

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 9, 2009, 12:00 P.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 afternoon. We'll call this  
2 hearing to order. I am John Cleland, a Judge of the  
3 Superior Court of Pennsylvania and Chairman of the  
4 Interbranch Commission On Juvenile Justice.

5           Today, ten weeks after this Commission was  
6 organized and nearly 11 months after the original  
7 indictments against Michael Conahan and Mark Ciavarella were  
8 returned by the United States Attorney, this Commission  
9 begins our hearings here in Wilkes-Barre.

10           Many of you might be aware of the work we have  
11 already done over the past two months. Perhaps you may have  
12 read in the newspaper about the hearing we held in  
13 Harrisburg last month or may even have watched it on  
14 television.

15           But before we begin to hear from the witnesses who  
16 have been called to testify during the next two days, it is  
17 important that we keep in mind the purpose of this  
18 Commission's work.

19           The Interbranch Commission on Juvenile Justice was  
20 created by the three branches of state government, the  
21 judiciary, the legislature, and the executive. We have been  
22 directed to conduct a non-criminal investigation into the  
23 failure of the juvenile justice system, to take steps  
24 designed to restore public confidence in the administration  
25 of justice, and to make recommendations to avoid a repeat of

1 such a breakdown elsewhere in Pennsylvania.

2 Our focus is on the juvenile justice system. We  
3 are not blind to the fact that as events have unfolded over  
4 the last year there have been investigations and indictments  
5 that have extended far beyond what went on within the  
6 confines of Mark Ciavarella's courtroom. But it is not our  
7 function to investigate the decisions of school boards or  
8 the actions of municipal authorities or to inquire into pay  
9 to play bidding processes or the numerous other instances of  
10 crime and corruption that have been alleged or admitted.

11 Our focus is on what happened in the juvenile  
12 justice system, what went wrong, and what can be done about  
13 it. We want to know what went on in these courtrooms. Were  
14 the established Rules of Juvenile Procedure followed? Was  
15 evidence properly presented? What did the prosecutors do?  
16 What did the defense lawyers do? What did the juvenile  
17 probation officers do? What did the judge do?

18 We want to know what the processes were that led to  
19 children being in those courtrooms in the first case, which  
20 cases were selected for prosecution. How were the charges  
21 determined? Who advised children and their parents about  
22 their rights? How were disposition recommendations  
23 developed?

24 And we want to know what happened after those  
25 children left the courtroom. Where were they placed? Who

1 paid for it? Who monitored the placements and the  
2 children's need for continued placement?

3           Given the criminal charges pending against them it  
4 may be unlikely we will hear from former Judge Conahan and  
5 former Judge Ciavarella.

6           Frankly, however, in terms of the work of this  
7 Commission, in terms of meeting our responsibility to  
8 develop recommendations to reform the juvenile justice  
9 system, not hearing from them may be no great loss.

10           The practical reality is that those who may be  
11 motivated by greed or the drive for power are not likely to  
12 be deterred by any laws, rules, or regulations that we may  
13 recommend or which may ultimately be adopted. That is the  
14 unfortunate nature of criminality.

15           So none of us should hold any illusions that the  
16 recommendations of one more Commission or the creation of  
17 one more regulatory agency or the enactment of one more law  
18 or the adoption of one more rule of court will prevent this  
19 from ever happening again.

20           The fact is there were laws and Rules of Juvenile  
21 Procedure and administrative regulations already in place  
22 that could have stopped or prevented those abuses. Having  
23 said that, be assured that we will do whatever we reasonably  
24 can do to develop recommendations for improvements that we  
25 believe could deter criminality by those who administer the

1 juvenile justice system and that will make the juvenile  
2 justice system more humane for children while continuing to  
3 protect community safety.

4 But if we are to truly effect meaningful reform, we  
5 must focus not only on how to stop bad behavior, we must  
6 also focus on how to encourage good behavior.

7 How do we create a system in which those who see  
8 corruption call the police or the FBI? How do we create a  
9 system in which prosecutors who see a judge flagrantly  
10 disregard the law make a report to the Judicial Conduct  
11 Board? How do we create a system in which the Judicial  
12 Conduct Board can respond quickly and effectively to  
13 allegations of misconduct?

14 How can we develop a system in which we select and  
15 educate our juvenile Court judges so that glib sloganeering  
16 and using phrases like zero tolerance is not mistaken for  
17 thoughtful judicial reflection? How do we create a system  
18 in which lawyers whose unique role it is to advance justice  
19 and protect liberty actually uphold the great traditions of  
20 that honored profession?

21 In short, those of us on this Commission are  
22 troubled by the same questions that have troubled those of  
23 you here in Luzerne County. We have asked ourselves whether  
24 it is possible that people can persuade themselves there's  
25 nothing they can do to correct what they know to be wrong.

1           We have asked ourselves whether it is possible that  
2 people can get so used to a culture of corruption that  
3 corruption loses its meaning. We, like all of you who have  
4 lived out the tragedy of this judicial scandal, know the  
5 answers to those questions, and the answers unfortunately  
6 are yes. People can persuade themselves there is nothing  
7 that they can do, and corruption can lose its meaning.

8           What we don't know and what we hope to find out  
9 here today and in future hearings is what it would have  
10 taken to encourage people to act. We know people in this  
11 community did not consciously choose to stand on the side of  
12 injustice at the expense of children. But what was it that  
13 made it so hard to do the right thing?

14           Were people afraid? And if so, afraid of what?  
15 What repercussions, what retributions? Were they  
16 intimidated? By whom and how? What protections would they  
17 have wanted? Where would they have wanted to take the  
18 information they had? Did they have confidence in their  
19 supervisors or county officials or law enforcement or the  
20 Judicial Conduct Board or the Attorney Disciplinary Board?  
21 Did they have confidence that those people would have acted  
22 professionally?

23           These are the questions that we need answered if we  
24 are to make meaningful recommendations. What we need to  
25 hear is the sole searching that we know that people of this

1 community have been doing. Only when we hear that and  
2 understand that can we develop what will be the truly  
3 meaningful kind of recommendations yielding a legacy that  
4 will turn tragedy to good.

5           If we know those answers, perhaps we can make  
6 recommendations so when others are confronted with a choice  
7 of doing the easy thing or doing the right thing, doing the  
8 right thing will be easier.

9           In the end it is the collective responsibility of  
10 all of us to uphold the rule of law that binds us together  
11 in a democracy. We all have a stake after all in protecting  
12 the welfare of our friends, our neighbors, and our children.

13           But how is it that we support and encourage each  
14 other in that common effort? To the extent that we can  
15 address that universal question in the context of this one  
16 tragedy in this one Pennsylvania county to the extent that  
17 we can shape our law in a way that promotes the mutual  
18 confidence that those who stand for justice do not stand  
19 alone, then we will, all of us, together, have done  
20 something meaningful.

21           I'm joined at this table by the other members of  
22 this Commission. They are Tod C. Allen, Director of Court  
23 Advocacy of the Crime Victim Center in Erie County; Valerie  
24 Bender, Senior Research Associate at the National Center For  
25 Juvenile Justice in Pittsburgh; Ken Horoho, a Pittsburgh

1 attorney and former president of the Pennsylvania Bar  
2 Association; Magisterial District Justice James A. Gibbons  
3 from Lackawanna County; Jason J. Legg, District Attorney of  
4 Susquehanna County; Robert L. Listenbee, Chief of the  
5 Juvenile Unit of the Defender Association of Pennsylvania;  
6 George D. Mosee, Chief of the Juvenile Division and Deputy  
7 District Attorney of Philadelphia; John C. Uhler, Senior  
8 Judge of the Court of Common Pleas of York County and former  
9 President Judge of that Court; Ronald P. Williams, Regional  
10 Director of the Pennsylvania Department of Agriculture; and  
11 Judge Dwayne D. Woodruff, Juvenile Court Judge from  
12 Allegheny County.

13 As a Commission we look forward to hearing your  
14 thoughts and receiving this testimony over the next couple  
15 of days.

16 Our first witness is Senior Judge Arthur J. Grim of  
17 Berks County. He is a well known figure here in  
18 Wilkes-Barre because of his work addressing the juvenile  
19 justice scandal here, and he has become known throughout the  
20 country for his judgement, temperament, and intellectual  
21 abilities in addressing the issues presented here.

22 He was appointed as a special master by the  
23 Pennsylvania Supreme Court earlier this year, and on October  
24 29th the Court adopted his recommendation and vacated all  
25 adjudications and consent decrees entered by former Judge

1 Mark Ciavarella between January 1, 2003 and May 31st of  
2 2008, thousands of cases.

3 We have invited Judge Grim to testify today and to  
4 answer questions regarding his work here in Luzerne County  
5 and to hear his recommendations to improve the juvenile  
6 justice system in Pennsylvania.

7 Judge Grim, would you please stand to take the  
8 oath?

9 ARTHUR J. GRIM, called as a witness, being duly  
10 sworn, testified as follows:

11

12 THE WITNESS: I do so help me God.

13 CHAIRMAN CLELAND: Judge Grim, if you please.

14 JUDGE GRIM: Members of the Commission, I hope any  
15 remarks today as well as my answers to your questions are  
16 useful in your deliberations and your own recommendations.

17 As I prepared an outline of my general remarks to  
18 this Commission today, my mind kept going back to a  
19 gentleman who many of us in this room, like myself, have  
20 been privileged to know, to respect, and to care deeply  
21 about; and that is the late Emanuel Mike Cassimatis who  
22 passed away this past Wednesday in Rome at the age of 83.

23 As a member of your own Commission, Judge John  
24 Uhler has said he was the epitome of judicial temperament,  
25 demeanor, patience, and incite. He cared deeply about kids

1 and juvenile justice and did everything in his power to do  
2 right by children.

3 He was quoted as having stated to former State  
4 Representative Beverly Mackereth, now York County Director  
5 of Human Services, quote, follow your heart, and you will  
6 never make the wrong choice, close quote.

7 I only wish that the same had occurred in the  
8 judicial proceedings before Judge Mark Ciavarella. I also  
9 believe it's important to state in the beginning that I  
10 believe that this blot on the juvenile justicesystem was an  
11 aberration which grew out of unfettered power, greed, and  
12 opportunity. But I don't believe that any of us who care  
13 deeply about juvenile justice can say it was, and therefore,  
14 that's the end of the inquiry.

15 Unquestionably this blot is one which has defined  
16 juvenile justice in Pennsylvania in ways that I would never  
17 have dreamed possible. About two months ago I had the  
18 opportunity to be at a meeting in Washington of the  
19 Organization of American States, which was dealing with the  
20 question of disproportion of minority contact with the  
21 juvenile justice system in the Americas.

22 There were juvenile justice professionals from all  
23 over the United States and Canada as well as representatives  
24 from Central and South America. When we introduced  
25 ourselves and I stated my name and said that I was from

1 Pennsylvania, the questions immediately became what's wrong  
2 with juvenile justice in Pennsylvania?

3 I believe I have dissuaded them of those opinions  
4 initially, but it goes to show you that this is not simply  
5 confined to Pennsylvania. But there's no question in my  
6 mind that the most important issue is the trust that  
7 Pennsylvanians have in juvenile justice and the judicial  
8 system, and the fact that that has been a road. That's  
9 where our good work really needs to occur. And there is  
10 good work and there is good news.

11 The good news in my opinion is that this is not  
12 being swept under the proverbial rug. The Supreme Court has  
13 moved decisively, and in less than nine months into the  
14 process has issued a definitive order regarding the vast  
15 majority of juvenile justice cases.

16 The Interbranch Commission on Juvenile Justice  
17 which I'm speaking before today was certainly formed with  
18 that idea in mind and under the excellent leadership of  
19 Judge John Cleland as well as the members of this  
20 Commission.

21 The Juvenile Court Judges Commission, under the  
22 leadership of Jim Anderson and Keith Snyder, has offered  
23 significant assistance to Luzerne County. Bob Listenbee and  
24 the Defender Association have done some amazing work to  
25 assist public defenders in Luzerne County.

1 Carol Lavery of this county, and victim advocate  
2 for Pennsylvania, together with her work group, are in  
3 connection with the victim community. And Val Bender of  
4 this Commission is also involved in that effort.

5 The Juvenile Law Center has been key and  
6 instrumental in bringing this matter to light. The news  
7 media has been largely responsible and thorough in reporting  
8 this, and the children and families of Luzerne County who  
9 were impacted by these acts have shown courage beyond belief  
10 in bringing this matter to light.

11 And last, but certainly not least, I want to  
12 emphasize the fact that the Luzerne County Court system  
13 under the leadership of President Judge Muroski, as well as  
14 J.J. Johnson and his staff have been collaborative and  
15 collegial in the way in which they have worked with myself  
16 as well as William Ehrlich, Esquire in facilitating our  
17 work.

18 The same is true of other court personnel,  
19 including District Attorney Carroll as well as staff members  
20 of the DA's office as well as the Public Defender's Office.  
21 It is in this context that I would like to address my brief  
22 remarks before attempting to answer any questions that you  
23 may have.

24 I'm not going to spend a lot of time talking about  
25 procedure and practice which I implemented following my

1 appointment as special master, but rather I would prefer to  
2 focus my remarks on some conclusions that I have reached,  
3 impressions that I have, and thoughts that I have for system  
4 reform.

5 My appointment commenced with a call from Chief  
6 Justice Ronald Castille in February of this year in which he  
7 asked if I would be willing to undertake this effort on  
8 behalf of the Supreme Court. It was a request that one,  
9 simply put, can't say no to.

10 Although I undertook it realizing that the results  
11 of my investigation might well reveal deeply troubling  
12 information, in point of fact it was even worse than I had  
13 expected.

14 From the very earliest point I realized it would be  
15 important that I would have both legal as well as  
16 administrative assistance in this endeavor. And I was  
17 fortunate indeed to be able to engage in the services of  
18 William Ehrlich, Esquire whose assistance has been  
19 absolutely invaluable.

20 I also realized very early in the process that  
21 there existed a percentage of these cases which I then  
22 classified or would classify as low hanging fruit. In other  
23 words, cases which I believe all parties would agree should  
24 result in orders being vacated and records expunged.

25 Pursuant thereto on Thursday, February 26th of this

1 year I met with the President Judge, Judge Muroski; members  
2 of the Juvenile Law Center; Chief Public Defender, Basil  
3 Russin; Chief of Probation Services, Michael Vecchio; Chief  
4 Deputy Juvenile Probation Officer, John Johnson; Acting  
5 Court Administrator, Jack Mulroy; Luzerne County Bar  
6 Association President, Sheila Saidman; as well as  
7 representatives from DPW; Defender's Association,  
8 Philadelphia; defense counsel; as well as District Attorney  
9 Musto-Carroll; and First Assistant District Attorney Jeffrey  
10 Tokach.

11 As a result of that meeting we were able to arrive  
12 at a, what I believe to be, initial agreement that showed  
13 the willingness of all parties to be cooperative. I issued  
14 my first interim report and recommendations March 12th. And  
15 the Supreme Court, as a result, concurred with and entered  
16 their agreement, entered their order.

17 Following therefrom there were a number of other  
18 recommendations which resulted in my third and final  
19 recommendation, which was accepted in the court order that  
20 was handed down on the 29th of August of this year.

21 Again, as I said to you, I don't want to spend a  
22 lot of time on the procedure, although certainly I'm willing  
23 to answer any questions which you may have regarding that,  
24 but let me talk a little bit about what we found in our  
25 review of approximately 100 of the transcripts as well as an

1 overview of the other transcripts which came before the  
2 Court.

3 No. 1, almost without exception, unless there was a  
4 hearing to determine whether the young person had committed  
5 the act, these cases were over with within a matter of three  
6 to five minutes.

7 No. 2, a very substantial number of juveniles who  
8 appeared without counsel before Judge Ciavarella for  
9 delinquency or related proceedings did not knowingly and  
10 intelligently waive their right to counsel.

11 Procedure outside of the courtroom where they  
12 and/or parents were asked -- and/or guardians were asked to  
13 sign waivers of counsel did not, did not I repeat, comply  
14 with a knowing and intelligent waiver of their right to  
15 counsel.

16 No. 2, there was routine deprivation of children's  
17 constitutional rights to appear before an impartial tribunal  
18 and to have an opportunity to be heard.

19 No. 3, when there were admissions of guilt by  
20 children there was no colloquy to determine that those  
21 admissions were knowingly, intelligently, and voluntarily  
22 entered.

23 No. 4, Judge Ciavarella routinely adjudicated kids  
24 delinquent without any apparent inquiry to determine that  
25 they were in need of treatment, supervision, and/or

1 rehabilitation pursuant to the Juvenile Act.

2 He was quoted as having said that he read the files  
3 ahead of time. Of course any of us that practice law know  
4 that you -- it's not only against the law and against  
5 procedure, but it is so obviously on its face the wrong  
6 thing to do that it absolutely -- it absolutely blew my mind  
7 for one of a better way to put it.

8 We know based on the review of the Juvenile Court  
9 Judges Commission records that over the five year period in  
10 question that counsel did not appear in approximately 54  
11 percent of the cases that came before Judge Ciavarella.

12 I speak for myself and the majority of my  
13 colleagues when I tell you that in the 21 years that I've  
14 been a judge it has never once happened in my court. That's  
15 not to suggest that my court is any better than the majority  
16 of the courts.

17 I've had discussions with members of your own  
18 Commission who have told me the same is true in their court.  
19 And so it would follow that based on some of my findings and  
20 based on what I have seen that I should have some thoughts  
21 as to how we might move forward.

22 First of all, it would be presumptuous of me to  
23 describe the full impact that these acts had on the victims.  
24 And when I talk about the victims my definition of victim is  
25 a lot broader than simply the young people that appeared in

1 this court.

2 Yes, they were victims of a system run amuck.  
3 Their families were victims. The original people who may  
4 very well have been the object of their delinquent acts or  
5 their acts which were against the law, clearly they are  
6 victims.

7 Employees of Pennsylvania Child Care have  
8 approached me and have said that in their own neighborhoods  
9 they are treated as somewhat like pariah because the people  
10 in their neighborhoods believe that they must have known  
11 about it or they must have been on the take themselves.

12 And the community at large in my opinion has been  
13 victimized by this. The impact on citizens, again, that  
14 I've heard from by mail and even by e-mail have indicated to  
15 me that they have felt victimized by it.

16 So, again, the situation is a lot broader than just  
17 simply talking about the children and the families. We need  
18 to broaden the scope of what is meant by victimization.

19 Now, what is there to do about it? I'd like to  
20 talk a little bit about transparency. And to do that I'd  
21 like to just very, very briefly synopsise the evolution of  
22 juvenile justice in the United States very briefly.

23 The juvenile justice system in the United States  
24 had its origin in 1899 in the State of Illinois. The second  
25 state in the United States to recognize juvenile justice as

1 a separate branch of government was Pennsylvania. The  
2 Pennsylvania system being formed in 1901.

3 Most people believe that from the very beginning  
4 that Doctrine of Parens Patriae was such that the courts  
5 were always closed. And frankly I was surprised in  
6 preparing today's remarks to realize that for the first 20  
7 years or so the -- the juvenile courts were open, open to  
8 the public and open to the press.

9 And it was later on that courts began to be -- to  
10 be closed and judges begin to find that children's matters  
11 ought to be adjudicated behind closed doors.

12 In 1982 a Rhode Island Supreme Court decision said  
13 that the interests of the juvenile are most often best  
14 served by anonymity and confidentiality. And while I  
15 certainly don't believe that there is not a place for  
16 confidentiality in certain matters, I do believe as a  
17 general principle that the time is -- is certainly here for  
18 there to be more transparency in the system.

19 In 1967 when the landmark case of In Re Gault was  
20 decided, Justice Abe Fortas wrote that it was important that  
21 the State's treatment of the adult and the child not be  
22 totally opposite to one another, in that it could be  
23 important from time to time to allow the light of day to  
24 enter into the court system.

25 And so I think many of us agree that the overall

1 trend points away from the shuttered courtroom with -- with  
2 an all-powerful judge, if you will. And accordingly the  
3 lower courts and state lawmakers have, in the last two  
4 decades, begun to open the system, begun to open the  
5 juvenile justice system, and that's happened here in  
6 Pennsylvania as well.

7           It seems to me that it would need to at least  
8 consider going a little bit further. And I would like to  
9 commend to your attention a motion that was adopted by the  
10 Juvenile Court Judge's Commission on May 1st of this year in  
11 which the Commission voted unanimously to support the  
12 concept of opening both delinquency and dependency  
13 proceedings to the public provided the courts would have  
14 broad authority to close any proceeding or any portion of  
15 any proceeding for reasons relating to the protection of a  
16 child victim, the safety of any witness, or when otherwise  
17 determined to be in the best of interest of a child,  
18 provided that attendees would be prohibited from disclosing  
19 the identity of any party, victim, witness, child, or other  
20 participant in the proceeding or from disclosing any  
21 information that would tend to disclose the identity of any  
22 of these persons, and provided that there would be a  
23 meaningful statutory sanction sufficient to deter this  
24 behavior.

25           In addition, the Commission discussed the

1 importance of prohibiting cameras in the courtroom and  
2 prohibiting sketches of family members to be drawn for  
3 release to the media.

4 Now, I would be less than honest if I didn't tell  
5 you that that is a motion that needs to be discussed further  
6 before I believe any definitive action can be taken, but I  
7 believe it goes a long way in suggesting the importance of  
8 opening these deliberations, these important deliberations,  
9 to the public.

10 Another member of the Commission, the Honorable  
11 Fred Anthony, who is no longer on the Commission but who  
12 was, again, well known to many of you for years and years  
13 had been taking -- had taken the position that dependency  
14 proceedings certainly should be open, and delinquency  
15 proceedings, under appropriate circumstances, should be open  
16 as well.

17 What else have I learned and what else do I have in  
18 the way of suggestions? I believe that it is important for  
19 there to be career tracks for judges as well as for counsel  
20 in juvenile court work.

21 I realize, as I have known for many years, that in  
22 67 counties in Pennsylvania there are 67 different ways of  
23 doing business. I'm sure that in your term as President of  
24 the Pennsylvania Bar Association you learned the same thing.

25 However, in certainly in the larger counties it

1 should be possible to develop both a prosecution and defense  
2 that is committed to the idea of a track, a professional  
3 track. And the same could and should and certainly in my  
4 opinion needs to be said for judges as well.

5 One of the things that -- that I've seen as a  
6 juvenile court judge which appeared to be lacking in my  
7 review of the transcripts here in Luzerne County is the idea  
8 that prosecution and defense in the juvenile court, in  
9 essence, wear two hats.

10 They wear the traditional advocate's hat as  
11 prosecution and defense, but they also wear the hat which  
12 compels them to be concerned about the juvenile himself or  
13 herself, if you will, the best interest hat. That requires  
14 mature, experienced, and committed lawyers.

15 Too often in too many places you see juvenile court  
16 defined as kiddie court. And the idea that if you're a new  
17 judge on the bench, if you come on the bench, you're going  
18 to go to juvenile court. And if you behave yourself, you'll  
19 be able to leave and go somewhere else.

20 Again, I'd much rather rely on the comments that I  
21 heard throughout my career by the late W. Richard Eshelman  
22 from Berks County who was president of the Pennsylvania  
23 State Trial Judges Association, Chair of the Juvenile Court  
24 Judge's Commission, and sat in juvenile court for his entire  
25 time on the bench. He was also a President Judge and sat in

1 many other Courts. And he said often that the most  
2 important work he did was in the juvenile court.

3 We need to emphasize that. In my opinion the  
4 tragedy that occurred in Luzerne County would be compounded  
5 if we didn't make that kind of distinction. We need to  
6 identify and promote family involvement and engagement  
7 practices and processes which support communication between  
8 juveniles and the juvenile justice system.

9 There's a lot of good evidence-based outcome  
10 measured work that's been done. It's my -- in my opinion  
11 quite important that counties realize that that work is out  
12 there and they use it.

13 Families can be a wonderful resource.  
14 Multi-systemic therapy, family functional therapy, family  
15 group decision making, these are not just words. These are  
16 programs that work. And I would encourage any court to  
17 consider them as well.

18 Those suggestions for improvement are not just  
19 appropriate for Luzerne County, but rather all counties in  
20 Pennsylvania.

21 I want to emphasize the importance of the juvenile  
22 probation office itself, the boots on the ground. The fact  
23 that the juvenile system in Pennsylvania, which I believe  
24 makes it unique in the entire United States, has a Master's  
25 Degree Program at the Center For Juvenile Justice in

1 Shippensburg University means that cutting edge training at  
2 no cost is available to every county in the Commonwealth of  
3 Pennsylvania in order to get their juvenile probation  
4 officers trained in the state of the art way to do business.

5 That emphasis I would suggest ought to not only be  
6 done in a way of education, but also in a salary and benefit  
7 package which is commensurate with the -- with the need for  
8 good JPOs. That's also true for ADA and APD.

9 And I think it's important to note that the  
10 Pennsylvania justice system as far as I know, and Bob,  
11 correct me if I'm wrong, is the only justice system in the  
12 United States that does not fund the public defender system  
13 out of taxes.

14 MR. LISTENBEE: There are two.

15 JUDGE GRIM: Okay. So there are two, two out of  
16 50, and we should not be in the two. We ought to be in the  
17 50 in my opinion. I'd like to see more collaborative  
18 efforts between schools and the justice system.

19 In my review of the transcripts as well as the  
20 facts of what occurred up here in Luzerne County it became  
21 apparent that many school officials in Luzerne County  
22 supported Ciavarella's get tough policy without really  
23 giving thought to what it meant.

24 So I believe that that ought to change. It should  
25 be noted that the current Pennsylvania law only requires

1 school personnel to report the discovery of prohibited  
2 weapons from school grounds. It doesn't require the  
3 reporting of other offenses committed on school property.

4 This fact creates an opportunity for a more  
5 flexible approach to the handling of other behaviors. And,  
6 again, there are a lot of good programs out there. The  
7 anti-bullying programs, which work. The youth aid panels,  
8 which is a program that works with police referrals and is  
9 an opportunity for the justice system to divert kids in the  
10 ways that would enable -- well, I mean, let me give you a  
11 for instance.

12 Some of the cases were -- in my opinion the most  
13 egregious cases here in Luzerne County were the kinds of  
14 cases that had there been a good youth aid panel system set  
15 up could, and in my opinion all likelihood would, have been  
16 diverted. So that young people who had a Facebook page that  
17 was derogatory about a vice principal or someone who threw a  
18 steak at his father across the kitchen table would not have  
19 been placed, but would have been diverted.

20 Peer councils and courts and juries in my opinion  
21 are things to look at as well. Voluntary mentoring  
22 programs. Mentoring is -- as I've come to believe is a very  
23 important way to help young people who may be at risk, but  
24 it's likewise very important the mentoring programs be  
25 long-term programs.

1           Research shows that if a mentoring program is set  
2 up and it is not for a period of two years or longer, that  
3 it's another abandonment of a young person. So if a  
4 person's going to be a mentor, they need to take it  
5 seriously.

6           Student assistance programs are also important. I  
7 think it's important for those of us who are judges when we  
8 make our decisions and we announce our decisions from the  
9 bench that we explain for the record the reasons that we  
10 have made those decisions.

11           If people don't understand why decisions have been  
12 made, it's very easy for them to leap to the conclusion that  
13 it was a decision that was not well-formulated or well  
14 thought through and to believe that essential justice has  
15 been denied them.

16           I think there needs to be stronger emphasis on the  
17 imperatives for lawyers and other court officers to stand up  
18 and speak out. That didn't happen in Luzerne County. And  
19 as Judge Cleland said in his introductory remarks, there may  
20 be a number of reasons that it didn't, but it did not.

21           I didn't address that issue in my recommendations  
22 to the Supreme Court, but it is something that has frankly  
23 troubled me throughout this process.

24           There was an almost routine disregard for the well  
25 established legal rights of juveniles. We can't lose sight

1 of the victim. And I'm going to close with those remarks.  
2 We can't lose sight of the victim or the victims, as I said  
3 earlier. It's important that victims be engaged in this  
4 process as much as humanly possible.

5 Again, I never saw any indication at all that that  
6 happened in any of the cases that I reviewed in Luzerne  
7 County. I believe that this is an opportunity for Luzerne  
8 County.

9 It may sound pollyannish, but I think that the  
10 opportunity exists for the juvenile justice system in this  
11 county to become a blueprint for a good system throughout  
12 the Commonwealth.

13 I think it's important that it be realized that  
14 many, many years of business having been done the way it was  
15 in this county may make it that much more difficult for  
16 change to occur, but if it's ever going to occur, it's going  
17 to occur on the heels of the tragic events that lead us to  
18 this hearing today.

19 Those are my prepared remarks. I'd be more than  
20 pleased to try to answer any questions that you might have.

21 CHAIRMAN CLELAND: Thank you, Judge Grim. Our  
22 procedure in handling witnesses is to divide up the  
23 witnesses for purposes of preliminarily asking the  
24 questions, and --

25 JUDGE GRIM: Divide up the witnesses, Judge?

1           CHAIRMAN CLELAND: Not yet, but we may get to that.  
2 To divide up the questions so that someone takes the lead.  
3 And I will be taking the lead with regard to you.

4 BY CHAIRMAN CLELAND:

5           Q I want to touch on -- on your last -- one of your  
6 last points about speaking out. It certainly appears that a  
7 lot of people knew what was going on; that Judge Ciavarella,  
8 when he was judge, was not following the rules in 2001.

9           It was an opinion by the Superior Court which  
10 reversed him for failure to follow the rules. But to our  
11 knowledge no one complained or reported. Do you have a feel  
12 based on your experience about what might have inhibited  
13 that, or -- or if it wasn't -- if it wasn't inhibited, what  
14 might have intimidated?

15          A I think the right word is intimidation. I think it  
16 was brought home to me most forcefully by some remarks that  
17 were made by President Judge Muroski when I was up here on  
18 February the 26th.

19          We had an opportunity to speak in his office, and  
20 that was before some of his actions were -- were public.  
21 They are now public, and I can state them without violating  
22 any kind of confidence that he put in me at that time, and  
23 that is that he did take some action.

24          He took that action back in 2005, as I recall, by  
25 -- because he was concerned with a large number of juveniles

1 that were being placed in institutions. According to his  
2 conversation with me he raised the issue with then Judge  
3 Ciavarella and was not given any reason to believe that it  
4 was going to change.

5 And he then, again, to the best of my  
6 understanding, wrote a letter to the Commissioners raising  
7 the issue in the context of it being a cost driver for the  
8 county. Because placement costs in this county were, as we  
9 all know, just absolutely through the ceiling.

10 And -- and he raised the issue not only with the  
11 Commissioners, but sent copies of that communication to the  
12 Board of Judges. And the next day he came into the office  
13 and Judge Ciavarella, who not only was juvenile court judge  
14 at that time but President Judge, had changed his assignment  
15 of 15 years from the court that he had been in to basically  
16 an entry level kind of position for one of a better word.

17 You can believe that that was around the courthouse  
18 in about five seconds flat. And so I think that people  
19 understood that if a judge with a certain amount of power  
20 can be treated that way by the President Judge, what's going  
21 to happen to me as the little guy or the little gal?

22 There were also -- and I don't begin to understand  
23 the nature and extent of this, but it's clear to me that  
24 there were alliances within the courthouse based on family  
25 and politics and friendships in which people got jobs.

1           And I'm not suggesting that they were not  
2 qualified. That I have no knowledge of one way or the  
3 other. One would hope they were qualified. But they owe  
4 their jobs to the judges. And so those allegiances were  
5 there as a result of that.

6           In addition, we all know that change is difficult.  
7 And had there been a human cry raised, there might have been  
8 some changes. And people who are fearful of change are  
9 probably reluctant to report. And unfortunately I think  
10 there's a human tendency to not -- not rock the boat.

11           But having said that, you're absolutely right,  
12 Judge Cleland, when you suggested that in 2001 the case was  
13 clear. And not only was the decision in the case clear, the  
14 reported remarks in the press by Ciavarella that he would  
15 never do it again were quickly followed by him doing it  
16 repeatedly, repeatedly.

17           And, I mean, this applies to the waiver of counsel  
18 issue, but it could just as easily apply to the issue of a  
19 lack of colloquy to determine that guilty pleas are entered  
20 knowingly, intelligently, and voluntarily, or a lack of any  
21 kind of on-the-record determination that would show that a  
22 juvenile truly was in need of treatment, supervision, or  
23 rehabilitation.

24           None of that occurred. So it -- it really is  
25 surprising to me that there was not more said. Now, were

1     there some things said that we don't know about, that I  
2     don't know about? Possibly so. You know, were reports made  
3     to the Internal Revenue Service anonymously? I have reason  
4     to believe that there might have been, but not substantial  
5     information on my part. It's just what I've heard.

6             Were reports made to other agencies within the  
7     state and federal government? I would suspect that there  
8     may have been. But the press -- press wrote articles of  
9     concern. Was the press as vigilant as it might have been?  
10    Perhaps not.

11            But, you know, there was certainly common knowledge  
12    that something was rotten in Denmark.

13            Q     Do you have any thoughts about what could be done  
14    to protect a person who were to make such reports?

15            A     Well, certainly it's going to require systemic  
16    change within this County in order for that to occur. I can  
17    certainly suggest that part of the way to ensure that that  
18    occurs is to make sure that the light of public scrutiny  
19    remains on the system.

20            And that once this matter is resolved in a way that  
21    we hope will create change, that everybody doesn't say okay,  
22    everything's fine now. We can go about our other business  
23    and not worry about this.

24            It seems to me that that's certainly important.  
25    You know, certainly, you know, if the County's policies for

1 their employees are such that protections are offered,  
2 that's important.

3 I believe that a good number of the folks here are  
4 union. I would assume that the union could offer some  
5 protection as well. You know, I have a lot of faith in the  
6 court system, and ultimate justice I think would occur if  
7 that kind of behavior were brought to the attention of the  
8 authorities. But that requires a leap.

9 Q But there -- it was basically individual people  
10 reporting their concerns. There was no organized discussion  
11 that you're aware of among the Bar Association, in the  
12 District Attorney's Office, in the Public Defender's Office,  
13 among service clubs about what was going on or whether this  
14 should be repeated. There was no organized objections to  
15 this --

16 A Not --

17 Q -- that you're aware of?

18 A Not to the best of my information, no.

19 Q You've talked about the -- the problems that you  
20 discovered here in -- in Luzerne County. And of course our  
21 concern extends not only Luzerne County, but throughout the  
22 Commonwealth.

23 A Sure.

24 Q Do you have any feel based on your experience here  
25 and your broad experience throughout the state about whether

1 or not things that you discovered here exist elsewhere in  
2 Pennsylvania?

3 A I cannot believe that -- what I believe to be one  
4 of the most egregious violations of the trust that's given  
5 to a judge, I cannot believe that given the nature of the  
6 juvenile justice system in Pennsylvania that it would occur  
7 to the extent that it has here anywhere else in  
8 Pennsylvania.

9 Am I suggesting that there are not areas for  
10 improvement? Absolutely I am not suggesting that. Do I  
11 believe that that improvement would occur more readily if  
12 there were professional codery of judges, juvenile  
13 prosecutors, juvenile defense counsel, and a fully  
14 professional juvenile probation office? Those are critical  
15 components in what I believe would make for the kind of  
16 change that would give me a great degree of assurance in  
17 telling you everything is fine in the 67 counties in  
18 Pennsylvania.

19 I can't tell you that. I will tell you that the  
20 Juvenile Court Judge's Commission has all sorts of  
21 opportunities for judges to be trained. I will also tell  
22 you that when I go to those trainings I usually see the same  
23 people around the table. I'm not seeing some of the folks  
24 who needed it most.

25 I never saw either Conahan or Ciavarella, not only

1 at any juvenile justice proceedings, but to the best of my  
2 knowledge not in any state trial judge's conferences either.  
3 They may have been there. I didn't know that. But I'm not  
4 aware that they were there.

5 Q So you're not hearing reports, getting anonymous  
6 rumors of people talking to you about other counties in the  
7 state that are problematic?

8 A Judge Cleland, I have probably --

9 Q I'll not asking you to identify those. I'm just  
10 trying to find out the scope of our responsibilities.

11 A You know, I've probably gotten over 100 letters  
12 from people since this process has begun. The vast majority  
13 from Luzerne County. And they've been letters of concern  
14 about individual juveniles as well as about victims.

15 I've not gotten any letters directed to me  
16 indicating that it's the same story in some other county.  
17 But I do, from time to time, allow myself the luxury of  
18 being frustrated by reading blogs. And, you know, there are  
19 blogs that have indicated that other counties have issues.  
20 But I take those for what they're worth.

21 That kind of reminds me of the talk radio 35 years  
22 ago when I was younger. You know, people, when they have  
23 anonymity, will say virtually anything about anyone at any  
24 time. So no, I have not.

25 Q Let me turn then to some of your specific concerns

1 and suggestions. The one is mandatory counsel. The rules  
2 currently permit children to waive representation. There  
3 has been some discussion that that should not occur, that  
4 all children should be represented by counsel.

5 That creates obviously practical problems statewide  
6 in terms of cost, competence, availability of counsel to do  
7 this kind of work. If mandatory counsel was -- well, first  
8 of all let me ask, do you think that there should be  
9 mandatory counsel in all cases?

10 A No.

11 Q Okay.

12 A No. But having said that, you know, I've never,  
13 ever had a young person come into my court and waive  
14 counsel. I have initially had one or two in my 21 years  
15 that have indicated that they wanted to do so, and they've  
16 been able to be dissuaded.

17 And if -- if it were to happen, I would have gone  
18 standby counsel. I would not allow a young person to be in  
19 court without counsel by their side.

20 Q Would that apply to all categories of cases? Would  
21 it be consent decrees, counsel, warn, or dismiss,  
22 misdemeanors, felonies?

23 A Certainly anything that does not involve an out of  
24 court consent decree as opposed to an in court consent  
25 decree I would insist that counsel be present. And,

1 frankly, I think the best practice would be the counsel be  
2 present at all levels, including the intake. That, to my  
3 way of thinking, is -- is ensuring that kids have legal  
4 representation throughout the proceeding.

