 constitutional rights of these children is what we're  
17 talking about.

18 A That's right.

19 Q We have a child who appears before a judge, and the  
20 child does not get a chance to knowingly, voluntarily, and  
21 intelligently waive his or her rights. That presents a  
22 legal issue that you and I are familiar with. You've been  
23 practicing law for many years.

24 A 25.

25 Q For 25 years. So you're familiar with these



1 rights?

2 A Yes.

3 Q In that particular example that we read, were the  
4 child's rights actually upheld?

5 A No, absolutely not.

6 Q They were totally violated?

7 A If that were my child standing there, I would feel  
8 sick about it. There's no question. Look, I'm all about  
9 fairness. Everyone in this county who knows me knows I am  
10 all about fairness and doing the right thing and saying  
11 things that maybe aren't popular.

12 But if the work of this Commission is to go back  
13 and say, this Assistant DA didn't do this, this public  
14 defender didn't do this, sure, you're going to find those  
15 things. But the point is how do we go forward?

16 Now, I think the fact is that juvenile court is  
17 very confidential. Because if one of my children were to be  
18 involved --

19 Q You say that, but is that accurate?

20 A Is what accurate?

21 Q Are juvenile courts open to the public?

22 A Yeah, in some instances they are. But what I am  
23 saying --

24 Q Can the press go into juvenile court?

25 A They can in certain instances.

1 Q Then you're saying it's closed, but, in fact --

2 A No, no, no.

3 Q -- the rules -- since 1995 they made it open?

4 A No, no. But I'm saying the confidentiality. I  
5 think it's --

6 Q Which aspects are confidential? Is it not only the  
7 simply the reports that are --

8 A Do you want my answer, sir?

9 Q Yes, ma'am.

10 A I would like to give you my answers, and then you  
11 can ask the next question.

12 Q Yes, ma'am.

13 A But what I'm trying to say is we have -- we want to  
14 preserve these children. If someone commits a crime, I  
15 don't want that child to have their face on the front page  
16 of the paper. I don't want that child to walk out into  
17 society and to forever be a criminal or a loser.

18 The purpose of juvenile court as I see it is to  
19 rehabilitate these kids. That's why -- that is why we don't  
20 treat them like we do criminals, because we're trying to  
21 salvage them.

22 So, you know, there is a lot of -- it just -- it's  
23 so spun out of control in my mind as to what occurred here.  
24 I think you have two things occurring. I think you had a  
25 judge who had zero tolerance who had no patience, didn't

1 care about anybody's rights. He wanted to get to the point  
2 for whatever reason.

3 And then you have a judge who had his money -- his  
4 hand in the till getting money off the backs of the system  
5 and the children and the people and everyone in the system.

6 So I have to honestly ask, if he were not indicted  
7 by the federal government, when would we be looking at these  
8 things? I understand there was statistics that were sent to  
9 certain agencies in the state. And I heard one of the other  
10 people who testified during the first hearing say, well, the  
11 results were sent to the state, but they didn't have time to  
12 sift through those statistics. Well, why were they being  
13 gathered?

14 Q Ms. Carroll, if I may. If I may.

15 A Yes.

16 Q Do you have -- as a DA or as a first Assistant DA  
17 did you have a responsibility to ensure that the rights of  
18 children were being protected in Luzerne County's juvenile  
19 courts? Did the responsibility -- some responsibility lie  
20 with you?

21 A You know the answer to that question. Everyone who  
22 practices law has a responsibility, if you can do something  
23 about it. Now, I was never told by anyone from that  
24 courtroom that the judge wasn't following the rules.

25 But let me tell you this. When Judge Conahan, his

1 partner in crime, had cases that were coming up before our  
2 system in adult court and he was not reading the colloquies,  
3 I was contacted by our appellate attorney who said to me,  
4 we've got to do something because case after case after case  
5 is coming back because Judge Conahan is not putting the  
6 colloquies on the record.

7           So we had a staff meeting, and we specifically  
8 addressed that and said, listen -- and I can remember  
9 saying, I don't care who the judge is or what the judge  
10 says. You have to make sure that that factual basis for  
11 that plea agreement gets on the record or it's for nothing.

12           So I have never shirked my responsibility. And as  
13 a matter of fact, I've probably --

14           Q     And I don't want to suggest that you have.

15           A     And I've probably put myself in situations where I  
16 don't have the responsibility, but I've taken it.

17           Q     Ms. Carroll, let's shift a little bit to another  
18 issue. In the juvenile system the -- there's a provision  
19 for informal adjustments. Are you familiar with that  
20 section of the Juvenile Act?

21           A     Yes.

22           Q     Are you engaged in any way with the Probation  
23 Department in helping to arrange informal adjustments in  
24 Luzerne County?

25           A     No, sir.

1 Q Is there a reason why?

2 A Well, I think the easy reason is because it's being  
3 handled by the Juvenile Probation Office. But I would like  
4 to say that we have had -- now had meetings with Judge  
5 Lupas, myself, the chief public defender, and the people,  
6 the attorneys who are going to be handling the system, the  
7 juvenile system, and we've talked about that.

8 So we're willing to make any changes we possibly  
9 can to make our system better. Up until this point it  
10 hasn't been an issue. It simply hasn't been an issue. But  
11 we'll do -- whatever you think we should do, we're going to  
12 do it.

13 Q What about diversion practices, such as youth aid  
14 panels that are practiced in about eight or nine counties  
15 throughout the Commonwealth of Pennsylvania?

16 A I think --

17 Q Is that something that you have an interest in  
18 doing?

19 A Yes, absolutely. I think if -- look, it's not  
20 going to do anybody any good if you simply put the child  
21 away and don't help them, if you put an adult away and don't  
22 help them. We have to go to the root of the problem and try  
23 to help that person so, again, they can become productive  
24 members of society.

25 So, yes, if there are divisionary programs, I'm all

1 for it. We started drug court here in Luzerne County that's  
2 a diversionary program. I think it's working very well. We  
3 just started mental health court. Yes, I agree with  
4 divisionary programs.

5 Q You think panels involve communities and community  
6 representatives actually having some say about what happens  
7 to juveniles? Do you think that particular practice -- and  
8 I'm not recommending it, because I'm not coordinating it  
9 myself, but --

10 A Yeah, I think that's a good idea. Because I think  
11 there are individuals and people out there who know more  
12 about child psychology, who know more how to handle children  
13 than maybe a District Attorney does or a public defender.

14 So, yes, if there are people in the social work  
15 realm that can help do something with these children,  
16 absolutely.

17 Q Do you have a specific policy at the present time  
18 regarding consent decrees?

19 A No, we do not have a specific policy, but that's  
20 something else that has been brought up that we are  
21 discussing as to whether or not the -- the Assistant  
22 District Attorney should be involved in those.

23 Q One of the things that we've discussed involves the  
24 -- again, going back to the -- to the waiver of the right to  
25 counsel, the role of the public defender in that process.

1           The public defender -- we've been told that the  
2 public defender set certain income requirements for children  
3 who were sent down to his office. Is that accurate?

4           A     That I wouldn't know. I -- I believe that that's  
5 probably true. Otherwise why wouldn't everyone in the world  
6 simply sign up for a free public defender? Because, I mean,  
7 I hear people say, I don't want a public defender. I want a  
8 real lawyer. And this isn't to give a plug to the public  
9 defenders, but they are the real lawyers. And they're the  
10 ones who do this day in and day out. But I don't know their  
11 cut off, their -- you know, how you qualify. I don't know.

12          Q     Who makes the decision about what the public  
13 defender's financial requirements are? Do you know? Is  
14 that something that you participate in?

15          A     No, I -- no, not at all. We don't participate.

16          Q     Does Judge Lupas or do the judges in Luzerne County  
17 participate in that decision?

18          A     I don't know the answer to that. But the Chief  
19 Public Defender will be testifying after me, so I'm sure he  
20 can give you those answers.

21          Q     Given that you have several juvenile defenders in  
22 the courtrooms now and you're having the round table  
23 meetings with other stakeholders, do you have an opportunity  
24 to actually go and observe juvenile court at the present  
25 time?

1           A     I would have that opportunity if I wanted to and if  
2     I could.  And -- but I do want to say a few other things  
3     that we've done at this point.  Instead of just having one  
4     Assistant District Attorney assigned to juvenile court, one  
5     person in the whole office who might know the Juvenile Act,  
6     what I have done now is assigned two Assistant District  
7     Attorneys, and they are both now our juvenile attorneys.  So  
8     they need to know that Act inside and out.

9                     I also have a third Assistant District Attorney who  
10    recently was the person who handled juvenile court.  She is  
11    in somewhat of a supervisory role to these other two  
12    individuals.  So if the other Assistant DAs can't make  
13    court, rather than having someone just fill in and stand  
14    there, they are going to be substituting for each other.

15                    The other thing is we have -- having three other  
16    people in the courtroom rather than one you're more likely  
17    to know if something is going wrong.  You're more likely to  
18    have someone say something or have them discuss those  
19    procedures and come to us.  So we've done that.

20                    I've also hired two brand new Assistant District  
21    Attorneys from two other counties.  They live in Luzerne  
22    County.  They couldn't get a job in Luzerne County.  The  
23    openings have come up.  One was a -- an Assistant DA in  
24    Bradford County -- or an Assistant Public Defender in  
25    Bradford County handling juvenile cases.  Another was



1 working in Monroe County for a judge who handled juvenile  
2 court.

3           So we've had people -- those two people come into  
4 our office, and we have ideas from them. And they've seen  
5 other juvenile courts, and they've seen how it worked. So  
6 we're getting ideas from them on how to try to make our  
7 system better. And it's been a great experience so far.

8           Q     We've heard that the disposition hearings for  
9 juveniles involve the judges knowing what was going to  
10 happen to the -- at the disposition stage prior to the  
11 adjudicatory hearing stage. Did you hear anything about  
12 that as well?

13           A     I heard that afterward. I've heard people say  
14 those sorts of things. There was a situation where Tom  
15 Calino, one of our Assistant DAs I believe it was, when he  
16 first started to handle juvenile cases, we were only sent  
17 the petitions to our office. I think at one point he was  
18 sent recommendations from juvenile probation, and he didn't  
19 know what they were, and he was concerned. Because he was  
20 -- he saw that before the actual adjudication hearing.

21                     So we had a meeting, as I recall, with two  
22 Assistant DAs who were also familiar with the process to say  
23 can you sit down with Tom and explain to him? And as they  
24 looked into it, and my memory is that they found out that it  
25 was the -- it was the recommendation of juvenile probation

1 that he saw. He didn't know what that was because they --  
2 we didn't see those.

3 And probation said, you know, we shouldn't have  
4 sent that over to you with the petition. So that's the only  
5 thing that I -- I have sat down over all this time and said  
6 to myself, did anybody say anything about what was happening  
7 in that court? That wasn't in the court. That was a matter  
8 of paperwork. But that -- I do remember that instance.

9 Q Did you talk at any time from 2004 until you became  
10 DA with any parents or concerned citizens about the  
11 operations of juvenile court?

12 A No, never. No, never. No one ever made a call to  
13 me or talked to me about it.

14 Q Regarding the disposition hearings, did your  
15 lawyers have files when they would go into disposition  
16 hearings for children?

17 A My understanding is that they would get those --  
18 the petitions, and that would be the only file that they  
19 would get. And the disposition hearings were happening the  
20 same day as the adjudication hearings. And the -- and now  
21 -- we're talking about this now that perhaps the disposition  
22 hearings should be handled on a different date so that the  
23 DA is then given as much information as possible prior to  
24 the disposition or the sentencing as it would be in adult  
25 court so that they can actively participate.

1           But my understanding is that at the time they did  
2 not -- they did not receive the information until they were  
3 in the courtroom. But, again, as Judge Lupas has said,  
4 those specific instances are going to have to be talked  
5 about with the individual District Attorneys and their  
6 experiences.

7           Q     In listening to Judge Lupas I was left with the  
8 impression that the DAs did not actually have files when  
9 they went in to do a disposition hearings. And, in fact,  
10 that you do not have -- did not at one point in time have a  
11 full file system whereby you would retain files from the  
12 hearings for juveniles; is that correct?

13          A     Right, yes. We did not have files at that time.  
14 The keeper of our files was the Clerk of Courts and the  
15 Juvenile Probation Office. But since I've taken over and  
16 since all of this has now come to light we've purchased  
17 filing cabinets with locks, and we now keep our files.

18           After they -- the child will go into the courtroom  
19 and they would have their hearing, disposition, et cetera,  
20 our Assistant DAs will then file those in these locked  
21 cabinets so that the District Attorney's Office can have  
22 files as well. But we didn't have that before.

23          Q     How long will you retain those files?

24          A     Well, forever if I have to. But I -- I'm not sure  
25 at this point. I don't know what the period would be. But

1 I know that there are files retained on microfiche from our  
2 Clerk of Courts for years and years and years. So I'm sure  
3 we will come up with some sort of system to make sure that  
4 we retain them.

5 Now, in our files I believe we have copies of the  
6 petitions and maybe some notes from the Assistant DAs  
7 handling the cases, the same sort of things we have in our  
8 adult files.

9 Q Did you hear anything about the actual adjudicatory  
10 hearing in terms of the fairness of the proceedings?

11 A No. The only thing that I would recall people  
12 saying would be that, you know, boy, juvenile just -- they  
13 -- they'll tell you the truth. You bring them before the  
14 judge, and they'll just tell you like it is. I wish adults  
15 were that way. I've heard that statement made from  
16 different people who had been in juvenile court. But never  
17 anything about the procedures.

18 Q And, of course, you know that many of -- many of  
19 the juveniles were sent away for minor infractions after  
20 these disposition hearings?

21 A Yes.

22 Q Did any of your DAs ever say anything about that  
23 particular practice of sending them away for minor  
24 infractions?

25 A No, sir.

1 Q What is your opinion of that particular practice?

2 A Well, there's -- there's a lot to that question  
3 because I don't agree with the kind of judge that Judge  
4 Ciavarella was. But we give our judges a lot of power, and  
5 we give our judges a lot of trust. That's the nature of our  
6 system.

7 So there are -- there are judges who handle adult  
8 court where I was not satisfied with some of those judges.  
9 So, you know, I don't like the way he ran the court. And to  
10 hear the stories of how, you know, kids did something minor,  
11 I think that's -- it's horrible.

12 But along those same lines, maybe someone did  
13 something very minor at this point, but maybe they were  
14 before the judge before. Or maybe there's something in  
15 their evaluations that say, you know, this child needs more  
16 help or needs some supervision.

17 So when we hear the stories in the press that, you  
18 know, this person stole a skateboard and went away for  
19 months and months, I wonder is that the whole story? What's  
20 in that file that we don't know about?

21 And I -- and I have to hope that there was  
22 something in the files to say to the judge, you know, this  
23 -- this child needs some more supervision, or there's  
24 something here. There are services that you can give to  
25 this kid.

1           But on its face, you know, simply to send a child  
2 away, you know, I think that's terrible. And I think anyone  
3 -- anyone in their right mind would say that that's not  
4 right to see that happen. But what are the reasons in these  
5 individual cases? I don't know.

6           Q     Ms. Carroll, when these matters first began in  
7 terms of litigation in the spring you indicated in your  
8 pleadings that you thought a couple of cases that were  
9 brought to your attention might be isolated cases, and that  
10 the petitioners were not providing you with information  
11 about a wide range of cases that they were alleging at that  
12 time?

13          A     Right.

14          Q     Have you come to find out that this was as wide  
15 spread as was being alleged at the time?

16          A     Well, just as everyone else has now found out,  
17 absolutely. But when I first took office the Juvenile Law  
18 Center had a -- I think it was four cases where the  
19 juveniles were not represented. What they did at that time,  
20 they asked for the extraordinary powers of the king's bench  
21 warrant and the Supreme Court to step in to exercise those  
22 powers.

23                 So looking at that in a vacuum and not knowing that  
24 there was so many other thousands of cases that this had  
25 happened in, we reviewed the law and took the position that

1 you don't need the Supreme Court to take such extraordinary  
2 steps.

3           What I agreed to as the District Attorney was what  
4 has now been called a do-over in that we said to the  
5 Assistant DAs, go up there and give the child a brand new  
6 hearing, agree and consent to a brand new hearing so that  
7 they can have a fair case and a fair hearing before the  
8 judge.

9           But the Supreme Court agreed with me. The Supreme  
10 Court of Pennsylvania said, you're right. Over a number of  
11 -- handful of cases we're not going to exercise these  
12 powers. But then as soon as the judges were indicted and it  
13 became well known that this was a pattern of abuse that this  
14 judge was engaged in and there was so many kids, we agreed,  
15 yes, the Supreme Court should come in.

16           And I have to say this. I took the extraordinary  
17 step myself when we were before Judge Grim -- and I didn't  
18 hear Judge Grim's testimony yesterday, but I would imagine  
19 that he told you that our office has been very fair now  
20 knowing what we didn't know then, but very fair in trying to  
21 rectify the situation.

22           So in his first interim report he sat with myself  
23 and Marsha Levick from the Juvenile Law Center. And I think  
24 he probably thought there was going to be a fight on my  
25 behalf saying we're going to fight tooth and nail to keep

1 every one of these cases going. I did not.

2 I said the fair thing to do would be to take the  
3 very minor cases, agree to vacate them and agree to expunge  
4 them. And his exact words to me were, thank you, Mrs.  
5 Carroll. You're very reasonable. This is going to be a lot  
6 easier than I thought.

7 So then we got to the second report. I agreed what  
8 should be done in the cases in the second group. Then we  
9 got to the third group. And then Marsha Levick said, well,  
10 wait a second. If this is what's going to be happening,  
11 maybe all cases should be vacated. If the judge did not  
12 give counsel to all these people in all these cases, maybe  
13 we should vacate every single case.

14 So I agreed that we would vacate all 6,500 cases.  
15 Now, what did that mean for our office? It meant an  
16 incredible burden, because to vacate the cases and give  
17 every child a new hearing was going to mean that possibly  
18 we'd have 6,000 more hearings.

19 I didn't really think that would occur, but  
20 possibly. So when the Supreme Court came down and adopted  
21 the third interim report, recommendations and report, and  
22 said that, you know, this is a victory. We're vacating all  
23 the cases. I was celebrating along with everyone else, but  
24 nobody seemed to want to ask me about it.

25 I was just as happy as the Juvenile Law Center and



1 the parents and the probation officers and everyone else  
2 because it was the best first step to turning this all  
3 around. So we said, let's vacate the cases.

4 Now, the second part of it, the Juvenile Law Center  
5 argued that double jeopardy should bar retrial of any other  
6 of these other cases. Now, I didn't agree with them for a  
7 lot of legal reasons. But my main concern was this. I had  
8 heard that there were still children in -- juveniles in  
9 placement who were deathly afraid to get out.

10 Their parents had given up on them. Some of them  
11 were drug addicts. Some of them had nowhere to go. They  
12 were in a wonderful program that -- that was helping them  
13 through the courts. So I had thought if double jeopardy  
14 applies to all of these kids, they're going to open up the  
15 doors of placement and just put them out on the street.  
16 They're going to have to.

17 So what I asked Judge Grim for and what the Supreme  
18 Court ultimately gave us was the opportunity to review  
19 these serious cases to determine -- and the cases that are  
20 still open and in placement and some not in placement, to  
21 determine whether or not we want to go forward.

22 So we're very lucky that we've only come up with, I  
23 think, 106 cases that fall into this small category. So  
24 right now as we speak I have assistant -- three Assistant  
25 DAs and our entire victim's unit working on these cases to

1 say out of 106, how many do we need to go forward with?

2 Now, I'm going to look --

3 Q Ms. Carroll, let me just say I've heard Judge Grim  
4 speak in a very positive way about the manner in which you  
5 handled this in other settings. So I do -- I don't know  
6 whether he mentioned it in his testimony yesterday, but I  
7 personally heard him speak and compliment you on the manner  
8 in which you handled these dispositions.

9 A And he's been wonderful to work with as well. And  
10 I appreciate that. But what I'm saying is --

11 CHAIRMAN CLELAND: I think what we're trying to do  
12 is to focus on Mr. Listenbee's questions.

13 THE WITNESS: Yes.

14 CHAIRMAN CLELAND: So I -- we'll give you the  
15 opportunity to make a statement.

16 THE WITNESS: Yeah. And I'm just saying --

17 CHAIRMAN CLELAND: I think we can short circuit  
18 this if you just answer the questions that he asks.

19 THE WITNESS: I apologize. I'm happy to.

20 BY MR. LISTENBEE:

21 Q Ms. Carroll, one of the other issues that's come up  
22 regards the District Attorney deciding not to certify the  
23 procedure whereby the District Attorney's role in juvenile  
24 court is to prepare all the petitions. What is your  
25 position on that at the present time?

1           A     We've been discussing that currently. I think --  
2     it has been being handled by juvenile probation, and there's  
3     some very capable, able people in juvenile probation. The  
4     question as to whether or not to take that certification  
5     from them, it is quite frankly going to be more work for our  
6     office, and it would be something that we had not done  
7     before.

