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INTERBRANCH COMMISSION ON JUVENILE JUSTICE  
PUBLIC HEARING

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

DATE: APRIL 12, 2010, 10:10 A.M.

PLACE: PENNSYLVANIA JUDICIAL CENTER  
600 COMMONWEALTH AVENUE  
HARRISBURG, PENNSYLVANIA

APPEARANCES:

BY: DARREN BRESLIN, ESQUIRE  
FOR - COMMISSION

DONNA E. GLADWIN, REPORTER  
NOTARY PUBLIC

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1           CHAIRMAN CLELAND: Good morning. I am John Cleland,  
2 Senior Judge of the Superior Court of Pennsylvania and chair  
3 of the Interbranch Commission on Juvenile Justice.

4           Today we are concluding our series of public  
5 hearings into the Luzerne County juvenile justice scandal.  
6 We began those hearings in this room last October 13th. And  
7 since the organization of our Commission last August we have  
8 held 17 days of public hearings and private work sessions.

9           We will have heard from over 70 witnesses, received  
10 other witness testimony, conducted twice a week conference  
11 calls, and exchanged countless e-mails and letters. We are  
12 very appreciative of the time, the energy, and thoughtfulness  
13 of those witnesses who have appeared before us and who have  
14 offered the lessons they have learned from their personal  
15 experience, their professional expertise, and their opinions  
16 formed after long years in the juvenile justice system.

17           While this concludes our public hearings today, we  
18 will be busy during the next approximately 60 days finalizing  
19 our report and preparing for the adoption of our  
20 recommendations and the distribution of our report for  
21 tentatively scheduled now for the last week in May.

22           Today we plan to conclude our examination of the  
23 workings of the Judicial Conduct Board. Our witnesses will  
24 be Mr. Patrick Judge, a judge of the Court of Judicial  
25 Discipline, and a former chair of the Judicial Conduct Board;



1 Mr. Joseph Massa, Chief Counsel to the Judicial Conduct  
2 Board; Mr. Samuel Stretton, a Pennsylvania attorney with  
3 experience in matters of judicial and attorney ethics who has  
4 represented various parties in Luzerne County; and Mr.  
5 Francis Puskas, Deputy Counsel to the Judicial Conduct Board.

6 I'm joined at this table this morning by Tod C.  
7 Allen, Director of Court Advocacy of the crime unit -- the  
8 Crime Victim Center rather -- in Erie County; Valerie Bender,  
9 formerly a senior research associate at the National Center  
10 for Juvenile Justice, and now a advocate for victim's issues;  
11 Kenneth Horoho, a Pittsburgh attorney and former president of  
12 the Pennsylvania Bar Association; Magisterial District Judge  
13 James A. Gibbons from Lackawanna County; Jason Legg, District  
14 Attorney of Susquehanna County; Robert Listenbee, Chief of  
15 the Juvenile Unit of the Defender's Association of  
16 Philadelphia; George Mosee, Chief of the Juvenile Division  
17 and Deputy District Attorney of the City of Philadelphia;  
18 Judge John Uhler, a judge -- senior judge of the Court of  
19 Common Pleas of York County and former President Judge of  
20 that court; Ronald P. Williams, regional director of the  
21 Pennsylvania Department of Agriculture; Judge Dwayne D.  
22 Woodruff, a Juvenile court judge from Allegheny County; and  
23 Darren Breslin, Commission counsel.

24 We're going to begin the testimony this morning with  
25 Mr. Judge. We may interrupt that testimony to accommodate





1 the schedule of the Court of Judicial Discipline, which is  
2 holding a trial this morning. And we will hear, when he is  
3 available, from Joseph Massa and then continue Mr. Judge's  
4 testimony if we haven't concluded it by that time.

5 Mr. Judge, if you'd please stand to take the oath.

6

7 PATRICK JUDGE, SR., called as a witness, being duly  
8 sworn, testified as follows:

9

10 CHAIRMAN CLELAND: Please be seated. Mr. Judge, the  
11 examination this morning will be begun by Mr. Gibbons. Mr.  
12 Gibbons -- Judge Gibbons, go ahead.

13 BY JUDGE GIBBONS:

14 Q Thank you, Mr. Chairman. Good morning. There's no  
15 way I can avoid sounding redundant by using -- when I use  
16 Your Honor as a judge and Judge. So Judge Judge, good  
17 morning, and thank you for your time in appearing here.

18 Most of my questions are going to be focused with  
19 your years of service on the Judicial Conduct Board. I may  
20 ask you a couple of general questions regarding your current  
21 service on the Court of Judicial Discipline and how that  
22 relates to your former services.

