Interbranch Commission on Juvenile Justice

Report

MAY 2010

The record of the commission's hearings is available on the Web site of Pennsylvania's Unified Judicial System at: http://www.pacourts.us/Links/Public/InterbranchCommissionJuvenileJustice.htm

The Honorable Edward G. Rendell
Governor of Pennsylvania

The Honorable Ronald D. Castille
Chief Justice of Pennsylvania

The Honorable Dominic Pileggi
Majority Leader
Senate of Pennsylvania

The Honorable Robert J. Mellow
Democratic Leader
Senate of Pennsylvania

The Honorable Todd A. Eachus
Majority Leader
Pennsylvania House of Representatives

The Honorable Samuel H. Smith
Republican Leader
Pennsylvania House of Representatives

The Interbranch Commission on Juvenile Justice was created last August with a mandate to investigate the juvenile justice scandal in Luzerne County and to develop appropriate recommendations for reform. Since then we have held eleven days of hearings and received testimony from sixty-eight witnesses, some more than once.

In the attached report we have developed a comprehensive account of what occurred in the courtrooms of Luzerne County. It is our hope that based on our understanding of how the juvenile justice system was undermined in one county we have developed recommendations that will avoid it from happening in any other county.

While the tragic events in Luzerne County have drawn criticism nationwide, and rightly so, it is also true that Pennsylvania is an acknowledged national leader in the field of juvenile justice. The outstanding commitment of our juvenile court judges, prosecutors, defense attorneys, probation officers, victim advocates and service providers should not be overshadowed by the actions of those who have damaged that reputation.

In making the recommendations in this report we are confident that if they are adopted Pennsylvania's juvenile justice system will be further strengthened to the end that our communities will be protected, those determined to be delinquent will be held accountable, crime victims will be restored, and the rule of law will be protected and preserved.

Sincerely,

John M. Cleland
Chair

Acknowledgements

The members of the Interbranch Commission on Juvenile Justice take special notice and express great appreciation for the dedicated work of the staff of the Administrative Office of Pennsylvania Courts who have been assigned to this project. They have demonstrated a genuine commitment to the rule of law, to the fairness of its application, and to the well being of our communities.

We acknowledge Darren Breslin, Esquire, who served as Commission counsel, Nicholene DiPasquale who coordinated logistical matters, Stuart Ditzen who edited this report and coordinated press relations, and Thomas B. Darr who was the governmental liaison.

We also express our special appreciation to: Arthur H. Stroyd, Esquire, and William S. Stickman IV, Esquire, of DelSole Cavanaugh Stroyd LLC, of Pittsburgh, who represented the Commission without charge in its litigation before the Supreme Court of Pennsylvania; and William Fisher, Esquire, formerly of the Philadelphia County District Attorney's Office, who provided without charge invaluable investigative services.

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Report to the General Assembly, Governor Edward G. Rendell and the Supreme Court of Pennsylvania

I. Introduction

The Interbranch Commission on Juvenile Justice was established by Act 32 of the Pennsylvania General Assembly in the summer of 2009 after unanimous votes by the House and Senate. The act was signed into law on August 7, 2009, by Governor Rendell.

The commission was created in response to a highly publicized judicial corruption scandal in Luzerne County involving millions of dollars in alleged payoffs to two judges and rights violations of thousands of juvenile defendants in the county's juvenile court. The scandal shocked citizens of the county and the state and made headlines around the world. So extraordinary were the circumstances that the executive, legislative and judicial branches of Pennsylvania government agreed to undertake a noncriminal investigation to determine the root causes of the breakdown of Luzerne County's juvenile justice system and to propose remedies.

As stated by Act 32, the Interbranch Commission on Juvenile Justice was to determine how the Luzerne County juvenile justice system failed, to restore public confidence in the administration of justice and to prevent similar events from occurring in Luzerne County or elsewhere in the Commonwealth.

The commission was to have 11 members. Three were to be appointed by the governor, four by the chief justice of Pennsylvania, one by the president pro tempore of the Senate, one by the minority leader of the Senate, one by the speaker of the House and one by the minority leader of the House.

An exacting timetable was established for the commission's work. Act 32 set a deadline of May 31, 2010, for the commission to file a final report with recommendations to the governor, the chief justice and the House and Senate.

The members of the Interbranch Commission on Juvenile Justice met for the first time for an organizational session in Pittsburgh on August 26-27.

In the months afterward, the commissioners held 11 days of public hearings and heard testimony from more than 60 individuals at every level and in every role across the spectrum of the juvenile justice system. Many more individuals, who did not testify at public hearings, provided written or verbal information to the commission. The record of the commission's hearings is available on the Web site of Pennsylvania's Unified Judicial System at: http://www.pacourts.us/Links/Public/InterbranchCommissionJuvenileJustice.htm

Witnesses who appeared before the commission included the president judge of Luzerne County, the former district attorney, the incumbent district attorney, the county public defender, assistant district attorneys who appeared in juvenile court, assistant public defenders, juvenile probation officials, former juvenile defendants, parents of juvenile defendants, school officials, county commissioners, officials of the Judicial Conduct Board and others.

With few exceptions, those asked to testify did so willingly and without the necessity of a subpoena.

Two individuals who declined to appear were former judges Mark A. Ciavarella, Jr., and Michael T. Conahan. These men have been charged with federal crimes relating to the alleged receipt of $2.8 million in illegal payments from the owners of two juvenile detention facilities. Conahan and Ciavarella were and are at the center of the "kids for cash" scandal in Luzerne County that, beginning with the filing of federal charges against them on January 26, 2009, released a flood of negative publicity on the former judges themselves and on the juvenile justice system of Luzerne County. Independent of the federal criminal charges, Ciavarella, who was the county's juvenile court judge, has been found by the Pennsylvania Supreme Court to have improperly denied more than 1,800 juvenile defendants the constitutional right to counsel. Those

rights violations were so extensive and egregious that the Supreme Court, on October 29, 2009, issued an unprecedented order vacating the adjudications of all juvenile cases Ciavarella handled from 2003 to 2008 and expunging the records of the cases.

It is plain from events over the past 18 months that corruption in the Luzerne County courthouse has been deeply ingrained for many years. A graphic illustration of the relaxed attitude toward corruption on the part of the judiciary is the fact that Conahan, a former president judge, has been described in court testimony unrelated to the federal criminal case as having been a close friend of the alleged organized crime leader of Northeastern Pennsylvania, William "Big Billy" D'Elia.

Conahan and Ciavarella are not the only Luzerne County judges charged with federal crimes. A third judge - Michael T. Toole - was charged in December 2009 with federal tax and fraud offenses. Toole pleaded guilty on December 29, 2009, and agreed to cooperate with federal authorities. The former court administrator, William T. Sharkey, Sr., Conahan's cousin, pleaded guilty on February 17, 2009, to federal charges of embezzling more than $70,000 in seized gambling proceeds. The former chief juvenile probation officer, Sandra Brulo, pleaded guilty on March 26, 2009, to obstruction of justice in connection with altering the record of a juvenile defendant. Former County Prothonotary Jill Moran resigned from office in February 2009 and signed a consent agreement pledging to cooperate with federal investigators under penalty of a possible fine or imprisonment if she fails to fully comply. Clerk of Courts Robert Francis Reilly was charged in April 2010 with soliciting and receiving $1,500 in bribes and gratuities from a courthouse handyman.

Federal authorities have widened their public corruption probe beyond the county courthouse to bring charges against school board members, a school superintendent, housing authority members, a former redevelopment authority director, a county commissioner, the former director of county human resources and others. And the probe continues.

With this collage of corruption as a backdrop, the Interbranch Commission on Juvenile Justice narrowed its attention to the serious and chronic malfunctions within Luzerne County's juvenile court.

The immediate and most obvious blame for failures in the juvenile justice system can be laid at the door of Mark Ciavarella who presided for years as juvenile judge, even during a period when he served as president judge of Luzerne County's Common Pleas Court. Ciavarella was a "zero-tolerance" judge who took a hard line on juvenile crime - particularly when crime occurred in schools. Ciavarella routinely decided cases of youths who were unrepresented by counsel - and did so in a manner that violated court rules. Far more often than most juvenile judges, he sent youths away from home when they got into trouble. Juvenile court was Ciavarella's domain. He ruled there supreme. By some accounts, he could show sympathy, compassion and concern for youthful defendants who appeared before him. More often, the record shows, his manner was harsh, autocratic and arbitrary. He judged by a formula rather than by individual evaluation. *If you do X, your punishment will be Y. I will send you away. I am telling you ahead of time.* That was his method - the antithesis of the process of individual evaluation that a judge should apply before deciding a case.

But the failures of the juvenile justice system do not stop with Ciavarella. The Interbranch Commission on Juvenile Justice found a far more complex and nuanced picture in which many individuals may be seen to have shared the responsibility. Silence, inaction, inexperience, ignorance, fear of retaliation. Greed, ambition, carelessness. All these factors played a part in the failure of the system. Prosecutors, defenders and probation officials witnessed and participated in proceedings in Ciavarella's courtroom. For some, hesitation to act stemmed from a quandary: They were not sure where to turn to report concerns. For some there was coinciding skepticism: What good would it do?

The agency responsible for investigating and prosecuting judicial misconduct in Pennsylvania is the state Judicial Conduct Board, a constitutionally established panel of 12 members, half of whom are appointed by the Supreme Court and half of whom are appointed by the governor.

As part of its investigation the commission made extensive efforts to learn whether the Judicial Conduct Board had received complaints about Ciavarella and Conahan and, if so, what the board had done to investigate those complaints. No public disciplinary charges were ever filed against Ciavarella or Conahan by the board in connection with any complaint.

In its hearings, the commission heard from witnesses who were reluctant to submit complaints to the Judicial Conduct Board. Some witnesses did not know of the board's existence. Others expressed doubt that the board would take corrective

action if a complaint was filed. All of this was of concern to the commission. The conduct board's handling of a 2006 complaint against Conahan raised major concerns for the commission which will be addressed later in this report.

While the scope of the commission's work focused on Luzerne County, it should be stated that the corruption and system failures in that county do not appear to be representative of the Commonwealth as a whole. For a county court system to be shot through with corrupt judges and underlings is an aberration. Unfortunately, the Luzerne County scandal has caused a taint to seep out and touch many others. These are individuals and institutions that have done nothing wrong, but who are affected because they are Pennsylvania judges, court employees, or individuals involved in county juvenile justice systems throughout Pennsylvania. In no way, for example, does the Luzerne County scandal reflect the performance of juvenile courts throughout the rest of the Commonwealth. In fact, Pennsylvania's juvenile court system, in its national profile, is considered a leader and a model of high standards and best practices. Regrettably, the scandal in Luzerne County may have done harm to the reputation of that system, as it may have done harm to the Commonwealth's judiciary generally. There are seven Supreme Court justices, 15 judges of the Superior Court, nine judges of the Commonwealth Court, more than 400 judges of the Common Pleas Courts, more than 500 magisterial district judges, and approximately 200 senior judges in Pennsylvania. Few among them have been cited for ethical breaches. Fewer still have been charged with crimes.

The Interbranch Commission on Juvenile Justice also recognizes the pain and embarrassment the judicial corruption scandal has inflicted on the community and on the citizens of Luzerne County. The wave of negative publicity that has continued for more than a year, the repeated "kids for cash" refrain, and the continuing disclosures of new corruption cases has become a drumbeat, almost a daily cavalcade painful to endure.

The news media, however, has played an important role. Other institutions and individuals may have failed in their roles, but the newspapers and other media of Luzerne County have impressively fulfilled theirs. While the media has thrived on the story it also has done an exemplary job of shining the light in dark corners and keeping readers, listeners and viewers informed of unfolding events. This has been especially true of Wilkes-Barre's two competing newspapers, the **Times Leader** and the **Citizens' Voice**, which have rooted out and reported many important stories, and of a third newspaper, not traditionally known for investigative reporting, the **Legal Intelligencer**, of Philadelphia.

To restore public confidence in the administration of justice in the face of corruption that citizens of Luzerne County have witnessed seems a formidable challenge. Yet a number of those who appeared before the commission spoke of the opportunity presented in this gloomy atmosphere, the possibility that the appalling scope of the corruption might generate a catalyst for positive change. Indeed, much change already has occurred within the court system of Luzerne County. A great deal more change is needed to ensure that there will be no repetition of the past and the misdeeds of villains who now face justice are erased. The commission in this report will outline what it sees as the needs and make recommendations as to how to address them.

This report is presented in five sections. Following this Introduction is Section II, titled **What Went Wrong**, a narrative that describes the many elements of the judicial scandal and the breakdown of the juvenile justice system in Luzerne County. Section III, **The Proceedings of the Interbranch Commission on Juvenile Justice**, provides a summary of the commission's investigation followed by segments, organized in categories that contain detailed findings and testimony. Section IV, **Recommendations**, provides all of the commission's recommendations. Section V is the report's **Conclusion**.

II. What Went Wrong

A Petition to the Supreme Court

On April 29, 2008, the Juvenile Law Center of Philadelphia, a public interest law firm, filed a petition with the Pennsylvania Supreme Court asking the court to exercise its King's Bench Power or Power of Extraordinary Jurisdiction "to end the practice of the Luzerne County Common Pleas Court of conducting delinquency hearings without counsel for children - or without lawful waivers of counsel."

The Supreme Court administers the entire Pennsylvania court system. With its King's Bench Power and Power of Extraordinary Jurisdiction, the court can take up any case or problem within the court system which it deems to be of immediate public importance.

The petition of the Juvenile Law Center contended that a matter of urgent importance was at hand in Luzerne County in the violation of constitutional rights of youths who appeared on delinquency matters before Judge Mark A. Ciavarella, Jr.

Under Pennsylvania's Rules of Juvenile Court Procedure, judges presiding in juvenile courts throughout the Commonwealth are required to inform juvenile defendants of the right to a lawyer prior to any proceeding. Juveniles are not permitted to waive the right to counsel unless judges conduct on-the-record discussions or "colloquies" to ensure that youths understand the right they are giving up and also understand the charges against them. The specific rule setting these requirements, Rule of Juvenile Court Procedure 152, was adopted by the Supreme Court on April 1, 2005, and took effect on October 1 of that year.

The Juvenile Law Center contended in its petition to the Supreme Court that Rule 152, which had been in effect for 2 1/2 years, was not being followed by Ciavarella. Instead, the center asserted, Ciavarella routinely failed to properly advise juvenile defendants of the right to counsel with the result that large numbers of youths in his court were unrepresented.

While petitioning on behalf of a few clients, the Juvenile Law Center asked the Supreme Court to issue a broad order expunging the records of all unrepresented juveniles who had been ruled delinquent by Ciavarella after Rule 152 took effect on October 1, 2005.

The state Attorney General's Office and the state Department of Public Welfare filed amicus briefs urging the Supreme Court to undertake a review based on statistics of the Pennsylvania Juvenile Court Judges' Commission showing that approximately 50 percent of all juvenile defendants in Luzerne County were unrepresented by counsel.

The District Attorney of Luzerne County opposed the Juvenile Law Center's petition arguing that a factual record documenting a broad pattern of abuse had not been established and the law center should not be permitted to by-pass the lower courts where such a record could be developed.

The Administrative Office of Pennsylvania Courts (AOPC), responding on behalf of Ciavarella, contended that issues raised by the Juvenile Law Center were moot because corrective measures had been taken. Shortly after the law center filed its petition, Ciavarella, then the president judge of Luzerne County had removed himself from juvenile court in May, 2008. The AOPC argued that the new judge assigned to juvenile court was abiding by the rule requiring a colloquy with juvenile defendants who waived counsel. In addition, new written notices were being provided to juveniles advising them and their parents of the right to counsel.

The Supreme Court on January 8, 2009, denied the petition of the Juvenile Law Center and declined to exercise its King's Bench Power.

Chief Justice Ronald D. Castille provided the Interbranch Commission on Juvenile Justice with a 14-page memorandum detailing the history of the litigation involving the Juvenile Law Center's petition. He noted that the memo did not reveal any internal deliberations of the Supreme Court "or other bodies, persons or institutions assisting the Supreme Court in its actions in this matter."

Chief Justice Castille said in the memo that the Supreme Court, in reviewing the pleadings related to the Juvenile Law Center's petition, took into account all information it had received, including the fact that Ciavarella was no longer hearing juvenile cases and that juveniles and their parents were being advised of the right to counsel. "Nothing in the pleadings suggested criminal conduct related to juvenile proceedings by former judges Ciavarella or Conahan, nor was there any information, or allegation, respecting the PA Child Care facilities or the judges' connection thereto."

Criminal charges had not been filed on January 8, 2009, when the Supreme Court declined to undertake a review of Luzerne County juvenile court.

But they soon would be.

The Filing of Criminal Charges

On January 26, 2009, just 18 days after the Supreme Court issued its ruling, Martin C. Carlson, then the United States Attorney for the Middle District of Pennsylvania, filed a 22-page document in the U.S. District Court in Scranton, bearing the heading: "Information."

In a legal context, the otherwise nondescript term "Information" had precise meaning. It meant that criminal charges were being filed in a case where a grand jury indictment had been waived. The defendant or defendants had agreed to plead guilty.

In this case, the defendants were Mark A. Ciavarella, Jr., and Michael T. Conahan. The Luzerne County Common Pleas Court judges were charged with federal tax violations and defrauding the public of the right to honest service by elected public officials. The judges were accused of taking $2.6 million in payoffs from the owner and builder of two juvenile detention facilities, PA Child Care in Pittston Township, Luzerne County, and Western PA Child Care in Butler County, Pa., during a period when Ciavarella, as the juvenile court judge of Luzerne County, had been placing large numbers of juveniles in detention at those facilities. Many of the juvenile defendants had appeared before Ciavarella without attorneys.

As outlined in the charges, Conahan and Ciavarella had received illegal income after entering into "agreements guaranteeing placement of juvenile offenders" in PA Child Care. This appears to have been the genesis of the "kids for cash" phrase that immediately attached to the case.

The individuals who allegedly made the payoffs - listed in the Information as "Participant 1" and "Participant 2" - later were identified as Robert J. Powell, a Luzerne County attorney and one of the original partners in PA Child Care and Western PA Child Care, and Robert K. Mericle, the contractor who built the two juvenile centers. Both men have pleaded guilty to federal charges and are cooperating with federal authorities.

The criminal Information charged that Conahan and Ciavarella had taken a series of actions to promote PA Child Care.

As president judge, Conahan had removed funding from the Luzerne County budget for the existing Luzerne County juvenile detention facility, resulting in its closure. That was a county-owned facility. In its place, Conahan had advocated in favor of the privately owned PA Child Care in 2003 and, later, Western PA Child Care. With Conahan's support, the facilities then received county contracts to house juvenile offenders who were placed in detention by Ciavarella. A county contract worth approximately $58 million was awarded to PA Child Care in 2004.

The closing of the county-owned juvenile facility and the lease of PA Child Care were well publicized and highly controversial events in Luzerne County. But the criminal charges introduced for the first time accusations that Conahan and Ciavarella had received payoffs related to those events. The allegation that the county's current and immediate past president judges had been selling the freedom of children for personal profit created a media sensation.

Accompanying the criminal charges were plea agreements. Conahan and Ciavarella each agreed to plead guilty to one count of "honest service" fraud - depriving the public of the honest service expected of public officials - and one count of conspiracy to commit federal tax fraud. Under the agreements, the judges anticipated sentences of 87 months in prison. The U.S. Attorney signed the agreements. A final decision would be up to the sentencing judge. Conahan and Ciavarella also faced the potential of $500,000 fines and restitution orders.

The filing of criminal charges triggered a series of actions by the Pennsylvania Supreme Court.

On January 28, 2009, the court removed both judges from active judicial service, relieving Ciavarella of all judicial and administrative responsibilities, and revoking the senior judge certification of Conahan, who had retired from the bench in 2007 and become a senior judge. Conahan's per diem pay as a senior judge was terminated. Ciavarella, a full-time elected judge, was temporarily permitted to continue receiving pay and benefits.

On January 30, the Juvenile Law Center returned to the Supreme Court and, in light of the federal criminal charges, again asked the court to undertake a review of Luzerne County's juvenile court. The law center argued that, in addition to widespread rights violations in the denial of counsel, there appeared to have been a "wholesale subversion of the Luzerne County juvenile justice system over a period of many years." The petition requested the appointment of a special master to review juvenile cases to determine whether adjudications should be reversed and the records expunged.

On February 2, the Supreme Court vacated its previous order denying the Juvenile Law Center's King's Bench petition.

Chief Justice Castille, in his memorandum to the Interbranch Commission on Juvenile Justice, wrote:

"In its Motion for Reconsideration, the JLC sought to enlarge the class of juveniles to include all juveniles who

were adjudicated delinquent by Ciavarella during the entire time that he received illegal payments, i.e., from 2003 through May 23, 2008, the date that Ciavarella ceased to preside over delinquency proceedings in Luzerne County. On February 5, 2009, Luzerne County District Attorney Jacqueline Musto Carroll filed a reply, concurring in the JLC's reconsideration request for the appointment of a special master to review the juvenile cases."

On February 11, 2009, the Supreme Court granted the Juvenile Law Center's petition, exercised its King's Bench Power and assumed full jurisdiction to address the handling of juvenile delinquency proceedings in Luzerne County. The court appointed Senior Judge Arthur E. Grim, of Berks County, as special master to review all cases in which Ciavarella had committed juveniles to PA Child Care and Western PA Child Care and cases in which juveniles had been denied the constitutional right to counsel in Ciavarella's court. Grim was given 120 days to file an interim report. The Supreme Court order said: "The goal of this Court is to determine whether the alleged travesty of juvenile justice in Luzerne County occurred, and if it did, to identify the affected juveniles and rectify the situation as fairly and swiftly as possible."

On February 12, Ciavarella and Conahan pleaded guilty in U.S. District Court. The following day, the Supreme Court terminated the salary and benefits of Ciavarella.

The Special Master

Arthur Grim, the former president judge of Berks County and the chairman of the Pennsylvania Juvenile Court Judges' Commission, began his review of juvenile cases handled by Ciavarella immediately.

One month after his appointment, on March 12, Judge Grim filed his first interim report with recommendations to the Supreme Court.

Noting that Pennsylvania Rule of Juvenile Court Procedure 152 provides that juveniles may not waive the right to counsel unless "the waiver is knowingly, intelligently, and voluntarily made" and the judge "conducts a colloquy with the juvenile on the record," Judge Grim wrote:

"My preliminary investigation, including in-chambers discussions on February 17, 2009 with the Chief Public Defender, the First Assistant District Attorney, and the Chief Deputy Juvenile Probation Officer [all of Luzerne County], points to the conclusion that a very substantial number of juveniles who appeared without counsel before Judge Ciavarella for delinquency or related proceedings did not knowingly and intelligently waive their right to counsel. My investigation has also uncovered evidence that there was routine deprivation of children's constitutional rights to appear before an impartial tribunal and to have an opportunity to be heard."

Judge Grim recommended that cases adjudicated by Ciavarella without counsel be vacated and the records expunged if the offenses involved minor crimes such as summary offenses or misdemeanors of the third degree. That was his immediate recommendation. He would evaluate cases involving more serious offenses in the next phase of his review.

His report explained the basis for his recommendation: "Had the juveniles in these [minor] cases been represented by competent counsel, had they appeared before an impartial tribunal, and had their other constitutional rights been protected, the vast majority of these cases would have resulted in consent decrees, or some lesser sanction. Had these cases resulted in consent decrees or lesser sanctions, all of these juveniles would be entitled to have their juvenile delinquency case records expunged by now pursuant to 18 Pa. C.S. Section 9123. An additional factor weighing in favor of vacating the adjudications and consent decrees and expunging the records in the categories specified below is that this prompt action in these non-serious cases will be at least one step toward righting the wrongs which were visited upon these juveniles and will help restore confidence in the justice system. Furthermore, it is not in the interest of the community to re-litigate these non-serious cases, nor do I believe that the victims would be well-served by new proceedings."

Two weeks after receiving that report, the Supreme Court issued an order on March 26, 2009, authorizing Judge Grim to move forward "as expeditiously as possible" to vacate the adjudications and expunge the records of the cases in the categories he had identified. Approximately 360 juveniles were identified as eligible or potentially eligible to have their cases vacated and the records expunged under the court's order. To accommodate the interests of individuals involved in civil litigation who claimed to have been adversely affected by actions of Ciavarella or Conahan, the Supreme Court later ordered that juvenile records subject to expungement be kept under seal pending the outcome of litigation.

After further investigation and review of juvenile records, Judge Grim filed a later report to the Supreme Court on August 7, 2009, in which he made a sweeping recommendation.

He had identified 1,866 cases in which juveniles appeared before Ciavarella without counsel between 2003 and 2008.

"Based upon my review of the transcripts," the August 7 report stated, "…I conclude that there is clear and convincing evidence that no juvenile who appeared before Judge Ciavarella without counsel between 2003 and May 2008 knowingly and intelligently waived his/her right to counsel."

"I also conclude," the report continued, "Judge Ciavarella knew he was violating the law and court rules by failing to conduct any, or legally adequate, waiver of counsel colloquies for the juveniles appearing before him. I base this conclusion upon (a) the transcripts I have reviewed, (b) the sheer number of juveniles, enumerated above, who appeared before Judge Ciavarella without counsel between 2003 and May 2008, and (c) the fact that Judge Ciavarella was reversed by the Pennsylvania Superior Court in the delinquency case In re A.M., 766 A. 2d 1263 (Pa. Super. 2001), for failing to provide counsel for the juvenile and/or failing to conduct an appropriate waiver of counsel colloquy."

In that 2001 Superior Court case, Ciavarella had placed a 13-year-old youth in detention without informing him of his right to counsel. The youth had admitted to a charge of indecent assault. His mother requested a continuance so an attorney could be present at a hearing. Ciavarella ignored the request, adjudicated the juvenile and placed him in detention. The Superior Court vacated Ciavarella's adjudication. The court cited Pennsylvania statutory and case law requiring that juvenile defendants must be afforded the right to counsel at critical proceedings such as disposition hearings.

After that corrective ruling, Ciavarella was quoted in the Wilkes-Barre **Times Leader** as saying he had learned a lesson. "I'll never do it again," Ciavarella said, according to the newspaper. "They [juveniles] obviously have a right to a lawyer, and even if they come in and tell me that [they] don't want a lawyer, they're going to have one."

Judge Grim found, however, that for years afterward juveniles stood before Ciavarella unrepresented, and Ciavarella decided their cases without mention of the right to counsel. There was no discussion or colloquy to ensure that the youths understood the right they were giving up in waiving the right to counsel. In 54 percent of juvenile cases Ciavarella adjudicated between 2003 and 2008, youths were unrepresented.

Having reached those conclusions in his report, Judge Grim recommended to the Supreme Court that all adjudications of delinquency and consent decrees entered by Ciavarella between January 1, 2003, and May 31, 2008, be vacated. He recommended that the cases be dismissed and the records be expunged. In cases involving juveniles who had not been discharged from detention, placement or probation or in which fines, restitution or fees had not been paid, Judge Grim recommended that he be authorized to promptly review each case to determine "an appropriate resolution" such as dismissal or a new hearing.