8                     But I do say this. If it comes out that it's the  
9     recommendation of this Commission that you feel that that  
10    would help prepare this system and have attorneys regarding  
11    -- looking over these petitions, then I think that -- I  
12    think this is something that we're going to have to do.

13           Q     Okay.

14           A     I think it is.

15           Q     Okay. I've heard you describe the role of the  
16    prosecutor in juvenile court as to help these kids. What do  
17    you see? Can you just tell this Commission what your view  
18    of the role of the prosecutor in juvenile court is, first in  
19    terms of what you're required to do, and secondly in terms  
20    of what you believe that you should be doing?

21           A     Yes. Well, I think not only in juvenile court, but  
22    in adult court as well, and I know it's the motto of the  
23    District Attorney's Association, but it's what I live my  
24    life by. You have to do the right thing for the right  
25    reasons.

1           So if a case comes before us in juvenile or in  
2 adult court, and the evidence is not there or, you know,  
3 maybe the case is not the sort of case that should be going  
4 forward, we don't try to win at all costs because there are  
5 no -- there are no winners. There are no losers.

6           When I was a young DA our first assistant, and who  
7 will later became the District Attorney, Jerry Cohen, was a  
8 very wise person. And he would tell us, the District  
9 Attorney's Office always wins regardless. If it's a not  
10 guilty, you've won. Justice is done. If it's a guilty,  
11 you've won. Justice is done. So that's the way I came into  
12 this system, and I've always agreed with that. And I  
13 believe that.

14           Keeping track of wins and losses -- he used to say  
15 it's not a baseball game. A lot of prosecutors like to say  
16 I have 100 percent conviction rate or 99. Well, that feels  
17 good to say that because you know you win a lot of cases.  
18 You get guilty verdicts. But I've lost cases. I've dropped  
19 cases where I didn't think that they should go forward.

20           And you can ask the defense attorneys. I've been  
21 fair in everything that I do. And I think the role of the  
22 DA in the courtroom is to make sure that the right thing is  
23 being done. So that's -- and that's in juvenile court.  
24 That's everywhere.

25           Q     Ms. Carroll, I have just one final question and I'm

1 going to turn it over to Mr. Horoho. On the issue of  
2 expungements, you have 6,500 cases to expunge. How long do  
3 you think it's going to take you to do those expungements?  
4 And do you believe that the State Police are set up now to  
5 handle that large volume of expungements as you go forward?

6 A Well, I'm not sure about the State Police, but I --  
7 maybe we could do this within the next several months.  
8 We're working on that as well. So in addition to working on  
9 the cases that may have to be retried, I have put so much of  
10 my personal attention into juvenile court at this point, and  
11 so have our attorneys so that we can appear before Judge  
12 Grim, and that we can be prepared. We can look at the  
13 system and say, how can we make this better?

14 But I'm saying I -- I would love to put this all to  
15 rest really and move on from the situation that we're in and  
16 make it that some day Luzerne County is a model; that, you  
17 know, we've gone through a terrible period, and we've gone  
18 through this horrible thing, and it's embarrassing, and it's  
19 -- you know, it's terrible. But maybe we'll become a model.  
20 And I'd love to be a part of that.

21 MR. LISTENBEE: Thank you, very much, Ms. Carroll.  
22 Mr. Horoho has a few questions for you.

23 THE WITNESS: Thank you.

24 BY MR. HOROHO:

25 Q Ms. Carroll, thank you. You were present in the

1 room when I asked the questions about the ethical  
2 obligations to Judge Lupas.

3 A Yes, yes.

4 Q Let me begin my questions with -- and you were kind  
5 enough to tee this up for me where you talk about this idea,  
6 this feeling sometimes in prosecutor's office of always  
7 winning.

8 I'm reading a book called Ordinary Injustice: How  
9 America Holds Court by Amy Bach. In fact, it was referred  
10 to me by a local lawyer in Luzerne County. Part of this --  
11 one of the chapters it talks about this idea of the  
12 prosecutor is not supposed to always be concerned about  
13 winning, that they're supposed to pursue justice.

14 And there's a quote that this ideal is best  
15 described by Robert Jackson as US Attorney General before he  
16 became Supreme Court Justice. And his quote is, the  
17 qualities of a good prosecutor are as illusive as impossible  
18 to define as those which make a gentleman. And those who  
19 need to be told would not understand it anyway.

20 A sensitiveness to fair play and sportsmanship is  
21 perhaps the best protection against the abuse of power, and  
22 the citizen's safety lies in the prosecutor who tempers zeal  
23 with human kindness, who seeks truth and not victims, who  
24 serves the law and not factual purposes, and approaches his  
25 task with humility.

1           Now, that is a quote from 1940, and maybe except  
2 for making it a little bit gender neutral --

3           A     I wouldn't change a thing.

4           Q     Wouldn't change a thing. What I want to do is --  
5 and I understand what your changes are, but I also think our  
6 role as a Commission is to revisit history and make sure  
7 mistakes of the past don't happen.

8           A     Sure.

9           Q     And I understand to a certain extent you not  
10 embraced, but accepted in part the zero tolerance policy of  
11 Judge Ciavarella. And I don't mean to mischaracterize what  
12 you're saying, but I'm not so much concerned about that.

13                   What I'm concerned about, and other Commissioners  
14 are concerned about is --and hopefully at some point in time  
15 the dust is going to settle here. You know, they say time  
16 heals all wounds, and I'm hoping it does here.

17                   But once it does, and the dust settles, what we are  
18 concerned about is that the next judicial mandate or  
19 philosophy that takes hold in the courtroom, and to a  
20 certain extent is supported by the schools or some other  
21 part of the community, it does not go unchallenged or  
22 unchecked.

23                   And you would agree with me that when you were in  
24 the District Attorney's Office, prior to the zero tolerance  
25 policy as it relates to the constitutional violations, went

1 unchallenged and unchecked by your office?

2 A Well, I think it went unchallenged and unchecked by  
3 the people in that courtroom, yes. Now, if you're telling  
4 me that by your question you think that we can go into a  
5 courtroom and tell a judge how to act or what to do and make  
6 that person a perfect judge, that's not realistic.

7 However, if a person in the courtroom sees that  
8 there are issues that need to be addressed, yes. But they  
9 have to first recognize those issues. And, again, I don't  
10 think I say it lightly. The Columbine incident is forever  
11 burned into our minds.

12 I mean, I remember coming home from work that day  
13 and the television was on. And I saw, you know, a young  
14 teenager hanging out the library window. It was smashed,  
15 and he was full of blood. And you see kids running from --  
16 from that school because there was a shooting.

17 So you can't discount that. So what I'm trying to  
18 say is I don't like zero tolerance. I never have. On the  
19 other hand, if all the dust settles here and everything  
20 clears and then, you know, you take a look at our system in  
21 a few years and suppose the pendulum swings the other way,  
22 well, we don't want to put any kids in placement because  
23 it's not good for them; or, you know, who knows what the  
24 perfect -- what the perfect thing is. I don't know.

25 But I want you -- don't worry about Luzerne County.



1 Because as long as I am here, it will be in good hands. If  
2 I can do something, I promise you I will do it.

3 Q Well, let's talk about when it wasn't in good  
4 hands. Let's go back to 2003 to 2008, okay?

5 A Yes.

6 Q And I go back, and I'm trying to look at this from  
7 the ethical responsibilities of the lawyers appearing in  
8 courtrooms. And I, again, go back to the book.

9 Here is a quote from the author. Prosecutors are  
10 supposed to act in favor of the victim, protect the  
11 defendant from having his rights impugned, and adhere to the  
12 law while reflecting local customs and values. It is an  
13 extremely complex position to be in, and I recognize that.  
14 And I think you recognize that.

15 A Yes, yes.

16 Q This is a question I think I asked Judge Lupas. Do  
17 you think during that period of time, '03 before you became  
18 DA, that the ethical obligations of the lawyers in your  
19 office and the other lawyers who appeared in those  
20 courtrooms were being outweighed by the priorities of the  
21 local customs, so to speak, or the values and the local  
22 philosophy of this judge?

23 A I don't know the answer to that. I don't know the  
24 answer. If you had an Assistant DA --maybe some Assistant  
25 DAs liked zero tolerance. Maybe they thought it was good

1 that he was very tough. Maybe they saw the success stories  
2 and said, this is great.

3 Or maybe you had an Assistant DA in the courtroom  
4 or assistant public defender who was afraid to say something  
5 to the judge. I don't know the answers to that. I can only  
6 speak to myself.

7 In 2003 I was a part-time Assistant DA. I had no  
8 supervisory jobs. I wasn't the first assistant. I became  
9 the first assistant in '04. Since '04 as the first  
10 assistant to being the DA I have worked my fingers to the  
11 bone on every issue that's been brought before me.

12 I never turned my head. I never let somebody else  
13 worry about it, never. And as a matter of fact, in my first  
14 year here, the day I became personally aware and I  
15 discovered that our court administrator, a man who I had  
16 known for 25 years, who was by all accounts a nice person,  
17 he was stealing from the District Attorney's Office, went in  
18 that day -- I felt very bad for him and his family, within  
19 that day I contacted the State Attorney General and United  
20 States Attorney's Office and I had conversations with the  
21 FBI, and we took it from there.

22 And I'm not so sure that everyone would have done  
23 that, but I did that. And he's been prosecuted, and he's  
24 been removed. I'd never turn my back on anything. So the  
25 point is for whatever reason I don't know why it wasn't

1 brought to my attention. I do not know the answer. So  
2 you're going to have to ask the individuals what they were  
3 thinking.

4 But, again, if the purpose of this Commission is to  
5 make sure this never happens again, and I don't mean to be  
6 smart about this, but you tell me how not to have a judge  
7 who's a criminal? That's the bottom line here.

8 CHAIRMAN CLELAND: You report them, Ms. Musto  
9 Carroll. You report them. That's the answer. That's the  
10 simple answer.

11 THE WITNESS: Well, I agree with that.

12 CHAIRMAN CLELAND: Excuse me. I apologize for  
13 interrupting your questioning.

14 THE WITNESS: No, but, Judge, I agree with that.  
15 And I understand that you're upset at this as well. Because  
16 this is a judge who makes all judges look bad. But, yes, if  
17 you see a judge is doing something, report them. And I've  
18 had meetings. As a matter of fact, on Friday I had a  
19 meeting with my -- our staff. And I said to them in no  
20 uncertain words, if that judge is not doing the right thing,  
21 you stand up to that judge no matter what the consequences  
22 are. So I agree with that.

23 BY MR. HOROHO:

24 Q But you're saying that to anybody in --

25 A Our Assistant DAs.

1 Q Were you saying that in 2003 to 2008 before --

2 A I was practicing it. I was practicing it. You can  
3 pull transcripts where I've told judges on the record that I  
4 did not like what they were doing, or I've told judges on  
5 the record that things were inappropriate. I've argued with  
6 judges. I think you can see my personality now.

7 But did we know? And you and everyone here has the  
8 benefit of hindsight to now know that the man was a  
9 criminal. Did they know then? No. Were these issues  
10 talked about then? Absolutely not. They weren't. They  
11 were not.

12 Q Well, did Sam -- Sam --

13 A Sanguedolci.

14 Q Did he -- apparently he didn't have confidence in  
15 you to come to you and complain to you about what was  
16 happening in the courtroom?

17 A I think you're putting words in Sam's mouth because  
18 Sam works with me, and I know Sam. He was a young attorney  
19 when I was in that office. You have him sit here, and you  
20 ask him.

21 Q Did he make any complaints to you --

22 A No, sir.

23 Q -- about what was --

24 A No, sir. And maybe he thought -- see, I think  
25 that's so unfair that you would make that statement on his

1 behalf. Maybe he thought at that point that no one could do  
2 anything to Judge Ciavarella. But I --

3 Q Is that what you thought? Is that what you thought  
4 --

5 A No, no.

6 Q -- was happening, that these people were -- were  
7 intimidated to the point where they refused to come to their  
8 supervisors and say what was going on in the courtrooms?

9 A Were they intimidated? Were they lazy? Were they  
10 not recognizing it? I don't know those answers.

11 Q Were they too inexperienced to know the rules?  
12 What was the reason why --

13 A No.

14 Q -- Sam would not come to you?

15 A Well, don't you think that you're going to have to  
16 ask him that and let him say -- I will be very surprised if  
17 he tells you that he would not come to me with things. He  
18 has come to me with things. They've all come to me with  
19 things when they need me to do something. No one I know  
20 would look at me and think I'm a wallflower. It's just not  
21 the way that I am.

22 So if Sam had said to you, I -- I didn't tell  
23 Jackie because I didn't think she'd do anything, I'll be  
24 shocked. I will be absolutely shocked.

25 Q All right. Let's look forward. One more question

1 on the ethical violations that there were and  
2 responsibilities. Have you done anything to implement  
3 internally a policy where your office is fully aware of what  
4 their ethical responsibilities are in courtrooms now?

5 A Well, we've -- we've discussed ethics, and I think  
6 everyone has. But let me ask you this. The Pennsylvania  
7 Supreme Court says that the lawyers only need one ethics  
8 credit a year. Maybe that should change. Maybe that should  
9 change.

10 MR. HOROHO: I have no other questions, Your Honor.

11 CHAIRMAN CLELAND: Mr. -- Judge Woodruff.

12 BY JUDGE WOODRUFF:

13 Q Ms. Carroll, how are you this afternoon?

14 A Okay.

15 Q I have a few questions for you here. Just so you  
16 know where I'm coming from, I sat as a juvenile court judge  
17 since I've been on the bench. I've also been a lawyer for  
18 quite some time, as everyone at this table has as well. I  
19 would think that as a lawyer, at least in law school, it was  
20 presented to me the number one thing for a lawyer to do is  
21 protect people's rights?

22 A Yes.

23 Q Would you agree with that?

24 A Yes.

25 Q And so -- and I'm -- I want to condense my

1 questions in regard to the things that happened in the  
2 courtroom. I would think that it's the responsibility of  
3 all lawyers, as well as other court personnel, to make sure  
4 the rights of everyone in the courtroom, particularly the  
5 defendants, is being protected?

6 A Well, I --

7 Q Is that something you agree with or disagree with?

8 A Yes. I don't think anyone would disagree with  
9 that.

10 Q Okay.

11 A I really don't.

12 Q Okay. With that being said, let's just talk about  
13 the Assistant District Attorneys. We've had a lot of  
14 testimony and a lot of documentation that juveniles were not  
15 represented, a substantial amount of juveniles weren't  
16 represented.

17 A Yes.

18 Q Are you aware if any of the Assistant DAs were  
19 present when the so-called waiver sheet, waiver of counsel,  
20 was provided to the juveniles?

21 A It's my understanding in asking those questions now  
22 that no, they were not.

23 Q Okay. They were not present during then. And it's  
24 also my understanding that there was no colloquy on the  
25 record when everybody was in the courtroom in regard to

1 waiver of counsel as well?

2 A Right. It's my understanding that there was not.

3 Q Okay. And there was no written colloquy that was  
4 provided as well in regard to the waiver of counsel?

5 A I don't -- I don't think so. I don't know for  
6 sure, but I would think obviously if it's written and they  
7 go over it on the record, it's part of the record. So I'd  
8 have to say no.

9 Q Okay. And, you know, there's a brief statement you  
10 indicated that Judge Ciavarella was not just -- that you  
11 indicated weren't just picking pure, innocent kids off the  
12 street?

13 A Right.

14 Q And --

15 A That's right.

16 Q Okay. But we don't really know that in at least 54  
17 percent of the cases because they weren't represented?

18 A Well, I hope to God that that's not what happened.

19 Q But, I mean, as the rights, you know, they weren't  
20 represented, you would think we don't know these 54 percent  
21 may well have and -- have been innocent kids?

22 A Well, here's the thing. Well, sure. I mean, not  
23 everyone who's arrested is guilty. There's no doubt about  
24 that.

25 Q Right. And that's why we have attorneys?



1 A Right.

2 Q And particularly for juveniles because, as you  
3 indicated, juveniles and adults are different, correct?

4 A Right, right. Now, the thing is -- the thing that  
5 we have to deal with, and I guess everyone has to answer the  
6 question, that some of them did have attorneys. And my  
7 understanding --

8 Q Okay. I understand that.

9 A You don't want my answer?

10 Q No. I want you to answer in regard to this.

11 A Okay.

12 Q It's my understanding that 54 percent of them did  
13 not have attorneys?

14 A Right.

15 Q 46 percent did, which is great. But in regard to  
16 54 --

17 A Right.

18 Q -- that didn't, what is your response to that?

19 A Well, it's my understanding that -- that they and  
20 their parents -- and, of course, taking the juveniles out of  
21 it, because I imagine whatever their parents said that they  
22 would do. But the parents -- I was told now looking back  
23 that many of the parents didn't feel that they needed an  
24 attorney.

25 And the interesting thing is in those four or five

1 cases that came up in front of Judge Ciavarella that I  
2 talked about before where we agreed to a do-over, I recall  
3 our first assistant handled those cases. But I recall him  
4 saying that even then they still didn't think they would  
5 need a lawyer.

6 Q Okay.

7 A So it was a choice that they had to make. Now,  
8 whether or not they made that on their own or maybe they had  
9 talked to someone who said you don't need a lawyer, I don't  
10 know the answers to that.

11 Q But it's the juvenile's choice, correct?

12 A Right, right. But the parents are also involved.

13 Q Okay.

14 A That's why -- if I could just put this in here as  
15 well. I think everyone should have to sit in this seat  
16 who's involved.

17 Q Ms. Carroll, I'm sorry. I'm sorry to cut you off.

18 A I know, but I'm sorry. I talk too much. Go ahead.

19 Q I have a lot of questions, and if we move on, I  
20 believe you're going to have a closing statement.

21 A I apologize.

22 Q Okay. In regard to the waiver of counsel, that's  
23 one thing. Let's talk about -- it's my understanding there  
24 were a number of admissions that were made as well?

25 A Yes.

1 Q And there was no admission colloquy --

2 A Yes.

3 Q -- provided?

4 A That's my understanding too.

5 Q Correct, okay. And we listened to one transcript  
6 here, and we know that, in fact, to be the case?

7 A Yes.

8 Q Correct? Okay. And your Assistant DAs were in the  
9 courtroom at that time?

10 A I believe that they would have been. There was one  
11 in that record, yes.

12 Q Right, okay. And we talked about the Juvenile Act  
13 came into affect in 2005, and all your Assistant DAs, I'm  
14 sure, are required to learn the Juvenile Act?

15 A Yes, sir.

16 Q Since they're in juvenile court?

17 A Yes, sir.

18 Q And so without an admission colloquy being given,  
19 isn't that in violation of the rules?

20 A Yes. I think -- I think you're going to find that  
21 there were violations of the rules. For whatever reason, I  
22 don't know.

23 Q Okay.

24 A But, again, but let me -- but let me say, Judge, in  
25 all fairness, if -- you know, if what we're trying to do is

1 make this better, then we know these are the facts.

2 Q I understand, Ms. Carroll. And that's -- and  
3 trying to make this thing better so it won't happen again,  
4 that's our job.

5 A Right.

6 Q And we'll do that.

7 A And my job also.

8 Q I understand. But your job is also to sort of  
9 answer the questions in the limited time that we have.

10 A I will.

11 Q With that being said, the waiver of counsel  
12 happening outside of courtroom in most cases, but the  
13 admission colloquy not happening in the courtroom, that is a  
14 clear violation.

15 My question is, you know, these are your Assistant  
16 DAs. You're their supervisor at this time, correct?

17 A Yes.

18 Q Okay. Why is it there was no mention of those  
19 rights being violated by -- by the people that you  
20 supervised?

21 A That would be coming to me. The information would  
22 be coming to me. Why didn't that information come to me? I  
23 don't know the answer to that.

24 Q Okay. And so with that being said, apparently your  
25 Assistant DAs, at least at that point, were not properly

1 doing their job; is that correct?

2 A Well, you're asking me to make a determination  
3 here.

4 Q Well, I'm -- I just want you -- we have limited  
5 facts. And so if you have your Assistant DA in the  
6 courtroom --

7 A If they were not -- if they were.

8 Q If colloquy was not given, were they doing their  
9 job properly as directed by you?

10 A No, no.

11 Q If, in fact, you had a DA or Assistant DA that was  
12 doing their job, what would you expect them to do when  
13 something like that occurred?

14 A I would expect them to bring it to the judge's  
15 attention on the record. I would expect them to bring it to  
16 my attention or the District Attorney's attention and to  
17 discuss it so that -- as I said, we have a perfect example.

18 Judge Conahan was not putting -- was not giving the  
19 guilty plea colloquies on record. He was not allowing the  
20 facts to be put on the record. We discussed that. That was  
21 brought to my attention by an appellate attorney. We  
22 discussed that. Because what's the point of getting a  
23 hollow conviction if you're going to have to do it again,  
24 and it's not done the right way?