23 Can you state your full name for the record, please?

24 A Patrick Judge.

25 Q And are you engaged in an occupation currently, sir?



1           A     Yes.  I'm the Executive Vice President for Keystone  
2     Automotive Operations.

3           Q     And where is that located?

4           A     Exeter, Pennsylvania.

5           Q     Okay.  Thank you.  Can you give us your dates of  
6     service on the Judicial Conduct Board?

7           A     August of '03 through August of '07.

8           Q     Okay.  And your dates of service on the Court of  
9     Judicial Discipline?

10          A     August, '07 and to the present.

11          Q     And during the time that you served on the Judicial  
12     Conduct Board did you hold any offices?

13          A     The second year I was on the Board I was selected  
14     secretary.  The third year I was elected vice chairman, and  
15     the fourth year I was elected chairman.

16          Q     And in your capacity as secretary what were your  
17     duties and responsibilities?

18          A     Just the approve the minutes and review them.

19          Q     Did you actually physically take minutes yourself?

20          A     No, I did not.

21          Q     Okay.

22                   CHAIRMAN CLELAND:  Judge Gibbons, note that Mr.  
23     Massa has arrived.

24                   MR. MASSA:  Good morning, Your Honor.

25                   CHAIRMAN CLELAND:  And maybe even before you get



1 into your examination it will be just best to take them out  
2 of order, and then we won't have to interrupt the flow of the  
3 examination once it begins.

4 MR. GIBBONS: You're a man of your word.

5 CHAIRMAN CLELAND: We already discussed that we  
6 would do this, and I think I have your agreement. So thank  
7 you, very much. So I'll call Mr. Massa and present his  
8 testimony.

9 MS. MASSA: Good morning.

10 CHAIRMAN CLELAND: Good morning, Mr. Massa. You can  
11 be seated. We will assume that you are still under oath and  
12 won't proceed with that formality again.

13 THE WITNESS: Thank you.

14 CHAIRMAN CLELAND: So thank you for being here and  
15 accommodating the -- and we appreciate the accommodation of  
16 the Court of Judicial Discipline to release you to come down  
17 here.

18 THE WITNESS: And I appreciate the Commission's  
19 accommodation as well. It's tough to be in two places at one  
20 time.

21 CHAIRMAN CLELAND: Mr. Legg, go ahead.

22 BY MR. LEGG:

23 Q Thank you. Mr. Massa, I'm going to try to be brief,  
24 and just as this is our last hearing, try to iron out the  
25 time table as well as determine if we can get straight on the



1 record exactly how this matter proceeded.

2 A Thank you.

3 Q Not only with reference to the 2006 complaint, but  
4 how the JCB handled it. Now, your deputy chief counsel, Mr.  
5 Puskas, testified regarding the manner in which complaints  
6 are handled and how the investigation process occurs.

7 And he provided some indication that was a little  
8 different in terms of what -- how the rules read and how the  
9 practice operates of the JCB.

10 And he essentially said that when we talk about a  
11 preliminary investigation, that would be the complete  
12 investigation up to the point when the judge is given notice  
13 of charges. Would you agree with that?

14 A I would. The complete factual investigation.

15 Q So is it fair to say that the JCB would have  
16 essentially completed their investigation prior to the notice  
17 of charges and allowing the judge to supplement that?

18 A The notice of full investigation.

19 Q Okay. So the JCB would be done, at least as far as  
20 it knows, with its investigation, the Board would then  
21 approve notice to the judge for what's called a full  
22 investigation, and at that point the judge is given the  
23 opportunity to provide information?

24 A Correct. A response. And, thereafter, there could  
25 be additional investigation.





1 Q Okay. Based upon whatever the judge provided?

2 A Correct.

3 Q Or whatever led from what the judge provided?

4 A That's right.

5 Q In the Lokuta brief there was an indication that in  
6 prior testimony both by Mr. Puskas and yourself that there  
7 was a minor error in that brief. And in previous proceedings  
8 you didn't feel that you were at liberty to correct that  
9 based upon confidentiality rules.

10 At this point in time, given the amount of  
11 information that's been provided to the Commission, as well  
12 as some of the answers that the JCB has given publicly, can  
13 you correct the record at this point?

14 A There were incorrections -- incorrect information on  
15 page 19 of the brief. I believe it's page 19. There was one  
16 confidential complaint that was 2006, 9/28/06. There was a  
17 complaint in 2004. There was grand jury testimony. And I  
18 don't know what else you want me to address, sir.

19 Q Well, both you and Mr. Puskas indicate there was an  
20 error. And I guess I'm looking for what it is that we can  
21 correct at this point in time, or are you still not at  
22 liberty to correct that error?

23 A No, I will be very happy to address it. Mr.  
24 Puskas's testimony, I believe, in February, his testimony was  
25 accurate.



1 Q Well, when I asked him if he'd like to correct the  
2 error, he said that he could not or his counsel objected. At  
3 this point are you prepared to correct the error?