The report cited transcripts of juvenile proceedings from Ciavarella's court. In the proceedings, Judge Grim wrote, there often was "not a single word" concerning the juvenile's right to counsel.

One transcript of a 2006 proceeding before Ciavarella reads as follows:

The Court [Ciavarella]: "K, it says here that you have been charged with violation of the Controlled Substance, Drug[,] Device and Cosmetic Act. How do you wish to plead?"

The Juvenile: "Guilty."

The Court: "Based upon her admission, I will adjudicate her delinquent. Where did this occur?"

The Juvenile: "School."

The Court: "What grade are you in?"

The Juvenile: "Eighth."

The Court: "Were you at the school when I was there?"

The Juvenile: "Yeah."

The Court: "What did I say about drugs in school?"

The Juvenile: "That you're going to get - well, you're going to get arrested in school."

The Court: "What else did I tell you?"

The Juvenile: "That you will get arrested and get charged."

The Court: "What did I say I will do?"

The Juvenile: "Send us away."

The Court: "Did you think I was kidding?"

The Juvenile: "No."

The Court: "Very good. She will be remanded. Send her to FACT. Let her stay there until she learns her lesson. I mean what I say. Thank you."

Another transcript from 2008:

The Court: "T[.] [juvenile's Mother], R[.] [juvenile], you had an opportunity to review the waiver of counsel document?"

Juvenile's Mother: "Yes, sir."

The Juvenile: "Yes, sir."

The Court: "Is there anything in it that you did not understand?"

Juvenile's Mother: "No, sir."

The Juvenile: "No, sir."

The Court: "Is that your signature on the documents?"

Juvenile's Mother: "Yes, sir."

The Juvenile: "Yes, sir."

The Court: "R[.], you've been charged with disorderly conduct. How do you wish to plead?"

The Juvenile: "Guilty."

The Court: "Based upon his admission I will adjudicate him delinquent. What were you thinking about?"

The Juvenile: "I don't know."

The Court: "Were you at Crestwood [High School] when I was there?"

The Juvenile: "Yeah."

The Court: "Did you hear what I had to say?"

The Juvenile: "Yeah."

The Court: "Did you think I was kidding?"

The Juvenile: "No."

The Court: "Why would you do this? Why would you make me send you away?"

The Juvenile: "I don't know."

The Court: "I will remand him to Camp Adams. He will be in the ACT Program. He will stay at Camp Adams until he learns how to make better decisions. While he's at Camp Adams I want a drug and alcohol eval completed. And if required when he's done I want intensive outpatient relative to any problems they might find."

Juvenile's Mother: "Excuse me, sir. I do have a letter. He is seeking counseling."

The Court: "Give it to Mr. Piazza, please. How will you test for drugs today?"

The Juvenile: "I will pass."

The Court: "Good. He will be remanded."

Judge Grim's recommendation for universal expungement of juvenile cases was based on a sampling of 100 such transcripts.

The Supreme Court Response

In response to Judge Grim's recommendation, the Supreme Court on October 29, 2009, issued an extraordinary nine-page order. The court adopted the recommendation and directed that adjudications and consent decrees involving all juveniles who had appeared before Ciavarella between January 1, 2003 and May 31, 2008, be vacated and the records expunged. Virtually every juvenile case Ciavarella had handled had been tainted, the court concluded, due to payoffs he had admitted receiving and his disregard for the rights of juveniles who appeared before him in court. Although estimates of the total number of cases handled by Ciavarella have varied widely, the final number of dismissals and expungements under the Supreme Court's order is expected to involve approximately 4,000 cases.

In its order, the Supreme Court said:

"Judge Grim's independent review of the transcripts of individual cases disclosed Ciavarella's systematic failure to determine whether a juvenile's waiver of the right to counsel was knowingly, intelligently and voluntarily tendered; the failure to conduct the requisite waiver colloquy on the record; the failure to advise the juvenile of the elements of the offenses charged; and the failure to determine whether an admission was tendered, and then to apprise the juvenile of the consequences of an admission of guilt. In addition, this Court's review of those same transcripts reveals a systematic failure to explain to the juveniles the consequences of foregoing trial, and the failure to ensure that the juveniles were informed of the factual bases for what amounted to peremptory guilty pleas. The transcripts reveal a disturbing lack of fundamental process, inimical to any system of justice, and made even more grievous since these matters involved juveniles... Ciavarella's complete disregard for the constitutional rights of the juveniles who appeared before him without counsel, and the dereliction of his responsibilities to ensure that the proceedings were conducted in compliance with due process and rules of procedure promulgated by this Court, fully support Judge Grim's analysis."

The court found that even cases in which juveniles were represented by lawyers and cases in which youths were not placed in PA Child Care or Western PA Child Care were tainted. It held:

"Judge Grim refers to the 'pall' that was cast over all juvenile matters presided over by Ciavarella, given his financial interest, and his conduct in cases where juveniles proceeded without counsel. We fully agree that, given the nature and extent of the taint, this Court simply cannot have confidence that any juvenile matter adjudicated by Ciavarella during this period was tried in a fair and impartial manner."

Who Were These Men?

Mark Ciavarella and Michael Conahan are natives of a region in Pennsylvania with a stormy and violent history dating to colonial days, a rugged, isolated locale which even today seems to exist unto itself. Luzerne County is a place of exceptional natural beauty with mountains, lush valleys and the magnificent North Branch of the Susquehanna River flowing through it. The principal city of Wilkes-Barre was described by a justice of the Pennsylvania Supreme Court in the year 1900 as "the most picturesquely beautiful city in the Commonwealth." But that was in the golden era when the coal mines and railroads and factories were churning out wealth for their owners, before time and events tarnished that lovely image. The history of the Wyoming Valley is written in tales of greed, violence, fortunes won and lost, conflict and corruption.

In colonial days, settlers from Connecticut and Pennsylvania and Native Americans waged war for control of the fertile river valley. In the 19th and 20th Centuries, king coal produced many fortunes. Tens of thousands of exploited immigrant workers labored in the mines to bring up the hard anthracite coal - "black diamonds" - that made mine owners rich. But market changes sent the coal industry into deep decline as the 20th Century advanced. Oil and gas replaced coal as a heating fuel. The coal companies began to scrounge and cut corners for profits. When the Knox Coal Company illegally excavated beneath the Susquehanna River in 1959, the Susquehanna broke through the roof of Knox's River Slope Mine. A thundering torrent roared into mine shafts and passageways, sweeping 12 miners to their deaths. A massive whirlpool sucked water through miles of interconnected mines beneath the Wyoming Valley. To plug the hole, workers rolled 60 coal hopper cars into the whirlpool. Then 400 one-ton coal cars. Then 25,000 cubic yards of dirt, rock and boulders. When the hole was sealed, billions of tons of anthracite coal had been lost forever. The coal was inaccessible in the flooded mines. The Knox Mine disaster was a death knell for an industry that had been in decline for half a century.

With coal no longer king, Luzerne County and its people endured long years of economic depression. Added hardships came with disastrous floods in 1936 and 1972. In politics, a culture of mutual back-scratching dominated relationships between politicians, public officials and businessmen. A powerful organized crime group held sway in the region. Today, the county, with a population of 312,000, reflects all that history. It is a cauldron of mixed elements - a patchwork of 76 municipalities, urban and rural, in which the multi-ethnic population has intermingled and intermarried for more than a century. Mark Ciavarella and Michael Conahan are products of that culture. They were born into it, Ciavarella in Wilkes-Barre in 1950 and Conahan in Hazleton in 1952, and they grew up in it.

Conahan was a magisterial district judge for 15 years before winning election to the Court of Common Pleas in 1993. Ciavarella was elected to the Common Pleas Court in 1995. The two men were close friends. They were partners in business ventures and next door neighbors for a time. With their wives, they shared a luxury condominium in Florida.

Ciavarella has received far more public attention in the "kids for cash" scandal than Conahan. That is because Ciavarella presided in juvenile court where he relished his role as a "zero-tolerance" judge. He never shied away from the media.

Even after charges were filed against him, Ciavarella continued to speak with the media, raising his profile even higher by disputing various allegations and interpretations of charges. In an extraordinary appearance, he testified in an unrelated civil matter and talked about payoffs he had received - referring to them as "finder's fees."

By contrast, Conahan remained silent and out-of-sight after the charges were filed, allowing the public to see him only as a stone-faced, one-dimensional figure. But Conahan was far from a bystander in the breakdown of the juvenile justice system in Luzerne County. By all accounts, he was deeply involved in activities that led to those failures. As president judge from 2002 through 2006, Conahan wielded tremendous power. He was described by some as "the boss," and he acted like one. He ran the courthouse like a personal sovereignty, placing friends and relatives on the payroll, sealing records at will and personally assigning cases. Conahan was known for a gentlemanly demeanor, but he was a power-broker, and he was feared.

For years, it was Conahan's habit - attested to in court records - to share meals with William "Big Billy" D'Elia, the reputed organized crime leader of Northeastern Pennsylvania. The two men often ate breakfast together at

Perkins Restaurant on Route 309 in Wilkes-Barre. They met early, around 6:30 a.m., and sat in a booth in a back corner of the restaurant's front section where no other patrons were seated. At times, business papers and envelopes were spread on the table before them. They sometimes discussed court cases.

The contacts between the president judge and the alleged mob boss were not limited solely to breakfast meetings. D'Elia sometimes dropped off envelopes at the Luzerne County Courthouse which were hand-delivered to Conahan by a courthouse security guard.

Details of the relationship between the judge and the reputed mob boss flow from an improbable source - a defamation case.

The Platt Report

Unrelated to the federal criminal charges against Conahan and Ciavarella, the Pennsylvania Supreme Court in 2009 ordered a review of a case in which Ciavarella in 2006 awarded a $3.5 million verdict to a man who had sued a Wilkes-Barre newspaper for defamation.

The newspaper, the **Citizens' Voice** and its owner, the **Scranton Times, L.P.**, contended that the newspaper was denied a fair trial. In light of corruption charges against Ciavarella and the emergence of a witness who claimed there had been a prearranged outcome in the trial, the newspaper asked the Supreme Court to exercise its King's Bench Power to order a review of the defamation case.

The Supreme Court granted the petition on April 7, 2009, and assigned President Judge William H. Platt of Lehigh County to hold an evidentiary hearing to determine if a new trial was warranted.

The plaintiff in the defamation case was a Luzerne County businessman named Thomas Joseph, a friend and nominal business associate of William D'Elia. Joseph filed suit after articles appeared in the **Citizens' Voice** in 2001 reporting that federal investigators had served search warrants on Joseph's home and his company, Acumark Inc., and seized records in connection with a federal racketeering investigation of D'Elia and associates. The articles, quoting unnamed sources, said the investigation might be focused on money-laundering, drug dealing and illegal gun sales. Joseph was a friend of D'Elia's who claimed to have had only minor - and legitimate - business dealings with him. He contended in his lawsuit that the newspaper articles were defamatory.

The procedural background showed that Ciavarella was not assigned to the Joseph case by objective means, such as a rotation or wheel method used in many courts. Rather, he received the assignment at the direction of then-President Judge Conahan.

Ciavarella heard the case without a jury. After an eight-day trial in 2006, he issued a $3.5 million verdict in favor of Joseph and Acumark. The verdict was upheld by the Pennsylvania Superior Court. The newspaper company appealed to the Pennsylvania Supreme Court. While the appeal was pending, a witness emerged with a striking story.

Robert Kulick, a former restaurant owner in Luzerne County, knew both Conahan and D'Elia. Kulick sometimes shared breakfast with the judge and the reputed mob leader at Perkins Restaurant. Kulick claimed that D'Elia had told him before the defamation case went to trial that the outcome would be "positive" for Joseph and Acumark.

In light of Kulick's allegation, and against the backdrop of the criminal charges against Conahan and Ciavarella, the Supreme Court assigned Judge Platt to conduct an evidentiary hearing. Kulick at the time was awaiting sentencing on federal weapons possession charges. He was cooperating with authorities in the ongoing Luzerne County corruption probe. His eventual testimony in connection with the defamation case was part of that cooperation.

Judge Platt conducted the evidentiary hearing on July 1 and 2, 2009.

In a proceeding filled with revelations, one witness stood out above all others. His name was Mark Ciavarella. The former judge took the witness stand on July 2 in Courtroom 1B of the Lehigh County Courthouse in Allentown.

At the time, Ciavarella's guilty plea in federal court was still in effect. On the witness stand, the former judge freely described arrangements by which he had received hundreds of thousands of dollars in payments from the contractor who built PA Child Care and Western PA Child Care and from one of the partners who owned the facilities.

Ciavarella testified that it was his idea, not Conahan's, to establish a new juvenile detention facility for Luzerne County.

"During my first two or three years as the juvenile court judge, I came to recognize, realize and understand that the facility where we were housing juveniles was an absolute dump and absolute disgrace," Ciavarella testified.

"I went to the county commissioners and I asked them to build a new detention center. They told me they would, but they didn't want to build it and announce that until after the election. This was in 1998 or '99.

"The election came. The election went. They didn't take any action…I went to Judge Conahan and I said, if you know anybody that has the wherewithal to build a facility, tell them to build one because this place is a dump and it shouldn't be open. That's how it came about."

Ciavarella said Conahan lined up Robert Powell and a partner, Gregory Zappala, who has not been charged, to undertake the project.

Ciavarella testified that payments he and Conahan received from Powell took the form of rent on a condominium in Florida. The rate was $10,000 a month for six years - prepaid. Ciavarella said that Powell never paid the full amount that was due: He only paid $520,000.

Ciavarella testified that Robert Mericle wanted the construction contract for PA Child Care, and enlisted Ciavarella's help to get it.

"Sometime after the contract was set, Rob Mericle came into my chambers and indicated that he was going to pay me a finder's fee."

Question: "When was that?"

Ciavarella: "My recollection was sometime, I believe, in April of 2002."

Question: "How much?"

Answer: "He told me he would pay me ten percent of whatever the contract price was."

Question: "When did you decide to cut Michael Conahan in on that?"

Answer: "That day."

Question: "How did you go about doing that?"

Answer: "Walked over to his chambers and told him what had transpired in my chambers. He said to me that that is one hell of a friend you have. That was the end of it."

Asked why he offered Conahan half the money, Ciavarella replied: "He was the one that made it all possible. He put the people in the room that came up with the financing to build the facility."

Ciavarella testified that his share of the "finder's fee" was $440,000. Through a series of transactions, he said, the money was paid from Mericle's company to an individual named Robert Matta, then to a firm owned by Conahan called Beverage Marketing, and finally to him.

"I did not consider what I did to be illegal," Ciavarella testified. "I did not consider the money that I was receiving to be illegal mob money. I was told it was legal money. I was told it was something that I was entitled to. And for that reason, I did not have a problem with where that money went or how it came to me."

Even so, he acknowledged that he did not pay taxes on the money. He said he thought Conahan would pay the taxes.

One month after the evidentiary hearing, President Judge Platt filed his Report and Recommendation with the Supreme Court on August 3, 2009. Drawing from witness testimony and exhibits he made findings of fact which included the following:

- From 2004 to 2006, then-President Judge Conahan and William D'Elia held breakfast meetings at least twice a month at Perkins Restaurant on Route 309, meeting at about 6:30 a.m. and sitting in a booth in a rear corner of the restaurant's front section where other patrons normally were not seated.
- Robert Kulick sometimes joined Conahan and D'Elia at these sessions.
- Kulick and D'Elia discussed the **Citizens' Voice** defamation case many times, and D'Elia laughed saying "that Joseph would win the case." D'Elia told Kulick that, based on information he received from Conahan, there would be a "positive outcome" for Joseph.
- From 2003 to 2005, Patricia E. Benzi, a security guard at the Luzerne County Courthouse, delivered between 10 and 20 plain envelopes from D'Elia to Conahan. Benzi picked up the envelopes from D'Elia in the employee parking lot of the courthouse and carried them to Conahan at his judicial chambers.
- Ciavarella claimed to be unaware of any judicial irregularity in the Joseph case. However, in view of his guilty plea in federal court, Ciavarella admitted on the witness stand to being a corrupt judge at the time he presided over the Joseph case.
- The assignment of the Joseph case was out of the ordinary. It was made by William T. Sharkey, Sr., the court administrator [Conahan's cousin], at the direction of Conahan. Ciavarella was not assigned to handle non-jury trials at the time.
- Attorney Robert Powell appeared in court before Ciavarella during the period that he was making payments to Ciavarella. Ciavarella did not disclose his private financial arrangements with Powell to other lawyers. He admitted he should have made that disclosure, and that he should have recused himself from Powell's cases. But no attorney, Ciavarella said, asked the right question to prompt him to do so.

- Ciavarella did not think it was smart for Conahan to eat breakfast with D'Elia on a regular basis, given D'Elia's alleged organized crime involvement. Conahan responded that he and D'Elia were friends; they had been eating together for 30 years. He saw no reason to stop.

Judge Platt recommended to the Supreme Court that a new trial in the Joseph case was warranted. He concluded that many aspects of the case presented appearances of impropriety.

The irregular assignment of the case to Ciavarella was one example. Of that assignment, the Platt report said:

"[Deputy Administrator for Civil Trials Ann Burns] was so concerned about the way the trial assignment was made that she included a notation of how the assignment was made in the Court Administrator Office's database. Making this notation was something that she normally did not do. She made the notation in this particular case, because she wanted to protect herself. She did not explain why or from whom she needed protection. A reasonable inference is that Burns had some unspecified concerns about the practices or the persons involved to cause her to take the unusual step of recording who made the trial assignment in the Joseph case."

The Platt report continues:

"The Joseph case involved a tangled web of interconnected relationships that created the appearance of impropriety in the way Ciavarella and Conahan conducted themselves throughout the case. These relationships involved Ciavarella, Conahan, D'Elia, Kulick, and Joseph. They may not directly link all parties, and they may not have been readily apparent. They were real, however, and help explain the actions of Ciavarella and Conahan.

"A central figure in this proceeding is D'Elia. The Joseph case was predicated on ten newspaper articles that discussed or mentioned Joseph and D'Elia, and others, in connection with a federal criminal investigation. The articles reported that D'Elia was a reported member of an organized crime family in northeastern Pennsylvania. The hearing evidence established that D'Elia had relationships with Ciavarella, Conahan, Kulick, and Joseph that varied in nature and degree. The other individuals had relationships with one another, but the common denominator involves the relationship each had with D'Elia."

Judge Platt found that Conahan's longstanding friendship with D'Elia created on its face the appearance of impropriety.

The judge noted that Ciavarella denied in his testimony that he had discussed the Joseph case with Conahan, but Platt found this doubtful.

"The court finds it difficult to reconcile this denial given their close friendship, their judicial relationship, and their shared involvement in the criminal scheme that resulted in the federal criminal prosecutions. Ciavarella knew that Conahan and D'Elia had a long, close personal relationship and knew from reading the newspaper articles that formed the basis for the Joseph case that D'Elia played a prominent [role] in the content of those articles. Based upon these facts and considering that Ciavarella's initial response after speaking with the contractor who offered to make illegal payments was to discuss it with Conahan, the court finds it unlikely that Ciavarella never spoke with Conahan about the Joseph case."

As to Ciavarella, Judge Platt concluded: "Ciavarella's admissions that he was a corrupt judge while presiding over the Joseph case, that he did not report outside income on the annual financial disclosure form for judges, that he lied when completing the form, and that he failed to properly report income on his tax returns are sufficient basis to conclude that he violated his fiduciary duty to the citizens of the Commonwealth of Pennsylvania, that he violated his duty to refrain from conduct that constituted a conflict of interest, and that he failed in his obligation to recuse himself in cases in which he had a conflict of interest. These conclusions alone are sufficient to create the appearance of impropriety to serve as judge for any matter in the Joseph case. Tellingly, former Judge Ciavarella, a witness called by [Joseph], was, because of his demeanor and lack of remorse, one of [the newspaper's] best witnesses. His testimony was one of the factors that persuaded me there was and is an appearance of impropriety and a need for a new trial in this case."

Judge Platt recommended that all substantive orders of Conahan and Ciavarella in the Joseph case be vacated and the case be returned to Luzerne County for a new non-jury trial.

On November 4, 2009, the Supreme Court adopted those recommendations and ordered a new trial "to remedy the pervasive appearance of impropriety in this case, and to give justice, and the appearance of justice, an opportunity to prevail."

In a seven-page order, the Supreme Court said:

"Conahan and Ciavarella were confederates in what appears to have been (by Ciavarella's own admissions here) a long-term criminal conspiracy. The judicial officers also positioned themselves and others (such as Sharkey) within

the Luzerne County court system so that they could control the assignment and trial of individual cases, if they were inclined to do so. And there was direct evidence that the assignment of this case to Ciavarella was controlled by Conahan and was not in the ordinary course of business."

The court added a comment about the underlying issue involved in the lawsuit itself - the dispute for which Ciavarella awarded a $3.5 million defamation verdict against a newspaper:

"The inherently troubling nature of Conahan's and Ciavarella's compromised positions as jurists is enhanced, in this case, given that the subject matter of this defamation lawsuit concerned newspaper articles reporting on the undisputed fact of a federal criminal investigation into D'Elia's and Joseph's alleged ties to organized crime activities, an investigation which included search warrants for Joseph's home and businesses."

Plea Rejection

Following the filing of criminal charges in January, the "kids for cash" saga produced one stunning revelation upon another for six months.

Then, on July 30, 2009, the plea agreement by which Mark Ciavarella and Michael Conahan expected to be permitted to serve 87 months in prison came undone. In an unexpected ruling, the federal judge presiding over their criminal case, Senior U.S. District Judge Edwin M. Kosik, rejected the guilty pleas of the two former judges, saying they had not met the terms of their plea agreements or shown "affirmative acceptance of responsibility" for their conduct.

After pleading guilty, Conahan and Ciavarella had undermined the delicate terms of their plea agreements by disputing and taking issue with the crimes they had admitted to. They had done this in distinctly different ways, Ciavarella publicly, Conahan privately.

Judge Kosik explained the distinction in his memorandum and order rejecting the plea agreements.

"Although each defendant enters a plea of guilty to a binding plea agreement," Judge Kosik wrote, "the probation officers are charged with providing a report that affords the Court with a complete history of the defendants, and their roles in aiding and abetting each other in the offenses. Each defendant is afforded the right to object or dispute the pre-sentence report, including the calculation of the sentence to be imposed and other relevant factual items.

"Defendant Conahan filed several sets of objections, some of which were resolved by the probation officer. The most recent revised objections, which remain unresolved, total some twelve which address more than one paragraph of the pre-sentence report. Without elaboration for our purpose here, some consist of denials concerning offense matters including the receipts of money. The report represents that Defendant Conahan refused to discuss the motivation behind his conduct, attempted to obstruct and impede justice, and failed to clearly demonstrate affirmative acceptance of responsibility with his denials and contradiction of evidence, which is essential to the tenor of the Government's case.

"Defendant Ciavarella is less obstructive to the sentencing report, but instead has resorted to public statements of remorse, more for his personal circumstances, yet he continues to deny what he terms 'quid pro quo' his receipt of money as a finder's fee, notwithstanding the Government's abundance of evidence of his routine deprivation of children's constitutional rights by commitments to private juvenile facilities he helped to create in return for a 'finder's fee' in direct conflict of interest with his judicial roles. Such denials are self serving and abundantly contradicted by the evidence the Government proffers as offense conduct."

Judge Kosik noted that the former judges had the right to withdraw their guilty pleas. If they did not, he wrote, the court "may dispose of the cases less favorably toward the defendants than the plea agreements contemplated."

If that caution was not adequately clear, Kosik quoted the oath that Conahan and Ciavarella had taken when they became judges - " I do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity."

Kosik added this comment in his memorandum:
"We paraphrase what has been written about judges, that, above all things, integrity is their lot and proper virtue, the landmark, and he that removes it, corrupts the fountain. In this case, the fountain from which the public drinks is confidence in the judicial system - a fountain which may be corrupted for a time well after this case."

Ciavarella and Conahan withdrew their guilty pleas.

Indictment

On September 9, 2009, a federal grand jury returned a 48-count indictment charging both men with using the Luzerne County Court of Common Pleas as a criminal enterprise to enrich themselves, secretly deriving more than $2.8 million - a sum increased from $2.6 million in the

earlier charges - in illegal income between June 2000 and January 2007.

Beyond honest services fraud and tax violations to which Conahan and Ciavarella originally had agreed to plead guilty, the indictment charged both men with violating the federal racketeering statute, conspiracy, extortion, bribery, money laundering - the latter involving the transfer of funds to disguise alleged payoffs - and conspiracy to defraud the United States by impeding the Internal Revenue Service in the collection of income taxes.

The indictment charged:

"The actions from which they derived improper income included, but were not limited to: entering into agreements guaranteeing placement of juvenile offenders with PA Child Care, LLC and Western PA Child Care, LLC; taking official action to remove funding from the Luzerne County Court budget for the Luzerne County juvenile detention facility, effectively closing the county-run youth detention center; facilitating the construction of juvenile detention facilities and an expansion to one of those facilities by PA Child Care and Western PA Child Care; directing that juvenile offenders be lodged at juvenile detention facilities operated by PA Child Care and Western PA Child Care…assisting PA Child Care and Western PA Child Care to secure agreements with Luzerne County worth tens of millions of dollars for the placement of juvenile offenders, including an agreement in late 2004 worth approximately $58,000,000."

The indictment described the relationship and dealings between Ciavarella, Conahan, Robert J. Powell and Robert Mericle in this way:

"In approximately June of 2000, the defendant Mark A. Ciavarella, Jr., whose duties then included presiding over juvenile proceedings as a judge of the Court of Common Pleas for Luzerne County, had discussions with an attorney who had a law practice in Luzerne County, [Powell] who was interested in constructing a juvenile detention facility in Luzerne County. [Ciavarella] introduced [Powell] to a contractor [Mericle] who was a friend of [Ciavarella] for the purpose of locating land for the juvenile facility and for constructing the facility.

"[Powell] and another person, doing business as PA Child Care, acquired land in Luzerne County and entered into an agreement with [Mericle] to construct a juvenile detention center to be operated by PA Child Care.

"On or about January 29, 2002, defendant Michael T. Conahan, acting in his capacity as President Judge of Luzerne County, signed a 'Placement Guarantee Agreement' between PA Child Care and the Court of Common Pleas for Luzerne County to house juvenile offenders at the PA Child Care facility. The 'Placement Guarantee Agreement' provided that the Court of Common Pleas for Luzerne County would pay PA Child Care the annual 'Rental Installment' sum of $1,314,000 and stipulated that '[t]he obligation of the Court to make payment of the Rental Installments shall be absolute and unconditional.'
"In or about December, 2002, [Conahan], acting in his capacity as President Judge of Luzerne County took official action to remove funding from the Luzerne County Court budget for the Luzerne County juvenile detention facility. The practical effect of this action was to close the Luzerne County youth detention center.