25 Q So you would expect them to come to you?

1 A Yes.

2 Q Talk to the judge or come to you?

3 A Yes. And I would expect that at that point I would  
4 go to the judge if the problem were not being corrected.

5 Q Okay.

6 A Then what should we have done? Talked to the  
7 judge, let the judge know. If that continues, you go to --  
8 perhaps I would guess the JCJC, the AOPC, or the Judicial  
9 Conduct Board.

10 Q Okay.

11 A You know, there -- you do something.

12 Q So there were a number of avenues that could have  
13 taken place, but none of them were? In fact, the initial  
14 contact with you didn't even occur from your Assistant  
15 District Attorneys?

16 A That's correct. But -- but I know you don't want  
17 me to say more than I need to, but let me just say this.  
18 Even if all these colloquies and the law and everything was  
19 followed in the courtroom and he was a procedural stickler  
20 for rules, even if that had all occurred, is there anyone  
21 saying on the other hand that he wouldn't still have gotten  
22 kickbacks from the juvenile -- from the people who built  
23 this PA Child Care?

24 Q Ms. Carroll, I understand.

25 A I think that's an important question, sir. And I

1 --

2 Q I do not agree with that. Because my position is  
3 here without the kickbacks there's rights being violated of  
4 these juveniles, even if he wanted to detain these kids or  
5 place these kids.

6 We haven't even got there yet, because in regard to  
7 juvenile hearings, there's two cases. There's an  
8 adjudication phase, and that's where we are. When we're  
9 talking about admissions we're talking about waiver of  
10 counsel. We're still at the adjudication phase. We don't  
11 even get to what happened --

12 A Disposition. I understand.

13 Q -- as far as disposition. So whether that be right  
14 or wrong, there's a violation up front that sort of -- you  
15 know, it doesn't matter what happened after that. Would you  
16 agree with that?

17 A Well, no. I think you know what was his  
18 motivation. Was his motivation to cut corners and put as  
19 many kids away as possible so he can get money from that?  
20 Because -- because my understanding was he was doing this in  
21 1999. The PA Child Care didn't start construction until  
22 2002.

23 Q That's been the case. That's just a longer time  
24 that one's rights are being violated. And that's -- as  
25 lawyers that's what we're talking about here, right?

1           A     Sir, I agree with that.  But what I am trying to  
2     say is we -- I think Judge Ciavarella should sit in this  
3     seat and answer these questions and tell us what his  
4     motivation was so that we can maybe see if we see this  
5     coming with another judge.

6           Q     Ms. Carroll, I understand that.

7           A     I know.  I understand that.  I understand that.

8           Q     And the judges, they've been indicted, and they'll  
9     have a seat to sit in and discuss it.  But there are other  
10    people --

11          A     But I can't just answer the questions.

12          Q     There are other people involved as well,  
13    particularly your Assistant District Attorneys.

14          A     Well, when you say involved though, sir, involved  
15    in the corruption?  No.  Involved in some sort of scheme  
16    that he was handling?  The US Attorney's Office and the  
17    federal government investigated the judge, and if there were  
18    any charges --

19          Q     Ms. Carroll.

20          A     Sir, I think this is extremely important.

21          Q     Ms. Carroll, didn't we just go over that your  
22    Assistant District Attorneys were sitting in the courtroom  
23    when no admission colloquies were given?

24          A     You're saying they're involved.  And I think that's

25    --



1 Q And you indicated that that's not their job?

2 A I think being involved is a loaded statement. And  
3 if I can at least say what I need to say. If there were any  
4 wrongdoing whatsoever, they'd be arrested. There's no  
5 question. In addition, there was no misconduct found from  
6 Judge Grim.

7 And when judge -- Marsha Levick and Lourdes Rosado,  
8 the two attorneys from the Juvenile Law Center, argued very  
9 strenuously that there was prosecutorial misconduct here,  
10 prosecutorial misconduct. I argued against it. Judge Grim  
11 had no findings of prosecutorial misconduct in any of his  
12 reports and recommendations.

13 More significantly, the Juvenile Law Center did not  
14 take exception to that. And then the Supreme Court didn't  
15 address it. So to say that the District Attorney's are  
16 involved, I think we have to say -- let's narrow the issue.  
17 Involved in what? Being in the courtroom where the rights  
18 aren't being read? Yes. Being in the courtroom where the  
19 colloquies aren't put on the record? Yes. Being involved  
20 in his criminal activities? I don't see any evidence of  
21 that.

22 Q Ms. Carroll, I have not asked you one question in  
23 regard to the District Attorneys, Assistant District  
24 Attorneys being involved with any criminal activity.

25 A You said involved.

1 Q I'm not asking any question.

2 A I apologize.

3 Q My question for you, and my final question, your  
4 Assistant District Attorneys that you supervised, were they  
5 doing their job during this time where no admission  
6 colloquies were provided?

7 A I said no.

8 Q Okay.

9 A They were not.

10 Q And what have you done now to hopefully prevent  
11 that from happening in the future? What is it? What  
12 program do you have in regard to if there's no admission  
13 colloquy given at this point? What do you expect from your  
14 Assistant District Attorneys or what's different than it was  
15 in the past?

16 A What's -- what's expected of the District Attorneys  
17 is what has always been expected, and that is to follow the  
18 law. Now, I --

19 Q And obviously that's not enough, right?

20 A Well, right. But I have just given you a perfect  
21 example of a meeting that I had on Friday with our Assistant  
22 District Attorneys where I stood up at that meeting and I  
23 said, if something is wrong in that courtroom, you have to  
24 speak up. You have to do something. I've had those  
25 discussions. We've been having those discussions.

1           But, again, in fairness to the Assistant DAs who  
2 were there, did they think that those procedures were being  
3 followed by these written colloquies? That's what they've  
4 reported to me.

5           MR. WOODRUFF: I have no other questions.

6           CHAIRMAN CLELAND: Ms. Carroll, we agreed that we  
7 would give you a five minute closing. And if you want to  
8 take five minutes, we'll give you that.

9           MS. CARROLL: Well, the only thing I would like to  
10 say in closing is that -- again, I think I've said most of  
11 what I needed to say in response to these questions. But  
12 the work of the Commission, I think, is extremely important  
13 because we have to make sure nothing like this ever happens  
14 again.

15           But the main ingredient in this entire thing was  
16 the fact that a man disregarded the law, and he used the  
17 justice system to make money. No one could ever expect that  
18 anything like that would ever happen, but it has.

19           And, unfortunately, it's happened to our county.  
20 So we are trying to do whatever we can. I am working -- I  
21 have agreed with the Juvenile Law Center in many issues. I  
22 have agreed with Judge Grim. We have vacated the cases  
23 which has made more work for our office.

24           I will do whatever I have to do as a DA to restore  
25 the confidence in our system. So knowing that and knowing

1 that we can never prevent someone, if they want to become a  
2 criminal, that's going to happen.

3 So what do we have to do? We have to be more  
4 vigilant. We have to question more. We have to look at  
5 judges not as if they're someone who's sacred, although they  
6 do deserve our respect. We have to know that they're human,  
7 and they have failings, and they may not go the right way  
8 for the wrong reasons.

9 So I think that I said Luzerne County is in good  
10 hands, and I believe that. I believe that Judge Lupas is  
11 going to do the right thing in his courtroom, and he has  
12 been. We've been talking to our Assistant DAs. If you see  
13 something wrong, you let us know.

14 But, again, I have assisted the FBI and the United  
15 States Attorney's Office. I have done whatever I could do,  
16 and I've done more than I probably could have done. I've  
17 done everything to try to make sure that our system is put  
18 back together.

19 Do you think I like going across the state and  
20 having people say Luzerne County and laughing at us and  
21 thinking that we're all rotten people and that we just stood  
22 by while this happened? That's so unfair, because we're  
23 not. And we're good people.

24 And we come from coal miners, and we come from war  
25 veterans. It's upsetting. It really is. But I'll do

1 whatever I have to to make it right.

2 CHAIRMAN CLELAND: Ms. Carroll, thank you, very  
3 much for your testimony today. I think that all of us here  
4 in this Commission acknowledge that you have done remarkable  
5 work to try to create a resolution to the system.

6 We have seen the transcripts of your meetings with  
7 Judge Grim that you mentioned. We've reviewed those  
8 transcripts. We know the concessions that you have made,  
9 and we appreciate very much your effort on that behalf.

10 Let me apologize for my outburst. I should not  
11 have done that. And it was not directed personally at you.  
12 But it is, I think, evidence of the frustration that we all  
13 feel, trying to understand how it is that good people like  
14 yourself and your assistants and the defense lawyers and the  
15 bar and the citizens of this community could allow hearings  
16 of the transcript that Mr. Listenbee read, and we know there  
17 are dozens of transcripts like that, and allow that to go on  
18 year after year, day after day, thousands of cases and  
19 nobody said a word.

20 And we don't understand that. And that's the  
21 frustration. Because until we can understand that, we can't  
22 prevent it. And so we appreciate you being here today, and  
23 if you have any thoughts in that regard, we'd appreciate any  
24 further written statements. And we'll be in recess until  
25 1:00.

1 MS. CARROLL: Thank you, Judge.

2 (Recess taken from 12:30 to 1:10.)

3 CHAIRMAN CLELAND: We'll resume the afternoon  
4 session. Good afternoon. We're not quite here at 1:00 as I  
5 had promised, but we'll try to maintain the schedule as we  
6 have previously indicated.

7 First witness this afternoon is Basil Russin, the  
8 public defender of Luzerne County. And, sir, if you would  
9 please stand and take the oath.

10

11 BASIL G. RUSSIN, ESQUIRE, called as a witness,  
12 being duly sworn, testified as follows:

13

14 CHAIRMAN CLELAND: Okay. Mr. Russin, as our  
15 practice has been for the members of the Commission to  
16 divide up the questioning. And with that, I think Mr. Mosee  
17 is going to begin the questioning.

18 BY MR. MOSEE:

19 Q Good afternoon, sir.

20 A Good afternoon.

21 Q How long have you been a member of the bar?

22 A Since 1973.

23 Q And how long have you been the public defender?

24 And let me stop there. Is that the correct title, public  
25 defender?

1           A     Chief Public Defender.

2           Q     Chief Public Defender.  How long have you been in  
3     that position?

4           A     I've been in that position since 1980.  And I was  
5     an assistant from 1976 on.

6           Q     Okay.  It's my understanding that you're part time;  
7     is that correct?

8           A     That's correct.

9           Q     What exactly does that mean?

10          A     The -- I believe the technical definition is that  
11     you work at least 1,000 hours per year.  It allows me to  
12     have a private practice.  It allows me to do other duties.

13                 And so the practice that I have established is I  
14     start my day at the office, stay there at least until noon,  
15     make sure the administrative work is done, what I call  
16     putting the fires out, and then usually go to my own  
17     practice.  Sometimes it takes all day.  I'll answer the  
18     phone in the middle of the night and weekends and so forth  
19     because I make myself available.

20          Q     How did you become the chief?

21          A     It's an appointment by the Commissioners.  And I  
22     don't know what happened in 1980, but the former Chief  
23     Public Defender left, and I was appointed.

24          Q     And it's not something that you campaign for?

25          A     No.

1 Q Apply for?

2 A No. Sometimes you wonder why you have the  
3 position, but it's an appointment by the County  
4 Commissioners.

5 Q And considering the length of time that you've been  
6 the chief, there's no set time limit, I take it?

7 A No. There's no set time limit, and it's an at will  
8 position, as I understand it. So I'm free to get let go at  
9 any time.

10 Q Okay. How large is the office in terms of the  
11 numbers of attorneys?

12 A We have 22 lawyers in the office, including myself.  
13 16 are part time, six are full time.

14 Q And is --

15 A And a support staff.

16 Q I'm sorry. Is there a hierarchal chart? Do you  
17 have supervisors? How does that work?

18 A I have myself. I have a first assistant. And  
19 that's the extent of it of the hierarchal.

20 Q So there would have been no supervisor per se for  
21 the juvenile unit or those attorneys who worked in juvenile?

22 A No, not at all.

23 Q Okay. All right. When is the decision made to  
24 appoint a public defender in a case?

25 A There are two ways one gets a public defender.



1 First they come into our office and apply for  
2 representation. If they meet the financial guidelines, they  
3 are accepted. If there's a question to the financial  
4 guidelines, I review the financials and determine if it's  
5 close enough or the charges are serious enough to get it.  
6 Second way is by court appointment.

7 Q By court appointment?

8 A Yes.

9 Q When there is a court appointment, when the public  
10 defender is appointed to a case, where and when does that  
11 happen?

12 A When the court appoints us.

13 Q I mean specifically does it happen at intake, is  
14 there a decision made? Is there an inquiry?

15 A Are you talking juvenile cases?

16 Q That's right.

17 A The only time I've seen it happen in a juvenile  
18 case is when the person is before the court and does not  
19 waive counsel and asks for an attorney. The court then  
20 appoints our office.

21 Q All right. And court is a term of art that usually  
22 means before the judge. Is that what you're talking about?

23 A That's what I'm talking about.

24 Q All right. So there would be all these other  
25 contacts with the system before a public defender is

1 actually appointed; is that correct?

2 A That's correct.

3 Q I'm talking about intake, detention hearings.

4 A Detention, we're there for that. But it's a  
5 contact with the court. I mean, we could be appointed then.

6 Q I see. I see. About how many delinquency  
7 petitions does your office handle per year?

8 A Well, you have to establish a time period. Now or  
9 then?

10 Q Between 2003 and 2008 what was the average per  
11 year?

12 A We were handling then about two to four per week.  
13 So that would say between 100 and 200 a year.

14 Q Okay. Now, we've heard talk about 6,500 cases  
15 which were the subject of Judge Grim's decision, and the  
16 Supreme Court actually vacated those cases. Approximately  
17 how many of those cases were yours? And I think I can help  
18 break it down further. I believe that 56 percent were  
19 unrepresented.

20 A Just using the statistics of the weekly report, I  
21 would say ten percent of those. Maybe 20 percent at the  
22 most were ours.

23 Q Okay. And what was the basis for the order to  
24 dispose of those cases where, in fact, there was an attorney  
25 -- an attorney from your office representing?

1           A     If a parent or a child came in to apply for our  
2     services, we deemed them eligible for our services. We then  
3     waited for them to appear on a list, a weekly list. We then  
4     have them come in for an appointment, went over their case  
5     and determined what had to be done, and then had a lawyer  
6     represent them in court before the judge.

7           Q     My question is of the cases that were dismissed,  
8     cases in which the defender represented --

9           A     The 6,000?

10          Q     That's right. Of the 6,000, I guess we can break  
11     it down to about, oh, I don't know, a little over 2,000?

12          A     Okay.

13          Q     Where the juvenile was actually represented, either  
14     by a private counsel, court appointed counsel other than the  
15     defender or the defender, what happened in those cases that  
16     warranted them being dismissed as well?

17          A     I don't know. And I was surprised because they did  
18     have representation. And I think the Supreme Court  
19     dismissed all of them.

20          Q     You haven't been privy to these discussions with  
21     Judge Grim?

22          A     I've been at meetings with Judge Grim, yes. I've  
23     been there especially, I believe, two meeting with him. A  
24     lot of people toward the end there were not -- you know,  
25     there were more briefs. While I was not a party to the

1 action, I did not file briefs, I received them and read  
2 them. And then we received the orders. So we reacted to  
3 it.

4 Q Would it be fair to say that it's possible because  
5 the cases were handled in such a patently unfair way that  
6 even where counsel was present, even where the juvenile was  
7 represented, it warranted reversing those cases?

8 A That could be one of the reasons.

9 Q All right. How many defenders do you have in  
10 juvenile court now?

11 A I have one. Not even one, a portion of one.

12 Q And that's because he or she is part time?

13 A No. Actually the person that's done juvenile court  
14 for a long time has been a full-time attorney. I do not  
15 have the resources to give that person full-time juvenile  
16 court.

17 When Judge Ciavarella was the judge it took  
18 approximately no more than four hours per week of that  
19 person's time. Now it's taking about two days per week of  
20 the person's time who's assigned.

21 Q Okay. And what kind of interaction do you have  
22 with that person as the chief defender?

23 A We've had -- throughout my tenure we have a very  
24 experienced staff. People do not leave our office as they  
25 do the DA's Office. I have a long tenured staff. They will

1 come to me with issues or problems that may have arisen that  
2 they cannot deal with. They come to me with seeking days  
3 off if they need substitute counsel for. I tend to look at  
4 the list from time to time to see what's going on, and  
5 that's about the extent of it.

6 Q And when you look at the list do you look at it to  
7 determine whether or not there are too many cases for the  
8 one person to handle?

9 A I just want to get a pulse to see if it's getting  
10 too big for the case load. But that's only happened  
11 recently. Before that was never an issue.

12 Q And that was never brought to your attention by  
13 this assistant defender?

14 A No, it wasn't.

15 Q All right. Let's talk a little bit about that --  
16 that screening process and determining the eligibility of a  
17 juvenile. What are the factors that are considered?

18 A It's my understanding that in Pennsylvania the --  
19 at least the Public Defender's Office determines eligibility  
20 requirements. I have taken the US Poverty Guidelines and  
21 implemented whatever they are for the year as an eligibility  
22 criteria for persons in our office.

23 If they're below or at the US Poverty Guidelines,  
24 we accept them as a client. I have a relaxed standard and  
25 have had a relaxed standard when it came to juvenile cases

1 that basically if the person applied, for the most part we  
2 would accept them.

3 The exception would be if we had a -- what we might  
4 determine a wealthy person coming in and trying to show  
5 their kid a lesson that we're not going to hire a lawyer.  
6 We're going to get -- and we get downloaded here to be a  
7 public defender. I sometimes would not accept that client  
8 because of that. Otherwise it was a very high acceptance  
9 rate.

10 Q This may or may not be obvious to everybody in  
11 here, but what you're really talking about is not the income  
12 of the juvenile, but the income of the family?

13 A The income of the parent.

14 Q Okay. Have you ever considered cases where, for  
15 example, the parents may be coconspirators or the parents  
16 may, in fact, have put themselves in a position, as you  
17 said, to be unreliable; and for that reason you need to  
18 consider the juvenile as a distinct individual with regard  
19 to this?

20 A It's really never a factor. If there's any doubt,  
21 we take the person.

22 Q Just so that we can put a dollar figure on it, what  
23 was the US Poverty Standard during the years in question,  
24 2003 to 2008?

25 A Oh, boy. You know, I can't tell you offhand except

1 it keeps varying for one person, two people. It depends on  
2 the family unit, how many people there. And it keeps rising  
3 as you add people to the family.

4 Q Ball park figure?

5 A I want to say for a parent, let's say a mother,  
6 father and child, it's around 13,000. I may be wrong. I  
7 have it posted on my board behind me at my desk, but I don't  
8 really read it. And every year we download a new one.

9 Q What do people make in Luzerne County?

10 A Some make nothing. Some might be -- the average  
11 salary is in the 30,000, the average household income.

12 Q All right. But it's your testimony that it really  
13 wasn't the dispositive consideration?

14 A No, it wasn't a factor. It -- a couple came in and  
15 they were making \$30,000 and their kid was in trouble, we  
16 would accept them.

17 Q Okay. Once the defender was appointed did the  
18 defender represent throughout? And what I'm talking about  
19 is not just the adjudicatory hearing or the disposition, but  
20 was the defender still appointed to that case for reviews?

21 A Yes. We were there at adjudication, disposition,  
22 and review hearings.

23 Q All right. Did the defender represent -- well, let  
24 me be more specific. Did the defender assigned to juvenile  
25 court represent young people who were charged with offenses

1 that would be excluded from the Juvenile Act, what we refer  
2 to as direct file cases?

3 A Was that person assigned or the office was  
4 assigned?

5 Q I'm asking first about that person who was assigned  
6 to juvenile court?

7 A It depends on the type case it is.

8 Q Okay. Can you give us an example?

9 A Well, there was a direct file with a -- you know, a  
10 bad aggravated assault. I may want someone else to do that  
11 case, or a bad sex crime or a drug case. I might bring  
12 somebody else in. It then gets shifted to the adult court,  
13 and the juvenile person did not always handle them. Now, in  
14 a transfer proceeding -- you want me to continue?

15 Q The certification?

16 A Yeah.

17 Q Um-hum.

18 A Transfer from adult back to juvenile.

19 Q Oh, okay.

20 A Then we usually entail the juvenile person because  
21 they were more familiar with the criteria for juvenile  
22 court. And then hire usually an expert to come in and  
23 testify as to why that person would be better in juvenile  
24 court or adult court.

25 Q Did you also do certifications?



1 A Yeah, we do certifications and transfers.

2 Q Okay. We heard some surprising testimony, at least  
3 surprising for some of us, that transfers often happened at  
4 the request of the juvenile. Have you experienced that?

5 A A transfer is from adult court to juvenile.

6 Q I'm sorry. With --

7 A Certification.

8 Q -- a certification?

9 A Yes, yes.

10 Q Um-hum.

11 A And why surprising? Sometimes there's a better  
12 disposition in the adult court. For instance, on a drunk  
13 driving case, first offense you can get an ARD in adult  
14 court, okay. And there's less -- it might be less of a  
15 license suspension then in juvenile court. So some kids opt  
16 to have their cases certified DUI.