4 A I would be happy to address it.

5 Q Okay. Well, I guess I'd be shooting in the dark  
6 because I'm not sure what the error was that you all would  
7 have been referring to because it's your brief. But let me  
8 suggest this.

9 A Sure.

10 Q The Lokuta brief indicates that there was a  
11 preliminary investigation done as to the first anonymous  
12 complaint. That would be the 2004 complaint. Was that an  
13 error when that was made in that particular brief?

14 A The 2004 complaint?

15 Q Yes.

16 A That's correct. That's accurate.

17 Q There was a preliminary investigation done?

18 A Well, again, I'm not parsing words, Mr. Legg. In my  
19 opinion, the way I use that term, a preliminary investigation  
20 ordinarily is a factual investigation. It can also, in my  
21 opinion, include legal research.

22 Q Okay. Because we had an exhibit marked some time  
23 ago which would have been a flow chart for the JCB. I don't  
24 know if you recall that. I think we took it out of --  
25 actually out of the handbook that the JCB does every year.



1 And in that --

2 A In which I provided.

3 Q Right.

4 A Yes.

5 Q Do you remember this flow chart?

6 A I do.

7 Q And it indicates that a complaint is followed by  
8 review by chief counsel, and then after that there's an  
9 indication of preliminary investigation?

10 A Correct.

11 Q And I started off the questioning to try to verify  
12 what a preliminary investigation was. Was it the full  
13 investigation by the Board subject to the judge supplementing  
14 it, or was it something -- simply a review of the complaint?  
15 To me those are two different things.

16 A Exactly. It was a review of the complaint. That  
17 2004 complaint the judge was not notified. It was not  
18 presented with a notice of full investigation.

19 Q Would it be fair to say -- and based upon your  
20 answers, at least there's an indication in your written  
21 answers, that no preliminary investigation was conducted as  
22 to the 2004 complaint?

23 A Correct.

24 Q Okay. And in the Lokuta brief there's an indication  
25 that a preliminary investigation was conducted. So would



1 that have been an error?

2 A It was an error.

3 Q Now, there's also an indication in the Lokuta brief  
4 that a preliminary investigation was conducted as to the 2006  
5 anonymous complaint. Would that have been an error as well?

6 A That could be -- I won't dispute that that was an  
7 error as -- referring to an investigation as a factual  
8 investigation. Yes, sir.

9 Q Well --

10 A Yes, it was an error.

11 Q Okay. And I don't know if you had a chance to  
12 review, I have it in my hands, an April 5th, 2010 statement  
13 from the Judicial Conduct Board. Have you seen that?

14 A I have. I -- I had intended to bring that with me,  
15 but my mind is in two places at one time. But yes, I have  
16 reviewed it.

17 Q Okay. And you agree with it?

18 A I don't dispute it, sir.

19 Q Okay. This is the Conduct Board's statement, not  
20 your personal statement?

21 A That's correct.

22 Q But there's nothing in that statement that you  
23 dispute?

24 A I don't dispute anything in that statement.

25 Q And that statement also indicates that there was no





1 investigation done as to the 2006?

2 A As we've addressed.

3 Q Now, what I'm curious about is that if the practice  
4 is to conduct an investigation, and prior to asking for the  
5 full investigation or notice of charges, why would there have  
6 been a recommendation in May of 2007 to conduct a full  
7 investigation on the anonymous complaint before any  
8 investigation whatsoever had been done?

9 A That was my decision. Again, I -- I believe that  
10 legal research is applicable, can determine whether and when  
11 to present it to the Board. In terms of factual  
12 investigation, as you are focusing on Mr. Legg, I would point  
13 out that at the time -- the time period involved that the  
14 Board had two investigators for 67 counties.

15 And as the Board's statement indicates, a third  
16 investigator was not brought on board until November of 2007.  
17 And it's -- it's unusual, but it's not the common practice to  
18 present a NOFI without factual investigation. But I did  
19 because of the nature of the matter.

20 Q Can you expound upon that? If it's not usual to  
21 provide the notice of charges to the judicial officer prior  
22 to the Conduct Board doing an investigation, what about this  
23 complaint caused you to believe that you should skip that  
24 process and move right to the notice of charges?

25 A Again, the nature of the investigation, the fact



1 that -- I'm sorry. The nature of the allegations and the  
2 fact that we simply did not have the resources to do a  
3 factual investigation at the time.

4 As I've stated, there were -- we had two  
5 investigators, one of whom -- one investigator and one  
6 counsel were on the eve and in the course of preparation for  
7 the Lokuta trial, which from the Board's standpoint exhausted  
8 a good portion of our resources and was a very important  
9 matter.

10 Q Well, how many other complaints during this time  
11 period wouldn't have gotten any attention or any investigator  
12 assigned to it as a result of the lack of resources? Was  
13 this a common practice that was occurring?