"In or before January of 2003, [Conahan] and [Ciavarella] arranged to receive a payment in the amount of $997,600 in connection with the roles they played as judges in accomplishing the construction of the PA Child Care juvenile detention facility.

"In order to conceal the $997,600 payment to defendants Conahan and Ciavarella, Jr., [Powell] and [Mericle] signed a written 'Registration and Commission Agreement' prepared by [Mericle] and backdated to February 19, 2002, which purported to be an agreement for [Mericle] to pay a broker's fee of $997,600 to [Powell]. In fact, however, a large portion of the money was paid to defendants Michael T. Conahan and Mark A. Ciavarella, Jr."

The indictment further charged that:

- When Western PA Child Care opened in Butler County, Pa., in 2005, Powell made a $1 million payment to Conahan and Ciavarella, which also was arranged as a "broker's fee."
- A $150,000 payment was made to the judges when an addition was built at PA Child Care in Luzerne County in 2006.
- After the juvenile centers were built, Conahan and Ciavarella continued to demand money from Powell. The judges allegedly received hundreds of thousands of dollars in additional payments "for their past and anticipated future official actions."

With regard to the placement of juveniles, the indictment said:

- Conahan entered into agreements guaranteeing the placement of juvenile offenders in PA Child Care and Western PA Child Care, and Ciavarella took necessary steps to ensure that the guarantees were met.
- Accused juvenile offenders were ordered detained by Ciavarella even when juvenile probation officers did not recommend detention and even when detention was unreasonable and unwarranted.

- Ciavarella and others "operating at his behest" exerted pressure on staff of the Court of Common Pleas to recommend detention of juvenile offenders. On some occasions, probation officers were pressured to change recommendations of release to recommendations of detention.
- Ciavarella adopted procedures in juvenile court which resulted in juveniles appearing without counsel and without creation of a normal court record. These procedures, in addition to violating the juveniles' rights, created the potential for increased numbers of juveniles to be sent to the detention facilities of PA Child Care and Western PA Child Care.

On June 9, 2009, the U.S. Attorney for the Middle District of Pennsylvania charged Robert J. Powell with failing to report a felony to federal authorities and with being an accessory after the fact to a tax conspiracy. Powell agreed to plead guilty, to forfeit his interest in a 56-foot yacht, the "Reel Justice," to forfeit a 1981 Sabreliner 65 corporate jet, and to cooperate with federal authorities. It was disclosed that he had worn a wire to record conversations with Ciavarella and Conahan which helped build the case against the judges. Powell is continuing to cooperate in an expanded federal probe that now includes a focus on case fixing.

Powell has sold his interest in the juvenile facilities to his former partner, Gregory Zappala, son of retired Pennsylvania Chief Justice Stephen A. Zappala. Gregory Zappala has not been accused of wrongdoing. Powell entered his guilty plea on July 1. He has not been sentenced.

On August 12, 2009, Robert Mericle was charged with concealing from federal investigators his knowledge that Conahan and Ciavarella were engaged in a conspiracy to defraud the government of federal taxes on income related to payoffs. Mericle signed a plea agreement and is cooperating in the continuing investigation. As part of his plea agreement, Mericle contributed $2,150,000 to fund "programs for the health, safety and general welfare of the children of Luzerne County." The money is to be dispersed under supervision of the federal court.

In yet another surprise development, Conahan on April 29, 2010, agreed to plead guilty to a charge of racketeering. He entered into a plea agreement, but his sentence was left to be determined by a judge at a future time. Nor were other details made public - particularly whether Conahan was cooperating with the government's corruption investigation.

In agreeing to once again plead guilty, Conahan did a solo act. Ciavarella did not join him at the courthouse. Ciavarella's lawyer announced to the media that his client would go to trial.

These are the men - Ciavarella and Conahan - who are directly responsible for the failure of the juvenile justice system in Luzerne County.

The record of their conduct was being drawn together in criminal charges, the work of the Special Master and Judge Platt's evidentiary review of the defamation case involving Thomas Joseph and the **Citizens' Voice** as the Interbranch Commission on Juvenile Justice was forming during the late summer and early fall of 2009.

It is against this background that the Interbranch Commission on Juvenile Justice began holding public hearings and receiving evidence on October 14, 2009.

Given the magnitude of the charges against them, the commission had no realistic expectation that Conahan or Ciavarella would cooperate with its investigation. Both men declined, through their attorneys, to testify before the commission.

The mandate of the commission is to probe not only the activities of Conahan and Ciavarella but to look beyond them at the conduct of others in the juvenile justice system and to make recommendations, in view of their actions or failures, that will ensure an honest and properly functioning court system in the future. These other individuals have not been charged with crimes or misconduct. But by omission, inaction, silence, inadvertence, ignorance, even unawareness, many contributed to the failures that caused potentially thousands of juveniles to be denied basic constitutional rights in delinquency proceedings.

III. Proceedings of the Interbranch Commission

The task of the Interbranch Commission on Juvenile Justice was to investigate the failure of the juvenile justice system in Luzerne County, to restore public confidence in the administration of justice and to prevent a recurrence of such a failure in Luzerne County or elsewhere in the Commonwealth.

The commission held 11 days of public hearings in Harrisburg and Wilkes-Barre between October 2009 and April 2010 and took testimony from more than 60 witnesses. The witnesses included individuals involved in the juvenile justice system, and those impacted by it, at every level. Many lived and worked in Luzerne County. The commission heard from the county president judge, local prosecutors, public defenders, probation department officials, juveniles, parents, county commissioners and others with first-hand perspectives on the breakdown in the county's juvenile court. Other witnesses presented statewide or national perspectives on juvenile justice issues and best practices in juvenile courts. The commission's schedule did not allow time for all who wished to testify to be heard. Many individuals who did not testify at public hearings instead provided written or verbal information to aid the commission in its work.

Transcripts of all the commission's hearings and other information, including standards for prosecutors and defense lawyers in juvenile cases, and the victim advocate's report, are available on the Web site of Pennsylvania's Unified Judicial System at: http://www.pacourts.us/Links/Public/InterbranchCommissionJuvenileJustice.htm

The Victims

Many people have been harmed by the corruption wrought by former judges Ciavarella and Conahan. The impact of the "kids for cash" scandal radiates far beyond the juveniles directly touched by Ciavarella's improper courtroom practices.

When **Judge Arthur E. Grim**, the special master, testified before the Interbranch Commission on Juvenile Justice he spoke of a wide range of victims affected by the scandal.

"It would be presumptuous of me to describe the full impact that these acts had on the victims," Judge Grim said. "And when I talk about the victims my definition of victim is a lot broader than simply the young people that appeared in this [Ciavarella's] court.

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

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

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

"So, again, the situation is a lot broader than just simply talking about the children and the families. We need to broaden the scope of what is meant by victimization. Now, what is there to do about it?"

The commission heard from young people who, as juvenile defendants, appeared before Mark Ciavarella and were traumatized by the experience. Parents of juvenile defendants told of the impact of having their children sent arbitrarily and unexpectedly into detention. By contrast, the commission heard accounts of victims of juvenile crimes, and the bitterness and frustration those individuals felt at records being expunged and adjudications being vacated for youths who had committed crimes against them.

Beyond individual victims, the commission heard testimony of a more abstract class of victim - the collective citizens of Luzerne County who have felt the demoralizing impact of the judicial scandal on their community.

Jacqueline Musto Carroll, the Luzerne County district attorney, spoke of the embarrassment the scandal has created for the people who live in the county.

"Do you think I like going across the state and having people say Luzerne County and laughing at us and thinking that we're all rotten people and that we just stood by while this happened?" Carroll asked. "That's so unfair, because we're not. And we're good people. And we come from coal miners, and we come from war veterans. It's upsetting. It really is."

The Victim Advocate

Carol L. Lavery, Victim Advocate of the Commonwealth of Pennsylvania, told the commission: "Victims include all of the people living in Luzerne County, who have learned to dread the daily news reports of investigations, arrests, indictments, and graft. Residents who are characterized as

accepting if not embracing that greed. Communities that are described as backward, with the ever present buzz word 'culture' defined to mean corrupt, pitiless, and powerless."

Lavery characterized the broad-based community harm caused by Ciavarella as so encompassing as to amount to an "incident of mass violence."

The central focus of Lavery's testimony to the commission, however, related to "original victims" of juvenile crimes. Many of these individuals, Lavery said, were distressed that the cases of perpetrators of crimes against them were being dismissed and the records expunged.

In the publicity arising from the "kids for cash" scandal, the victims of juvenile crimes have been largely overlooked. Lavery, who served as a spokesperson for this group, stressed that this oversight - perhaps a sense of getting lost in the shuffle - has been a source of bitterness and frustration for many crime victims. Lavery's testimony underscored a key point: The fact that injustices were done to juvenile defendants by a rogue judge does not negate the reality that in many instances those same young people committed delinquent acts, and often admitted doing so.

Victims of Juvenile Crimes

Lavery cited several illustrations of "original victims" who felt, despite the judicial corruption scandal, that the juvenile justice system had worked effectively in their cases and now the system had derailed by wiping out appropriate adjudications.

One case involved an assault by one school student on another. The assailant was adjudicated by Ciavarella, placed on probation and ordered to stay away from the victim. The victim's parents thought the system had worked, and a record of the attacker's violent nature had been made. But when the case was vacated and the record expunged, the stay-away order was no longer in effect. There was no record to look back to in the event of a future attack by the violence-prone student. The parents were concerned for their child's safety.

Another case involved a woman who had been violently assaulted by a group of juveniles. The woman's son wanted to retaliate. The mother persuaded her son that the way to respond was through the courts. The attackers were ruled delinquent and placed in out-of-home facilities. A record of their offenses was created. The mother believed the system had worked. But when the adjudications were vacated and the records expunged, Lavery said, the mother did not know what to tell her son. She lost confidence in the justice system.

"To each of these parents, their efforts to do the right thing in seeking justice in the juvenile justice system now seems to have been in vain," Lavery testified. "…they find the fact that the cases are being vacated and expunged as incomprehensible.

"One mother spoke about her child who was severely beaten during an attack at school by a group of juveniles who had notified other students ahead of time to come and watch the assault. The mother felt the juveniles did not receive a harsh enough sentence.

"For their cases to be expunged she [the mother] said, what does that say to my child and every other child that is assaulted or bullied? I hope someone takes into consideration the hurt, the fear, the pain my child had to endure at the hands of these juveniles that are very, very troubled juveniles."

Lavery said that crime victims who are owed restitution believe it particularly unfair that they will not be compensated for losses resulting from juvenile crimes. "Many of the victims who I -- who I heard from talked about not having received their restitution, and many, many of them were very angry about that," Lavery testified. "Many victims talked also about their frustration over the loss of not only restitution, but personal and irreplaceable items of sentimental value.

"They talked of burglaries of family heirlooms, the grandparents' jewelry, of coin collections that were never recovered. They spoke of personal items saved to pass along to their own children, war medals and work and retirement mementos destroyed in burglaries and in arsons. And for some victims the lack of any recognition or remorse or apology from the juvenile has increased the harm once these cases have been vacated and expunged.

"They see the system as failing to help the juvenile understand or take responsibility for the harm since that apology was never forthcoming."

Juveniles and Parents

The commission also heard testimony from "juvenile victims" - young people who appeared in court before Ciavarella - and from their parents.

A 19-year-old youth identified as D.G. and his mother, M.G., a teacher, told of an incident in which D.G. was charged with throwing rocks on a highway when he was 12-years old. The mother contended that an older boy had thrown the rocks, and her son was innocent. Even so, she testified, a lawyer hired by the family advised her son to admit the charge, and the boy agreed to do so.

In court, the mother testified, Ciavarella leafed through a folder on D.G.'s case and spotted the fact that D.G. had received a commendation from former Governor Tom Ridge for attaining a top award as a Cub Scout. "And his words were something like, well, Mr. Big Shot Boy Scout. So you have a commendation from Governor Ridge. Well, Governor Ridge is now head of Homeland Security. Perhaps I should call him and tell him we have a terrorist loose on the streets of Luzerne County. And he ordered that my son be taken away. So they shackled my son and handcuffed him and took him off to the side."

D.G. was sent to Camp Adams for 35 days. After he had been there a few days, his mother said she received a call from her son's pediatrician's office. The residential facility had called the pediatrician's office to say D.G. was having difficulty breathing. Did he have any allergies?

"I couldn't find out what was wrong with him, and I was -- I was really uptight," the mother testified. "…I called Sandra Brulo [chief juvenile probation officer]. And I told her what the story was, and I asked if I could speak to my son, and she told me absolutely not.

"And I said to her, he's having a breathing problem. He has allergies. I need to speak with him. Nope, can't talk to your son. At which point I said to her, he has rights. He has to be allowed to talk to me. And she said to me, he has no rights. He gave them up when he decided to be a criminal."

Barry H. Dyller, a lawyer who accompanied D.G. and M.G. during their testimony, made an observation about the prior lawyer who advised D.G. to plead guilty even though he claimed to be innocent. Having practiced before Ciavarella, Dyller said, "I can say that that was not crazy advice. Because the alternative…would more likely have meant that he would have been placed for a much longer period of time. So while people say, well, you pled guilty, in that courtroom there weren't a lot of alternatives."

Another witness before the commission was A.A. who was arrested for gesturing at a police officer with her middle finger after the officer had intervened in a custody dispute involving her parents and her sister.

Prior to the incident, A.A. testified, she had never been arrested. At 16, she said, "I never even had detention in school. I was on the Honor Roll. I was a Girl Scout. I was a member of the YMCA. I was in Bible school. I was in every club, ecology, newspaper, year book, dance, from middle school to high school."

At the Juvenile Probation Department, she said, "They told me I was going to have to go to court, and that I really didn't need a lawyer because it wasn't really a big deal."

The hearing before Ciavarella went quickly. A.A. testified that Ciavarella flipped through a stack of papers and told her she had no respect for authority. She said he gave her no chance to speak - even to admit to the charges. "And he just told me to go sit down, and…they put the shackles on me."

A.A. said she was sent to PA Child Care where she remained for two months. While there, a court-ordered psychological evaluation was done by Dr. Frank Vita, the brother-in-law of Conahan.

From PA Child Care, she was sent to Adelphoi Village, a residential facility near Pittsburgh, where she remained for six months.

A.A. said her father consulted a lawyer to see if her case could be appealed. "They said it would take too long, and it would cost some crazy amount of money to do it. And it -- my time would run out before I -- before I would get anything done with the appeals."

While in placement, A.A. said she had to keep up with school work largely through self-study because the educational provisions in the facilities were inadequate for her grade level.

After her release, she was taken before Ciavarella. A.A. testified that the judge told her she had "made progress" and he warned her he didn't want to see her back in court.

She said she returned to school, made it back onto the Honor Roll and rejoined her prior extracurricular school activities. She is currently attending Bloomsburg University. She plans to go to law school. She said she wants to do work as a lawyer to help protect the rights of children.

Thirteen-year-old M., whose parents were involved in a bitter divorce and custody battle, was charged in December 2004 with simple assault and harassment for pushing his mother's boyfriend and throwing a piece of steak at him.

When M. went before Ciavarella for trial, a lawyer representing the youth and his father contended that the incident stemmed from family tensions in a custody dispute. Ciavarella was unmoved. After a short proceeding at which M.'s mother and her boyfriend testified, Ciavarella ruled M. delinquent and ordered him placed at PA Child Care. The youth was handcuffed, shackled and taken into custody. He remained in placement for 48 days.

M.'s father, identified as Mr. K. before the commission, testified that M. had never previously been in trouble. The father said neither he nor his lawyer expected the youth to be "locked up." The father said he thought M. might be

placed on probation for a short time. After the adjudication, Mr. K. made extensive efforts to gain his son's freedom. "I contacted County Commissioners, state representatives, Governor's Office, Congressmen, help line, juvenile justice organizations, Children and Youth, just to name a few," Mr. K. testified - all to no effect. Worse, he said, Sandra Brulo, chief county probation officer, recommended that M. be kept in placement much longer: for one year at a Colorado Boy's Ranch followed by placement at Glen Mills School in Pennsylvania until he was 18 or 21 years old.

At that point, Mr. K. said, he went to the media. "[The Wilkes-Barre] **Times Leader** published a story describing our situation. Five days after the article appeared …M. and I again appeared in court…Judge Ciavarella ordered that M. be released from PA Child Care and placed on probation for approximately six months."

Mr. K. testified that he ran up heavy expenses to win his son's release, including $590 in fees for required post-release counseling. He said his son suffered depression while in placement and afterward.

"At the present time, M. has no faith or trust in police or the judicial system," Mr. K. testified. "I've tried unsuccessfully to explain to him that he was a victim of judicial injustice, and that the judicial system can work…I've not been very successful."

Ms. J. was in the 11th grade at a suburban high school in Luzerne County when she was arrested in 2006 for possession of drug paraphernalia - a lighter and a pipe which, she said, belonged to a friend.

"I had always been a good student," Ms. J. testified to the commission. "I had never been in trouble at school, let alone in trouble with the law."

She appeared without a lawyer before Ciavarella in January 2007. She said no one asked her if she understood that she had a right to a lawyer.

"The court officer read the charges and asked me how I intended to plead," Ms. J. testified. "I thought my only option was to plead guilty, so that is exactly what I did. No one asked me whether I understood my right to contest the charges, whether I understood the consequences of my admission, or whether I had discussed my admission with my parents or lawyer.

"Ciavarella declared that I would be sent away, but he didn't say where or for how long. I was immediately handcuffed and escorted out of the courtroom to a small waiting room by a sheriff. I did not even have a chance to say goodbye to my father."

Ms. J. was sent to the residential facility Camp Adams where she remained for three months. She said she tried to keep up with schoolwork, but found it difficult because the quality of teaching at the facility was poor.

After her release, Ms. J. was placed on probation for three months. She returned to high school and caught up on her studies. But she said she lost friends and was frequently humiliated by being summoned from class to be searched for drugs. She now is a college student with plans to go to law school.

Ms. J. said her encounter with Mark Ciavarella and his singular style of juvenile justice has left her with "a deep mistrust of the American legal system."

"Zero-tolerance is what allowed this to happen," she testified. "If a judge applies the same sentence to every case brought before him, then what is the point of a trial or a judge at all?"

Fear and Intimidation

During its public hearings, the Interbranch Commission on Juvenile Justice heard repeated testimony in which witnesses described a climate of fear and intimidation, reprisal and retribution in the Luzerne County Courthouse during time when Michael Conahan and Mark Ciavarella were the president judges. It is clear that this atmosphere fostered the breakdown of the juvenile justice system. Both men were autocratic. They did not rule by consensus. They did not take kindly to opposition.

Conahan was president judge for five years from January 2002 through the end of 2006. He retired in 2007 at age 54 to become a senior judge. Ciavarella became president judge in January 2007 and held the position until January 2009 when he was relieved of his duties after federal charges were filed against him.

The successor to Ciavarella was **Chester B. Muroski** who took on the role of president judge in Luzerne County on January 30, 2009, at a time when the courthouse seemed almost in meltdown. It was the height of the scandal created by the corruption charges against Ciavarella and Conahan. Judge Muroski has been widely praised for his work in bringing order to the chaotic situation he inherited and instituting reforms.

Judge Muroski is a former Luzerne County district attorney and was, when he became president judge, the most senior member of the Common Pleas Court in the county. In the past he had personally opposed the Conahan-Ciavarella power structure, and he had paid a price for it.

A judge since 1982, he had presided over the Juvenile Court, the Orphans Court and the Family Court in Luzerne County for many years. Within the juvenile court, there are two divisions, the delinquency division, where criminal offenses committed by minors are adjudicated, and the dependency division, where cases of abused and neglected children are supervised.

Judge Muroski testified that he handled both delinquency and dependency divisions in juvenile court until 1996 when Ciavarella joined the bench. At that point, the delinquency division was transferred to Ciavarella.

Judge Muroski said Ciavarella took a hard line on juvenile crime which was well-received in the community, particularly by school administrators, teachers and police.

"At the beginning of every school year [Ciavarella] spoke at assemblies held in most school districts within Luzerne County, and in effect, he promised institutional placement for school-related infractions. He was true to his word and became even more popular when he followed through with placements, sometimes for minimal offenses."

Judge Murorski read a May 2007 transcript of a case in which a 10th grade high school student had been charged with harassing a school official.

The Court: "How do you plead?'

The Juvenile: "Guilty."

The Court: "Based upon her admission, I'll adjudicate her delinquent. What makes you think you have a right to do this kind of crap?"

The Juvenile: "I don't know, sir."

Ciavarella asked if the student recalled him visiting her school: "You heard me speak?"

The Juvenile: "Yes."

The Court: "Told you what type of conduct I expected from children in that school relative to the juvenile justice system?"

The Juvenile: "Yes."

The Court: "Is this acceptable?"

The Juvenile: "No, sir."

The Court: "What did I say would happen if you acted in an unacceptable way toward teachers and/or administrators?"

The Juvenile: "I don't recall, sir."

The Court: "You don't recall? You don't remember me saying if you did anything to these teachers that I would send you away? You don't remember those words?"

The Juvenile: "No, sir."

The Court: "Were you sleeping?'

The Juvenile: "No, sir."

The Court: "You can't remember that?"

The Juvenile: "No, sir."

The Court: "It's going to come back to you because I didn't go to that school, I didn't walk around in that school, and I didn't speak to that student body just to scare you, just to blow smoke, just to make you think I would do that when I wouldn't. I'm a man of my word. You're gone. Send her up to FACT. Let her stay there until she figures it out. Thank you."

Juvenile's Mother: "No. That's not fair. That's not what the officer said. That's not what he said."

Under Ciavarella's zero-tolerance policy, Luzerne County's juvenile placement costs rose to unprecedented heights - notably after PA Child Care opened in 2003. In 2007, one of every four juveniles ruled delinquent in Luzerne County - 25.8 percent - were being sent to out-of-home placements. That was more than double the statewide average.

The soaring costs of those placements had a direct and negative effect on the dependency division of juvenile court where Muroski continued to oversee cases of abused and neglected children. Children in dependency cases often are removed from their families by court order and placed in temporary out-of-home settings such as foster homes. The primary goal in most dependency cases is to reunite children with their families after providing services to parents to alleviate or correct problems that caused abuse or neglect.

"Unfortunately," Judge Muroski testified, "once the juvenile center [PA Child Care] opened, slowly but surely the social services to these [dependent] children and their families became difficult to obtain. There were waiting lists for parenting classes, family assessments, drug and alcohol evaluations and treatment, as well as other specialized services.

"Parents had to wait sometimes months to be given these services. This resulted in a child being in placement longer

than necessary when the child hadn't done anything wrong while the parents waited to complete services and the County had to pay to keep the children in placement.

"When I complained I was told off the record Dependency Court got less funding because Delinquency Court placements had consumed much of the entire Juvenile Court delinquency and dependency budget."

Judge Muroski testified that after making unsuccessful attempts to obtain funds for the dependency division he wrote a letter to the Luzerne County Commissioners on June 15, 2005, threatening to use his contempt powers to ensure that services were made available to dependent children and their families. That provoked a quick response but not the one he was looking for:

"A few days later [President Judge] Conahan issued an order transferring me effective the first week in September, 2005, to Criminal Court…There was very little doubt in my mind that Conahan expected me to retire because I had not handled a criminal jury trial since 1981 when I was the District Attorney."

Luzerne County Commissioner **Maryanne Petrilla** described a run-in with Conahan, then a senior judge, around the New Year's holiday of 2008. Petrilla, a former county controller, had been elected a commissioner and was planning to institute a program of reforms in county government.

As she prepared to take office, Petrilla made it known that she intended to fire a high-level county employee, the chief clerk-county manager.

"And I - I recall New Year's weekend of 2008 when I was inundated with probably anywhere from 40 to 60 phone calls from friends…and they had received calls from Judge Conahan and told me that, you know, Judge Conahan had really wanted me to reconsider my replacing the chief clerk, county manager. And I - I told everyone that I just felt that that was something that I could not do."

Petrilla testified that Conahan eventually telephoned her directly.

"And the conversation was not what I would call a friendly phone call. He said that I could not replace [the chief clerk-county manager]…And his final words to me were, Maryanne, if you do this, you will be finished. And I said, well, with all due respect, Judge, I - you know, I'm not going to tell you how to run your courts, and I would really ask that you respect this decision because I think it's the best decision going forward for our administration."

After taking office, Petrilla proceeded to dismiss the employee. She said the same individual then was rehired by the court, specifically by county court administrator's office to be "specialty court administrator." The Luzerne County court administrator at the time was Conahan's cousin, William Sharkey.

Petrilla testified that the Luzerne County courts under Conahan and Ciavarella spent money, let contracts and hired personnel without regard to county rules or policies. In the process, she said, the courts ran up huge deficits for the county.

She cited as an example the contract of Dr. Frank Vita, Conahan's brother-in-law. Vita held a non-competitive court contract to conduct psychological evaluations on youths charged with criminal offenses. Ciavarella referred juvenile defendants to Vita for the evaluations. The youths often were placed in detention while the evaluations were conducted.

Petrilla said a county policy that required advertising for an "RFP" or a request for proposals was not followed on Vita's contract.

"They just issued the contract, and there was no RFP put out…And it's just indicative of the philosophy that they had that they did not have to abide by the other county policies that other departments had to abide by…they just did their own things and sent the bills to the county to be paid."

In 2008, the county faced a financial crisis. The county commissioners decided to impose a major spending cut across all departments of government, including the courts.

"[President] Judge Ciavarella came to the budget hearings, and it was what I would call a pretty tumultuous encounter with Judge Ciavarella," Petrilla testified. "He said that he needs the money to run his courts. I can't tell him how to run his courts. And he will do his budget, and we will fund his budget.

"And I said, well, quite frankly, Judge, we can't. We don't have the resources to fund your budget. And he said, well, then I'll sue you. And I said, well, Judge, if that's what you have to do, that's what you have to do. And that's what he did."

Even **Richard J. Gold**, deputy secretary of the Pennsylvania Department of Public Welfare, found himself reprimanded for questioning Judge Mark Ciavarella's inordinately high juvenile placement rates - and the high costs that went with them.

Gold heads the Welfare Department's Office of Children, Youth and Families which administers the child welfare system throughout Pennsylvania. The office also provides approximately 80 percent of funding for the child welfare system, using state and federal revenues.

Among its functions, the Office of Children, Youth and Families licenses and inspects juvenile detention facilities, and arranges audits to ensure their costs of those facilities are reasonable.

In testimony before the Interbranch Commission on Juvenile Justice, Gold outlined a struggle that went on for years between his office and Luzerne County over juvenile detention matters.

"Specifically dealing with Luzerne County, in October, 2002, Judge Conahan publicly announced that Luzerne County judges would stop sending youth to the Luzerne County detention center, which was known as the River Street Center, at the end of the year because the building was, quote, too run down, end of quote," Gold testified.