17 There are some cases that just lend themselves  
18 better to adult court. Especially in this -- word was going  
19 around they knew if they go to adult court, they might get  
20 probation. Or if they went to juvenile court, they might  
21 get incarcerated. And the decision was made in that respect  
22 also.

23 Q So it wasn't necessarily that it was a better  
24 general proposition, but in this context?

25 A Sometimes it was, and sometimes it was for the

1 other reasons I stated.

2 Q Okay. How are conflicts appointed?

3 A When a conflict arises in our office we send a  
4 petition to establish at the time a conflict to the  
5 President Judge who then either accepts it or denies it.  
6 And then there's a pool of conflict lawyers, I believe eight  
7 or ten of them, and they take the cases in rotation.

8 Q And were those attorneys on that - what you called  
9 it, a sort of a list?

10 A Yeah.

11 Q Okay.

12 A We would take that petition to the court  
13 administrator. The court administrator has the names, and  
14 they go down the list.

15 Q Were those attorneys on that list because they  
16 possessed a specific expertise or they had particular  
17 training?

18 A Not that I know of. They did criminal work.  
19 That's all I could tell you. They're appointed by the  
20 court. I don't know how they got their appointments.

21 Q Okay. All right. Did those attorneys represent  
22 throughout the duration of the juvenile case?

23 A Yes. Once they got in the case it was their  
24 client.

25 Q All right. So your attorneys were never called in

1 to stand up when an attorney failed to appear or anything  
2 like that?

3 A No. Except when you come back to the -- after the  
4 disposition. The review hearings, usually the conflict  
5 lawyers wouldn't come back for that.

6 Q Now, not just with regard to conflict attorneys,  
7 but any court appointed attorneys other than the attorneys  
8 from the Defender's Association, how much were they paid?

9 A I don't know what their salaries -- they're salary  
10 by the court, and I don't know what that is. I--

11 Q Well, do you know whether it was a salary?

12 A Yes.

13 Q Or whether they were paid by the hour or by the  
14 case?

15 A No. They're salaried. And my memory says  
16 somewhere between 25 and 30,000 a year. They're part-time  
17 lawyers.

18 Q All right. That's really surprising to me as well.  
19 So they're actually on the payroll?

20 A They still are.

21 Q And whether they -- they worked on 20 cases or two  
22 cases, they still received that salary?

23 A That's right. But it's more like 30 or 40 cases.  
24 And they -- they do adult conflicts also. So we have -- all  
25 the homicides we've had, they are very busy with homicide

1 cases as well as the routine cases that we handle.

2 Q Okay. Let's talk about some of the specific things  
3 that were happening in the courtroom, all right. Were  
4 colloquies administered for defender cases where the  
5 juvenile admitted to the delinquent acts?

6 A In juvenile court? Now, first of all, I was not in  
7 the courtroom a lot of the time. I was there rarely. I was  
8 there only when my assigned attorney was double scheduled or  
9 running late or in a trial or whatever, and I would cover  
10 until they would get there. Were colloquy -- no, colloquies  
11 were not there.

12 Q Even when there's was an attorney representing?

13 A No, no.

14 Q Still no colloquy?

15 A No.

16 Q So it stands to reason that it wasn't surprising  
17 that there were no colloquies administered when a juvenile  
18 waived the right to counsel?

19 A It doesn't surprise me.

20 Q All right. You had that one defender assigned to  
21 the courtroom. Did he leave the courtroom when his cases  
22 weren't being heard?

23 A Usually the way this was working is there was a  
24 list between 15 and 20 cases for the day. If the defender  
25 had three cases, he would report to the person running the

1 list, and he would take those three cases and say, okay,  
2 I'll put you first. Or you're running late, I'll put you  
3 last. And they would kind of clump them together for a --  
4 for economic reasons so we can get out of there.

5 So we wouldn't sit there for the whole list. In  
6 other words, if we had cases two, 10 and 15, we wouldn't sit  
7 there until the 15th case was tried. They tried to say  
8 okay, we have one case, and we'll put you in.

9 Q So you would agree that there were occasions when  
10 the defender was in the courtroom while juveniles who were  
11 represented by private attorneys or juveniles who were  
12 unrepresented were before the court?

13 A They could be there waiting for their case,  
14 certainly.

15 Q All right. Did -- did the defender assigned to the  
16 courtroom ever complain to you about what was going on in  
17 Judge Ciavarella's courtroom?

18 A I'll tell you at the end of Ciavarella's term I did  
19 get a complaint from the defender assigned there. He said,  
20 you know, there's a lot of kids not being represented and  
21 the proper waivers. And I said, first of all, I said, we're  
22 not going to seek clients. I'm not going to put up a sign  
23 and say, please come in here, and we'll represent you.

24 We have to assume there's a proper waiver going on.  
25 We have to assume the judge has a waiver. We have to assume

1 the District Attorney knows the rules and the waiver and the  
2 juvenile probation office is doing the waiver. And we don't  
3 have the time or the manpower to intervene. And we didn't,  
4 and we don't.

5 Q I can understand not having the time or the  
6 manpower, but I don't understand why you would suggest that  
7 we have to assume. Isn't a colloquy something that's  
8 supposed to be open and transparent and something that  
9 everybody actually hears?

10 A That's right, an on the record colloquy. You've  
11 been familiar with many judges in our county having a  
12 written colloquy several pages long, and they'll say is that  
13 your signature at the end? Yes. Thank you. Do you  
14 understand all the questions? Yes. And then they'll  
15 continue with the plea.

16 I was not familiar what was going on with  
17 unrepresented people. I just had to assume if everybody  
18 knew their job, there was some sort of writing going on, and  
19 there was a waiver of rights.

20 The other issue -- and let me explain this. My  
21 office is at Penn Place, which is a three-story building in  
22 the middle of Wilkes-Barre. My Public Defender's Office is  
23 on the second floor. The juvenile court and the -- the  
24 Juvenile Probation Office is on the third floor. Not once  
25 did a parent or a juvenile get on that elevator at 3 and

1 press 2 and come in and say, my son was taken away  
2 improperly. I want to appeal this. I want a reconsideration  
3 of this -- reconsideration of this. Not once did a person  
4 press 2 and got off and came to our office, which is right  
5 there.

6 Q Not once did the defender in the room say go  
7 upstairs and press 2 because --

8 A Well, let me tell you --

9 Q -- how would they know where your office was?

10 A Not to make excuses, but he was available there.  
11 And somebody could have said, how do we get you to represent  
12 us? He would have stepped right up, or he would have said  
13 go downstairs to 2.

14 Q Part of the colloquy is it explains your rights  
15 with regard to counsel?

16 A And we had to assume that somewhere in that  
17 colloquy --and I don't know what kind of colloquies were  
18 signed. I know juvenile probation is saying they had signed  
19 colloquies. I don't know what it says in there. If it says  
20 you have a right to a lawyer, I don't know that. But I had  
21 -- and you have to understand, in running a public defender  
22 -- I don't know what your position is, sir, but in running a  
23 public defender office unfortunately we don't have the  
24 luxury of time or money. And we have to do what we have to  
25 do the best we can.

1           And we were representing the people who asked for  
2           our services, and we tried to do the best we can for them.  
3           We did not have the luxury or the time or the resources to  
4           look for business.

5           Q     Well, see, I see it as being relevant if they were  
6           actually encouraging these young people to waive counsel in  
7           these cases where you otherwise would have represented, then  
8           that had an impact on the functioning of the Defender  
9           Association in Luzerne County?

10          A     We know now that they were encouraging people not  
11          to come to our office. We didn't know that then. And I  
12          could say now that Judge Lupas has us representing just --  
13          well, everyone except those represented by private counsel.

14                 We still have the same percentage of people coming  
15          to our office to apply. And that is in the 10 to 20 percent  
16          range. Most people go to court without counsel, even after  
17          all this publicity.

18          Q     Did your attorney in the courtroom ever complain to  
19          you about the dispositions?

20          A     Didn't complain about the dispositions, told me.  
21          And we heard, you know, once Ciavarella took over everybody  
22          seemed to be going away.

23          Q     But did he ever complain about that?

24          A     I wouldn't say complain. He informed me of it.

25          Q     Did you strategize as to how you might overcome



1 that predisposition, no pun intended, to send kids away?

2 A You know, having practiced quite a while, I  
3 practiced before judges who were almost zero tolerance, and  
4 I've practiced before judges who are very liberal. And I  
5 sat down and said, we're stuck with a guy who has zero  
6 tolerance. And it's within his discretion, apparently what  
7 he's doing, and we have to wait until something -- until he  
8 retires, resigns, gets a different assignment or whatever.

9 But this is what we have to deal with, and that's  
10 what we dealt with. He was the same in adult court, if I  
11 can say that also, where the first appearance was very  
12 lenient. But if you violated your probation, you got maxed  
13 out.

14 I recall one day we went in there, and there were  
15 maybe six probation violations in the jury box. The jury  
16 box was filled with violators that day. He maxed everybody  
17 out. So it was like his philosophy that he was doing, and  
18 we knew that's what we had. That's the hand we were dealt.

19 Q I've heard several witnesses talk about the zero  
20 tolerance policy. And it might surprise you to know that  
21 zero tolerance has nothing to do with the ultimate  
22 disposition.

23 A I know that.

24 Q All it has to do with is holding the kid  
25 accountable.

1           A     I understand that.

2           Q     Responding when that particular infraction takes  
3 place, albeit in the school or wherever. So why was it that  
4 everybody was so willing to say it's zero tolerance that  
5 these kids are being placed?

6           A     Because everybody loved it. Everybody loved it.  
7 The schools absolutely loved it. They got rid of every bad  
8 kid in their school. When I was in school if you threw a  
9 spitball, maybe you went to the principal's office and sat  
10 for a couple periods. Last couple years if you threw a  
11 spitball, they got the police, and you ended up in juvenile  
12 court and get sent away.

13                   Schools got rid of all their problems. Parents,  
14 parents who had problems with the kid at home, they called  
15 the police. Police said, you want us to take him away?  
16 Sure. I can't control the kid anymore. Away the kid would  
17 go.

18                   Parents loved it. Police loved it. They knew  
19 every arrest they made the kid would get sent away. And  
20 despite what you heard this morning, the DA loved it because  
21 they were getting convictions. They were never losing  
22 cases. I can't say they never lost cases, but they were  
23 getting convictions.

24           Q     Well, I don't think the DA said that, but what I do  
25 know --

1 A No, she didn't.

2 Q -- is that just based on our interaction --

3 A Um-hum.

4 Q -- I guess maybe it's been ten minutes now, I know  
5 that you're a bright guy, probably a good attorney. You're  
6 not a Chief Public Defender for the money. You're a Chief  
7 Public Defender because you want to do something for kids  
8 and for people who have been charged with whatever in our  
9 system; isn't that right?

10 A That's my purpose.

11 Q Well, as the Chief Public Defender why wouldn't you  
12 confront a mishandling, a misapprehension of something like  
13 zero tolerance?

14 A Well, the dispositions in juvenile court is within  
15 the judge's discretion. The judge can decide what he wants  
16 to do with kids, and this was the way he did things. This  
17 was the way he disposed of cases.

18 Unlike in the adult system where we have guidelines  
19 and reasons and so forth, in juvenile court the judge can  
20 just say, you're going to Pennsylvania Child Care, and off  
21 you go, and I'll see you in 90 days.

22 Q Well, that's a good segue into my next question,  
23 which is were motions to reconsider filed in this court?

24 A Motions to reconsider were filed. They were filed.  
25 Not frequently, but they were filed. And many times they

1 were reconsidered and the kid let out.

2 Q And the what?

3 A And the kid released. Put on probation and said  
4 --that did happen.

5 Q All right. Were appeals taken?

6 A They were very few appeals taken because very few  
7 of the cases were litigated. And by litigated I mean no  
8 admission where they had to be found delinquent.

9 And those of us that have done juvenile law, as  
10 Jackie said earlier, they wished all the defendants were  
11 like kids. They come out and tell everything. Almost every  
12 juvenile case that appears in Luzerne County has a  
13 statement. The parents are there. The statement was taken  
14 properly, and it's an admission to the crime.

15 There are the exception where kids deny having done  
16 that. Most of the cases are admissions to the crime. It  
17 seems like kids, when confronted, especially by a policeman,  
18 spill their guts.

19 Q Kids in Luzerne County are extremely truthful.  
20 That's what I've been told.

21 A Maybe that's the case. But that's -- the typical  
22 case that I've seen here is we have nothing -- we have no  
23 defense.

24 Q Okay. You mention these statements.

25 A Um-hum.

1 Q You file a lot of motions to suppress?

2 A We filed a motion, as I saw it -- now, don't  
3 forget. I didn't see every case. I didn't see a lot of the  
4 cases.

5 Q Right.

6 A But when I was there I would look at the statement.  
7 It was a written statement. There was the parents'  
8 signature as a witness. I'd ask the kid how he did it. He  
9 said, yeah. You know, everything he told me in my  
10 experience I could have filed the motion to suppress. It  
11 would have been frivolous, and I would have lost, okay. I  
12 never saw anything in juvenile court that I could suppress.

13 Q Did you ever win a motion to suppress?

14 A Pardon?

15 Q Did you ever win one?

16 A In juvenile court, no. But we did win them, yeah.

17 Q I didn't mean you personally.

18 A Yeah, the office won them, yeah.

19 Q All right.

20 A Drug cases we won some. And I could also say that  
21 when there was a defense and you had a trial in juvenile  
22 court, you had a level playing field. I personally tried  
23 two cases. One was a rape case, and I got an acquittal,  
24 which took a substantial amount of time. The second case  
25 was a burglary case, which, again, took a substantial amount

1 of time, and I lost that case.

2 Now, in -- before a jury in my experience I think  
3 the same result would have taken place. I think I would  
4 have lost the burglary and would have won the rape. But we  
5 always felt there was a fair, level playing field before  
6 Ciavarella when it wasn't a case that was defended.

7 Q An opportunity to be heard and an opportunity to  
8 actually try your case?

9 A Yeah, yeah.

10 Q Was there an opportunity to be heard when the case  
11 resulted in an admission?

12 A You have to -- I have to speak from my experience,  
13 okay. When I was there I just -- I started talking on  
14 behalf of the kid.

15 Q But you were there as the chief defender?

16 A Yeah. But when I was there I had no problem. Now,  
17 I hear other things. But when I was there I had no problem.

18 Q We've been told that the proceedings often took a  
19 little more than three or five minutes?

20 A The admissions didn't take long.

21 Q All right. It seems to me that there wasn't much  
22 of an opportunity to say anything?

23 A As I said, when I was there I had the opportunity.

24 Q And it seemed that in just about every case he  
25 would go straight to disposition?

1           A     Most cases.

2           Q     Was there ever a request from the defender in the  
3 room to defer disposition so that there would be an  
4 opportunity to get evaluations in hand, to figure out what  
5 this kid was really about, to go home, investigation, any of  
6 that?

7           A     And then we get to the next step, which is we never  
8 had access to reports. We didn't know why the  
9 recommendations were being made. We didn't know what the  
10 recommendations were, okay. We were going into the  
11 disposition hearing blind. Now, there was --

12          Q     And when did that begin being the case?

13          A     Well, sometime -- and I don't know the year, but as  
14 I said, there was a list of cases. There were 15, 20 cases.  
15 And you go up and you say, you know, I represent George  
16 Mosee in the Case No. 10. And you look, and it said we  
17 recommend probation, and you've written in there probation.  
18 Or we're recommending Camp Adams, or we have Camp Adams  
19 written in there.

20                   Now, I would then go to the client and his parents  
21 and say the recommendation is probation, and they'd say  
22 fine. You'd say the recommendation is Camp Adams, and the  
23 parents say fine. He needs 30 days or he needs some time  
24 away, and the kid would say okay.

25                   There came a point in time where that stopped.

1 When, I don't know.

2 Q Can we try to -- try to nail it down?

3 A I want to say --

4 Q Year?

5 A Five years ago, seven years ago where we could no  
6 longer get that recommendation.

7 Q Was it about the time that PA Child Care came into  
8 existence?

9 A You know, because that had no -- that had no  
10 impression on me, you know, the PA Child Care opened. So I  
11 can't -- but it was -- I'd say it was around there, within a  
12 year or two, within a year or two of that. And I understand  
13 the reason that the recommendations stopped appearing on  
14 that list is because one recommendation was for probation  
15 and the disposition was otherwise. It was incarceration.

16 And there was a big dispute as to why it's not  
17 probation, why it's incarceration when the recommendation is  
18 probation. And from what I've heard from the probation  
19 officers, they were then told we can't release the  
20 recommendations anymore.

21 Q I have to present this next question to you with a  
22 little bit of commenting. We've been talking about what we  
23 can do in retrospect, you know, if we're purely reactive.  
24 What can we accomplish when you've got a judge like  
25 Ciavarella with this zero tolerance attitude?



1           But did you ever consider a preemptive strike? You  
2 know, what can we do from a prophylactic perspective? And  
3 there I'd be suggesting, you know, did you consider things  
4 like we got to put our foot down and tell these probation  
5 officers and these evaluators that they have to send us the  
6 reports?

7           A     We get them now. That's all I can say. Back then,  
8 no, because the rule was you don't get them. But like a  
9 presentence report, we can only read them in the judge's  
10 chambers.

11           We've changed the procedure now going forward. We  
12 now get them when they're prepared. We got a chance to  
13 study them. I'd like to get the resources to hire a  
14 psychologist, to hire a sociologist. We're not familiar  
15 with the different centers where placement is available.  
16 And to offer the judge an alternate plan for the kid, we're  
17 not at that point.

18           We need training, No. 1. We need funding for  
19 resources to do this. And, you know, quite frankly we had  
20 no training. When I went to Denver a couple weeks ago for  
21 the National Juvenile Summit it was the first training I  
22 ever had in 36 years on juvenile law. And my eyes were like  
23 saucers.

24           I took the assistant with me who does juvenile  
25 training, and she is great. I mean, we sucked up everything

1 that was thrown at us. You know, we are changing this. We  
2 hope to go forward with this. But I hope I've answered that  
3 question.

4 Q You didn't see the evaluations before the judge  
5 rendered his disposition?

6 A We never saw them at any time, either before or  
7 after.

8 Q Then how could the defender in the room effectively  
9 advocate for the juvenile who was about to be the subject of  
10 the disposition?

11 A He didn't know what we were fighting against. We  
12 could only put forth what we knew about the kid, what he's  
13 done, what psychological problems he may have had, how he's  
14 done in school, what jobs he has.

15 We'd bring in family members. What kind of kid he  
16 is at home? That's -- we had to fight that -- the unknown  
17 with what we knew, and we had no opportunity to see what was  
18 against us on the other side.

19 Q And you said at no point. So even when the judge  
20 was -- I don't know, did he ever read off of the evaluation?  
21 Did you ever tell --

22 A He never read off -- you know, flipping through it,  
23 you know.

24 Q And nobody would say, judge, may I see that?

25 A I can't recall anyone asking that. It was like a

1 -- the atmosphere was that it was almost under lock and key,  
2 you know. When -- once the recommendations were stopped,  
3 and with just a simple recommendation of probation, Camp  
4 Adams, Pennsylvania Child Care, once that was stopped it was  
5 like everything froze, and we got access to nothing.

6 Q Were you aware that recommendations were actually  
7 being formulated before the adjudicatory hearing in cases?

8 A Well, I knew that the Probation Department prepared  
9 a report with their recommendation on it, which was prepared  
10 before the adjudication hearing, okay. I knew that. I  
11 didn't know when they were prepared, but there were  
12 typewritten pages.

13 Q You knew it was prepared before the adjudicatory  
14 hearing?

15 A Yeah.

16 Q But you didn't know it was being given to the judge  
17 before the adjudicatory hearing?

18 A I didn't know when the judge got it. Sometimes  
19 you'd see him flipping. I can't say when he got it.

20 Q When you say you'd see him flipping, was that  
21 during the adjudicatory hearing?

22 A Yeah.

23 Q Didn't that concern you?

24 A Well, sure it concerned me.

25 Q Well, why didn't you confront it?

1           A     First of all, I wasn't there that much, okay. Why  
2     didn't I confront it? Because he would say, well, you were  
3     a student at, you know, such and such a high school, junior,  
4     right? You didn't do too good last year. Your last report  
5     card you got three Fs. Why is that? You know, he'd go  
6     through.

7           Q     Just trying to get the timing of this course. Was  
8     that before all the evidence was in?

9           A     No, after.

10          Q     All right. All right. You're familiar with a Dr.  
11     Vita?

12          A     No. Just what I've read in the paper.

13          Q     Just what you've read in the paper. So you never  
14     had a chance to read any of his evaluations?

15          A     I wouldn't know Dr. Vita if he walked in here, and  
16     I haven't seen any of his reports.

17          Q     Are you aware of cases where defender clients were  
18     sent to detention solely for the purpose of being evaluated?