5           And if counsel is not present at the intake level,  
6 then it seems to me that the scope of the intake would have  
7 to be more limited in terms of questioning the juvenile  
8 about the act itself.

9           You can get other information at an intake without  
10 counsel. I don't see a problem with that. But you don't  
11 get into the facts of the allegations. And I would say this  
12 too, Judge Cleland. You talk about the difficulty from a  
13 economic point of view, counties paying for public  
14 defenders, small counties that may not have that many cases  
15 that come into juvenile court.

16           One thing that I think would at least bear some --  
17 some consideration is the possibility in the smaller  
18 counties, and you could probably relate to this much, much  
19 better than I, having a collaborative and cooperative effort  
20 between counties to hire a public defender specializing in  
21 juvenile matters that could ride the circuit and maybe go to  
22 five or six different counties.

23           Because I would not believe that there would be  
24 that many cases to keep that person busy solely with  
25 juvenile cases in one particular county.

1           Q     You touched on -- on the question of victims.  And  
2     last month, as we've discussed, the Supreme Court vacated  
3     6,000 cases because children didn't have attorneys or the  
4     judge had a financial interest potentially in the  
5     disposition.

6                     And for some people that has restored confidence in  
7     the system because it acknowledged the fundamental values of  
8     our justice system.  But for others they argue that these  
9     kids were guilty.  They were trouble makers.  They got what  
10    they deserved, and how can vacating the adjudication restore  
11    confidence in the system?  How do you respond to that?

12           A     On a number of levels.  First of all, in my  
13    recommendation and in the Court's order it was clear that  
14    there were, in fact, going to be orders vacated,  
15    adjudications set aside, and the Court concluded that the  
16    issue of a dismissal with prejudice was an appropriate  
17    approach for those cases.

18                     However, there are some cases that are not.  And  
19    those are cases in which the juvenile has not totally  
20    discharged the responsibilities under the order, under the  
21    findings initially.  Those would include such things as not  
22    paying restitution to a victim, not paying court costs,  
23    although I don't get excited particularly about that.

24                     But the idea of restitution not being paid and --  
25    and in those cases the Court has said that they would accept

1 my recommendation with respect to those remaining cases that  
2 are not yet final, and directed the District Attorney to let  
3 me know within 30 days under seal what those cases are.

4 So what I'm saying is that if we're talking about  
5 the goals of balance and restorative justice, holding a  
6 young person accountable to the extent that accountability  
7 was appropriate in those cases, the majority of 6,000 cases  
8 accountability has, in fact, occurred.

9 The idea of safety of the community -- remember,  
10 the last time that this particular person was a juvenile  
11 court judge was in May of 2008. May of 2008. The majority  
12 of cases, the safety of the community occurred. And so  
13 we've taken care of accountability, and we've taken care of  
14 safety of the community in most cases.

15 Competency development, rehabilitation, again, one  
16 would hope that the rehabilitation has occurred to the  
17 extent that it was appropriate. So the basic tenancy of the  
18 juvenile justice system under balance and restorative  
19 justice appeared to have been met in the majority of those  
20 cases, at least to the extent that they ever will.

21 It's also important to note that if there were  
22 consent decrees, and there's a procedure for expungement  
23 which already exists, which basically says upon completion  
24 of a consent decree and the expiration of six months, there  
25 being no further delinquent acts alleged, the juvenile may

1 ask for his or her record to be expunged. And from  
2 adjudication of delinquency, five years.

3           So many of these young people, even without the  
4 Supreme Court order and even without my findings and my  
5 recommendations, would already be eligible for expungement.  
6 There are certainly a class of young people who are not. I  
7 don't want to minimize the fact that I'm sure as a victim it  
8 would be initially of concern to me if I saw that the young  
9 person who broke into my house or did A, B, or C, that some  
10 judge out of Berks County made a recommendation that their  
11 record be expunged.

12           So in closing this matter in a way which is --  
13 which appropriately honors the important position of the  
14 victim, it seems to me Carol Lavery and her group, the  
15 juvenile justice system, Val Bender, and the juvenile -- and  
16 the NCJJ will be addressing that issue. And to the extent  
17 that victim restoration concur, I think it should.

18           I think it would be important for kids to apologize  
19 for what they did. I never noticed anything in the record  
20 to indicate that Judge Ciavarella ever, ever had a young  
21 person apologize to a victim of crime.

22           You know, that's important. Victim offender  
23 mediation can work and can work beautifully. So that's a  
24 very long answer to your question. I hope I haven't drifted  
25 too far off topic. But, again, what I believe is important

1 is that we adopt in Luzerne County the principles which have  
2 -- which drive the juvenile justice system in Pennsylvania  
3 and have for many years.

4 Q The -- as I take it your answer is essentially  
5 these kids have paid their debt --

6 A Yeah.

7 Q -- as it is? And basically the remedy is they got  
8 their record vacated, which they might have gotten anyway  
9 under the best of circumstances?

10 A Correct. It would have been expunged, yes.

11 CHAIRMAN CLELAND: Okay. I'll start with Judge  
12 Uhler.

13 BY JUDGE UHLER:

14 Q Judge Grim, you indicated that one of the concerns  
15 which you found was the lack of an impartial tribunal?

16 A Right.

17 Q That has both ethical ramifications and due process  
18 ramifications. Can you spell out more specifically what was  
19 the basis of your finding in that regard?

20 A Any time that there is the obscene amount of money  
21 that was paid to a judge or judges by a facility, in this  
22 case a juvenile justice detention center, I believe, and the  
23 Court -- Supreme Court agreed in their opinion, that there  
24 is not only the appearance of impropriety, that there is, in  
25 fact, such impropriety that it would make it impossible for

1 this -- this individual to be impartial.

2 I mean, it's a facile answer perhaps to say that  
3 there was no disclosure, but there was never any disclosure,  
4 ever any indication of any conflict, perceived or otherwise,  
5 by this judge in any of his deliberations or any of his  
6 proceedings.

7 And yet although not every child was sent to  
8 Pennsylvania Child Care, a good number were. Now, does that  
9 also cloud his determinations with regard to other  
10 proceedings? In my opinion it clearly -- it clearly does.

11 You can't be just a little bit unethical. You're  
12 either an ethical judge or you're not. And so the ethical  
13 issue is, to me, huge.

14 Marsha Levick of the Juvenile Law Center has called  
15 this the most egregious breach of judicial ethics in the  
16 history of the United States, or words to that affect. I  
17 don't think she's too far off the mark.

18 So huge, huge ethical implications by what they  
19 did, to say nothing of the legal requirement. We have a  
20 Code of Ethics. I don't know how many sections of the Code  
21 of Ethics were violated by this, but certainly many.

22 So, you know, he was -- he was -- that's what I  
23 meant, John.

24 Q What about the announced predisposition to place  
25 youth as a result of what would ordinarily be relatively

1 minor school infractions into a placement resources as a  
2 consequence of the youth's action?

3 A You know, what's interesting is I understand this  
4 judge was this way from the time that he was on the bench.  
5 It was not just simply the fact that many who crossed --  
6 crossed his palm that he had that get tough attitude.  
7 Apparently he did have that even before.

8 Although it's my understanding as well that after  
9 2001 when the criminal activity began that he became even  
10 more that way. That's one of the reasons I talk about the  
11 importance of judicial training. We know that that get  
12 tough policy is a knee-jerk reaction, that zero tolerance  
13 policies don't work.

14 And I'm not just simply saying I wish they didn't  
15 work. The bottom line is they don't work. We know that  
16 kids that get enmeshed in the system and drawn into the  
17 juvenile justice system at an early stage have a tendency to  
18 stay in the system. That's why diversion programs are so  
19 important.

20 So to me it's critical that we realize that not  
21 only was his behavior unethical and against the law, but it  
22 was also contrary to all the research regarding the best way  
23 to treat kids.

24 Q And would that not also be so with regard to the  
25 very essence of the Juvenile Act in which the least

1 restrictive intervention should be undertaken by the  
2 juvenile court judge keeping the child annexed to his family  
3 when can be done so in keeping with community safety?

4 A Absolutely, absolutely, yeah. You know, the least  
5 restrictive environment. Again, some people will say, well,  
6 we're coddling these predators. Remember, about ten years  
7 ago the word of the day was there were kids that were  
8 predators.

9 Well, you know something, that didn't prove to be  
10 the case. And the more the research evolves -- and I can't  
11 emphasize enough the fact that the research-based outcome  
12 measured programs that are available today are exponentially  
13 greater than they were when I began my year as a juvenile  
14 court judge.

15 I still remember a very well-intentioned juvenile  
16 probation officer that came to Berks County, used to be a PO  
17 in upstate Pennsylvania. And he had a program in which he  
18 helped kids by taking them on motorcycle -- ATV, all terrain  
19 vehicle, trips through the state forests.

20 It sounded nice, but I have no clue whether it  
21 worked, and neither did he. But today we -- we know based on  
22 the outcome measures that have occurred, not only in  
23 Pennsylvania but other states in the United States, we have  
24 a pretty darn good idea what works and doesn't work.

25 And hopefully we are also keeping a careful enough

1 watch on the way in which our programs are -- are set up in  
2 our individual counties that it's true to the model, and we  
3 do our own analysis and research to make sure it's working  
4 in our counties.

5 JUDGE UHLER: I have no further questions.

6 CHAIRMAN CLELAND: Any further questions, Ms.

7 Bender?

8 BY MS. BENDER:

9 Q Judge Grim, could you please clarify what you said  
10 about restitution in cases that have not been closed but are  
11 now vacated?

12 A Yes. What I decided and what I recommended and  
13 what the Court agreed with was that there were a certain  
14 number of kids, at this point we believe it would be between  
15 100 and 110, where the cases have not been closed and where  
16 their competency, development, and accountability, and  
17 reparation of victims has not been discharged.

18 Now, do I believe that a young person who has 50  
19 bucks in outstanding court costs ought to be brought back to  
20 Court? I don't. And I'm not so sure that the District  
21 Attorney does either. But there are those cases where  
22 victim restoration has not yet occurred in any meaningful  
23 fashion.

24 Those cases the Supreme Court has said that the  
25 District Attorney is to let me know within 30 days under

1 seal those matters that she wishes to proceed with. My plan  
2 is to take those cases and to convene, when appropriate,  
3 proceedings that will be open and transparent in this county  
4 in order that the people of this county can see that we're  
5 serious about not only providing the kids who were deprived  
6 of their basic constitutional rights have a remedy, but  
7 victims have a remedy as well. That's the goal.

8 Q Thank you. And did you say that when you reviewed  
9 the records you did not see anything about victims being in  
10 the court, either at the adjudication or disposition  
11 hearings?

12 A That's correct.

13 MS. BENDER: Thank you.

14 BY MR. ALLEN:

15 Q Judge Grim, one of the things that we've heard from  
16 the victims is they -- sometimes with all the cases being  
17 dismissed they don't feel like the case ever happened? In  
18 other words, it's like they were -- they were kind of  
19 forgotten.

20 I -- I think it's wonderful you've addressed the  
21 issues that the victims haven't been and weren't in the  
22 courtroom, the restitution issues, the apologies. Apologies  
23 are very important.

24 A Yep.

25 Q But what do you propose that we can tell victims,

1 Valerie and I deal with victims a lot --

2 A Sure.

3 Q -- so they can -- so they can at least feel like  
4 this is the proper way that this should have been matter --  
5 or dealt with and the best way for them also?

6 A You know, some people say you -- after the horse is  
7 out of the barn you can't lock the door. And for some  
8 victims it's five and six years down the road and they've  
9 never had an apology. They've never had a letter written.  
10 And it might appear on its face that the apology, if it  
11 comes, is not going to be as meaningful.

12 And if that's the case, I'm certainly very sorry  
13 for that. But I will tell you that I've had expressions  
14 from parents of young people who have told me after I  
15 entered my recommendation and the Court entered its order,  
16 Judge, my kid wants to apologize.

17 And so I think to the extent that you have a  
18 willing victim and a willing juvenile, it would be  
19 appropriate for there to be -- for there to be an  
20 opportunity for victim offender mediation, at the very least  
21 a letter of apology.

22 And I've seen it in my court. I'm sure those of  
23 you who are in court on a regular basis have seen it.  
24 There are some victims for whom that is not the right  
25 answer. And so I wouldn't want to say across the board and

1 unilaterally that we ought to get all the victims, and we  
2 ought to get all the kids, and there ought to be these  
3 blanket apologies. Because it's not going to be right for  
4 some people. But for those that it is the right answer I  
5 think it ought to occur.

6           You know, I remember a case very early in my career  
7 where a woman's house had been burglarized, and she was the  
8 kind of lady that used to go out every morning and take a  
9 broom and clean the stoop, and everybody else's stoop in the  
10 neighborhood, friendly person.

11           We didn't know whether this young person was going  
12 to admit to the act, so she came in as a witness. He did  
13 admit. She didn't want to come into the courtroom. She was  
14 frightened. She didn't know what would happen.

15           Well, months went by and the young person went  
16 through treatment, and he wanted to apologize to her.  
17 And so through our victim/witness coordinator in our -- in  
18 our office that was set up, and it occurred.

19           And it's going to sound silly, but they became very  
20 close afterwards, this victim of this burglary and this kid.  
21 What I'm saying to you, Mr. Allen, is that it would be wrong  
22 to suggest that because time has passed that it's not  
23 possible to get a victim/offender mediation and  
24 reconciliation in place. I think it is.

25           Now, getting folks to come forward in the first

1 place is the challenge, and I don't begin to understand how  
2 to do that. That, I think, is much more within your area of  
3 expertise.

4 MR. ALLEN: Thank you, Judge.

5 CHAIRMAN CLELAND: Judge Woodruff.

6 BY JUDGE WOODRUFF:

7 Q Judge Grim, first of all, thank you for coming to  
8 speak before this Commission. I think I speak for all of us  
9 when I indicate that you've done a yeoman's job thus far in  
10 regard to Luzerne County and all of the juvenile victims  
11 that are involved.

12 I just have a couple questions here. You indicated  
13 initially a number of reasons why these 6,000 some odd cases  
14 were overturned. You recommended that they be overturned,  
15 and the Supreme Court sent that order down, and a number of  
16 those reasons being lack of admission colloquy, waiver of  
17 counsel, just to name a couple.

18 Was the waiver of counsel, was that the single  
19 biggest issue in regard to these 6,000 cases, or was there  
20 some other causes as well?

21 A That was the biggest in my opinion.

22 Q Okay. Of the 6,000 cases did they also include  
23 consent decrees?

24 A Yes.

25 Q What was that percentage? How much -- how many of

1 the 6,000? Do you recall?

2 A Have you heard from Jim Anderson yet?

3 CHAIRMAN CLELAND: Not formally.

4 JUDGE GRIM: Okay. It seems -- Jim would have a  
5 better idea, I think, than I. I don't want to pass the  
6 buck. I honestly don't know.

7 BY JUDGE WOODRUFF:

8 Q Okay.

9 A If it's true to the usual percentage in the  
10 Commonwealth, it was less certainly than a majority, but I  
11 don't know.

12 Q Okay. Of those consent decrees that you may  
13 recall, did any of them also include placements of  
14 juveniles?

15 A Again, my answer to you, Judge Woodruff, would be  
16 based on my general knowledge, not my specific recollection  
17 of Luzerne County. But I would say that some did, yes.

18 Q Okay. We've also heard some issues in regard to an  
19 extraordinary amount of mental health evaluations that have  
20 been ordered as well. Did you also write that as well --  
21 finding as well?

22 A Yes.

23 Q I guess one last question is we've been talking  
24 about the kids that were adjudicated delinquent. Were there  
25 kids also that came in in the court that were not

1 adjudicated delinquent?

2 A I'd say this to you, Judge Woodruff, that in the  
3 cases where there were in court consent decrees it --  
4 clearly those were appropriately determined to be consent  
5 decree cases. But there were very few of those that  
6 involved in court consent decrees.

7 And what I saw on the flip side is cases that  
8 clearly should have been consent decrees where adjudications  
9 occurred. And you, I think, have been privy to at least  
10 some of the comments that I made in my recommendations,  
11 written recommendations, as well as the Court's response  
12 where it went immediately from a young person's admission --  
13 and by the way, there was no repetition of what the young  
14 person had admitted to that occurred on the record to make  
15 sure that they understood what they were even saying. And  
16 then immediately followed after that was I adjudicate you  
17 delinquent. These kids didn't know what that meant.

18 And it was done, at least on its face, without any  
19 kind of benefit of the judge having any idea as to why the  
20 kid might be in need of treatment, supervision, or  
21 rehabilitation. That's why I made the remark earlier about  
22 the fact that he said he looked at it all beforehand, which  
23 is mind blowing.

24 JUDGE WOODRUFF: Thank you.

25 BY MR. MOSEE:

1 Q I didn't know about Judge Cassimatis. So thanks  
2 for bringing that to my attention.

3 A Sure.

4 Q He certainly was one of my favorite people as we  
5 served together on the Juvenile Justice and Delinquency  
6 Prevention Committee.

7 Just a couple of questions. My questions actually  
8 go to what was actually happening in the courtroom. You  
9 described for us a person who was standing outside the  
10 courtroom getting the parents to sign these waiver forms?

11 A Right.

12 Q Who was that person, and who did he work for?

13 A He worked for the Juvenile Probation Office, and  
14 the individual would vary from time to time.

15 Q And was that person doing that at the direction of  
16 Judge Ciavarella or at the direction of the Chief of  
17 Juvenile Probation?

18 A At the direction of Judge Ciavarella.

19 Q How did the judge get the reports or the  
20 recommendations before there was even an adjudicatory  
21 hearing?

22 A He got them from juvenile probation personnel.

23 Q And was that at his direction or the direction of  
24 the Chief of Juvenile Probation?

25 A That would have been at his direction as well.

1 Q Were there direct file cases or certifications that  
2 were subject to your review?

3 A Not subject to my review.

4 Q Were there direct file cases handled by Judge  
5 Ciavarella?

6 A Yes.

7 Q And they would have been handled in the same  
8 courtroom? They didn't -- you know, in some jurisdictions  
9 those cases would have been in a courtroom or a courthouse  
10 devoted exclusively to adult cases.

11 A Mr. Mosee, I'm not 100 percent sure, but I believe  
12 that the way it was handled here was the way it would have  
13 been handled in many jurisdictions where an issue of  
14 certification was done by a juvenile court judge as opposed  
15 to being handled in adult court by an adult court judge.

16 Q And the direct files, would they have been handled  
17 by a juvenile court judge as well?

18 A Again, I can't tell you with 100 percent certainty  
19 that's the case, but I believe so.

20 Q One of the ways we might answer this question is by  
21 getting an understanding of what some of the most serious  
22 charges which were subject to your dismissal were.

23 A Sex offenses would be about as serious as it gets.  
24 I mean, some very serious sex offenses.

25 Q Any aggravate assaults with weapons, robberies with

1 weapons?

2 A There were those as well. There were those as  
3 well. Again, proportionately no more than any other  
4 jurisdiction, no less than any other jurisdiction of a  
5 similar population and location. You know, it's -- frankly  
6 in my review I don't think there was many what we would  
7 classify as serious cases in Luzerne County than there were  
8 say in my own county, Berks.

9 Q Except that as you indicated in response to Judge  
10 Woodruff's question, these were cases where counsel had been  
11 waived?

12 A Yes.

13 Q Okay.

14 A Now, there were -- please understand, there were  
15 cases where there were hearings that were held and where  
16 kids were represented by counsel. Remember, there's 54  
17 percent of the cases there were no counsel involved, which  
18 obviously means 46 percent of the cases there were.

19 The -- many of those were public defenders. And  
20 what I did find in cases in which the issue was not guilty  
21 or innocent, but rather once an admission was made or once a  
22 finding of guilty was entered what then happens to the  
23 child? Counsel was really not given an opportunity to speak  
24 by the judge, not given an opportunity to address that  
25 issue.

1           And, you know, many of us believe that the issue of  
2     determining what the disposition should be is as critical  
3     and as important almost as the initial finding of whether or  
4     not the kid committed the act.

5           Now, in the cases that I -- that I reviewed where  
6     there was zealous advocacy and the issue was guilt or  
7     innocence, I have to say to you that I did not find that  
8     this judge aggregated his responsibilities to have a hearing  
9     consistent with the rules and the law.

10          Q     You mentioned earlier that I think you were in  
11     Washington, D.C. and that one of the issues you were  
12     discussing was disproportion at of minority contact. Was  
13     DMC an issue in Luzerne County cases?

14          A     I didn't see it. I think that Luzerne County is on  
15     the cusp of some change, but I don't believe that that  
16     change has -- this has been a rather -- this has been a  
17     community where there's not a lot of diversity. I believe  
18     that's a fair statement.

19                 MR. MOSEE: Okay. Thank you.

20                 BY MR. HOROHO:

21          Q     Judge Grim, I echo everybody's thanks for your fine  
22     work, and especially I'm joined with members of the bar,  
23     especially children's advocates across the state, in  
24     thanking you not only for what you're doing here but what  
25     you've done on addressing the children's issue before

1 February of '09, which is why I think you might be helpful  
2 with one of the issues I'm struggling with as well as other  
3 Commissioners are struggling with.

4           And it goes back to your comment about the 67  
5 counties. I could not agree with you more. Sometimes in my  
6 travels I'm thinking, am I still in Pennsylvania because of  
7 how we do things differently, which makes Pennsylvania  
8 unique and is why I like living here, and why we like to  
9 travel around Pennsylvania.

10           But what happens when you bump into a judicial  
11 philosophy when you're in a county -- I see this in my  
12 practice in the eight or nine contiguous counties around  
13 Allegheny.

14           And sometimes it's one judge, sometimes it's two or  
15 three judges together that has a judicial philosophy that  
16 conflicts with best practices. Best practices in juvenile  
17 court that every one of us, some more than others, and  
18 you've named them, have worked very, very hard in improving,  
19 communicating to others, but you get into a situation where  
20 there is a disregard, sometimes total disregard, for these  
21 best practices, whether it be a philosophy of zero tolerance  
22 or corporate punishment.

23           So my questions are, No. 1, would you agree with me  
24 that the only way that the system we have in place now to  
25 challenge that judicial philosophy is the appeal process?

1 If that's the case, is there some other way that that can be  
2 challenged effectively? How would we track that?

3 And once we find that out, how do we go about  
4 convincing that court or that courtroom that there's a  
5 better practice out there to run their courtroom?

6 A You've really asked the question that has probably  
7 bothered me more than anything in the entire time I've been  
8 involved with this. And frankly even before that in my 21  
9 years as a judge.

10 There are unfortunately judges, just like there are  
11 people in every other walk of life, who don't choose to or  
12 care to adhere to the rules. And I think there's probably  
13 even a greater possibility of that happening in positions,  
14 be they judicial, be they doctor, stock broker, your pastor  
15 where there's a certain amount of power and a certain amount  
16 of respect. And if -- if it's not kept in check, abuses and  
17 excesses can occur.

18 And we've both been around long enough that we can  
19 probably sit in a room and talk about some of the same  
20 places and the same abuses. So how we deal with that and  
21 how we change it is a tough, tough question.

22 Yes, you know, I believe very much in the judicial  
23 system. I believe the appeal process is the best way to  
24 correct it. But you and I both know that a lot of folks  
25 can't avail themselves of that process, either because they

1 don't have the money or because they simply give up and they  
2 go away.

3           They go away, but they remain routed in the idea  
4 that this is a system that doesn't work. So how else do we  
5 do it? Part of the way, I think, is if we, in fact, do  
6 develop courts where judges are certified as having an  
7 expertise in that area.

8           I realize that if I'm talking about Forest County,  
9 we're not going to have a juvenile court judge. We're going  
10 to have a judge who does juvenile court work along with  
11 everything else.

12           So ought we to be looking at a group of judges who  
13 ride the circuit like the public defenders I talked about  
14 earlier. These are -- this is at least a thought that I've  
15 had. Maybe it would bear some looking at.

16           Training, training, training, training, training,  
17 and a certain amount of authority. I think maybe Mr. Massa,  
18 who's scheduled to testify later, can talk to you about  
19 this. A certain amount of authority to ensure the judges  
20 who don't do it the way they ought to be doing it can be  
21 held accountable.

22           It is very troubling. It really is. But I don't  
23 want to go to the California system, you know, where you're  
24 going to get the same result moving from county to county  
25 and everybody's going to -- all the kids are going to go

1 into a statewide authority where they're going to be 250  
2 miles from their families and where the approach is not --  
3 is not the Pennsylvania approach.

4 The Pennsylvania approach, if it works and works  
5 well, is in my opinion the best system imaginable. Because  
6 you have a local judge who understands the local community  
7 dealing with the problems and concerns of the victims,  
8 families, children, and the community at large.

9 You know, who's going to care more about what  
10 happens in Berks County or York County or Forest County than  
11 the person who lives there? But we need to make the best  
12 research available to these judges, the best training  
13 available. We need to have accountability, and we need to  
14 have a willingness to speak up if it's not working the way  
15 it ought to be working. And I realize that that is a tough  
16 nut to crack.

17 Q That's a good segue into my second question, which  
18 is the lack of people that did not speak up. I've always  
19 been impressed with the local bar here, engaged, active  
20 local bar.

21 A Um-hum.

22 Q In your investigation, your work here, you  
23 mentioned that it was -- it was common knowledge what was  
24 happening in Judge Ciavarella's courtroom. Do I take that  
25 to mean that you thought that the local bar, the lawyers who

1 did not practice in those courtrooms, still knew that there  
2 was something amuck, inappropriate?

3           And if they knew about it -- and again, it's  
4 questions that have been asked, and I kind of want to ask it  
5 a different way to sound like I'm not being repetitive. But  
6 why was there a cloak of silence? Why wasn't there a  
7 feeling that maybe I'll call the state bar or the ABA or the  
8 JCJC? What do lawyers feel that caused them to be so  
9 silent, the retribution or the intimidation you talked about  
10 earlier? What was your feeling that the -- what the lawyers  
11 felt that caused them, if there was silence?

12           A     I think there was the NIMBY approach. Because face  
13 it, I don't know how big the bar is. I think it's around  
14 300. Out of the 300 attorneys, if there were a handful that  
15 practiced in juvenile court, that would probably be about  
16 the extent of it.

17           So the other 95 percent or more could simply just  
18 say, well, you know, maybe there's a problem, but let Joe  
19 take care of it. It's not in my backyard. And when I said  
20 there was common knowledge, I think there was common  
21 knowledge that -- that basic constitutional rights of  
22 children were being deprived. I'm not suggesting that --  
23 because I have no information that would lead me to believe  
24 that people knew about the \$2.8 million in kickbacks. If  
25 they did, I -- you know, that's not something I'm aware of.

1           And I've had more than one person, I think there's  
2 maybe three or four, write to me and say -- are quoted in  
3 the newspaper as saying, you know, I went to see an attorney  
4 about representing my child in court, and that lawyer said  
5 to me don't bother. It won't make a difference. He's not  
6 going to let me talk anyhow.

7           So I think some lawyers approached it as I don't  
8 want to get involved. So I don't want to get involved.  
9 It's not in my backyard.

10           The cloak of silence, remember, this is a county  
11 that is small enough if you practice in court, you know,  
12 you're not only approaching Judge Ciavarella in his position  
13 as a juvenile court judge, he's also the President Judge.  
14 And I think people were probably concerned that if they  
15 raised too much of a raucous, this is the same judge that is  
16 going to be deciding matters, arbitration, civil court, what  
17 have you, or at least having power over the people who did.  
18 Is that responsive?

19           Q     Yeah, I think that is. One final question. Do you  
20 think that the local schools had more -- too much influence  
21 on the initiation of complaints in juvenile court?

22           A     I think that they immediately picked up the phone  
23 and called the police, no matter what the incident was.  
24 Because they knew that if they reported it and it got in  
25 front of a tough judge, that the outcome would be such that

1 the trouble makers would be out of their hair.

2 One of my best friends is superintendent of a  
3 district outside of Philadelphia, and she has said to me,  
4 you know, our job is to educate. And then when there is a  
5 small group of kids that make that almost impossible, part  
6 of me says we need the help. Part of me says just get them  
7 away. And I think that's part of what's going on.

8 MR. HOROHO: Thank you.

9 BY MR. LEGG:

10 Q Good afternoon, Judge Grim, and thank you for  
11 coming. The time frame that your analysis encompassed, what  
12 was that again?

13 A It was 2003, January, 2003 until May, 2008.

14 Q And that would have been determined by a directive  
15 from the Supreme Court?

16 A It was not only the Supreme Court's opinion, it was  
17 when the -- the nexus between this judge and the pay offs  
18 began. And May, 2008 was the last time he sat.

19 Q Okay. You said that approximately how many cases  
20 did you review?

21 A I reviewed about 100.

22 Q How many cases were affected by your  
23 recommendations?

24 A Well, I mean, the figures are between 5 and 6,000.

25 Q And would this include all of Ciavarella's cases,

1 or would it have included other judges as well?

2 A All of Ciavarella's.

3 Q Were other judges sitting in for Ciavarella when he  
4 was unavailable?

5 A Yes.

6 Q Do you know whether or not business as usual  
7 continued to occur while Ciavarella was on vacation? In  
8 other words, were the other judges practicing having the same  
9 policies and practices, or were they administering juvenile  
10 justice in a more appropriate manner?

11 A I think they were adhering to his -- his directives  
12 as the juvenile justice judge. But their courtroom and the  
13 procedure in their courtroom was much more constitutionally  
14 firm.

15 Q So have you reviewed any of the transcripts from  
16 those particular proceedings?

17 A I've looked at them briefly, and less than a  
18 handful.

19 Q So the waivers of counsel and colloquies were done  
20 properly in those particular --

21 A No. Waivers of colloquy -- waivers of counsel were  
22 done the same way they were always done, but colloquies and  
23 an opportunity to speak and to be heard in my very, very  
24 limited review were better.

25 Q And it's fair to say that one of the things that

1 concerned you most was the failure to have appropriate  
2 waivers of counsel done?

3 A Yes.

4 Q Do you think that we should be reviewing or you  
5 should be reviewing those cases where other judges sat? In  
6 other words, it seems to me there's a class of children here  
7 who waiver of counsels were deficient, and they're getting  
8 expungement. There's another class who had different  
9 judges, same problem, apparently not getting the same  
10 remedy. Is that something you're concerned about?

11 A Less concerned than it might appear on its face.  
12 First of all, that's not what the Supreme Court asked me to  
13 do.

14 Q Right. I understand that.

15 A But secondly, in many of these cases, if not all of  
16 them, will soon be ripe for expungement on their own by the  
17 passage of time assuming arguendo that these young people  
18 didn't get in further trouble.

19 Listen, I mean, if I wanted a job for the rest of  
20 my life, there's probably some things that in a perfect  
21 world would have occurred. But I had to deal with what I  
22 was directed to deal with.

23 Q Okay.

24 A And that's what I've tried to do.

25 Q And that follows into the next question that I had.

1 You indicated it was your understanding that Ciavarella had  
2 this zero tolerance policy for some time?

3 A Yes.

4 Q And that would have predated your -- your  
5 investigation?

6 A That's right.

7 Q But there's -- at this point in time the only  
8 remedy that those children will have is to seek the  
9 statutory expungement, not anything that the Supreme Court  
10 is going to do as far as you know?

11 A That's correct.

12 Q And you didn't conduct any evidentiary hearings?

13 A No.

14 Q It would have been based upon whatever record was  
15 available from the juvenile proceedings themselves?

16 A Yes.

17 MR. LEGG: That's all I have.

18 CHAIRMAN CLELAND: Judge Gibbons.

19 JUDGE GIBBONS:

20 Q Thank you, Mr. Chairman. Judge Grim, again, thank  
21 you for your time that you have devoted to this entire  
22 matter. As we get toward the end of the questioning the  
23 questions get fewer and fewer with each questioner. But I'm  
24 -- you made an observation at the beginning of your remarks  
25 about on average the proceedings that you reviewed taking

1 anywhere from three to five minutes.

2 A Right.

3 Q And in those instances I'm assuming that there in  
4 the courtroom besides the juvenile and the judge were  
5 somebody from the Juvenile Probation Office, somebody from  
6 the District Attorney's Office, and either a public defender  
7 or a private lawyer. Is that a safe assumption?

8 A Yes.

9 Q All right. And -- and --

10 A In the cases where kids were represented.

11 Q Right. But at the very least, even when they  
12 weren't, there was still somebody from the DA's office?

13 A Correct.

14 Q And you seem to suggest that there was no  
15 opportunity for anybody to say anything. Were there  
16 attempts in the cases that you reviewed? Were there  
17 attempts from say the District Attorney's Office or the  
18 Juvenile Probation Office to speak or to say something?

19 A There were a few transcripts in which private  
20 counsel were present and made attempts to be heard and were  
21 not given the opportunity or the respect that they should  
22 have been. Those are the ones that I reviewed.

23 I'm not aware of the District Attorney ever  
24 interposing any questions about the procedure or the lack of  
25 counsel. Although, again, as we all know, what's on the

1 record is often only a shadow of what may or may not have  
2 been said in other venues.

3           You know, I can't say that there were not people  
4 that have had discussions with this judge off the record  
5 about his procedures. I don't know the answer to that.

6           Q     Did you get a sense from any of your reviews that  
7 there might have been some other venues, or are you just  
8 wondering aloud?

9           A     I'm wondering aloud.

10           JUDGE GIBBONS: Okay. Thank you.

11           CHAIRMAN CLELAND: Mr. Listenbee.

12 BY MR. LISTENBEE:

13           Q     Thank you, Mr. Chairman. And, Judge Grim, again,  
14 in the same manner in which all others have thanked you for  
15 your work here in the county, I would like to thank you as  
16 well. We know you as a tireless advocate on behalf of the  
17 juvenile justice system and its children.

18           Your Honor, going back to a comment you made about  
19 -- about appellate issues. Picking up a little bit where  
20 Ken left off, I'd just like to know were there any appeals  
21 filed on behalf of juveniles during this period of time  
22 aside from the one that was filed back in 2001 up until the  
23 time -- up until 2008 to the best of your knowledge?

24           A     I know there were appeals. I have not reviewed the  
25 appeals, and so I can't tell you what the content of the

1 appeals were. But they were very, very few and far between.

2 Q Your Honor, as you look at the issue of appeals in  
3 Luzerne County and other counties across the Commonwealth,  
4 we are certainly asking ourselves what would be needed to  
5 make it possible for both public defenders, court appointed  
6 counsel, and private counsels who are handling juvenile  
7 matters to file more appeals and have them handled in a more  
8 expeditious fashion. Have you given any thought to that?

9 A Yes, I have. And, you know, there needs to be a  
10 procedure and process that is meaningfully available for  
11 fast tracking. But, you know, like so many other things,  
12 that's going to require a commitment and wherewithal to make  
13 sure that it occurs.

14 You know, why appeal? And that's, I think, part of  
15 the reason why there may not have been that many appeals.  
16 Why appeal if by the time your appeal is heard the young  
17 person who is hard ordered in a placement is finished with  
18 the period of placement?

19 So, Bob -- I'm sorry, Mr. Listenbee, fast tracking  
20 is a necessary condition precedent to having meaningful a  
21 process.

22 Q Your Honor, a couple of small points. You've  
23 indicated that 6,000 more cases are going to be up for  
24 expungement. In Pennsylvania, based upon information we've  
25 received from JCJC, there are rarely more than 1,000 in any

1 given year.

2 A Yeah.

3 Q Has any thought been given to how the State Police  
4 will actually man or have staff to deal with such a large  
5 volume of expungements coming from just one county when in  
6 the past they haven't dealt with anywhere near that number  
7 throughout one given year?

8 A Yes, some thought has been given to it. There have  
9 been some discussions. The State Police have indicated,  
10 just as Juvenile Probation Office and the District Attorney  
11 in Luzerne County have indicated, that it's impossible for  
12 them to perform this function without additional personnel  
13 in order to do it, not in a timely fashion.

14 You know -- as you know, expungement goes to the  
15 school. It goes to the local police department. It goes to  
16 the court of initial jurisdiction. It goes to the District  
17 Attorney. It goes to the victim. It goes to Pennsylvania  
18 State Police central repository.

19 I believe from what I've seen that the most  
20 important place for it to occur as quickly as possible is  
21 the Pennsylvania State Police central repository because  
22 that's where the information's most readily available and  
23 most broadly available to those who want to know.

24 So to answer your question, thought has been given  
25 to it, the opportunity to provide that personnel. While

1 it's not in my purview, but I know the Pennsylvania State  
2 Police will definitely need additional personnel.

3 Q Okay. Thank you, Your Honor. You've indicated  
4 that -- that career tracks for judges, attorneys, both on  
5 the defense and on the prosecution side, is a -- an  
6 essential element for a system that's going to be able to  
7 avoid these kinds of problems in the future.

8 Can you elaborate a little bit more in terms of  
9 what you mean by a career track for judges? You've  
10 indicated some training. Are you contemplating mandatory  
11 training for judges, any judge that comes into juvenile  
12 court?

13 A I think it's important, and I would support it.

14 Q Mandatory training for any prosecutor who comes  
15 into court?

16 A Yes.

17 Q As well as any defense counsel?

18 A Yes.

19 Q Any other aspects of career track that you want to  
20 elaborate upon at this time?

21 A Yeah. I think oversight from professionals is  
22 important. For instance, your career track public defender  
23 in Luzerne County, it would be, I think, a good idea if from  
24 time to time a representative of the Defender's Association  
25 or the Juvenile Court Judge's Commission were to come and be

1 available to observe court to see how the judge is doing.

2           You know, I'm not saying all my colleagues agree  
3 with me on this one, but I just think that oversight can be  
4 an important component of doing a good job, professional  
5 advice and expertise.

6           One of the things that I think we all realize is  
7 sometimes being a judge can be a pretty lonely job. And  
8 they're not too many people in whom you can discuss issues  
9 that confront you day in and day out as a judge.

10           I mean, I have some -- ten colleagues on the bench  
11 in Berks County that I like a lot. But the amount of time  
12 that we sit down and talk about matters of usual concern  
13 doesn't happen very often.