"At that time [Office of Children, Youth and Families] had fully licensed the facility as we determined that it met all state requirements for the operation of a safe and secure facility."

Gold said his office conducted a review of the 22-bed River Street Center and found it "safe and satisfactory to house juveniles." As a result, the department announced it would renew the facility's license. Gold said that Ciavarella sharply criticized the license renewal decision. Then Conahan overrode the state's decision.

"In December, 2002, Judge Ciavarella's criticism was followed by Judge Conahan's official action to remove all funding from the county budget for the River Street Center and his stated intention of closing the facility," Gold testified. "Thereafter, the court returned the River Street Center's license to the Department closing the facility." The state accepted the license. When the new 48-bed PA Child Care facility opened in February 2003, the Welfare Department granted it a license.

Gold testified that the department expected PA Child Care to be a temporary facility, used for two to four years while Luzerne County built a new detention center on county-owned land.

Within a year, however, it became clear that county officials were thinking of issuing a long term lease to PA Child Care. It also became clear through a Welfare Department audit that PA Child Care was making unusually large profits - 28 percent, equal to $1.2 million - in its first 10 months of operation.

Gold said those discoveries raised such concern that the department listed PA Child Care as an immediate priority for further audit, and the department asked the Luzerne County commissioners to delay a vote on the long term lease until the audit was completed. The request for delay was disregarded.

"The county proceeded with a vote prior to the audit conclusion, and in November, 2004, the county approved a 20 year lease with Pennsylvania Child Care," Gold testified. The aggregate cost of the lease was $58 million.
"In December, 2004 Pennsylvania Child Care filed a court action against the Department and then Luzerne County controller, Steve Flood contending that pursuant to a subpoena issued by Controller Flood the Department was going to release, quote, trade secrets, end of quote, of Pennsylvania Child Care.

"As part of the lawsuit Pennsylvania Child Care sought an emergency injunction barring the release by the Department of any of the alleged trade secrets and also sought to seal the lawsuit.

"Judge Conahan granted Pennsylvania Child Care's motions. The immediate impact of Judge Conahan's rulings was that the Department had to place the audit of the Pennsylvania Child Care facility in abeyance because the potential ruling significantly limited the audit scope and also precluded the Department from discussing the report findings and recommendations with Luzerne County officials."

Gold testified that Conahan's order was reversed by the Pennsylvania Superior Court in November 2005. That allowed the audit of PA Child Care to proceed.

The final audit was not released until January 2008. It showed that Luzerne County payments to PA Child Care exceeded reimbursable costs by approximately $2 million per year.

The audit found the costs to be so excessive, Gold testified, "that the county could have built three juvenile detention centers for the cost of what it paid to lease Pennsylvania Child Care facility." [Luzerne County eventually renegotiated its contract with PA Child Care.]

Gold said a separate audit of Western PA Child Care also found patterns of unreasonable and unallowable costs.

A third audit of payments to Dr. Frank Vita for court-

ordered psychological evaluations of juvenile defendants, "found questionable costs in the amount of $836,636."

Gold testified that an indication that something was "out of sync" in Luzerne County was the fact that the juvenile detention numbers were exceptionally high - far above statewide averages.

In a visit to Luzerne County in the summer of 2007 where he met with county officials, Gold commented on the high numbers, telling those in the group, "there's something wrong here in your numbers."

Ciavarella was at that meeting. Gold said the judge "wasn't pleased at all with being questioned as to the practices of the jurisdiction."

After the meeting, Gold testified, "a complaint was made about me" and he received "a formal reprimand for questioning how out of sync this county was to all the other counties of Pennsylvania."

Stephen Urban is a Luzerne County commissioner who was in office when the River Street Center closed and PA Child Care opened.

In testimony before the commission, Urban said he opposed closing the county-owned center and also opposed the immense costs of leasing PA Child Care. He said repairs and improvements were needed at the River Street Center, but the work could have been done for $2 million to $4 million.

The $58 million lease for PA Child Care was approved by former Luzerne County Commissioners Todd Vonderheid and Greg Skrepenak on October 20, 2004. Urban was the only No vote on the three-member commission. [Skrepenak resigned his position as a commissioner in December 2009 shortly before the U.S. Attorney's Office charged him with accepting $5,000 to assist a developer gain tax incentive financing for a project. Skrepenak pleaded guilty on January 26, 2010, and is cooperating with investigators in the Luzerne County corruption probe.]

Although the county commissioners were generally compliant in granting the financial requests of Conahan and Ciavarella, Urban testified that the courts assumed and co-opted powers that properly belonged to the county commissioners.

As an example, Urban cited the fact that employees of the River Street detention facility were court employees, under the control of the president judge, when, in his view, they should have been county employees. The River Street Center was a county facility, not a court facility, Urban said, and its employees thus should have been answerable to the county commissioners.

Urban also questioned the authority of the Luzerne County courts to turn in the license of the county detention center to the state.

"I believe since the Commissioners under the County Code have the authority to operate the detention center we should have been the one that turned in the license and not the -- not the courts," he testified. "Also I think that the Office of Children and Youth and Families, which is a state run agency, should not have accepted that license from the courts, that they should have referred that license back to the County Commissioners. And only after a formal vote of the County Commissioners to close the detention center should that detention center have been closed.

"And that is not the way things ran in the county. The judge said, we're not sending anybody there. The other two Commissioners then voted for a budget that defunded positions of the childcare workers…And then they closed the facility, and the county was then forced to use the detention center that Mr. Powell and Zappala had built at the cost of about $100 per day -- extra per day per bed that was costing us in our own facility."

The Role of the Judicial Conduct Board

On September 28, 2006, an unsigned eight-page letter of complaint arrived at the office of the Pennsylvania Judicial Conduct Board in Harrisburg listing 33 accusations of purported "glaring violations of ethics which are occurring in the Luzerne County Courthouse."

The subject of the complaint was President Judge Michael T. Conahan. Mark A. Ciavarella, Conahan's friend and colleague, was named at several points in the complaint as well.

The anonymous complaint was addressed to **Joseph A. Massa, Jr.**, chief counsel of the Judicial Conduct Board. The document was organized in three sections, bearing these headings:

- "Judge Conahan has used his judicial authority and power of appointment to benefit his family and friends and to contain and destroy his detractors."
- "Judge Conahan also falsely creates new titles for Courthouse employees in order to appear to comply with Supreme Court Directives, even though the Employee's functions remain the same. He also engages in political activities."

- "He routinely hears matters presented by Attorneys with whom he has close personal and longstanding business and friendships and refuses to recuse himself. In fact, it is his practice to direct William Sharkey [then the Luzerne County court administrator, and Conahan's cousin] to switch cases, which are assigned to other Judges when the litigants or the Attorneys are his friends."

Under each heading were multiple examples providing names, dates, docket numbers and other details that appeared to document and support the statements in the headings. Among the specifics:

Lawyers - identified by name - who worked as law clerks for Conahan and Ciavarella were described as practicing before the two judges, in violation of Supreme Court rules.

Conahan was described as ruling on appeals from decisions made by his sister, a court master, without disclosing the relationship to parties in litigation. The sister was identified by name.

Conahan's closest friends were described as Ciavarella and lawyer Robert Powell. The complaint said Conahan regularly presided in civil cases in which Powell and associates were counsel for plaintiffs, but Conahan did not disclose his relationship with Powell to other parties in litigation. Five cases were identified by caption and docket number.

The complaint said that Conahan often ordered Powell's cases assigned to Ciavarella. Seven civil cases were listed by caption and docket number.

The complaint described a case in which Conahan allegedly awarded a verdict of more than $800,000 to a lawyer friend - identified by name - in a nonjury civil trial. The caption and docket number of the case were provided.

The complaint said that Conahan had been "watched" while attending an early morning meeting with alleged crime boss William D'Elia in the company of the same lawyer who had received the large civil trial award.

The letter of complaint appeared to be the work of a courthouse insider - a whistleblower - who was laying out a roadmap for an investigator to follow in pursuit of a malefactor in public office. In signing off, the letter writer said, "I have submitted this information to you without identifying myself because I fear retaliation should my identity be revealed."

For an agency such as the Judicial Conduct Board, whose job is to investigate and prosecute judicial misconduct, it might seem that such a detail-laden complaint would immediately have triggered an investigation.

It did not.

The conduct board conducted no investigation into any of the allegations. No misconduct charges were filed against Conahan or Ciavarella based on allegations in the complaint. No disciplinary action was taken against either judge. In fact, no public disciplinary action was ever taken in any matter against Conahan or Ciavarella.

Why the board did not launch an investigation into a complaint containing such serious allegations involving two Luzerne County judges is a matter that caused concern and raised many questions for the Interbranch Commission on Juvenile Justice.

The Judicial Conduct Board operates under constitutionally mandated confidentiality rules which the board applies extensively to its operations. Complaints and investigations are confidential except when the board files formal misconduct charges against a judge.

Attempts by the commission to obtain information from the conduct board about the handling of the 2006 complaint against Conahan and to get answers to other questions led to litigation before the Pennsylvania Supreme Court. The litigation was followed by lengthy negotiations between the commission and the board. In the end, the conduct board agreed to provide information concerning its handling of the Conahan complaint. The board also provided nonpublic information under seal concerning other complaints filed against Conahan and Ciavarella throughout their judicial careers.

Regarding the 2006 complaint against Conahan, information provided by the Judicial Conduct Board disclosed that members of the board did not learn anything about the Conahan complaint until 7 1/2 months after it arrived on the chief counsel's desk on September 28, 2006.

At that point, the chief counsel, Joseph Massa, informed the board about the complaint in a detailed memorandum on May 14, 2007. Massa did not provide board members with a copy of the complaint. His memorandum described the complaint, discussed the allegations and provided an analysis. Massa testified to the commission that this was his standard practice; he did not provide the conduct board with original complaints, but rather summarized them in memo form for the board's review. Regarding the Conahan complaint, Massa recommended a full investigation.
He included his May 14, 2007, memorandum in a packet of materials that was distributed to Judicial Conduct Board members in preparation for a June 4, 2007, meeting.

When the meeting was held, the chairman of the board, **Patrick Judge, Sr.**, did not participate in discussion of the Conahan complaint. Patrick Judge is a Luzerne County businessman. He told the commission he disqualified himself because he had business relationships with Conahan.

The Judicial Conduct Board issued a statement to the commission on April 5, 2010, describing Massa's memo to the board, what occurred at the June 4 meeting and events that followed.

"The focus of the [Massa] memorandum was on allegations of nepotism, political activities, conflict of interest and of association with individuals believed to be known criminals," the conduct board's statement said. "Other allegations in the complaint such as case fixing and Judge Conahan's relationship with Judge Ciavarella were not set forth in Chief Counsel's memorandum recommending a [full investigation]. At the meeting an oral request was made by Chief Counsel to table the matter until the October 27 meeting because of the pendency of the Lokuta trial at which former Judge Conahan was expected to be a witness."

(This was a reference to Luzerne County Judge Ann H. Lokuta who was tried on misconduct charges before the Court of Judicial Discipline in late 2007 and early 2008. She was later removed from the bench. Conahan appeared as a witness against Lokuta at her disciplinary trial. The anonymous complaint against Conahan became public during those disciplinary proceedings. The complaint has been attributed to Lokuta, who was openly hostile to Conahan, or to someone acting at her behest. An exception to the Judicial Conduct Board's confidentiality rule is that a judge who is the subject of a misconduct complaint can waive confidentiality. Conahan, in fact, did waive confidentiality with regard to the anonymous complaint against him. But then, according to Massa, he changed his mind and sought to reinstate his right to confidentiality after criminal charges were filed against him in 2009. By that time, it was too late. The complaint was circulating in the media.)

The conduct board's statement regarding the Conahan complaint continued: "The Board approved the motion to table the discussion of the 2006 anonymous complaint until the October 2007 meeting. The complaint was not, however, placed on the agenda for the October 2007 meeting and was never placed on any agenda for a Board meeting since that time."

In testimony before the commission, Massa said he did not recall asking for the Conahan matter to be tabled, but he took responsibility for the fact that no follow-up action was ever taken on the complaint after the conduct board's June 4, 2007, meeting. Asked if the complaint "had fallen through the cracks," Massa replied: "It had."

"I hold myself accountable," he testified. "It was on my list…There was nothing nefarious or in terms of a subterfuge at all…I am accountable."

Ten months after the conduct board tabled the complaint, Massa provided a copy of the document to the U.S. Attorney's Office. Massa said he did that - on April 3, 2008 - at the request of the federal prosecutor and without informing the members of his board.

In normal circumstances, the Judicial Conduct Board refers a complaint of criminal wrongdoing to a law enforcement agency such as a District Attorney's Office, the Attorney General's Office or a U.S. Attorney's Office.

Why Massa did not promptly refer the Conahan complaint, which appeared to contain allegations of case-fixing and other potential criminal conduct, to a law enforcement agency in keeping with that practice is unclear. At the point when the U.S. Attorney requested a copy of the complaint in April 2008, the investigation of Conahan and Ciavarella was in full progress.

Edwin L. Klett, a Judicial Conduct Board member, testified to the commission that neither he nor other board members saw the full, eight-page Conahan complaint until the summer of 2009.

The Judicial Conduct Board was created by a 1993 amendment to the Pennsylvania Constitution designed to ensure that Pennsylvania judges accused of unethical conduct are investigated and, if necessary, prosecuted, tried and appropriately punished if found guilty. In addition to the 12-member Judicial Conduct Board, whose role is to investigate and prosecute judicial misconduct, the same constitutional amendment established an eight-member Court of Judicial Discipline to conduct trials in judicial misconduct cases.

The constitution imposes strict confidentiality rules on many of the conduct board's functions. Complaints filed with the board are to be confidential. Statements, testimony, documents, records, other information and evidence acquired by the board during investigations are to be confidential. All proceedings of the conduct board are to be confidential.

At the same time, there are exceptions to the confidentiality rules. The subject of a Judicial Conduct Board complaint

can waive confidentiality. A complaint against a judge can become public knowledge and, at the direction of the judge being investigated, the board can then issue a statement confirming the investigation. In that statement, the board can clarify procedural aspects of the proceedings or provide the judge's response to the complaint. The Judicial Conduct Board also can share complaints against judges with other government agencies. If a complaint involves allegations of criminal conduct, for example, the conduct board can refer the complaint to a law enforcement agency.

The Judicial Conduct Board has a small staff. In addition to the chief counsel, there are two other attorneys, three investigators and three support staff. The board's jurisdiction extends to the entire Pennsylvania judiciary of more than 1,000 fulltime judges and approximately 200 senior judges.

The body of ethical rules that governs appellate and trial judges is known as the Code of Judicial Conduct. Under these rules, judges are expected to act at all times in a manner that fosters public confidence in the integrity and independence of the judiciary. Judges must avoid all forms of improper behavior and the appearance of improper behavior. They must carry out their duties impartially and diligently. They must refrain from inappropriate political activity. They must avoid conflicts of interest.

In a mission statement in its 2008 annual report, the Judicial Conduct Board says: "The Board and its staff investigate every allegation made against a Pennsylvania judge. This procedure is an essential safeguard to the integrity of, and public confidence in, the judicial process."

In 2008, the conduct board received 636 complaints against judges - the highest number of complaints since its inception in 1993. In the same year, the board disposed of 621 complaints - 579 of them, or 93 percent, by dismissal after a preliminary inquiry. The high dismissal rate was explained as the result of large numbers of complaints being filed by unhappy litigants, particularly criminal defendants, whose issues belonged in the appellate courts.

There were 24 cases in which judges were disciplined, though the discipline in 22 of those cases was nonpublic; it was issued in the form of private reprimands.

In 14 cases in 2008, the conduct board issued "Letters of Caution." These were private reprimands, warning letters of judicial misconduct. Judges who receive Letters of Caution are not required to sign or accept them.

The board issued eight "Letters of Counsel." These were slightly stronger private reprimands. Judges who received them were required to accept them.

Finally, in the most serious misconduct actions, the Judicial Conduct Board filed formal charges in two cases. These were the only cases that became public.

On January 8, 2010, the Judicial Conduct Board adopted new Internal Operating Procedures which establish written rules for handling anonymous complaints and for referring complaints to law enforcement agencies. Previously, there had been no written policies governing these practices.

In its statement to the commission, the Judicial Conduct Board said the rules were established because the handling of the 2006 Conahan complaint demonstrated that the board needed to exercise greater "oversight and supervision" of its internal operations. The board said it "recognized that action was necessary to assure that complaints like the 2006 anonymous complaint, alleging misconduct immediately and directly impacting the administration of justice, be acted upon swiftly."

Board member Edwin Klett testified to the commission that the Internal Operating Procedures were intended to reassert authority of the board over its staff. Too much discretion had been given to staff, Klett said, "And so these internal operating procedures are intended to reclaim all of that authority, including -- including whether or not a particular matter is referred to another agency."

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

Under the conduct board's Internal Operating Procedures, anonymous complaints must be logged and presented to the board for review and approval before a file is opened or a preliminary investigation is begun. If the source of the complaint is known, that information is to be recorded by the chief counsel for use in any inquiry and to advise the complainant of the ultimate disposition of the complaint.

The procedure governing referrals to law enforcement agencies requires that any complaint alleging criminal activity by a judge be brought to the board's attention within 30 days. The chief counsel must call a special meeting of the board by tele-conference unless a regular meeting is up-coming. The board is to review the complaint and decide by majority vote whether to refer it to a law enforcement agency. Under the same procedure, the board is to determine whether to actively investigate any part of the complaint that may allege ethical violations.

The Role of the District Attorney

The district attorney of Luzerne County during the period when Michael Conahan and Mark Ciavarella controlled the courthouse was **David W. Lupas**. Lupas took office in 2000 and served as the county's prosecutor through 2007.

Now a judge of the Court of Common Pleas, Lupas presides in juvenile court, having replaced Ciavarella in that role in May 2008. Lupas has instituted reforms which include ensuring that juveniles and their parents are properly advised of the right to counsel. He also refuses to entertain adjudicatory recommendations from the Juvenile Probation Department prior to hearings, which was a regular practice of Ciavarella's.

District attorneys - in fact, all prosecutors - have a unique ethical obligation among lawyers. While private lawyers are bound by strict duties to their clients, prosecutors have a broader responsibility - one that extends to all citizens and to society as a whole.

As explained in the Code of Professional Responsibility, the ethical rules governing lawyer conduct in Pennsylvania: "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence."

The "special responsibilities of prosecutors" under the Code of Professional Responsibility include a requirement that prosecutors:

"Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for, obtaining counsel and has been given reasonable opportunity to obtain counsel."

In his testimony to the commission, President Judge Muroski, a former district attorney of Luzerne County, commented on the role of a judge as compared to that of a district attorney:

"Let me take you back to something I was asked many, many years ago when I became a judge," Muroski said. "I was asked, you know, which job did you prefer? What's different about your jobs being DA or being a judge? And I would say that being a DA was probably the most difficult job because you had to be fair, and you had to win. Now, I only have to be fair."

David Lupas, in his testimony to the commission, said juvenile court did not get a great deal of his attention when he was district attorney. Asked if there was an attitude among prosecutors that juvenile court was a "kiddie court," or a less important court than adult courts, Lupas replied:

"I don't know if it was [a] lesser court. It may have -- there may have been some of those attitudes. Unfortunately, I see some of those -- I still see some of those attitudes today as a judge…there are limited resources…there, I guess, are times, because of lack of resources, that it maybe didn't get the priority maybe that it should have."

Lupas said he assigned specific assistant district attorneys on his staff of 20 to 25 prosecutors to juvenile court so that individuals could specialize to some degree in the rules and procedures there. Direct supervision of those assistants, and all assistants, was by Lupas personally and by his first assistant, Jacqueline Musto Carroll, who now is the Luzerne County district attorney.

"Those attorneys [assigned to juvenile court] would be consulted with on a periodic basis. How are things going? Any issues, any concerns, any problems in juvenile court? We would have periodic staff meetings with the entire staff of Assistant District Attorneys. Again, ask whether there are any issues or any problems or any concerns going on in juvenile court. And, you know, we really -- I didn't get any feedback that there were concerns or problems, just everything was going well."

Lupas said Ciavarella's zero-tolerance policy was well-known, reported in the newspapers, spoken of in the community and discussed among school officials.

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

"Never had any of them come to me and say, we think the judge is engaged in criminal activity, or we think there's something going wrong here. None of that ever occurred."

Lupas said it was not until after the "kids for cash" scandal erupted that he became aware of a controversy involving Ciavarella failing to properly advise juvenile defendants of the right to counsel.

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

His assistants did not bring it to his attention. His counterpart, the public defender, did not mention it. No private defense lawyer complained to him that the constitutional rights of juveniles were routinely being violated.

If he had received complaints from his assistants that constitutional rights were being violated, Lupas said, he would have taken action - but no one complained.

Lupas noted that Ciavarella used a written "colloquy" - which juvenile defendants filled out with the assistance of probation officers before court hearings - to waive the right to counsel.

Because of the written colloquy, he said, "I believe the ADAs probably assumed that the juveniles appearing were made aware of their right to counsel and were waiving it. Albeit the judge wasn't abiding by the rules by giving the on the record colloquy, but there was this written document that was being utilized.

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

With regard to the special duties of a prosecutor spelled out in the Code of Professional Responsibility, Lupas said of his assistants: "They were instructed and advised and expected to always abide by those professional responsibilities."

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

Two assistant district attorneys who were assigned to juvenile court while Lupas headed the prosecutor's office testified before the commission. Both said it was Ciavarella's practice to have the Juvenile Probation Department present a written waiver form to youths who opted to appear in court without lawyers. The forms were signed prior to court hearings. It was not Ciavarella's practice to conduct colloquies in open court. The assistant prosecutors did not object because they assumed the written waiver, and the judge's method, was acceptable.

Thomas J. Killino began work in the District Attorney's Office in 2004 as a young lawyer seeking to gain trial experience. As a newcomer to the office, he was assigned to "shadow" more experienced prosecutors to learn the ropes in various assignments. In 2005, he began covering an assignment in juvenile court, replacing another prosecutor who was reassigned to adult court.

Juvenile court was a busy venue. Sessions were held on Tuesdays for adjudications and Thursdays for review hearings. Typically, more than 20 hearings a day were scheduled. Cases moved at a fast pace. Killino told his superiors he thought more than one prosecutor was needed. He said he received some back-up support.

Asked if juvenile court was considered a high priority by the prosecutor's office, Killino replied:

"It certainly didn't appear to be No. 1 on the list of things going on to be very honest with you."

The District Attorney's Office kept no records of the kinds of dispositions that occurred in juvenile court. There was no filing system to enable a prosecutor to review a case in the future and look back at how well or poorly a juvenile had advanced from the point of disposition.

Killino confirmed what Lupas had said concerning waiver of counsel. "There was an accepted practice in place with the waivers. That was something that the court accepted and utilized." Killino didn't know who provided waiver forms to juvenile defendants. The procedure normally was completed in advance of court hearings. No one challenged it. It was accepted by prosecutors and defense lawyers alike. Killino observed other prosecutors accepting the procedure. He accepted it as well.

Killino said he did raise one concern with his superiors: Case lists distributed in the courtroom by the Juvenile Probation Department included handwritten notations recommending placement facilities for some of the juveniles on the list.

He said Ciavarella usually had a folder of information about each juvenile defendant and referred to it during the case disposition.

Asked if he was troubled by the fact that Ciavarella did not conduct guilty plea colloquies with youth defendants as is done in adult court, Killino replied:

"Well, again, I came into a very fast paced environment. I observed my colleagues handle that environment in the same way as I came to handle it. And, again, it was an established practice by the court. And the trust factor was there that if the court is satisfied in proceeding in that manner that was the manner it proceeded."

Samuel M. Sanguedolce became an assistant district attorney in 2002, a year after he graduated from law school, and was assigned to juvenile court in his first month as a prosecutor. As with Killino, he "shadowed" a more experienced prosecutor to learn procedures and then took over the juvenile court assignment when the senior attorney was reassigned to other duties.

Sanguedolce went to work in juvenile court with no perspective on how the juvenile justice system operated in other jurisdictions. While it was Ciavarella's rule that students arrested for fighting in school would be automatically ordered into out-of-home placements, Sangudolce was surprised, for example, to learn that was not the automatic rule in Philadelphia. Sanguedolce said he did not support zero-tolerance because in his view a blanket policy of that type eliminated the judge's function of deciding each case individually and deciding appropriate punishment on a case-by-case basis.

"I feel that had I seen all these other courtrooms, that [the automatic placement for fighting in school] probably would have been very alarming to me," Sanguedolce testified. "I can also say that when I first got to juvenile court I was surprised, not knowing anything about the law really, in how many juveniles had been taken away."

Sanguedolce suggested a possible reason why Ciavarella's hard line policy - coupled with due process abuses - may not have been recognized as irregular or improper at the time:

"I spent a long time thinking about that, and I tried to take myself back there…What we would see very frequently were people coming to the courtroom where Judge Ciavarella was reciting a letter that he got from another juvenile. The parents and teachers would come to the courtroom and thank him and say things like, you know, I was addicted to pain killers, and I was traveling down the wrong road, and you saved me.

"So when you see -- I should say when all you see is the benefits of how the system is working -- you know, we didn't have the juveniles' parents come to juvenile court later to say, my child is ruined. The only thing we saw was the success. So that is the reason I think it didn't alarm anyone."

Sanguedolce said he discussed Ciavarella's zero-tolerance policy with other prosecutors, but found it to be generally accepted among them.
It should be noted that Ciavarella often claimed that his hard line tactics with kids produced good results, not just in individual cases, but in the big picture. As evidence he cited the fact that the delinquency recidivism rate went down during the period when he sat in Luzerne County juvenile court.

Jacqueline Musto Carroll, now the district attorney of Luzerne County, was first assistant when David Lupas headed the prosecutor's office.

Looking back at Ciavarella's tenure in juvenile court, Carroll echoed her former boss. She testified that she was unaware that 50 percent of juvenile defendants were unrepresented by counsel. She did not know that Ciavarella failed to conduct on-the-record colloquies with juveniles who asked to waive counsel. She said no such information was reported to her. Nor did assistant district attorneys assigned to juvenile court raise other concerns.

"You and everyone here has the benefit of hindsight to now know that the man was a criminal," Carroll told the commission. "Did we know then? No. Were these issues talked about then? Absolutely not. They weren't. They were not."

Carroll said that the judicial scandal has created tremendous impetus for reform, and much has changed. She said the District Attorney's Office now assigns two assistant prosecutors to juvenile court and requires a third, more experienced prosecutor to supervise them. In a departure from the past, she said, prosecutors assigned to juvenile court now keep their own case files rather than relying on the clerk of courts as the sole record keeper. With their own files, prosecutors are better able to keep abreast of cases. Carroll said she has instructed her assistants to "speak up" and "do something" when they see something wrong or improper occurring in a courtroom.