19          A     I'm aware that he would detain people for  
20     evaluations. I didn't know what those evaluations entailed.  
21     I assumed the psychological work up.

22          Q     Did you find --

23          A     Among other things.

24          Q     Did you find that problematic?

25          A     Did I? Certainly that could have been done as an

1 outpatient. He was -- you know, everybody that came before  
2 him went away. Not everybody, most people.

3 Q I don't want to editorialize again, but that meant  
4 that the juvenile's liberty was taken away from them just so  
5 that they could be evaluated?

6 A That's correct. It was very troubling, but he's  
7 the judge. You have to assume the judge, this is his  
8 philosophy. He's honest. I've always respected judges.  
9 Maybe that's a false assumption, but I have the utmost  
10 respect for the judicials, no matter on what level. And if  
11 he said you're going away until this evaluations done, I  
12 have to respect him that he's an honest person.

13 Q You said that you never received any training with  
14 regard to juvenile justice?

15 A No.

16 Q Until you went to Denver, and that was this year?

17 A That's correct.

18 Q After the Rules of Juvenile Court Procedure were  
19 implemented in October of 2005 did you do anything to train  
20 your assistant, or did you make sure that he or she was  
21 exposed to the new rules so that they would have an  
22 understanding?

23 A We have a library, you know. As lawyers we  
24 routinely read new rules. We routinely read cases that  
25 affect areas that we're in, okay. At the time the person

1 doing juvenile court had been there for, I want to say, at  
2 least 15 years. She was very familiar with -- I have to  
3 assume -- I never sat and talked with her about the Juvenile  
4 Act and so forth.

5 So I -- I have to assume supervising an experienced  
6 person that she was familiar with the new rules.

7 Q And so as the chief defender you're telling me that  
8 all you had to rely on was your assumption that the new  
9 rules established for the State of Pennsylvania had been  
10 studied by the defender who was assigned to juvenile court?

11 A We -- I can't -- it's not that blatant an  
12 assumption. I mean, we sat down many times and talked about  
13 rules in conferences. We talked about cases. We talked  
14 about -- we discussed cases in the -- every morning we  
15 discussed problematic cases and tried to get a consensus of  
16 how to deal with them.

17 And I'm sure -- you know, I remember when the new  
18 Rules of Evidence came out. We sat and we talked to them on  
19 a daily basis to iron them out. And I'm sure we talked  
20 about the new rules of juvenile court. I don't specifically  
21 remember it, but I'm sure we did. We got the new rules, and  
22 we read them.

23 Q Were there local rules before the new rules were  
24 implemented?

25 A I don't know. I don't know --

1 Q You don't know?

2 A -- if there are local rules on the juvenile.

3 Q Local rules of practice related to juvenile justice  
4 in Luzerne County?

5 A If there were, I'm not aware of them.

6 Q Okay. Did you ever meet with any of the other  
7 stakeholders in Luzerne County, like the Chief of Juvenile  
8 Probation, Ms. Brulo? I guess she would have been chief  
9 during your tenure.

10 A We never had any formal meetings like we do now.  
11 There was nothing -- no round table, no discussions.

12 Q Did you ever meet with Judge Lupas when he was the  
13 District Attorney?

14 A Judge Lupas, when he was a District Attorney, on  
15 juvenile matters, no.

16 Q Okay. Did you meet with any District Attorney?

17 A On juvenile matters, no, not until recently.

18 Q And as of now are you meeting with the  
19 stakeholders?

20 A Now we routinely meet.

21 Q All right. And are you getting some things done as  
22 a result of that?

23 A Yeah, a lot of things done. We got handcuffs off  
24 the kids.

25 Q And in retrospect do you wish you had been meeting

1 with them all along?

2 A Certainly. Hindsight's 20/20.

3 MR. MOSEE: Hindsight's 20/20, okay.

4 BY MR. HOROHO:

5 Q Mr. Russin, obviously you're familiar with the  
6 Rules of Professional Conduct?

7 A Yes.

8 Q And you're familiar with the rule that it's the  
9 obligation -- absolute obligation on behalf of lawyers to  
10 report professional misconduct, both that they view  
11 regarding the lawyers and also judicial misconduct?

12 A Yes.

13 Q When these reports started to filter into your  
14 office about lack of colloquies, inappropriate conduct in  
15 Judge Ciavarella's courtroom, did you ever think about  
16 reporting that conduct, misconduct, potential misconduct to  
17 the Judicial Conduct Board?

18 A I didn't, nor did the assistants who were in the  
19 courtroom. As I said before, as his philosophy -- now, I'm  
20 talking about his loss or detentions -- or on dispositions  
21 regarding the waiver. Obviously when we were there there  
22 was no waiver of counsel. And the only assumptions that we  
23 could make was that there were proper written waivers  
24 somewhere done with the proper people.

25 Q Jonathan, is it Ursiak?



1 A Ursiak.

2 Q Was your attorney in the beginning of 2004?

3 A Um-hum.

4 Q If I told you that he provided some information to  
5 our investigator that when he was asked whether or not he  
6 saw anything improper in court he answered yes, he believed  
7 the procedure employed by the court relating to the waiver  
8 of counsel at admissions may have been improper. He  
9 mentioned this to his office, to his office would be to you?

10 A (Nods head up and down.)

11 Q Did you do anything about that?

12 A No. I like I said earlier, I said Jonathan, I  
13 said, No. 1, I said you're not going to solicit clients, No.  
14 1. No. 2, we have to assume that there's a proper waiver in  
15 force with the judge, the District Attorney, and with the  
16 probation office. And you're not in a position, and we did  
17 not have the resources to go ahead with this.

18 Q Okay. Well, then did you think about maybe  
19 consulting your colleagues at the District Attorney's Office  
20 and sit down with them maybe over lunch or over a meeting  
21 and say, we may have a problem in Judge Ciavarella's  
22 courtroom? I need your assistance and support. Let's --  
23 let's have a plan here to fix this problem?

24 A Did I sit down and talk with them? No. And I  
25 think the reason is because I think they were on his

1 bandwagon, on the train.

2 Q You thought --

3 A I felt they were -- they were happy with the way  
4 things were running.

5 Q You thought the District Attorney's Office was on  
6 the bandwagon?

7 A Yes. They were getting convictions.

8 Q Okay. You weren't on the bandwagon?

9 A No. I wasn't on the bandwagon, but yet I didn't  
10 try to stop the train.

11 Q So you didn't stop the bandwagon?

12 A No.

13 Q But yet you thought the District Attorney was on  
14 the bandwagon. So, therefore, you knew the music was  
15 playing somewhere?

16 A By the bandwagon I mean the same mind set, the same  
17 philosophy.

18 Q Okay.

19 A That's what I mean. Not any illegality, but the  
20 same philosophy as the probation office, as the judge, and  
21 them.

22 Q And that's the zero tolerance policy and send the  
23 kids away? That's the bandwagon you were talking about?

24 A That's the bandwagon I'm talking about.

25 Q Did you ever seek out any community officials, any

1 -- any support within the community to see if the problem  
2 can be fixed, you know, with -- from the -- your local  
3 politician or the local Commissioner or anybody that has an  
4 interest? There's so many different organizations that have  
5 children's interests.

6 A No. We were dealing with, first of all, what  
7 appeared to be a unified court. So we couldn't reach out to  
8 the judges. They elected Ciavarella President Judge by  
9 unanimous victory. Even last January when there was a  
10 lawsuit, or December when there was a lawsuit filed against  
11 the County Commissioners on budgetary items, the  
12 Commissioners had it. Ciavarella says, I have unanimous  
13 consent of my colleagues to file this lawsuit.

14 So I'm dealing with a unified court or a  
15 brotherhood. I have a District Attorney's Office who wants  
16 to win, and they're winning, okay. The only possible way  
17 was perhaps the County Commissioners who were powerless  
18 except to give me more help, but they're fighting the  
19 juveniles on the budget problems all the time.

20 So I just felt this is the way, this is the  
21 direction this county is going. And there are editorials,  
22 letters to the editor, saying what a great judge Ciavarella  
23 is. Recidivism rate is low, how all the bad kids are being  
24 put away. It seemed like we were in this community where  
25 the mind set was lock them up.

1           Q     Six or seven other judges, did you walk in Judge  
2 Muroski's office and say, are you one of the band of  
3 brothers on this?

4           A     He voted with them.

5           Q     Did you go in --

6           A     Did I go in? No.

7           Q     -- and ask him that question? How about any of the  
8 other judges?

9           A     I did not.

10          Q     So you assume that they were all in the band of the  
11 brothers?

12          A     When I see unanimous votes coming down, that tells  
13 me they're unanimous.

14          Q     Did you ever question why they would vote there in  
15 that way?

16          A     I'm not going to question. The meetings were in  
17 secret, but they announced the results in public.

18          Q     After you got the results, did you call them up?

19          A     If I'd go in and say why'd you vote for Ciavarella  
20 for President Judge, they'd tell me to go to hell. That's  
21 not my function. They're supposed to run the courts. I'm  
22 trying to run my public defender.

23          Q     You obviously had complaints, and you -- instead of  
24 voicing those complaints and making them of record to some  
25 -- to either them or others, you kept silent?

1           A     No. I did. Yes, I did. And obviously I wish I  
2     didn't, but I did.

3           Q     Do you intend to continue to keep silent?

4           A     Obviously not.

5           Q     What have you done in your office to ensure that  
6     this type of problem, whether it be the next zero tolerance  
7     that comes down the line, will not -- will go unchecked?

8           A     Well, first of all, we're obviously not going to be  
9     silent anymore. We're going to complain wherever we can.  
10    We're going to file appeals wherever they can as much as our  
11    resources let us. The Judicial Board, we'll put them on  
12    speed dial, and we'll have complaints there all the time,  
13    and the Disciplinary Board if we see things. This code of  
14    silence is no longer. We're going to be proactive.

15          Q     We've had the code of -- the Judicial Conduct Board  
16    was here to testify, and we've been -- they've been active.  
17    They've been going around to -- Luzerne County was one of  
18    the counties reminding lawyers and others of their  
19    responsibility and what -- what procedures they have.

20                 I mean, the same thing that exists now that exists  
21    then, and you -- you didn't bother making any complaints.

22          A     Maybe you have to be experienced. Maybe we had to  
23    get the experience with you, which is what we have now. You  
24    know, something we never thought we'd have. You know, you  
25    say, well, I never thought I'd be in a car accident, next

1 thing you're laying in the hospital. We've been wounded.  
2 We know. We want to heal. And the only way we can heal is  
3 by being proactive.

4 Q Well, your kids have been wounded?

5 A Yeah. That's no question.

6 Q Let's talk a little bit about the ethical  
7 obligations as a juvenile defense counsel in light of  
8 representation of minors.

9 You would agree that after the -- since the  
10 decision the role of the juvenile defender has really  
11 evolved into a complex and challenging skill set?

12 A Oh, yeah.

13 Q You got to wear a lot of hats. You got to be a  
14 criminal lawyer. You have to know the strength and  
15 weaknesses of the juvenile clients. You got to know their  
16 family, the community. You got to know the rules inside and  
17 out. And, of course, the rule changes.

18 What special programs or policies were established  
19 in the defender's office from 2003 to 2008 to improve the  
20 skill set of the juvenile defense lawyers in your office?

21 A As I said before, unfortunately until a month ago  
22 we had no training in juvenile. We have, you know, our  
23 funding. It's a terrible cop out and a terrible excuse, but  
24 we are funded entirely by the county, as probably you all  
25 know.

1           As I understand it there are only two states in the  
2 union that have local county-funded public defender offices.  
3 48 states have state public defender offices. Maybe there  
4 are more resources out there. Last year with my case count  
5 up ten percent I got cut a lawyer and got cut a clerical  
6 person.

7           Q     I'm talking about training.

8           A     Yeah.

9           Q     Wait a minute. Let me be fair about this and be  
10 fair with me about this. You have been working with my  
11 colleague, Robert Listenbee, for the last couple months?

12          A     Right.

13          Q     He's reminded you of the various training programs  
14 within the Commonwealth of Pennsylvania and outside that  
15 have -- would be provided free of charge to you and to your  
16 colleagues, correct?

17          A     That's correct.

18          Q     And you're now taking advantage of them?

19          A     We are.

20          Q     This just didn't happen over the last few months.  
21 These training programs were available during the periods of  
22 time in '03 to '08. You chose not to take advantage of  
23 them?

24          A     We did not take advantage of them. As I said  
25 before, the person who was juvenile court was -- it was less

1 than, what, four hours out of 65 of his case load. It was  
2 not a big part of his case load. We were in and out of that  
3 courtroom, okay. The person was handling other things. We  
4 never viewed the juvenile court as a big problem.

5 Q Sir, whether or not it was one child or --

6 A I know that.

7 Q -- 2,000 children.

8 A I know that.

9 Q Because it was a -- it's a youth, that complex  
10 skill set is -- there's the ethical obligation on behalf of  
11 your -- your young defenders and you had -- you had an  
12 obligation to get up to speed and be trained to adequately  
13 defend these young kids, right?

14 A And we're trying to do that now.

15 Q And they weren't there?

16 A They were not.

17 Q They were not prepared?

18 A No.

19 Q You did not have your APDs prepared?

20 A They were -- no. I'll agree with you. They were  
21 not prepared. We didn't know what defenses existed out  
22 there. We do now. And now I see all the work we have ahead  
23 of us. And I don't know where I'm going to get the money to  
24 do this, but hopefully I can get it somewhere.

25 Q Well, let's -- just as reminder, just as a reminder



1 to you, maybe the Juvenile Court Judges Commission has an  
2 annual meeting that would help you and your ADAs with  
3 various programs.

4 A Um-hum.

5 Q Okay. If you're going to take -- that was  
6 available from '03 to '08. It's available now, correct?

7 A That's correct.

8 Q All right. The Pennsylvania Association of  
9 Criminal Defense Lawyers has similar type of programs to  
10 help assistant public defender's be well trained to secure  
11 the comprehensive skill set to meet their ethical  
12 obligations, correct?

13 A Yes.

14 Q Had it then, had it now?

15 A That's correct.

16 Q Same thing with the Public Defender's Defense  
17 Association, the Juvenile Defender's Association of  
18 Pennsylvania with Mr. Listenbee's involvement has numerous  
19 programs?

20 A I understand that. Now, one thing -- it's one  
21 thing putting that isolated and say these are wonderful  
22 programs, and they are wonderful programs. But that same  
23 lawyer who was doing juvenile court had 20 cases on the  
24 trial list that month. And I do not -- I cannot stretch it  
25 any further.

1 Q I understand.

2 A Every year at budget time I'm asking for help, and  
3 I'm the easiest office to cut. I keep saying if I was on  
4 the ballot, it would vote to close our office. Nobody wants  
5 to give the public defender any money.

6 Q Well, let me ask this, and to be fair to you,  
7 because one of our -- we're trying to find ways to improve  
8 the service to juveniles. And clearly your office would be  
9 one of those that we would like to -- if you're committed to  
10 get that training and take advantage of the training free of  
11 charge, what recommendations to your office would you like  
12 to see implemented to assist you in ensuring the problem  
13 that happened in Luzerne County will never happen again?

14 A Well --

15 Q Besides funding?

16 A Okay. Besides the funding?

17 Q Yeah.

18 A We have to get -- we have to get our lawyers  
19 trained, which we're in the process of doing. And we have  
20 the training session going on. We have to get available  
21 resources to do the proper testing of these kids and provide  
22 the judge with an alternative disposition, which we didn't  
23 know existed before.

24 We need to investigate these -- these cases, which  
25 we've never been able to do. And there's some way we have

1 to get the kids and the parents in prior to coming to court.

2 And what we hope to do, once we get staff, is to  
3 meet them at the intake hearing and be on board right then.  
4 So we're in the case in the beginning, not at the tail end.  
5 And then we can work with the family, work with the kids,  
6 work with the system, and provide suggestions for the judge  
7 other than whatever has been suggested by probation.

8 Q Now, you recognize that the ethical obligation,  
9 again, on behalf of the juvenile defense counsel is to  
10 advocate for the client's expressed interests, not so much  
11 the client's best interests?

12 A Yeah.

13 Q And so you really have to listen to the -- to your  
14 client, that being the juvenile?

15 A Sure.

16 Q So if the juvenile says to you, you know, I kind of  
17 really want to go home, you have to find -- try to find ways  
18 to get him to achieve that goal?

19 A Yeah.

20 Q Correct?

21 A Correct.

22 Q That might be working with the --

23 A School, outpatient programs.

24 Q -- school, social service. What programs were in  
25 existence in your office from 2003 to 2008 to ensure that

1 the ethical obligation that you were advocating for the  
2 client's expressed interests was being implemented?

3 A The only way I can answer that is by saying we  
4 would -- of the clients that came to us for representation,  
5 we would try to get their background, try to interview their  
6 family, try to see what their interests are, and try to  
7 portray that in the best light we could for placement. And  
8 home, hopefully that's where they wanted to go. We had no  
9 other resources available.

10 Q Did you -- did you feel that you were being --  
11 because of the -- of the judge's policy did you feel like  
12 you were being inhibited or interfered with seeking or  
13 implementing that goal?

14 A You're arguing to -- you're making a deaf argument.

15 MR. HOROHO: That's all the questions I have.

16 CHAIRMAN CLELAND: We have, I think, probably 10 or  
17 12 minutes. Mr. -- Judge Uhler.

18 BY JUDGE UHLER:

19 Q Very quickly. You indicated you did not know where  
20 to go to seek redress for these concerns that were  
21 articulated by your assistant defender. You were aware,  
22 were you not, of the Juvenile Law Center's successful appeal  
23 surrounding Judge Ciavarella's failure to provide advice as  
24 to right to counsel and the overturning of that case in  
25 2001?

1 A Yes.

2 Q Had you considered recontacting them with this  
3 continuum of violations?

4 A I made an assumption, and an improper one, that  
5 they were in tune with the reports that were being  
6 generated, that we all get annual reports regarding  
7 placements, incarceration, and so forth. Our numbers were  
8 way askew.

9 And the improper assumption was that they were  
10 monitoring this. And if they saw a problem, they would come  
11 back. You know, everybody in the system got those reports.  
12 Nobody did anything about them, including us. Probably  
13 everybody at this table got -- gets those reports. Nobody  
14 did anything. The AOPC gets them. The Supreme Court gets  
15 them. All the judiciary gets them.

16 And when you see the numbers out of whack, I guess  
17 -- now it raises -- we see that next year, we know everybody  
18 at this table is going to raise that issue. What's going on  
19 in whatever county?

20 Q Well, you knew that on the record waivers were not  
21 taking place after 2005 --

22 A Yes.

23 Q -- did you not? What was there left to assume that  
24 that was not taking place?

25 A As I said, the only thing -- and I did not hear a

1 lot of cases. I wasn't in the courtroom a lot. But I could  
2 only assume there was a proper written waiver that the judge  
3 was accepting as a waiver. And I don't know what they have  
4 in writing. I've never seen one of these. But I -- my only  
5 assumption was that he's the judge. DA, here's the waiver.  
6 They must have a proper written waiver.

7 Q I gather then you did not feel as the public  
8 defender that you should be looking and eyeballing this  
9 waiver, and assuming is all that you relied on?

10 A They were not my client and not the purveyor of the  
11 whole system. I tried to represent my clients, and that's  
12 what I was trying to do.

13 Q Getting to the representation of your clients, did  
14 you feel that the predisposition for placement regarding  
15 zero tolerance youth who had admitted warranted seeking a  
16 recusal or request for recusal of Judge Ciavarella?

17 A I do now.

18 Q But that's in hindsight?

19 A That's in hindsight. There's a lot in hindsight.  
20 I mean, having spent my -- almost my whole life in this  
21 system, I mean, it's repugnant what we've read and what  
22 we've seen. Just -- it's very difficult to get through this  
23 period.

24 Q It must be in as much as you were there?

25 A Yes, yes.

1 JUDGE UHLER: I have nothing further.

2 CHAIRMAN CLELAND: Mr. Listenbee.

3 BY MR. LISTENBEE:

4 Q Your Honor, just one or two questions. Mr. Russin,  
5 I reread the Public Defender Act of 1968 last night. And on  
6 the issue of the poverty guidelines I looked to see if they  
7 were there. The Public Defender Act states basically that  
8 the public defender must represent any person who's  
9 indigency prevents him from obtaining counsel for the  
10 following proceedings, No. 1, juvenile delinquency  
11 proceedings. And then it goes on to list other kinds of  
12 proceedings.

13 Where in the Act does it specify or where do you  
14 actually obtain the direction that says that you must use  
15 poverty guidelines for youth?

16 A It doesn't.

17 Q It doesn't?

18 A It doesn't. And the way I've interpreted that is  
19 that I have the power to create what guidelines I say. Now  
20 -- and I've talked to other public defenders throughout the  
21 Commonwealth. Some, if you apply, you get a public defender  
22 regardless. If you just say, I want a lawyer, you get one.  
23 Some have certain guidelines.