14           And if it's an even more isolated area of  
15 expertise, i.e. juvenile court, who am I going to talk to?  
16 I can wait until I get to the JCJC conference or the state  
17 trial judges conference or I can e-mail somebody, but  
18 wouldn't it be nice if from time to time an acknowledged  
19 member would come into my court, observe me, and make  
20 suggestions about ways in which I might do my job?

21           Some judges wouldn't like that at all, but I think  
22 that it at least bears some thought.

23           Q     Your Honor, have you given additional thought to  
24 case load standards and compensation standards as a part of  
25 that sort of career tracking? Are those necessary elements

1 as well?

2 A Compensation standards, as you know, are set in  
3 ways that I don't think are going to be changed, nor do I  
4 necessarily think they should be.

5 Q For judges they are.

6 A Yeah, that's true. For public defenders they're  
7 not. So maybe there ought to be for public defenders. And,  
8 Mr. Listenbee, the second part of the question? I'm sorry.

9 Q In addition to compensation standards, case load  
10 standards?

11 A Case load standards. Yeah, I think we can all  
12 point to situations where in the morning 30 cases are heard  
13 and in the afternoon 30 cases are heard in juvenile court.  
14 That's -- I can't see how you can do that job.

15 So should we attempt to find what would be an  
16 objective and reachable goal as far as case load? I think  
17 it would make sense.

18 MR. LISTENBEE: Thank you, very much, Your Honor.

19 CHAIRMAN CLELAND: Um-hum. Judge, is there  
20 anything more you'd like to say as we wrap this up?

21 JUDGE GRIM: Only in closing. I, again, am  
22 thankful that this Commission was established. I think the  
23 fact that it was an effort of all three branches of  
24 government and the fact that those of you who sit on this  
25 Commission are obviously folks who care deeply about what

1 you do is an example of the fact that in Pennsylvania we are  
2 -- we are looking for answers and solutions to these  
3 problems. And I'm sure that your report will be thorough,  
4 and I look forward to it.

5 CHAIRMAN CLELAND: Judge Grim, thank you, very much  
6 for your assistance in helping us to meet those  
7 responsibilities. And I -- I, on behalf of all the  
8 Commission, want to thank you not only for your testimony  
9 here today, but for the work you have done for juvenile  
10 justice.

11 JUDGE GRIM: Thank you.

12 CHAIRMAN CLELAND: We'll be in recess until 3:20.  
13 That will be a half an hour.

14 (Discussion held off the record.)

15 CHAIRMAN CLELAND: Good afternoon. We'll be back  
16 in session. As has been noted by Judge Grim, Pennsylvania  
17 is recognized as having one of the best juvenile justice  
18 systems in the United States. The bench here in Luzerne  
19 County, however, have tarnished that reputation  
20 immeasurably.

21 Our Commission has recognized early on that the key  
22 component of the success of the juvenile justice system in  
23 Pennsylvania is the broad power and discretion given to its  
24 juvenile court judges to assure that the system protects the  
25 community, holds juveniles accountable for their crimes, and

1 assists juveniles in developing the competencies that can  
2 restore them to society. What has been called the approach  
3 of balanced and restorative justice.

4 For that approach to work, however, it requires  
5 that a juvenile court judge have broad power to hold the  
6 system accountable and assure it functions properly to  
7 protect the community and to encourage the juvenile's proper  
8 development.

9 But we also recognize that if we're going to give  
10 judges such extraordinary powers and such great discretion  
11 to exercise their judgement, we must also have an effective  
12 system in place which holds judges accountable for the abuse  
13 or misuse of that power.

14 That, of course, is why the legislation creating  
15 this Commission specifically states that as part of our  
16 mission we are directed to make recommendations regarding  
17 the system of judicial discipline.

18 And that is why as one of our very first witnesses  
19 at our first hearing last month in Harrisburg we sought the  
20 testimony of Joseph Massa as counsel to the Judicial Conduct  
21 Board. At the last minute, however, he was instructed by  
22 the Judicial Conduct Board not to appear because of the  
23 Pennsylvania -- the confidentiality provisions of the  
24 Pennsylvania Constitution.

25 We understood, of course, at the outset that the

1 kinds of questions we could ask Mr. Massa would be limited  
2 by the confidentiality provisions of the Pennsylvania  
3 Constitution, specifically Article 5, Section 18 which  
4 states that all proceedings of the Board shall be  
5 confidential except when the subject of the investigation  
6 waives confidentiality or until a complaint is filed with  
7 the Court of Judicial Discipline and the matter then becomes  
8 public.

9           We understood that we would be limited in asking  
10 questions about any ongoing activities of the Board  
11 regarding the former Judges Conahan and Ciavarella or even  
12 if there were pending proceedings regarding them.

13           At the same time we understood that some  
14 information has already been made public about the Board's  
15 actions involving Conahan, Ciavarella, and Judge Lokuta.  
16 While we understand the confidentiality requirement that  
17 limits what the Judicial Conduct Board can and cannot say,  
18 we are also under a legislative mandate to assess the  
19 judicial disciplinary system and make recommendations to  
20 strengthen it.

21           We cannot make that assessment in the abstract. To  
22 the extent that we can understand how the Board functions in  
23 the context of particular cases, that will be helpful to us  
24 in satisfying our legislative obligation. And so we are  
25 brought to the current situation.

1           The testimony in Harrisburg in October was  
2 postponed to allow us the opportunity to address these  
3 constitutional contentions. We have been assured that the  
4 Board will discuss without limit its practices, policies,  
5 and procedures in general.

6           We understand the Board is limited constitutionally  
7 in what it can disclose regarding specific cases. There are  
8 some gray areas, however, around the edges. Because so much  
9 has been disclosed, there is some legitimate room for  
10 interpretation about what questions can and cannot be  
11 properly answered.

12           As a result, since mid-September we have spent  
13 literally hours in phone conversations, conference calls,  
14 exchanges of e-mails and letters and even a lengthy  
15 face-to-face meeting with Mr. Massa in Harrisburg in an  
16 effort to secure the Board's testimony.

17           Last Friday afternoon at 2:00 the Board asked the  
18 Pennsylvania Supreme Court to take extraordinary  
19 jurisdiction to quash the subpoena we issued to Mr. Massa to  
20 appear here today. Shortly after 5 p.m. on Friday Justice  
21 Greenspan entered an order on behalf of the Court denying  
22 the Board's request.

23           That subpoena was issued despite Mr. Massa's  
24 statements that he would voluntarily appear in a statement  
25 that we took at face value, but which we felt in an

1 abundance of caution should be issued.

2           The Commission has repeatedly assured the Board  
3 through Mr. Massa and through conversations with Board  
4 members that we recognize the Board's constitutional  
5 confidentiality requirements. And on behalf of the  
6 Commission I do so again this afternoon.

7           The Commission has repeatedly assured the Board  
8 that we do not intend to belabor areas of inquiry to which  
9 the Board believes it cannot respond. And on behalf of the  
10 Commission I do that again this afternoon.

11           If there are areas of inquiry, if there are  
12 questions that Mr. Massa, you believe, to be objectionable,  
13 you need only simply state the basis for the objection. And  
14 if you choose not to answer or believe that the constitution  
15 prohibits you from answering, the Commission will decide at  
16 a later time what further action we may take to secure that  
17 information.

18           The Judicial Conduct Board and this Commission  
19 shares an important responsibility in working together to  
20 restore the public's confidence in the competency, the  
21 honesty, and the judgement of Pennsylvania's juvenile  
22 judges.

23           This Commission intends to fulfill that important  
24 responsibility. And we have every confidence that the  
25 Judicial Conduct Board shares that same motivation, and that

1 the Board will work with us today and in the future to  
2 achieve that important objective.

3 Mr. Massa, would you please approach the stand and  
4 take the oath?

5

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

8

9 MR. MASSA: I do.

10 CHAIRMAN CLELAND: Good afternoon.

11 MR. MASSA: Good afternoon, Judge, Commissioners.

12 CHAIRMAN CLELAND: Mr. Horoho.

13 BY MR. HOROHO:

14 Q Thank you, Mr. Massa. Commissioner Legg and I have  
15 divided the questions, and we will be asking you those. We  
16 don't mean to be double teaming you, but we prepared the  
17 questions that way, and that's how we'll proceed.

18 A I look forward to the dialog, Judge.

19 Q First of all, I'd like to mark -- you were kind  
20 enough before today's date of providing us the binder of  
21 materials, the Judicial Conduct Board information materials  
22 for the Interbranch Commission of Juvenile Justice. I'd  
23 like to have that marked, Mr. Breslin and Judge as our  
24 Exhibit 1. And enclosed in that is also the 2008 annual  
25 report. And also inside of the pocket was the 2007 report,

1 correct?

2 A That's correct, sir. And had you not moved to make  
3 that your exhibit, I would have done so. I think it's very  
4 important and relevant information.

5 Q Okay. Great. In fact, we'll use most of that  
6 information as we follow up in the first part of the  
7 questions.

8 Can you state your full name for the record?

9 A Joseph A. Massa, M-A-S-S-A, Jr.

10 Q And I also note for the record that you provided us  
11 a resume. An impressive one it is.

12 A Thank you.

13 Q Sir, as I understand it you became the chief  
14 counsel of the Judicial Conduct Board on March 4th, 2002?

15 A That's right.

16 Q And before that you had a -- your professional  
17 career began you were admitted to the bar May 1st of 1969?

18 A That's correct.

19 Q Diverse practice as I understand it?

20 A That's right.

21 Q And you were also president of the Warren County  
22 Bar Association?

23 A I was.

24 Q I wanted to make sure I mentioned that.

25 A All 36 members.

1           Q     Okay. I've been there, and I -- they're good  
2 folks. Could you first explain your position with the  
3 Judicial Conduct Board as chief counsel? Can you explain  
4 your duties and responsibilities?

5           A     Yes. Before I do so, sir, may I just, in addition  
6 to the brief summary you provided about the resume, stress  
7 that I was for three decades in court virtually on a daily  
8 basis. I served as public defender for the 37th Judicial  
9 District of Pennsylvania, Warren and Forest Counties; and  
10 for 14 years as District Attorney of Warren County.

11          Q     Thank you for that.

12          A     In regards to your question, what are my duties and  
13 responsibilities as chief counsel to the Judicial Conduct  
14 Board, I am an at will appointee of the Board. The Board,  
15 by constitutional mandate, must appoint a chief counsel and  
16 requisite staff.

17                 As chief counsel I am potential -- I wear two hats.  
18 I provide legal -- legal research and recommendations for  
19 the Board's consideration. And I'm also, in effect, the  
20 administrator, chief administrator, of the Board staff.

21          Q     Okay. And I note in the 2008 report that the Board  
22 received 636 complaints. Would you consider yourself the  
23 gate keeper of the JCB as it relates to those complaints?  
24 If you didn't review them, you knew probably something about  
25 each one?

1           A     Every complaint that's forwarded to the Judicial  
2     Conduct Board, sir, crosses my desk.

3           Q     And as a chief counsel for the JCB would you see  
4     yourself more as a prosecutor or an investigator, person who  
5     investigates complaints dealing with judicial discipline and  
6     that somewhat -- and that after you would do that you make  
7     certain recommendations to your Board?

8           A     Again, I am one of nine staff persons, three legal  
9     -- myself and the other two attorneys. We have three  
10    investigators and three support staff. We gather the  
11    information, do the legal research, present recommendations  
12    to the Board. And then it's the 12 members of the Board  
13    that must act on the recommendation.

14          Q     And -- but do you see yourself more as somebody who  
15    recommends -- makes recommendations about the complaints  
16    that come in versus more -- acting more as an in-house  
17    counsel?

18          A     Yes, sir.

19          Q     Okay. And there is a certain degree of  
20    independence between you and the Board?

21          A     I'm not sure I understand that question.

22          Q     Well, you make certain recommendations, they --  
23    there's some interaction?

24          A     Oh.

25          Q     Correct?

1           A     Correct.

2           Q     Basically you two -- I mean, you work together, but  
3 you still have a certain amount of independence?

4           A     Oh, absolutely. The Board, by no means, acts as a  
5 rubber stamp to the recommendations accumulated by legal  
6 staff.

7           Q     Can we talk a little bit about the historical  
8 perspective of the JCB? When was the JCB established?

9           A     That's an excellent question and a timely one. All  
10 50 states have similar Commissions or Boards regarding  
11 judicial accountability. The first one was in California in  
12 1960. Pennsylvania followed up in 1968 by the creation of  
13 our predecessor entity called the Judicial Inquiry and  
14 Review Board.

15                     By constitutional amendment the people of  
16 Pennsylvania amended that status so that as of 19 -- August  
17 11th of 1993 the Judicial Conduct Board came into -- into  
18 existence.

19           I think it's important. I'd like to stress that  
20 prior -- during the juror days, 1968 through 1993,  
21 Pennsylvania, like the vast majority of states, had a  
22 one-tier system, had one entity that performed four  
23 functions. It investigated and, quote, prosecuted criminal  
24 complaint -- or complaints of judicial misconduct; and it  
25 also adjudicated and sanctioned all four roles, you know,

1 cop, prosecutor, judge, and jury.

2 The 1993 amendment bifurcated those roles so that  
3 it created two entities. The first being the Judicial  
4 Conduct Board, which is the investigatory and the --  
5 investigatory and prosecutorial arm; and the Court of  
6 Judicial Discipline, which is the adjudicatory and  
7 sanctioning body.

8 To this day, sir, only eight states in the union  
9 have that two-tier system.

10 Q Is it a independent agency?

11 A It's independent, yes, sir.

12 Q And how is it funded?

13 A By state legislature.

14 Q And --

15 A And I'd like to address that later on.

16 Q Well, I'd like to -- who's responsible for drafting  
17 the proposed budget, and how do you proceed with securing  
18 funds for the JCB?

19 A We are an independent state budget. I guess if you  
20 were to diagram the construct of state government, we're  
21 under the judicial branch, but an independent entity within  
22 that branch.

23 Each year as a matter of fact about -- about this  
24 year time, the judicial branch, including our small agency,  
25 prepares a budgetary request. Ultimately we go up to

1 Capitol Hill, hat in hand, and present our budgetary request  
2 to the House and -- House of Representatives and to the  
3 Senate. And ultimately the -- the folks on the Capitol Hill  
4 determine what -- how we are to be financed and what amount  
5 we are to receive.

6 Q Now, do you do that as an independent agency or on  
7 behalf -- or as part of the court's -- Supreme Court's  
8 budget?

9 A I am also present to answer any questions at those  
10 legislative hearings, but the overall judicial budget is  
11 submitted by the Administrative Office of Pennsylvania  
12 Courts by ordinarily the Chief Justice or one of the  
13 justices.

14 I have a spokesperson on behalf of the judiciary,  
15 and the Judicial Conduct Board is a small line item of that  
16 overall budget.

17 Q Is your budget independent of the Supreme Court?

18 A It is.

19 Q Okay. And how are your staffing needs determined?

20 A By myself as the administrator of the Board and in  
21 consultation with the Board and its actions or  
22 recommendations. All, again, dependent upon our financial  
23 structure and what -- what dollars we are given to work  
24 with.

25 Q So you -- the JCB does receive tax dollars?

1 A Yes, sir.

2 Q Okay.

3 A I have no private funds.

4 Q Yeah. I was just going to ask you. Is there any  
5 other revenues from grants or any other sources?

6 A No.

7 Q Does it receive any revenue from the disciplinary  
8 process?

9 A No, sir.

10 Q No fines or costs that might be assessed? Would  
11 that be part of your budget at all?

12 A Again, that's a very pertinent question. The vast  
13 majority of disciplinary entities throughout the country as  
14 part of sanctions can impose fines or costs upon the  
15 judiciary. There's a handful of states, I can't identify  
16 them at the moment, that impose a due, just like we  
17 attorneys get -- pay to the Disciplinary Board.

18 But neither of those are in existence in  
19 Pennsylvania. Our sole revenue is tax dollars appropriated  
20 by the legislature.

21 Q Now, are you aware of any other bodies, agencies,  
22 or groups with the authority to investigate the conduct of  
23 judges and dispense discipline against judges?

24 A We are the sole entity with that authority with the  
25 exception that the constitution still provides for the House

1 or Senate to have impeachment powers as per former Justice  
2 Larson.

3 Q Now, we -- we had the member of the Disciplinary  
4 Board here. Prior to the Disciplinary Board being formed  
5 the lawyer discipline was done by the local bar associations  
6 or local groups. Historically was that ever done locally,  
7 the judicial discipline?

8 A Prior to 1968 it was a very loose system. There  
9 was no really written rules. In 1924 the American Bar  
10 Association promulgated a model rule, model code of judicial  
11 conduct, which was loosely followed by Pennsylvania. But it  
12 wasn't until 1968 that the process was formalized. There  
13 was a very loose -- loose process.

14 Q Now, you talked about other states and how they  
15 handle judicial discipline. Do they do it similar to  
16 Pennsylvania?

17 A Roughly.

18 Q Are you familiar with that?

19 A Oh, sure. They're -- as I said at the outset,  
20 Pennsylvania is one of only two states with a two-tier  
21 system, which is -- I think is vastly superior, the better  
22 of the two systems. There are some differences as to what  
23 sanctions can be imposed.

24 For example, some states can impose fines and  
25 costs. We do not. Our Court of Judicial Discipline does

1 not have that authority. There are some subtle differences  
2 as to what is made public, what complaints can be made  
3 public. There are differences as to what private actions  
4 the Board or the Commission can take.

5 Q Do you see any strengths in other states and how  
6 they discipline the judiciary that you think could be  
7 incorporated or should be incorporated into Pennsylvania's  
8 judicial discipline system?

9 A Speaking only myself as chief counsel, I think  
10 there's merit to expanding the sanctions that can be imposed  
11 by the Court of Judicial Discipline. I believe for those  
12 rare cases, the rare cases when the Board brings formal  
13 charges against a judicial officer, I believe the Court of  
14 Judicial Discipline should be able to impose fines and costs  
15 upon that judicial official. That is done in -- in quite a  
16 few states.

17 Q Is there any sort of national rating system? I  
18 know in the disciplinary system of lawyers there's some  
19 national rating system. And I know our Disciplinary Board  
20 in Pennsylvania went from one of the worst to one of the  
21 first.

22 Is there a similar sort of rating system for  
23 judicial discipline around the country?

24 A There is by an independent entity. And I'll -- I  
25 don't have the document with me today, but I'll be very

1 happy to provide it to the Commission with the document.

2 This independent agency that's not -- not friendly  
3 to the legal profession or the judiciary ranked all 50  
4 states. And Pennsylvania was ranked third out of the 50  
5 states in terms of the overall efficiency, efficacy, results  
6 of our judicial system.

7 There were both strengths and weaknesses noted. I  
8 will be not disingenuous with the Commission. I'll be glad  
9 to address those. This is an independent body.

10 Q Were there reasons given for that? We would  
11 definitely like to get a copy of that report if you could  
12 provide it.

13 A I will. There were categories ranging from  
14 transparency, consumer friendliness I think was a term that  
15 they used. There were six or seven separate categories, if  
16 I recall. And each -- each category was ranked from A to F.

17 Q And maybe following up on that question, in  
18 reviewing your 2008 -- JCB's 2008 annual report it states,  
19 and I quote, it is undoubtedly fair to state that the  
20 Pennsylvania judiciary has become more sensitive to its  
21 ethical obligations and that public confidence in the  
22 judiciary has consequently improved.

23 Could you state the basis for that statement in  
24 your report?

25 A Well, it's two-fold, that statement. And I -- I

1 will take responsibility. I believe I authored that  
2 statement. I sincerely believe it's true. I would defer to  
3 the judicial members of this panel for the first part of it.

4 I believe that over the last -- when I was  
5 appointed and had the privilege and honor of accepting this  
6 position, initially one of the first responsibilities that I  
7 was given by the Board in 2002 was to raise visibility of  
8 the Judicial Conduct Board to engage in what we called the,  
9 and still do, an operation outreach whereby I was charged  
10 and the Board engaged in a -- myself and the Board went out  
11 through -- throughout the Commonwealth.

12 To date we have appeared in approximately 50 of the  
13 67 counties, almost 80 percent of the judicial districts, in  
14 explaining our process, meeting with judges, meeting with  
15 bar associations, meeting with bench bar conferences with  
16 the public explaining our -- our process.

17 Also over the past four or five years the  
18 Administrative Office of Pennsylvania Court has invited the  
19 Judicial Conduct Board to be -- to present ethical  
20 components of its continue -- you know, its continuing  
21 education.

22 For example, take it one step further. When you  
23 met on October 14th in the new Pennsylvania Judicial Center,  
24 across the hall from the hearing room where your hearing was  
25 held is the new continuing education center for magisterial

1 district justices. Magisterial district judges, which  
2 represent about a third of the judges under our authority,  
3 are mandated to have -- meet -- spend one week a year in,  
4 quote, continuing education.

5 Over the past four or five years we have always --  
6 the Board, the Judicial Conduct Board, has presented an  
7 ethics component of that. So we're very aggressive in that.

8 Secondly, we have made a very strong effort in  
9 approving -- improving and increasing our publications that  
10 are made available to the public, our brochures, our annual  
11 reports.

12 Third, and I think very important, is we created a  
13 website, a website that we feel is very, very user friendly,  
14 very informative, very comprehensive, very complete. It's  
15 got the Code of Judicial Conduct, the rules governing  
16 standards of magisterial district judges. It has much of  
17 the material that is contained in the notebook that I have  
18 shared with you.

19 As a matter of fact, this report card that we got,  
20 one of the reasons for the high grade that we received is  
21 the transparency and the user friendliness and the quality  
22 of our website. I think all of that amounted to an  
23 elevation, a competence on behalf of the public with  
24 exceptions that there is a mechanism, there's an appropriate  
25 body and process in place in Pennsylvania to address those

1 circumstances when judges fall short of their high ethical  
2 responsibilities.

3 BY MR. LEGG:

4 Q Mr. Massa, I think you indicated that the Judicial  
5 Conduct Board has nine employees, that would be three  
6 employees, three investigators, and three administrative  
7 staff?

8 A That's correct.

9 Q What about the Board itself? How many members are  
10 on the Board?

11 A There are 12 members of the Judicial Conduct Board,  
12 three judges. The three judges are always an appellate  
13 court judge, currently a judge of the Superior Court of  
14 Pennsylvania. There's always a common pleas judge, and  
15 there's also a magisterial district judge. There are three  
16 attorneys who are non-judges, and there are six lay members  
17 who are neither judges nor lawyers.

18 And, again, Pennsylvania -- there are a few states  
19 -- speaking of, you know, how to look at the system. There  
20 are a few states that have a plurality, I guess is the right  
21 word, of lay members. Pennsylvania has six, 50 percent.

22 Each -- half of those members are appointed by the  
23 Supreme Court. Half are appointed by the Governor's Office  
24 for staggered four year terms. No more than six can be  
25 republican. No more than six can be registered democrats.

1 And the members serve uncompensated. They're not paid for  
2 their service.

3 Q Are there any specific qualifications aside from  
4 either the judge position being a judge or the attorney  
5 position being an attorney?

6 A Or residents of the Commonwealth. Mr. Legg, I'm  
7 not sure that there are any specific qualifications. I do  
8 know that if you look at their resumes and backgrounds that  
9 are included in the annual reports, they're distinguished.  
10 But I don't believe there's any qualifications.

11 Q In terms of the four year terms, are they staggered  
12 so that you're having different members coming and going so  
13 the Board has some consistency?

14 A Correct.

15 Q Do you have any idea how -- how many leave at any  
16 particular time?

17 A Well, at the moment as we speak we have -- we're  
18 two short. We -- as of August 16th, 2009 former Chair  
19 Charles Clements, the magisterial district judge position,  
20 his four year term was concluded, and that has yet to be  
21 appointed. And there is a lay -- lay member, one of the six  
22 lay member positions that are vacant as well.

23 So we have two vacancies. Those have not yet been  
24 filled, and we're, what, November 9th. As of -- it's going  
25 to be even more interesting, and it's hard -- there are some

1 that -- you know, resignations and so forth. Next August  
2 we're going to have five vacancies. It just -- the cycle  
3 happens to come then. There will be five new openings in  
4 our Board.

5 Q On top of the two you have now?

6 A Well, hopefully those two --

7 Q Will be filled by then?

8 A -- will be filled by then. So hopefully we won't  
9 have seven at one time.

10 Q Are there any restrictions for the -- being on the  
11 Judicial Conduct Board?

12 A There's no member of the Supreme Court on there.  
13 The restrictions, if you want to address restrictions, Mr.  
14 Legg, it would occur in the event that there were a conflict  
15 of interest that would arise. And then that -- that member  
16 would either have to recuse themselves, deliberate upon a  
17 matter if it was comprehensive enough, and resign.

18 Q Does the Board itself have any particular duties  
19 and responsibilities?

20 A The duties and responsibilities of the Board are to  
21 follow their constitutional mandate to investigate and  
22 properly handle events that are presented to it for  
23 consideration and to issue an annual report.

24 Q Does the Board have the ability to create its own  
25 policies and procedures?

1 A It does.

2 Q Has the Board done that?

3 A Yes, sir, it has.

4 Q And these are -- would these be written policies  
5 and procedures?

6 A They are.

7 Q Are they published in any particular manner?

8 A I -- yes, they are. They're -- they are. The  
9 Judicial Conduct Board Rules of Procedure. And in addition,  
10 the Board has published a Code of Conduct -- a Code of  
11 Ethics, if you will, for Board members.

12 Since Board members -- members of the Judicial  
13 Conduct Board are held to the high responsibility of holding  
14 judges accountable, the Board has adopted the position in  
15 writing that staff and members should have -- hold  
16 themselves to a high standard of conduct. So there's that  
17 in addition.

18 Q There's a case pending right now before the United  
19 States Supreme Court regarding prosecutorial immunity and  
20 the scope of that immunity. You're being asked to be some  
21 sort of quasi-prosecutor. Is there any type of immunity  
22 that is provided to you or your staff in connection with  
23 your duties?

24 A Yes. Both the Board and the staff, by a provision  
25 in the constitution, are immune from civil suit from the

1 performance of their official duties.

2 Q Generally speaking, where does your jurisdiction  
3 lie?

4 A Our jurisdiction lies within -- any member of the  
5 Pennsylvania judiciary is subject to the authority and  
6 accountability of the Judicial Conduct Board, starting with  
7 the seven justices of the Supreme Court, the appellate court  
8 judges, the common pleas judges, common pleas judges, the  
9 judges of the Philadelphia municipal and traffic court, and  
10 all magisterial district judges.

11 There are about, as we speak, approximately 1,180  
12 Pennsylvania jurist and another 150 or so senior judges, all  
13 of whom, in effect, report to the Board, if you will, are  
14 under our jurisdiction.

15 BY MR. HOROHO:

16 Q Are there ethical rules governing the conduct of  
17 judges in Pennsylvania, Mr. Massa?

18 A Yes, sir.

19 Q And where do they come from?

20 A Two sources. First and foremost -- in terms of  
21 applicable to the judges from the -- above the level of  
22 magisterial district judges is the Code of Judicial Conduct.  
23 And the other rules applicable to magisterial district  
24 judges are the -- are rules governing the conduct of  
25 magisterial district judges. Two codes, if you will.

1 Q And when were they adopted?

2 A They were adopted in 1971, last amended in 1992.

3 And personally I -- I would have a recommendation in regards  
4 to those codes, if you would like me to address it now or  
5 later.

6 Q Maybe a little later. Generally what does the  
7 judicial ethical canons prescribe?

8 A There are seven canons of judicial conduct  
9 providing that a judicial officer must abide by the law,  
10 must act fairly, impartially, independently in the  
11 performance of their duties, must avoid the appearance of  
12 impropriety in fulfilling their judicial duties, that they  
13 must abide by certain administrative and adjudicatory  
14 responsibilities.

15 There are restrictions or guidelines as to what  
16 financial activities a judge can engage in. There is a  
17 canon applicable to political conduct. There is also a  
18 canon applicable to what outside activities or off the bench  
19 activities judges can engage in.

20 Q Do the judicial canons only relate to official  
21 actions of a judge?

22 A No. When I have the opportunity to speak to judges  
23 I emphasize the point that to you, Judge Cleland's words,  
24 because of the high responsibility that is placed upon the  
25 judiciary, from the local MDJ to the Chief Justice of our

1 Supreme Court, and the high visibility that the judges have  
2 not only on the bench, but in their community, they're --  
3 they have elevated expectations of conduct, personal and  
4 professional conduct.

5 And I even have a -- a page that I use in my power  
6 point presentations labeled 24/7. The canons, in effect,  
7 state that judges certainly have private lives, but because  
8 of their positions the code applies to them 24/7, 24 hours a  
9 day, seven days a week.

10 So it's a long answer to say that private off the  
11 bench conduct can cause difficulties for a judge and has.

12 Q Is there a statute of limitations for misconduct of  
13 a judge?

14 A Four years. Unless -- unless the circumstances  
15 indicate that the conduct which is complained of,  
16 notwithstanding that it occurred four years prior to the  
17 date of the receipt by the Board of the complaint,  
18 constitutes a pattern of conduct.

19 Q Now, you -- the information you provided to us  
20 indicates that there were different forms of discipline in  
21 the JCB system. The first is a letter of caution. When are  
22 they issued?

23 A You're speaking of the internal process of the  
24 Judicial Conduct Board before and until a complaint is filed  
25 with the Judicial Conduct Board?

1 Q Correct.

2 A In essence, Mr. Horoho, the -- the Board, upon  
3 completion of a preliminary or full investigation, has --  
4 can dismiss the case or the complaint as not having clear  
5 and convincing evidence that judicial misconduct has taken  
6 place; or file formal charges -- I beg your pardon, or file  
7 what we call a notice of full investigation, which is when  
8 we provide the jurist, such as a judge, with a full -- full  
9 detailed account of what the allegations are.

10 Ultimately the Board determines whether to dismiss  
11 a complaint after a full investigation or to file formal  
12 charges before the point of judicial discipline. Short of  
13 that, if the circumstances warrant, the Board has two -- the  
14 Board itself has two mechanisms that we use, letter of  
15 inquiry or a letter of caution. A letter of counsel, let me  
16 correct myself. Letter of caution and a letter of counsel.

17 Q Okay.

18 A A letter of counsel is issued when the Board feels  
19 that there is clear and convincing evidence that judicial  
20 misconduct has taken place, but because of mitigating  
21 circumstances, such as a one time event, otherwise long and  
22 distinguished judicial career, that the matter can be  
23 handled privately.

24 A letter of caution requires a judicial officer to  
25 come to Harrisburg to meet with chief counsel and/or the

1 chair person of the Board to have a dressing down, go to the  
2 principals office, and actually sign a letter of counsel  
3 which becomes -- still remains a complaint, but remains a  
4 matter of the file.

5 The other avenue is a letter of caution when it's a  
6 relatively minor transgression, and it's kind of an  
7 advisory. Judge, you might want it take a look at Canon A  
8 or B or Rule 5 or 6. It's been brought to our attention  
9 that this instance occurred. We know you've done a good  
10 job, but take a look at this and be cautious.

11 And generally those letters of caution have been  
12 welcomed by judiciary -- actually we received letters of --  
13 of appreciation for the Board calling these matters to a  
14 judge's attention.

15 Q Now, returning back to the 2008 annual report. I  
16 note out of the 636 complaints there were 14 letters of  
17 caution. Would that be correct?

18 A Excuse me a minute. I'll confirm that. In 2008  
19 the Board received 638 formal complaints, of which 579 were  
20 dismissed after preliminary inquiry.

21 Q And there were 14 letters of caution issued?

22 A There were 14 letters of caution issued, 8 letters  
23 of counsel, and on two occasions, two times, the Board filed  
24 formal charges before the Court of Judicial Discipline.

25 Q Okay. Were there any letters of caution issued to

1 members of the Common Pleas Court of Luzerne County during  
2 2008?

3 A Any letters of?

4 Q Caution issued out of the 14? Were any of those 14  
5 letters that were letters of caution that were issued, were  
6 they issued to any members of the Common Pleas Bench of  
7 Luzerne County?

8 A I want to be careful about the restrictions on  
9 confidentiality, but I do not believe there were.

10 Q Okay. How about --

11 A I'm speaking only from recollection, memory.

12 Q Okay. How about the letters of counsel issued?  
13 There were eight. Any issued to members of The Court of  
14 Common Pleas of Luzerne County?

15 A I believe that's confidential information, but to  
16 be candid and fully cooperative with this Commission, I do  
17 not believe.

18 Q Do you have a recollection, and I'm looking at --  
19 from 2004 through 2008 there were 2,917 complaints received,  
20 81 letters of caution issued, 54 letters of counsel issued.  
21 Out of those two columns do you recollect any being issued  
22 to members of the Common Pleas Court of Luzerne County?

23 A I could neither confirm or deny that. It would not  
24 be unusual. You know, by -- by the number -- by the numbers  
25 which you have accurately stated, it would not be unusual,

1 sir. I cannot either confirm or deny.

2 Q Okay. Let's go down to the last column, formal  
3 charges filed. There were 17 over that same period of time,  
4 two during calendar year 2008. Any formal charges filed  
5 against judges -- any judges of -- members of the judiciary  
6 in Luzerne County?

7 A 2008?

8 Q Right, 2008?

9 A No, sir.

10 Q How about from 2004 through 2007?

11 A Yes.

12 Q And how many?

13 A Two that readily come to mind, one which is still  
14 in litigation, still pending, and there was a formal charge  
15 brought against a Luzerne County magisterial district judge  
16 before the Court of Judicial Discipline.

17 Q And you're at liberty to indicate -- identify those  
18 two complaints?

19 A Yes. They're a matter of public record.

20 Q Okay.

21 A Do you want me to?

22 Q Yes, please.

23 A I can't give you the term and number before the  
24 Court of Judicial Discipline, but the one matter was in re  
25 Luzerne County MDJ, I believe, Donald Whittaker, Whitaker.

1 And the other matter was in re Luzerne County Common Pleas  
2 Judge Ann Lokuta.

3 Q Okay. Can you talk a little bit about the  
4 intervention when you have a mental health or substance  
5 abuse issue with members of the judiciary? Are they handled  
6 any -- in any special way?

7 A They are. And I believe that's one of the areas,  
8 again, of emphasis that was given to me as a charge by the  
9 Board when I was retained and appointed as chief counsel in  
10 2002 was to come up with a mechanism whereby Pennsylvania  
11 judicial officials who suffered from mental or physical  
12 infirmity -- infirmity that affected their ability to carry  
13 out their judicial offices were held.

14 Studies show that, you know, judges are people.  
15 Judges are fellow human beings. And they're not -- you  
16 know, like the legal profession, I can't quote the  
17 statistics accurately, but, you know, one out of -- one out  
18 of eight or nine have some sort of issues, whether it be  
19 alcohol related, drug related, or mental infirmity.

20 So we have created a special process, protocol  
21 which addresses those issues in a very private, highly  
22 professional, highly competent manner involving  
23 professionals in the field.

24 So psychiatry, drug addiction whereby a judge can  
25 kind of be treated quietly, professionally, or agree to

1 leave the bench with his or her dignity intact and with  
2 professional attention being brought to their needs.

3 BY MR. LEGG:

4 Q Mr. Massa, you referenced the filing of formal  
5 charges. Can you explain just briefly how that comes about?

6 A Yes. Formal charges, Mr. Legg, like any formal  
7 action that's taken by the Judicial Conduct Board, must be  
8 only with the approval of the Board itself. And formal  
9 charges are brought only after there is a full investigation  
10 and the judicial officer is afforded -- is provided a notice  
11 of full investigation and is afforded an opportunity to  
12 respond in writing.

13 The formal charge is much like -- I don't like --  
14 this is not an exact analogy, but it's much like -- as a  
15 former District Attorney, it's much like a criminal  
16 information filed against a criminal defendant. That's  
17 unfortunate in the way I used that analogy because the  
18 proceedings are not criminal.

19 The Court of Judicial -- the Board cannot seek --  
20 in the Court of Judicial Discipline cannot arrest a  
21 Defendant, cannot judge, cannot impose a fine or cost,  
22 cannot send a jurist to jail. But formal charges are filed  
23 with the Court of Judicial Discipline.

24 The sole burden of proof is on the Board. Because  
25 it's not a criminal matter, it's not beyond a reasonable

1 doubt. It's beyond -- it's with clear and convincing  
2 evidence. The sole burden is on the Board. The jurist is  
3 deemed to be not guilty of an ethical violation. They are  
4 entitled to counsel. And once the formal charges are filed  
5 before the Court of Judicial Discipline the cloak of  
6 confidentiality dissipates, and all the proceedings before  
7 the Court of Judicial Discipline are open to the public.  
8 It's a matter of record and open.

9 Q At that point in time you essentially, either  
10 yourself or one of the other staff attorneys, prosecute, for  
11 lack of a better word, the case?

12 A Correct.

13 Q Is the Conduct Board at that point in time still  
14 actively involved, or after they've made the decision to  
15 authorize the charges, do the staff attorneys take over and  
16 prosecute the matter?

17 A That's a combination of the two. The Board always  
18 stays involved because they have the ultimate  
19 responsibility. For example, how does the Board stay  
20 involved after formal charges that have been brought? If  
21 after either during the prosecution or the trial of the case  
22 or after the Court of Judicial Discipline has found that the  
23 Board has proven the charges, they then schedule a separate  
24 sanction hearing.

25 The process is rather important for the Commission

1 and public to know because it doesn't act like -- the  
2 process is not similar to a civil or criminal jury where a  
3 case is presented to the court, parties are represented by  
4 respective counsel. The case -- the court listens to  
5 argument and receives evidence, listens to testimony.

6 Unlike a jury, they don't retire into a room and  
7 come out with a verdict that same day or within a day or two  
8 later. They take the matter under advisement and then issue  
9 an opinion later.