The Role of the Public Defender

Basil G. Russin was the chief public defender of Luzerne County for 30 years, from 1980 until the spring of 2010. He was an assistant public defender for four years before that. His position was part time, requiring him to work 1,000 hours a year, and allowing him to maintain a private law practice. He served by appointment of the county commissioners.

Under the public defender's supervision there are 22 assistant public defenders, 16 of whom work part time, six of whom work full time.

Russin told the Interbranch Commission on Juvenile Justice that he normally began his day at the Public Defender's Office in the morning and typically worked there until noon, handling administrative duties and "putting the fires out." He then proceeded to his private law practice for the

remainder of the day. He said he remained on call for public defender matters at all times.

During the time that Mark Ciavarella was the judge of juvenile court, the Public Defender's Office handled a remarkably small number of delinquency cases in Ciavarella's court.

In testimony before the commission, Russin estimated that his office handled only 10 to 20 percent of the juvenile cases in which juvenile defendants were represented by lawyers between 2003 and 2008.

Not everyone was entitled to representation by the Public Defender's Office. The office provides legal services to clients at no cost, but only to those whose income falls at or below the U.S. Poverty Guidelines. A family whose income exceeded the guidelines would be required to hire a private lawyer. Russin, however, said he used a "relaxed standard" for juvenile defendants and generally accepted any juvenile who applied for representation. The court also could appoint the defender's office to represent a defendant.

Of his staff of 22 defenders, Russin said he assigned one defender to juvenile court, or as he put it, "Not even one, a portion of one."

"I do not have the resources to give that person full-time juvenile court. When Judge Ciavarella was the judge it took approximately no more than four hours per week of that person's time. Now it's taking about two days per week of the person's time who's assigned."

In speaking of the overall caseload of his office, Russin painted a picture of an office so heavily booked that even when he received a complaint about Ciavarella's courtroom practices, involving possible procedural rights violations of juvenile defendants, he declined to address it.

"I'll tell you at the end of Ciavarella's term I did get a complaint from the defender assigned there," Russin testified. "He said, you know, there's a lot of kids not being represented and the proper waivers. And I said, first of all, I said, we're not going to seek clients. I'm not going to put up a sign and say, please come in here, and we'll represent you.

"We have to assume there's a proper waiver going on. We have to assume the judge has a waiver. We have to assume the District Attorney knows the rules and the waiver and the juvenile probation office is doing the waiver. And we don't have the time or the manpower to intervene. And we didn't, and we don't."

Russin said he did not know what Ciavarella's attorney waiver form looked like, or what it said.

"I know juvenile probation is saying they had signed colloquies. I don't know what it says in there. If it says you have a right to a lawyer, I don't know that…but in running a public defender office unfortunately we don't have the luxury of time or money. And we have to do what we have to do the best we can. And we were representing the people who asked for our services, and we tried to do the best we can for them. We did not have the luxury or the time or the resources to look for business."

A number of witnesses who testified before the commission noted that Pennsylvania is one of only two states where public defenders' offices are funded solely with county or local revenues. Elsewhere, state governments provide funding to support these offices.

Even with a lack of funds, Russin said he would not have ignored a plea for help from a juvenile or the parent of a juvenile who came to his office. But he said no one during Ciavarella's years in juvenile court came to his office in distress seeking legal help after a juvenile court hearing.

"My office is at Penn Place, which is a three-story building in the middle of Wilkes-Barre. My Public Defender's Office is on the second floor. The juvenile court and the Juvenile Probation Office is on the third floor. Not once did a parent or a juvenile get on that elevator at 3 and press 2 and come in and say, my son was taken away improperly. I want to appeal this. I want a reconsideration of this -- reconsideration of this. Not once did a person press 2 and got off and came to our office, which is right there."

Nor, Russin said, did anyone approach his assistant in court with such a request.

Russin said that when Ciavarella first began to preside in juvenile court in 1996, the assistant public defender assigned to the juvenile court reported to him that the judge was sending juveniles into placement at a high rate.

Russin was stoic in his response. "You know," he testified, "having practiced quite a while, I practiced before judges who were almost zero-tolerance, and I've practiced before judges who are very liberal. And I sat down and said, we're stuck with a guy who has zero tolerance. And it's within his discretion, apparently what he's doing, and we have to wait until something -- until he retires, resigns, gets a different assignment or whatever. But this is what we have to deal with, and that's what we dealt with…We knew that's what we had. That's the hand we were dealt."

Russin said the zero-tolerance policy was popular in the community.

"Everybody loved it. The schools absolutely loved it. They got rid of every bad kid in their school. When I was in school if you threw a spitball, maybe you went to the principal's office and sat for a couple periods. Last couple years if you threw a spitball, they got the police, and you ended up in juvenile court and get sent away.

"Schools got rid of all their problems. Parents, parents who had problems with the kid at home, they called the police. Police said, you want us to take him away? Sure. I can't control the kid anymore. Away the kid would go.

"Parents loved it. Police loved it. They knew every arrest they made the kid would get sent away. And…the DA loved it because they were getting convictions."

There were few trials. Appeals from trial decisions were rare. In most cases, juvenile defendants admitted to the charges against them.

"They come out and tell everything," Russin said, speaking of juvenile defendants. "Almost every juvenile case that appears in Luzerne County has a statement. The parents are there. The statement was taken properly, and it's an admission to the crime…It seems like kids, when confronted, especially by a policeman, spill their guts."

If the statement was properly taken by police, Russin said, "We have no defense."

Typically, a juvenile who admitted guilt was adjudicated immediately. The judge had in hand a disposition recommendation from the Juvenile Probation Department. Russin said those recommendations were - for a time - made known to defense lawyers. A notation on the daily case list indicated "probation" beside a juvenile's name, or "boot camp," or a detention facility. But that practice was discontinued after which defense lawyers were kept in the dark as to sentencing recommendations.

"We didn't know what we were fighting against," Russin testified. "…we had no opportunity to see what was against us on the other side."

That practice has changed, Russin said. The Public Defender's Office now receives sentencing recommendations and evaluation reports on juvenile defendants. But Russin said the defender's office remains at a disadvantage in that it has a limited perspective on various placement options for juvenile offenders.

"We need training, No. 1," Russin testified. "We need funding for resources to do this. And, you know, quite frankly we had no training. When I went to Denver a couple weeks ago for the National Juvenile Summit it was the first training I ever had in 36 years on juvenile law. And my eyes were like saucers."

Jonathan Ursiak was the assistant defender who complained to Russin about improper procedures involving the waiver of counsel in Ciavarella's court.

Ursiak began work in the Public Defender's Office in January 2007 and was given the juvenile court assignment, replacing Virginia Cowley, who left the defender's office after handling juvenile court matters for many years.

Ursiak observed youths appearing for review hearings, making admissions to crimes, and being adjudicated - all without an attorney representing them or without any discussion with the judge about waiving their right to any attorney.

"I do not recall any time through my experience seeing an on-the-record colloquy when the judge was -- at the time was dealing with a juvenile that was unrepresented," Ursiak testified. This was in the spring of 2007, approximately 1 1/2 years after the Pennsylvania Supreme Court had adopted Rule of Juvenile Court Procedure 152 providing that juveniles could not waive the right to counsel unless "the waiver is knowingly, intelligently, and voluntarily made" and a judge "conducts a colloquy with the juvenile on the record."

Ursiak was troubled. He spoke with Russin. When Russin told him the defender's office could not take on more clients, Ursiak said he provided assistance to the Juvenile Law Center of Philadelphia which was gathering evidence to challenge suspected illegal practices in Luzerne County's juvenile court.

Ursiak said he saw much that concerned him in Ciavarella's court, but he felt unable to effectively do anything about it. Proceedings were abbreviated. When psychological evaluations were ordered for juvenile defendants, the juveniles were placed in detention. Evaluation reports were not provided to him in advance of court hearings. When he did see evaluations - particularly those done by Frank Vita - they frequently recommended placement. At review hearings for his clients, Ursiak did not feel that he was given an adequate opportunity to advocate for his clients. He did not think he or his clients were given fair hearings in matters where Ciavarella's zero-tolerance policy came into play. Ursiak thought disposition hearings were often unfair. He felt "handcuffed" in his ability to do his job as a defense lawyer.

"I always felt that the cards were stacked against both myself and ultimately the client," he testified.

The Role of the Disciplinary Board

Approximately 60,500 lawyers are licensed to practice law in Pennsylvania. The Supreme Court issues their licenses and establishes rules and standards governing all aspects of legal practice.

The Rules of Professional Conduct outline ethical standards lawyers must follow. These rules are enforced by the Disciplinary Board of the Supreme Court and a related court agency, the Office of Disciplinary Counsel.

Lawyers accused of violating the Rules of Professional Conduct are investigated and prosecuted by the Office of Disciplinary Counsel. If the Disciplinary Board concludes that an ethical violation has occurred, it can issue an "informal admonition" or a "private reprimand" to the offending lawyer, or recommend to the Supreme Court that the lawyer be more severely punished. The more serious sanctions can be public censure, suspension or disbarment. Only the Supreme Court can administer those sanctions.

In 2008, the Disciplinary Board received 4,878 complaints against Pennsylvania lawyers. As with the Judicial Conduct Board, the dismissal rate of the Disciplinary Board is high. In 2008, the board declined 4,344 complaints - a 91 percent dismissal rate. The explanation given to the commission by the board for most dismissals was "prosecutorial discretion" or "policy dismissal."

Under the Rules of Professional Conduct, if a lawyer knows that another lawyer has engaged in unethical conduct, the lawyer possessing that knowledge must report it to the "appropriate professional authority."

In the same vein, Rule 8.3 (b) of the ethical code states: "A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority."

As noted earlier in this report, Rule 3.8 deals with the special duties of prosecutors and the responsibility of prosecutors to make reasonable efforts to assure that defendants are advised of the right to counsel.

The Disciplinary Board operates under confidentiality rules in its investigations and proceedings. Only when it seeks public discipline against an attorney in the form of censure, suspension or disbarment is the veil of confidentiality lifted.

Because of the board's confidentiality rules, there was no way for the commission to learn if any lawyer in Luzerne County filed a complaint against another lawyer for failure to comply with Rule 3.8 or Rule 8.3 of the Rules of Professional Conduct in connection with proceedings in Mark Ciavarella's courtroom.

The inability to obtain that information raises troubling questions. There are more than 700 lawyers practicing law in Luzerne County. At any point during Ciavarella's tenure as juvenile court judge, did any member of the bar see what he or she believed to be ethical failings on the part of professional colleagues in the courtroom and file a complaint with the Disciplinary Board?

Leaders of the Luzerne County bar declined to testify before the Interbranch Commission on Juvenile Justice.

Carl D. Buchholz, III, chair of the Disciplinary Board, was asked during testimony before the commission if any lawyer had been publicly disciplined for violation of Rule 3.8 or Rule 8.3.

Buchholz responded in a letter to Commission Chairman John M. Cleland that a review of the Disciplinary Board's records dating to 1988, when the Rules of Professional Conduct were adopted by the Supreme Court, failed to disclose any case in which a lawyer had been publicly disciplined for a violation of either of those rules.

Clifford E. Haines, president of the Pennsylvania Bar Association, was asked why, in his view, members of the bar in Luzerne County did not file misconduct complaints against Ciavarella with the Judicial Conduct Board. His answer may explain not only why lawyers failed in that regard, but why they may have failed to comply with the Rules of Professional Conduct in their responsibilities to participate in the policing of their own colleagues within the profession.

"I think that there is a -- an element of acculturation that apparently occurred in Luzerne County," Haines testified. "And by that I mean it -- it's kind of like the dog that gets beaten. It's only when you stop that it recognizes something was wrong.

"You know, behavior starts to be the norm to everybody, and nobody thinks things are that far off the mark; or they do, but they are uncertain and unsure about what they can do."

The Role of the Juvenile Probation Department

During the period when Mark Ciavarella presided in juvenile court, the Juvenile Probation Department played an unusually dominant role in the adjudicatory process. Despite a Supreme Court rule requiring an oral on-the-record waiver of counsel by a juvenile defendant, probation department intake officers obtained those waivers from

youth defendants prior to court proceedings using a one or two-page written waiver form. Though a violation of court rules, this was the self-styled method that Ciavarella adopted.

The probation department worked up social histories of juvenile defendants and made disposition recommendations to Ciavarella that defense lawyers and even assistant district attorneys handling cases in juvenile court did not see until the day of court - if at all. These documents - including the probation department's recommendations for disposition - were given to Ciavarella in advance of court hearings.

The chief probation officer, **Sandra Brulo**, was a controversial figure seen by many as the enforcer of Ciavarella's policies, though Brulo told the commission she saw herself as a victim who worked in an atmosphere of "oppression" and intimidation. Brulo has pleaded guilty to a federal charge of obstruction of justice for altering a record in which she had recommended detention for a juvenile defendant. She altered the record to make it appear she had recommended probation for the juvenile.

Probation officials attended parties and sometimes went on overnight outings as the guests of juvenile placement facilities and providers. There was no policy against receiving gifts. Ciavarella and Juvenile Probation Department personnel sometimes attended graduation ceremonies at juvenile residential facilities. The accommodations on these trips, including food and drinks, were provided by the institutions.

In one of the most Dickensian of Ciavarella's judicial practices, the probation department arranged an occasional proceeding known as "fine court" in which juveniles who had not paid court-ordered fines or restitution were summoned to appear before the judge. Those unable to pay were ordered into detention. In this way, the county detention center - and for a time, PA Child Care - became a debtor's prison for children.

In testimony before the commission, **John Johnson**, deputy chief of the Juvenile Probation Department, was asked:

"If a kid didn't make payment of his money that was owed, what was the sanction for that?"

Answer: "The sanction at that time was detention until the money was paid."

Question: "So a child was placed in detention until the money was paid?"

Answer: "From my recollection, yes."

Details about fine court were provided by **Theresa Kline**, a juvenile probation officer who was present in Ciavarella's courtroom during many of the proceedings.

Kline testified that fine court sessions were held from 1999 until 2004. There was no established schedule for this "court." Sometimes sessions occurred once a month, sometimes at more widely-spaced intervals.

Kline identified a document from probation department files that listed 82 youths scheduled for a fine court session on September 13, 2001. She said not all sessions involved that many cases.

Youths were summoned to court for failure to pay fines or restitution. Kline testified that if, upon appearing in court, a juvenile or his or her parents paid the required money, "they would be taken off the list."

Question: "What generally would happen if the juvenile did not pay?"

Answer: "In some cases the judge would ask if the child had the ability -- had the money. And if not, he would remand him to detention."

Question: "And the age group of these youth that were appearing before the judge for this process was approximately what?"

Answer: "I would say 10 to 18, 19."

With regard to legal representation, Kline was asked:

"And upon their appearance in court can you give a general idea how many would be represented by counsel?"

Answer: "I would say very few, if any."

Question: "Was it generally -- was the prosecutor present at all?"

Answer: "Not all the time that I recall."

Question: "What was the nature of the proceeding? Can you describe what happened?"

Answer: "To my best knowledge it would run pretty much like any other court that we ran. We would have the kids outside and their parents, and we would call them in one at a time. And they would go in front of the judge."

Here are excerpts from a transcript of a 2004 proceeding in "fine court" in a case involving an 11-year-old boy.

The Court: "[Name of party], how old are you?

The Juvenile: "Eleven."

The Court: "You and your brother, it seems you like to do the same thing, harass. There was a fine imposed. You didn't pay it. Disorderly conduct, engaged in another fight. So you didn't pay that one. Do you have $488.50?"

The Juvenile: Indicated in the negative.

The Court: "Very good. He's remanded. He can stay there until he pays the fines."

Juvenile's Mother: "It's actually more than that."

The Court: "Well, I got something in the mail. I received one in the mail that he owed $850 for something I think it was due by the 15th of January, I believe."

Sandra Brulo, Chief Juvenile Probation Officer: "We didn't get that yet."

The Court: "We'll get that. By the time he gets out he'll be able to go back for the next one. You're having a great day. Put the cuffs on him and get him out of there."

Theresa Kline was asked if this was typical of fine court proceedings.

Answer: "I would say in some cases, yes."

Question: "Was Ms. Brulo the -- the PO that was largely responsible for this form of process?"

Answer: "Yes sir."

Question: "And did she ever express any concern from -- from her social work background that this was a fair process that should be undertaken with youth that were 10, 11 years of age?"

Answer: "No."

(Brulo, the former chief probation officer, testified that she holds masters degrees in social work and public administration.)

Kline said the only way for a youth to gain release from detention when placed there from fine court, as far as she knew, was to pay the fine. This was done, as a rule, by the parents.

Question: "So this was largely a -- a collection method to -- focused on the children, but indirectly the parents needed to pay?"

Answer: "Yes, to my knowledge."

Question: "In order to secure the release from detention?"

Answer: "To my knowledge, yes."

Paul McGarry, director of Human Resources for Luzerne County Courts, is the former fiscal officer of the county Juvenile Probation Department. McGarry testified that he was instrumental in terminating "fine court." He said he objected to the practice of incarcerating juveniles for nonpayment of fines on fiscal grounds.

"When I found out that they were doing this I approached Ms. Brulo and Judge Ciavarella and strongly objected to this procedure as a way of collecting money," McGarry told the commission. "It just didn't make -- as a business operation it didn't make any sense for us to be trying to collect $400 by placing somebody in a facility at $200 a day."

Tom Lavan, a placement officer in the Juvenile Probation Department, testified that when PA Child Care opened in 2003, he was told that the institution was to be kept full.

Question: "And who advised you of that?"

Lavan: "Sandy Brulo."

Question: "Okay. Did she confer with anyone at that time in regard to advising you of that, or you think she made that on her own?"

Answer: "I don't know if she conferred with somebody or not, sir."

Question: "Okay. Did she just make that indication to you on one occasion, or did it depend on, I guess, the occupancy of PA Child Care?"

Answer: "It -- that was originally stated to me when PA Child Care was first opened…Once the residential facility came online."

Question: "Okay. And what was your response to that?"

Answer: "My response was I asked who? And she said, just fill the beds. I tried to distance myself personally. I tried to bring children who were in the other end of the state in a secured facility and bring them back closer to home."

John Johnson, deputy chief of the probation department,

testified that reforms have been instituted in the aftermath of the "kids for cash" scandal. Among them: The department no longer administers waivers of counsel for juvenile defendants. Instead, it attempts to ensure that juveniles are represented. Psychological evaluations and sentencing recommendations are no longer withheld from prosecutors and defense attorneys. Alternatives to out-of-home placement such as a day treatment facility and a diversion program to provide a community service alternative for youths who cannot afford to pay fines, are being developed. Probation officials now consult with the District Attorney's Office to determine appropriate charges in juvenile cases.

"Moving forward as a Probation Department we are working together as a team to do what's right for the juveniles of Luzerne County and move forward in a positive nature," Johnson told the commission. "I know that there are some -- there has been a blight on the County, but we have stuck -- stuck it out, and we are going to focus on proper procedure and hopefully never again will this situation ever occur."

The Juvenile Court Judges' Commission

The goal of juvenile courts in Pennsylvania is distinctly different from that of adult criminal courts. While there has been a trend in recent years toward "problem solving" adult courts geared to rehabilitation of nonviolent offenders with alcohol, drug or mental health problems, the criminal justice system generally is punitive in outlook. For most adults convicted of crimes there is only one outcome: Punishment. A fine. A jail sentence. Or both.

The juvenile justice system is entirely different. Its orientation is toward rehabilitation, not punishment. It aspires to "balanced and restorative justice" in which the focus is on accountability, competency development of children and community protection. Even the word "guilty" is not part of the vocabulary of the juvenile justice system. Rather, juvenile defendants are "adjudicated." They are not "sentenced;" they are "placed."

Whether a juvenile is adjudicated based on an admission or a finding at trial, the juvenile court judge has a responsibility to determine how the juvenile can best be rehabilitated. The young person's welfare carries great weight, balanced with the protection of the community. The ultimate goal is to redirect the youth toward responsible adulthood and citizenship. The judge also must attempt to resolve each case in a manner that is least restrictive for the juvenile. Thus, out-of-home placement should be a last resort.

The Pennsylvania Juvenile Court Judges' Commission is a small, highly regarded executive branch agency that provides advisory support and training for juvenile judges and tracks juvenile court statistics in Pennsylvania's 60 judicial districts. It is partly through the work of the Juvenile Court Judges' Commission that Pennsylvania's juvenile justice system has won national recognition for high standards.

James E. Anderson, executive director of the Juvenile Court Judges' Commission, told the commission in testimony that "many of Pennsylvania's finest judges regard their work in juvenile court as the most meaningful and rewarding work they do because they know they can make a difference in the lives of the children and families who come before them."

By contrast, Anderson testified, the conduct of former Judge Mark Ciavarella as juvenile judge in Luzerne County was an "unimaginable abuse of power" that brought harm to thousands of children and families.

A statistical profile provided by the Juvenile Court Judges' Commission covering an 11-year period from 1997 to 2008 showed that Ciavarella's placement rate was consistently higher than statewide averages beginning in 1999. The waiver of counsel rate in Ciavarella's courtroom was vastly higher than the statewide average. This pattern of high placements began well before the opening of PA Child Care in 2003 reflecting the fact that Ciavarella was routinely sending large numbers of juveniles into placement prior to any alleged "kids for cash" motive to pack PA Child Care with residents. The data of the Juvenile Court Judges' Commission also shows that Ciavarella placed juveniles in a wide range of facilities after PA Child Care and Western PA Child Care opened. He did not limit placements to those two institutions.

The statistical picture is striking. In 2003, Ciavarella ordered 330 juveniles from Luzerne County into placement. That was twice the statewide average. More significant, in a county that represented less than 3 percent of Pennsylvania's population, this single judge was responsible for 22 percent of the juvenile placements throughout all of Pennsylvania. Over the next several years, there was a downward trend in juvenile placements across the state. Ciavarella followed the downward trend to some degree, but his placement rate still remained far higher than the norm. In 2007, he sent 219 youths into placement. In context, that number was 2 1/2 times the statewide average. Of 1,066 juveniles placed statewide in 2007, Ciavarella accounted for 20 percent of them with placements from Luzerne County. Judge David Lupas, now presiding in Luzerne County juvenile court, testified that the number of placements as of October 2009 was 65 - down 70 percent from 2007 when Ciavarella was presiding.

The statistics of the Juvenile Court Judges' Commission on waiver of counsel are even more stark. In 2002, juvenile defendants throughout Pennsylvania waived the right to counsel in 7.4 percent of all delinquency proceedings. In Luzerne County, the attorney waiver rate in Ciavarella's court was 54.8 percent - more than seven times higher than the statewide rate. The following year, 2003, the state waiver rate was 7.9 percent; the rate in Ciavarella's courtroom was 50.2 percent. The next year, 2004, the statewide rate dropped to 4.8; it was more than 10 times higher, 50.2 percent in Ciavarella's courtroom. The pattern - and the vast gap between statewide courtroom practice and Ciavarella courtroom practice - continued year after year.

Judge Lupas testified that no juvenile is now unrepresented in Luzerne County juvenile court.

The Interbranch Commission on Juvenile Justice sought to learn why the statistics did not raise concerns at the time, given the aberrant nature of the patterns. Why didn't the numbers coming from Luzerne County raise red flags?

Anderson testified the statistics on Ciavarella's placement rates - examined in isolation - were not indicative of deeper problems:

"They did have high placement rates, but there were certainly other counties that had high placement rates as well," Anderson testified. "So I would say that our data did not cause alarms to go off with respect to Luzerne County…Their placement rates were higher, but we weren't looking at that from the standpoint of an alarm going off."

Anderson said a state legislator from Luzerne County, Rep. Phyllis Mundy, contacted him in 2005 to inquire about high juvenile placement rates and placement costs in Luzerne County. Mundy requested a comparison with other counties. After compiling data on placements and providing it to Mundy, Anderson said, he telephoned Ciavarella in March 2005 and outlined the information to him.

Anderson said that Ciavarella responded by telling him "that the youth that were placed in his court needed to be placed, and he only placed children who needed to be placed. And that, you know, he cared a great deal about -- about those decisions that he was making."

The Juvenile Court Judges' Commission has no authority to compel judges to change their ways or to correct judges if they are engaged in misguided practices. The role of the commission is advisory.

The statistics reflecting waiver of counsel rates were not included in the annual reports of the Juvenile Court Judges' Commission and, thus, the exceptionally high waiver rates in Ciavarella's courtroom were not publicly known. Information on waiver of counsel data was developed at the request of the Juvenile Law Center as the law center prepared its King's Bench petition for the Supreme Court in 2008.

Anderson said the waiver of counsel information could have been produced and published previously, but, to be meaningful, the data would have required careful analysis including examination of individual cases.

Asked what would have been needed to set off alarms, Anderson made clear that statistics, standing alone, would not have been enough.

"The kind of information that I think you would have to have would be very case specific information around the types of cases that were coming into court, the types of diversion opportunities that were being considered, the prior record of the -- of the kids," he testified.

"I mean, it is -- it is very complicated. The kind of resources we would have needed if we were -- assuming that that was our role, to -- to make judgments about the, you know, the decision making of judges, we certainly would need staff working in a different way than we have now."

IV. Recommendations

The Interbranch Commission on Juvenile Justice has received many recommendations from a variety of witnesses representing a range of interests and concerns. The commission has carefully considered all materials and testimony. Some suggestions presented worthwhile topics for further consideration in an environment offering more extensive resources. The commission is mindful, however, of the realities of Pennsylvania's difficult fiscal situation and the imperative of focusing reform on practical recommendations. As a result, the commission has not adopted some recommendations that have received considerable support.

Space limitations do not permit an explanation of why some suggestions have not been adopted. However, the commission feels compelled to explain why it has not chosen to adopt two suggestions that have been widely endorsed.
The first is a suggestion that juvenile courts be made presumptively open to the public.

The Juvenile Act currently provides that the public "shall not be excluded from" hearings involving children 14 years of age or older who have been charged with a felony, and children 12 years of age or older charged with designated serious offenses such as murder, robbery or certain sexual offenses. In addition, under defined circumstances, court records and files are also available for public review.

Those in favor of opening all proceedings to the public argue that public scrutiny will serve as a check on abuses of judicial power. The commission agrees that there must be checks on abuse of judicial power. The commission believes, however, that on balance any abuse can be more appropriately addressed by enhancements to appellate review and to the system of judicial discipline rather than by exposing children to the possibility that the facts surrounding childhood misconduct could be perpetually maintained in news clippings, and now even on the internet. The notion that the hearings can be made accessible to the public, but that information presented in those hearings can be kept private and not subject to distribution, the commission determines to be impractical.

The commission acknowledges that some juvenile court judges as an aid to enhancing public understanding of the juvenile courts, and with the consent of the parties, have opened their courtrooms to the press and public. The commission does not discourage this practice in appropriate cases. However, it concludes that the Juvenile Act as currently written provides the correct balance of public access and child protection.

Second, the commission did not recommend the creation of an office of Ombudsman.