14 A No.

15 Q Would the Conahan anonymous complaint in '06 have  
16 been the only complaint that this type of procedure would  
17 have been utilized for?

18 A During the time period it was the only such matter  
19 that was presented to the Board with a request for NOFI.

20 Q Without investigation?

21 A Without it.

22 Q Had there been other complaints in the past where  
23 that procedure had been followed?

24 A I believe there have, but I can't, as I sit here,  
25 provide you with detail. I believe also that Mr. Puskas in



1 his testimony had indicated that while unusual, it has  
2 occurred, I believe.

3 Q Mr. Puskas testified, and I believe you did as well,  
4 that basically the cases are assigned to an attorney?

5 A Correct.

6 Q And the attorney makes the decision as to the  
7 assignment of an investigator?

8 A That's correct.

9 Q Okay. So in September of 2006 when the anonymous  
10 complaint came to the JCB, that would be the seven page  
11 anonymous complaint that we referred throughout these  
12 proceedings?

13 A Right.

14 Q Would it have been assigned to a prosecutor at that  
15 point?

16 A As I indicated, every single complaint, all 600 of  
17 them during the course of a year, are brought across my desk.  
18 I make a preliminary review assessment, and I assign it to  
19 one of three attorneys, myself, Deputy Counsel Puskas, or  
20 Assistant Counsel Reimer.

21 Q All right. And can you tell us a little bit of how  
22 that assignment occurs? Is it based upon a wheel, every --  
23 you know, every attorney gets -- as they come through the  
24 door they get randomly assigned? Or is it based upon your  
25 discretion, or how does that work?



1           A     It's not random.  It's at my discretion.  I try to  
2     take a number of factors into consideration.

3           Q     Such as?

4           A     The case load of each of the attorneys, whether or  
5     not an attorney is engaged at that time in a major matter,  
6     things of that nature.

7           Q     What about the prosecutor's familiarity with a  
8     particular court?  In other words, if the prosecutor had had  
9     other judicial officers disciplined or been involved in  
10    investigations that may involve the same witnesses, things of  
11    that nature?

12          A     That could be a factor, certainly.

13          Q     Did you consider assigning the Conahan matter to Mr.  
14    Puskas because he was involved in the Lokuta investigation?

15          A     No.  I deliberately did not because he was so  
16    involved and engrossed in that matter.

17          Q     So who was assigned the Conahan complaint?

18          A     I assigned myself.  And in retrospect -- in  
19    retrospect with hindsight I would not.  I would not have  
20    assigned it to myself.

21          Q     Why?

22          A     Because in my own case load, because of the  
23    administrative matters that I was engaged in at the time  
24    trying to -- because of the administrative matters and my own  
25    case load.  I was preparing for two cases myself that went to





1 the Court of Judicial Discipline.

2 In short, again, I would have, in retrospect,  
3 assigned it to Mr. Reimer.

4 Q Okay.

5 A I did not.

6 Q Mr. Puskas indicated that he believed that the  
7 assignments were basically divided evenly between the three  
8 prosecutors?

9 A Tried to. I mean, that's not automatic. It's not  
10 every third goes to -- the first goes to one, the second goes  
11 to the second, the third goes to a third. But overall,  
12 that's one of the factors that I consider is the case load,  
13 if you will, of each of the three attorneys.

14 Q Do the attorneys assist each other at any point in  
15 time if they are overloaded? Do they go to each other?

16 A Yes.

17 Q And say, hey, I've got something coming up, can you  
18 look at these ten complaints for me?

19 A Yes.

20 Q Do you think that a -- basically a set wheel of  
21 assignment might be a more appropriate way to assign cases?

22 A I understand what you're suggestion. I would  
23 consider it. But I don't think that that's the most  
24 appropriate, fair way to do it. But it certainly is  
25 something to consider.



1           Q     The investigators, they're assigned based upon the  
2 request of the prosecutor? Is that -- that's how I  
3 understood it from Mr. Puskas.

4           A     Correct.

5           Q     And he indicated, I believe, that approximately if  
6 he has 200 complaints, he would assign an investigator to  
7 maybe 30 of those complaints?

8           A     I think that's accurate. I would believe that at  
9 any given time there are 90 matters assigned to the three  
10 investigators. So that would be correct, about a third each.

11          Q     So each prosecutor at this point in time has  
12 approximately 30 cases, give or take?

13          A     Each prosecutor or each investigator?

14          Q     I'm sorry. Each investigator?

15          A     On the average, yes. One might have 35, another 25.  
16 But on the average 30 a piece, yes.

17          Q     And do you believe that that's adequate in terms of  
18 something they can handle at this point in time?

19          A     May or may not be. No, I don't think it's adequate.

20          Q     Okay. Well, you know, I deal with the State Police,  
21 and I know how many cases that they're involved in at any  
22 given time, and that seems like a relatively low number to  
23 me.