24 I don't know of anybody else that uses US Poverty  
25 Guidelines. Some say if you're on welfare, you get a public

1 defender. So there's no uniformity as I'm understanding --  
2 as I understand to a right to a public defender. And maybe  
3 that's something this Commission could recommend.

4 Q Would you believe that it might be appropriate  
5 given what we've experienced in Luzerne County in order to  
6 prevent this from ever happening again that -- that there  
7 should be no guidelines for -- for indigency for juveniles?

8 A No. There should be an absolute right to a lawyer.  
9 And I don't even think they should have the right to waive a  
10 lawyer. I think that it should be mandated that a lawyer  
11 has to be there.

12 Q Do you think that would prevent this kind of  
13 problem from occurring again, at least as far as the waiver  
14 of counsel part?

15 A I don't know if it would prevent it. I think it  
16 would help.

17 MR. LISTENBEE: Thank you. I have further  
18 questions, Your Honor.

19 CHAIRMAN CLELAND: Judge Gibbons.

20 BY JUDGE GIBBONS:

21 Q Mr. Russin, in your supervisory capacity did you  
22 ever -- we know you told us that you went to juvenile court  
23 to fill in for your assistant from time to time. But did  
24 you ever go and just sit and observe in your supervisory  
25 capacity?



1 A No.

2 Q Why?

3 A You know, I really had no complaints. It wasn't --  
4 people weren't complaining of the -- in other words, the  
5 clients, the parents were not complaining saying, you know,  
6 your lawyer didn't do a job. People weren't coming and  
7 complaining about court, as I said. No nobody pressed 2 on  
8 that elevator in tears and crying. And --

9 Q Did you feel the need to just go down and -- didn't  
10 you feel a need to go down and see how your lawyer is doing?

11 A From time to time I'd be there, as I said, filling  
12 in. And the person would come in, okay, and I'd observe  
13 them do a case. And the case was being processed. But  
14 while it was going on it was a process. So I did not ever  
15 go up there and sit through a whole session.

16 Q Do you think that's something that you might  
17 consider doing?

18 A Certainly I'm going to look at it now. And I did  
19 in Lupas's courtroom and, you know, told him how it was.  
20 And I also consult weekly with my juvenile lawyer and go  
21 over the list and see what's going on with cases.

22 Q Do you do performance reviews of the lawyers that  
23 you supervise?

24 A I don't do the performance reviews, but I do  
25 observations, and I go to preliminary hearings and observe.

1 I go to trials and observe, just a general performance. And  
2 you get a feel for the number of cases that we have and  
3 complaints we have, and you pull people and adjust their  
4 performance and their skills.

5 Q But that -- you do that regularly for adult court?

6 A Yes. Well, with all the lawyers, every one of the  
7 lawyers.

8 Q But not specifically for juvenile court?

9 A Not specifically. But with juvenile now we -- in  
10 fact, last night we reviewed what happened in court on  
11 Monday, which was yesterday.

12 JUDGE GIBBONS: Okay. Thank you, Mr. Chairman.

13 CHAIRMAN CLELAND: Mr. Legg.

14 BY MR. LEGG:

15 Q I do have a few, Mr. Russin. Thanks for coming.

16 A Sure.

17 Q You said that you were assuming that there was a  
18 proper written waiver of counsel, and that was one of the  
19 bases for your decision that you weren't going to take any  
20 action; is that correct?

21 A That's correct.

22 Q Do the rules allow for a written waiver of counsel?

23 A I'm sure they don't.

24 Q Okay. So how could it be a proper written waiver  
25 of counsel?

1           A     I said it would be a written waiver.  Now, whether  
2     it's proper within the rules or not would be decided at a  
3     future time.  But I was -- my mind set was that there was a  
4     waiver in place, a -- whatever it said I don't -- I never  
5     saw one.  I was just assuming since they have been at  
6     intake, they have been with probation, and since the DA had  
7     a file, that there was a waiver there.  And the judge had a  
8     file.

9           Q     But you had watched proceedings and saw that there  
10    was no oral colloquies?

11          A     Oh, I knew that.  There was no oral colloquy.

12          Q     And you knew the rules didn't allow for written  
13    waivers?

14          A     That's correct.

15          Q     So at that point in time you knew whatever was  
16    occurring wasn't proper?

17          A     I cannot -- it wasn't proper.  There's no question  
18    it wasn't proper.

19          Q     And is it fair to say that that assumption was  
20    motivated, at least in large part, by your desire to keep  
21    your case load down?  You said you don't solicit business?

22          A     I keep my case load down.  I keep it so we can at  
23    least represent people, manage it.

24          Q     Well, 50 -- over 50 percent of the juveniles coming  
25    into Luzerne County didn't have counsel?

1           A     That's right.

2           Q     And you were aware of that?

3           A     No, I wasn't.

4           Q     At the time you were not aware of that?

5           A     I didn't know what the statistics were.  As I said,  
6 we probably did about 10 to 20 percent.

7           Q     Would it be fair to say that you really didn't want  
8 to know what was going on?

9           A     No, that's not fair.

10          Q     Would it be fair to say that you should have known  
11 what was going on?

12          A     In hindsight I should have known.

13          Q     And when your assistant comes to you and you've  
14 observed these improper -- no colloquies, and your  
15 assistant's complaining as well, what's the mind set?  Aside  
16 from not wanting to solicit more business, what's the mind  
17 set that says we do nothing?

18          A     You know, it was -- I remember once when I was  
19 young and there was a pro se murder trial going on.  
20 Defendant represented himself.  And I walked up in the  
21 middle of the courtroom and went up to the judge and said,  
22 this is terrible.  I want to represent this fellow.  And the  
23 judge just about held me in contempt, okay, basically threw  
24 me out of the courtroom.  And maybe that's in my back of my  
25 mind somewhere.

1           And I just had to rely on the honesty of everybody  
2 involved and the colloquies involved, and hopefully that  
3 these colloquies were in place.

4           Q     Now, in full disclosure, I'm a prosecutor.

5           A     Um-hum.

6           Q     But I have a great deal of respect for defenders,  
7 especially public defenders. And I agree with a lot of what  
8 your sentiment that you've expressed today is. But it's  
9 always been in my mind that public defenders are kind of a  
10 special breed of people. They really deeply care about the  
11 rights of those they represent and rights in general. Would  
12 you agree with that assessment?

13          A     Oh, yeah. I mean, we purvey ourselves as the  
14 defender's of the Constitution.

15          Q     And prosecutors should be just as concerned about  
16 those rights?

17          A     Even more.

18          Q     And what I'm confused by is you referenced as one  
19 of the reasons there were no appeals taken that I think you  
20 quoted, everybody loved it, that there was a bandwagon of  
21 zero tolerance. The DA's Office was on board. They just  
22 wanted convictions.

23                 It seems to me that's the atmosphere most right for  
24 the entity that represents the little guy to step forward  
25 and say, hey, what's happening here is not right. And I'm

1 confused as to why it was -- why the atmosphere dissuaded  
2 your office as an entity not to do or not to take any steps  
3 because everybody loved it?

4 A When you say no appeal's taken, it's because every  
5 -- the Defendants, the kids, their parents, they all  
6 accepted this. For some reason they all accepted the fact  
7 that they were being sent away.

8 And you know, I mean, I'm dealing with a certain  
9 class of clientele, and most of them are troubled homes.  
10 They're not in trouble because, you know, there's not an  
11 issue at home. Usually there's some sort of issue at home.

12 And it seemed, you know, everybody -- everybody was  
13 in concert with what was going on. It was hard -- it's hard  
14 to believe, but that's what happened.

15 Q When you say everybody was in concert, is it fair  
16 to say that the Public Defendant's -- Public Defender's  
17 Office was also singing harmony with these people?

18 A No, no, no. I paint us as the exception. However,  
19 when you say -- and I haven't done this, but I assume this  
20 would happen when you say do you want us to appeal this?  
21 No, he deserves it. The client, do you want us to appeal  
22 it? No, maybe I'll get some help.

23 Q So in each case, each juvenile case that your  
24 office would have represented, your assistants or yourself  
25 would have asked the juvenile if they wanted an appeal?

1           A     They should have, yeah. You know, we do that all  
2 the time. You have a right to appeal, the right to  
3 reconsideration.

4           MR. LEGG: That's all I have, Mr. Chairman.

5           CHAIRMAN CLELAND: Mr. Russin, is there any  
6 concluding remarks or statements that you would like to  
7 make? We appreciate any thoughts or incites that you might  
8 have.

9           MR. RUSSIN: Just briefly. And I think what we  
10 have here is just a -- Luzerne County is a systemic problem.  
11 And it's a systemic problem from the beginning to the end.  
12 It was a systemic problem, and it still is. And we're  
13 trying to reverse that. We still have a mind set out there  
14 in the prosecution, in the police, and in the juveniles,  
15 juvenile probation, that one of the passages of adolescent  
16 it seems is going to juvenile court. And we have to stop  
17 that.

18           It's starting to get stopped, but it's still in its  
19 formative stages. We're still seeing some cases that I feel  
20 shouldn't be in juvenile court come in juvenile court,  
21 although there are less of them. And I hope they're  
22 increased to be less of them.

23           I'm almost grateful for meeting Bob Listenbee and  
24 his group and the training that's being provided. And we're  
25 attempting, at least our goal is, to become a model office.

1 We want to raise ourselves from the ashes to being where  
2 people come to see how things are done the right way.

3 I'm excited about this. I have a lot of  
4 enthusiasm. My staff has a lot of enthusiasm to try to make  
5 us the model for Pennsylvania so we can do things the  
6 absolute right way, and I look forward to do that.

7 Hindsight, as I said, is wonderful. It's a  
8 terrible thing that happened. And as extremely upset as I'm  
9 sure all of you are, but being there it just puts a knot in  
10 your stomach that's hard to get rid of. And I'll never  
11 practice the way I practiced for the first 36 years.

12 I don't think any of the lawyers in my office will  
13 ever practice like that anymore. This has totally changed  
14 our whole gig. Thank you.

15 CHAIRMAN CLELAND: Mr. Russin, thank you for your  
16 efforts to reform this system. Certainly evidenced the  
17 sincerity about this which we appreciate very much and your  
18 candor about the dilemmas in which you found yourself years  
19 ago. So thank you for being here today.

20 MR. RUSSIN: Thank you, Judge.

21 CHAIRMAN CLELAND: Do you want to recess? We're  
22 going to take a 15 minute recess, and we'll reconvene at 20  
23 to 3 for Mr. Johnson.

24 (Recess taken from 2:16 to 2:30.)

25 CHAIRMAN CLELAND: We'll begin and come back into



1 order. Our next witness is Mr. John Johnson from the  
2 Juvenile Probation Department. And I think our intention is  
3 to conduct an examination about an hour, correct?

4 MR. LEGG: Yes.

5 CHAIRMAN CLELAND: And that would give you some  
6 time frame --

7 THE WITNESS: Thank you, Judge.

8 CHAIRMAN CLELAND: -- that you can anticipate that  
9 we will be inquiring. Although previous experience has  
10 shown that we don't always adhere to the schedules that we  
11 think we're going to getting into it.

12 THE WITNESS: Okay.

13 CHAIRMAN CLELAND: So if you would stand, Mr.  
14 Johnson, and take the oath.

15

16 JOHN JOHNSON, called as a witness, being duly  
17 sworn, testified as follows:

18

19 CHAIRMAN CLELAND: Please be seated. Our practice  
20 is that members of the Commission divide up the questioning.  
21 And this questioning will begin with Mr. Allen. Mr. Allen,  
22 go ahead.

23 BY MR. ALLEN:

24 Q Thank you, Mr. Chairman. Welcome, Mr. Johnson.  
25 Thanks for coming.

1           A     Thank you.

2           Q     Let me start with some background questions.  How  
3 long have you worked at the Juvenile Probation Office and at  
4 what capacities?

5           A     Started in the probation office in 1998.  And  
6 currently when I started I started as a Intensive Probation  
7 Officer, moved forward to School-based Probation Officer,  
8 and then took the position as a Community Liaison Officer.  
9 And then worked my way up to Supervisor.  And I'm currently  
10 the Deputy Chief of Administration.  So approximately 11  
11 years.

12          Q     How did you happen to get the job?

13          A     Well, I guess that all comes back to I did my  
14 internship with the sheriff's department when I was in  
15 Bloomsburg University.  And the sheriff at the time, Carl  
16 Zawadski (phonetic), took interest in me.  And he said, you  
17 know, I'll see if I can hire you as a deputy sheriff.  And  
18 as I looked at the pay grade and scale I said I'm not sure  
19 if want to stay here.

20                    But I'm originally from York County, so I decided  
21 not to the move back to York.  And I was able -- there was a  
22 position open, and I applied and got the position.

23          Q     You mentioned you went to Bloomsburg University?

24          A     Yes, sir.

25          Q     What educational background do you have?

1           A     Criminal justice, Bachelor's in Criminal Justice.  
2     And a Master's in Administration of Justice from  
3     Shippensburg University.

4           Q     What training and education are required for  
5     employment at the juvenile probation as an officer as an  
6     entry level type of position?

7           A     You need to have a four-year college degree in  
8     levels of behavioral health, sociology, along through  
9     criminal justice. And you also need to attend the JCJC 20  
10    hour a year training.

11          Q     And what's the process for promotion? Do you have  
12    to take a civil service exam, or do you apply for -- you bid  
13    into a job?

14          A     You basically -- a job might be posted, and you  
15    would then -- you would apply. And you would then meet with  
16    the Human Resources Director and go through the interview  
17    process.

18          Q     Are you related to or have you ever been related to  
19    anyone working for Luzerne County?

20          A     No.

21          Q     What is your employment history prior to working at  
22    the Juvenile Probation Office? You said you did an  
23    internship with the sheriff's office?

24          A     Right. I did internship with the sheriff's office.  
25    I have hired -- sheriff took pity on me because I was a

1 college student who was driving back and forth. And he  
2 hired me as a per diem deputy sheriff.

3 Prior to that I was doing a couple odd jobs around  
4 Bloomsburg to make ends meet, which might have been from  
5 bouncing at a local, you know, bar; or just working in  
6 general as campus security.

7 Q Who's your direct supervisor?

8 A At this point my direct supervisor is Michael  
9 Vecchio currently.

10 Q Now, we're going to shift a little bit to different  
11 types of -- different series of questions. What basically  
12 are the goals of juvenile probation, the goals and  
13 objectives for your clients as you see, philosophical type  
14 of goals and objectives?

15 A Philosophical goals and objectives, one to find a  
16 balanced and restorative justice approach. Two, to -- and  
17 the biggest one currently is to make sure that the juvenile  
18 is competent when he or she leaves the system.

19 The major focus at one time was accountability, but  
20 currently we are looking at making sure that a child among  
21 the age of 18 or prior has some type of skill. Meaning if  
22 the child is, you know, without a skill as far as a trade or  
23 got a GED, it's our job to make sure the child gets a GED,  
24 has some type of level so they can be a productive person in  
25 the community.

1 Q Now I'll switch gears again.

2 A Okay.

3 Q Have you ever taken a waiver of counsel?

4 A Have I ever taken a waiver of counsel?

5 Q Yes.

6 A No.

7 Q Do you know of any officers that did, any juvenile  
8 probation officers that might have taken these waivers of  
9 counsel?

10 A No.

11 Q The -- basically what it would be is -- I'll kind  
12 of give you some background. Maybe it might make it a  
13 little easier for you to be able to put it back in your  
14 memory.

15 A Okay.

16 Q In fact, there should be a waiver of counsel form  
17 right -- Darren's going to get one out right now and show it  
18 to you.

19 A I'm sorry. Are you asking have I personally taken  
20 a waiver of counsel with a juvenile?

21 Q That's correct.

22 A Oh, okay. No, I have not. But yes, there is  
23 intake officers who have taken a waiver of counsel with  
24 juveniles, yes.

25 Q Okay. So it would be an intake officer that would

1 do that?

2 A Yes.

3 Q If you want to take a look at that. Is that  
4 familiar to you, that form?

5 A Yes.

6 Q Do you know who composed that waiver of counsel?

7 A The --

8 Q The format?

9 A The first waiver of counsel I do not know. And the  
10 second waiver of counsel looks to me that it was done  
11 sometime after '05, I would imagine. But I do not know who  
12 composed it, no.

13 CHAIRMAN CLELAND: Just for purposes of the record,  
14 Mr. Allen, would you clarify which waiver form he's talking  
15 about?

16 MR. ALLEN: He's talking about the waiver of  
17 counsel form, I do believe, that was provided to us by Judge  
18 Lupas; is that correct?

19 MR. BRESLIN: The --

20 CHAIRMAN CLELAND: That's the one-page waiver?

21 THE WITNESS: Right.

22 MR. ALLEN: Okay. The two-page waiver form is the  
23 one that Judge Lupas gave us. The one-page waiver form is  
24 the one that was provided to us by, I think, Sandra Brulo in  
25 her -- in her --

1           CHAIRMAN CLELAND: Okay. Okay. The one page is  
2 identified in the record as Lupas 1. And the second one is  
3 identified in the record as Lupas 2.

4           THE WITNESS: Okay. Okay.

5 BY MR. ALLEN:

6           Q     So you -- you've seen those forms?

7           A     Yes.

8           Q     You just don't have -- you don't know where they  
9 came from, but you know they are used by the intake folks?

10          A     Yes.

11          Q     The current officer -- the current policies and  
12 procedures that are in -- in use by your office for your  
13 staff and, you know, basically the A to Z handbook on how to  
14 deal with juvenile probation issues.

15          A     Right.

16          Q     Do you know who -- who has written -- who wrote  
17 that policy?

18          A     The current policy?

19          Q     That's correct.

20          A     As far as -- I wrote the current policy for intake  
21 with -- along with my intake officers and staff members. We  
22 met as a team, and also included with the judge. We were  
23 working to revise this policy because there's some issues  
24 that the judge has raised to -- he would like to include  
25 some more information in the policy. So yes, it was a team

1 approach.

2 Q Are you aware of any other policies and procedures  
3 besides the ones that you're referring to?

4 A We had previous policies and procedures that were  
5 written in 2004 which were just intake unit general  
6 procedures. And another procedure that was written in some  
7 -- I think -- it was basically just called juvenile court  
8 procedures. It doesn't exactly identify them as the intake  
9 procedure. Then the policy in which I wrote with my staff  
10 in -- excuse me, 2008 we had a question with this. I sent  
11 this to the director. I'm not sure if you have seen this.  
12 I could offer this as evidence.

13 And that particular policy I wrote in 2008. We had  
14 -- I sent that policy over to the -- to my director at that  
15 time to get approval, but the policy you see now had been  
16 changed. And it had included some information on it with  
17 signatures that at that time I wouldn't -- I refused to sign  
18 that intake policy because it just wasn't something that I  
19 approved of at that time.

20 Q What problems did you see with that policy?

21 A Well, it implemented a procedure in which the  
22 intake staff were to send their recommendations to a -- an  
23 outside party for a recommendation to be made to the court,  
24 which violates the Juvenile Act. It actually violates the  
25 Juvenile Act as well as the Rules of Juvenile Court



1 Procedure. That was an issue that I felt we had to try to  
2 rectify, and I did. And it still was the set policy and  
3 procedure until we dissolved it when Judge Lupas took over.

4 Q Is there a Code of Ethics that your department has  
5 that follows?

6 A We follow the Code of Ethics from the Human  
7 Resources policy, which is identified as the blue book  
8 manual for the courts.

9 Q Is this a Code of Ethics provided to the employees  
10 of your department?

11 A Yes.

12 Q Is there any training provided to the staff, or is  
13 the policy and procedure just handed to them and they're  
14 given -- just told they have to read it, and they're  
15 responsible for reading it and signing off on that they did  
16 read it?

17 A Signing off on reading as far as the training, no.  
18 There -- I have never received training on the policy  
19 manual, no.

20 Q You mentioned that you -- you've reviewed some of  
21 the policies and procedures, and that you've had some issues  
22 with them, and that you're going to make some changes?

23 A Yes.

24 Q Are there other policies and procedures besides  
25 these that you think, for example, need to be added or maybe

1 there might be some gaps in the policies and procedures that  
2 need -- need to be filled in?

3 A Yes. We've been working with the Public Defender's  
4 Office as well as the District Attorney's Office, and we are  
5 looking to try to get together as a group. We meet -- we're  
6 going to meet monthly to discuss and bring together -- one  
7 question that we did raise was the lack of -- of a public  
8 defender or an attorney in the intake process.

9 And we -- we're going to look at procedure in which  
10 we could hopefully open up that door and have a -- have a  
11 person available for a parent or child when coming to the  
12 office. So that would be added into the new policy as far  
13 as having a -- the public defender available on site for a  
14 child who requested one for an intake.

15 Q You mentioned we. Who's on this -- this -- who's  
16 with you when you talked about the public defender? What  
17 other parties are at the table with you?