Although the office of Ombudsman can be configured in many ways, as defined in one suggestion submitted to the commission it was defined as follows: "…an independent watchdog and public advocate who investigates grievances regarding governmental abuses of power, illegal and inappropriate behavior by those in positions of authority, and violations of individual's rights."

If the recommendations the commission has suggested do not prove to be adequate to address the problems in the juvenile justice system that the commission has identified, it is possible that creation of such an office could be considered in the future. However, it is the judgment of the commission that the statewide juvenile justice system as currently constituted can be improved without additional bureaucratic structures, and that the resources that would be needed to create and maintain the office of Ombudsman could be put to more productive uses.

Here then, in sum, are the full recommendations of the Interbranch Commission on Juvenile Justice.

A. Recommendations Regarding Crime Victims

The Juvenile Act and the Crime Victims Act provide the legislative foundation for Pennsylvania's balanced and restorative juvenile justice system.

In 1995, the Juvenile Act was amended to require that upon finding a child delinquent, the court must enter an order of disposition consistent with the protection of the public interest and best suited to the child's treatment, supervision,

rehabilitation and welfare. Moreover, the Juvenile Act requires that in fashioning a disposition, a juvenile court judge must give balanced attention to protecting the community, imposing accountability for the offenses committed, and assisting the juvenile to develop the competencies that will be needed to become a responsible and productive member of the community.

Subsequently, the Pennsylvania Commission on Crime and Delinquency's Juvenile Justice and Delinquency Prevention Committee developed a juvenile justice system mission statement that has guided the Pennsylvania juvenile justice system for over a decade. That statement provides that the juvenile justice system should be guided by the values of community protection, victim restoration and youth redemption.

Community Protection refers to the right of all citizens to be and feel safe from crime.Victim Restoration emphasizes that a juvenile who commits a crime harms the victim of the crime and the community, and thereby incurs an obligation to repair that harm to the greatest extent possible. Youth Redemption embodies the belief that juvenile offenders have strengths, are capable of change, can earn redemption, and can become responsible and productive members of their communities.

The Interbranch Commission on Juvenile Justice concludes that Pennsylvania must give additional attention to victim restoration. Significant attention has been afforded the aspects of balanced and restorative justice relating to community protection and youth redemption. However, funding has been substantially reduced for the Victims of Juvenile Offender (VOJO) program and there is no statewide advocate for victims of juvenile crime. Moreover, some of the original victims of the juvenile crime in Luzerne County have been denied the right to receive restitution because the juvenile adjudications have been vacated.

Therefore, the commission recommends:

1. The creation of a statewide office of Juvenile Justice Victim Advocate. This position would be affiliated with the Office of the Victim Advocate. The goals of victim restoration when juvenile crime is involved present complex dynamics as society attempts to balance the unique developmental needs of children against the real harm suffered by victims. This requires a specialized expertise. The Juvenile Justice Victim Advocate, therefore, would work collaboratively with the Pennsylvania Commission on Crime and Delinquency, statewide victim services agencies and juvenile justice stakeholders to develop appropriate policies, guidelines, protocols, and data collection and analysis pertaining to victims of juvenile crime.

2. The restoration of funding for the Victims of Juvenile Offenders (VOJO) program to 2005 levels. Since 2005, funding for VOJO has dropped to $1,221,000 from $3,455,000 and further cuts are anticipated. These cuts have forced counties to reduce the number of advocates serving victims of juvenile crime and enhanced the difficulties associated with providing services to juvenile crime victims.

3. The creation of a Luzerne County Victims of Juvenile Crime Restitution Fund. Because the Supreme Court vacated juvenile adjudications in Luzerne County, many victims of juvenile crime have been deprived of the benefit of restitution awards to which they would otherwise have been entitled. The commission recommends that a fund be created and made available to Luzerne County residents who have been denied restitution payments because their awards have been vacated as a consequence of the Supreme Court's decision. Because the amount of some restitution awards has been questioned, the commission is unable to determine the amount of money that should be allocated to the fund once it is created. However, the commission members believe the amount to be less than $500,000. The commission further recommends that the Supreme Court appoint a Master to develop a method to properly determine the amount of restitution owed to any particular victim and to distribute the funds allocated accordingly.

B. Recommendations Regarding Judicial Ethics

The 1973 Pennsylvania Code of Judicial Conduct became a focal point of the testimony before the Interbranch Commission on Juvenile Justice. It was glaringly apparent not only from the testimony, but also from the recorded background information, that the aspirational goals and mandatory prohibitions contained in the code were not a deterrent to the conduct of Judge Ciavarella in his supervision over the juvenile court. The pervasive treading upon the constitutional rights of accused juveniles, coupled with the apparent conflict of interest due to the relationship with the dispositional placement resources, which former Judge Ciavarella has acknowledged in judicial forums, cries out that the goals and prohibitions of the code did not prevent misconduct in this unique instance in Luzerne County.

The commission learned that the Juvenile Court Judges' Commission (JCJC), on behalf of its judicial members, sought guidance from the Ethics Committee of the State Conference of Trial Judges, concerning issues such as gifts, offers of transportation and lodging, board activity, and other instances which had been commonplace marketing tools by private providers to the juvenile courts. Additional guidance was also sought regarding supervision of juvenile court staff. The Ethics Committee responded to the JCJC, stating that due to the overall complexity of the issues and the potential impact on other specialized courts such as drug courts, mental health courts, Orphans' Courts, and proceedings involving the elderly, a comprehensive input from a broader cross section of the judiciary was required. The Ethics Committee concluded that there needs to be a collaborative opportunity to further define the common interests and issues shared by the respective specialty courts and to obtain guidance from the Pennsylvania Supreme Court in order to properly articulate meaningful guidelines and directives.

The commission heard testimony from Robert Kuhlman, Ethics Counsel to the American Bar Association. Kuhlman advised the commission that the Revised 2007 Model Code of Judicial Conduct provides in pertinent part more expansive ethical guidance to judges whose roles include restorative justice principles and engagement with the community. Kuhlman also recommended that the Supreme Court revisit the use of the aspirational language of "should" found within the code to a more definitive "shall" when addressing concerns of known or suspected judicial misconduct.

Given the concerns expressed by the Ethics Committee of the State Trial Conference and the testimony of Kuhlman, the commission recommends:

1. That the Supreme Court re-examine the current Code of Judicial Conduct in order to address the ethical provisions which impact confidence in our courts such as ex parte communications, impartiality, and community engagement.

2. That the Supreme Court examine whether or not the code should provide clearer language for judges to recognize when they are obligated to report either misconduct or their belief of misconduct.

C. Recommendations Regarding Judicial Discipline

The Interbranch Commission on Juvenile Justice recognizes the inherent difficulties associated with any proposed changes to the judicial disciplinary system. It cannot be forgotten that the Judicial Conduct Board is a relatively new creation with its own genesis arising out of a prior scandal involving Pennsylvania's judicial disciplinary system. The 1988 Report of the Governor's Judicial Reform Commission (also known as the "Beck Commission") carefully studied and considered the complex issues surrounding judicial discipline and compiled a detailed report of its findings and conclusions. As a result of the Beck Commission's work and study, the Pennsylvania Constitution was amended to create the Judicial Conduct Board in 1993.

The Interbranch Commission on Juvenile Justice was not created to overhaul the judicial discipline system, though one of the commission's statutory duties required that this system be considered. This commission spent a significant amount of time reviewing the specific failings of the Judicial Conduct Board in relation to its actions towards then Judges Conahan and Ciavarella. Despite the amount of time spent on the issue, that effort cannot compare to the careful analysis and targeted consideration provided by the Beck Commission report to the issue of judicial discipline. It was clear from Judge Beck's testimony that the judicial discipline system as implemented was not comporting entirely with the recommendations of the Beck Commission. There can be no better starting point for consideration of the judicial discipline system than the Beck Commission report and Judge Beck herself in assessing the proper steps for continued improvement.

Given the constitutional nature of the Judicial Conduct Board, any substantive adjustments of the existing system requires amendment of the constitution, a process which obviously cannot be immediately implemented.

On the other hand, the Judicial Conduct Board has to its credit attempted to address its own failures by the creation of new Internal Operating Procedures through which, as one witness stated, the Judicial Conduct Board was taking back its constitutional authority. The commission commends the Judicial Conduct Board for its proactive efforts, and certainly encourages the Judicial Conduct Board to continue its own critical review with an eye toward improving judicial discipline in Pennsylvania. However, the commission found the new Internal Operating Procedures deficient and believes that in their current form they will not serve to correct all of the internal deficiencies that contributed to the board's failure to address the judicial discipline issues that cried out for attention in Luzerne County.

The ability of the commission to review the Judicial Conduct Board's conduct was substantially hindered by the provisions relating to confidentiality contained within the constitution itself. After months of fighting, arguing and cajoling, the Judicial Conduct Board eventually provided the commission, under seal, a substantial amount of material that was critical to the assessment process. The commission commends the Judicial Conduct Board for its final cooperation, but the material provided also raised more questions about the board's operations and reinforced the commission's opinion that changes are necessary.

The commission has developed two sets of recommendations, one set of short term recommendations that can be implemented without the need for a constitutional amendment, and a second set that will require the more arduous, but necessary process of amending the constitution.

1. Short term recommendations:
   a. The Judicial Conduct Board needs assistance in reviewing its internal operating procedures to assure that the shortcomings evident in the Luzerne County corruption scandal are eradicated. To assist in this important undertaking, the commission recommends the creation of a small but committed and experienced task force comprised of experts in the fields of judicial discipline, ethics and investigations with the specific purpose of (1) reviewing the internal operating procedures of the Judicial Conduct Board as well as the policies dealing with the interaction between the Conduct Board's staff and its voluntary board; and (2) to make suggestions for improvement. It is recommended that this task force include representatives of the state bar association. The commission remains hopeful that the Judicial Conduct Board will cooperate with the task force to implement meaningful reform to its internal policies and procedures. The commission also recommends that the Judicial Conduct Board include a section in its next annual report addressing its work with this task force, what changes were implemented, and how its procedures were improved.

   b. In particular, the record demonstrates, both through documentary evidence and board member testimony, that chief counsel had acquired and exercised far too much autonomy, authority and absolute discretion over how complaints were investigated, deferred, referred, or resolved. The record further shows that chief counsel would unilaterally act without the consultation, knowledge or approval of the Judicial Conduct Board. Whether the evolution of chief counsel's power and autonomy developed with or without the board's approval, the record sadly compels the conclusion that too much power was vested in chief counsel. The commission strongly recommends that the Judicial Conduct Board and the task force weigh the obvious need for a strong chief counsel against the constitutional obligations of the Judicial Conduct Board. The internal operating procedures must provide for clear descriptions of the duties and responsibilities of the critical staff, create a mechanism for performance review and accountability, and implement procedures for meaningful oversight of the staff.

   c. The Judicial Conduct Board is required under the constitution to provide an annual report of its activities. The commission recommends that the annual report provide some details as to how the Judicial Conduct Board is operating, in particular as to how many complaints have been deferred pending criminal investigation. While the commission recognizes the confidentiality that attached to the work of the Judicial Conduct Board, it is also painfully apparent that the Luzerne County corruption complaints somehow were allowed to languish without appropriate attention or consideration. It is recommended that the Judicial Conduct Board include within its annual report an index of all pending case filings, identified only by case number, with an indication as to the current status of that particular case. If a complaint has not been resolved, then it would appear in each annual report under its original case number. By providing this generic indexing practice, it will provide a means to identify any complaints that have been pending without resolution for a substantial period of time.

   d. The commission also recommends that the Judicial Conduct Board undertake to revise and update its Web site. It should provide clear, simple directions to allow the public to file complaints over the internet. In addition, it should include the reminders to the public and to professionals of their options and ethical responsibilities in reporting judicial misconduct as more specifically explained in the next recommendation.

   e. During the course of testimony, it was clear that far too many professionals, let alone lay persons, were wholly unaware that reporting judicial misconduct to the Judicial Conduct Board was not only an option, but an ethical responsibility. The commission recommends that the Judicial Conduct Board partner with the Pennsylvania Bar

Association and its educational arm, the Pennsylvania Bar Institute, to create and implement an educational program and materials to assure that practicing attorneys and judges are aware of the mandatory ethical obligation to report judicial misconduct to the Judicial Conduct Board. Moreover, the commission also recommends that the Judicial Conduct Board and the Pennsylvania Bar Association/Pennsylvania Bar Institute work together to create educational material for the general public that can be made available at professional offices for purposes of recognizing judicial misconduct and explaining how to report such misconduct to the Judicial Conduct Board.

f. While the Judicial Conduct Board contends that it lacks sufficient resources to fulfill its constitutional obligations, the commission lacks sufficient evidence to conclude that the board is not adequately funded. This is plainly a budgetary issue better addressed between the Judicial Conduct Board and the Legislature.

2. Long term recommendations:

With regard to the long term recommendations, the commission has come to two inescapable conclusions: (1) the Judicial Conduct Board lacks sufficient oversight to assure that it is fulfilling its constitutional duties and obligations; and (2) the existing confidentiality provisions relating to the work of the Judicial Conduct Board prohibit any meaningful oversight and accountability.

In order to effectuate the needed reforms to the Judicial Conduct Board, the commission recommends the creation of a group, perhaps similar to the composition of the Beck Commission, to conduct a constitutional review and study to determine what changes are necessary to assure oversight and accountability of the Judicial Conduct Board. In particular, the commission emphasizes the following areas for review:

a. The appointment process for board members and the general board composition;

b. The powers and duties of the board;

c. Determination if the general rules governing the conduct of its members are adequate to discharge the members' constitutional mandate and if they are being adequately implemented;

d. The creation of an appellate mechanism to the Court of Judicial Discipline for review of the Judicial Conduct Board's decision to dismiss a complaint;

e. A careful review and revision of Article V, Section 18(a)(8) as it relates to confidentiality and accountability of the Judicial Conduct Board in fulfilling its constitutional obligations;

f. The creation of an outside administrator and record keeper. Such an administrator would be bound by the confidentiality standards mandated for the board and would, therefore, have access to details about complaints and their handling. The administrator would then be in a position to audit the board's specific performance. When warranted, the administrator could promptly question the failure to address complaints, or why investigations were allowed to languish.

D. Recommendations Regarding Attorney Discipline

The Interbranch Commission on Juvenile Justice heard testimony that raised questions about whether conduct occurred during juvenile delinquency hearings that may have violated the Code of Judicial Conduct or the Rules of Professional Conduct. The commission is concerned at the possibility, if not the probability, that no lawyer practicing in Judge Ciavarella's courtroom ever filed a complaint to the Disciplinary Board against a fellow lawyer alleging a violation of the Rules of Professional Conduct. In addition, while attorneys witnessing unethical behavior by judges are bound to report the judge's behavior to the Judicial Conduct Board, the Judicial Conduct Board reported that no such complaints were filed by any attorneys present at the juvenile proceedings which have been the subject of the commission's investigation.

The commission recommends:

1. That the Disciplinary Board create appropriate educational materials for the general public and for attorneys. This will assure that both the bar and the community at large understand what constitutes a violation of the Rules of Professional Conduct and how to file a complaint.

2. That the Web site of the Disciplinary Board be redesigned so that it offers a clear and simple mechanism to file complaints electronically.

3. That the Pennsylvania Continuing Legal Education Board Regulations be amended to provide that of the 12 continuing legal education credit hours a Pennsylvania attorney is required to earn each year, the minimum number of ethics credits should be increased from one hour to two hours per year; and an attorney should be required to attend at least one hour of continuing legal education every five years on the topic of the duty to report misconduct by judges and other attorneys.

4. That courses which are offered to satisfy the ethics continuing legal education requirement provide meaningful and inspirational programming.

E. Recommendations Regarding Continuing Education

The need for judges, prosecutors, defense counsel, hearing officers and masters to be properly educated about the Juvenile Act, child development, and problems unique to the relationship between children and their families is readily apparent. However, there are currently no standards that provide any guidance to the primary participants in the juvenile justice system regarding the duty of continuing education. Therefore, the Interbranch Commission on Juvenile Justice endorses the training standards adopted by the Pennsylvania District Attorney's Association and the Juvenile Defenders Association of Pennsylvania.

The recently adopted Standards for Pennsylvania Prosecutors in Juvenile Court recognize that "the effective representation of the Commonwealth's interests requires that the juvenile court prosecutor be well versed in the relevant statutory and procedural mandates, the Juvenile Act and the Rules of Juvenile Court Procedure. Juvenile court prosecutors, therefore, need to be trained in the statutes and the rules before handling juvenile matters. Furthermore, all juvenile court prosecutors should be trained in these Standards".

The recently adopted Performance Guidelines for Quality and Effective Juvenile Delinquency Representation recognizes and incorporates Pennsylvania's Rules of Professional Conduct, Rules of Juvenile Court Procedure and the Juvenile Act. They also reflect national standards established by the American Bar Association, the National Legal Aid and Defender Association and its Council of Chief Defenders and the National Juvenile Defender Center. The guidelines will serve as a training and development tool for new juvenile public defenders, contract and assigned counsel who receive assignments in juvenile court and affirm for experienced attorneys the considerations necessary to deliver quality legal representation. Therefore, the commission recommends all juvenile defense attorneys should be trained in these guidelines before handling juvenile cases.

The commission recommends that both organizations develop and consistently present continuing legal education courses to train prosecutors and defense attorneys in their respective standards.

Further, the commission recommends that every judge of the court of common pleas who is assigned to handle matters involving allegations of delinquency brought under the Juvenile Act be required by the Supreme Court of Pennsylvania to attend 12 hours of continuing education within 90 days of such assignment. The commission also recommends that periodic updates in mandatory continuing education be considered by the Supreme Court for all such judges. The commission further recommends that at least some part of the continuing education be conducted on a regional basis so judges have the opportunity to discuss and analyze legal issues that may be uniquely regional, and to become familiar with placement and community-based resource options that may have a common regional connection.

In addition, the commission recommends that the Supreme Court develop mandatory continuing education standards for juvenile masters and hearing officers.

Finally, while training provides an appropriate foundation, there must be vigilance by all concerned regarding the importance of the mission of the juvenile justice system. All too often during the commission's hearings, there were references to "kiddie court" and the juvenile court in Luzerne County being considered a training ground for prosecutors and defenders. Officials at the state and county levels must emphasize the importance of balanced and restorative justice,

and must see to it that the individuals who fill the roles in juvenile justice possess the integrity, the desire and the commitment to the goals and values of the system. Attitude reflects leadership, and the system will not function properly if it is simply a training ground, or an unwanted stepchild of the entire justice system.

F. Recommendations Regarding Juvenile Prosecutors

A prosecutor has a special ethical obligation to be a minister of justice, and this solemn responsibility is enhanced in the context of juvenile delinquency proceedings under the principles of balanced and restorative justice. While prosecutors must assure the safety of the community and protect the rights of victims, prosecutors must go further in juvenile cases. A prosecutor must also weigh the needs of the juvenile offender – not with an eye toward punishment – but toward rehabilitation through the least restrictive means necessary.

When this responsibility is considered in light of what occurred in Luzerne County, the prosecutors clearly abdicated their roles as ministers of justice and simply became passive observers to the tragic injustices that were perpetrated against juvenile offenders. It is not an understatement to conclude that there was a systematic failure within the Luzerne County District Attorney's Office that allowed for the corruption to continue unabated for too long.

First, the record plainly demonstrates that juvenile prosecutors were not properly supervised by the district attorney; rather, both former District Attorney David Lupas and then-First Assistant (and now current) District Attorney Jacqueline Musto Carroll incredibly conceded that they had never set foot in a juvenile court throughout their entire careers as prosecutors. District Attorneys Lupas and Carroll demonstrated no initiative, interest, or concern with what was occurring in juvenile court. In addition to providing no real supervision of their juvenile prosecutors, it was also apparent that young prosecutors were left on their own in juvenile court without any substantive training or guidance. As a result, a pattern of ineffective juvenile prosecutors with no concern for the needs of the juvenile offenders emerged in Luzerne County – and sadly repeated itself as inexperienced prosecutors rotated in and out of former Judge Ciavarella's courtroom.

Second, both district attorneys and their juvenile prosecutors blindly accepted the zero-tolerance philosophy advocated by Ciavarella as a simple unavoidable circumstance over which they had no control. The juvenile prosecutors never advocated for a change in Ciavarella's draconian placement practices; rather, the juvenile prosecutors simply sat silent while large numbers of juvenile offenders were ordered into out-of-home placements without adequate grounds or justification. Rather than seeking justice based upon the circumstance of each juvenile case, the prosecutors became complicit in the countless acts of injustice by their silence and lack of advocacy.

The inherent unfairness of Ciavarella's practices was apparent even to the young, untrained, and inexperienced prosecutors. As one prosecutor noted, he was disturbed by the placement of some juvenile offenders for minor offenses, but he did not know what to do or to whom he should go for guidance. This statement is a striking indictment to the deficiencies in the performance, training, education and supervision of juvenile prosecutors in Luzerne County.

After this scandal erupted, District Attorney Carroll took the affirmative step to reclaim her prosecutorial authority and fulfill the special ethical obligation to do justice in each juvenile case. She has elected to sign every juvenile petition prior to its filing, thereby ensuring that juvenile prosecutors are involved in each juvenile case from its inception. This election represents a significant reform and hopefully marks the beginning of a new prosecutorial philosophy relating to juvenile justice in Luzerne County.

Further, as noted above, the Pennsylvania District Attorney's Association (PDAA) has taken the affirmative step of adopting Standards for Pennsylvania Prosecutors in Juvenile Court. These new standards clearly enunciate the special duties of a juvenile prosecutor. The PDAA has undertaken the commitment to ensure that this Commonwealth never experiences the wholesale abdication of prosecutorial duties and responsibilities like those that occurred in Luzerne County.

Under the Rules of Professional Conduct, a prosecutor has the obligation to make certain that a juvenile offender understands the proceedings, comprehends a waiver of any specific rights, and knows the implications of any admissions or pleas. As these responsibilities are considered in light of the Luzerne County scandal, the record shows that prosecutors sat through proceedings where juveniles were not represented by counsel, where the court never advised the juvenile of the

right to counsel, and where the court never provided any meaningful explanation to the unrepresented juvenile as to what was occurring or the implications that arose from any admission to specific conduct.

The PDAA's new standards make these obligations clear, and emphasize that juvenile prosecutors not only seek a successful adjudication, but also must take affirmative steps to ensure that juvenile rights are protected. Moreover, while the Juvenile Act and rules do not require that a prosecutor be present at any juvenile proceeding, the PDAA has taken the approach that prosecutors must be present at each and every juvenile proceeding, not only to protect the Commonwealth's interests and the rights of victims, but also to fulfill the prosecutor's special obligation to protect the rights of juveniles and pursue just results in each case.

The Interbranch Commission on Juvenile Justice commends the PDAA's prompt creation and adoption of standards for Pennsylvania's juvenile court prosecutors. The commission views this as an important step toward ensuring that prosecutors throughout the Commonwealth understand their far-reaching role in juvenile court. The commission, therefore, supports the precepts articulated in these standards and recommends that the PDAA take any reasonable steps necessary to train juvenile prosecutors to effectuate the implementation of these standards throughout Pennsylvania.

Finally, the commission recognizes that additional funding will be required for prosecutors to implement these recommendations. The commission supports increasing prosecutors funding to sufficient levels.

G. Recommendations Regarding Juvenile Defense Lawyers

At present, Pennsylvania and Utah are the only states in the nation that do not provide any state funding for indigent juvenile defense. County budgets must cover all expenses for juvenile defense attorneys in Pennsylvania including essential support services such as investigators, social workers, paralegals and expert witnesses. Relying solely on counties to determine how to fund indigent juvenile defense has led to significant differences in the quality of representation from one county to the next across the Commonwealth. In addition, by not providing funding for indigent juvenile defense, the state does not have a way to ensure that basic caseload and performance standards are met by attorneys representing children in delinquency proceedings.

The Interbranch Commission on Juvenile Justice heard testimony that juvenile defender case loads in Pennsylvania were far too high. Few offices had adequate computers, with some offices using outdated computers donated by their colleagues in the district attorney's offices. Fifteen percent of the public defenders did not have adequate telephone service; and 30 percent did not have access to the internet. As a result of varying levels of access to resources, the quality of juvenile defense services varied dramatically from county to county resulting in "justice by geography".

According to the former Luzerne County Chief Public Defender Basil Russin, a shortage of resources played a role in his decisions about how the Luzerne County juvenile practice was developed. Russin testified that when former Judge Ciavarella was presiding in juvenile court, his office handled between two and four cases per week for a total of 100 to 200 cases per year out of a total of 800 to 1,000 delinquency cases per year. Under the supervision of the new juvenile court judge, David Lupas, it now takes two full days per week for the assigned attorney to handle between 800 and 1,000 cases per year. This caseload is well in excess of the standard of 200 felony and misdemeanor cases per year for a juvenile defense attorney recommended by the American Council of Chief Defenders. During an era of tight budgets, Russin explained that the county commissioners were made aware of increases in caseloads but did not respond favorably. According to Russin, "Last year with my case count up ten percent I got cut a lawyer and got cut a clerical person."

Pennsylvania's obligation to enforce a child's constitutionally guaranteed right to counsel in delinquency proceedings arises from the Sixth Amendment right to counsel and Fourteenth Amendment right to due process for children that was established in 1967 in the landmark U.S. Supreme Court case In re Gault, 387 U.S. 1 (1967). Pennsylvania incorporated these constitutional requirements of due process and the right to counsel for juveniles in § 6337 of its Juvenile Act in 1972. See 42 Pa. C.S. § 6337.

The 1968 Public Defender Act specifically obligates public defender offices in Pennsylvania to include representation of a person charged with juvenile delinquency who lacks sufficient funds to otherwise retain counsel. See 16 P.S. § 9960.6(a) (1). The Pennsylvania Rules of Juvenile Court Procedure provide for the appointment of counsel if a juvenile is without

financial resources or is otherwise unable to employ counsel. See Pa.R.J.C.P. 151(A).The rules also provide for the assignment of legal counsel separate from the appointment of a guardian ad litem, for a child in a dependency matter who has been charged with committing a delinquent act. Pa.R.J.C.P. 151(B) (c).

Unfortunately, whether due to indifference, inexperience, incompetence or intimidation, many, though not all of the defense attorneys in Luzerne County that appeared before Ciavarella, clearly abdicated their responsibilities to zealously defend their clients and to protect their due process rights.

According to the record, over 54 % of the children who appeared in Ciavarella's courtroom from 2003 to 2008 appeared without counsel. Public defenders, contract counsel and privately-retained attorneys were present in those courtrooms and observed the routine violation of the constitutional rights of children and in some cases the violations of the judicial cannons of ethics. They had an ethical obligation to speak up. At the bare minimum, they should have contacted their supervisors in the Public Defenders Office and the local bar associations or notified the appropriate judicial or attorney disciplinary organizations.