10 If the court deems that ethical misconduct has  
11 taken place, then a sanction hearing is scheduled. At which  
12 time the entire eight member Board -- court participates  
13 between that time. There is the judge -- the respondent  
14 judge makes a recommendation that they are willing to accept  
15 probation or willing to accept a suspension, will counsel,  
16 will chief counsel, join that recommendation? I cannot --  
17 if I think it's -- has some viability, I report back to the  
18 -- to the Board for authority to engage in that.

19 Q Well, that's an interesting question. Does this  
20 mean that the Board itself wouldn't make a determination as  
21 to the recommendations for sanction, that counsel would  
22 normally make that decision; or is it only when you need a  
23 stipulation that you go to the Board?

24 A No. Generally I -- it's the ultimate  
25 responsibility of the Board, and the Board controls that.

1           Q     So the Board would -- in any of these publications  
2 would actually meet and make some type of -- either through  
3 your recommendation or otherwise, some type of determination  
4 as to what, as a Board, they should recommend to the Court  
5 of Judicial Discipline?

6           A     It certainly would do it on its own. It would do  
7 it through counsel. But I would always be acting on the  
8 behalf of the Board.

9           Q     That's my question. Do you have independence to  
10 make that decision, or is it something that the Board  
11 actually has to be involved in the decision making process?

12          A     Counsel, myself, or the other two attorneys  
13 certainly have prosecutorial independence to who we're going  
14 to call, what questions we ask, et cetera. But it's our  
15 policy and protocol to defer to the Board for a specific  
16 recommendation. Do we seek removal? Do we seek suspension?  
17 If so, for how long? Are we willing to recommend probation,  
18 et cetera?

19          Q     After the filing of formal charges is the system  
20 akin to the criminal system where there's a discovery, or  
21 even the civil system where the effective jurist has a  
22 chance for discovery?

23          A     Absolutely, full scope of discovery.

24          Q     And would the Board prepare reports in the same  
25 fashion that say like a police department prepares reports?

1     Would you have reports that you could share with attorneys  
2     in terms of statements that were taken, evidence that was  
3     obtained, things of that nature?

4           A     Yes.  There's -- after the formal charges have been  
5     filed and the judge, if he or she chooses, files a formal  
6     response to the Court of Judicial Discipline, that court  
7     schedules a pretrial conference.

8                     And one of the components of that pretrial  
9     conference is to assure on the record that discovery has  
10    been completed, including those matter that you referred to.  
11    Including -- both sides have to inform the court of  
12    witnesses, what witnesses will be called in a suit, and a  
13    synopsis of proper testimony of each witness.

14           Q     Does the Board itself, or you as the chief counsel,  
15    have any particular discovery policy for attorneys that  
16    represent jurists?  For instance, in our office we have  
17    what's called an open file policy that we'll sit down with  
18    the defense attorney and let them go through our entire  
19    files.

20                     Is there something in terms of what you as the  
21    Board or counsel for the Board turn over to jurists or their  
22    attorneys, or is it an open file policy?

23           A     It's not totally open file.  It's wide ranging.  It  
24    does not include the deliberations, for example, of the  
25    Board.  But every -- every investigative report, every

1 communication with a witness is turned over to the jurist.  
2 There's nothing hidden.

3 Q What are the potential disciplines that a jurist  
4 might receive if they are found by clear and convincing  
5 evidence to have violated the canon of judicial evidence?

6 A Of course that discipline is imposed by the Court  
7 of Judicial Discipline, and it can range from -- and, again,  
8 I want to emphasize that we don't bat -- we don't bat a  
9 thousand.

10 There are some cases, i.e. the Whittaker case,  
11 where the Court of Judicial Discipline ruled that the Board  
12 had not proven its case. But what it does, the Court of  
13 Judicial Discipline can -- ranging from the least onerous to  
14 the most serious, can impose a warning, a reprimand, a  
15 public reprimand to the judge, suspension with pay,  
16 suspension without pay, removal from the bench, removal from  
17 the bench with permanent prohibition from ever being able to  
18 serve as a judge in the Commonwealth in the future.

19 Ancillary consequence, this has nothing to do --  
20 the Board can't seek it. The Court of Judicial Discipline  
21 cannot impose it. In the event that a judge is removed from  
22 the bench, either because of the Commission of a felony or  
23 because the actions of the misconduct has brought, quote,  
24 disrepute upon the judiciary, close, double quote,  
25 independently of the Board or the Court of Judicial

1 Discipline, the State Employee Retirement System, SERS, can  
2 revoke a jurist's pension.

3 Q I want to back up just a little bit to go to the  
4 point where formal charges haven't been filed.

5 A Have not?

6 Q Have not. And it's my understanding that there is  
7 a constitutional provision that provides for confidentiality  
8 in terms of what the Board does; is that right?

9 A That's right, correct.

10 Q And that's also, I believe, encompassed within the  
11 statute itself that parrots the constitution?

12 A That's right.

13 Q Does the Board, or you as chief counsel, have any  
14 special rules or policies or procedures in terms of how that  
15 confidentiality is maintained, protected, or interpreted?

16 A We tried -- our general protocol is strict  
17 adherence to those constitutional mandates. If I may give  
18 you an example. And if there were a question -- if we  
19 received -- and we often do. If you receive or you have a  
20 complaint within your -- pending against a particular judge,  
21 we cannot either confirm nor deny it. We have no comment  
22 whatsoever. We try -- we attempt as best we can to strictly  
23 adhere to that mandate.

24 Q Is there any other way besides the filing of formal  
25 charges where that confidentiality can be lifted?

1           A     We have no -- the Board -- the Board has no control  
2 over -- we urge complainants not to make the complaint  
3 public. After all, that's what the constitution says. We  
4 have no control over that. If the complainant makes their  
5 complaint public, then the judicial officer can waive  
6 confidentiality, but it's not a broad waiver.

7                     Under those circumstances, plaintiff files a  
8 complaint with the Judicial Conduct Board, private,  
9 confidential. Notwithstanding, complainant calls a press  
10 conference, goes to the TV, local TV station, says I filed  
11 this complaint against Judge Doe, and that -- and  
12 disseminates that complaint.

13                    The judicial officer who's the subject of that  
14 complaint can waive confidentiality and ask that the  
15 complaint be made public. But even in those circumstances  
16 the confidentiality protections don't completely dissipate.

17                    The Board is then permitted to a very limited  
18 explanation of, No. 1, a complaint was received. No. 2, the  
19 judge is presumed to have not violated the code. The judge,  
20 you know -- the sole burden of proof is on the Board of  
21 clear and convincing evidence, and generically explain the  
22 process.

23            Q     Is it fair to say that the confidentiality  
24 protection is for the judge to waive?

25            A     Would you repeat that, please?

1           Q     There are certain privileges in the law that both  
2 parties would have to waive, the confidentiality  
3 communication privilege between spouses, for instance.

4           A     Correct.

5           Q     Do you view this particular privilege that a judge  
6 has, or an affected jurist has, under the constitution to be  
7 their privilege, or do you view it as a privilege that  
8 protects the Judicial Conduct Board as well?

9           A     Both, both. Because the -- the judge can invoke  
10 confidentiality. It is indeed entitled by the constitution.  
11 I believe also the other side of the coin is that the  
12 Judicial Conduct Board -- the cloak of confidentiality and  
13 the confidentiality provisions of the constitution apply to  
14 the Board as well for three reasons.

15                   No. 1, to protect the identity of the complainants,  
16 to prevent complainants from retaliation or retribution, to  
17 encourage complainants to come forward.

18                   The second component of the confidentiality as  
19 applicable to the Board is to protect the deliberative  
20 process of the Board.

21                   And the third is the attorney/client privilege so  
22 that any recommendations or work product between counsel and  
23 the Board are protected by the sanctity of confidentiality.

24           Q     So is it your testimony that if the judge publicly  
25 or took whatever steps were necessary to waive the

1 confidentiality, that the Judicial Conduct Board could  
2 refuse to release information?

3 A We could release -- we could make certain  
4 explanations, as I have -- as I have indicated within those  
5 restrictions.

6 Q So even if the judge wanted a total release or  
7 wanted to waive confidentiality entirely, it would be the  
8 Board's position that, in fact, the Board would decide the  
9 scope of that particular waiver?

10 A That's the Board's position, sir.

11 Q Is that a written policy, or is that a informal  
12 policy?

13 A That's a formal policy and long standing protocol.  
14 I can't state at the moment and give you -- cite you chapter  
15 and verse.

16 Q How is confidentiality by a judge waived?

17 A Ordinarily in writing. But on rare occasions,  
18 verbally.

19 Q Does the Board have some type of form or some other  
20 type of documentation to verify that a judge has waived  
21 confidentiality?

22 A There's no specific form, sir.

23 Q If a judge were to call the Judicial Conduct Board  
24 to ask for a waiver, would you direct them to send you a  
25 correspondence, or how would that work?

1           A     Well, first of all, if -- if a judge is represented  
2     by counsel, we would ask that that come through counsel.  
3     Ordinarily would ask that it be forwarded by -- in writing  
4     by the judicial official himself or herself.

5           Q     Does it have to be witnessed, notarized, anything  
6     of that?

7           A     There's no requirement for that. We would prefer  
8     that, but it's not -- it's not mandated.

9           Q     Is there any instances where a judge's conduct  
10    constitutes that they a de facto waiver?

11          A     I -- I would assume that there might be some, yes.

12    BY MR. HOROHO:

13          Q     How does the JCB investigate judicial misconduct,  
14    Mr. Massa?

15          A     I'd like to begin to answer that question by a  
16    little bit of background. In 2002, in March of 2002 when I  
17    started my tenure, the court had at that time, due to  
18    unusual circumstances, one investigator.

19                 My first action, official action, as chief counsel  
20    was in May of that year to bring a second investigator on  
21    board. From 2002 until late November of 2006 the Board had  
22    two investigators to handle the case load that we've shared  
23    with you statistically.

24                 In late November of 2000 -- mid-November of 2006  
25    circumstances and budget enabled the Board to hire a third

1 investigator. So that presently we have seven of the nine  
2 staff members located at the Pennsylvania Judicial Center.

3 We have a Pittsburgh office, which is our western  
4 investigator. We have a Philadelphia area office, which is  
5 our eastern investigator. We have three investigators.

6 Every complaint, as I stated, comes across my desk.  
7 If I -- I as chief counsel deem that it's a matter other  
8 than what we call a dismissal after preliminary inquiry, I  
9 or one of my two assistants -- I assign the case to the  
10 legal staff, either accept it myself or assign it to one of  
11 my two assistant counsels.

12 Counsel then makes a determination as to whether to  
13 refer it to an investigator or not. Our investigators, I  
14 must say, are -- have incredible backgrounds. It wasn't  
15 planned, but all three are retired FBI agents with  
16 incredible records with the FBI. Highly skilled  
17 individuals.

18 And then counsel works with the investigator to  
19 commence an investigation. It can range from telephonic  
20 interviews to on site one-on-one interviews. Ultimately the  
21 investigator reports to -- to counsel, and counsel reports  
22 to the Board.

23 Q Okay. Now, let me take you -- I'm going to mark as  
24 my next exhibit, or the next exhibit, the Judicial Conduct  
25 Board complaint process that your annual report outlines.

1           Before I do that, before we talk about what kinds  
2 of allegations the Board will consider, can you tell us what  
3 allegations the Board will not consider?

4           A     Well, first, not only what allegations we cannot  
5 consider, but against what complaint -- what respondents do  
6 we not even accept a complaint. We're not the Disciplinary  
7 Board. So we have no responsibility for what attorneys do  
8 or do not do in derogation of their professional  
9 responsibilities.

10           We have no control over workers' compensation  
11 judges, federal judges, police officers. We have no  
12 responsibility over masters or mediators. We do have -- we  
13 do not address legal -- legal error. We're not an appellate  
14 body, even though a good number of the complaints that we  
15 receive and dismiss involve either an inadvertent or blatant  
16 attempt by a complainant to circumvent the appellate  
17 process.

18           Clear example, matter before magisterial district  
19 judge, judge rules. Our procedures, as all attorneys and  
20 judges know, that party, either party, has a right to file a  
21 petition for an appeal hearing before a Court of Common  
22 Pleas.

23           Often times we receive a complaint where the party  
24 hasn't taken that step, and they try to cloak their --  
25 they're asking the court -- the Board to do what only a

1 court can do.

2 Q When they allege legal error, what is the response  
3 from the -- from your office as to that complainant?

4 A Again, even that complaint, I don't have the  
5 authority, staff doesn't have the authority to dismiss it.  
6 We have to receive it, analyze it, report it to the Board.

7 The Board -- our rules provide we have -- the  
8 constitution provides that every single instance when the  
9 Board has taken final action, the complaining party must be  
10 apprised of the Board's action and why.

11 In case of a legal error, generally it's a short,  
12 direct letter that the Board has considered the matter. It  
13 has no jurisdiction over legal error. They're not an  
14 appellate body. The matter's been dismissed. Thank you for  
15 communicating with the Board.

16 Q In your materials you do mention there were two  
17 categories of the many other types of conduct that the Board  
18 would consider in a complaint.

19 Could you take a moment and describe those two  
20 categories for us? I think one is the mental or physical  
21 disability. Maybe you've already touched on that.

22 A May I refer to my notes?

23 Q Sure.

24 A Excuse me, please, for a moment. Let me start with  
25 off the bench conduct first. Abusing contempt power -- no,

1 this is on the bench power. Abusing contempt power,  
2 interfering with the attorney/client relationship,  
3 communicating improperly with only one side to a proceeding,  
4 commenting or interfering with a pending or impending case,  
5 engaging in improper political campaign activities,  
6 misappropriating or misusing public property, funds or  
7 resources, misusing court staff for personal reasons.

8 Q I guess I'm looking -- if I'm a citizen, there  
9 isn't any precise definition in -- in your rules and  
10 regulation about what ethical misconduct is. It's not  
11 defined, right?

12 A That's correct. It's not.

13 Q Okay. So how would one determine that it's  
14 appropriate to file a complaint against a judge?

15 A It's a fair question. I think one way of answering  
16 -- it's difficult to, in a sentence or a paragraph, to  
17 define judicial misconduct. I don't know whether this is a  
18 fair analogy, but it's -- I'm trying to think of the famous,  
19 I believe, 1968 case before the Supreme Court dealing with  
20 obscenity when the Supreme Court said it's hard to define,  
21 but you know it when you see it.

22 You know, the blatant -- the blatant forms of  
23 judicial misconduct, I think, hit anyone between the eyes.  
24 Absurd courtroom behavior, screaming, yelling profanities,  
25 walking out of the courtroom during court proceedings,

1 making racial or gender derogatory comments, accepting  
2 bribes, interfering -- telling parties, don't you appeal my  
3 case or you'll be -- you'll be sorry, interfering with cases  
4 in another judge's court. Those types of examples are so  
5 blatant that anyone should -- should know that it's wrong.

6 But I concur, sir, it's not defined in any one  
7 section. We try to -- in our -- in our publications, in our  
8 annual reports, in our brochures, on our website we try to  
9 have a laundry list of examples of conduct that are  
10 applicable so that an individual who makes use of those  
11 resources could get a very clear idea of what is appropriate  
12 to complain to the Board.

13 Q And complaints could be filed not just by lawyers  
14 or public officials, but by other judges against judges,  
15 correct?

16 A Absolutely. And may I make a specific reference in  
17 that regard?

18 Q Absolutely. Go ahead.

19 A You had, I think on October 14th, a representative  
20 of the Disciplinary Board. But recently Paul Killian, my  
21 counterpart, chief counsel to the Judicial Conduct Board,  
22 and I were interviewed by the editor or -- of the  
23 Pennsylvania Lawyer Magazine.

24 This is a widely dispensed magazine that's  
25 available to the legal profession. And the -- the lead

1 article is entitled Confronting Judicial Misconduct.

2 Mr. Killian and I were interviewed for this -- for  
3 this article. Mr. Killian pointed out that it's the  
4 mandatory responsibility of an attorney by Rule 83(b) to  
5 report judicial misconduct. I opined that there is a  
6 similar responsibility on the behalf -- on behalf of  
7 attorneys or judges to report judicial misconduct.

8 And indeed in my opinion the failure to do so may,  
9 may under appropriate circumstance, be a violation of either  
10 the Judicial Code of Conduct on the one hand or the Code of  
11 Responsibility -- Professional Responsibilities that apply  
12 to attorneys. And I would commend to your attention this  
13 article.

14 Q Would you sense a reluctance by individuals who  
15 could file complaints against members of the judiciary to  
16 not do so?

17 A I think human nature being what it is, Mr. Horoho,  
18 that lawyers and judges probably have a reluctance for  
19 reasons, you know, of human nature. We do -- I emphasize  
20 that we do receive -- it's a small minority, but on occasion  
21 we do receive complaints from attorneys, more attorneys, but  
22 from some judicial officials reporting judicial misconduct.  
23 It's not uncommon. It's a small percentage, but it's not  
24 uncommon.

25 Q Now, returning back to your complaint process in

1 the exhibit. Will the JCB investigate alleged misconduct  
2 even where a complaint is not filed, either from published  
3 reports or from third parties?

4 A We have that authority to do so. And by the way,  
5 now that you made this an exhibit, I'm sorry I didn't make  
6 the print larger.

7 Q Yeah. How is that done typically if there's not a  
8 complaint filed? Do you --

9 A The Board has -- has the authority on its own  
10 initiative if it receives information to open up a  
11 complaint, open up an investigative complaint.

12 Q All right. Now, it starts with the confidentiality  
13 complaint filed. That's -- you were talking about the  
14 initial screening. And I think your materials indicate that  
15 the Board investigates every allegation. Is that --

16 A We receive and review each allegation, even the  
17 spurious ones that I made reference to.

18 Q Now, do you divide those among your staff people  
19 when they come in?

20 A Yes, sir.

21 Q Okay. And then what happens -- take us through  
22 that process. Complaint comes in. Who initially screens  
23 that, you, or do you have a -- an assistant to do that?

24 A Complaint came -- comes in before I left my office  
25 this morning. I noted -- I asked specifically, did we get

1 any complaints today? Today's Monday. We usually --  
2 Mondays and Tuesdays -- you know, the weekend is passed. We  
3 had -- there are six complaints that will be sitting on my  
4 desk tomorrow morning. Every complaint is docketed and  
5 forwarded to me for review. I make a review, enter it into  
6 the computer. I don't know how much detail you want. But I  
7 review it and then assign it to one of three -- myself or  
8 two counsel.

9 Q As you know, one of our charges is to determine the  
10 effectiveness of the judicial system and how to improve it.

11 You were talking about the -- the limited number of  
12 investigators that you had. I would assume, if I -- if  
13 asked one way to improve the judicial system, the discipline  
14 of judicial -- the judiciary would be to increase your  
15 staff, correct?

16 A That's correct. Can I be specific in that regard?

17 Q Well, let me ask you this.

18 A Okay.

19 Q If you had an additional investigator, and let's  
20 say two additional staff attorneys, how would that have  
21 increased the effectiveness of the JCB in 2008 in the 638 or  
22 636 complaints that were filed? How would that increase  
23 your effectiveness?

24 A An excellent question. 636 complaints in 2008 was  
25 a record. Today those six complaints that are going to be

1 on my desk tomorrow were the last, 590. We're going to  
2 break a new record this year.

3 As -- as I'm sitting here, ladies and gentlemen of  
4 the Commission, the Board, the Judicial Conduct Board has  
5 375 open complaints. That's 125 for each attorney. Of  
6 those 375 complaints about 90 of them are assigned to our  
7 investigators. That's about 30 complaints per investigator.

8 We don't work on one case at a time. That's been  
9 -- I think there's been a misimpression. And please  
10 understand that we only have a presence statewide. Our  
11 visibility is present, but we only have a physical presence  
12 in three counties. Yet our -- our domain is statewide.

13 So would I welcome the funds and the viability and  
14 the ability to retain additional staff? Absolutely.  
15 Would it improve our timeliness and efficiency? I believe  
16 it would.

17 Q Back to the exhibit. After the initial screening  
18 there is a potential referral to other agencies. Do you see  
19 that?

20 A Yes.

21 Q What circumstances would that occur?

22 A Well, the -- the referral to another agency on the  
23 left side of that diagram would -- the most obvious is if we  
24 receive a complaint against an attorney. We refer it to the  
25 D Board.

1 Q Okay.

2 A If we receive an allegation -- a complaint alleging  
3 serious criminal conduct, the Board's protocol is to refer  
4 that matter to the appropriate public agency, either the  
5 local District Attorney, the Attorney General's Office, the  
6 US Attorney's Office, and to defer investigation -- further  
7 investigation until the criminal judge -- the criminal  
8 charges are completed.

9 Q Now, who makes that determination, you or the  
10 Board?

11 A The Board upon my recommendation.

12 Q Now, is that recommendation written? Do you  
13 prepare a written report as it relates to referring a matter  
14 to the US Attorney's Office or the District Attorney's  
15 Office?

16 A Virtually without -- without exception that would  
17 be a written recommendation.

18 Q Do you do that in --

19 A Yes, it would be a written recommendation.

20 Q Okay. Do you do that in consultation with any of  
21 your investigators?

22 A Oh, yes, sure.

23 Q Do you interview witnesses to -- how much of --  
24 what do you do as far as your investigation up to that point  
25 to determine that this matter should be referred to another

1 agency?

2 A There's a preliminary investigation, gathering of  
3 information. There could be interviews. Ultimately, again,  
4 staff -- investigative staff reports to counsel. Counsel  
5 reports to the Board. Report is prepared for the Board's  
6 consideration with a recommendation, and then appropriate  
7 action is taken as deemed appropriate -- as deemed proper by  
8 the -- by the Board.

9 Q If the complaint contains criminal allegations and  
10 also ethical allegations, you refer the -- that portion of  
11 the complaint to US Attorney's Office or the District  
12 Attorney's Office, does the Board continue to investigate  
13 the ethical -- alleged ethical violations of the complaint?

14 A It may or may not depending upon the circumstances.

15 Q Who makes that determination?

16 A Chief counsel with the advice and consent of the  
17 Board.

18 Q What's your basis to defer or wait on the ethical  
19 violations, investigating the ethical violations?

20 A If I could give you an example. Again, I believe  
21 this is a fair example, and this has not occurred. So --  
22 but I believe it's an appropriate response to your -- your  
23 appropriate question.

24 If we were to receive a complaint that a judge has  
25 been discourteous, has yelled, ranted and raved in court,

1 has sexually harassed an employee, and by the way has been  
2 charged with the crime of rape, Felony I, crime of rape.

3 Is the fact that the complaint contains allegations  
4 of sexual harassment, profanity to the courtroom, et cetera,  
5 is that a violation of the Code of Judicial Conduct? Yes,  
6 it is.

7 Q Would you consider that fairly serious?

8 A I'm sorry?

9 Q Would you consider -- would the Board consider that  
10 serious allegations?

11 A You mean the non-criminal?

12 Q The non-criminal?

13 A Oh, sure.

14 Q Then why wouldn't they continue to investigate that  
15 as the criminal side is being investigated?

16 A Matter of resources, of time, judgement on a case  
17 by case basis.

18 Q Who makes that determination?

19 A Again, chief counsel and/or with the advice and  
20 consent of the Board.

21 Q How long would you wait -- if you did cease waiting  
22 to investigate any further the ethical violations of a  
23 complaint that has criminal -- alleged criminal violations,  
24 how long would you wait if you deferred the investigation?

25 A If the -- if the complaint were solely -- solely

1 involved criminal violations, we would defer them obviously  
2 until the appropriate agency completed it. If a complaint  
3 contained both criminal and non-criminal, criminal  
4 allegations and ethical violations of the Code of Judicial  
5 Conduct as well, that would be determined on a case by case  
6 basis.

7 I can't be any more specific on that at the moment.  
8 It would be a judgement call as to what were the nature of  
9 the ethical allegations, the allegations involving ethical  
10 misconduct, how serious were they. Are they provable or  
11 not, et cetera.

12 Q Why would you wait at all? Why would you wait at  
13 all?

14 A Again, it depends upon the circumstances of a  
15 particular case.

16 Q Would the --

17 A It may or may not be appropriate in a particular  
18 case.

19 Q Are you told by the referring agency to cease your  
20 investigation?

21 A Oh, no.

22 Q Is there --

23 A No.

24 Q Is there ongoing -- if you -- if you were, would  
25 you be bound by that directive?

1 A No.

2 Q Okay.

3 A We -- never in any circumstances. I could not  
4 imagine if we were -- if we were to continue an  
5 investigation under the example that you have provided, and  
6 if we were -- and if our investigation as to the  
7 non-criminal aspects of the allegation -- of the complaint  
8 were to involve an area where the -- the District Attorney,  
9 the US Attorney, the Attorney General felt was improper,  
10 we'd certainly defer.

11 We would do nothing that would interfere with the  
12 criminal investigation because that's where the real  
13 consequences lie of fine, imprisonment, conviction, criminal  
14 record, et cetera.

15 Q Is there ongoing communication between you and the  
16 referring agency as you wait for the criminal allegations to  
17 be investigated and determined?

18 A There can be as to the status and so forth.

19 Q Are you concerned about the confidentiality when  
20 you start releasing information to referring agencies?

21 A Oh, absolutely.

22 Q Okay. How -- and you testified in front of the  
23 grand jury on behalf of the United States Attorney's Office  
24 in -- in the complaint that was filed by your office. How  
25 did you handle that confidential situation?

1           A     That was filed by the office?  I'm not sure you --  
2     that was -- I testified before the federal grand jury in a  
3     matter that was received by our -- by the Board.

4           Q     Right.  And how did you -- before you testified at  
5     the grand jury how did you handle the confidentiality issues  
6     concerning that?

7           A     Well, first of all, again, the Board has -- has a  
8     strict adherence to the confidentiality provisions of the  
9     constitution.  Rule 17 of -- Rule 17 of our Rules of JC --  
10    Judicial Conduct Board Rules of Procedure, 17 permits and  
11    mandates that the Board release and refer criminal matters  
12    to the appropriate agency.

13                    If a subpoena -- we honor a subpoena or a written  
14    request in writing from -- from the US Attorney, from the  
15    Attorney General's Office, from the local District Attorney,  
16    but that's limited in scope.

17                    If I, as a member -- as a citizen of the United  
18    States, as an attorney, as chief counsel receive a subpoena  
19    to testify before a grand jury, I honor that, sir.

20           Q     Now, doesn't that affect the confidentiality of the  
21    complaint that's filed?

22           A     First of all, it depends upon the circumstances and  
23    what the testimony was.  And obviously I cannot even  
24    inferentially divulge grand jury proceedings.

25           Q     Okay.  Let's return to the -- your complaint

1 process again. After the complaint is reviewed by chief  
2 counsel, what are the options at that point?

3 A Well, it's presented -- it's presented to the  
4 Board.

5 Q Okay.

6 A And the Board at that time has one of two options,  
7 either to dismiss the complaint as being de minimis, or that  
8 there's obviously no violation, or to authorize counsel to  
9 continue its investigation, what we call a full  
10 investigation.

11 And at that stage we -- we do a -- do a fuller  
12 investigation, report back to the Board. And upon the  
13 Board's authorization we send a notice of full investigation  
14 to the respondent judge, detailed, written document  
15 specifying in considerable detail what specific allegations  
16 have arisen, what violations we believe may be involved.

17 Q And the preliminary investigation occurs in every  
18 case?

19 A Yes, sir.

20 Q Are witnesses interviewed in every case?

21 A No.

22 Q Who usually are the witnesses, if they are  
23 interviewed?

24 A The complaining party. May I give you an example?  
25 Just as an example, we get a complaint alleging that

1 Magisterial District Judge John or Jane Doe presided over a  
2 matter, whether it's a criminal -- common example, violation  
3 of the traffic code.

4 John or David Defendant appears for the hearing  
5 before the MDJ, is told to report at 10:30, wants to be  
6 early, goes at 10:15. Alleges to see the MDJ and the  
7 arresting officer in the back room laughing and sharing a  
8 cup of coffee.

9 Court convenes at 10:30. Judge listens to the  
10 police officer's testimony, and then finds the Defendant  
11 guilty without affording the Defendant an opportunity to  
12 testify.

13 Under those circumstances we ask for the MDJ's  
14 file. We speak to the complaining party. We ask if there  
15 are any witnesses to corroborate his or her story. That's  
16 an example.

17 Q You talk to the judge who's being accused?

18 A Ordinarily not at that stage, not until a notice of  
19 full investigation. Always after a full investigation we  
20 specifically provide the allegation to the judge and invite  
21 and encourage their written response.

22 Q How about anonymous complaints? Do you accept  
23 anonymous complaints?

24 A Yes.

25 Q And what credibility, if any, do you give those?

1           A     Again, it depends upon the -- upon the quality or  
2     the extensiveness of the complaint.  There are some states  
3     that absolutely do not accept an anonymous complaint.  I  
4     think it's fair to state that it's a position of the Board  
5     that it is preferred that the complaining party use our  
6     complaint form and/or sign a verified complaint because of  
7     the obvious reasons, the identity and the ease with which to  
8     follow up, to communicate, and start the process by readily  
9     talking with the complaining party or witnesses.

10                     But yes, we do receive and consider anonymous  
11     complaints.

12           Q     Are there any rules as to the length of time of  
13     this preliminary investigation?

14           A     We -- the Board attempts, as a very earnest effort,  
15     to do its work in a timely fashion.  We have internal -- we  
16     have internal time tables.  We are earnestly attempting,  
17     ladies and gentlemen, to, you know, improve that timeliness.

18                     We have a committee, a subcommittee, looking at our  
19     internal operating procedures to address the very issue of  
20     timeliness and how that can be addressed and improved upon.

21           Q     Okay.  If there is a full investigation, what --  
22     what's the process after that?

23           A     The notice is sent to -- with the authorization of  
24     the Board, the notice is sent to the respondent judge.

25           Q     Now, is there a time period where the judge would

1 respond?

2 A 20 days or -- or the -- it's not uncommon,  
3 depending upon the seriousness of the matter -- again, in  
4 our -- in our office -- our notice contains two things.  
5 First of all, we highlight the 20 day period within to  
6 respond.

7 We also advise the respondent judge that they have  
8 a right to retain counsel. And we also send a separate  
9 letter to the State Conference of Trial Judges. As the good  
10 judges here on the -- on the panel are aware of, the State  
11 Conference of Trial Judges have -- have entered into an  
12 agreement whereby a judge who receives an official  
13 communication from the Judicial Conduct Board, i.e. a notice  
14 of full investigation, is entitled to an initial, free of  
15 charge, consultation with a judge.

16 Currently the judge is Judge -- not judge. That  
17 attorney is John Summers, a prominent attorney in  
18 Philadelphia. So they're given that opportunity to consult,  
19 and Mr. Summers would advise the judge what -- this is a  
20 serious matter. We got to take a close look at that. You  
21 better get yourself a qualified attorney and so forth.

22 So then if we -- if we receive a response from the  
23 judge, our investigative staff continues investigation. And  
24 in that notice, sir, we invite the judge to provide us, the  
25 Board, with a list of witnesses. Who, in your opinion, Your

1 Honor, should we notify? Who do you want us to contact to  
2 -- give us the other side of the story, et cetera.

3 We attempt to do that. After that full  
4 investigation is complete then counsel reports back to the  
5 Board. Because it's the Board that has the sole authority.

6 Q Now, at that point in time is there a supplemental  
7 report that you and your staff prepare for the Board?

8 A Yes.

9 Q Okay.

10 A And between that time, after the notice of full  
11 investigation, as a part of that process and before final --  
12 final report is prepared by counsel with the assistance of  
13 our expert investigators, the Board has deposition power.

14 And we have -- we can summon the respondent judge.  
15 We can, and we have, and we do. And we -- and witnesses to  
16 take a deposition, which of course, is a sworn testimony  
17 under oath.

18 Q Okay. Then what happens after the report is filed  
19 with the Board? The Board convenes -- when the Board meet  
20 -- determines what to do next, do they meet as a group on a  
21 regular basis?

22 A Yes. The Board meets -- its present schedule meets  
23 on a bimonthly basis, every other month. And the Board --  
24 and I'd like to mention something about the work load of the  
25 Board as well. But the Board considers the report of

1 counsel, its recommendation. And then at that time  
2 recommends a number of options, either dismisses the  
3 complaint and takes the position after this lengthy  
4 investigation, now that we have the full picture, we have  
5 depositions, we have sworn statements, we've interviewed --  
6 you've heard from the judge, given all that, there's nothing  
7 here.

8 Q Do they take any testimony at that point?

9 A The Board?

10 Q Yes.

11 A The Board does not take testimony.

12 Q Okay.

13 A No, sir.

14 Q And they don't conduct any depositions?

15 A The Board does not.

16 Q You would conduct the depositions? Would they  
17 direct you as to who to investigate?

18 A Generally not. Generally not. I mean, that's  
19 within the professional judgement of counsel. There is a  
20 mechanism whereby Board -- Board members can become involved  
21 in a panel of three, but that's very rarely been exercised.

22 Q So at that point in time they would obviously have  
23 the complaint, all the investigator's notes, the reports,  
24 the preliminary -- preliminary report, the supplemental  
25 report, anything else that they would consider as to -- and

1 obviously the judge's response.

2 Now, would the judge be interviewed at that point  
3 or a deposition?

4 A By the --

5 Q By --

6 A By the Board itself?

7 Q No, by you or yourself?

8 A Invariably, with some exception, but I can't  
9 recall. Very rarely, if ever, has a matter gone to that  
10 level without the judicial officer being notified,  
11 responding, replying, and being deposed or interviewed.

12 Q Okay. In which instance would they -- is it -- the  
13 information received by the judge after the written  
14 information is typically done by an interview or by  
15 deposition?

16 A Or both.

17 Q But is it usually both or --

18 A Depends -- invariably -- the notice, reply,  
19 interview, depending upon the Board's view or counsel's view  
20 as to the seriousness of the charges, a -- a deposition as  
21 well.

22 Q Okay. And then what does -- all that information  
23 comes to the Board, and what are the options at that point?  
24 One is obviously dismissal?

25 A Correct.

1 Q We talked about that. And then if they choose not  
2 to dismiss it, what are their options?

3 A Well, those are the two extremes, dismiss or filing  
4 formal charges. Or in short of the filing of formal  
5 charges, depending upon the unique factual circumstances of  
6 a particular case, to issue what I had mentioned before as a  
7 letter of caution or a letter of counsel.

8 Q Okay. So that would be then the Board's -- at the  
9 Board's determination or recommendation?

10 A Yes, sir, correct.

11 Q And you talked already about the letters of caution  
12 and the --

13 MR. LEGG: Letters of counsel.

14 BY MR. HOROHO:

15 Q The letters of counsel?

16 A I would also state that even after what you very  
17 accurately described as the process, you know, when all of  
18 this data and information is available to the Board, you  
19 know, the Board, as you know it, has staggered terms.

20 Depending on whether it's -- I like to refer to it  
21 as a hot Board, some Boards become very involved. It's not  
22 unusual for the Board in reviewing its documentation. And,  
23 again, they're not a rubber stamp. They might state,  
24 counsel, we want you to interview or reinterview this  
25 witness or obtain records, additional records, before we

1 make a final determination.

2 Q And the -- is the judge required to accept the  
3 letter of caution?

4 A No, letter of caution is not.

5 Q And what happens if they don't?

6 A Well, they're not -- they're not -- I believe I  
7 understood your -- in a letter of caution, this is the  
8 advisory.

9 Q Right.

10 A They are not required to accept. That's just sent  
11 from -- over my signature on behalf of the Board to the  
12 respondent judge. A letter of counsel, a judge must accept  
13 it.

14 Q And if he or she refuses, what happens?

15 A The Board is prepared to file formal charges.

16 BY MR. LEGG:

17 Q Mr. Massa, I just would like to get a little more  
18 specific in terms of some questions. And I have before me a  
19 -- something I printed off the Judicial Conduct Board  
20 website, which was in the press release section dated  
21 September 10th of 2009.

22 And that is a brief filed by the Judicial Conduct  
23 Board in the matter of In Re: Ann Lokuta. On page 19 of  
24 that particular brief there's an indication, and I'll quote.

25 It says, quote, in light of respondent, that would

1 be Lokuta, speculation that the Board did nothing with the  
2 referenced complaint against Judge Conahan, the Board has  
3 secured a waiver of confidentiality from the former Judge  
4 Conahan, end quote.

5 I want to just ask some questions on that waiver of  
6 confidentiality specifically. How was that waiver obtained?

7 A I --

8 Q Was it initiated by the Board? Did Conahan contact  
9 you? How was it obtained?

10 A That was my action. I'll take responsibility for  
11 that and place it in context. The anonymous -- I refer to  
12 it -- the Board -- I refer to the subject underlined  
13 document as an anonymous letter of September 26th, 2006. I  
14 believe that that's a fair representation. That became in  
15 the public domain.

16 That was reported in the media. That was reported  
17 on television. That was reported in legal -- legal press,  
18 local press. I don't know how it became public, but it  
19 became very public. It became a part of legal pleadings.

20 I, as chief counsel, exercising my own professional  
21 judgement felt that it was only appropriate for the court to  
22 have an official document in front of it so that it could  
23 properly address the issue.

24 Therefore, I personally called counsel for Conahan  
25 and requested a waiver that was verbal. I received -- it

1 was a verbal request. I received a letter acknowledging --  
2 I believe I received a letter.

3 I received authorization to release the  
4 confidential complaint for the sole purpose of attaching it  
5 to -- to the pleading for that sole and limited purpose.  
6 And I -- and I did so. If I could go on.

7 Q Go ahead.

8 A Carrying it a step further, the -- subsequently, in  
9 light of the fact that there are criminal cases now pending  
10 regarding both Conahan and Ciavarella as everybody certainly  
11 locally knows, the plea agreement was negated or refused by  
12 the senior judge. They're back in the docket.

13 Both -- counsel for both those individuals have  
14 expressly written to me stating that they will not waive --  
15 they do not and will not waive confidentiality for any  
16 reason under any circumstances.

17 Q Well, let's just back up. In terms of the waiver  
18 from Conahan that you reached out apparently to counsel to  
19 obtain?