24          A     What does?

25          Q     25 or 30 cases per investigator.



1           A     I've dealt with the State Police too as you know,  
2 Mr. Legg, in my 14 years as a District Attorney, and I don't  
3 think -- I understand your -- your analysis. I don't think  
4 it's a fair comparison.

5           Q     Is it because the cases that you handle they're more  
6 complicated, more difficult? What would it be that an  
7 investigator couldn't handle 25 to 30 cases on a given year  
8 or in a given time?

9           A     They're assigned 30 cases at a given time. Again,  
10 focusing on the time period in question, there were two  
11 investigators for 67 counties, one of whom was devoted to a  
12 particular case.

13                     In a specific instance, Mr. Legg, we don't cover one  
14 county. And I'm not by any means minimizing the operation or  
15 the administration of a District Attorney's Office. I held  
16 that responsibility.

17                     An example would be we have our three investigators,  
18 one in Harrisburg in our main office upstairs, one in  
19 Pittsburgh, one in Philadelphia. Roughly we divide the state  
20 into thirds like the federal district court, western, center,  
21 middle, east.

22                     As an example, our Philadelphia investigator might  
23 have something -- an investigation in the Northeastern part  
24 of the state, Monroe County, Lehigh County. Additionally, at  
25 the same time, he might have a major investigation in the



1       southeastern part of the state requiring considerable travel,  
2       dealing with witnesses that are not in his or her -- his own  
3       county.

4                So it's not like dealing with 10, 12, 15 matters  
5       within the confines of a particular county.

6                Q     Well, if you were looking forward, how many  
7       investigators do you think that the JCB needs to do its job?

8                A     Good question. I think a fourth would be very  
9       helpful.

10              Q     Well, I guess I'm looking for what's the number?  
11       How many cases can an investigator handle? If 25 to 30 is  
12       too many at a given time, what would be the standards or the  
13       numbers that you'd be looking at for your investigators, 10,  
14       15?

15              A     Well, again, it all depends on any given time. On  
16       the investigator side, our three investigators are extremely  
17       competent, as I think I -- as I indicated to you  
18       consequently, each of the three are former FBI agents with  
19       distinguished careers. They are extremely hard working.  
20       They're not laggards. They do excellent work.

21              It's my own personal opinion that a fourth would be  
22       beneficial. Again, it ebbs and flows, but I'm not a very  
23       good mathematician, but four into 90 would be less of a case  
24       load than three into 90, 30 a piece.

25              Q     What happened --





1           A     Excuse me.

2           Q     Go ahead.

3           A     I think that's very unlikely, that possibility.  
4     It's my belief that the budget -- the upcoming budget, if and  
5     when passed, will at best present to the judicial branch  
6     generally and the Judicial Conduct Board specifically a flat  
7     budget. I'm led to believe that we won't get a penny more  
8     than we had in the last two years, and maybe less.

9           Q     In September of 2006 then is it fair to say that if  
10    you had more investigators, one would have been assigned to  
11    the Conahan matter?

12          A     Yes.

13          Q     And the reason that an investigator was not assigned  
14    was manpower?

15          A     Primarily, yes.

16          Q     Mr. Puskas testified that counsel on their own do  
17    some investigating?

18          A     Again, yes.

19          Q     Did you conduct any investigation on your own of the  
20    Conahan matter in terms of things that could have been done  
21    with phone calls or anything like that?

22          A     I did not do any factual investigation.

23          Q     Okay. Do you at times do factual investigations?

24          A     Personally on occasion. Not often, but on occasion.  
25    If there's a particular matter that an investigator has



1 something else on his plate, and I think it would be  
2 expedited, I do.

3 Q Looking back do you think there was anything about  
4 that 2006 anonymous complaint that you could have done  
5 differently?

6 A In hindsight, no doubt.

7 Q Now, I want to address the Lokuta brief just a  
8 little bit, because the record's a little inconsistent as to  
9 that brief. Mr. Puskas testified that he wrote the bulk of  
10 the brief except for the section that would be the section  
11 relating to the Conahan investigation. And he indicated that  
12 that was language that you provided to him to insert into his  
13 brief; and that, in fact, he thought it was gratuitous and  
14 would not have put it in the brief. Do you agree with that  
15 testimony?

16 A I agree.

17 Q Why? Why would you do that if Mr. Puskas was your  
18 prosecutor? It's his case. Why are you having him add  
19 language that he doesn't want in his brief?

20 A Mr. Puskas, as you noted from his February  
21 testimony, I believe you personally commended him, is an  
22 exceptionally bright, capable young attorney. His -- his  
23 testimony that he presented regarding that brief was totally  
24 accurate. I should not have intervened.