Many of the juvenile defendants whose rights were violated were represented by counsel. These attorneys appeared in court without protest, while large numbers of juvenile offenders were placed in out-of-home facilities without adequate legal justification. Inexplicably, very few motions for reconsideration or appeals were filed. The Juvenile Law Center was one of the few organizations that challenged the violation of the rights of these juveniles.

The record plainly indicates that the juvenile defenders were not properly supervised by former Chief Defender Russin. According to his testimony, there was no real supervision in the courtroom, no juvenile-specific training and no performance reviews.

There was at least one complaint brought to Russin's attention by one of the young assistant public defenders assigned to juvenile court. That attorney reported that there were lots of youths going unrepresented in Ciavarella's courtroom and there were improper waivers. No action was taken by Russin in response to this complaint.

Through his silence and the silence of the juvenile defenders on his staff, Russin became complicit in the zero-tolerance policies instituted by Ciavarella and the routine placement of children for minor offenses and without careful consideration of their individual circumstances as required by a balanced approach to restorative justice.

As the scandal gained wide attention throughout the state and across the nation, Russin reached out for assistance. In September 2009, he assigned a skilled and experienced defender to become the juvenile defender and he agreed to accept appointments by the court to all the juvenile cases where there were no conflicts.

Based on the above, the commission makes a series of recommendations bearing on juvenile defense:

1. A state-based funding stream for indigent juvenile defense.

   The General Assembly should establish a dedicated funding stream for indigent juvenile defense that supports the traditional efforts of the counties to provide financial resources for this constitutionally mandated right to counsel.

2. A Center for Juvenile Defense Excellence.

   In order to ensure that children in Pennsylvania's juvenile courts are represented by competent attorneys, technical assistance required to provide quality representation should be readily available to juvenile defense attorneys throughout the state. A Pennsylvania Center for Juvenile Defense Excellence would provide support to defense counsel representing indigent juveniles in delinquency proceedings and would provide a resource for attorneys representing children in smaller counties to obtain advice and referrals in areas such as special education, immigration, sex offender registration and civil commitment issues. See Recommendations to the Interbranch Commission on Juvenile Justice by the Juvenile Indigent Defense Reform Initiative, March 15, 2010.

   It is recommended that the center provide an annual report to the governor, the legislature and the Supreme Court. The commission further recommends that this issue be referred to the Joint State Government Commission where it can be considered in conjunction with other issues related to indigent defense, such as Senate Resolution 42 of 2007, by an advisory group composed of stakeholders from throughout the criminal justice system.

3. Ensuring Access to Defense Counsel

Defense counsel plays an important role in ensuring fairness and equity in the juvenile justice system in Pennsylvania and in protecting children against abuses of judicial power. Defense lawyers occupy the unique position of giving children a voice in the process by representing the child's expressed interest. They protect the due process rights and liberty of children they represent with pretrial motions, habeas corpus petitions, challenges to evidence in adjudicatory hearings, motions for reconsideration and appeals. Defense counsel protect their clients' rights, and are in a position to report judicial and prosecutorial abuses to disciplinary boards. For these reasons the commission recommends:

A. That all juveniles should be deemed indigent for the purposes of appointment of counsel.

In many counties in Pennsylvania, the courts and public defender offices have relied upon the income of parents and guardians of juveniles to determine financial eligibility for the appointment of counsel. In Luzerne County, former Chief Public Defender Basil Russin testified that he used Poverty Guidelines to determine eligibility for public defender services.

In such situations, there is an inherent risk that the legal protections afforded juveniles could be eroded by the limited financial resources of their parents, particularly those parents whose income is just above the guidelines, or by the unwillingness of parents to expend their resources. There is also the risk that the attorneys hired by parents might rely upon the parents for decision making in a case rather than rely upon the juvenile as the law requires. Accordingly, the Interbranch Commission for Juvenile Justice recommends that the Pennsylvania Supreme Court amend the Rule of Juvenile Court Procedure 151 to instruct courts that juveniles are to be deemed indigent for the purpose of appointment of counsel.

B. Restrict the right of a juvenile to waive the right to counsel and require stand-by counsel if the juvenile waives counsel.

As noted above, over half of the children who appeared before former Judge Ciavarella waived the right to counsel. In spite of the protections afforded children since October 2005 by Pennsylvania Rule of Juvenile Court Procedure 152, the right to counsel was routinely waived.

The commission was asked by experts in the field to recommend an unwaivable right to counsel. Instead, however, the commission has chosen to recommend new safeguards and protections for the right to counsel by strengthening the protections of the waiver rule, increasing access to the counsel through the appointment process, increasing the protections and speed of the appellate process and strengthening the role of defense counsel. It is with these considerations in mind that the commission recommends that the Pennsylvania Supreme Court modify Pennsylvania Rule of Juvenile Court 152 (relating to waiver of counsel) to:

1. Require a juvenile to consult with an attorney prior to waiving counsel at any of the following proceedings:
   Detention hearings;
   Pretrial hearings;
   Hearing to consider transfer to criminal proceedings;
   Adjudicatory hearing;
   Dispositional hearing;
   Dispositional hearing/commitment review hearing;
   Probation review hearings; and
2. Retain Section C of Rule 152 which limits the waiver of counsel to the proceeding where the waiver occurs and authorizes the juvenile to revoke the waiver at any time. It also requires that the juvenile be informed of the right to counsel at any subsequent proceeding;
3. Require the appointment of stand-by counsel if a juvenile waives counsel at any of the aforementioned proceedings;
4. Replace the guidance regarding the specifics of the colloquy that is currently contained in the Comment to Rule 152, with provisions in the rule that would detail the specific information that the colloquy is to elicit.

C. Implement an appointment system for counsel that avoids the appearance of impropriety.

Where judges appoint counsel that appear before them on specific cases there is an inherent potential conflict between the financial interests of the attorney in obtaining future appointments and the zealous representation of the juvenile. The independence of the defense counsel is critical for making client-centered case decisions. Some counties have chosen wheels or other neutral procedures to accomplish this task. This is a critical addition to the system of checks and balances needed to ensure the right to counsel. Therefore, it is recommended that the Pennsylvania Supreme Court should work with the Juvenile Defenders Association of Pennsylvania to establish an independent procedure in each county or regional district to reduce appointments by judges of lawyers who appear before them.

D. Performance Guidelines for Quality and Effective Juvenile Delinquency Representation

Guidelines serve as a training and development tool for new attorneys who receive delinquency representation assignments. They also affirm for experienced counsel the considerations necessary to deliver quality legal representation.

The Juvenile Defenders Association of Pennsylvania (JDAP) has taken the necessary steps to develop and adopt performance standards for indigent juvenile defense attorneys. The guidelines have also been adopted by the Public Defenders Association of Pennsylvania (PDA of PA). These new standards explain the duties and responsibilities of juvenile defenders at every stage of the juvenile court process. JDAP and PDA of PA have committed themselves to taking all necessary measures to ensure access to counsel and quality representation for Pennsylvania's children.

The commission commends the Pennsylvania Commission on Crime and Delinquency (PCCD), the MacArthur Foundation and JDAP for their prompt support in the creation of a comprehensive juvenile practice training program for defense counsel in Luzerne County. The Commission also commends JDAP and the PDA of PA for their adoption of the guidelines. The commission supports the principles articulated in these standards and recommends that the JDAP work in conjunction with the PDA of PA and the Pennsylvania Association of Criminal Defense Lawyers to train juvenile defense attorneys to effectuate the implementation of these standards throughout Pennsylvania.

H. Recommendations Regarding Ethics for Juvenile Probation Officers

Juvenile Probation Officers are officers of the court by definition, and bound by the provisions of the Juvenile Act. Generally speaking, the officers are called upon to:

Make investigations, reports, and recommendations to the court;

Receive and examine complaints and charges of delinquency or dependency of a child for the purpose of considering the commencement of proceedings;

Supervise and assist a child placed on probation or in his or her protective supervision or care by order of the court or other authority of law;

Make appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable;

Take custody and detain a child who is under his or her supervision or care as a delinquent or dependent child if the probation officer has reasonable cause to believe that the health or safety of the child is in imminent danger, or that he or she may abscond or be removed from the jurisdiction of the court, or when ordered by the court, or if the child has violated the conditions of his or her probation, as well as such other duties imposed by the court.

As officers of the court, juvenile probation officers must conduct themselves in a manner which avoids the appearance of impropriety. In all instances while interfacing with the juvenile, family, victims, community-based providers, and private providers, their recommendations must always be mission-driven, performance-based, and outcome-focused.

The testimony before the Interbranch Commission on Juvenile Justice reflected the potentiality of decisions of juvenile probation being influenced by extraneous factors which were not evidence-based surrounding youth appearing in juvenile court, but rather the derivative of aggressive marketing practices or a by-product of potential conflict of interest.

The Interbranch Commission on Juvenile Justice applauds the efforts of the Chief Juvenile Probation Officers Association of the Commonwealth in its initiative to develop statewide standards for ethical practices of probation officers.The commission recommends that the chief's association, as well as each county probation department, adopt comparable standards which address the following:

1. The rejection of all gifts, souvenirs, and tokens from all private providers who provide services to juveniles and their families as a result of recommendations by the Juvenile Probation Department.

2. The incorporation by counties entering into contractual agreements with the private providers on behalf of the probation department limiting providers to merchandizing based on outcomes and services rather than enticements.

3. Standards barring part-time employment and board of directors' engagement of probation officers by private providers unless approved by the chief probation officer and the juvenile court.

4. Standards surrounding confidentiality of cases.

5. Standards surrounding subsequent employment of probation officers by private providers.

6. Standards surrounding partisan political activity.

The commission recognizes that these recommendations are not all-inclusive and that the chief's association does not have authority over individual departments of probation in each judicial district. However, the adoption of uniform standards by the individual districts and the application of those standards would benefit the judicial system.

I. Recommendation Regarding Court Hiring Practices

Former judges Conahan and Ciavarella hired family members and friends to work in the courts. The Interbranch Commission on Juvenile Justice determined that this was an extremely detrimental practice. It contributed to a breakdown in professionalism and to a breakdown in public confidence. Ultimately, as some witnesses before the commission testified, the environment for corruption became more fertile. Court employees were less likely to speak out against judicial misconduct if they had personal ties to the judges engaging in misconduct.

The commission is concerned that the employment of family members, close personal friends or political associates creates the perception that hiring decisions are not based on merit and competence and, thereby, undermines public confidence in the courts.

It is therefore recommended that the Court Administrator of Pennsylvania undertake a national study to determine the highest standards and best practices for court hiring policies and present the findings of that study to the Supreme Court for review.

J. Recommendation Regarding Continuing Supreme Court Oversight

Since the juvenile justice scandal became public knowledge in Luzerne County in early 2009 there has been a dramatic public reaction leading to significant reform in the ways the juvenile court system operates.

Based on a report provided to the Interbranch Commission on Juvenile Justice by the Luzerne County Juvenile Justice Victim Response Task Force, the commission is aware of changes in the practices and procedures of the juvenile court under the leadership of Judge David W. Lupas, initiatives to improve the operations of the juvenile probation department, procedural modifications in the Office of the District Attorney Jacqueline Musto Carroll, enhanced services provided by the Public Defender's Office, and programs to respond to the needs of both the original victims and juvenile victims of the juvenile justice scandal.

It is clear that significant efforts have been made, improvements have occurred, and additional changes and improvements are under consideration. The commission believes credit is due to those who have worked diligently to repair the harm that has been done and who share a vision of creating a model juvenile justice system.

At the same time, the commission is concerned that the local culture of practice and procedure is so ingrained that there can be no reasonable assurance the commitment demonstrated to date can be sustained without the ongoing support and encouragement of the Supreme Court.

The commission, therefore, recommends that the Supreme Court develop a mechanism to provide continuing oversight of the Luzerne county court system through the office of the Court Administrator of Pennsylvania and to receive regular reports from the President Judge of Luzerne County to assure that the programs and procedures are institutionalized and the juvenile system functions in accordance with the Juvenile Act and the Rules of Juvenile Procedure.

K. Recommendations Regarding the Use of Data and Statistics

The Juvenile Court Judges' Commission (JCJC), the Administrative Office of Pennsylvania Courts, the Department of Public Welfare and perhaps other state agencies collect an extensive amount of data about the juvenile justice system. In addition, the JCJC annually provides a statistical overview of juvenile court dispositions based on data collected as cases are closed in all 67 counties. While the data is available, there is no meaningful process for converting the data into useful information that can be used to guide the development of juvenile justice policy and decision-making statewide, or to identify localized problems in the juvenile justice system.

The Interbranch Commission on Juvenile Justice recommends, therefore, that the JCJC be afforded adequate resources:

1. To study how data can be usefully applied to identify and to solve problems in the juvenile justice system;

2. To identify what data should be collected and by what agency; and

3. To determine how data should be analyzed and disseminated.

The commission further recommends that all state agencies and entities with relevant information, including the Administrative Office of Pennsylvania Courts and the Department of Public Welfare, should collaborate with the JCJC in that effort.

L. Recommendations Regarding Stating Dispositional Reasoning on the Record

The Interbranch Commission on Juvenile Justice heard testimony from Luzerne County children and parents that they entered juvenile court expecting to receive treatment that was fair and evenhanded. Instead, many were subjected to disproportionately harsh dispositions for minor offenses with no justification. A requirement that juvenile court judges state the reasons for dispositional orders on the record would add a layer of transparency to juvenile court proceedings that would help children and families understand the purpose of juvenile court dispositions.

Requiring juvenile court judges to consider the treatment, rehabilitation and supervision needs of each child as well as the principles of balanced and restorative justice prior to stating the reasons for the disposition would help to ensure that the principles which should guide every juvenile court disposition would be followed. Additional emphasis on the court's justification for orders requiring out-of-home placement would serve both as a reminder that out-of-home placement should occur only when there is a "clear necessity" to remove the child from the home, but also would assure children and families that juvenile court judges did not take this step lightly. In cases where a dispositional order was challenged, appellate courts would have a clear record to review. Accordingly, the commission recommends:

1. The General Assembly amend the Juvenile Act to require juvenile court judges to state on the record how the disposition ordered furthers the goals of the Juvenile Act and the principles of balanced and restorative justice; if the disposition is an out-of-home placement, why there is a "clear necessity" to remove the child from home.

2. The Pennsylvania Supreme Court promulgate changes to Rules of Appellate Procedure and Rules of Juvenile Court Procedure (Rule 512, relating to dispositional hearings) to require Juvenile Court judges to state on the record how the disposition order furthers the goals of the Juvenile Act and the principles of balanced and restorative justice; and if the disposition is an out-of-home placement, why there is a "clear necessity" to separate the child from the home.

3. The Pennsylvania Supreme Court modify the Comment to Pa. R. J.C.P. 512 to clarify that, prior to stating the reasons for its disposition, the court should give consideration to the following factors: the protection of the community; the treatment needs of the juvenile; the educational, health care, and disability needs of the juvenile; the supervision needs for the juvenile; the development of competencies to enable the juvenile to become a responsible and productive member of the community; accountability for the offense(s) committed; and any other factors that the court deems appropriate.

M. Recommendation to Reduce or Eliminate the Practice of Shackling

The Interbranch Commission on Juvenile Justice heard testimony that after disposition, children in Luzerne County were at times taken from the courtroom in leg shackles and handcuffs attached to thick leather belts. The use of shackles on children can be a demeaning and dehumanizing practice that is contrary to the philosophy of balanced and restorative justice and undermines the goals of providing treatment, rehabilitation and supervision for children. However, there are certain circumstances where children need to be restrained to protect themselves and others and to maintain security in the courtroom. Given the complexity of these issues, the commission recommends that the Juvenile Justice Delinquency Prevention Committee of the Pennsylvania Commission on Crime and Delinquency undertake a study and develop recommendations on how to effectively address this issue. The goal of the study should be to reduce and if possible eliminate shackling in Pennsylvania's juvenile courtrooms.

N. Recommendation Regarding Juvenile Placement Decisions

Witnesses before the Interbranch Commission on Juvenile Justice and accompanying exhibits confirmed that during the years 2003-2008 placement decisions for secure detention in Luzerne County were often: a) directly driven by police recommendations at the time of arrest without independent evaluation by the probation department; b) prompted by a request for a diagnostic evaluation; or c) precipitated by the juvenile court judge as a punitive measure such as for nonpayment of fines. It is clear that the narrowly-defined mandates of the Juvenile Act and the existing Juvenile Court Judges' Commission detention standards were disregarded by these practices.

The general detention standards developed by JCJC in response to Coleman v. Stanziani are valid and remain overarching principles of detention decision-making. Nonetheless, probation officers, police, prosecutors, victims, family members and other community stakeholders would greatly benefit by the implementation of the Juvenile Detention Alternatives Initiative (JDAI) model as a detention assessment instrument in order to avoid reckless and thoughtless secure placement decisions and enhance the objectivity surrounding placement decisions affecting juveniles.

The commission endorses the modification of the JCJC Standards Governing the Use of Secure Detention to incorporate the use of a detention assessment instrument based on the JDAI model as supported by the Annie E. Casey Foundation.

O. Recommendation Regarding Youth Level of Services Initiative

Under the Juvenile Act, a juvenile court's disposition must be best suited to the child's treatment, supervision, rehabilitation and welfare. The juvenile court is required to impose the minimum amount of confinement consistent with the protection of the public and the rehabilitative needs of the child. Balanced attention must be given to all of these factors while focusing on the development of competencies for the child. Clearly, the testimony offered before the Interbranch Commission on Juvenile Justice displayed an abdication by the Luzerne County juvenile court during 2003-2008 of its responsibilities under the Juvenile Act in crafting appropriate dispositions.

Given the individuality of each adjudicated youth appearing before the court, it is warranted that validated screening tools and risk assessment to reoffend be included by probation as part of the case assessment so that the most complete information is made available to the court for its decision based upon objective criteria. The Juvenile Court Judges' Commission, Pennsylvania Commission on Crime and Delinquency (PCCD), and the Chief Probation Officers

Association have asked the commission to recommend the Youth Level of Services (YLS) initiative in order to implement this identified tool as an aide to the decision making of juvenile court judges.

One of the most important aspects of the YLS initiative is that the results from the assessment are being used to develop a more comprehensive case planning process for juveniles that is focused on reducing identified risk factors. The desired outcome is that this validated risk/needs assessment will be used in determining appropriate levels of supervision, establishing measurable case-specific goals, and in allocating the necessary resources to achieve better outcomes for juveniles and their families, and consequently for our communities. The implementation of the YLS assessment tool will not restrict judicial dispositional authority. On the contrary, juvenile judges will begin seeing more comprehensive proposed supervision plans that are directly related to the risks, needs and strengths of each child.

The implementation of the YLS initiative and instrument is being considered for use in 25 additional probation departments within the Commonwealth as an expansion of the current pilot program of 10 probation departments. Generally speaking, the utilization of risk assessment and case planning tools by probation departments can promote greater objectivity in the disposition recommendation to juvenile courts. All risk assessment and planning tools employed by probation departments for these purposes should be verified as evidence or researched based thereby assuring that they are valid and reliable measures of the risks and strong predictors of desired outcomes.

Accordingly, the commission recommends the expansion as a pilot program of the use of the Youth Level of Service / Case Management Inventory (YLS/CMI) risks/needs instrument and the employment by probation departments throughout the Commonwealth of valid research and other evidence-based risk assessment instruments that have been determined to be both valid and reliable measures of the predictors of youth crime and recidivism.

P. Recommendations Regarding Appellate Rights

The Interbranch Commission on Juvenile Justice heard testimony from parents of children who appeared in former Judge Ciavarella's courtroom, who asserted they contacted a variety of governmental agencies and private organizations in an effort to free their children from unjust detention and placement. These efforts were often made at great expense to the parents, but they rarely achieved success. After seemingly exhausting all options in the county and the state, parents reported seeking assistance from advocacy groups in New Jersey, and as far away as Texas.

The frustration, anguish and pain experienced by children and their parents and conveyed eloquently during their testimony helped the commission, the citizens of Luzerne County and all concerned parties understand the true dimensions of this unprecedented tragedy. Parents should not have to exhaust their resources and search throughout the United States to find ways to protect the constitutional rights of their children. Additional steps should be taken to ensure that juveniles understand their appellate rights and are able to take advantage of the right to appeal.

With these considerations in mind the commission recommends the following:

1. The Pennsylvania Supreme Court should promulgate a Rule of Juvenile Court Procedure to include a form entitled "Notice of Right to Seek Appeal and Other Post-Dispositional Relief," similar to Wisconsin's Form JD- 1757, "Notice of Right to Seek Post-Judgment Relief." The form should refer children to the statewide appellate office. There should be a requirement that every child adjudicated delinquent in the juvenile courts of the Commonwealth be given a copy of the form.

2. The Pennsylvania Supreme Court working in conjunction with the Juvenile Court Judges' Commission should develop internet-based resources that will be referenced on the form explaining how the post-dispositional process works and providing the names of individuals and organizations that can assist children and their parents.

Q. Recommendation Regarding Appellate Review

1. Timely Appellate Review

Appellate review by the Superior Court of Pennsylvania is essential to the proper functioning of the juvenile

justice system because it provides an aggrieved party an opportunity to seek review of the juvenile court judge's decision, and provides a mechanism to correct legal and procedural errors that may have been made by the judge. To be meaningful, however, appellate review must be completed before the child's placement, or other disposition, has been completed.

Because many dispositions are completed in 120 days or less, the Interbranch Commission on Juvenile Justice recommends that an appellate process be developed which assures that any appeal will be finalized, and a decision rendered by the Superior Court, in 90 days or less from the date the appeal is filed.

The commission understands the implementation of this recommendation will present a serious challenge for the Superior Court given the court's already significant workload and the complexity of the appeals process as defined in the Rules of Appellate Procedure.

The commission, therefore, further recommends that the Supreme Court's Appellate Court Procedural Rules Committee and Juvenile Court Procedural Rules Committee collaborate to develop an expedited appeals process or, in the alternative, collaborate to develop a process that affords an aggrieved party an option to elect a mechanism that affords some measure of review of a juvenile court judge's decision short of a formal appellate review in the following proceedings: transfer of a case to a criminal proceeding or the denial of a request to do so; transfer of a case from criminal proceedings or a denial of a request to do so, or an order of disposition following an adjudication of delinquency that removes a child from his or her home.

2. Meaningful Appellate Review

The Pennsylvania Constitution gives juveniles the right to appeal and the Rules of Juvenile Court Procedure require that at the dispositional hearing the judge state on the record that the juvenile has been informed of the right to file a post-dispositional motion, the right to appeal, the right to counsel on appeal and the time available to file the appeal. (Pa. Const. Art. 5. Section 9. In re Thomas, 625 A.2d 150, 153 (Pa. 1990); Pa. R.J.C.P. 512(C))

Pennsylvania's Juvenile Act guarantees juveniles a right to counsel at all stages of the proceedings. 42 Pa. C.S. § 6337. At the appellate level, the promise of counsel could be achieved by developing an office for attorneys who are specially trained and adequately compensated to undertake this critical responsibility. Illinois, Indiana and Wisconsin have developed statewide appellate offices for juveniles that could serve as models.

The commission has recommended training of juvenile defense attorneys. A training division could be set up within an appellate office so that appellate attorneys could provide guidance to the indigent juvenile defense bar relative to the filing of appeals in juvenile matters.

The training of attorneys through statewide and regional sessions could be undertaken throughout the year in a coordinated fashion, ensuring that an appropriate range of subjects related to substantive, procedural and ethical issues would be available to meet the requirements set forth by the Supreme Court.

It is recommended that courses be interesting, informative and of high quality, drawing on the best practices in the field and on local, state and national experts in the areas of juvenile defense, prosecution and judicial practices. The courses could also address practices related to juvenile probation and providers.

An appellate office could work in conjunction with the Juvenile Defenders Association of Pennsylvania, the Public Defenders Association of Pennsylvania, the Pennsylvania Association of Criminal Defense Lawyers and other interested parties to develop the training programs.

Accordingly, the commission recommends that the General Assembly consider the creation of a statewide juvenile appellate office. The office would represent children throughout the Commonwealth when necessary and provide training for juvenile defense attorneys on issues related to appellate practice and new developments in the law.

R. Recommendations Regarding Nunc Pro Tunc Relief

The Pennsylvania juvenile justice system, unlike the adult system, has no procedure to correct errors that may have occurred in juvenile court proceedings except by way of direct appeal. If the time limit for filing a direct appeal has expired, then the juvenile has no formal opportunity to seek relief.

In the adult system, the use of the Post Conviction Relief Act permits those who have been convicted of crime, and for whom the time for filing a direct appeal has expired, to bring their cases to the attention of the court under certain limited circumstances.

Whether a similar formal statutory mechanism should be developed in Pennsylvania is beyond the scope of this report. However, the Interbranch Commission on Juvenile Justice notes the difficulty faced by those wrongly adjudicated in Luzerne County in obtaining review of their cases once the alleged criminal scheme in the juvenile court came to light. For many, the time limit for filing a direct appeal had long since expired and their only avenue of relief was to file a King's Bench Petition with the Supreme Court.

The commission therefore recommends:

1. That consideration be given to creating a mechanism which will afford a juvenile adjudicated delinquent an avenue to present a petition for relief from a wrongful adjudication even though the period for direct appeal has expired.

2. That until a formal mechanism is developed for presenting a petition for relief after the period for direct appeal has expired, the Superior Court and Supreme Court should liberally allow the filing of appeals from juvenile adjudications nunc pro tunc (now for then).

S. Recommendations Regarding County Commissioners

From the testimony presented at the hearings of the Interbranch Commission on Juvenile Justice, it was apparent there had been confusion and misunderstanding in Luzerne County about the respective powers and responsibilities of the county commissioners and the Court of Common Pleas.

In Pennsylvania, county commissioners have well-defined authority over specified operational aspects of county government. Under the Pennsylvania Constitution, the Court of Common Pleas is a separate and co-equal branch of government. As a branch of government separate from the commissioners, the judiciary has its own independent set of constitutional and statutory responsibilities. Admittedly, this complicated system of county governance - of checks and balances - creates tensions and presents difficult issues when there are attempts to precisely draw the boundaries between each branch's prerogatives and responsibilities to check and balance the other.

Based on the testimony, however, the commission has concluded that the Luzerne County Commissioners, during the period from 2002 to 2008, abdicated certain responsibilities by failing to exercise appropriate oversight regarding budget issues, managing the county-owned juvenile detention facility, and supervising county staff. The commission also concludes that the president judges during that period failed to promote or preserve the comity which should be expected between co-equal branches of government.

The commission's hearings, of course, have focused on issues that arose out of the relationship between the Board of Commissioners and the Court of Common Pleas in Luzerne County. The commission members are aware that similar issues may exist in other counties in Pennsylvania. The commission concludes that positive steps can be taken both in Luzerne County and elsewhere to minimize the opportunity for misunderstanding and conflict between commissioners and courts of common pleas.

Therefore, the commission recommends:

1. That county commissioners be encouraged to complete the Academy for Excellence in County Government offered by the County Commissioners Association of Pennsylvania.