20 A I did.

21 Q So is it my understanding you received a letter  
22 from counsel, not Conahan, waiving confidentiality?

23 A That's correct, sir.

24 Q And, of course, there were no -- he didn't have  
25 counsel in any pending matters before the Judicial Conduct

1 Board?

2 A That's correct.

3 Q So this would have been a counsel in connection  
4 with some type of criminal matter that was pending?

5 A That's correct.

6 Q So it would have been his criminal defense  
7 attorney?

8 A That's correct.

9 Q And you did receive a written documentation of  
10 that?

11 A I believe I did. I'd have to double check. I want  
12 -- you know, I'm not sure, but I will double check.

13 Q Well, would it be fair to say it was pretty serious  
14 to release some of this stuff?

15 A Oh, yes.

16 Q And is it fair to say you wouldn't have done it  
17 without some type of written authorization?

18 A I believe so, yes.

19 Q And would that particular written authorization,  
20 would that be confidential?

21 A I believe it would be, but I will address that.  
22 I'll be happy to look at that.

23 Q Even a waiver of confidentiality is confidential?

24 A I believe it is. But, again, I'll be glad to check  
25 on that. And if it's not, to provide it to the Commission.

1 Q When you say check on that, would it be something  
2 within the body of the letter itself that would make it  
3 confidential, or some type of rule that the Conduct Board  
4 has?

5 A I believe it would be the Board's interpretation of  
6 the constitution and its Rules of Procedure.

7 Q That correspondence that you received, what in  
8 particular did Judge Conahan waive confidentiality as to?  
9 Was it limited in scope?

10 A To the release -- not the release. For the ability  
11 of the Board to attach that document to a pleading. The  
12 document which, not through the Board, not through Conahan,  
13 not through Ciavarella had been made a matter of the public  
14 domain by some party or parties.

15 Q Well, the Judicial Conduct Board brief actually  
16 goes further than that, actually references two complaints.  
17 So did the confidentiality waiver from Judge Conahan include  
18 permission to release information as to both complaints or  
19 just the one that had become part of the public record?

20 A The anonymous complaint that had been made public.

21 Q All right. There was one anonymous complaint that  
22 apparently had not been made public, which is referenced in  
23 your brief, Judicial Conduct Board brief, on page 19. Two  
24 complaints are referenced.

25 A I don't have it in front of me, sir.

1 Q Are you saying that the waiver of confidentiality  
2 that Conahan gave you didn't include both complaints?

3 A 2006 -- the 2006 matter.

4 Q Well, have you seen the brief?

5 A There's a number of briefs that have been prepared,  
6 sir.

7 Q Well, in fairness --

8 A I'm sure I did.

9 Q In fairness to the Board, it says that the Board  
10 avers the following regarding the complaint. And the  
11 complaint you're referring to is the second anonymous  
12 complaint.

13 And No. 1 is, an anonymous complaint was initially  
14 received by the Judicial Conduct Board regarding then Judge  
15 Michael Conahan toward the end of the Board's investigation  
16 against Ann H. Lokuta. The allegations in this anonymous  
17 complaint focused on nepotism in the Luzerne County  
18 Courthouse.

19 That complaint appears to be a different complaint  
20 than the one that was attached. Because later in the brief  
21 you reference another complaint, and that's attached as  
22 Exhibit A. Well, I'm sorry. Do you want to take a look at  
23 that?

24 A May I?

25 Q Yeah, page 19.

1           MR. LEGG: Judge Cleland, I ask that that be marked  
2 as an exhibit as well.

3           CHAIRMAN CLELAND: That will be marked.

4           THE WITNESS: What page?

5 BY MR. LEGG:

6           Q     19. I'm sorry, Mr. Massa.

7           A     Again, I am chief counsel, and I accept  
8 responsibility. But I -- I would note that that was  
9 prepared by Deputy Chief Counsel Puskas. So I'm sure he --  
10 he could readily answer your specific questions.

11                     But on page 19 it's in reference to -- as I read  
12 and interpret this on initial glance is the September 28th,  
13 2006 complaint, which is the one that became part of the  
14 public domain.

15           Q     And in paragraph 1 on page 19 there. Paragraph 1  
16 references an anonymous complaint, and then paragraph 3  
17 references a second anonymous complaint. So is it fair to  
18 say that there were two anonymous complaints?

19           A     That's what this brief says, sir.

20           Q     So when you reached out to Judge Conahan's  
21 attorney, did you obtain a waiver of confidentiality as to  
22 both those complaints or only one?

23           A     My recollection is that it was the September 28th,  
24 2006 complaint. And, again, I will be very happy to have  
25 Mr. Puskas provide you with detailed answers as to his --

1 his brief.

2 Q Well, as to that first anonymous complaint that's  
3 referenced in the JCB brief --

4 A Yes.

5 Q -- at page 19, do you recall approximately when  
6 that was received by the Judicial Conduct Board?

7 A At or about late September, 2006.

8 Q They were both received at the same time?

9 A Again, sir, I have no independent recollection, but  
10 I believe they were.

11 Q The reason I ask is that in your brief it indicates  
12 that the anonymous complaint was received toward the end of  
13 the Board's investigation against Ann H. Lokuta. And based  
14 upon representations in the brief it appears that the Lokuta  
15 investigation was done in late December of 2005, sometime  
16 into February of 2006. Does that sound about right?

17 A I'm not totally conversant with the time table, but  
18 the Lokuta investigation, if I recall, started about 2004,  
19 and formal charges were filed in 2006. Went to trial over a  
20 three week period in 2000 -- September and December of 2007  
21 and January of 2008.

22 Q Well, is my characterization fair? Do you think  
23 that that means the first anonymous complaint was received  
24 sometime late 2005, early 2006?

25 A That was -- it was received in the latter part of

1 the Lokuta investigation.

2 Q Okay. Do you know when that would have been?

3 A My recollection, it was received shortly after it  
4 was dated, you know, late September, 2006.

5 Q Well, the complaint you're referring to that's  
6 dated is the second anonymous complaint; is that fair to say  
7 or no?

8 A Again, I'll be very happy to provide you with the  
9 specific answers. I -- I don't want to be misleading in any  
10 way. So I can't -- I'm not being evasive. I don't -- I  
11 can't answer that at the moment.

12 Q Is there a reason that this first anonymous  
13 complaint would not have been appended as an exhibit to the  
14 JCB brief?

15 A Again, I'm going to defer -- I'll ask Mr. Puskas to  
16 explain his brief.

17 Q Do you recall that first anonymous complaint?

18 A I do not as we sit here, no.

19 Q Do you know if it crossed your desk?

20 A I have no recollection of it crossing my desk.

21 Q It indicates that the allegations focused on  
22 nepotism. Do you see that in your brief?

23 A Yes. On the Board's brief, yes.

24 Q On the Board's brief, I'm sorry. And nepotism  
25 would be a violation of the Code of Judicial Ethics?

1 A Yes. That complaint did cross my desk.

2 Q Okay. You recall it now?

3 A Well, the first -- what's referred to in paragraph  
4 1, yes. I -- again, may I have a moment, please?

5 Q Absolutely.

6 A The second one is referred to in the brief as Board  
7 Exhibit A. Attached to the brief and referred to on page 19  
8 is the September 28, 2006 complaint, which was received by  
9 the Board on September 28th, 2006, and that did cross my  
10 desk. I'm aware of it, fully aware of it. Yes, sir.

11 Q And I guess I have to go backwards again. Are you  
12 aware whether there was one or two complaints?

13 A I'm not aware of a second anonymous complaint other  
14 than this one.

15 Q Would you agree with me that a fair reading of the  
16 Judicial Conduct Board brief suggests there were two  
17 complaints?

18 A There is, yes.

19 Q And is it also fair to say that any complaints  
20 would come across your desk first before they were assigned  
21 out?

22 A Yes.

23 Q And it's your testimony that you'll check to see  
24 whether or not you can release that --

25 A Yes.

1 Q -- particular complaint to this Commission?

2 A If, in fact, it exists, yes, we'll address that.

3 Q Given the fact that the Board has already  
4 acknowledged its existence, would there be any reason to  
5 suspect that you could not produce that complaint to this  
6 Commission?

7 A I'll take that matter under consideration.

8 CHAIRMAN CLELAND: Given our time schedules, are  
9 you approaching the end of your investigation -- your  
10 interrogation, or are we going to have to call this witness  
11 back?

12 MR. LEGG: I'm not sure how much longer it's going  
13 to be, Judge. I mean, I have a second anonymous complaint  
14 to address as well. I'm not sure how much Mr. Massa can  
15 answer given the confidentiality restrictions.

16 CHAIRMAN CLELAND: Well, it's ten after five.  
17 We've got another witness, as you know, scheduled for 7:00.

18 MR. LEGG: Whatever the Board's preference is, the  
19 Commission's preference is. I'm fine with continuing.

20 CHAIRMAN CLELAND: I guess I'm asking how much  
21 additional time?

22 MR. LEGG: Half an hour.

23 CHAIRMAN CLELAND: Well, how about 20 minutes, and  
24 we'll break at 5:30?

25 MR. LEGG: Okay.

1 CHAIRMAN CLELAND: Okay.

2 THE WITNESS: Can I make a brief request?

3 CHAIRMAN CLELAND: Sure.

4 THE WITNESS: May I confer a moment?

5 (Discussion held off the record.)

6 CHAIRMAN CLELAND: Okay. Let's plan then to get  
7 this wrapped up by 5:30. And if there's some --

8 MR. HOROHO: Mr. Chairman, in lieu of having Mr.  
9 Massa come back, if we can finish -- if we can finish him --  
10 finish his testimony up, we'd like to tonight.

11 CHAIRMAN CLELAND: Okay. We'll go then until 6:00.

12 MR. LEGG: May I continue?

13 CHAIRMAN CLELAND: Do you need a recess or a break,  
14 Mr. Massa?

15 THE WITNESS: No, no, I do not.

16 MR. LEGG: May I continue?

17 CHAIRMAN CLELAND: Yes. I'm sorry. Go ahead.

18 BY MR. LEGG:

19 Q Mr. Massa, do you remember if this -- I guess what  
20 I'll term the first anonymous complaint was referred to the  
21 US Attorney's Office?

22 A The -- the September 28th, 2006 complaint was.

23 Q Okay. What about the complaint that was filed --

24 A I don't have any recollection, sir, about what has  
25 been referred to as a second complaint.

1 Q If it dealt simply with nepotism, would that be  
2 something that would raise criminal type nature, or would it  
3 be something generally ethical?

4 A Ordinarily -- it would be generally ethical.

5 Q So as you sit here you don't have any specific  
6 recollection as to whether a preliminary investigation was  
7 done on that complaint or anything to that regard?

8 A I would have to refer, sir.

9 Q Let me go to the second anonymous complaint, which  
10 I believe you have a copy of as well as an exhibit? Yes,  
11 no?

12 A I do.

13 Q I'd ask that that be marked as well. We can  
14 establish that this particular second anonymous complaint  
15 was received by the Judicial Conduct Board on September  
16 28th, 2006?

17 A Yes, it was.

18 Q And, in fact, it appears that it's stamped by the  
19 Judicial Conduct Board. Is that what happens when any of  
20 these particular complaints come in?

21 A Every complaint, yes.

22 Q And do you have a specific recollection as to  
23 receiving this complaint?

24 A Yes.

25 Q And we say anonymous, that means it wasn't, in

1 fact, signed by anyone, right?

2 A That's correct.

3 Q And it doesn't actually on the face of it have its  
4 own date? The only date would be what is stamped by the  
5 Conduct Board itself?

6 A That's what you see. And what has been marked as a  
7 part of the record is exactly as it was received by the  
8 Board.

9 Q And you reviewed this particular complaint?

10 A I have.

11 Q Have you reviewed it recently?

12 A I have reviewed what I believe is the paragraph --  
13 the sole paragraph that is applicable to the narrow scope of  
14 this Commission's inquiry.

15 Q Well, have you reviewed all the paragraphs?

16 A I have.

17 Q Was this complaint referred to the US Attorney's  
18 Office?

19 A Yes, sir, it was.

20 Q And do you recall when it was referred to the US  
21 Attorney's Office?

22 A I -- that is confidential information. I would  
23 defer to the public statements that were made by the US  
24 Attorney.

25 Q With reference to the brief -- or the complaint

1     itself, do you have it in front of you?

2           A     I do, sir.

3           Q     I'm going to ask you to take a look at that, and I  
4     want you to review Paragraph 1-A.

5           A     Yes, sir.

6           Q     That allegation involves Judge Conahan allegedly  
7     hiring relatives of himself or his court administrator who  
8     apparently was also a relative. Do you see that?

9           A     Yes, sir.

10          Q     Would that be a violation of any particular Code of  
11     Judicial Ethics?

12          A     It may or may not. There is a -- matter of fact,  
13     there are a number of President Judges in the Court of  
14     Common Pleas in Pennsylvania whose wife -- wives and/or  
15     children are employees. That is, in my opinion, a gray area  
16     of the Code of Judicial Conduct. So my -- the answer to  
17     that is it may or may not.

18          Q     I'd like you to look at Paragraph 1-B.

19          A     Yes, sir.

20          Q     Again, an allegation that the judge appointed a  
21     brother-in-law?

22          A     Again, I give you the same answer that I gave you  
23     in reference to Paragraph 1-A.

24          Q     Paragraph 1-C references his sister being allowed  
25     to act as a master and also not disclose any relationships.

1 A What are you asking, sir?

2 Q Would that be a violation of the --

3 A It could be.

4 Q Paragraphs 1-D through F essentially contends that  
5 a -- the judge created his own tip staff to employ relatives  
6 and friends?

7 A Yes, sir.

8 Q Can we agree that would be a violation?

9 A Yes, sir. Could be a violation, yes.

10 Q Paragraph 3, and I know I'm jumping, but I'm trying  
11 to keep it all in a category.

12 A Sure. I'm sorry, what paragraph?

13 Q 3-N indicates that Judge Conahan was hiring persons  
14 who worked on his political campaign. Would that be a cause  
15 of concern in terms of nepotism?

16 A That's quite common place, but it could, yes, sir.  
17 Very common place throughout the Commonwealth, throughout  
18 the judiciary.

19 Q Does the Code of Judicial Ethics prohibit judges  
20 from engaging in political activity?

21 A There is a canon that strictly applies to political  
22 campaign.

23 Q In other words, they're not allowed to except in  
24 election years? Is that a fair statement?

25 A That's a general statement. More specifically,

1 they're not allowed to raise funds except on their own  
2 campaign, during your own campaign, and then only through a  
3 Committee.

4 Q Paragraph 2-D of that complaint contends that Judge  
5 Conahan allowed a law clerk -- encouraged a law clerk to run  
6 for a magistrate judge position and kept her on as a law  
7 clerk while she did that. Would that be a violation of the  
8 code?

9 A Questionable.

10 Q Paragraph 2-E indicates that Judge Conahan made a  
11 statement at a bar dinner where he indicated that anyone  
12 interested in running for a judge in Luzerne County was to  
13 see him. Would that be any particular concern from the  
14 Board's perspective?

15 A An area of concern.

16 Q I'm going to also refer you to Paragraph 2-E, and  
17 this deals with the appearances of impropriety.

18 A 2-E?

19 Q 2-E, yes, sir. Indicates that Judge Conahan  
20 allowed a law clerk to practice in front of him? Would that  
21 be something that would be a problem in terms of the  
22 appearance of impropriety?

23 A Certainly an area of concern.

24 Q 3-A indicates another law clerk, again, was allowed  
25 to practice as a solicitor for the Probation Department.

1 Would that be an area of concern?

2 A Yes, sir.

3 Q 3-A also indicates that a employee of the court was  
4 arrested for a DUI. Judge Conahan heard the license appeal.

5 A Yes, sir.

6 Q Would that be a concern?

7 A Yes, sir.

8 Q Paragraph 3-N indicates that an attorney who served  
9 as a law clerk was allowed to bring cases in front of --  
10 another law clerk in front of Judge Conahan. Would that be  
11 a violation?

12 A 3-N?

13 Q 3-N, yes, sir.

14 A Area of concern, yes, sir.

15 Q 3-C indicates a person appointed to a position as a  
16 mental health hearing officer was also allowed to practice  
17 in front of Judge Conahan. Would that be a area of concern?

18 A Yes, it would be an area of concern.

19 Q And, in fact, that particular allegation indicates  
20 that Judge Conahan awarded the client of that particular  
21 hearing officer a million dollars in damages. Would that be  
22 something that would raise the eyebrows of the Conduct Board  
23 or --

24 A I'm sorry, sir. What paragraph?

25 Q Is it 3-D?

1           A     3-D.  Yes, it would be an area of concern.

2           Q     And that, I guess, is the -- and you indicate in  
3     the JCB brief, or the Conduct Board does, that there was a  
4     case-fixing allegation.  Would that be one of the  
5     allegations that relate to case fixing?

6           A     I would suspect, yes, sir.  In any event, it would  
7     be an area of concern.

8           Q     There's also -- I don't want to belabor it, but  
9     there's a number of allegations that Conahan was accepting  
10    pleas from people who were close to him or employed his  
11    family members.  Would that be areas of concern?

12          A     Of course.

13          Q     And then we get to what you indicated was the most  
14    pertinent thing for this Commission, that being the ties  
15    between Robert Powell and the court?

16          A     Right.

17          Q     In particular, it indicates that -- makes reference  
18    to that detention center, right?

19          A     Yes, sir.

20          Q     Is there anything in that complaint itself that  
21    suggests that what's going on in Luzerne County in terms of  
22    case assignments or fixing is criminal?

23          A     In my opinion, no, sir.

24          Q     Okay.  Did the second anonymous complaint have  
25    allegations regarding Ciavarella?

1 A I'm not aware of it, sir.

2 Q I'd refer you to paragraph 3-K.

3 A Now you're talking about this -- are you talking  
4 about the same complaint?

5 Q Yes, that complaint.

6 A Oh, I'm sorry.

7 Q That complaint, the second anonymous complaint.

8 A This.

9 Q Did it have references regarding Ciavarella? And  
10 I'd refer you to paragraph 3-K.

11 A Yes.

12 Q Okay. Would those be allegations of ethical  
13 misconduct?

14 A They would be areas of concern.

15 Q In fact, it indicates relationships with Powell as  
16 well as having Conahan assign cases to him in terms of being  
17 close to Conahan?

18 A Yes, sir.

19 Q And actually having one judge removed and having  
20 the case reassigned to Ciavarella?

21 A Yes, sir.

22 Q Prior to releasing the second anonymous complaint  
23 did the Board obtain any type of waiver of confidentiality  
24 from Ciavarella with respect to the allegations that were  
25 contained in there?

1 A No, sir.

2 Q Is there a reason why that wouldn't have been done?

3 A There was no -- there was no -- there was no waiver  
4 sought nor given.

5 Q Do you view that second anonymous complaint just  
6 relating to Conahan, or do you believe it relates to both  
7 Conahan and Ciavarella?

8 A I believe 9 -- 95 percent of it involves Conahan.

9 Q Five percent Ciavarella?

10 A Ciavarella is mentioned.

11 Q Okay. The second anonymous complaint you've  
12 indicated was referred to the US Attorney's Office?

13 A Correct, sir.

14 Q Was that a decision that was made by the Conduct  
15 Board itself, or was that a decision that you made as chief  
16 counsel?

17 A That was a decision that I made as chief counsel.

18 Q So when the reports say that the Judicial Conduct  
19 Board sees every complaint and reviews every complaint,  
20 that's not -- the Board doesn't see every complaint?

21 A It does -- no.

22 Q Does it? I guess I'm confused.

23 A No, there's no need for confusion. Maybe I'm not  
24 explaining it properly. I see every complaint. Every  
25 complaint is reported to the Board. The Board may or may

1 not see the actual physical document, but it is made aware  
2 of the substance of the document by counsel report.

3 Q So they get a report from you saying on September  
4 --

5 A Yes, sir.

6 Q -- whatever, 2006 we received a complaint, the  
7 complaint is this, I took the following action?

8 A Yes, sir.

9 Q And they would essentially be able to say, yes, no,  
10 or otherwise?

11 A Correct.

12 Q Would that particular -- was a preliminary  
13 investigation done in connection with the second anonymous  
14 complaint?

15 A Again, not trying -- not being evasive, I believe  
16 we're treading to areas of confidentiality. But there were  
17 preliminary investigations done, yes, sir. If it was  
18 reported -- if it was reported to the Board, obviously by  
19 definition of our process, preliminary investigation was  
20 done.

21 Q And I'm not trying to tread anywhere into that  
22 because in paragraph 5 on page 19 of your brief it indicates  
23 a preliminary investigation was done prior to referral.

24 A That's correct.

25 Q Would that involve investigators or just yourself

1 who were involved?

2 A It could involve either or both.

3 Q Would a report have been generated as a result of  
4 that preliminary investigation?

5 A A report would have gone to the Board.

6 Q So a report would have been generated?

7 A A report would have been generated, yes.

8 Q Do you know if the report was also sent to the US  
9 Attorney's Office?

10 A No, sir. No, it was not.

11 Q Just the complaint itself?

12 A Correct.

13 Q What was it about the second anonymous complaint  
14 that caused the referral to the US Attorney's Office?

15 A The request of the US Attorney's Office.

16 Q Did they request it?

17 A Yes, sir.

18 Q So they requested of the Judicial Conduct Board the  
19 complaint, and that's how the referral occurred?

20 A Yes, generally, yes.

21 Q You indicated that there's a rule that allows  
22 complaints to be referred to appropriate law enforcement  
23 agencies. That's an internal rule that the Board has?

24 A Yes, sir. I believe I said it correctly. Judicial  
25 Conduct Board Rule of Procedure 17.

1 Q And would that be a rule that's just approved by  
2 the Board, or would it also have to be approved by the  
3 Pennsylvania Supreme Court?

4 A It's an internal rule of procedure of the Board  
5 itself.

6 Q As a former prosecutor and defense attorney are you  
7 concerned about the interplay between the constitutional  
8 confidentiality provisions and an internal rule of the Board  
9 and how that might affect investigations of law enforcement  
10 agencies?

11 A I think there's an interplay, of course.

12 Q Is there a potential for the Board referring those  
13 complaints without a waiver to create suppression issues for  
14 defense attorneys?

15 A Theoretically it could.

16 Q So why would the Board engage in referrals if  
17 you're creating potential hazards for prosecutors in terms  
18 of confidentiality issues if the subject of the  
19 investigation hasn't waived confidentiality?

20 A I think where there's a -- I'm not trying to mince  
21 words here, but when the criminal investigative agency  
22 itself requests by letter and/or subpoena, by our protocol  
23 and by, I think, sense of coventry, we're going to release  
24 that information. I don't believe there would be a conflict  
25 or be an unfair violation of due process to either -- either

1 side, the defense or the -- or the prosecuting agency.

2 Q Is it fair to say that confidentiality information  
3 is not generally released on a subpoena?

4 A Yes.

5 Q Or just a letter?

6 A Correct. Generally, yes.

7 Q How long has that policy been in place, the  
8 referral policy?

9 A The rule that I cited?

10 Q Yes.

11 A I don't know at the moment, sir.

12 Q Has it been in place since you've been chief  
13 counsel?

14 A Yes.

15 Q Predates your coming?

16 A I believe it does.

17 Q In terms of anonymous complaints, would you agree  
18 with me that generally the detail that goes into an  
19 anonymous complaint is important?

20 A Sure.

21 Q And would you agree with me that second anonymous  
22 complaint that was received by the Judicial Conduct Board in  
23 September of 2006 has a great deal of detail?

24 A It does.

25 Q In fact, it has case numbers?

1 A It does.

2 Q It has names?

3 A It does.

4 Q Things that would be fairly easily verifiable at  
5 least in terms of on their face?

6 A This was a detailed complaint.

7 Q Does the detailed nature of that complaint in the  
8 eyes of you as a prosecutor give it more weight?

9 A It's certainly a factor.

10 Q Is that particular complaint, the first anonymous  
11 complaint, still pending before the Judicial Conduct Board?

12 A I cannot comment on that, sir.

13 Q Do you know if any full investigation has been done  
14 on either the first anonymous complaint or the second  
15 anonymous complaint?

16 A I cannot comment on that, sir.

17 Q And, again, that's based on confidentiality?

18 A Yes, sir.

19 Q The letters that were received from Conahan and  
20 Ciavarella after the withdraw of the plea indicate that  
21 they're reasserting confidentiality. Is that what you  
22 indicated? Or I guess Ciavarella's asserting it, and  
23 Conahan is reasserting it?

24 A Correct.

25 Q Are those particular letters or documents

1 confidential?

2 A I believe they are, but -- I believe they are, sir,  
3 but I've stated on the record that they exist.

4 Q Are there any documentations relative to the  
5 Judicial Conduct Board's investigation of either the first  
6 or second anonymous complaints as referenced in the brief  
7 that would be available or non-confidential at this point?

8 A Again, I would have to -- I would have to double  
9 check that and report back to the Board, to the Commission.  
10 And I would state -- no, I have no further comment.

11 Q Has the Judicial Conduct Board referred any other  
12 complaints to the US Attorney's Office since September of  
13 2006?

14 A No. But may I answer that question? Since 2006  
15 there is -- the general practice and protocol of the Board  
16 in matters involving serious criminal complaints, the Board  
17 has, by past practice, referred the matter to the  
18 appropriate criminal prosecutorial agency.

19 There is a former Superior Court judge in  
20 Pennsylvania sitting in federal prison today because the  
21 Board received a complaint and referred it to the United  
22 States Attorney's Office. There is a former Allegheny  
23 County judge who received bribes -- presiding over asbestos  
24 litigations who sought bribes. That complaint was given to  
25 our attention. It was immediately turned over and

1 appropriately turned over in a timely fashion to the US  
2 Attorney's Office resulting in a conviction and 27 -- a  
3 prison sentence of 27 to 54 months.

4           There are other matters currently pending that are  
5 strictly confidential where similarly very serious criminal  
6 complaints have been received, allegations have been  
7 received by the Board which we referred to the prosecutorial  
8 agencies.

9           And the first two matters are matters, Mr. Legg, of  
10 public record.

11           Q     Those examples that you gave would involve where  
12 actual charges were filed obviously, right?

13           A     Not when the referral was made.

14           Q     But after the referral?

15           A     Ultimately, yes.

16           Q     What's the Board's position on waiting for charges?  
17 How long will you wait? I think we can all agree that we  
18 don't want unethical judges, and certainly we don't want  
19 criminal judges.

20           A     Absolutely.

21           Q     How long do you sit on -- let's say in '06, how  
22 long would the Board wait to make a decision in terms of  
23 when are we going to file?

24           A     It would, again, depend upon the circumstances. I  
25 -- your characterization is absolutely correct. We don't

1 want unethical judges on the bench. We don't -- we  
2 certainly don't want judges who have been convicted of  
3 criminal conduct on the bench.

4           Until -- until -- and it becomes even more  
5 problematic if and when formal charges are filed against a  
6 judicial officer alleging serious criminal matters.

7           Q     Well, in a case such as this.

8           A     Such as what, sir?

9           Q     Such as Conahan and Ciavarella where apparently the  
10 office is aware, the Conduct Board is aware that there's an  
11 investigation going on, is there constant communication with  
12 the US Attorney's Office in terms of, A, the investigation  
13 is still ongoing; or B, if we can't prove it, go ahead and  
14 file your ethics violations? I mean, how does that  
15 interplay occur in trying to determine what you have to do  
16 to protect the public?

17          A     Again, it depends upon the -- the unique  
18 circumstances of a particular case. And I -- again, sir, I  
19 understand the scope of your question. But I believe that  
20 that's confidential deliberative process of the Board in  
21 this particular -- in this particular case.

22          Q     Well, let's take it in the abstract. You get a  
23 complaint in 2006. Would you wait for nearly four years  
24 until the statute of limitations is almost expired before  
25 filing something, or would you generally act?

1 A Generally would act prior to that, in the abstract.

2 Q And does the gravity of the alleged violations  
3 factor into that analysis?

4 A Yes.

5 Q And does the bulk or the number factor into that  
6 analysis?

7 A The bulk or number of what?

8 Q Of alleged violations?

9 A Again, if the -- if the alleged violations involve  
10 serious criminal conduct, they're going to be referred. It  
11 would be my policy and practice to refer to the agency. If  
12 it refers to allegations of judicial misconduct, a whole  
13 variety of factors would -- would be taken into  
14 consideration in determining the time table.

15 Q And then you just refreshed my memory. You made a  
16 comment earlier that kind of sparked something. You said  
17 that you refer because that's where the real consequences  
18 are?

19 A That's where -- no, no, where -- what I meant to  
20 say is where the criminal consequences lie, i.e.,  
21 imprisonment, fine, loss of freedom, et cetera.

22 MR. LEGG: That's all I have, Mr. Chairman.

23 MR. HOROHO: No further questions from myself.

24 CHAIRMAN CLELAND: We had -- in our discussions  
25 with the Board there had been a -- a request to have a

1 representative -- actually have -- the Board wanted to send  
2 one of its Board members, and we deferred on that and asked  
3 specifically that you come to speak about the policies,  
4 practices, and procedures and deferred them until later, any  
5 decision on whether we would ask for past or current members  
6 of the board to appear.

7           So in -- in that vein I want to give you the  
8 opportunity as general counsel to the Board if you have any  
9 comments that you want to make that may be on issues that we  
10 have not addressed here, suggestions, ideas,  
11 recommendations, or other matters that you believe have not  
12 been touched on.

13           THE WITNESS: Well, thank you, Judge Cleland, for  
14 the opportunity. And I don't know what your time table is.

15           CHAIRMAN CLELAND: We said we'd go until six.

16           THE WITNESS: Okay. Thank you, sir. First let me  
17 reiterate speaking as chief counsel personally that it's a  
18 privilege for me to appear before this Commission. I read  
19 the enacting statute. I've read your opening statements of  
20 October 14th. Today's opening statement, I've read that.  
21 And I am in total concurrence with your important mission,  
22 and I have full intention, and I am sure I speak on behalf  
23 of the Board, of totally cooperating with the Board's --  
24 with the Commission's mission.

25           One of your -- to state your language, Judge

1 Cleland, in your opening statement, how do we create a  
2 system -- how do we create a system in which the Judicial  
3 Conduct Board can respond quickly and effectively to  
4 allegations of misconduct, et cetera? And I believe one of  
5 the specific charges that this Commission has is what  
6 recommendation do you make to the Governor, the legislature,  
7 the Supreme Court to improve the system?

8 I want to emphasize that my comments in this regard  
9 are strictly mine as chief counsel. The Board may -- the  
10 Board itself as an entity may have comments to make,  
11 specific recommendations to make.

12 First of all, I believe it goes without saying that  
13 the Board needs adequate financial resources. The past  
14 fiscal year, 2008, 2009 we were appropriated \$178,000 short  
15 of the requested amount. We're a very small entity, nine  
16 member board. Our overall budget is roughly \$1.2 million.

17 To the average citizen that may sound, you know,  
18 wow, but in the scope of things we are a very small entity  
19 and every penny counts. I could look each Commission member  
20 in the eye and tell you that the last quarter of the fiscal  
21 year, April, May, June of 2009 we were hanging by a thread.

22 We -- the Board, over my recommendation and review,  
23 was preparing a fertile policy requiring each staff member  
24 to have -- be layed off one day each pay period once every  
25 two weeks.

1           I can say proudly that the Board wasn't -- wasn't  
2 pleased with that prospect, but was prepared to enact it. I  
3 reported that to the Board. My staff, without exception,  
4 that did not affect the staff's commitment. They rolled up  
5 their sleeves and said, if we have to work harder, we'll  
6 work harder. The more important point is I had to make  
7 decisions on a daily basis as to the very nuts and bolts of  
8 an investigation.

9           For example, were we going to order a transcript?  
10 Were we going to order a deposition? Could we pay a  
11 reporter, having a reporter and the transcript? Could we  
12 get a copy of that transcript in? That's how bad it was.

13           And when the Governor -- and, again, certainly not  
14 pointing fingers, I guess, at that powerful entity. But  
15 when -- you know, the budget impasse, which became daily  
16 headline figure, when they finally went for how many days, a  
17 record number of days without issuing a budget, the --  
18 ultimately the issue -- an emergency budget or supplemental  
19 budget we were left out.

20           The Judicial Conduct Board was left out  
21 notwithstanding our dire straights. I wrote a letter. I,  
22 as chief counsel, wrote a letter to the Governor's office  
23 pointing out the consequences, and we received a rather  
24 sarcastic response. Words to the affect that you're not a  
25 vital agency.

1           I want to point out the current fiscal year, 2009,  
2   2010, we requested a budget allocation of \$1.45 million,  
3   \$1,450,000. The legislature authorized \$1,186,000. So as I  
4   sit here today in the what, third, fourth month of the  
5   fiscal year, we are \$264,000 in the hole. I don't know  
6   what's going to happen. I don't know what's going to  
7   happen.

8           The public has every right, this Commission has  
9   every right to expect and demand timely investigations of  
10  judicial misconduct. I agree. That's our responsibility.  
11  We want to fulfill it. I don't know how it's going to  
12  happen. So that's the first and foremost area of concern.

13           Two other areas that I -- again, these are my  
14  personal recommendations. I want to reiterate that. We  
15  referred -- Mr. Horoho and Mr. Legg had referred to the Code  
16  of Judicial Conduct. The Code of Judicial Conduct was  
17  promulgated, adopted in Pennsylvania, I believe, in 1972 and  
18  last amended a little bit in 1991.

19           The American Bar Association had an intense  
20  investigation study from 2003 to 2007 of the model Code of  
21  Judicial Conduct, and in 2007 reported to commissions  
22  nationwide regarding that the model code -- the code should  
23  be updated, should be modernized.

24           Pennsylvania's one of a handful of states that has  
25  not addressed the issue. I can't give you the precise

1 numbers as we -- as we sit here, but upwards of -- I think  
2 Pennsylvania's one of only 10, 12 states that has not even  
3 addressed the issue.

4 This would, again, with all due respect, require  
5 the Supreme Court action. I'm not being critical of the  
6 Supreme Court, but we can't do it by ourselves on our own  
7 initiative.

8 A third area, again, speaking for myself, would be  
9 campaign, campaign reform. It's -- it's a gray area. If  
10 you ever want to hear details in that regard, you might want  
11 to have Lynn Marks of the Pennsylvania -- Pennsylvanians For  
12 Modern Court testify at length.

13 Again, with all due respect to the individuals who  
14 recently campaigned, and there's 30 reputations, the sad  
15 fact is that the -- particularly on the appellate level  
16 candidates must raise enormous amounts of money. There are  
17 pros and cons as to whether Pennsylvania should have an  
18 appointive process of judges on -- on the -- on the  
19 appellate level or not.

20 My point is that rules have to be promulgated. We  
21 get complaints -- we have no jurisdiction over non-incumbent  
22 candidates, for example. We get complaints over how signs  
23 are -- you know, what -- what languages is for judge. Is  
24 the for, F-O-R, big enough? Does the candidate appear to be  
25 a sitting judge when they're not?

1           Those kinds of issues are not really within our  
2 authority. There needs -- my opinion, there must be rules  
3 promulgated addressing those types of issues and a separate  
4 body. New York State has a entity that addresses strictly  
5 that type of conduct.

6           I believe those -- those are three recommendations  
7 I would ask for your consideration.

8           Just two other comments without belaboring the  
9 issue, if I may, sir. I mentioned about operation outreach  
10 and raising the visibility of the Board and certain  
11 allegations which have been made regarding the -- whether  
12 the average citizen knows who to turn to or where to turn  
13 to.

14           I believe that that's been highly visible. I want  
15 to emphasize, again, without pointing fingers, in reference  
16 to this Pennsylvania Lawyer article where Chief Counsel  
17 Killian and I were interviewed. And I would like to make  
18 that a part of the record by inference. And I'll supply it  
19 later.

20           CHAIRMAN CLELAND: We've already distributed that  
21 among ourselves.

22           THE WITNESS: Okay. You have. In that regard, you  
23 know, this operation outreach. I believe the exact date was  
24 April 25th, 2000 -- I'm trying to give you an exact date. I  
25 believe it was April 25th, 2005. I appeared at the

1 invitation of the Luzerne -- the Luzerne County Bar  
2 Association. I appeared and gave them an overview, much as  
3 I have to you good Commission members today, specifically  
4 citing the obligation of judge -- of lawyers to address  
5 misconduct when it's under their nose, when it appears.

6 And the last comment I would like to make is that  
7 the members -- I'm -- this is my profession. I'm a -- I'm  
8 -- I have a salary. The 12 members of the Commission serve  
9 gratuitously at enormous personal sacrifice. They are  
10 individuals from all four corners of the Commonwealth with  
11 sterling reputations.

12 To allege that the Board members put their head in  
13 the sand and ignored juveniles from this county being  
14 shanghaied is a disgrace. That allegation is untrue and  
15 unwarranted.

16 The Judicial Conduct Board members, without  
17 exception, with brilliant careers and backgrounds, that's  
18 below the knee to even mention that.

19 Last closing thought. Without exception Judicial  
20 Conduct Board members, when they serve their four year term,  
21 they receive a plaque for their efforts. We have a little  
22 ceremony, informal ceremony, and they accept a plaque, and  
23 they're expected to say a few words.

24 They say two things. No. 1, when I received the  
25 invitation to the appointment I didn't know what I was

1 getting myself into. I had no idea of the scope and  
2 magnitude of the work.

3 Side note, the most recent Board meeting, staff  
4 prepared for the Board's consideration about 150 matters.  
5 The material that we sent to the Board for their  
6 consideration was literally the size of a metropolitan phone  
7 book.

8 Several of the Board members, highly intelligent  
9 legal minds, said they spent 25 hours just to prepare for  
10 the meeting. To suggest that these individuals with that  
11 background would jeopardize their career, their names, their  
12 reputation, their good work career is absolutely false.

13 And, again, thank you for the honor and privilege  
14 of appearing before you. I will exhaust every effort to  
15 assist the Commission in its works.