25 Q Well, and I guess --



1           A     It was a overreaction on my part to what I felt was  
2 a confidential document that had been made available to the  
3 press and was being mischaracterized. I should not have done  
4 it, as Mr. Titus had indicated in the statement. I agree  
5 totally.

6           Q     Was it damage control? Is that what you viewed it  
7 as? Or what -- you were getting beat up in the press and you  
8 wanted the press to know -- I guess I'm trying to understand  
9 why that would have been -- why that would have been included  
10 in the brief.

11          A     That might be an accurate way to state it.

12          Q     And is it accurate to say you wrote that language?

13          A     It was my language, yes. Unauthorized, certainly  
14 not directed by the court. I beg your pardon, by the Board.

15          Q     By the Board. And -- when I go back to your  
16 November testimony I remember questioning you on some of  
17 this. And we got into the question about you making a phone  
18 call to Conahan's attorney to get the waiver. Do you  
19 remember that?

20          A     Yes.

21          Q     And you testified that the waiver was only for the  
22 2006 complaint, right?

23          A     That's correct.

24          Q     And then I went into the question of why the 2004  
25 complaint language would have been in there. Do you remember



1 that?

2 A Yes.

3 Q And you indicated at that point you were going to  
4 defer to Mr. Puskas?

5 A That's correct.

6 Q Can you explain to me now if you wrote that language  
7 why you were deferring to Mr. Puskas?

8 A On the date that I -- I don't recall the specific  
9 November date, but when I -- the first appearance when I  
10 testified it was my understanding that my testimony would be  
11 very general in nature, that it would involve the make-up  
12 construct of the Board, the general operations of the Board,  
13 who the Board consists of, the flow chart, if you will.

14 I did not, Mr. -- I was not requested to, and I did  
15 not review any documentation whatsoever. Again, when that  
16 was presented to me and the line of questioning was brought  
17 up, at that -- at that point in time I didn't address it. I  
18 wasn't focused on it. I didn't expect it.

19 And my testimony was inaccurate. When Mr. Puskas  
20 testified in February his testimony was totally accurate.

21 Q The Lokuta brief was filed, I believe, in September  
22 of 2009. You testified two months later in November of 2009.  
23 I mean, did you remember at that point in time writing that  
24 language and inserting it into the Lokuta brief?

25 Because I remember being struck thinking that you





1       seemed surprised that there were two complaints referenced,  
2       and I wasn't sure at that point whether there had been two  
3       complaints filed.  So I'm curious.

4           A     You know the time line now, sir.

5           Q     I do know the time line now, sir.

6           A     Right.

7           Q     I'm trying to verify at that moment did you know,  
8       did you remember writing that?

9           A     At the moment of my testimony?

10          Q     Yes.

11          A     Is that your question?

12          Q     Yes.

13          A     No, I did not.

14          Q     Now, the 2006 anonymous complaint was actually  
15       attached to that Lokuta brief?

16          A     Correct.

17          Q     Mr. Puskas indicated that that was his request?

18          A     I --

19          Q     Would you agree with that?

20          A     I would agree that that was his testimony.  It was  
21       accurate.

22          Q     It was accurate?

23          A     Yes.

24          Q     So I'm going to go back to, again, your initial  
25       testimony, because I thought you had called Conahan to get a



1 release of confidentiality to attach the Conahan 2006  
2 complaint to the Lokuta brief?

3 A To reference the complaint. It was Mr. --

4 Q To reference it?

5 A It was Mr. Puskas's decision, and I understand why  
6 he made it, to attach the complaint.

7 Q So when you called Conahan's attorney you didn't  
8 tell them at that point in time, hey, we're going to attach  
9 this complaint to the Lokuta brief?

10 A Explained it that the complaint would be made -- it  
11 was in the public domain, and it was going to be addressed.

12 Q Now, when you got that waiver of confidentiality how  
13 was it then you came to write that portion of the Lokuta  
14 brief to reference not only the 2006 complaint, but the 2004  
15 complaint as well if you hadn't had -- if you hadn't obtained  
16 a waiver as to the 2004 complaint?

17 A Should not have been done now.

18 Q I believe our time line shows that the 2006  
19 anonymous complaint came in in September, and it didn't make  
20 it on a Board agenda until June of 2007. You agree with  
21 that?

22 A That time line is accurate, yes.

23 Q What happened in between September of 2006 and June  
24 of 2007 with reference to that complaint? No investigator  
25 was assigned, right?



1           A     An investigator was -- we talked about it. Again,  
2     in retrospect -- and keep in mind the perspective that I had  
3     at the time. We had limited resources. In fact, we had -- I  
4     had, as chief counsel, one available investigator. I also  
5     had on my plate two matters, major matters, that went to the  
6     Court of Judicial Discipline.