18 A District Attorney's Office as well as Judge Lupas  
19 and as well as my intake staff as well.

20 Q Do you want to kind of walk through your intake  
21 process, how it works?

22 A Okay. The first issue is that a intake -- or you  
23 want me to start from the allegation of the complaint form,  
24 or would you like me to start from the process of call from  
25 a police officer and that issue, or would you like to just

1 start in the middle as far as intake is concerned? Where  
2 the intake is sent out, the information is sent to the  
3 parent. Summons is sent, and the intake is coming in to  
4 their -- they're provided with five actually papers telling  
5 them that they are to -- requested to come to the intake.  
6 They have been charged.

7           They are notified that they need to have an  
8 attorney present for that intake. They were suggested. And  
9 once the person -- or youth shows up with a parent they are  
10 run to the intake process. And at that time the intake  
11 officer will read them the youth rights, and they will ask  
12 them whether or not they were going to -- about the charges,  
13 if they deny.

14           If they do not want to talk about the charges, then  
15 the intake is ended at that time, and we will move forward  
16 to a court hearing.

17           Q     If they show up without an attorney --

18           A     Yes.

19           Q     -- does the intake process go on regardless of  
20 whether there's an attorney there or not?

21           A     If they -- if the parent or child acknowledges that  
22 they would like to continue with the intake process, then  
23 yes.

24           Q     You mentioned they're given their rights. Could  
25 you kind of explain to me what that means?

1           A     They are notified of their rights to remain silent,  
2 notified of the Miranda rights.

3           Q     As -- are there other parts of that besides the  
4 right to remain silent?

5           A     The right -- I'm not exactly sure of the whole  
6 process. I don't have the paperwork in front of me. So I  
7 do not want to jeopardize the -- it -- the legality of the  
8 information.

9           Q     At that time are they given any information about  
10 an attorney?

11          A     Yes. They are given information well before they  
12 even get to the intake. They're provided with a paper at  
13 this point that describes the process and what they're going  
14 to be coming to. The intake officer also has on that  
15 paperwork that they are -- you know, they are allowed to  
16 have an attorney present if they request one.

17                   We, at that point, after the intake is also over --  
18 we do send the parent down to the Public Defender's Office  
19 immediately after intake is over.

20          Q     So is that a new procedure?

21          A     A new procedure, yes.

22          Q     And how long has that been in affect?

23          A     I can't tell you exactly how long. We've been  
24 doing that for -- sending the child down to the public  
25 defender from as long as I know the intake process has been

1 happening. As far as -- I do not know. I can't tell you.

2 I was not a supervisor of intake at certain times,  
3 so I can only tell you that currently that is a process that  
4 we do utilize. But I knew the intake officers have been  
5 always telling the parents to go to the Public Defender's  
6 Office if they requested a public defender.

7 Q So are you saying that if -- let's say the parents  
8 don't want a lawyer.

9 A Right.

10 Q But the juvenile -- juvenile does want one.

11 A Right.

12 Q How would you deal with that type of situation?

13 A Still send the -- sent the parent down to request  
14 that they still go down to the Public Defender's Office to  
15 get a public defender. That is how we solve that.

16 Q So in other words, you're saying every juvenile  
17 that wants an attorney currently --

18 A Yes.

19 Q -- can get one?

20 A Yes.

21 Q Are the juveniles advised that this right to  
22 counsel is their right, not their parents' right?

23 A Yes. And in certain circumstances, yes, they are  
24 -- each intake officer, when they do their intake, advise  
25 the juvenile specifically, as the Supreme Court has a

1 procedure, identify that the juvenile is the major, I guess,  
2 person in this whole scheme of the process. And the parents  
3 really do not have the authority to tell them -- tell us, as  
4 a probation staff, yes or no. We do focus on the juvenile  
5 because it is their -- it's their right to have that  
6 information.

7 Q How do you go about making sure that the parents  
8 don't do non-verbal types of communications with that  
9 juvenile to tell them, this is what I want? You're going to  
10 do what I want anyway?

11 A It -- I really can't tell you as far as how each  
12 individual intake officer would define that, but they do  
13 know because they are schooled in the fact that it is the  
14 right of the juvenile. So I would be sure that irregardless  
15 if a parent tells the child yes or no, we do advise them  
16 before they leave that the public defender is downstairs,  
17 and you need to go see them.

18 Q Before Judge Lupas got on the bench were you -- did  
19 you say you did some intake work?

20 A No. I've never worked in the intake department.

21 Q Never worked intake. So basically I can still ask  
22 you this question. Did you know how many -- how many of the  
23 juveniles are waiving their right to counsel before Judge  
24 Lupas approximately?

25 A No.

1 Q Have you heard the statistics?

2 A Recently, yes.

3 Q Okay. What are those statistics?

4 A From what my understanding there were a large  
5 percent. And the statistics may have been 50 percent  
6 waiving their right to counsel.

7 Q Currently how many juvenile defenders waive their  
8 right to counsel?

9 A I would have to say zero. At this point we don't  
10 -- we -- we don't even utilize the waiver of counsel. We  
11 make sure that every juvenile has -- in court the judge will  
12 assign either -- even if they deny it, still standby  
13 counsel.

14 We, as a staff, make sure that the juvenile has  
15 counsel. And we've been working with the public defenders  
16 to make sure that someone is available for court, and they  
17 are assigned. I know recently in the past Jonathan Ursiak  
18 was assigned to the juvenile probation courtroom. And he  
19 took every case that was assigned to him from juvenile  
20 probation, whether -- irregardless if they wanted the client  
21 or not. And that is still the process.

22 Q I'm going back to when Judge Ciavarella was working  
23 again. Do you know -- did you know whether or not he  
24 explained in a colloquy the right of counsel to the juvenile  
25 defendant if the juvenile defendant wanted to waive counsel?

1 Were you aware that that was ever done?

2 A No.

3 MR. ALLEN: That's all I have, Mr. Chairman.

4 CHAIRMAN CLELAND: There was a document, I believe.

5 MR. LEGG: Oh, you want to mark it as an exhibit?

6 THE WITNESS: Yes, two different.

7 MR. LEGG: Is that right, Mr. Johnson?

8 THE WITNESS: Yeah. The one without the signatures  
9 is the one I produced, and the one was -- the one with the  
10 signatures is the one that was sent back to me.

11 MR. ALLEN: Mr. Chairman, I move that those be  
12 marked as exhibits, please.

13 CHAIRMAN CLELAND: Okay. They'll be marked and  
14 made part of the record. Mr. Williams.

15 BY MR. WILLIAMS:

16 Q Yes, Judge. Mr. Johnson.

17 A Yes, sir.

18 Q Who files the petitions for delinquency?

19 A I do.

20 Q Has that always been the case?

21 A No, sir.

22 Q And why not?

23 A That was a policy that was instilled many years ago  
24 as far as I knew, and it was something that we recently have  
25 changed based upon looking through the Supreme Court Rules



1 of Procedure that it was something that -- it was identified  
2 by the JCJC when they came in to review some of the  
3 procedures that we as the staff were doing.

4 Q And who may file an allegation of delinquency in  
5 your county?

6 A The local police departments.

7 Q And they're the only ones?

8 A No. Well, anybody could file. Any outside person  
9 could file a allegation as well as a probation officer could  
10 file the allegation of the complaint.

11 Q Could the school district?

12 A Yes. Through a -- through an SRO officer, meaning  
13 an officer of the school district.

14 Q Who works within the school district?

15 A Yes.

16 Q Okay. Once an allegation of delinquency is filed,  
17 tell us the steps that are taken.

18 A Once the allegation of delinquency is filed then a  
19 -- we send the allegation to a intake officer who then  
20 determines at this point whether or not the -- the intake is  
21 -- the allegation is worthy of coming to juvenile court.  
22 And if it is worthy of juvenile court, then it is  
23 distributed to a intake worker who then will schedule the  
24 intake and provide -- do the intake. And then after that we  
25 will then file the petition with the courts and file the

1 petition rules.

2 Q And who makes the initial decision regarding  
3 detention upon arrest?

4 A At this point we have changed that policy. We've  
5 worked with the District Attorney's Office, which we have  
6 utilized a -- basically followed the Rules as Juvenile Court  
7 Procedure and made sure that detention is only authorized  
8 for felonies, misdemeanors.

9 I do have a copy here somewhere of that order,  
10 which I will find that tells you guidelines that we do not  
11 accept or will not accept a juvenile in detention unless he  
12 or she is -- it's a major felony or it's a misdemeanor.

13 And sometimes we also negotiate with the police  
14 officer to make sure that those charges are -- there's  
15 evidence behind those charges. Because sometimes, you know,  
16 at 2:00 in the morning they call, and they come in, and it  
17 will be did you call the DA's Office before you're going to  
18 file those charges? And we do request that police officers  
19 speak with the District Attorney's Office first before  
20 filing a charge to make sure it is viable.

21 So to warn a supervisor who does -- case manager  
22 supervisor who will get the call as well as myself and  
23 another supervisor who was on call that may get a call for  
24 detention previously.

25 Q So you now have written guidelines for this?

1 A Yes, yes.

2 Q Okay.

3 A Yes. We worked with the District Attorney's Office  
4 to formulate this of what will be admitted. I will also  
5 mention too, Your Honor, we are --

6 MR. WILLIAMS: This will be Exhibit Johnson 3.

7 THE WITNESS: We also are in the process of  
8 utilizing the Berks Detention Assessment Tool, which is  
9 something that we have found that does work. It is a tool  
10 that we are utilizing. And the only issue that we have now  
11 currently with implementing it 110 percent is that we need  
12 access to our computer system in the evening time so that if  
13 a police officer does call, I may be able to look up a case  
14 history on a child before telling that police officer, yes  
15 or no, because not having a current history or what his  
16 curfew is and that information. So --

17 BY MR. WILLIAMS:

18 Q I notice it's addressed to all Luzerne County  
19 police chiefs and the Pennsylvania State Police commanders.  
20 Shouldn't this also be addressed to the school officers?

21 A Yes, sir. That is correct.

22 Q Was anything in the policies and procedures about  
23 this previous to the change?

24 A As --

25 Q Was there anything in the policies and procedures

1 previous to the change, any of this in your policies  
2 previous to your change?

3 A Oh, of accepting detention?

4 Q Right.

5 A We had some simulations of this policy previously  
6 that were for detention authorization, but not specific, no.

7 Q What issues does your office consult with the DA?

8 A Issues? We consult with the DA's Office on just  
9 about every charge that's coming through the system at this  
10 point. Previously there was no -- a lot of things were, you  
11 know, left to the Juvenile Probation Office to discern. But  
12 as -- as I've talked to my intake staff, I think we had  
13 opened up the doors of communication and collaboration in  
14 order to make sure that we are not accepting or moving  
15 forward with charges that do not deem necessary in the  
16 juvenile court system.

17 Q Has this always been the case?

18 A No.

19 Q So this has just recently evolved?

20 A Right, yes.

21 Q And is this relationship described now on the  
22 written policies?

23 A No, not at this point, no. We are -- like I said,  
24 we are working on developing a true policy manual, working  
25 with the judge and the group to come up with a -- a very

1 good policy manual that describes every step of the process  
2 for the departments, as well as the collaboration that's  
3 necessary. Because that is one thing that we realized we  
4 don't have is a true policy manual.

5 Q So currently you're working on policies and  
6 procedures for your office?

7 A Yes.

8 Q The school district's refer many cases to your  
9 office or the police?

10 A At this point the level of school officers who have  
11 referred has been down, and the police officers we have --  
12 it's -- I could say it's probably maybe a 70/30 possibility  
13 as far as police officers filing allegations, complaints,  
14 and school officers.

15 Q Can you tell us what types of cases are referred to  
16 you by the schools?

17 A At this point by the schools they are coming to  
18 assault, aggravated assault cases. The old -- the old cases  
19 that used to be filed were the zero -- that fell under the  
20 zero tolerance of school violence. Those cases have fell by  
21 the wayside because of the implementation and -- of Judge  
22 Lupas dissolving the true zero tolerance policy for the  
23 schools. They realized that we will not accept those cases,  
24 and that those cases will be turned back to them for that  
25 fact because we are under the guide -- the auspices of the

1 judge to make sure that we do not accept them.

2 Q Are these handled more informally?

3 A Yes. We do -- we are looking for diversion. We  
4 are as a group, as an intake office, as well as the courts  
5 we're moving forward to utilize more diversion as far as  
6 informal diversion.

7 We are also in the process of looking to develop a  
8 day treatment type facility as well as utilizing many  
9 possibilities. I will let you know that we have been behind  
10 in the process of having community-based programs of  
11 structure and are available for youth to be diverted to.

12 So at this point we are moving forward in that  
13 direction. It is something that the judge has utilized,  
14 delayed disposition at this point.

15 Q Is one school reporting more than another?

16 A No.

17 Q They're all about the same?

18 A Right. They're evenly matched. I would say that  
19 we do not really have as many allegations. I don't have a  
20 statistical outcome for you, but I would -- we could draw  
21 one up and find out exactly. I would think that I see less  
22 school petitions coming forth unless they are some type that  
23 rise to the level of aggravated assault at this point.

24 Q How many district judge referrals were made?

25 A District judge referrals --

1 Q Go ahead.

2 A I don't -- I don't have a statistic for you.

3 Q Okay. Who was permitted in the courtroom during  
4 non-adversarial adjudication hearings?

5 A Who was permitted in the courtroom?

6 Q Um-hum.

7 A Currently we have a -- we have probation staff as  
8 well as the public defender and District Attorney's Office.  
9 And at this point we might have one or two attorneys who are  
10 in the courtroom.

11 Q And what roles did each of them have?

12 A Well, each meaning probation office or the public  
13 defender or the District Attorney, sir?

14 Q All of them.

15 A All of them. The public defender is there to  
16 utilize to help with the child, to defend the child. The  
17 District Attorney is there to prosecute the case. Probation  
18 staff is there to give information to each public defender  
19 and District Attorney and provide any substantial testimony  
20 when requested, and to also have some staff who if we have a  
21 child who is detained to transport the child in and make  
22 sure that there is some safety in the courtroom.

23 Q So transport was there?

24 A Yes.

25 Q Were the victims of the crimes there?

1 A Yes.

2 Q And what role did the victims have?

3 A The victims would utilize a Victim Impact  
4 Statement, also had opportunity to speak on the bench. They  
5 also have a opportunity with a victim's witness coordinator  
6 if there's restitution owed. They do -- they might have  
7 some testimony that they are allowed to speak to the courts.

8 Q And who notified the crime victims of their rights  
9 and made sure they were afforded them if they so desired?

10 A The victim's witness coordinators who worked for  
11 the District Attorney's Office.

12 Q And what interactions did you have with the victims  
13 of the juvenile offenders?

14 A With the victim's of juvenile offenders? My  
15 interaction is very limited as far as meeting with the  
16 victim's coordinators and making sure they have information  
17 that they so desire. Also maybe utilizing a Victim Impact  
18 Statement if we -- if necessary, if it's something that is  
19 brought to my knowledge.

20 Q What kind of input was solicited from them, and how  
21 was it presented to the judge? Was it just for the Victim  
22 Impact Statement?

23 A No. There's a question and answer period that the  
24 judge allows the victim to, you know, approach the bench if  
25 he or she would like to make a statement. The information



1 is then garnered and processed, and if there's another  
2 victim that may want to make a statement, then the judge  
3 will allow that to happen as well.

4 Q Was that done in Judge Ciavarella's courtroom also?

5 A There was certain times. I cannot tell you that it  
6 happened all the time, but there were times victims did  
7 speak. I do know that the restitution, high restitution  
8 cases, sometimes the victims were adamant about discussing  
9 issues. But I can't tell you if that was a common practice  
10 all the time.

11 Q And who was in the courtroom during the  
12 adjudication hearing?

13 A The victims, the public defenders, the District  
14 Attorney, and the probation staff, and the juvenile or the  
15 parents.

16 Q Were the witnesses sequestered?

17 A Yes.

18 Q And what role did you have there?

19 A When a witness was sequestered that would mean we  
20 would help the witness -- we would actually escort the  
21 witnesses out of the courtroom and make sure that they found  
22 a suitable place outside of the courtroom and make sure that  
23 there was no talking in the -- and call them, if necessary.

24 Q Were adjudication hearings held regularly with no  
25 counsel present for the juvenile?

1           A     For the juvenile? During what time period are you  
2 speaking, sir?

3           Q     During the adjudication hearings?

4           A     Currently, no. During one time period I would have  
5 to say yes at this point.

6           Q     And the victims were present?

7           A     Yes.

8           Q     And they also participated?

9           A     Yes.

10          Q     What was the average time for an adversarial  
11 hearing?

12          A     I cannot give you a time frame of how long a court  
13 hearing might have taken, sir. Sometimes if it was an  
14 adversarial hearing depending -- I do not know. I cannot  
15 give you an accurate time.

16          Q     And who was present during -- who was present at  
17 the admissions hearing?

18          A     The same.

19          Q     Same people?

20          A     The same people, yes.

21          Q     And they had the same roles?

22          A     Yes.

23          Q     And was there a set schedule for juvenile  
24 proceedings?

25          A     Yes. We had court Tuesday, every Tuesday. And

1 then sometimes that might have changed, but normally it was  
2 on a Tuesday.

3 Q Was this like everybody was called for a certain  
4 time and then went in?

5 A Yes. We actually organized -- it was  
6 predetermined. We had everything scheduled at least three  
7 weeks in advance. And a court list was provided to  
8 everyone. And the juvenile and their parent would show up  
9 in order for the court hearing to be held.

10 Q What about disposition hearings? Who was normally  
11 present?

12 A The same people as well.

13 Q And the victims had a role there also?

14 A Yes.

15 Q And they were allowed to speak?

16 A Yes.

17 Q And did the judge read the victim impact or input  
18 statements and order restitution claim forms?

19 A Order restitution, I know the answer to the order  
20 restitution, yes. Now, I do know -- about the victim's  
21 impact statements, I do not know if they were read or not,  
22 no.

23 Q So restitution was not ordered as a matter of  
24 practice?

25 A Restitution was ordered, yes.

1 Q Okay. Was there a conference with the judge prior  
2 to the disposition hearings?

3 A Of my knowledge from me, no. With certain staff,  
4 no. Not -- nobody from my office was conferencing with the  
5 judge prior to the court hearing.

6 Q Nobody from your office conferenced?

7 A Right.

8 Q What about disposition review hearings? Who was  
9 normally present?

10 A The same people that you have that I said before.

11 Q And there were no conferences with the judge prior  
12 to a disposition review hearing?

13 A As far as -- in certain circumstances. I'm going  
14 to ask you one question, sir.

15 Q Sure.

16 A What time period are you -- are you talking  
17 presently, or are you talking previously?

18 Q Can you give me anything previously?

19 A Previously I could tell you that disposition  
20 hearing was held the same -- the same day. So the same  
21 people were still in the courtroom.

22 Q The same people -- they're both done at the same  
23 time, yes?

24 A Yes.

25 Q And now?

1           A     And now they are -- the judge will have a situation  
2     where he has a dispositional hearing after disposition  
3     review on a separate day, if necessary.  And he may have a  
4     dispositional hearing on the same day based upon the nature  
5     of the charge and the case is being worked out with the  
6     public defender and District Attorney in the courtroom.

7           Q     And is there a resource placement team?

8           A     Resource placement team?

9           Q     Um-hum.

10          A     No.

11          Q     Okay.  How was screening for alcohol, drug, mental  
12     health and mental retardation issues completed?

13          A     Screening?

14          Q     Can you give me a prior and now?

15          A     Okay.  Prior we utilized the Problem Severity Index  
16     tool, which was a self reporting tool.  And that tool  
17     basically gave us the guidelines on which we would determine  
18     whether or not a child had some type of mental health  
19     history or drug and alcohol history.

20                 Currently we utilize the INCA, which is a newer  
21     version of the Problem Severity Index tool, as well as the  
22     YLS, which is a Youth Level Study risk assessment tool,  
23     which is utilized by both the intake staff.  These two tools  
24     together combined will give us risk factors as well as if  
25     the juvenile has any prior history of drug and alcohol or

1 any mental health issues as well.

2 Q And did your staff make recommendations for  
3 psychiatric or psychological evaluations at all?

4 A Currently we do make a recommendation if it is  
5 necessary. Before, no.

6 Q And you don't know the results of the  
7 recommendations? Have you followed them up to see where  
8 they were going, whether they were getting them?

9 A Currently, yes. We do follow the -- the  
10 recommendation to make sure that we have a morning meeting  
11 as a team. We do sit down and discuss the issues about the  
12 recommendation from the provider. And we meet, and I have  
13 placement staff who is very knowledgeable, have intake  
14 workers who are very knowledgeable. And we will sit down  
15 and review it as a complete team to find out what is best  
16 suitable for the child.

17 I can't say that, you know, I have vast amount of  
18 knowledge, but I do have some staff who have been there for  
19 20 some years and know the placements inside and out.

20 Q And who are completing these psych evaluations?

21 A Currently we utilize the Children Service Center or  
22 Northeast Counseling for psychiatrics or our psychological.  
23 We have decreased the number of utilization for psychiatrics  
24 and psychologicals in the past two or three years based upon  
25 looking at children as a whole. Not every child has a

1 mental health case, has a mental health issue that comes  
2 from the system.