16 CHAIRMAN CLELAND: I believe there were some  
17 documents that you had agreed to provide to the Commission  
18 or some issues that you'd agreed to provide additional  
19 information, and we look forward to receiving that.  
20 Anything further?

21 MR. LISTENBEE: May I just ask one question?

22 CHAIRMAN CLELAND: Sure.

23 BY MR. LISTENBEE:

24 Q Mr. Massa, first of all, I want to thank you for  
25 coming in and providing us with an abundance of information

1 regarding the Judicial Conduct Board.

2 I guess I would ask you to think a little bit  
3 differently about some of the questions that we're asking  
4 today in this sense. Between January, 2003 and May, 2008  
5 about 5,000, 6,000 children appeared in the courts in  
6 Luzerne County. And of that number about 54 percent,  
7 according to Judge Grim who testified before you, or  
8 somewhere between 2,000 and 3,000 children had their  
9 constitutional rights violated in terms of waiving the right  
10 to counsel.

11 I don't know how many complaints came to the  
12 Judicial Conduct Board during that time, but I would ask you  
13 to think about how you can develop an outreach procedure  
14 that would reach out to young people across the Commonwealth  
15 and their parents and victims across the Commonwealth so  
16 that they might also raise concerns about judicial conduct  
17 so that they can also receive the services.

18 It sounds like outreach, as presently instituted,  
19 is oriented towards lawyers and other judges and other  
20 professionals. But these are the young people who have  
21 their rights violated, and they don't have a direct way of  
22 accessing the power and the resources that you do have.

23 And I would ask you to think differently about your  
24 approach and think about how you can reach them. Because a  
25 constitutional violation, though not a criminal violation,

1 is certainly critical to integrity of the courts and the  
2 respect that the people have in those courts.

3 A Mr. Listenbee, that's an excellent recommendation.  
4 I certainly would take that under advisement. In regards to  
5 you don't know how many complaints the Board received  
6 regarding the occurrences.

7 Sir, the Board learned about it when it was  
8 reported by the media. Zero complaints, zero. None until  
9 after it became available and known to the public. And then  
10 we learned about it through media reports.

11 Q Well, that's -- that's my point.

12 A As unbelievable as that may seem.

13 Q There needs to be some other way for you to reach  
14 to the courts so that they come directly.

15 A I agree.

16 Q Even in looking at the Court of Judicial Discipline  
17 I don't see any complaints coming from juvenile courts from  
18 1993 to the present. And so I'm wondering like to what  
19 extent is anyone reaching out to the juvenile courts and  
20 trying to find out what's going on in the juvenile courts  
21 and finding out ways of -- of making sure that the  
22 constitutional rights of all parties involved in those  
23 courts are protected.

24 A I understand your point. It's well taken.

25 MR. LISTENBEE: Thank you, Your Honor.

1           CHAIRMAN CLELAND: Thank you, very much, Mr. Massa.  
2 Thank you, and we will be in recess until 7:00.

3           (Recess taken from 5:44 to 7:00.)

4           CHAIRMAN CLELAND: Good evening. My name is John  
5 Cleland. I'm a judge of the Superior Court of Pennsylvania,  
6 and I want to welcome you here this evening for the  
7 afternoon -- the evening session of the Interbranch  
8 Commission on Juvenile Justice.

9           I will begin by introducing the members of the  
10 Commission. Todd C. Allen is the Director of Court Advocacy  
11 of the Crime Victim Center in Erie County. Valerie Bender  
12 is a senior research associate at the National Center for  
13 Juvenile Justice in Pittsburgh. Ken Horoho is a Pittsburgh  
14 attorney and former president of the Pennsylvania Bar  
15 Association.

16           Magisterial District Judge James A. Gibbons is from  
17 Lackawanna County. Jason J. Legg is the District Attorney  
18 of Susquehanna County. Robert L. Listenbee is the Chief of  
19 the Juvenile Unit of the Defender Association of  
20 Philadelphia. George D. Mosee, Jr. is Chief of the Juvenile  
21 Division and Deputy District Attorney in Philadelphia.  
22 Judge John C. Uhler is the Judge of the Court of Common  
23 Pleas of York County and a former president judge of that  
24 court.

25           Ronald P. Williams is a regional director of the

1 Pennsylvania Department of Agriculture. And Judge Dwayne D.  
2 Woodruff is a juvenile court judge from Allegheny County.  
3 And we're joined at the table by Darren Breslin, an attorney  
4 and counsel to the Commission.

5 This evening our first witness is Sandra Brulo.  
6 And Ms. Brulo, if you would come forward, please. Ms.  
7 Brulo, before you sit down, would you please stand to take  
8 an oath?

9  
10 SANDRA BRULO, called as a witness, being duly  
11 sworn, testified as follows:

12  
13 CHAIRMAN CLELAND: Please be seated. Ms. Brulo,  
14 the way we have allocated the work among the Commission is  
15 to have the questioning divided up among the members of the  
16 Commission. And Ms. Bender will begin the questioning.

17 THE WITNESS: I do have an opening statement to  
18 make, if I could.

19 MS. BENDER: Would you mind holding your opening  
20 statement, please, until after the questioning?

21 CHAIRMAN CLELAND: We'll give you an opportunity to  
22 make any concluding statements that you want at the end.

23 BY MS. BENDER:

24 Q Thank you. Thank you, Ms. Brulo. I'd like to ask  
25 you a few general questions to begin with. What is your

1 educational background?

2 A I have a Master's in social work and a Master's in  
3 public administration.

4 Q And before you were employed by the Juvenile  
5 Probation Office what was your employment history?

6 A I had 22 years with the mental health system for  
7 children. Prior to that I worked in the Adult United  
8 Rehabilitation Services, which is for disabled persons. I  
9 worked there about two and a half years.

10 Q Thank you. And how did you come to work for the  
11 Juvenile Probation Office?

12 A I applied for the job when it was opened.

13 Q And which position was that?

14 A The Chief of Juvenile Probation slash Detention  
15 Home Administrator.

16 Q Did you have a sponsor?

17 A No, I did not.

18 Q Who appointed you Chief Juvenile Probation Officer?

19 A Judge Patrick Toole. He was the President Judge at  
20 the time.

21 BY JUDGE GIBBONS:

22 Q That application was pursuant to an advertisement,  
23 or how did you come to know about the position being opened?

24 A I just heard about it in the system and applied.

25 Q Heard about it in what system?

1 A The social service system where I --

2 Q Okay. You weren't working in the courthouse before  
3 that?

4 A No, I was not.

5 Q Okay.

6 A I was working in the mental health center.

7 Q Okay. The testimony that we've heard so far  
8 indicates that there was a consistent pattern of asking  
9 juveniles and their families to waive their right to counsel  
10 before appearing in juvenile court in Luzerne County, and  
11 there was a form that was utilized.

12 I'd like to ask you a couple questions about that  
13 form. Are you familiar with the form?

14 A Yes.

15 Q Okay. And can you tell me who composed that form?

16 A Judge Ciavarella.

17 Q Okay. Was there any input sought by Judge  
18 Ciavarella in the composition of that form?

19 A No. Because it was a legal document, and juvenile  
20 probation didn't serve in the capacity of -- as lawyers. We  
21 weren't trained in that area of law.

22 Q Well, how did it come about? Did he just say, this  
23 is a form you're going to use?

24 A Yes. I mean, you'd have to ask him how he decided  
25 we needed one.

1 Q But I assume he communicated that to you as Chief  
2 Juvenile Probation Officer?

3 A No. You assume a lot in that regard.

4 Q Pardon?

5 A You assume a lot in that regard, that he would have  
6 communicated that to me.

7 Q Okay. Well, how did you come to learn of it?

8 A He just said we are going to start using a waiver  
9 form.

10 Q Okay. Do you know whether anybody else had any  
11 input into the composition of the form?

12 A I do not know that.

13 Q How was it communicated? Was there a memo that  
14 came with it, or you said he said --

15 A No. He just came to us and said, we need to start  
16 using a waiver form, and he created one.

17 Q Okay. Did he give you any instructions as to the  
18 execution of that form?

19 A Wow, it's been such a long time. I suppose he did,  
20 but I -- at this point if I had to get into specifics, I  
21 really don't recall that. It's been a while.

22 Q Was it just given to you? Was it given to the  
23 people that worked in your office as well?

24 A Well, I disseminated to the people that worked in  
25 my office, particularly the intake people.

1 Q Okay. And what instructions, if any, did you give  
2 when you disseminated it?

3 A That if people did not have a -- if a juvenile did  
4 not have counsel, they would sign the waiver prior to court.

5 Q Okay. And talk to me about the logistics of how  
6 that was done. Where was that form signed?

7 A It was done as people checked in for court on the  
8 day of court.

9 Q Okay.

10 A At the desk by the elevator.

11 Q Okay. So outside the courtroom?

12 A Yes.

13 Q All right. And you mentioned that people who  
14 didn't have a lawyer. So what would you do? You'd ask  
15 them, do you have a lawyer with you today?

16 A Yes.

17 Q And if you didn't have a lawyer, you had to sign  
18 the form?

19 A You didn't have to sign the form. They were asked  
20 to sign the form, but they weren't made to sign it.

21 Q Okay. What if people didn't sign the form? What  
22 option was explained to them as to what they could or  
23 couldn't do?

24 A I don't think there was an option explained to them  
25 except that they just didn't sign it.

1 Q Well, what would happen to them if they didn't sign  
2 it?

3 A Nothing.

4 Q Would they proceed into court?

5 A Yes.

6 Q They would have their hearings?

7 A Yes.

8 Q Okay. Was there any -- what was done with the form  
9 when it was signed? Were they collected?

10 A All of the forms, whether they were signed or not,  
11 went into the courtroom to the judge. And he verified that  
12 they had counsel or they didn't have counsel.

13 Q Were they then put in each file for each juvenile?

14 A Yes.

15 Q Okay. And when you say he verified, how would he  
16 verify that?

17 A He would ask them, did you sign the form? I have a  
18 blank form here, or I have a signed form. And he would say,  
19 you're waiving counsel? He would kind of verify what they  
20 signed.

21 Q What was on the form? Do you have a recollection  
22 of it?

23 A Just that they waive counsel. I don't have a  
24 recollection at this point.

25 Q Was there an explanation of a right to counsel?

1           A     I really don't recall that.  I mean, if I saw -- I  
2 haven't seen the form in a lot of months because I left my  
3 position in 2005.  So I really don't know that.

4           Q     I appreciate that.  Do you have a recollection of  
5 -- of when you looked at the form did anything strike you  
6 about it?  Was it deficient in any way to your way of  
7 thinking, or did you think it was satisfactory?

8           A     I would have no way of knowing that.  I'm not  
9 trained in that area.

10          Q     Did you -- were you aware that people you were  
11 dealing with had a right to counsel?

12          A     Yes.

13          Q     Okay.  So knowing that when you reviewed the form,  
14 did it raise any red flags to you at all?

15          A     I'm not sure what you're asking me.

16          Q     Did it satisfy what you knew in terms of the rights  
17 the juveniles had?

18          A     I didn't know specifics about that.  All I know was  
19 they had a right to an attorney, and they could choose to  
20 have an attorney or not have an attorney.

21          Q     Okay.  And did this form explain to them that they  
22 did have a right to an attorney?

23          A     I believe it did.

24          Q     Okay.

25          A     But, again, I'm not an attorney.

1 Q I understand that. I understand that. But you're  
2 a well-educated woman. You can read, and you reviewed the  
3 form?

4 A Right. But I reviewed it as a social worker.

5 Q Well, you were Chief of the Juvenile Probation  
6 Office. You weren't a social worker.

7 A No, I was a social worker.

8 Q In this capacity though you were Chief Juvenile  
9 Probation Officer?

10 A And I functioned as a social worker.

11 Q Did you have any discussions with Judge Ciavarella  
12 about the form?

13 A No.

14 Q Did you have any discussions with Judge Ciavarella  
15 about the process that was utilized with the form?

16 A Other than he said how people would sign it. We  
17 went over that. You know, that they would do it at the  
18 desk, that that was the best option.

19 Q And you said when you came into the courtroom that  
20 he would ask the individuals if this -- about the form?

21 A Right.

22 Q If they had a lawyer or if they didn't?

23 A Right.

24 Q What do you recall about the substance of that comm  
25 -- conversation?

1 A Just what you said.

2 Q That was it?

3 A That was it.

4 Q Did he advise them that they had a right to  
5 counsel?

6 A Yes, he did.

7 Q Okay.

8 A I mean, it was no different than in any other  
9 judge's courtroom when they held juvenile.

10 Q All right. Who was asked to sign the form, just  
11 the juvenile?

12 A I believe it was the juvenile and the parent. But,  
13 again, I haven't seen the form for a while.

14 Q All right. During this time did your office  
15 utilize the services of a solicitor? Did you have a  
16 solicitor assigned to juvenile probation?

17 A Not that I'm aware of.

18 Q Okay. All right. Where would you turn for legal  
19 advice? You've told me you're not a lawyer. Where would  
20 you turn for legal advice regarding your policies and  
21 procedures, things like the form, or would you turn  
22 anywhere?

23 A No, we didn't turn anywhere. That was the judge's  
24 responsibility, and the -- I mean, we didn't. I had a boss,  
25 Director of Probation Services. And I would, you know, deal

1 with him on all issues.

2 Q Who was the boss?

3 A Paul McGarry.

4 Q Okay.

5 A And prior -- and whoever the President Judge was at  
6 the time. So it was President Judge Augello for a time, and  
7 then President Judge Conahan. But I dealt with Paul  
8 McGarry.

9 Q Did you ever raise any questions about the policies  
10 or procedures in -- in the courtroom with Mr. McGarry?

11 A I raised a lot of concern in the courtroom in terms  
12 of some of the antics that went on in the courtroom.

13 Q What kind of antics are you talking about?

14 A Well, we can start with the collection of bets in  
15 the courtroom from probation officers by the judge. The  
16 judge wearing a NASCAR hat in the courtroom, having parents  
17 standing before the bench waiting for their hearing, and he  
18 was collecting bets. And then in the next breath conducting  
19 a hearing and sending their child away. I had a lot of  
20 concern about that.

21 Q And you raised that with Mr. McGarry?

22 A I raised that with Mr. McGarry, and I raised that  
23 directly with the judge.

24 Q Judge Ciavarella?

25 A Yes.

1 Q Okay. What did Mr. McGarry tell you?

2 A He just said he would look into it.

3 Q How often did you raise it, more than once?

4 A Probably. But I was told I was being a party  
5 pooper.

6 Q By whom?

7 A Well, my staff thought I was a party pooper  
8 sometimes. I think the judge did.

9 Q When you say staff, do you mean other --

10 A Probation staff.

11 Q -- juvenile probation officers?

12 A Right.

13 Q And why did they think you were a party pooper?

14 A Well, I don't know if they saw anything wrong with  
15 that going on in the courtroom.

16 Q You mentioned Judge Augello too. Did you ever  
17 raise anything with Judge Augello?

18 A He was not the President Judge at the time when  
19 that was occurring.

20 Q So the answer is no, you didn't?

21 A No.

22 Q Okay. Did you raise it with any other judges?

23 A No.

24 Q Okay. Who had the ability to file delinquency  
25 petitions?

1 A The police.

2 Q Anybody else?

3 A Home and school visitors that were functioning as  
4 police officers in the schools. And then if the child was  
5 on probation and there was a technical violation, then the  
6 probation staff filed a technical violation form.

7 Q Did you interact directly with school districts or  
8 local police departments in that function?

9 A When they would send the reports over we had a  
10 person assigned who would say all the material was there, it  
11 wasn't there. At times I took those calls, that kind of  
12 thing.

13 Q Was there any consultation with the District  
14 Attorney's Office?

15 A The police are the ones who contacted the District  
16 Attorney's Office if they had questions if the charges would  
17 be approved or not.

18 Q Well, are you aware whether there was any -- any  
19 consultation at all, or are you just surmising that?

20 A No. There were times when I was aware the DA's  
21 Office was consulted because that was the procedure.

22 Q Okay.

23 A There were certain charges that -- serious offenses  
24 that they had to call the DA's Office for prior approval,  
25 sex offense charges, arson, ag assault. That was the

1 procedure that was set up.

2 Q Okay. What types of offenses did not require that?

3 A Simple assaults, weapon on school property, those  
4 kinds of things.

5 Q Okay.

6 A More -- even some possession of drugs, that kind of  
7 thing.

8 Q Did you have any written policy in your office with  
9 respect to who had permission or who had the process to file  
10 delinquency petitions?

11 A That's in the Juvenile Act.

12 Q Did you have a written policy in your office?

13 A No. We followed the Juvenile Act.

14 Q Okay. Can you walk us through a process employed  
15 by your office once you received a petition?

16 A Let's see. Again, it's been a while. The intake  
17 officer would receive it. It would be assigned to another  
18 intake officer. They would send a letter to the juvenile  
19 and their parents inviting them to come to the intake  
20 hearing, at which it said in the letter that they could  
21 bring an attorney or anyone else they so choose to do.

22 The intake meeting would occur. Sometimes lawyers  
23 attended. Sometimes they didn't. The police could attend.  
24 Most of the -- 99.9 percent of the time the police did not  
25 attend.

1 Q Were parents or guardians?

2 A Oh, parents had to be there.

3 Q Okay.

4 A They absolutely had to be there. And after the  
5 intake was completed they were then sent a letter saying  
6 your court date is again and advised they could bring an  
7 attorney. They were Mirandized at the intake, by the way,  
8 and told to get -- they could have an attorney. And the  
9 juvenile and the parent, I believe, signed the Miranda form  
10 at intake.

11 Q And would that form be placed in the file?

12 A Yeah, as far as I know, yes.

13 Q Was there a policy that it had to be placed in the  
14 file?

15 A Yes, there was.

16 Q Okay.

17 A And then the court hearing would be set. And,  
18 again, the parents and juvenile were advised they could  
19 bring an attorney.

20 Q Okay. At that point was there any interaction --  
21 interaction on the part of your office with the victims of  
22 the alleged infractions?

23 A We primarily were assigned from the DA's Office  
24 victim's representatives. So they primarily worked with the  
25 victims.

1 Q Okay.

2 A There was a victim -- there is a -- I believe still  
3 a Victim's Unit.

4 Q Would there be any interaction on the part of your  
5 office, either directly with the victims or with the victim  
6 representative from the DA's Office at that point?

7 A Yes.

8 Q Okay. What kind of interaction would there be?

9 A Just if the victims had issues or when court was  
10 scheduled. Could they attend an intake hearing, which we  
11 did not encourage victims to do that at that point.

12 Q Was there a solicitation of input with respect to  
13 their wishes?

14 A The Victim's Unit handled that. They had a Victim  
15 Impact Statement that they sent out.

16 Q Okay. And would you be provided with that at -- at  
17 that point?

18 A We were. Yes, we were. We were given a copy.

19 Q And would that become part of the file as well?

20 A Yes. Majority of times victims did not fill those  
21 out.

22 Q Okay.

23 A A lot of times the school was the victim, and they  
24 didn't fill it out.

25 Q Who would make the initial decision regarding

1 detention upon arrest?

2 A The police would, in routine cases, just call the  
3 supervisor on call and request detention. If it was a  
4 really serious arson, sex offense, they, again, went through  
5 the DA's Office. And then the supervisor on call was  
6 called.

7 Q Was there a set of guidelines employed by your  
8 office that would -- in this regard?

9 A For those cases it was generally risk to the  
10 community, flight risk, that kind of thing. And then there  
11 was a detention hearing held, and it was up to the judge  
12 whether to continue detention or not.

13 Q Was that a written set of guidelines?

14 A The flight risk, et cetera, that's put out by the  
15 Detention Association and, again, the Juvenile Act.

16 Q Okay. But nothing beyond that, nothing drawn up  
17 specifically by your office or --

18 A We had for -- if a child was in placement, we did  
19 have that if they escaped from placement, that you would  
20 file charges of escape from placement.

21 Q Okay. Were there recommendations made to the  
22 court?

23 A Regarding?

24 Q Detention?

25 A I suppose there were after intake would be held.

1 But if there was a detention hearing, that was primarily up  
2 to the judge to look at whatever material was available.  
3 Now, if we knew the child, we made recommendations. Like if  
4 the intake had already occurred, and this was a child we  
5 knew, then we made a recommendation. And that's all it was  
6 was a recommendation.

7 Q Where -- from whom would you seek any input in  
8 arriving at that recommendation?

9 A We met with the parents, the juvenile for the  
10 intake piece.

11 Q Right. Again, victims at all?

12 A Victims had input, again, through the Victim's  
13 Unit.

14 Q Okay. Were your -- did you track whether or not  
15 your recommendations were followed?

16 A No.

17 Q Why not?

18 A We just didn't track it.

19 Q Did you not think that it was relevant, or did you  
20 not -- I mean, why wouldn't you track it?

21 A We just -- we just didn't track it. I mean, the --  
22 we would take recommendations to court, and the judge would  
23 either agree with them or not agree with them. We didn't  
24 track it.

25 Q Well, I know that, but I'm asking you did you feel

1 a need to, I suppose, or did you not feel a need to track  
2 them?

3 A No, I guess we didn't.

4 Q Okay.

5 A I mean, no different than in the adult system where  
6 probation makes recommendations, and they don't track it  
7 either in the adult system.

8 Q Were juveniles screened initially for any drug and  
9 alcohol or mental health issues?

10 A Yes.

11 Q Okay. Can you describe that process, please?

12 A That's the Problem Severity Index, which most of  
13 the probation offices use. It's now called INCA, and don't  
14 ask me what INCA stands for, because I really forgot. But  
15 it's a intake form, and then it gives you a range of  
16 severity so that you know that you're looking at a mental  
17 health issue or you're looking at a drug and alcohol issue,  
18 that intervention is needed or not needed.

19 It was created by Marshal Davis and another  
20 gentleman, Andy, and I can't think of his name, from Lehigh  
21 County. I can't think of his name.

22 MS. BENDER: Andy DeAngelo?

23 THE WITNESS: Yes, thank you. Andy DeAngelo. They  
24 worked with the University of Pennsylvania. And then the  
25 INCA is an upgrade of it, which I did not have experience

1 with because that was done after I left juvenile. So I only  
2 know about the PSI.

3 BY JUDGE GIBBONS:

4 Q Okay. Is that primarily what was consulted?

5 A That, and if the parent said that the child was in  
6 treatment at a mental health center or drug and alcohol  
7 system. A lot of our children -- at one point we did a  
8 survey, and about 49 percent of our kids came from the  
9 mental health system, and they came with a strong mental  
10 health history.

11 So we would -- the intake office would get  
12 permission and write for records, and the same thing for  
13 drug and alcohol. At one point on the same survey we  
14 tracked about 70 percent of the children had a drug and  
15 alcohol issue. And of that 70 percent, probably 80 percent  
16 of the parents also had a drug and alcohol issue.

17 Q Would you make recommendations for evaluations at  
18 that point?

19 A Yes. And that was part of the court  
20 recommendation.

21 Q All right. And did you track whether those  
22 recommendations were followed?

23 A No.

24 BY MS. BENDER:

25 Q Ms. Brulo, you said that the police made the

1 initial intake decision on routine cases. Could you just  
2 tell me what routine cases are?

3 A I'm talking about drug possession, simple assault,  
4 those crimes that are not listed as rape, murder,  
5 kidnapping, ag assault, burglary. Those kinds of -- arson,  
6 sex offenses. They had to consult with the DA's Office on  
7 those. And I forget which DA put that in place, if it was  
8 Olszewski or Lupas. I'm not sure.

9 Q In a non-adversarial case who was generally in the  
10 courtroom at adjudication?

11 A On a non-adversarial case?

12 Q If the child admitted to the charges?

13 A The same people that were in the courtroom in  
14 adversarial cases.

15 Q Could you please tell me who they are in Luzerne?  
16 Who would be in the courtroom at that time?

17 A Well, probation officers are in the courtroom. The  
18 Assistant District Attorney's in the courtroom. If the  
19 child had a public defender, they were in the courtroom.  
20 The judge is in the courtroom. The judge's tip staff is in  
21 the courtroom. Private attorney would be in the courtroom.  
22 And at times -- and you had asked about -- and I told you  
23 about the NASCAR things. At times we had tour groups in the  
24 courtroom.

25 Q And what was probation's role at that time?

1           A     And the police would be in the courtroom.  
2     Probation was simply there to wait for the outcome of the  
3     case, and then hand the judge the recommendations and to  
4     maintain order in the courtroom.  Other than that, we didn't  
5     have a role.  We were very clearly told our role was to get  
6     the case to court, that it was the DA's Office  
7     responsibility to prosecute the case.  And defense  
8     attorney's role was to defend the case.  But we did not have  
9     a role.

10          Q     Were there victims in the courtroom at that time?

11          A     There were at times, and police officers.

12          Q     Did they have -- did the victims have a role?

13          A     They did.  They could speak.  They were also  
14     witnesses to, you know, the crime.  If there was a consent  
15     decree that was on the table, of course the victim, the  
16     police, the DA, and the judge had to be in agreement.

17                 I mean, we could recommend a consent decree, but it  
18     didn't mean it was going to happen.  We didn't have input  
19     into that.  We're not one of the required agreers, so to  
20     speak, to a consent decree.  You know, we could say we want  
21     one, but -- or didn't want one, but it didn't matter.

22          Q     If you said you wanted one, what would you base  
23     that on?

24          A     We would look at the crime.  We would look at the  
25     child's background, that kind of thing.  You know, some of

1 the crimes, especially post-Columbine, you know, were a lot  
2 of school-related offenses.

3 Q You said that the same people were in the courtroom  
4 for cases where the child admitted and in cases where the  
5 child didn't. Did you see that there were adjudication  
6 hearings conducted regularly where there was no counsel for  
7 the juvenile when the child hadn't admitted to the charges?

8 A Could you repeat that?

9 Q Yes. When a child had not admitted to the charges  
10 did you note if there were -- was counsel present for the  
11 child on a regular basis?

12 A It depended. I didn't count. I mean, at the end  
13 of the year a count went into the Juvenile Court Judges  
14 Commission of who was there without an attorney.

15 Q Can you guess what the average time of a hearing  
16 would have been?

17 A For which kind of case?

18 Q An adversarial hearing.

19 A Adversarial hearing?

20 Q Um-hum.

21 A It depended on how many victims and how many  
22 witnesses they had. It could go from ten minutes to we've  
23 had two hours.

24 Q In a non-adversarial hearing?

25 A That would be very quickly. That probably was

1 about ten minutes, 15 minutes, five minutes.

2 Q Were juvenile proceedings held daily?

3 A It depended. Regular court, which would have been  
4 our regular court list, was either once or twice a week  
5 depending on how many we had. And detention hearings were  
6 held sometimes every two, three days, again, depending on  
7 how many we had.

8 Q There was no set schedule then?

9 A For detention?

10 Q Um-hum.

11 A Not really, no. We dealt with them as they came  
12 up. We would go to the judge's secretary actually and say  
13 we need court time.

14 Q What time of the day did hearings generally begin?

15 A Usually the morning by 9, 8:30.

16 Q And what time would they generally end?

17 A Depended on the court list. Usually by noon.  
18 Sometimes they went passed noon.

19 Q Who was normally in a disposition hearing?

20 A The disposition and the adjudication hearing  
21 occurred at the same time generally.

22 Q So immediately following adjudication --

23 A Yes, ma'am.

24 Q -- the disposition took place? What was your role  
25 in the disposition hearing?

1           A     I didn't have a role other than we handed the judge  
2     our recommendations.

3           Q     How did you arrive at those recommendations?

4           A     Based on the PSI, mental health information, drug  
5     and alcohol information, family information. I was big on  
6     family information.

7           Q     So your -- you consider the PSI family information,  
8     drug and alcohol information. Were -- was there anything  
9     put into policy, written policy?

10          A     Regarding?

11          Q     Regarding what you would consider for a  
12     recommendation at disposition?

13          A     I don't remember. I mean, part of the policy was  
14     that we use the PSI. So if you want to call that the  
15     policy.

16          Q     There were no disposition guidelines of any sort in  
17     written form?

18          A     We had zero tolerance policies that the judge had  
19     formulated. That started back with Judge Toole. Because  
20     when I arrived as chief in December of '96 there were zero  
21     tolerance policies by Judge Patrick Toole regarding drug and  
22     alcohol use. And then post-Columbine Judge Ciavarella  
23     expanded -- and I don't -- don't ask me the year for  
24     Columbine. He expanded it to include fighting on school  
25     property, weapon on school property.

1           Then in February of 2003 he expanded, Judge  
2       Ciavarella, the policy to include probation violations, such  
3       as not attending court ordered programs. Oh, God, what  
4       else? School attendance. But usually our kids went to  
5       school. Those kinds of issues. So it was expanded upon.

6           Q     Thank you. Did you also make recommendations for  
7       placements?

8           A     Yes.

9           Q     And what did you consider when you were making  
10       placement recommendations?

11          A     The needs of the child and the family.

12          Q     Were there any types of screening, or how did you  
13       arrive at what the needs were? Would you have a tool that  
14       you used?

15          A     We used the Problem Severity Index. We used the  
16       mental health information. We had reports from  
17       psychiatrists. We had psychological evaluations by Dr.  
18       Vita. We had drug and alcohol reports.

19          Q     Were your recommendations followed?

20          A     Half and half maybe. I don't know.

21          Q     You didn't track?

22          A     We did not track.

23       BY JUDGE GIBBONS:

24          Q     You mentioned, Ms. Brulo, that often times  
25       disposition hearings just flowed right in after the

1 adjudication?

2 A Not often times, the majority of the time.

3 Q Okay. Was there any break at all in between the  
4 two where the judge would either review your recommendations  
5 or review your report or consult with you?

6 A He would sit and read at the bench the report --  
7 the report from juvenile.

8 Q Would there be any consultation with you?

9 A Sometimes he would ask a question, you know, what's  
10 this? What does that mean? That kind of thing. But other  
11 than that he would just read the report.

12 Q So there wouldn't really be any consultation with  
13 you or anybody on your staff prior to dispositions?

14 A I'm trying to remember how he did that. He would  
15 sit and read at the bench. I mean --

16 Q But you wouldn't have any consultations with him  
17 outside of what was in your report?

18 A If he came over and asked a question, you know,  
19 prior to that court hearing.

20 Q Okay. But there was no set -- I mean, you wouldn't  
21 go in and see him ahead of time? You wouldn't have any --

22 A At times if he asked, yes.

23 Q But that was not -- I guess what I'm trying to get  
24 at is, I mean, was there a set procedure that was employed  
25 that there would be a consultation?

1           A     Only if he asked for that, okay.  And it was no  
2     different than on rotation judges, okay.  They would -- they  
3     were not familiar with juvenile procedures, so they would  
4     ask us to come in and go over the recommendations.

5           Q     Okay.

6           A     Prior to court.

7           Q     So they would?

8           A     Yeah.  And sometimes Judge Ciavarella did as well.

9           Q     Sometimes, but there was no set procedure?  I guess  
10    that's -- it wasn't part of the process?

11          A     I would say the majority of time, yes.  Minority,  
12    no.  I mean, sometimes he just didn't do it.

13          Q     Did you have any concerns when you witnessed so  
14    many juveniles going through the process without the benefit  
15    of counsel?

16          A     I would say yes.

17          Q     Did you express those concerns to anybody?

18          A     To my superiors, yes.

19          Q     Again, Mr. McGarry?

20          A     Yes.

21          Q     Anybody else?

22          A     No.  That was my chain of command.

23          Q     Anybody outside the chain of command?

24          A     I probably might have mentioned it to Basil Russin,  
25    who was the Chief Public Defender, you know, that most of

1 our kids were rejected from having public defenders. There  
2 were times when I would -- you know, the parents would ask  
3 about where could they get an attorney, and I would give  
4 them three names of attorneys. The rule of three. Again,  
5 here's three names of who usually represents juveniles.  
6 There were times that some attorneys took cases pro bono.

7 Q My question is going -- you expressed that you had  
8 concern about witnessing so many juveniles go through the  
9 process without the benefit of counsel. You said you talked  
10 to Mr. McGarry. Did you -- and you didn't talk to anybody  
11 else?

12 A There was no else to go.

13 Q You mentioned you talked to Mr. Russin?

14 A That was in regard to the public defender case.

15 Q Did you ever talk to anybody in the District  
16 Attorney's Office?

17 A No.

18 Q Did you ever go to anybody in the County  
19 Commissioner's Office?

20 A No. We were separate from the County  
21 Commissioners.

22 Q Did anybody in the District Attorney's Office or  
23 the Public Defender's Office ever express any concerns to  
24 you?

25 A No.

1 Q Did you ever go to any of the other judges about  
2 it?

3 A No.

4 Q Did you attend any training conferences outside  
5 Luzerne County, or even inside Luzerne County for that  
6 matter, during your time as Chief of JPO?

7 A Yes. We had to have 40 hours a year.

8 Q All right. Would you express any concerns that you  
9 were experiencing at any of those with people around the  
10 states?

11 A I wouldn't say a training, but at Chief Juvenile  
12 Probation Officers Association meetings I would ask other  
13 chiefs what happened in their counties, you know, in regard  
14 to counsel. And at that time we also would have access to  
15 the Juvenile Court Judges Commission, Jim Anderson. I know  
16 that Jim Anderson had called the judge on several occasions  
17 talking to him about the high placement rate. I don't know  
18 if he ever talked to him about the counsel.

19 Q Did you ever express anything to him about the  
20 concerns?

21 A To whom?

22 Q Mr. Anderson?

23 A No. About the -- in regard to what, high  
24 placements?

25 Q No, about going through so many people -- so many

1 children going through the process without the benefit of an  
2 attorney?

3 A No.

4 Q Did your office adjust cases or make any use of  
5 diversion programs such as youth aid panels?

6 A No.

7 Q Why not?

8 A The judge did not want youth aid panels.

9 Q Did you adjust cases at all?

10 A What do you mean adjust cases?

11 Q Informal adjustments?

12 A Oh, yes, we did. We did.

13 Q Okay. Did you make use of any kind of diversion  
14 programs?

15 A Like what do you mean by diversion program?

16 Q Like a program put in place that would accomplish  
17 something the same way as an adjustment program might be?

18 A Community-based programs?

19 Q Any type of programs along those lines?

20 A There was a litany of community-based programs  
21 established.

22 Q Did you utilize them?

23 A We did primarily on the way back from placement.

24 Q But not beforehand?

25 A Sometimes. But primarily on the way back from

1 placement.

2 Q You said the judge didn't want to -- would not  
3 allow youth aid panels?

4 A No. He did not want youth aid panels developed.

5 Q Why?

6 A I don't know. You'd have to ask him.

7 Q Did he ever express it to you why?

8 A No, no.

9 Q Okay. Did your office supervise consent decrees?

10 A Yes, we did.

11 Q Tell me again, you mentioned schools could file  
12 petitions?

13 A They had school-based probation -- or not  
14 probation, school police officers.

15 Q Right. Would that be the person from any  
16 particular school district who would come in to initiate  
17 proceedings? Would --

18 A They would fill out an allegation complaint form  
19 just like the police would. They'd have the ability to do  
20 that.

21 Q They were actual police officers of school safety  
22 officers?

23 A Police -- some districts. And some districts had  
24 something called a home and school visitor that had those  
25 kind of powers to do that.

1 Q How about principals, vice principals?

2 A No, not that I'm aware of anyway. I don't recall  
3 ever having those come in.

4 JUDGE GIBBONS: Thanks, Mr. Chairman. I don't have  
5 anything further.

6 CHAIRMAN CLELAND: Ms. Brulo, I -- Mr. Williams.

7 BY MR. WILLIAMS:

8 Q I just have a couple questions, Ms. Brulo. I'd  
9 like to know what mental health center did you work at?

10 A Children Service Center.

11 Q Children's Service Center. Okay. And in the --  
12 you stated that you disagreed with Judge Ciavarella about as  
13 many remands, and you argued for more community-based  
14 placements. And you said you didn't -- you took the  
15 argument to Paul McGarry?

16 A Yes. He was Director of Probation Services.

17 Q And you didn't take anything to the County  
18 Commissioners at all?

19 A We were separate from the County Commissioners.

20 Q You're never separate from the County  
21 Commissioners. I was a County Commissioner for 16 years,  
22 and if somebody came to me with those kind of -- kind of  
23 issues on a travesty going on, I certainly would have done  
24 something.

25 A I could only speak to the direction we had from the

1 President Judges I served with. And the court was separate  
2 from the County Commissioners.

3 Q Well, I think there were other avenues that could  
4 have been taken. I really do. Especially in your position  
5 you could have taken them.

6 A If there were, I didn't know of any.

7 Q And how long did you work for the county?

8 A In the end 12 years.

9 Q 12 years. And you didn't know of any avenues to go  
10 to, and you worked in the mental health system?

11 A Pardon?

12 Q And you worked in the mental health system also?

13 A Yes.

14 Q Okay.

15 A I'm not sure I understand that last point.

16 Q The point being that you worked for the county.  
17 You worked in the mental health system, and you still didn't  
18 know who to take a complaint to?

19 A I took it to my superior.

20 Q And if you didn't get any satisfaction with your  
21 superior, don't you think you should have taken it a little  
22 further?

23 A I didn't --

24 Q At least try the County Commissioners, at least  
25 try?

1 A The --

2 Q They hold the purse strings of the county.

3 A I took it to my superior. At one point when we had  
4 high placement rates I took it to Judge Augello, who was  
5 President Judge, and to Mr. McGarry. And I was told the  
6 judge -- the juvenile judge was not to be bothered about  
7 budgetary matters.

8 Q That's probably true. It's the County  
9 Commissioner's job.

10 A Not in the system that I worked at. It was the  
11 President Judge's matter.

12 MR. WILLIAMS: All right.

13 CHAIRMAN CLELAND: Thank you.

14 BY CHAIRMAN CLELAND:

15 Q Ms. Brulo, I have just a few questions. You have  
16 an MSW, correct?

17 A Yes.

18 Q And you're actually a licensed social worker?

19 A I was at one point.

20 Q And you have a Master's in public administration?

21 A Yes, sir.

22 Q And when you were the Chief Juvenile Probation  
23 Officer you were pretty active in the Chief's Association  
24 statewide?