2. That the Pennsylvania Association of Court Management collaborate with the County Commissioners Association of Pennsylvania to convene educational meetings and seminars to encourage conversation and mutual understanding among county commissioners and president judges and court administrators of the courts of common pleas regarding their respective duties and statutory obligations.

T. Recommendations Regarding the Department of Education

The manner in which school officials in Luzerne County handled offenses, especially minor infactions, during school hours or on school property, came under scrutiny as part of the wide-ranging probe of the Interbranch Commission on Juvenile Justice. Several witnesses who appeared before the commission spoke of how school officials praised then Judge Ciavarella for his "get tough" policy that resulted in significantly higher placement rates. Two of those witnesses, senior Berks County Judge Arthur Grim, who was appointed by the State Supreme Court to review Ciavarella's cases and Basil Russin, Luzerne County's Chief Public Defender, questioned whether school districts had done enough to resolve cases outside of court. Judge Grim said he felt school officials supported Ciavarella's policy without giving thought to "what it really meant" for juveniles - many of whom ended up in out-of-home placement for minor offenses based on Ciavarella's zero-tolerance for offenses committed at school. "They would immediately pick up the phone and call police because they knew . . . if they got in front of a get tough Judge, the troublemaker would be out of their hair," Judge Grim informed the commission. Russin added that "instead of handling it as an interdisciplinary matter, such as in-school suspension, they'd call police and it would go to Juvenile Court." Notably, Russin also commented that he believed many of the schools have since changed their philosophies, and he believed that the number of referrals from schools has decreased.

The Commonwealth's Secretary of Education said that Pennsylvania has three broad goals for education: (a) high student performance; (b) high quality teaching and administration; and (c) a safe, secure and supportive environment for each school and every child.

To achieve these goals, the Department of Education has provided the public schools with information and tool kits that emphasize prevention, mitigation, preparedness, response and recovery. These protocols were made available to ensure that when an incident happens, schools and their campuses can quickly and adequately restore the school climate to optimal learning conditions.

The juvenile justice system serves as an important public safety role. There is a general consensus within Pennsylvania that there are many dedicated juvenile justice professionals who have devoted their lives to helping youth turn around their lives. However, too often, schools use the justice system as the school disciplinarian and juvenile courts are too willing to serve in this role. Although not listed as one of the Department of Education's protocols, schools in Luzerne County too quickly turned to the juvenile justice system as a vehicle to address school climate and learning condition. As a result, too many youths unnecessarily entered the juvenile justice system.

Although the Department of Education developed and, arguably, had available alternative methods of improving students' behavior, programs that are similar to those that have been developed by schools across the country, schools in Luzerne County chose to have their students arrested. The commission agrees with experts in the field of education that, for most students, there are alternatives that are much better and effective in ensuring a safe, secure and supportive environment for each child who attends school in Pennsylvania. Despite their respective stated and/or aspirational goals, the commission believes that both the Pennsylvania Department of Education, specifically the local schools in Luzerne County, as well as local juvenile justice system, specifically the District Attorney's Office and law enforcement, failed to comport with their duties and obligations in achieving an educationally stimulating but safe environment for every child who attended a public school in Pennsylvania. To address the respective organizations' shortcomings and in an effort to ensure the above-mentioned goals are achieved, the commission recommends the following:

The Pennsylvania Department of Education, the Pennsylvania District Attorney's Association, law enforcement, the Juvenile Court Judges' Commission and other key individuals and groups associated with the juvenile justice system in Pennsylvania collaborate to determine what improvements would be necessary to assure the implementation and oversight of the Commonwealth of Pennsylvania's goal of providing a safe, secure and supportive environment for each school and every child in Pennsylvania. In particular, the commission emphasizes the following areas for consideration:

1. In Luzerne County, school referrals made under zero-tolerance policies were integral to the overall scheme as they provided an easy removal of children from their homes and schools and a constant stream of children to be placed into detention. The commission believes that zero-tolerance and allowing schools to use the justice system as its school disciplinarian has no place in the educational process or in the juvenile court system. To that end, it is recommended the entities identified above develop and expand programs that would support at-risk students and expand affordable and available diversionary programs, while at the same time reduce unnecessary and inappropriate school referrals;

2. During the course of the testimony, it was clear that the Department of Education and the schools were not thoroughly familiar with how the juvenile justice system operates. Nor did the department seem to understand that juvenile justice and traditional educational programs cannot be viewed as separate "silos". Even when youth are appropriately referred to the juvenile justice system, their connection to traditional schools is never severed. Probationers attend school and youth who are placed often eventually return to their neighborhood schools. Similarly, law enforcement, the District Attorney's Office, and other key groups associated with the juvenile justice system, should be better informed of how schools appropriately deal with discipline issues when they arise on school campuses. Therefore, the commission recommends these groups collaborate to create an educational program necessary to assure that all stakeholders are fully aware of how each of these organizations operate. Additionally, resources must be available to achieve the stated and aspirational goals of both the Department of Education and the juvenile justice system. It is suggested that the Department of Education consider partnering with the Pennsylvania Bar Association to assist in the creation and implementation of these programs, especially since the PBA has a focus on law-related education and has experience developing programs that protect, motivate and educate Pennsylvania's children;

3. It is further recommended that the above-stated groups work together to foster a relationship of cooperation, mutual support and the sharing of information and resources between their various organizations as they work together to maintain physical security and safety of schools in their districts as well as achieving the goals of the Pennsylvania juvenile justice system - holding youth accountable to victims, providing competency development for youth and ensuring community safety;

4. In addition, the commission heard testimony about Luzerne County students who were on probation being drug tested in school and having their juvenile justice status revealed to the rest of the student body. These students were embarrassed and even ostracized by their classmates and teachers. The commission recommends that school districts develop protocols to keep the juvenile justice status of students confidential;

5. Finally, the commission heard testimony from a student who described the educational efforts in the facility where she was sent as wholly ineffective, and performed by unlicensed teachers. This is unacceptable. The commission recommends that the Department of Education cooperate with the Department of Public Welfare to review curricula at all licensed placement facilities to ensure properly accredited teachers are in place, and a complete and beneficial education plan is in effect.

V. Conclusion

The Luzerne County juvenile justice scandal cannot be understood as simply the isolated acts of former judges Conahan and Ciavarella. While this scandal is known as "kids for cash" and news reports and commentaries frequently add that the two have been criminally engaged in sending children to placement in return for $2.8 million in kickbacks, the Interbranch Commission on Juvenile Justice concluded that the breakdown of the juvenile justice system in Luzerne County was more pervasive and insidious.

While Conahan has agreed to plead guilty, the criminality of Ciavarella's actions and of his motives have yet to be proven. Ciavarella's trial in federal court is still pending as this report is filed. However, it is now well-demonstrated that Conahan and Ciavarella created an atmosphere in which children's constitutional rights were routinely trampled from the time Ciavarella became the juvenile court judge in 1996.

Although the Juvenile Law Center brought attention to the problem in the spring of 2008 by filing a King's Bench Petition with the Supreme Court, not until the United States Attorney filed criminal charges in January 2009 alleging that Ciavarella's motivation was criminal did the Luzerne County community and the juvenile justice system statewide take significant notice of Ciavarella's courtroom practices.

His practices have been explained as taking "cash for kids," an allegation yet to be proved, but those practices are far more troubling because at their core is not only the alleged criminality but undisputed incompetence which, coupled with an abuse of power condoned by the community, led essentially to a collapse of the rule of law.

While the federal indictment brought widespread attention to Ciavarella's courtroom practices, his conduct had been ongoing for over a decade. His penchant for confinement arguably created the opportunity for profit, but it is clear that the opportunity for profit did not create the penchant for confinement.

His practices were no secret. They were well-known by the offices of the district attorney and public defender, defense counsel, police, probation officers, and school officials. Many child victims or their parents testified they were well aware of Ciavarella's reputation for "sending kids away" and his abrupt courtroom demeanor. Indeed, Ciavarella himself virtually advertised his approach to hard line juvenile justice in his annual trips to Luzerne County schools where he told students what would happen to them if they came to his court. When children arrived in his courtroom, he frequently reminded them of what he had said during his school visits. In 2004, the **Times Leader**, a Wilkes-Barre newspaper, published a series of articles over two days detailing Ciavarella's views and practices. The following year, he won retention with over 59% of the vote, some ten percentage points more than Supreme Court Justices Russell Nigro and Sandra Newman, who were also up for retention, received in Luzerne County.

Ciavarella's courtroom practices, coupled with the administrative practices he and Conahan implemented as president judges, created an atmosphere in which coercive power trumped law and procedure. Whether because of intimidation, incompetence, inexperience, indifference or corruption, every source of check and balance on this abuse of power failed to one degree or another, some more than others: the Board of Judges, prosecutors and defense attorneys, probation officers, police, school officials, the Judicial Conduct Board, the Disciplinary Board, community leadership, the electoral process, court administration, county government, the procedural protections afforded by statute and rules of court, and appellate review.

All three branches of government have historically shared the constitutional responsibility to assure that our justice system functions properly. The origins of the Luzerne County juvenile justice scandal sprang from a breakdown by all three branches of government, at both the county and state level, in meeting their shared and independent responsibilities.

Looking to the future, however, the commission believes the primary responsibility for the quality of our justice system must logically rest with the Supreme Court of Pennsylvania. Based on the evidence presented in its hearings, the commission does not know whether the breakdown of the Luzerne County juvenile justice system can be traced to a lack of funding or other resources.

Nevertheless, it is clear that before the Supreme Court can fulfill its responsibility, and before it can be held accountable for any failure to meet its responsibility, it must have the appropriate financial resources and staff required to perform the

necessary tasks of adjudication, education, oversight and, where justified, sanction. Assuring that appropriate resources are provided to permit the justice system to function properly is, of course, the responsibility of the General Assembly, the governor, and county government.

As the Supreme Court, the General Assembly and the governor consider how to meet their respective responsibilities to the children of Pennsylvania, the commission believes it is important that they keep in mind, and explain to the public, the unique role that the juvenile court plays in our system of law.

From the testimony the commission heard, it appears the public does not always understand how the juvenile justice system works and has conflicting ideas about what it is expected to accomplish.

Some erroneously believe the system should be punitive in nature and emphasize punishment; others believe the system should be protective and emphasize education and socialization. Understandably, these potentially conflicting approaches can lead the public, lawmakers, judges, and attorneys to a muddled conclusion about what exactly the juvenile system does and should do.

On the one hand, society expects juvenile courts to be places where children learn the consequences of engaging in unlawful conduct and to be places where punishment is a reality. As a result, an adjudication of delinquency can carry the possibility of very significant and lifelong effects, including out-of-home placement, disqualification from military service, Megan's Law registration, and enhanced sentencing for adult crimes. Given these possible consequences, children must be afforded constitutionally required due process protections with all the formality and associated procedural rigidity they entail.

On the other hand, society thinks of juvenile courts as "problem-solving courts." As problem-solving courts, they should have the flexibility and creativity needed to address the unique problems of childhood behavior and to be places of shelter and protection.

Compounding the misunderstanding that arises from these potentially conflicting approaches is the fact that there exists an inaccurate perception about the children who come into the juvenile courts. While news accounts often evoke images of "juvenile predators" or "gang leaders," in fact such cases are a relative rarity. The reality is that in our juvenile justice system it is only a very small percentage of cases – and frequently the ones which garner large headlines – that constitute serious criminal offenses.

Instead our juvenile courts routinely deal with a less serious range of conduct – cases arising exactly out of the kinds of behaviors one might expect of children not yet mature in body or mind. More often, the juvenile court is dealing with children who frequently are troubled by mental illness, or who are themselves being abused or neglected, or who are simply immature. These are the children who will benefit from the supervision of the juvenile court and who are unlikely to return to court, as either juveniles or adults.

Nevertheless, those competing, sometimes conflicting, visions create significant systemic tensions and demand unique skills from all who participate in the system. It takes a special understanding by judges, prosecutors and defense attorneys to handle these cases. It is an understanding that is borne of education, experience and professional commitment to this important, and undervalued, work.

While the commission has heard speculation that what occurred in Luzerne County could occur elsewhere in Pennsylvania, the investigation uncovered no evidence of pervasive or systemic breakdown in the juvenile justice system anywhere else on the scale that occurred in Luzerne County. Therefore, the commission does not perceive a need for a pervasive or systemic overhaul of the juvenile justice system as it is currently established. It is a system that is fundamentally sound and, except for those recommendations in this report, more rules, procedural processes or statutory requirements will simply add administrative burdens and operational costs that will not materially benefit children, deter judicial abuse, or protect our communities.

Clearly, a juvenile justice system in a state as diverse as Pennsylvania and that addresses the conduct of children from age 10 and continuing to, in some cases, 21, must provide a wide range of options if we are to address the three prongs of

balanced and restorative justice – accountability, competency development of children, and community protection. The strength and effectiveness of that system must depend on properly educated judges, prosecutors, defense attorneys, victim services representatives, and probation officers who are afforded the maximum flexibility possible to address the constellation of problems that bring children before our juvenile courts.

There is, after all, no more basic and fundamental principle of civil society than an acknowledgment of the mutual obligation that all citizens share a solemn responsibility for the safety, well-being and welfare of all other citizens. That is all the more true when those citizens are children, the most vulnerable of all our citizens.

The collapse of the juvenile justice system in Luzerne County carries with it sad lessons. Most important, the experience demonstrates what happens when judicial power is divorced from the constraints of law, when slogans such as "zero-tolerance" masquerade as thoughtful philosophy, and when judicial courage and compassion are replaced with a self-serving cunning.

Preservation of democracy depends on the preservation of the rule of law, and if we cannot have confidence in the fairness and honesty of those who make, apply and enforce our laws, then democracy itself is at risk.

As a commission, we recognize that whether what happened in the Luzerne County juvenile justice system was the result of malignant criminality or benign incompetence is not a question for us to answer. And it makes no difference, after all, to the children who were unlawfully adjudicated and their parents, or to the original victims of crime who have been denied their day in court. Either way the harm has been done. The commission's responsibility has been to develop recommendations to guard against it happening again.

We understand that our recommendations offer little protection against determined greed, avarice and criminality. But based on the testimony presented at our hearings, we also understand that many otherwise good and responsible people simply lost their way and chose accommodation over principle, and passivity over vigilance. To the extent that the commission's work will lead others to reaffirm their commitment to the cause of justice, and to encourage others to take action necessary to improve and reform our legal system, then as a Commonwealth we will have redeemed ourselves in some small way for the myriad failings that undermined the rule of law.

VI. Commission Biographies

Judge John M. Cleland is Chairman of the Interbranch Commission on Juvenile Justice. He served as President Judge of McKean County from 1984 until his appointment to the Superior Court in 2008. He currently serves as a Senior Judge on that court.

Tod C. Allen was a police officer from 1975-2000, spending 15 of the years with Penn State Erie as a Police Services Officer. In 2000, Tod took over the Director of Court Advocacy position at the Crime Victim Center, a position he holds today. Tod is a current Board member of the Coalition of Pennsylvania Crime Victim Organizations (COPCVO). He has both a Bachelor of Arts and a Master of Science degree from Mercyhurst College. Tod has been married to his wife Barbara since 1974 and has three adult children, Emily, Molly and Tod as well as two grandchildren, Nora and Michael.

Valerie Bender, a victim advocate and balanced and restorative justice specialist, with over 21 years experience in direct services, program development and group facilitation. Ms. Bender is a gubernatorial appointee to the Juvenile Justice and Delinquency Prevention Committee as well as the Victim Services Advisory Committee. Ms. Bender chairs the Pennsylvania Joint Policy Subcommittee and the Pennsylvania Female Services Subcommittee. Among other publications, Ms. Bender co-authored the White Paper, *Advancing Accountability: Moving Toward Victim Restoration*; and the curriculum, *Victim/Community Awareness: An Orientation for Juveniles and Best Practice Guidelines for Victim Inclusion in Community Justice Panels*. A graduate of LaRoche College, Ms. Bender is currently a consultant on victim and juvenile justice issues.

District Judge James A. Gibbons is a 1982 graduate of the Seton Hall University School of Law. He served as a law clerk to Judge Richard P. Conaboy of the U.S. District Court for the Middle District of Pennsylvania from 1982-1984 and as an Assistant United States Attorney for the Middle District of Pennsylvania from 1987-1993. He was elected Magisterial District Judge in Lackawanna County in 2005. He was appointed to the Interbranch Commission on Juvenile Justice in 2009. Judge Gibbons resides in Newton Township, Lackawanna County with his wife Kelly and their five children. He is a native of Avoca, Luzerne County.

Kenneth J. Horoho, Jr., Esquire, is a partner with the Pittsburgh law firm of Gentile, Horoho & Avalli, P.C. He was president of the Pennsylvania Bar Association in 2006-2007 and has been a member of the PBA House of Delegates for the past 20 years. He served six years on the Executive Counsel of the PBA's Family Law Section, served as Vice Chair of its Childrens' Rights Committee and was PBA Governor to Allegheny County. Mr. Horoho is a graduate of Saint Francis University and Duquesne University School of Law and is an adjunct professor at the University of Pittsburgh School of Law. In 2006, he was named to the 25th Anniversary Edition of *The Best Lawyers in America*.

Jason A. Legg, Esquire is in his 8th year working as a prosecutor for Susquehanna County. He has personally been involved in approximately 3,000 adult criminal cases, and hundreds of juvenile cases. Mr. Legg has also successfully litigated numerous proceedings to certify pedophiles as sexually violent predators under Megan's Law, a classification that requires a lifetime of registration with the state. Finally, Mr. Legg handles the bulk of the appellate work and federal habeas corpus proceedings for the District Attorney's Office. In connection with the creation of this local law enforcement task force, Mr. Legg also created, with the cooperation and support of the County Commissioners, a DUI Task Force dedicated to finding and arresting drunk drivers. By early 2007, Susquehanna County added 10 part-time county detectives to its roster, and these officers will serve as members of the Susquehanna County Law Enforcement Task Force. Mr. Legg was able to accomplish these goals without the use of county tax dollars by utilizing state grant monies, along with a major contribution from the Susquehanna County Drug & Alcohol Commission, as well as monies paid by criminal defendants for costs and fees.

Robert L. Listenbee, Jr., Esquire, has been a trial lawyer at the Defender Association of Philadelphia since 1986, and Chief of the Juvenile Unit since 1997. He serves on the Governor's Advisory Committee on Juvenile Justice, the DMC Subcommittee and as the President of the Juvenile Defenders Association of Pennsylvania. He also serves on the Advisory Board of the National Juvenile Defender Center and he is actively involved in the MacArthur Foundation's Models for Change Initiative in Pennsylvania. Mr. Listenbee received his B.A. from Harvard University and his J.D. from the Boalt Hall School of Law at the University of California, Berkeley.

George Mosee, Esquire, has been the Deputy District Attorney in charge of the Juvenile Division of the Philadelphia District Attorney's Office since October 2002. Deputy Mosee joined the Office in 1988 and has served in various capacities including Special Assistant United States Attorney, Asset Forfeiture Chief and Dangerous Drug Offender Unit Chief. From 1995 to 2002, Mosee was the Deputy District Attorney in charge of the Narcotics Division. Mr. Mosee serves on many boards and committees including the Pennsylvania Juvenile Prosecutors Network as Chair and the Supreme Court of Pennsylvania's Juvenile Court Procedural Rules Committee as Vice-Chair.

Judge John C. Uhler, elected Judge York County, November1989; served as a Juvenile Court Judge for 20+ years, and elected President Judge York County (November 1995- January 2001). He served as Chairman of the President Judges, President of the Juvenile Court Section, was a member of the Judicial Ethics Committee for the State Conference of Trial Judges, and was a consultant for the Juvenile Bench Book. He initiated the Commonwealth's first Juvenile Mental Health Court, and leads York County's Truancy Response Initiative. Uhler was also a senior law clerk in the Federal Court, Assistant U.S. Attorney, and the elected District Attorney of York County from 1978-1982.

Ronald P. Williams is an energetic and goal focused individual experienced in working in fast-paced environments, demanding strong organizational, technical and interpersonal skills. Recognized for excellent problem solving skills and responding to the needs of others. Recognized for working with emergency services during crisis situations and children with special needs. Also recognized by Northern Tier Regional Planning and Development for work with Business and Industry. Mr. Williams exhibits excellent problem solving and analytical skills. Learns and applies new skills quickly and takes advantage of tools and resources that are available. Demonstrates team leadership, promotes positive management style and has keen understanding the government exists for all the people. In May 2007, completed IS-00275, Rule of the emergency Operations Center in Community Preparedness, Response and Recovery. In October of the same year, completed DHS/PDA MGT-332 Agriculture and Food Vulnerability issued by FEMA and the University of Tennessee.

Judge Dwayne Woodruff obtained his Juris Doctor from Duquesne University, subsequently becoming a founding member of the law firm Woodruff, Flaherty & Fardo, LLC out of Shadyside. Woodruff was elected in 2005 to be a Judge in the Court of Common Pleas in Allegheny County, Pennsylvania. Judge Woodruff is a former professional American football player who played cornerback for twelve seasons for the Pittsburgh Steelers. As a rookie, he won a Super Bowl ring with the Steelers in Super Bowl XIV.

Commission Counsel

Darren M. Breslin, Esquire has served in various capacities at the Administrative Office of Pennsylvania Courts since 1995. From 1999 until 2003, he served as a staff attorney in the litigation department. In 2001, he served as staff counsel to the Intergovernmental Task Force to Study the District Justice System. Currently he serves as the AOPC Special Projects Advisor and as counsel to the Pennsylvania Commission on Judicial Independence. Darren has been a lecturer in the areas of judicial independence, public health law and emergency preparedness. Since August 2009, Darren has served as counsel to the Interbranch Commission on Juvenile Justice.

VII. Glossary

Act 32 of 2009 - Interbranch Commission on Juvenile Justice Act of 2009. 2009, Aug. 7, P.L. 143, No. 32. Codified at 71 P.S. §§ 1190.35a - e.

Administrative Office of Pennsylvania Courts (AOPC) - The office of the Court Administrator of Pennsylvania who, under the direction of the Supreme Court of Pennsylvania, is responsible for "the prompt and proper disposition of the business of all courts." Pa.Const. Art. V, § 10(b), 42 Pa.C.S. §§ 1901-1906, Pennsylvania Rules of Judicial Administration (Pa. R.J.A.) 501-509.

Code of Judicial Conduct (CJC) - Ethical rules, or "Canons," adopted by the Supreme Court of Pennsylvania establishing the "high standards of conduct so that the integrity and independence of the judiciary may be preserved." 207 Pa. Code § 33.

Crime Victims Act - Statutory provisions intended to ensure that victims of crimes are treated with dignity, respect, courtesy and sensitivity. 18 P.S. §§ 11.101 - 11.5102.

Disciplinary Board - Board appointed by the Supreme Court of Pennsylvania responsible for investigating and prosecuting alleged misconduct by attorneys and for making recommendations to the court regarding disciplinary matters. Disciplinary Board Rules § 93.21 - 93.23.

Juvenile Act - Statutory provisions governing juvenile matters. 42 Pa.C.S. §§ 6301 - 6375.

J**uvenile Court Judges' Commission (JCJC)** - Commission consisting of nine Pennsylvania judges serving in the juvenile courts charged with, among other things, advising juvenile court judges, examining administrative methods and judicial procedures used in juvenile courts, and collecting and publishing statistical reports and other data "as may be needed to accomplish reasonable and efficient administration of the juvenile courts system." 42 Pa.C.S. §§ 6371 - 6375.

Juvenile Defenders Association of Pennsylvania (JDAP) - Organization of attorneys who provide information and training on juvenile defense, supported by the Pennsylvania Commission on Crime and Delinquency. For more information on JDAP, see http://www.pajuvdefenders.org/.

Juvenile Detention Alternatives Initiative (JDAI) - Designed to support the Casey Foundation's vision that all youth involved in the juvenile justice system have opportunities to develop into healthy, productive adults. For more information on JDAI, see http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative.aspx.
Juvenile Law Center (JLC) - A Philadelphia based public interest law firm. JLC promotes juvenile justice and child welfare reform in Pennsylvania and nationwide through policy initiatives and public education forums. For more information on JLC, see www.jlc.org.

King's Bench / Power of Extraordinary Jurisdiction - For the statutory basis of the "extraordinary jurisdiction" of the Supreme Court of Pennsylvania see 42 Pa.C.S. § 726. For an explanation of the court's "king's bench powers," see In re Avellino, 547 Pa. 385, 690 A.2d 1138 (1997).

Office of Disciplinary Counsel - Office that investigates and prosecutes matters of attorney misconduct under the Pennsylvania Disciplinary Board. Disciplinary Board Rules §§ 93.61 - 93.63.

Office of the Victim Advocate - Office established with the Pennsylvania Board of Probation and Parole to represent the interests of crime victims before the board or the Department of Corrections. 18 P.S. § 11.301.

Pennsylvania Commission on Crime and Delinquency (PCCD) - 71 P.S. §§ 1190.21 - 1190.33. Commission seeks to enhance the quality of criminal and juvenile justice systems, facilitate the delivery of services to victims of crime and assist communities to develop and implement strategies to reduce crime and victimization. For more information on PCCD, see http://www.portal.state.pa.us/portal/server.pt/community/pccd_home/5226.

Pennsylvania District Attorneys Association (PDAA) - Organization formed in 1912 for the purpose of providing uniformity and efficiency in the discharge of duties and functions of Pennsylvania's 67 district attorneys and their assistants. For more information on PDAA, see http://www.pdaa.org/.

Pennsylvania Judicial Conduct Board (JCB) - An independent board within the judicial branch responsible for receiving, investigating, and, where warranted, prosecuting complaints alleging judicial misconduct. Established pursuant to Pa. Const. Art. V, § 18. See also 42 Pa.C.S. §§ 2101-2106.

Pennsylvania Rules of Juvenile Court Procedure (Pa.R.J.C.P.) - Rules of court governing delinquency and dependency proceedings.

Rules of Professional Conduct - Ethical rules adopted by the Supreme Court of Pennsylvania governing attorney conduct.

Victims of Juvenile Offender Program (VOJO) - Program providing for rights and services to victims in the juvenile justice system, through the VOJO state general appropriation.

Reports and other submissions made to the Interbranch Commission on Juvenile Justice may be accessed through the commission's Web site at http://www.aopc.org/Links/Public/InterbranchCommissionJuvenileJustice.htm.

State constitutional provisions and statutes (such as The Juvenile Act, 42 Pa.C.S. § 6301) identified in this report may be accessed through the Pennsylvania General Assembly's Web site at http://www.legis.state.pa.us/.

State court rules identified in this report may be accessed through the Pennsylvania Code online at http://www.pacode.com/secure/browse.asp.

Many state court cases identified in this report may be found through the Unified Judicial System Web site at http://www.pacourts.us/Opinions/Default.htm.

United States Supreme Court opinions cited in this report may be found at http://www.law.cornell.edu/supct/.