3 Q There's no one person? Children's Service Center  
4 is doing this with their staff, and Northeast is doing it  
5 with their staff?

6 A Right, yes.

7 MR. WILLIAMS: That's all I have.

8 CHAIRMAN CLELAND: Ms. Bender.

9 BY MS. BENDER:

10 Q Thank you for being here, Mr. Johnson.

11 A Thank you.

12 Q It sounds like you've done a lot to make probation  
13 more transparent. And some of our witnesses have talked  
14 about transparency through the whole juvenile court system.  
15 And I think your policies and procedures are going to go a  
16 long way towards making that happen.

17 Prior to your being the chief was there an  
18 individual case plan done for children?

19 A Individual case plan? No, not necessarily. It was  
20 a court order. Basically the recommendation was provided,  
21 and the court order was then the actual case plan itself.

22 Q The court order was the case plan?

23 A Yes, was the case plan.

24 Q Is there an individual case plan done now?

25 A Yes. With the utilization of the YLS, Youth Level

1 Service tool, there is an individual case plan that is given  
2 and distributed to the probation officers who then also have  
3 to -- they are required to use a YLS tool as well for a six  
4 month period to make sure that if there are any changes  
5 throughout the family, they identify any treatment that's  
6 necessary. And then we change the case plan currently.

7 Q Is the case plan based totally on the YLS, or do  
8 you add other information to it?

9 A We utilize the social history from the INCA as  
10 well.

11 Q Are there case plans done for children that are  
12 being placed?

13 A Yes.

14 Q And are those case plans done in the same way?

15 A Yes.

16 Q Does the probation office monitor those case plans  
17 once the child is in placement?

18 A Yes. We have probation staff who are required to  
19 go on a monthly visit to the pro -- to the placement  
20 facility. And they are also to have contact with the  
21 parents on a weekly basis to make sure that the child is  
22 getting the help that he or she may need.

23 We have identified certain placements that we are  
24 looking to possibly bring a child back for a more frequent  
25 review versus the standard six month review. Because we --



1 we're thinking that maybe having the child in front of the  
2 judge more often may allow that juvenile to get out of  
3 placement a little bit faster at this point.

4 We don't know if sometimes, you know, having a  
5 juvenile there for a lengthy period of time and not having a  
6 review -- a earlier review is it -- is it because he or she  
7 becomes complacent? So we're going to look at some  
8 placements and maybe start utilizing a three month review  
9 process to see if that helps a child get the behavioral  
10 modifications or get the mental health situation  
11 stabilization quicker.

12 Q At the disposition review who would have access to  
13 the case file for the child?

14 A The Probation Department as well as the District  
15 Attorney. Any person who was involved with the child has  
16 access to the case if you follow the complete rules.

17 Q Specifically does the public defender have access  
18 or counsel for the child?

19 A Yes. If they request access, they have access to  
20 the -- this -- they have access to the information that is  
21 garnered.

22 Q But they have to request it?

23 A It's open. I mean, it is -- we are providing -- I  
24 know we've had meetings about providing a public defender  
25 with the placement review teams -- facilities placement

1 review team referral -- not referral. I'm sorry. The  
2 placement review team's information in reference to how the  
3 child is doing.

4 We have had some issues, and we are working with  
5 the providers to make sure that we get them in a timely  
6 fashion. Because sometimes the providers give us the  
7 reviews maybe a week in advance, or not even a week, maybe  
8 it's three days in advance prior to the dispositional  
9 review.

10 So it is kind of tough for us to, you know  
11 disseminate that information prior to the case. But we are  
12 going to try to figure out how to, you know, get the  
13 information disseminated a lot earlier to the public  
14 defenders.

15 Q Do you do an after care plan for children in  
16 placement?

17 A Yes.

18 Q And who participates in developing that plan?

19 A The development is worked with the provider and the  
20 placement officer.

21 Q And is that also shared?

22 A Not -- currently it's there, but it's not been  
23 requested. So I would have to say, I mean, it's open for  
24 the public defender at this point, but we have not actually  
25 sat down and talked with the PD, no.

1 Q Who advises children of their right to have their  
2 records expunged? Does your office do that?

3 A Yes, we do do that.

4 Q When did you do that?

5 A The probation officers. Before the child is closed  
6 off of probation they do notify the child that they have the  
7 right for an expungement. That is part of the requirement  
8 within the Probation Department. It is not currently on a  
9 -- we had it prior policy, but it's not something that we  
10 have currently written down. But is a known fact that it's  
11 something that the probation officers are required to do.

12 Q Are you considering adding it as part of your  
13 policies?

14 A Yes, yes.

15 Q Does your office utilize any graduated responses or  
16 graduated sanctions?

17 A Currently we do not have a true graduated sanctions  
18 policy. With utilizing the YLS tool I have come up with a  
19 procedure where the juvenile probation officer, if the child  
20 violates his probation, they're required to up the level of  
21 supervision.

22 And if there's another violation, then the  
23 probation officer's also required to see -- instead of -- if  
24 it's a first time violation or second time violation, they  
25 may have to see the child one or two times per week versus

1 one time a week. And as the violations increase, then the  
2 child may be seen on a weekly -- on a three time a week  
3 basis with more frequent parent contact.

4 So that is a current graduated sanctions policy for  
5 that particular set. We are working with Judge Lupas to  
6 come up with one that includes his rationale and policies as  
7 far as what he thinks graduated sanctions would be at this  
8 point.

9 Q Has there been any consideration given to graduated  
10 incentives instead of just sanctions?

11 A I've -- no, we haven't talked about graduated  
12 incentives. I know that it's something that is talked about  
13 throughout the state, but that is something that I will take  
14 as a reference point and look forward to discussing with the  
15 judge.

16 Q Prior to your being chief did you ever hear of a  
17 probation officer telling a family or a child that there  
18 probably -- the child would be placed on probation, and then  
19 that didn't happen when they went into court?

20 A No, no.

21 Q Does it ever happen now?

22 A That a pro -- no. If the probation officer is  
23 making a recommendation -- one key fact between then and now  
24 is that the probation officers are making recommendations,  
25 and those recommendations they are sharing with the parents,

1 those recommendations are also going before the -- you know,  
2 going before the judge. And the probation officer's  
3 testifying in court based upon his ability to determine  
4 whether or not a child is, you know, capable of continuing  
5 -- containing he or herself in society, or is it something  
6 deemable that maybe we have to do something else different  
7 with the child?

8 But no, the probation officer does discuss with the  
9 parent prior to the -- prior to the child coming back for a  
10 violation of a dispositional review what -- what he or she  
11 is recommending.

12 Q Have you ever heard any of the probation officers  
13 say that they feel under pressure to keep a child in  
14 detention, to make a recommendation that the child stay in  
15 detention?

16 A Felt under pressure to keep currently, no.

17 Q Under pressure prior?

18 A Before -- I've never heard of pressure to keep a  
19 child in detention, no.

20 Q Have you ever personally recommended placement in  
21 Western Child Care?

22 A Recommended placement?

23 Q Um-hum.

24 A No. At this point we do not utilize Western PA  
25 Child Care.

1 Q So you didn't utilize it while you were chief?

2 A No.

3 Q Okay. We heard testimony before that some of the  
4 cases in front of Judge Ciavarella were open for tours where  
5 children could come in from schools, and they could spend  
6 time in the courtroom. Were you ever present for any of  
7 those tours?

8 A Yes.

9 Q Could you tell me the kind of cases that they might  
10 have seen at that time?

11 A I can't tell you -- no, I can't give you a honest  
12 answer of what type of cases they may have seen during that  
13 time period.

14 Q Do you know if they would be serious cases or less  
15 serious cases?

16 A I would -- no, I can't answer.

17 Q Prior to your becoming chief do you know how much  
18 training was required for probation officers?

19 A 40 hours on a regular basis in order for the -- for  
20 the juvenile probation officers to receive the grant and aid  
21 process from the Juvenile Court Judges Commission.

22 Q And those standards were followed?

23 A Yes.

24 Q Did you ever hear at any of those trainings or when  
25 you talked with your peers any rumblings about perhaps court

1 procedures weren't going quite the way they thought they  
2 should?

3 A No.

4 Q Have you ever had any concerns about the court  
5 process prior to becoming chief?

6 A The court -- I had concerns about the court process  
7 prior to becoming chief, and the court process for me was  
8 one that was identified, and that was the recommendation  
9 process. That was my major concern. Because previously we  
10 had a meeting with Richard Gould at some time in -- for  
11 needs based budget meeting, and it was one of the first that  
12 I was present for.

13 And it was very discerning when he basically came  
14 out and told the county that, you know, our placements were  
15 too high. And meaning that our recommendations were. How  
16 do you recommend placement for a child? So my question at  
17 that point was how -- what is my issue, and how do we  
18 address the issue? And that was the recommendation process.

19 That was a problem for me. And I've had brief --  
20 I've had discussion with Richard Gould on the problem of who  
21 was making the regs and how the recommendations were coming  
22 about. Numerous e-mails about that process. And that was  
23 one that I felt to him that was unethical. But it was just  
24 an issue that was brought up. And we've currently changed  
25 that process. We've changed that process.

1 Q And that's since you've been chief?

2 A Yes.

3 MS. BENDER: Thank you. No more questions, Judge  
4 Cleland.

5 CHAIRMAN CLELAND: Judge Uhler.

6 BY JUDGE UHLER:

7 Q Could you share those e-mails with us?

8 A Sure.

9 Q I'd like to have those marked as an exhibit. Back  
10 in 2006 -- while that's -- while the distribution of the  
11 exhibit's taking place -- what was your role?

12 A 2006 I was a supervisor.

13 Q And supervising what unit?

14 A I supervised the -- I was in charge of the Special  
15 Grant Unit. I was in charge of the Specialized Grant Unit,  
16 meaning the intensive probation officers, the  
17 community-based probation officers at that time.

18 Q As a matter of practice did the juvenile probation  
19 officers have site visitations where -- where your youth  
20 were placed?

21 A For -- under the placement officers, yes.

22 Q Okay.

23 A Juvenile -- the community-based officers would go  
24 to -- if the child was placed in a community as far as one  
25 of the after care programs, yes.



1 Q In 2006 were you -- were you alert or was your  
2 antenna up surrounding the issues of -- of Northwestern and  
3 the Midwestern PA Child Care issues?

4 A No, not particularly. No, Your Honor. As far as  
5 antenna up, no.

6 Q Were you invited or were you made aware of a gala  
7 or party thrown by Jeffrey Giovino of Mid-Atlantic?

8 A Yes.

9 Q And were you -- were you there?

10 A Yes, I was at that party.

11 Q Can you describe -- was it a party?

12 A It was a party that was held at one of the local  
13 establishments that was --

14 Q Big Ugly?

15 A Yes. It was held at the local establishment where  
16 the probation officers, myself included, were -- were in  
17 attendance, yes.

18 Q And what was the fare, if you will, the food, the  
19 drink? What was the purpose?

20 A I'll be honest with you, I don't know the purpose.

21 Q Okay.

22 A I just know it was a party that was thrown by  
23 Mid-Atlantic Services, yes.

24 Q Okay. And what length of time did it -- was it  
25 just for a half an hour, a cocktail party, or was it

1 lengthy?

2 A No. It was pretty much a cocktail hour, if I  
3 remember correctly, yes.

4 Q What was the food that was provided?

5 A Judge, I cannot tell you exactly what food was  
6 provided. I do not know.

7 Q Do you remember if there was any judges there?

8 A No, I cannot tell you that.

9 Q County Commissioners?

10 A No, I -- I do not recall, no.

11 Q Was it heavy appetizers or light appetizers?

12 A I do not recall, Judge.

13 Q Drink, was it open bar?

14 A It was -- there was -- alcohol was available, yes.

15 Q Okay. And that was about the time that there was a  
16 use of PA Western; is that correct?

17 A I think PA Western was utilized in '05.

18 Q Okay.

19 A That's -- yes, there was utilization of PA Western,  
20 yes.

21 Q Okay. Now, juvenile probation, at least if the  
22 Luzerne County Juvenile Probation Officer policies and  
23 procedures existed at that time, had a no gift policy; is  
24 that correct?

25 A Yes.

1 Q Did that seem problematic to you that this Big Ugly  
2 party was being proffered?

3 A Not at the time, no, because it had been authorized  
4 prior to anyone attending the party.

5 Q What do you mean by that?

6 A It was -- from my understanding it was something  
7 that was authorized by the previous administration to attend  
8 the party. It wasn't us probations officers decided that we  
9 were going to go to the party.

10 Q What do you mean by previous administration?

11 A Under the former director that was authorized, as  
12 well as I think the -- at the time the deputy chief at that  
13 time.

14 Q Okay. In hindsight are those type of affairs when  
15 placement decisions are being made surrounding children, are  
16 they problematic?

17 A Yeah.

18 Q The big parties?

19 A Yes, yes.

20 JUDGE UHLER: Okay. I'll move on. There's -- Mr.  
21 Listenbee.

22 MR. LISTENBEE: No questions, Your Honor.

23 BY MR. HOROHO:

24 Q Mr. Johnson, I applaud your changes in all the  
25 rules that you've been making the last -- apparently mostly

1 last few months, correct?

2 A Yes.

3 Q You were in a position as a supervisor to recognize  
4 during the period of '05 through '08 that there may need to  
5 be the same rule changes?

6 A To recognize?

7 Q Especially after the September -- or after the  
8 Supreme Court's rule change in '05, you were aware of that?

9 A No, I was not. I was not aware of that until '07  
10 when I received the juvenile bench book from the JCJC. And  
11 then we -- I can't remember -- recall when in '07 that we  
12 received the juvenile bench book, but that was something we  
13 were guided to give to the judge at that time period.

14 Q At that point in time was there any suggestions by  
15 anybody in your office that the rules, that the internal  
16 policy and the rule changes that you're making now should be  
17 done?

18 A No.

19 Q And these team meetings you talked about, you're  
20 having those on a regular basis now?

21 A Yes. Tuesdays, yes.

22 Q Were they -- were these same team meetings  
23 conducted during '05 to '08 on the same regular basis?

24 A Not in regards to placement decisions. They were  
25 in regard to detention utilization decisions where a child

1 may -- how many children we might have in detention. What  
2 is the status of the child that's in detention? We may have  
3 -- we do do the same theory this -- you know, recently as  
4 far as the detentions, but we also implement on a separate  
5 day for the meetings about placement for the child.

6 MR. HOROHO: No other questions, Your Honor. No  
7 other questions.

8 CHAIRMAN CLELAND: Okay.

9 MR. LEGG: No questions.

10 BY CHAIRMAN CLELAND:

11 Q Just touching back on this Western Pennsylvania  
12 Child Care. We've looked at the numbers of placements there  
13 as opposed to PA Child Care here. And it appears that there  
14 was a big spike in placements right after Western  
15 Pennsylvania child care opened.

16 Were you aware of any instructions to place  
17 children at that newly-opened facility?

18 A No. I was not aware of any instructions to place  
19 children at that facility.

20 Q Are you aware of any explanation as to why a child  
21 would be placed 240 miles away?

22 A No, I was not aware of any explanations. The only  
23 possible explanation that I was told was that we were not  
24 allowed to utilize Northwestern, which was a sheltered care,  
25 which was in -- I guess an hour away. The Commissioners

1 would not sign the contract. So, therefore, we needed to  
2 utilize a sheltered care.

3 Q And that lasted for about a year, and then that  
4 dropped off?

5 A We --

6 Q Hardly used it at all?

7 A -- declined utilizing the detention. You know, we  
8 looked to stop utilizing detention as a -- or sheltered care  
9 utilizing -- decreasing detention, sheltered care  
10 utilization, yes.

11 Q The material that you provided indicated that the  
12 detention decisions and placement decisions were always --  
13 your words, lied solely with the chief?

14 A Yes.

15 Q That was Ms. Brulo?

16 A Yes.

17 Q So she was making placement decisions apparently up  
18 into early 2008?

19 A Yes.

20 Q Or placement recommendations?

21 A Yes.

22 Q And so she had access to all the reports and the  
23 information and was making -- in fact, making placement  
24 recommendations in court?

25 A Yes.

1           Q     We've talked about adjudication hearings,  
2     disposition hearings, probation revocation hearings, review  
3     hearings.  Were there other kind of hearings that were held?

4           A     The hearings that were -- that were held, I don't  
5     know if you would call them hearings.  They were something  
6     that started in '06 which were called the specialty court,  
7     which was a situation where -- I'm not sure if you -- where  
8     we had a -- a team that was reviewing the case information,  
9     the intake officer was providing to the certain probation  
10    officer who then would give it to the team.  And they would  
11    review and make a recommendation.

12                     And also they would have a hearing or type of  
13    review -- I don't know if you would call it a hearing or a  
14    meeting with the child, and they would track these children  
15    while they were going through the system.

16           Q     How about a hearing to collect money and pay fines,  
17    costs, restitution?

18           A     Yes.

19           Q     You held those hearings too?

20           A     Yes.  There was hearings for unpaid restitution  
21    prior to '05 or maybe '04.

22           Q     What did you call those hearings?  Did they have a  
23    name that you used in the office?

24           A     I cannot recall what those hearings were called,  
25    no.

1 Q If a kid didn't make payment of his money that was  
2 owed, what was the sanction for that?

3 A The sanction at that time was detention until the  
4 money was paid.

5 Q So a child was placed in detention until the money  
6 was paid?

7 A From my recollection, yes.

8 Q And that detention was where?

9 A I want to -- I would like to say that it was  
10 probably at the PA Child Care or sometimes in our old  
11 detention center. I do not recall when exactly those fine  
12 hearings were being held and which facility was open at the  
13 time.

14 Q Now, how often were these collection courts held?

15 A I cannot give you a number of how long or how --

16 Q Once a week, once a month?

17 A They were probably involved with the regular court  
18 hearing. If we had a regular court list, I think they might  
19 have been added on to a court list as well as far as -- so  
20 maybe every three weeks, or I cannot give you an actual time  
21 period kind of thing.

22 Q Were you aware of any calls ever made to the  
23 detention center from the Probation Department or the court  
24 saying how many beds do you have available that we can fill  
25 today?



1 A No, not --

2 Q Never heard that?

3 A No, I never heard that.

4 Q You never heard that a officer would call the  
5 detention center and say, this is a collection day, how many  
6 beds do you have?

7 A I never heard that, no. As far as an officer's  
8 concerned, no, no.

9 Q Any idea how often these kids that were in  
10 placement for not paying their fines, costs, and restitution  
11 were brought back in to review that -- that detention?

12 A Your Honor, I would say that the time frame -- I  
13 cannot give you an answer of recollection, no, I do not know  
14 when or how long they were brought back.

15 Q So there was no policy to bring them back after 24  
16 hours, 72 hours, 10 days, 30 days?

17 A No. Under the previous -- no, there was no policy  
18 written as far as the fine court. Yes, I'm sorry. It was  
19 called fine court.

20 Q Fine court?

21 A Fine court.

22 Q It did have a name?

23 A Yes, it did. Yes, it did.

24 Q And once a kid was placed in detention at fine  
25 court --

1 A Okay.

2 Q -- was the cost of that detention added on to his  
3 fines, costs, fees, and placement?

4 A I cannot answer that question. I do not know that  
5 process, no.

6 Q Okay. Anything further? Okay. Oh, yes. Mr.  
7 Johnson, would you clarify your title for us?

8 A Yes. Deputy Chief.

9 Q You're the Deputy Chief of?

10 A I was the Deputy Chief of Administration, and now  
11 I'm currently the Deputy Chief.

12 Q Of the Juvenile Probation Department?

13 A Yes.

14 CHAIRMAN CLELAND: Okay. Thank you. Mr. Johnson,  
15 do you have any closing remarks or recommendations that you  
16 would like to make to this Commission?

17 MR. JOHNSON: Well, one recommendation that as we  
18 move forward and my office and we look to hopefully maybe  
19 standardize the detention process and hopefully utilize  
20 something similar to the Berks County Assessment Tool that  
21 we are looking to utilize now.

22 It does make for a -- a good piece of background  
23 when questioned about a detention decision. And having that  
24 standard across the state may bring a little bit more  
25 evenness to juveniles being placed in detention and

1 decisions being made. That's one recommendation that I do  
2 have.

3 Moving forward as a Probation Department we are  
4 working together as a team to do what's right for the  
5 juveniles of Luzerne County and move forward in a positive  
6 nature.

7 I know that there are some -- there has been a  
8 blight on the County, but we have stuck -- stuck it out, and  
9 we are going to focus on proper procedure and hopefully  
10 never again will this situation ever occur. Thank you.

11 CHAIRMAN CLELAND: Thank you, Mr. Johnson, for your  
12 efforts on behalf of the Commission and those who are -- for  
13 whom you are responsible.

14 MR. JOHNSON: Thank you.

15 CHAIRMAN CLELAND: Anything further this afternoon?  
16 Then we are -- we are adjourned. Thank you.

17 (Whereupon, the hearing was adjourned at 3:36 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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Date\_\_\_\_\_  
Donna E. Gladwin, RPR

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