25 A I was avid, yes.

1 Q Am I correct that you were in line to become  
2 president of the Chief's Association?

3 A I was, yes, sir.

4 Q Okay. So you were pretty active?

5 A Yes.

6 Q So you were a pretty knowledgeable probation  
7 officer as probation officers go in Pennsylvania? You  
8 certainly were involved at the highest levels of the state  
9 organization?

10 A I suppose.

11 Q Okay. So were you aware of the Juvenile Court  
12 Judges Commission guidelines on detention?

13 A Yes.

14 Q Were those detention standards applied in Luzerne  
15 County?

16 A I believe they were. And when they weren't, then  
17 the detention group would come in and evaluate. And we were  
18 never written up.

19 Q As an experienced probation officer you know that  
20 those guidelines are subject to some considerable  
21 interpretation?

22 A Yes, they are.

23 Q And they can be used in ways sometimes that they're  
24 not intended to be used?

25 A I suppose they are.

1 Q Was that done in Luzerne County?

2 A I think that at times probably the judge did take  
3 leeway to do that.

4 Q Is it true that on occasion calls were made to the  
5 detention center to find out how many beds need to be  
6 filled?

7 A How many beds needed to be filled?

8 Q Um-hum.

9 A We would call on a daily basis to find out how many  
10 beds were available, but not that needed to be filled.

11 Q So you had no quota of filling beds?

12 A We were not told about that, no.

13 Q Okay.

14 A In fact, a lot -- when I ran the old detention  
15 facility, I can speak to that, most of the time we were at  
16 capacity and buying beds from other facilities. When the  
17 new facility opened -- I'm going to try to give you a time  
18 line. For the first six months, I believe, and don't hold  
19 me to that, we had access to the beds, okay.

20 And then after that six months they started -- the  
21 people who owned detention started to farm it out to -- or  
22 contract out beds to other counties. So we did not have  
23 access to that many beds at that facility at that point.

24 Q Were you a party to the negotiations involving the  
25 commitment of the county to fill beds?

1 A No, I was not.

2 Q After you left the position as chief you were still  
3 in charge of placement facilities, correct?

4 A No.

5 Q What was your -- what was your title after you left  
6 the position?

7 A I had a title with no duties. I was Deputy of  
8 Forensic Programs, Deputy Director of Forensic Programs.

9 Q And you had no responsibility with regard to  
10 placement after that?

11 A Not initially. I wish I had my notes. I basically  
12 -- it's a bad time to recall.

13 Q Well, let me refresh your recollection. There was  
14 a facility then opened in Western Pennsylvania, Western  
15 Pennsylvania Child Care, correct?

16 A (Nods head up and down.)

17 Q And isn't it true that a significant number of  
18 children were transferred from Luzerne County to Western  
19 Pennsylvania Child Care, or that facility was used in lieu  
20 of local facilities?

21 A That I do not -- I did not have anything to do with  
22 that.

23 Q And when did you leave the position as chief?

24 A October of '05.

25 Q And wasn't that in 2004 that Western Pennsylvania

1 Child Care was opened?

2 A I don't know. No, it was opened after I left, I  
3 believe. Because I did not place kids at Western.

4 Q You talked about the atmosphere in the courtroom,  
5 and you mentioned tour groups coming in?

6 A Yes.

7 Q Would you explain that reference?

8 A Teachers would call and ask to bring their students  
9 to the court for -- to sit in on court proceedings.

10 Q And --

11 A The judge would honor that.

12 Q And are we talking five kids, ten kids?

13 A It could be a class of 20, 25.

14 Q And they just stayed there all morning, and what  
15 happened?

16 A Yes, they sat in the jury box. They would call the  
17 judge's office directly about setting that up. And then the  
18 judge would just tell us we had a tour group, or sometimes  
19 we didn't even know.

20 Q You talked a little bit more about this courtroom  
21 atmosphere. There was a series of articles that ran in the  
22 Times Leader in -- in May of 2004. And I don't expect you  
23 to recall those articles.

24 But the reporter recalls a case, the 16 year old's  
25 case ended like several others that day with the girl being

1 placed in a residential treatment facility. I know you're  
2 upset. I know you don't want this, Ciavarella told the  
3 crying girl. You're reaching out. I'm going to take your  
4 hand and help you. This is not punishment. It's your  
5 opportunity to get a hold of your life. It's a message the  
6 judge says he conveys to virtually all offenders who come  
7 before him. Is that your experience?

8 A He did do that. He had many cases where he did  
9 reach out like that.

10 Q And is that why you agreed with him that we know  
11 placement works, or at least you were quoted as saying that?

12 A I had no leg to stand on when it came to that.  
13 Because the data was showing that our recidivism rate went  
14 down. When I started we had a 44 percent recidivism rate,  
15 and we went down to 14 percent.

16 Q So your view of this is that placements were done  
17 as part of a --

18 A Rehab program.

19 Q -- thought-out, data-supported judicial philosophy?

20 A Yes.

21 Q That you supported?

22 A To a degree I supported it. I mean, I would have  
23 preferred if he also tried the community programs first, and  
24 then we would have had a comparison.

25 Q So you have no basis to conclude, if I understand

1 your testimony, that these placements were made from any  
2 improper ulterior or illegal motive?

3 A I don't think so, unless I'm very naive. I don't  
4 think he did.

5 Q Okay. All right. Okay.

6 A You're talking about residential treatment  
7 facilities?

8 Q Well, I'm talking about placements.

9 A Placements, residential treatment, yes. Not  
10 detention. Because obviously we know different about  
11 detention.

12 Q Okay. Then let's talk about detention. Do you  
13 have any reason to think that the detention decisions --

14 A Now I do.

15 Q Did you at the time?

16 A No.

17 Q Okay.

18 A Unfortunately, no.

19 Q What do you know now that you didn't know then?

20 A I did not know he was taking money.

21 Q You were in court every day, and you saw lots of  
22 kids going off to detention. I guess I'm trying to find out  
23 what would have gone off -- what would have turned the light  
24 bulb on in the juvenile probation office, the District  
25 Attorney, the public defender, all these people that you

1 listed in the courtroom that somebody would have said  
2 something isn't right here, and we got to talk to somebody?

3 A I don't know. Because a lot of kids didn't  
4 necessarily go to detention. For instance, sometimes a  
5 disposition was right to Camp Adams or the female version of  
6 Camp Adams. There was a van downstairs that some kids did  
7 not go to detention.

8 Then you would look at -- and if you go back and  
9 look at the JCJC data, okay, our detention average length of  
10 stay was eight days. The other third class counties was  
11 somewhere around 16 to 19 days.

12 And when I look at placements or you look at  
13 detention rates, you would say, gee, we're pretty comparable  
14 to Berks County, Lehigh County, even Bucks, which is a 2A  
15 county.

16 Q Then let's talk -- let's talk about post  
17 adjudication detention for mental health evaluations. Did  
18 you see the mental health evaluations Dr. Vita did?

19 A Yes.

20 Q You mentioned those as a matter of fact?

21 A Yes.

22 Q That's the basis on which you made placement  
23 recommendations?

24 A He made the placement recommendation.

25 Q Well, you said you saw the evaluations?

1           A     Right, right.

2           Q     DPW, in their audit, was very critical of those  
3     evaluations. Did you share their view of those evaluations?

4           A     Initially Dr. Vita's -- again, I'm speaking as a  
5     social worker and not a psychologist.

6           Q     Which is your expertise?

7           A     You need a psychologist to judge another  
8     psychologist. But I will say as a social worker initially  
9     his evaluations were very individualized and specific. And  
10    then he got cookie cutter, which is why the courts switched  
11    from Children Service Center in the first place, because  
12    their evaluations were cookie cutter.

13          Q     Did you report that to anybody?

14          A     That they were cookie cutter?

15          Q     Yes.

16          A     Paul McGarry, again, knew; and he was concerned  
17    about it.

18          Q     Did you report it to the licensing board of the  
19    psychologist?

20          A     No. That -- I -- God, you'd have to report every  
21    psychologist in Luzerne County for cookie cutter evaluations  
22    or -- and psychiatrists.

23          Q     The answer is you didn't?

24          A     No.

25          Q     Can you tell me why?

1           A     Because it -- at some point all of these people go  
2     to cookie cutter.  There's a computer program which was  
3     probably the downfall of psychiatrists and psychologists.  
4     They have a computer program.  You plug in certain data.  It  
5     spits out a report.

6           Q     You're saying astonishing things here.  You're  
7     saying that you would -- you stood by knowing that placement  
8     decisions were being made by cookie cutter psychological  
9     reports, and you felt no responsibility to do anything about  
10    it?

11          A     No.  The report format was cookie cutter, not the  
12    placement recommendation.

13          Q     I'm not being accusatorial here.  I'm trying to  
14    understand what the impediment was why you didn't tell  
15    somebody this?

16          A     I did tell my superiors.

17          Q     And nothing happened?

18          A     No.

19          Q     And you did nothing more?

20          A     I didn't.

21          Q     As a licensed social worker do you have an ethical  
22    responsibility to report another professional that does  
23    inferior work?

24          A     Again, you would be reporting every psychiatrist,  
25    psychologist who sent a report to the court.  And it --

1 Q Did you report every psychologist that sent a  
2 report to the court?

3 A No.

4 Q Okay. Why -- and why?

5 A It wasn't -- you're misinterpreting something. The  
6 format is the cookie cutter. The recommendations were not  
7 cookie cutter. The format is. You take a format, and it  
8 gets plugged in. But not the recommendations. The  
9 recommendations were very individualized based on  
10 individualized testing that the doctor did. It's the  
11 format.

12 Q Can you give us any incite from your social worker  
13 background --

14 A About?

15 Q -- about why this wasn't reported to the Judicial  
16 Conduct Board, to the Attorney Disciplinary Board, to DPW,  
17 to the FBI, to the Attorney General? Why these kind of  
18 things went on and it didn't ring a bell with anybody?

19 A I don't know. It certainly didn't a ring a bell  
20 with me to report somebody for cookie cutter evaluations.

21 Q Some things rang bells?

22 A Like?

23 Q Well, you were concerned about nepotism?

24 A Oh, absolutely.

25 Q You were concerned about the quality of staff being

1 hired?

2 A Oh, absolutely.

3 Q You were concerned about the work being done by  
4 your department?

5 A Yes.

6 Q To the point where you applied for a different  
7 position?

8 A Yes.

9 Q Didn't report any of that to anybody?

10 A Of course I did, and then I was demoted. When I  
11 applied for the Children and Youth Director job I wrote  
12 Judge Conahan a letter indicating -- as a courtesy I was  
13 telling him that I was applying, and I told him why. And  
14 then I was suspended without -- or suspended with pay.

15 Q Do you think that was a feeling of the courthouse,  
16 that if people reported, that they would be sanctioned?

17 A Absolutely.

18 Q Can you give me another example?

19 A I think because I did speak up from '96 to 2005  
20 that's why I was transferred, which they now call it  
21 reorganization. But it was a demotion. October of 2005 was  
22 a demotion. I was put into a job with no job duties, no  
23 responsibilities.

24 Q What would have made it easier for you to do the  
25 right thing?

1 A To do what the right thing, to report?

2 Q Um-hum.

3 A Probably knowing who to go to, which I did not know  
4 you could go to any Judicial Conduct Board.

5 Q Okay.

6 A There was certainly no one in the courthouse to go  
7 to. I didn't -- quite frankly didn't know where to go. And  
8 it didn't meet any of the -- even when I was being told to  
9 dumb down to the men, to the boys, it didn't meet any  
10 standard of harassment or gender bias.

11 Q Okay.

12 A So I didn't know where to go.

13 CHAIRMAN CLELAND: Dwayne, Judge Woodruff.

14 BY JUDGE WOODRUFF:

15 Q Ms. Brulo, I just have a few questions for you.

16 One of the things that you mentioned was the Juvenile Act?

17 A Um-hum.

18 Q You're aware of the Juvenile Act?

19 A Yes.

20 Q Okay. Have you read that?

21 A Not recently.

22 Q Okay. During the time that you were employed here  
23 in Luzerne County you had read it at that time?

24 A We had it in the office at all times.

25 Q Okay. Was there anyone other than yourself that

1 would determine whether your actions with juveniles fell  
2 within the scope of the Juvenile Act?

3 A We were evaluated by the Juvenile Court Judges  
4 Commission because we took specialized probation monies.

5 Q Um-hum.

6 A And they would come in and do an evaluation. We  
7 received high honors, and I would recommend that you look at  
8 that process.

9 Q Okay.

10 A That it go from something superficial to something  
11 more in depth. We were evaluated by the detention folks.  
12 They would come in and look at our records. DPW, when we  
13 ran detention, came in and looked at the facility for  
14 detention. So we did have bodies come in to look at us.

15 Q Okay.

16 A And license us for detention.

17 Q Let me just take you back a little bit just so I  
18 can, you know, clear it up in my mind. Let's talk about the  
19 form that was signed for waiver of counsel.

20 A Um-hum.

21 Q When the juvenile came in you indicated the  
22 question was asked whether they have an attorney?

23 A Yes.

24 Q Okay.

25 A They were Mirandized at intake.

1 Q Okay. And so if they indicated they did not have  
2 an attorney, what was the next thing that was said or done?

3 A They were asked if they wanted to proceed, and they  
4 did -- never had to. They were never required to comment on  
5 the charges. We were there to gather psychosocial  
6 information. So if they did not want to comment on charges,  
7 they didn't have to.

8 Q Okay.

9 A As far as I'm concerned, the juvenile system for me  
10 was about a rehab plan. It wasn't about the crime  
11 necessarily. And I think that's a decision to be made. Is  
12 the juvenile system about a crime?

13 Q Okay. If we can --

14 A Go ahead.

15 Q If you just want to follow me on the questions.

16 A My attorney's probably having a --

17 Q Let's go back to this form. I understand there was  
18 a form for waiver of counsel that was given to you by Judge  
19 Ciavarella, correct?

20 A Yes.

21 Q Okay. So the day of the court hearing if -- when  
22 the juvenile came in you asked if they had an attorney?

23 A Yes.

24 Q And if they did not have one, did you give them  
25 this form?

1 A Yes.

2 Q At that point?

3 A I didn't personally, but the staff at the desk did.

4 Q Okay. Was the staff at the desk directed to inform  
5 them of anything at that point?

6 A That they could have an attorney if they wanted to.  
7 Sometimes parents were directed right when -- we were in the  
8 building with the PD's office. So they were directed to go  
9 downstairs to the Public Defender's Office.

10 Q Okay. And they were asked if they wanted an  
11 attorney?

12 A Right.

13 Q And if they said no?

14 A Some parents said no, they would not pay for an  
15 attorney.

16 Q Okay. And then they would sign a form?

17 A Yes.

18 Q Was anything else stated to them at that point?

19 A No, not that I'm aware of.

20 Q Okay.

21 A I wasn't at the desk. But no, not as far as I'm  
22 concerned.

23 Q And that form, was it initially given to you, and  
24 you distributed it out?

25 A No.

1 Q Okay.

2 A No. It was put with the packet and given to the  
3 judge.

4 Q Okay. In regard to the public defenders, to  
5 qualify for a public defender was that the family income?

6 A As far as I know it was, yes.

7 Q Okay.

8 A And that was a decision that -- that was their  
9 policy, not --

10 Q Okay.

11 A -- ours.

12 Q And kids would come back for second and third  
13 hearing at times?

14 A What do you mean?

15 Q You know, if they were -- if they were adjudicated,  
16 if there was -- if they were placed, did they ever come back  
17 before the judge again?

18 A There were placement review hearings, yes.

19 Q Okay. And did they have to sign this form again?

20 A No.

21 Q Okay. Were they asked?

22 A No. We weren't told to use that form at that  
23 point.

24 Q So if they came back for another hearing and didn't  
25 have an attorney, there was nothing indicated or stated to

1       them at that point?

2           A     No.  The judge never told us to do that form again.

3           Q     Okay.  And when they were in the courtroom are you  
4       aware of the judge indicating -- stating their right to an  
5       attorney?

6           A     No.  The first time, if you're referring to the  
7       colloquy.

8           Q     Talking about the second time --

9           A     No.

10          Q     -- they come back?

11          A     No.

12          Q     All right.  Let's talk about the colloquy.  It's my  
13       understanding there were juveniles that admitted to certain  
14       charges?

15          A     Yes.

16          Q     Okay.  And at that time was there an admission  
17       colloquy stated on the record or in written form given to  
18       them?

19          A     I have to tell you the first time I heard the  
20       colloquy was in May of 2008 in Judge Lupas's courtroom.  I  
21       never heard it in any judge's courtroom who heard juvenile  
22       cases.

23          Q     Okay.  So the charges that the juvenile were -- was  
24       admitted to, was that ever explained to them?

25          A     Yes.

1 Q Okay. And who did that?

2 A The presiding judge.

3 Q Okay. He'd do that in every case that you're aware  
4 of?

5 A I would take a wild guess and say probably not.

6 Q Okay. And so it would not surprise you if we had  
7 court transcripts indicating that that a lot of times was  
8 not done?

9 A No, it wouldn't surprise me.

10 Q Okay. In regard to recommendations by probation,  
11 you would have those recommendations prior to the court  
12 hearing?

13 A Yes.

14 Q Okay. Would that be in written form?

15 A Yes.

16 Q Was that placed in the file?

17 A Yes. They didn't --

18 Q Now, you indicated that you weren't aware the  
19 number of cases that the court followed your recommendation,  
20 but do you have any idea of a majority of the time, not  
21 often was your recommendation or probation's recommendation  
22 followed?

23 A Not often.

24 Q Not often, okay. Did probation have, I guess, a  
25 guideline in regard to the type of charges that would --

1 where they would recommend placement?

2 A The zero tolerance policies.

3 Q Okay. For something like school fights or  
4 disorderly conduct would probation ever recommend placement?

5 A Sometimes. It depended on the -- again, the  
6 child's circumstance, if the child needed mental health  
7 placement. You know, some kids got into fights, and they  
8 had an extensive mental health background, and the  
9 recommendation was that they would get treatment in a  
10 residential facility.

11 Q Okay. So if there was no mental health background,  
12 say the child came in and had disorderly conduct, would  
13 probation ever recommend placement?

14 A Probably not. But, again, we had to go by zero  
15 tolerance policies.

16 Q Okay.

17 A You know, sometimes we didn't go by the zero  
18 tolerance policies and our recommendations were simply not  
19 taken.

20 Q Okay. In regard to the zero tolerance policy, and  
21 you indicated you had to go by those guidelines in regard to  
22 placement?

23 A Oh, yes.

24 Q Okay. Explain to me what zero tolerance policy --  
25 what that meant to you?

1           A     It was certain charges, fighting on school  
2 property, weapons on school property primarily, zero  
3 tolerance for drug and alcohol abuse. And that was an  
4 automatic placement according to the judge's policy.

5           Q     Okay. Now --

6           A     Unless there was a consent decree put on the table.

7           Q     Okay. And so was that something that the judge  
8 informed everybody of, or is that something that you read?

9           A     Oh, it was quite knowledge -- everybody knew about  
10 it. The schools knew about it. The police knew about it.  
11 It was common knowledge. It was supported by the community  
12 and by the schools and by the police.

13          Q     And so with regard to the zero policy -- tolerance  
14 policy as written, that's not indicated in the written  
15 policy, but that's something that was known.

16                   As I read the zero tolerance policy it indicates  
17 zero tolerance being if there's a violation of those things  
18 it's to be brought back before the court. It doesn't  
19 indicate in there that there would be an automatic  
20 placement.

21          A     There was at one point. I don't know what happened  
22 to that policy. But it -- when I left that office that was  
23 the policy.

24          Q     Okay.

25          A     Somewhere along the line. I mean, the judge made

1 it very clear that fighting on school property, weapons on  
2 school property would not be tolerated, and that resulted in  
3 placement. He went around to the school districts doing  
4 speeches about that.

5 Q Okay. In the courtroom itself, once there was an  
6 admission or an adjudication in regard to those type of  
7 charges, was there any argument by the public defender? Or  
8 if they had a private counsel, did they have the opportunity  
9 to argue or to state their position in regard to possible  
10 placement?

11 A Sometimes.

12 Q Sometimes, okay. When you indicate sometimes, is  
13 that majority of the time or not many?

14 A Probably 50/50.

15 Q 50/50, okay. The length of time in the courtroom,  
16 particularly if there was an admission, you indicated -- I  
17 think the least amount of time you said 10, 15 minutes.  
18 Would it surprise you if we indicated to you that we've had  
19 other witnesses testify that the majority of the time the  
20 length of the court hearing was three to five minutes?

21 A No. Could be. You know, I mean, when you're in  
22 the courtroom it seems like you're in there forever. So,  
23 you know, it could have been shorter.

24 Q Okay.

25 A I mean, there were cases that you were zip, zip.

1 Q Um-hum.

2 A That was it.

3 Q Let's talk a little bit about the mental health  
4 evaluations. On kids that were not detained, when did they  
5 get their mental health evaluations?

6 A When?

7 Q Where?

8 A Oh, when?

9 Q Was it prior to the hearing or after the hearing?

10 A After the hearing.

11 Q After the hearing. Were kids placed at that point  
12 if they had come in and admitted to certain charges?

13 A Prior to mental health evaluation?

14 Q Yes.

15 A Sometimes.

16 Q Sometimes they were?

17 A Yes, they were.

18 Q Again, what do you mean by sometimes? Is that the  
19 majority of the time?

20 A I don't know. I would have to go back and look at  
21 that. That one I'm not going to take a guess on.

22 Q If it was one of these zero tolerance issues, would  
23 -- that would be the majority of the time they would be  
24 placed?

25 A Yes.

1 JUDGE WOODRUFF: Judge Cleland, thank you.

2 CHAIRMAN CLELAND: Judge Uhler.

3 BY JUDGE UHLER:

4 Q Getting back to the colloquy that was referenced,  
5 the waiver of counsel. You indicated you left the probation  
6 services insofar as your chief position in 2005?

7 A Right, right.

8 Q Was it in the year 2005 that this waiver form was  
9 developed?

10 A Oh, no. It was developed prior to that as far as I  
11 know, as far as my memory serves me.

12 Q Okay.

13 A We were using it for a while.

14 Q So there was no change mandated in the year 2005 as  
15 a result of the juvenile delinquency rules? Am I to  
16 understand that?

17 A Not that I'm aware of.

18 Q Now, if a parent would come in or a child and would  
19 say, do I need counsel, what was the response from juvenile  
20 probation, if you know?

21 A They were told -- okay. The policy was, again, we  
22 are not lawyers, that we're not there to give legal advice.  
23 The response was you have the right to an attorney. Here's  
24 the place for the Public Defender's Office. There are  
25 juvenile lawyers out there that you have the right to an

1 attorney. That is not our decision to make. If an intake  
2 officer went above and beyond that, I'm not aware of it.  
3 But they were told not to do that.

4 Q All right. That said, let's move on to the  
5 recommendations that you indicated were prepared by your  
6 department.

7 And you indicated that there would be differences  
8 if there was a judge coming into the rotation to cover  
9 vacations or otherwise, and you would provide the  
10 recommendations in advance to that -- that judge.

11 A It depended. If the judge asked for it. Some  
12 judges did, and some did not.

13 Q And was there any rhyme or reason as to the request  
14 for the recommendations?

15 A No. Some judges just didn't feel comfortable with  
16 juvenile.

17 Q And I gather then that it was anticipated that the  
18 youth that was appearing in front of that judge was going to  
19 be admitting, and hence a disposition was going to be made  
20 if the recommendations were given in advance?

21 A I'm not clear on that.

22 Q You're indicating that some judges requested the  
23 recommendations in advance of the hearing?

24 A Um-hum. It was on all hearings.

25 Q In all hearings?

1           A     All hearings, not just admissions. We didn't know  
2 the day before if a kid was admitting or not.

3           Q     So recommendations would be given in advance of a  
4 child being even adjudicated?

5           A     Right.

6           Q     After a hearing?

7           A     Right.

8           Q     So the judge would be provided information  
9 surrounding the background of that child prior to that judge  
10 hearing anything about the facts of the underlying criminal  
11 charge?

12          A     Yes.

13          Q     Did that cause any trouble in your mind?

14          A     Not in my mind. I mean, that was the -- what the  
15 judge was asking for. So I assumed it was okay.

16          Q     All right.

17          A     I mean, it wasn't just one judge doing that. All  
18 the judges did that. Because, again, I don't think one of  
19 the judges were comfortable with juvenile. As late as --  
20 because I had gone back to making some recommendations as  
21 part of my new job.

22          Q     Right.

23          A     Okay. Back in November of '07 I was assigned to  
24 make recommendations again and look at cases. And as late  
25 as June of '08 Judge Muroski asked for recommendations ahead

1 of time.

2 Q All right. Let's get back to the recommendations  
3 themselves. And you have a youth that goes into the  
4 courtroom without an attorney who's executed the waiver. To  
5 whom would the recommendations be given if they're being  
6 offered to the court at that time? Would it be just the  
7 judge?

8 A The judge.

9 Q How about the District Attorney?

10 A The District Attorney was there. And--

11 Q Would they be provided a copy?

12 A I believe they were, yes.

13 Q And what about the youth and/or his parents who are  
14 unrepresented? Would they be given a copy of the  
15 recommendations?

16 A No.

17 Q Was there ever any opportunity to challenge the  
18 factual predicate of the recommendations made in court?

19 A Sometimes.

20 Q And what do you mean by sometimes?

21 A Well, if the judge would go over something  
22 verbally, the parents could say, you know, that's not right  
23 and make a correction.

24 Q Would that be tolerated?

25 A Not well.

1 Q All right. So I gather then in those instances the  
2 recommendation that you generated on behalf of probation in  
3 writing was not copied to the child and/or his parents?

4 A No.

5 Q Who was representing himself or herself?

6 A No.

7 Q Was a copy given to the DA's Office?

8 A I believe it was. But, again, that's my memory. I  
9 can't be sure about that. I believe they had something, but  
10 I'm not exactly sure what in the packet they all had. I  
11 just don't remember that at this point.

12 Q Let's shift gears. Transfer cases.

13 A Transfer cases, okay.

14 Q Who was the -- who was involved in making the  
15 transfer request? Who decided to seek transfer in your  
16 system in Luzerne County?

17 A Transfer for what now?

18 Q For juvenile court to adult court?

19 A That would be made by the defense attorney.

20 Q The defense attorney?

21 A Or sometimes the child asks to go to adult court  
22 because they heard the prison was better than the detention  
23 center.

24 Q There were no cases generated by the prosecution or  
25 probation to seek the child?

1 A Yes.

2 Q Okay.

3 A Yes.

4 Q And tell me about that process.

5 A That was handled entirely by the DA's Office.

6 Q Entirely by the DA's Office?

7 A Yeah.

8 Q And when that child -- and I did review some of the  
9 records, that there were approximately 70 percent of the  
10 cases that went from juvenile court to adult court were  
11 unrepresented by transfer?

12 A That I don't know. I don't know that off the top  
13 of my head.

14 Q Were you involved whatsoever in making  
15 recommendations from a probation standpoint regarding  
16 transfer cases? What involvement did probation have with  
17 regard to transfer cases?

18 A Very minimal, very minimal. That was a legal  
19 process, but we didn't get involved much in that.

20 Q When you say you didn't get involved much with that  
21 --

22 A I mean, we would give --

23 Q -- would you be -- you'd give the form?

24 A We would give background information on the  
25 juvenile, and that would be it. But that was up to the

1 judge to decide if they met the criteria to be transferred  
2 to adult court or not.

3 Q Was the waiver of counsel form employed with those  
4 cases as well?

5 A That I do not know. I don't recall that. I really  
6 don't remember that. There weren't that many, as I recall,  
7 transfer to adult proceedings that we handled. We didn't  
8 have many of those cases.

9 Q The -- I noticed in some of the documents that have  
10 been provided to us that the Probation Department developed  
11 certain policies at certain points in times over the years;  
12 is that correct?

13 A I suppose.

14 Q While you were chief was there any policies  
15 relative to gifts?

16 A To gifts?

17 Q Yes.

18 A I didn't tolerate gifts.

19 Q You didn't tolerate gifts?

20 A No, I did not.

21 Q Was there a written policy?

22 A Yes, there was. And there was another -- Judge  
23 Augello wrote the policy and procedure manual for the court.

24 Q Okay.

25 A And that's in there as well. And then we also

1 followed the recommendation of the Chief Juvenile Probation  
2 Officer's Association that gifts not be tolerated.

3 Q Now, when PA Child Care was in its gestation stage  
4 and the detention center was -- was being closed or closed.

5 A Um-hum.

6 Q No. 1, what was your reaction to the detention  
7 center closing?

8 A Thank God.

9 Q Okay.

10 A Because the place was a dump.

11 Q All right. Now, were you involved with any  
12 promotional activities? Were you invited to any promotional  
13 activities of PA Child Care with regard to identifying what  
14 services were going to be made available, any of the  
15 underpinnings of what this entity would -- was intended to  
16 do?

17 A We were asked what services we needed. And what we  
18 needed was a treatment program close to home, okay.

19 Q Um-hum.

20 A Because we had a lot of kids clear on other side of  
21 the state, and the opportunity for family therapy was not  
22 there. Plus we needed a facility that would take our  
23 difficult cases, like arson, sex offenses. Because a lot of  
24 facilities wouldn't take them.

25 The only place that had to was the state

1 facilities, and they're not the best in terms of being close  
2 by. So we were asked about that. And as far as the  
3 detention center, we needed a detention center. I mean  
4 cockroaches crawled on the kids at night when they slept in  
5 our old place.

6 Q Okay.

7 A So I would say we did need a detention center.

8 Q Now, when these facilities were about to be opened  
9 were you made aware of any dinner or promotional affair that  
10 had been provided to not only the Luzerne County facility,  
11 municipal leaders and others within the surrounding  
12 counties?

13 A We were just at the ribbon cutting.

14 Q Just at the ribbon cutting?

15 A That's all I was at was the ribbon cutting.

16 JUDGE UHLER: Okay. I have nothing further.

17 CHAIRMAN CLELAND: Mr. Mosee.

18 BY MR. MOSEE:

19 Q Thank you. It's interesting, but coincidentally  
20 when you reassigned in October of 2005 that's when the Rules  
21 of Juvenile Court Procedure were implemented?

22 A I did not know that.

23 Q Have there been any trainings with regard to the  
24 rules since then?

25 A Oh, I don't know that.

1 Q Nothing for juvenile probation about the way the  
2 petitions are prepared, the way that intake works, the way  
3 that detention works, nothing?

4 A I don't know that.

5 Q Okay.

6 A I mean, I was really cut off.

7 Q Okay. And you haven't heard about anything with --  
8 okay.

9 A No, no, sir.

10 Q Well, as I said, one of the things that the rules  
11 did was it helped to define some of the terms so that there  
12 would be a universal understanding of what terms meant  
13 across the state. One of those terms is petition.

14 A Okay.

15 Q Sometimes we use that term loosely. And you talked  
16 about police officers filing petitions; is that correct?

17 A Yes, allegation complaint petitions.

18 Q Okay. See, there is an allegation and complaint,  
19 and that can become a petition, which is the formal start of  
20 a case in court.

21 A Right.

22 Q It would be during the interim, between the filing  
23 of the allegation and the creation of the petition, that  
24 juvenile probation would have the opportunity to adjust the  
25 case.

1 A And we did do that.

2 Q And you did do that?

3 A Yes.

4 Q So I'm wondering whether what was happening with  
5 the police department and these school officials was the  
6 filing of a complaint and allegation and not necessarily a  
7 petition. I just want to try to clear up the record as far  
8 as you know.

9 A The petition, I believe, was signed when the case  
10 was going to court. I know the form you're talking about  
11 now.

12 Q Um-hum.

13 A And the officer actually had to sign that they were  
14 petitioning the court. At one point when I started it was  
15 the chief probation officer who petitioned the court. And  
16 then we switched it to the police officer petitioning the  
17 court.

18 Q Okay. Well, what would you do in order to actually  
19 effectuate an adjustment of the case? How did that work?  
20 Because when you adjust the case it doesn't make its way  
21 into court, right?

22 A Right.

23 Q So how did you do that?

24 A The probation officer doing the intake would make  
25 the recommendation for an informal adjustment, and we just

1 informally adjusted it.

2 Q Okay. It's difficult for somebody like me, I come  
3 from Philadelphia.

4 A Um-hum.

5 Q And a lot of the cases that I've heard about which  
6 wound up causing the juvenile to be placed or detained would  
7 never make it into court. So I'm wondering, and I'm hoping  
8 that you can tell me, give me some examples of the kinds of  
9 cases that were, in fact, adjusted?

10 A Oh, let's see. Stealing 85 cents worth of candy  
11 from the school cafeteria lady. We were able to get some  
12 minor -- like bring a plastic butter knife in your school  
13 lunch bucket informally adjusted. You know, those little  
14 plastic things. Sometimes very, very small amounts of  
15 drugs. And we would have to go to the judge on those, and  
16 he would say, okay, you know, marijuana kind of thing.

17 Q Let me stop you there, if you can embellish upon  
18 that some. What would the judge do at that point? Would he  
19 say, okay, I'm dismissing the charge; or would he say --

20 A No.

21 Q -- we're not going to pursue this at all?

22 A Right. We would just go with the informal  
23 adjustment.

24 Q And then did you recommend that those juveniles who  
25 might have been caught with a small amount of drugs went to

1 a treatment facility or went some place?

2 A No, not to a treatment -- to outpatient treatment.

3 Q That's -- yes.

4 A Yes, outpatient treatment. Yes, yeah absolutely.

5 Q All right. I don't want to assume too much. How  
6 often were you in court?

7 A Me?

8 Q Um-hum.

9 A I tried to attend all the major courts, and  
10 sometimes my schedule permitted me to attend most of the  
11 detention hearings. I tried.

12 Q But you weren't there as a general rule in Judge  
13 Ciavarella's courtroom on a day-to-day basis?

14 A We didn't have court on a day-to-day basis.

15 Q Oh, I'm sorry. That's -- okay. How often was  
16 court in session in his courtroom?

17 A Maybe two, three times a week because of detention  
18 hearings.

19 Q All right. Okay. And you really didn't have an  
20 opportunity to train your people, and I'm talking about that  
21 period of time when you were the Chief of Juvenile  
22 Probation, with regard to some of the things that he asked  
23 you to get involved in, in particular that waiver form?

24 A I don't know what training there would have been  
25 other than this is how you do it.

1 Q Right. Well, you know, I appreciate the fact that  
2 you viewed this as something that lawyers should be involved  
3 in because it was a legal procedure, the waiver of counsel.  
4 I believe that's your testimony?

5 A No, the development of it. We did not get involved  
6 in the development of it because it was a legal form.

7 Q Okay. Well, I was assuming something. Maybe a  
8 little bit more than what you said.

9 A That's what I meant by that.

10 Q But if you felt that the development of the form  
11 was a legal procedure that should have been handled by  
12 attorneys, then wouldn't it stand to reason that giving this  
13 form to a juvenile and explaining it to them was something  
14 that lawyers should have been involved in?

15 A Now that you say it, maybe, but I didn't think  
16 about it at the time. I mean, the judge said this is how  
17 we're going to do it, and that's what we did.

18 Q And you say this is how we're going to do it. Was  
19 it just handing it to them and you give them a blank stare?

20 A No.

21 Q Weren't there questions about it?

22 A No. The staff asked them, you know, do they have  
23 an attorney? And then went over the form with them.

24 Q Okay. Now, that's a piece that I didn't hear  
25 before. They actually went over the form with them?

1           A     Yeah, they did.

2           Q     And see, that's what I'm getting at.  Don't you  
3 think that it's problematic for a probation officer to go  
4 over a legal document with a juvenile whose very liberty is  
5 in jeopardy?

6           A     We did what the judge instructed us to do.

7           Q     Okay.  And that gets back to my question about not  
8 having an opportunity to train people with regard to  
9 something the judge instructed you to do.

10          A     I guess if you put it that way, but --

11          Q     Okay.  All right.  Question about Dr. Vita.  And  
12 I'm glad that you have a background, and I heard your  
13 responses to Judge Cleland's questions.  Did young people  
14 have to go into detention in order to be evaluated by Judge  
15 Vita -- I mean by Dr. Vita?  Was it Dr.?  He's a doctor  
16 right?

17          A     No, they didn't have to go to detention for that.  
18 They could be evaluated on an outpatient basis.  Or if they  
19 were in placement, they were evaluated at the placement.

20          Q     Okay.  Because I seem to recall somebody saying  
21 that often young people were sent into detention just so  
22 that they could be evaluated.  In fact, they were sent into  
23 detention during what we would call the deferment of the  
24 disposition.

25          A     Yes, sometimes they were.

1 Q Okay.

2 A Yes.

3 Q And this would be a young person who otherwise was  
4 out on the street on their own recognizance, but as a result  
5 of the judge perceiving that there was a need for an  
6 evaluation, they would be sent into detention?

7 A Yes.

8 Q All right. And did that happen with Dr. Vita?

9 A Yes.

10 Q All right.

11 A And sometimes it was for a psychiatric, not just a  
12 psychological.

13 Q So it wasn't just for Dr. Vita? It was for others  
14 as well?

15 A Sometimes. Majority was Dr. Vita.

16 Q Okay. All right. After 2005 when you took this  
17 new position you said that you had some opportunity to  
18 review evaluations?

19 A From October of '05 to June of '06 I was assigned a  
20 job of -- finally of developing the probation manual for  
21 adult probation, of developing an intake department and  
22 training them in mental health and drug and alcohol issues  
23 for adult probation. I was also asked to retrain juvenile  
24 probation officers.

25 I was also asked to go over the new MA realignment

1 procedures that were taking place. I was sent on the road  
2 to visit the facilities that juvenile used, okay. And  
3 that's when I had the opportunity to see Western PA Child  
4 Care.