7                     What happened between September 28th, 2006, May of  
8     2007 was legal research. It should have been presented to  
9     the Board sooner. And in retrospect I will tell you, Mr.  
10    Legg, that I would have taken two steps that I did not.

11                    No. 1, I would have presented it to the Board in its  
12    entirety, in its original form, at the next meeting, which I  
13    believe would have been the October, 2006 meeting. I did  
14    not.

15                    As I said, if I had to do it all over again, it  
16    would have been done that way. And I initiated and requested  
17    that the Board -- that the chair and the Board engage in a  
18    process of developing written procedures to tighten  
19    loopholes. And that has been done, as the Board is aware --  
20    as the court is aware, with the adoption of internal  
21    operating procedures which are fully intended to make sure  
22    that these types of matters are addressed properly, timely,  
23    and fully.

24                    Q     Now, the October, 2006 meeting I guess was in  
25    Chicago?



1           A     I believe it was.

2           Q     Is that the common practice for the Board to go to  
3 different -- outside Pennsylvania for its meetings?

4           A     Very rare.  But at that time, 2006, we did not have  
5 any budgetary constraints.  And the reason that that was held  
6 was it was for the preceding, oh, I would say ten years  
7 before my tenure as chief counsel, every other year the  
8 American Adjudicators Society, AJS, which is the national  
9 organization representing boards dealing with judicial  
10 ethics, had -- had an -- a biannual conference in Chicago.

11                     It was the practice then when funds were available  
12 to hold the meeting concurrent with that -- with that  
13 conference.  That's the reason why we did it.

14          Q     So it could be educational as well?

15          A     Precisely.

16          Q     Is --

17          A     It was educational to the Board, most of whom would  
18 have -- it was very comprehensive, detailed helpful material.  
19 In addition staff -- excuse me.  Attorneys who attended would  
20 earn CLE credits.

21          Q     Now, that would have been the meeting as well, and I  
22 have a copy of the minutes, where the Board decided to move  
23 forward with the charges, formal charges, against Judge  
24 Lokuta?

25          A     Correct.  The minutes certainly reflect that.





1           Q     So we missed the October, 2006 meeting.  When would  
2     have the next meeting of the Board have been prior to June of  
3     '07?

4           A     The Board meets then, as it does now, every other  
5     month beginning with February.

6           Q     Okay.  So October would have been it for 2006.  Then  
7     February they would have started again, or would they have  
8     met in December?

9           A     December.

10          Q     Okay.  Then there would have been a February of '07?

11          A     February, '07; April, '07; June, '07, and onward  
12     through the end of the year.  And that's the pattern as we  
13     speak.

14          Q     So there would have been three Board meetings prior  
15     to the June meeting?

16          A     Yes.

17          Q     Generally speaking how long does it take after you  
18     receive a complaint for it to get on to a agenda for the  
19     Board, or does it vary?

20          A     It varies.

21          Q     Okay.  I think at one point we talked about there  
22     being time lines for investigation and resolving complaints,  
23     and you indicated a 180 day period?

24          A     That's a benchmark.

25          Q     Does the -- do you keep any internal time keeping



1 mechanisms, anything that -- any calendars in terms of  
2 complaints that are pending that haven't been resolved,  
3 anything like that?

4 A Tried to then. We've certainly tightened it up  
5 dramatically. We've addressed that. The Board and I have  
6 addressed that. The Board and staff have addressed that. So  
7 that presently the Board staff presents a very comprehensive  
8 status log, which is presented to the Board with each -- each  
9 of their packets.

10 The purpose of which is to realize several  
11 objectives, one of which would be to rank the cases with the  
12 most important, give them priority. The second would be to  
13 assure that the Board is aware of every single complaint that  
14 is pending.

15 For example, in early April, I think April 5th, we  
16 had the April meeting. In that packet was the status log  
17 with 400 -- I think 402 matters, all 402 matters in tabular  
18 form, gave the Board in concise form specific and pertinent  
19 and exhaustive information.

20 Prior to the adoption of that log, or the refinement  
21 of the log, the Board was given much less, not as full, not  
22 as complete information.

23 Q So back in '06 or '07 you didn't have that type of  
24 log in place?

25 A There was a log, but it certainly wasn't as



1 complete, and it was not in the format that it is now. I  
2 would say, Mr. Legg, it was -- if I would characterize it,  
3 the format and the information that is presented probably has  
4 been doubled in the areas that you have pointed out that  
5 would be pertinent for the Board's knowledge and action.

6 Q Now, in the April 5th, 2010 statement the Board  
7 indicates that at the June 4th meeting they were provided  
8 notice of the 2006 anonymous complaint?

9 A Correct.

10 Q And, in fact, that there was a memorandum  
11 recommending a notice of full investigation, NOFI. Is that  
12 how you refer to it?