5 Q Okay. My only question was going to be did you see  
6 any market change in the quality of the evaluations?

7 A Oh, I didn't see evaluations then after that  
8 probably until February of '07.

9 Q Okay. All right. Just three more questions.

10 A Go ahead.

11 Q When you received the request from Judge Ciavarella  
12 or the judges who rotated through juvenile court to provide  
13 them with the recommendations did you also provide them with  
14 the evaluations?

15 A Which evaluations?

16 Q Any -- I assume that probation had the evaluations  
17 before they developed or arrived at the recommendation?

18 A Oh, sure. That -- the PSI, the Problem Severity  
19 Index, or any reports from mental or drug or alcohol  
20 agencies, yes.

21 Q Or any reports from people like Dr. Vita?

22 A Dr. Vita's would not have been in the file at that  
23 point because that's something that the judge would have  
24 ordered from the bench.

25 Q Okay. And sometimes you got that request the day

1 before the cases were actually listed?

2 A Yes.

3 Q Okay. And because you had that attitude, I think  
4 you said that as a social worker you were only concerned  
5 with the rehabilitation of the juvenile?

6 A Yes.

7 Q So the fact that they may or may not have actually  
8 committed the delinquent act was irrelevant at that point?

9 A Oh, no. Well, in terms of -- we would have made  
10 the recommendation, okay. Take a case, look at it, and say  
11 if this child's adjudicated, this would be our  
12 recommendation, okay.

13 Q Um-hum.

14 A So it wasn't that the crime was irrelevant.  
15 Obviously if it was an arson case or a sex offense case, you  
16 had to factor that in.

17 Q Um-hum.

18 A But we were looking at the overall family picture.  
19 What can we do to help get this juvenile and their family  
20 get back on track?

21 Q I don't want you to miss why that concerns us. For  
22 example, let's say that the evaluation said that the kid  
23 needed drug and alcohol treatment.

24 A Um-hum.

25 Q And the charge was possession of a controlled

1 substance. The judge reads that evaluation before hearing  
2 the facts. He's probably going to conclude, yeah, he did  
3 have the drugs.

4 A I --

5 Q That didn't dawn on you?

6 A It would have dawned on me. But, again, when a  
7 judge asks you to do something, you do it.

8 Q Um-hum. You had a discussion with the public  
9 defender, Basil Russin, about the fact that his people  
10 weren't being appointed in cases where you thought it was  
11 appropriate; is that correct?

12 A No. I -- when -- I had a conversation with him  
13 about his guidelines, his INCA guidelines.

14 Q Okay. Do you recall specifically what was  
15 problematic about the guidelines?

16 A Well, I thought they were really high, you know, to  
17 meet the qualifications.

18 Q Can you be a little more specific?

19 A Well, I mean, a lot of people weren't getting a  
20 public defender. So the salary limit, the income into that  
21 family, was pretty set -- the bar was set high.

22 Q Okay. And, you know, I'm not asking you to be  
23 specific with this one, but how would you characterize the  
24 juveniles and their families who were coming into Luzerne  
25 County's courthouse in terms of income?

1           A     We had a lot of families who I thought were  
2 struggling, okay, income-wise. We had a lot of single moms  
3 who were working two jobs, three jobs. You had a lot of  
4 absent fathers.

5                     Poverty to me is a factor when looking at a  
6 juvenile case, even though at one point Judge Ciavarella did  
7 not think that was a factor, okay. That's one of the risk  
8 factors defined by Communities That Care to look at that,  
9 look at grades, look at learning disabilities. How are they  
10 doing in school? The whole nine yards. I don't need to  
11 repeat these to you.

12           Q     Well, let me just ask you this, and I'm finished.  
13 When did you have that conversation with the public  
14 defender?

15           A     I don't recall that.

16           Q     Can you try to narrow it down, just the year?

17           A     I really can't.

18           Q     Okay.

19           A     I mean, I wish I could, but I can't. I don't even  
20 know what I had for lunch yesterday.

21                     MR. MOSEE: Okay. Thank you, very much.

22                     CHAIRMAN CLELAND: Mr. Listenbee.

23 BY MR. LISTENBEE:

24           Q     Thank you, Your Honor. And, again, thank you, very  
25 much for coming in and informing us more about the

1 procedures that were involved.

2 The issue of appointment of counsel is central to  
3 our hearings, and I think you did shed a little more light  
4 on the process by discussing the role of the public defender  
5 in this process.

6 Children were directed from court to do exactly  
7 what? If they needed lawyers, what did you direct them to  
8 do?

9 A The morning of court?

10 Q Yes.

11 A Sometimes they were sent right down to the Public  
12 Defender's Office to seek counsel.

13 Q Okay. And what was the result most often when they  
14 arrived at the Public Defender's Office?

15 A They were told that they hadn't applied in time, so  
16 then the case would be continued.

17 Q Okay.

18 A So that the Public Defender's Office could more  
19 properly assess that. So we did have continuances.

20 Q Can you tell us what percentage of cases to the  
21 best of your recollection did the public defender deny  
22 representation based upon income? Do you have any idea?

23 A No, I do not.

24 Q Can you give us some sense? And I know George  
25 pressed you on this a little bit, Mr. Mosee did, as to what

1 the income standards were.

2 A I don't know that.

3 Q Did many parents come back and tell you that they  
4 simply --

5 A Didn't qualify.

6 Q -- didn't qualify for the public defender?

7 A Right.

8 Q And could then not afford to hire counsel?

9 A Right.

10 Q And as a result then they would come in and waive  
11 the right to counsel?

12 A Yeah. There were a lot of people who were middle  
13 income families who couldn't afford counsel. Lawyers are  
14 expensive. So even if you had a family who looked like they  
15 were making a fairly good living, I mean, to hire counsel,  
16 \$3,000, \$1,500. That's a lot of money in a middle income  
17 family.

18 Q Did -- when the -- when the children came back up  
19 with their parents did they give you any indication as to  
20 whether or not -- well, let me back up a little bit. When  
21 you talked to the public defender about this appointment of  
22 counsel, did they tell you why they set the standard so  
23 high?

24 A No. I just assume that was a statewide standard.

25 Q Who decided that the public defender was going to

1 be the party to determine the income qualifications? Do you  
2 know who decided that?

3 A No, I don't.

4 Q Did Mr. Russin ever indicate to you why it was  
5 decided or what the standards were that were put in? Who  
6 decided what the standards were to be that were put in  
7 place?

8 A No.

9 Q Let me go back again to the questions concerning  
10 Dr. Vita. Slightly different question. Where does it say  
11 in the Juvenile Act or Rules for Juvenile Court Procedure  
12 that it's the responsibility of the psychologist or  
13 psychiatrist to determine a recommendation on placement?

14 A It doesn't.

15 Q Then why -- why were the psychologists and  
16 psychiatrists asked to make a recommendation on placement?

17 A Because the judge felt they had good input into  
18 some cases. Some have mental health backgrounds. Some had  
19 issues of learning disabilities that were picked up that the  
20 schools did not identify.

21 Q Do you know if any of the psychologists had ever  
22 been to any of the placements that they were recommending  
23 for the children?

24 A I don't have knowledge of that. I would say my  
25 best guess would be no.

1 Q So they were making recommendations that children  
2 should go into placement, places that they'd never been  
3 themselves?

4 A Right.

5 Q One --

6 A And I will add that I have been to all the  
7 placements where the kids went.

8 Q I recognize that you have. That's why I'm  
9 wondering why they were making recommendations at all given  
10 that there was no -- there are no requirements under the  
11 Juvenile Act or Rules of Procedure for them to do that.

12 On the issue of Miranda, you indicated that the  
13 probation officers were Mirandizing the children?

14 A Yes.

15 Q Why?

16 A That was the policy in the office from the time  
17 that I got there. That's what you did at intake so that  
18 they would know that they didn't have to speak to you.

19 Q Were the statements that the children made at  
20 intake used against them during the course of their  
21 adjudicatory hearings at all?

22 A No, not that I'm aware of.

23 Q Were you taking statements from them at all?

24 A At times they -- we would ask them to clarify the  
25 charges, to give their viewpoint. And they could choose not

1 to, or they could choose to do so.

2 Q So did the police ask you to Mirandize them?

3 A No.

4 Q Did the Miranda statements go into their files?

5 A Yes.

6 Q And they were then --

7 A That was part of the intake process. So they were  
8 Mirandized, I would assume, when they were arrested and then  
9 -- by the police. And then we Mirandized them when they  
10 came in to intake.

11 Q Did you consider that a legal function as well?

12 A No. That was just part of intake that had always  
13 been from the two chiefs before me.

14 Q Has that -- is that continuing at the present time?

15 A I do not know that.

16 Q You indicated that you were involved in informal  
17 adjustments, and you discussed that at length. And I'm not  
18 going to go down that same road.

19 Can you tell me how many informal adjustments you  
20 did on a regular basis?

21 A No. We did probably more than some counties. When  
22 I would look at the JCJC data there were some counties that  
23 had the policy that they didn't do informal adjustments when  
24 I would talk to other chiefs. Wyoming County was a good  
25 example of that. They rarely did informal adjustments, if

1 any at all.

2 Q Did you need the approval of the judge or the  
3 prosecutor in order to do informal adjustments?

4 A No, no.

5 Q So were there any of the cases coming out of the  
6 schools that you thought potentially could have been  
7 informally adjusted?

8 A Sure. But we had zero tolerance policies. And  
9 remember I said that if it was involving a drug charge,  
10 okay, we did go to the judge before we did informally  
11 adjust.

12 Q But if they were fighting in school?

13 A Oh, yes. We had to go for that, yeah. That was a  
14 zero tolerance policy.

15 Q So it was the judge's zero tolerance policy --

16 A Yes.

17 Q -- that determined that you could not informally  
18 adjust a lot of those cases?

19 A Right, correct.

20 MR. LISTENBEE: I have no further questions, Your  
21 Honor.

22 CHAIRMAN CLELAND: Mr. Allen.

23 BY MR. ALLEN:

24 Q I have a few questions for you, Ms. Brulo. Talk  
25 about restitution claim forms. You mentioned earlier the

1 Victim's Unit from the DA's Office. Did they also send out  
2 restitution claim forms?

3 A Yes, they did.

4 Q Do you know when they sent the Victim Impact  
5 Statements and the restitution claim forms out, how early in  
6 the process?

7 A No, I don't know. But it was early enough to get  
8 it back for court.

9 Q When the judge ordered rest -- did the judge order  
10 restitution on a regular basis?

11 A Yes.

12 Q Was it appropriate?

13 A It was based on what the victim brought in to  
14 court. I can't remember except for one or two times when he  
15 thought it was pretty out of sight and reduced it.

16 Q Did any of the victim's services people verify any  
17 of the restitution, or they just --

18 A No, they did verify restitution claims.

19 Q The restitution claim forms as well as the  
20 recommendations made by your staff, did those end up in the  
21 -- in the files of the juvenile?

22 A We had a Restitution Collections Unit established  
23 at some point. And, again, I don't remember when that was  
24 established, for the both adult and juvenile probation.

25 Q But where did they get the information to collect

1 it? Did they get it right out of the juvenile's file, or  
2 was the Victim Impact Statement and the restitution claim  
3 form sent down to them to collect it?

4 A Sent down to whom?

5 Q That collection that you mentioned?

6 A Yes. It was part of the Probation Department.

7 It's just that certain people were assigned to do  
8 collections.

9 Q Do you know of anyone telling a juvenile, whether  
10 it be a juvenile probation officer, whether it be a police  
11 officer, whether it be the District Attorney or anyone that  
12 they don't need an attorney, this isn't a serious enough  
13 case?

14 A I'm not aware of that. And that would be sad if  
15 they did tell them that.

16 Q When you were at proceedings did you ever hear the  
17 judge yell at anybody?

18 A Oh, yes.

19 Q About a motion, like an attorney?

20 A Oh, yes.

21 Q The attorney -- how did the attorney or the person  
22 that the judge yelled at respond to that?

23 A Usually backed right down.

24 Q Did they ever complain to anybody about it?

25 A I don't know that.

1 Q Were you ever yelled at for saying anything in  
2 court that the judge didn't agree with?

3 A Not yelled at. There is a funding stream called  
4 Title 4E, okay. So if a child is in placement, and Title 4E  
5 is being used, you need to have all proceedings on the  
6 record as part of the placement review.

7 And there were a couple times that -- because the  
8 judge liked to go off the record. He would tell the court  
9 stenographer, this is not on the record, and he would make a  
10 comment. Okay, we're on the record for this review because  
11 Ms. Brulo says we need to be on the record for this review.

12 Because it was illegal not to be on the record for  
13 Title 4E funding. And we would be audited on that when the  
14 Title 4E folks came in to audit us. So I insisted that be  
15 on the record. So he would, you know, kind of poke fun, I  
16 guess, at me more than yell.

17 Q Thank you.

18 A For being such a stickler, I guess.

19 MR. ALLEN: Thank you, Ms. Brulo. That's all I  
20 have, Mr. Chairman.

21 MR. LEGG: I have a few, Your Honor.

22 CHAIRMAN CLELAND: Mr. Legg.

23 BY MR. LEGG:

24 Q Thank you, Ms. Brulo. You referenced that the  
25 other judges used the same waiver of counsel form?

1           A     As far as I know, yes.

2           Q     How often would other judges have been sitting in  
3 juvenile court aside from Judge Ciavarella?

4           A     Not very often.  When I initially started as chief  
5 every summer we had summer court rotations, and that would  
6 have been prior, I think, to the waiver form being  
7 established.  But then after that it was for vacations and  
8 things like that or days off.

9           Q     Did you notice anything different about the  
10 proceedings that the other judges would have sat in as  
11 opposed to Judge Ciavarella's proceedings?

12          A     There were more formal.  There were no visitors in  
13 the courtroom.  It was calmer.

14          Q     What about the actual legal proceedings, like the  
15 waiver of counsel and the colloquies or things of that  
16 nature?

17          A     I've never -- I can honestly say, maybe I'm wrong,  
18 but when -- the first time I heard the colloquy in May, 2008  
19 I remember thinking, wow, that's pretty long.  So I would  
20 think I would have remembered it at some point along the  
21 line.

22          Q     And you don't remember any detailed waiver of  
23 counsel colloquies either?

24          A     No, I don't.

25          Q     What about the detention or placement rates?  Did

1 you see a difference between Judge Ciavarella and the other  
2 judges, or was it pretty much a zero tolerance policy that  
3 was adhered to by all the judges?

4 A No, they pretty much followed that as well. I will  
5 say that there was one time we were before Judge Burke, and  
6 he would not -- the child had come in to detention. And I  
7 don't remember the name of the child, but someone's going to  
8 ask me that, but I do remember, because I thought, oh,  
9 somebody else knows the place is a dump.

10 The child had come in to detention, and then the  
11 hearing was to see if they were going to stay in detention  
12 before adjudication hearing. And Judge Burke had said he  
13 could not send that child to detention because he had  
14 children of his own, and he wouldn't want his own kids up  
15 there.

16 Q But that's the only example you remember?

17 A (Nods head up and down.)

18 Q In terms of the consent decrees, can you give us a  
19 little idea of how the District Attorney's Office was  
20 involved in making that decision? Was it on the day of  
21 court, or would they have been involved prior to actually  
22 the hearing date?

23 A Mostly the day of court. They decided that in the  
24 courtroom half the time, you know, as a sidebar. We weren't  
25 involved in that.

1 Q Okay.

2 A They passed the paper around when it was approved.

3 Q And there was no involvement with the District  
4 Attorney's Office and the probation office prior to court?

5 A Between whom?

6 Q The District Attorney's Office and your office in  
7 terms of consent decrees or --

8 A There were times we would tell the District  
9 Attorney's Office we were recommending a consent decree.  
10 But, again, when push came to shove we didn't have any input  
11 into that. Because even if we had said we don't agree with  
12 the consent decree, let's use that, our vote wouldn't count  
13 because it's the victims, the police, the DA, the court who  
14 decided there's a consent decree or not.

15 Q Do you know if there's any type of established  
16 policy in terms of what he will -- what Defendants were  
17 eligible for a consent decree?

18 A No.

19 Q You were kind enough to provide one of our  
20 investigators with copies of a lot of different documents,  
21 including, I think, the Luzerne County Juvenile Probation  
22 Policy and Procedures, and as well as a number of memos that  
23 I think you authored; is that correct?

24 A I -- my attorney would have done that.

25 Q Okay. And I'm going to just read this and see if

1 you recall. It's a June 7th, 2001 correspondence to a  
2 Trooper Summers regarding escapes.

3 A Yes.

4 Q Do you remember that?

5 A Yes, I do.

6 Q And in the second page of that you indicated that  
7 -- and I'll quote. Please be assured this office does not  
8 take escape charges lightly.

9 A Right.

10 Q And neither does the Honorable Mark A. Ciavarella,  
11 Juvenile Court Judge.

12 A Right.

13 Q In addition, this is a zero tolerance county  
14 concerning drug alcohol usage and school violence.

15 A Yes.

16 Q I am pleased to report a 14 percent recidivism rate  
17 among youth on probation. Three years ago the recidivism  
18 rate was 45 percent, end quote.

19 A Yes.

20 Q So in June of 2001 Luzerne County was a zero  
21 tolerance?

22 A Luzerne County was a zero tolerance from the day I  
23 took over as chief.

24 Q Did you see anything change about that zero  
25 tolerance policy from the day you were chief forward until

1 you were demoted?

2 A Yes.

3 Q What did you see change?

4 A Post-Columbine there were -- there was more  
5 attention paid to it, I guess, because a lot of the schools  
6 were concerned. The DA was concerned. The employees were  
7 concerned. And then it changed in February of 2003 to  
8 include probation violations as well that the kids would be  
9 detained.

10 And then we developed graduated sanctions policies  
11 as a way to kind of counter the zero tolerance policies.  
12 With the exception of if it was a child using heroin or  
13 cocaine. The judge was concerned that they would overdose,  
14 so they would go to detention.

15 But graduated sanctions, and I can't recite them at  
16 this point, but you probably have a copy. We had proposed  
17 that not all kids go to detention the first time out on a  
18 probation violation. Because a lot of kids, sometimes they  
19 couldn't get to court-ordered programs, for instance,  
20 because their parents couldn't get them there, and they  
21 didn't have transportation, that kind of thing.

22 Q Now, in February of 2003 I have a memo that you  
23 sent to law enforcement agencies regarding detention center  
24 admission procedures.

25 A Um-hum.

1 Q Do you remember that?

2 A Um-hum.

3 Q Vaguely?

4 A Vaguely. That's when the new place was opening.

5 Q That's what it is. It's for PA Child Care. It  
6 says it's effective February 17th, 2003 at 8:30 a.m. In  
7 particular I wanted to call your attention to -- and it's in  
8 bold paragraph 2 on the second page.

9 It says, the arresting officer has the  
10 responsibility to determine the need to detain a youth based  
11 on the officer's good judgement.

12 A That was the directive we were given from Judge  
13 Ciavarella, that they had the child, and they would make  
14 that determination.

15 Q So when you say arresting officer, that would be  
16 the police officer?

17 A Yes.

18 Q So it was a police officer making the determination  
19 about whether to place that child?

20 A Um-hum.

21 Q And that was based upon the officer's judgement  
22 independent of a juvenile probation officer reviewing the  
23 case or a District Attorney?

24 A Yes.

25 Q An ADA reviewing the case?

1           A     There were certain charges that the District  
2 Attorney made sure police called them about, sex offenses,  
3 arson.

4           Q     And questionable charges?

5           A     Yeah.

6           Q     So if they didn't know if they had enough before  
7 they put a kid in the slammer, they wanted to make sure they  
8 had enough evidence?

9           A     I don't know if it was enough evidence, but that  
10 the charge warranted, I guess, detention. We were kind of  
11 out of the loop on that a little bit.

12          Q     Okay. Well, if that's the issue, if it warranted  
13 detention, what type of training did either the District  
14 Attorney's Office, your office provide to these law  
15 enforcement officers in terms of what you expected from them  
16 exercising their judgement for detention policies?

17          A     I don't know that. I know we didn't provide  
18 training.

19          Q     And that memo is dated February 11th of 2003. And  
20 I want to actually mark this, Mr. Chairman, and show it to  
21 the witness, if I could. February 20th, 2003 memo from her,  
22 I believe, to her staff.

23                    If you could look at that, Ms. Brulo. And I'm  
24 going to ask you if you recognize that?

25          A     Oh, yes.

1 Q And what is that?

2 A That is the directive by Judge Ciavarella expanding  
3 the zero tolerance policy.

4 Q And that's dated February 20th?

5 A Yes.

6 Q Three days after PA Child Care was opened?

7 A Yes.

8 Q And how did that change the policy for the county  
9 at that point in time?

10 A Well, we would have had more children going in to  
11 detention. But, again, we proposed countered with graduated  
12 sanctions. So that kind of pulled it back a little bit.

13 Q Well, was that particular memo -- that was  
14 basically putting -- suspending the graduated sanctions  
15 program? Didn't it implement a zero tolerance program at  
16 that point?

17 A We had -- you know, graduated sanctions we had over  
18 the years. There were different graduated sanctions that  
19 went back and forth over the years. If you had to ask how  
20 many graduate sanctions policies did we propose over the  
21 years, probably about six or seven or eight. You know, they  
22 would stand for a while, and then he would forget about  
23 them. And even then we'd say we got to go back to graduated  
24 sanctions to counter the zero tolerance. And, you know, he  
25 would adhere to it for a while, go back away from it.

1 Q Well, if I can quote your memo. It says, quote,  
2 youth on probation are to be violated and detained for any  
3 violation of the terms of their probation?

4 A Yes.

5 Q Examples, zero tolerance?

6 A Yep.

7 Q Not attending school?

8 A Yep.

9 Q Not attending appointments and curfew?

10 A Yes.

11 Q So if someone on supervision missed a curfew, they  
12 were detained?

13 A Yes.

14 Q And let me finally show you -- if I could, Mr.  
15 Chairman, have this marked as well and provide that to the  
16 witness. And this is my last line of questioning, Ms.  
17 Brulo, so thank you for your patience.

18 Do you recognize that document?

19 A Yes, both of them. There's two here.

20 Q Yeah, there's a back there as well. But what is  
21 that document just generally?

22 A This first one, November 19th?

23 Q Yes.

24 A That's the graduated sanctions policies that he  
25 agreed to reinstate.

1 Q So that would have been November 19th? That would  
2 have been approximately nine months, I guess, after the  
3 revocation or suspension of the graduated sanctions?

4 A (Nods head up and down.)

5 Q Okay. So at that point Luzerne County went back to  
6 graduated sanctions, which I take it if a child missed a  
7 curfew, they weren't necessarily detained?

8 A Right.

9 MR. LEGG: That's all I have, Mr. Chairman.

10 BY MR. HOROHO:

11 Q You get to the end of the questioning you have a  
12 tendency to hear some repetitive questions. So if I do, I  
13 apologize. I just have a few.

14 First, again, I want to thank you for coming. I  
15 know you want to make a statement, so my question is I'm  
16 trying to get the feel for the atmosphere that you worked in  
17 from '96 to 2005.

18 Now, you mentioned about the antics in the  
19 courtroom. Obviously you thought that was inappropriate?

20 A Yes.

21 Q And there was other inappropriate conduct in Judge  
22 Ciavarella's courtroom?

23 A I think so, in my opinion.

24 Q And I just got done reading your affidavit that you  
25 signed in August of '09, which is replete -- 21 paragraphs,

1       subparagraphs, replete with accusations of nepotism?

2           A     Yes.

3           Q     Ethical violations, arguably violations of judicial  
4       canons?

5           A     Oh, I don't know about that.

6           Q     Well, I guess it goes to your comment to Judge  
7       Cleland that you knew -- you did not know anything about the  
8       Judicial Conduct Board during the period of time of '96 to  
9       2000?

10          A     No, I didn't.

11          Q     So am I correct to assume you had no idea that  
12       judges in the Commonwealth of Pennsylvania could be  
13       disciplined, or there was no discipline system?

14          A     Not until Judge Lokuta was taken before the Conduct  
15       Board.

16          Q     All right. Well, did you ever go to one of the  
17       other judges and said -- and say, I can't believe what's  
18       happening in Judge Ciavarella's courtroom? Is there some  
19       place I could go or some person I could complain to about  
20       this judge?

21          A     No. It was unspoken that when the President Judge  
22       was the President Judge it was their bailiwick, so to speak,  
23       and no other judge interfered with another President Judge.  
24       Even when I was, quote, reorganized as -- or I call it  
25       demoted, okay, I spoke with Judge Toole about it informally.

1 I spoke with Judge Augello about it informally. And no  
2 other judge interferes with the sitting President Judge.

3 Q Well, did they -- did you ask them, is there some  
4 place I can go individually and file a complaint?

5 A No. I didn't know to ask that.

6 Q Anonymously did you --

7 A No, no. I didn't know how to do that. I did  
8 research on the internet about the Equal Opportunity  
9 Commission. And, in fact, I have recently filed with them,  
10 and they told me that I had no grounds for filing.

11 Q The chief counsel for the JCB was in to testify  
12 earlier and said that everyone --

13 A For the who?

14 Q For the Judicial Conduct Board. Joe Massa was in  
15 earlier and talked about his trips, I think one to Luzerne  
16 County, where from time to time the Judicial Conduct Board  
17 would have seminars sponsored by the Bar Association. I  
18 assume you were not invited and did not attend any of those?

19 A I'm not aware of any of that.

20 Q Did you ever go to any lawyers and ask them, is  
21 there a place I could go to?

22 A No.

23 Q Why did you think that they were not a stop or a  
24 source of information to you?

25 A No offense to anybody, but I just didn't think that

1 they would be of help.

2 Q Judge Muroski --

3 A Sorry.

4 Q Judge Muroski testified that the high schools were  
5 very active in the intake process of processing and  
6 initiating complaints against the juveniles. Would you  
7 agree with that?

8 A The high schools?

9 Q Yeah, the schools? The schools were very -- not  
10 the high school. The schools were very active in the  
11 process along with police officers initiating complaints  
12 against the juveniles?

13 A You're going to need to explain that more. I'm not  
14 meaning to be stupid, but --

15 Q Well, Judge Muroski made it seem that it was -- the  
16 schools had a lot of influence in initiating complaints into  
17 the juvenile system about juveniles?

18 A We had a lot of cases where the school was the  
19 victim.

20 Q Did you find that at all unusual?

21 A Pre-Columbine we didn't have that many.  
22 Post-Columbine we did.

23 Q Did you think they had too much influence in the  
24 process?

25 A In my opinion I would say sometimes they

1 overreacted to a situation. That's my opinion. You know,  
2 maybe if I was the principal, I wouldn't think that way, but  
3 --

4 Q You provided some notes Commissioner Legg referred  
5 to, and it's in one of those notes you say eventually  
6 Ciavarella relented, and if a consent decree could be  
7 offered on school violence and weapons, then he would agree.  
8 A lot of the time the school, as the victim, or the police  
9 would disagree. If the child was a pain, your quotes, to  
10 the school, they wanted that child gone.

11 A Yes.

12 Q What did you mean by that?

13 A Well, if the child was a behavioral problem in the  
14 classroom, they wanted that kid out.

15 Q Who wanted the child gone?

16 A The school.

17 Q Did the school call you and tell you that?

18 A No. But it was pretty evident when they would  
19 present why they were disagreeing with the consent decree.  
20 They would have a litany of behavioral issues that the child  
21 had exhibited, school suspensions, behavioral reports. You  
22 know, we weren't dealing with kids who sometimes behaved  
23 well in school.

24 Q Did you personally agree with the zero tolerance  
25 policy?

1           A     I don't agree with the zero tolerance policy unless  
2     it looks at every aspect, including family issues. I think  
3     sometimes zero tolerance backs you into a corner that you  
4     don't want to be in. I -- I deal a lot in gray area. So  
5     that kind of puts you into a black and white area.

6           Q     Let me go to one of your own quotes in your notes.  
7     In spite of what we believe about keeping kids in the  
8     community, Ciavarella had a very low recidivism liration  
9     rule. When I started we had 44 percent. Then it went down  
10    to 8 to 12 percent. I began to think maybe I was nuts and  
11    he was right.

12          A     Yeah, I did.

13          Q     What did you mean by that?

14          A     Well, I mean, he would say to me what I'm doing  
15    works. And he would say to me, refute what I do doesn't  
16    work. How could you refute it when our recidivism rate was  
17    going down? And, again, we were using the state's  
18    definition of recidivism.

19                 And in my closing comments I think that the  
20    definition of recidivism should be looked at. Because I  
21    think if you're in placement, it's easy to not commit  
22    another crime. And if you're on supervision in the  
23    community, okay, and some probation officer is watching you  
24    seven days a week and you're in program five of that seven  
25    days a week, it's easy not to commit a new crime.

1           I think recidivism should be looked at after you  
2 get off probation to see if you commit a new crime. I think  
3 we should look at how many of the juveniles ended up in the  
4 adult system. You know, when you're on supervision,  
5 especially kids, and, you know, probation officer's looking  
6 over your shoulder, the recidivism rate, I think, is going  
7 to be low.

8           Unfortunately I never had the opportunity to prove  
9 that -- that community programs work. And we would -- in my  
10 best guess I'd bet you any money we would have come close to  
11 a low recidivism rate if the kids had stayed in the  
12 community.

13         Q     You testified earlier that your job was to get the  
14 case to court?

15         A     Yes.

16         Q     Our recollection of what we saw on the 20/20  
17 interview by Judge Ciavarella, his defense of sending the  
18 kids away and increasing the detention of juveniles was  
19 because of the recommendations that were made to him from  
20 repeat -- from people who got the case to him. So was it  
21 your fault, your office's fault, for the detention?

22         A     I guess according to Judge Ciavarella it is.

23         Q     What do you think?

24         A     I don't think it is. I'll give you another  
25 example, okay.

1           Q     Well, you just said you seem to be agreeing with  
2     this -- that it was working?

3           A     Well, it was, okay. It was working. So how could  
4     you refute that? He had a low recidivism rate, okay. He  
5     did. There was no doubt about that. But as far as your  
6     question about is it our fault that kids ended up in  
7     placement, according to him I guess it is because he said we  
8     made the recommendations, okay.

9                     I'll give you an example when I was over in adult  
10    probation. We developed a screening tool for mental health  
11    and for drug and alcohol. Just bear with me. A judge would  
12    order an adult defender to have a mental health or drug and  
13    alcohol evaluation. So we would apply this screening tool.

14                    And sometimes it came back that the person had no  
15    mental health symptoms that they could report, okay, or drug  
16    and alcohol. So I said to a person in the office with  
17    authority, I said, why don't you go back and tell the judge  
18    that it would be a waste of manpower to do a mental health  
19    evaluation because this person is saying they don't have any  
20    mental health issues?

21                    Okay. And the response I got was, you go back to  
22    the judge and tell him that because I'm certainly not going  
23    back because I'll be tossed out on my ear. So it's not just  
24    the juvenile system. You need to look at how business gets  
25    conducted.

1           I don't mean to tell you how you do your job, but I  
2 think you need to look at how do things play out, not only  
3 in the adult system, but the juvenile system as well. You  
4 need to come back with standards and criteria, some  
5 guidelines in the adult court, at least sentencing  
6 guidelines.

7           And maybe I'm not expressing myself properly, but  
8 you know, it's not just an issue -- the judge is the final  
9 say, and not many people want to question the judge. Sorry  
10 judges, but that's the way, from this side of the fence, you  
11 look at it.

12           MR. HOROHO: That's all the questions I have.

13 BY CHAIRMAN CLELAND:

14           Q     What we're trying to do is understand your side of  
15 the fence. So if we've been pressing you and pushing at  
16 you, it's to understand why it is that you're reluctant to  
17 use your own professional expertise to question the judicial  
18 policy.

19           A     You learned not to do that.

20           Q     And because of the unique environment in the  
21 Luzerne County courthouse --

22           A     Well, I don't know. I will speak for Luzerne  
23 County. I don't know what it's like anywhere else. It's a  
24 very political environment, very political environment.

25           Q     You -- Judge Ciavarella had the power to fire you?

1 A Oh, yes.

2 Q And that's your only source of income?

3 A Yes.

4 Q And what was your salary?

5 A I started off at 53,000 for managing both probation  
6 and detention. And I think -- I don't know. I think it was  
7 74 after 12 years.

8 Q And that was your only source of income?

9 A Yes, yes.

10 Q And had you been fired, you would have lost that  
11 income?

12 A Right. Because when I came into the court system  
13 one of the things I did, I had a private practice, small  
14 that it was. And because of the potential for conflict  
15 because I did service kids and I also had parents for  
16 treatment, I decided that I should close that, which I did  
17 because of a potential for conflict.

18 Q And as the President Judge he had the sole  
19 authority to dismiss you if he chose to?

20 A Oh, absolutely. And you were reminded of that  
21 many, many times over.

22 CHAIRMAN CLELAND: Okay. We are to the point where  
23 we promised that you could do your opening statement?

24 THE WITNESS: Right.

25 CHAIRMAN CLELAND: So it's -- it's your turn, Ms.

1 Brulo. Go ahead.

2 THE WITNESS: Okay. First of all, I do really  
3 appreciate the opportunity to be here, and I'm glad you  
4 invited me here even though it was by subpoena, if that's  
5 okay. I hope that what I've said here today will improve  
6 the system for children and for their families.

7 When I accepted the task of being Chief Juvenile  
8 Probation Officer and the Detention Home Administrator on  
9 December 16th, 1996 my goal was to make it better for  
10 juveniles and their families.

11 I don't know if I can continue.

12 CHAIRMAN CLELAND: If you want to make a written  
13 statement part of the record, we can do that if you -- if  
14 that would be easier for you. That's your option.

15 THE WITNESS: Judge Toole charged me with the task  
16 of bringing the system into the 20th century while staying  
17 in budget. I was Detention Home Administrator until  
18 December 31st, 2002, which is when Judge Conahan closed the  
19 facility.

20 I remained Chief of Juvenile Probation until  
21 October of 2005 when I was placed in a newly created  
22 position without authority or a recognized purpose with the  
23 title of Deputy Director of Forensics. I consider this job  
24 a demotion.

25 And then it resulted from a system that was unfair

1 to women and which favored a law enforcement approach to the  
2 probation function rather than the rehabilitation model that  
3 I embraced and emphasized working with families.

4           Although I was not fired, I was certainly  
5 oppressed, and like others in the system who did not have a  
6 patron or relative in the court system, my position was in  
7 constant jeopardy.

8           For 12 years I was involved in a system which  
9 controlled employees through fear and oppression and was not  
10 kindly disposed towards women who spoke up. A former  
11 supervising judge now under indictment even told me on  
12 numerous occasions to dumb down to, quote, the boys so that  
13 they would feel smarter, which I interpreted as advice to  
14 hide signs of intelligence as he told me it would help them  
15 to feel smarter.

16           Some changes that I would propose to you that I ask  
17 you to consider. That all juveniles have an attorney  
18 retained or appointed in all cases; that each juvenile have  
19 an independent advocate appearing in either juvenile or  
20 dependency court similar to the CASA program; that there be  
21 a mirrored selection of probation and court staff, including  
22 credentials and experience, that more closely match the  
23 needs of the population to be served and also protection  
24 from those appointees for whistle blowing if it involves  
25 fraud, corruption, or illegal discrimination; that there be

1 regular rotations of judges through delinquency and  
2 dependency court so that court staff could become more  
3 familiar with rules of court.

4 I would suggest rotating probation officers in the  
5 schools, in court, and through other assignments for more  
6 holistic training. Additionally, this lessens the  
7 opportunity to create a mutually biased relationship that  
8 does not place the client and family first.

9 Revise and set up guidelines for policies for  
10 detention admissions. Set policies or guidelines for  
11 probation or placement dispositions, and develop a family  
12 focused service plan.

13 Create a juvenile system which cannot be governed  
14 by one or two judges or administrators as their personal or  
15 political platform. Improve the current five hour  
16 evaluation system that evaluates detention, probation  
17 offices, and specialized probation services and make it more  
18 in depth and meaningful.

19 Review the current outcome measures and review the  
20 definition of recidivism. I might point out that in spite  
21 of all Luzerne County issues that have surfaced, the  
22 Probation Department exhibited high marks on the Governor's  
23 outcomes measurement tools.

24 If a child is in placement or engaged in community  
25 programs through the majority of the week, it is easier to

1 remain crime free. The test is remaining crime free when  
2 the child is off probation.

3 How many juveniles commit crimes after probation  
4 has ended? How many juveniles are now in the adult  
5 probation system? The true test of probation's  
6 effectiveness is remaining crime free. Do not permit zero  
7 tolerance policies that do not permit focus at least on the  
8 individual and child and family circumstances.

9 Create a safe haven for judicial employees to seek  
10 assistance when encountering problems such as a hostile work  
11 environment or gender bias.

12 Provide information to judicial appointees as to  
13 their right to counsel when they are faced with a civil  
14 lawsuit arising out of their employment so that no one else  
15 will have to hear, as I did from President Judge Muroski,  
16 that I was on my own and had to hire my own attorney when I  
17 asked for legal representation after I was sued personally  
18 in the first civil lawsuit arising out of the corruption  
19 scandal.

20 Too late I found out that I did have a right to  
21 counsel and have since been dismissed from the civil  
22 lawsuits. Thank you for having me here tonight.

23 CHAIRMAN CLELAND: Thank you. Thank you for being  
24 here. Even though you were under subpoena we appreciate  
25 your cooperation and meeting with our investigator and

1 providing the background information which you did.

2           Before we adjourn I'd like to once again put out  
3 the message that we would like to hear from juvenile victims  
4 or the families of juvenile victims from this court scandal  
5 here in Luzerne County. We have invited juvenile victims.  
6 We have not been successful in identifying children that  
7 will come and testify or their parents except in a very  
8 limited number of cases.

9           If you are interested, are here as a victim or  
10 family member, and would like to testify or give a statement  
11 of some kind, Mr. Breslin will be here after our session  
12 convenes and be willing to speak with you about that.

13           If there's nothing further, we will be in recess  
14 until 9:00 tomorrow morning. Thank you.

15           (Whereupon, the hearing was adjourned at 9:15 p.m.)

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Donna E. Gladwin, RPR

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