13 A NOFI, yes.

14 Q That memorandum would have gone out to Board members  
15 prior to the meeting?

16 A I believe I prepared it November -- I beg your  
17 pardon, May 14th. It's our practice to mail out the packets.  
18 I was going to bring an exhibit, if you will, a comprehensive  
19 packet in two separate packets, if you will. The first  
20 packet would be the -- what we call the DAPI matters,  
21 dismissal after preliminary inquiry, the matters, which if I  
22 could draw an analogy, the summary offenses or the  
23 Misdemeanor 3s.

24 The second packet would be the more comprehensive,  
25 the more serious allegations. Those are mailed out -- we



1 make every attempt to have those in the Board member's hands  
2 two weeks prior to the meeting.

3 Q And I take it that a notice of full investigation  
4 would be a serious matter?

5 A Oh, yes.

6 Q So --

7 A There were -- yes.

8 Q What prompted you in May of 2007 to -- to do this  
9 memorandum after six months or whatever? Was it something  
10 internally? You realized that this was sitting on your desk  
11 or --

12 A Yes, I did. I knew it was belated. I felt it was  
13 important to be called to the Board's attention.

14 Q And the memo recommended a full investigation?

15 A It did.

16 Q So we go to the meeting in June, and the Board has  
17 in front of it this memorandum, but does not have the  
18 complaint itself?

19 A That's correct. And I -- as I had indicated, if I  
20 had to do it over again, I would have attached the original  
21 complaint.

22 Q You had a chance to see the April 5th?

23 A I did.

24 Q And, in fact, the Board --

25 A The Board's memorandum or statement.





1 Q Statement?

2 A Yes.

3 Q They indicate at the end of the first page, it says  
4 other allegations in the complaint, such as case fixing and  
5 Judge Conahan's relationship with Judge Ciavarella, were not  
6 set forth in Chief Counsel's memorandum recommending a NOFI.  
7 Would you agree with that?

8 A I believe you have a copy of the NOFI, or my  
9 memorandum, yes.

10 Q Okay. When you wrote the portion of the Lokuta  
11 brief, however, you indicated that the second anonymous  
12 complaint primarily dealt with case fixing?

13 A Again, there was only one anonymous complaint. That  
14 was an error that I addressed. But yes, the insertion speaks  
15 for itself, Mr. Legg.

16 Q Okay. Well, would case fixing be a pretty  
17 significant or serious thing?

18 A It would.

19 Q Looking back can you give us any reason why that  
20 wouldn't have been included in your memorandum?

21 A No.

22 Q Especially in the Lokuta brief you say that the  
23 anonymous complaint dealt with case fixing?

24 A No.

25 Q So what happened? June 4th, 2007 you're ready to go



1 forward with a full investigation, and some -- why did you  
2 change route? Why did you change plans at that point?

3 A Why did I change the rule?

4 Q Why did you change the route you were taking, the  
5 plans? Why did you decide to hold off? You said it was  
6 important. You said you wished you --

7 A Now it's important. Yes, it was then. I would say  
8 -- you know, again, in retrospect, I'm trying to capture my  
9 thought process. Again, I would repeat for the third time,  
10 and in the future, I would -- and we have as a matter of fact  
11 at the April meeting the original -- any anonymous complaints  
12 are now on the Board agenda in their original form.

13 It was not a deliberate, intentional -- it was not  
14 -- the fact that it did not appear in my memorandum was not a  
15 deliberate matter.

16 Q Okay. I'm not -- not with respect to that, but what  
17 caused the change in wanting a full investigation because it  
18 was important to deferring it or putting it off until the  
19 October, '07 meeting?

20 A What caused that?

21 Q Yes.

22 A At that -- we did not have extensive minutes, Mr.  
23 Legg. There was -- I do recall, and I believe the -- the  
24 statement would reflect that there was considerable  
25 discussion at the June meeting. There was considerable



1 discussion on my request for a NOFI.

2 As you stated, these requests are not ordinary.  
3 They're important to staff and to the Board. So the Board  
4 paid attention to it. There was no recording of that  
5 meeting, of that discussion. Minutes -- verbatim minutes, as  
6 in a stenographic copy of testimony in court, were not taken.  
7 I do recall. And it's reflected that there were -- there was  
8 an extensive discussion.

9 Q Well, and the April 5th, 2010 statement of the  
10 Judicial Conduct Board indicates, and I'll read it for the  
11 record, at the meeting an oral request was made by chief  
12 counsel to table the matter until the October, 2007 meeting  
13 because of the pendency of the Lokuta trial at which former  
14 Judge Conahan was expected to be a witness.

15 A That's what the Board's statement says.

16 Q Did you make a request to table this complaint  
17 because Conahan was one of your witnesses in the Lokuta  
18 trial?

19 A I don't recall that. Again, I'm not trying to  
20 dispute what the Board's recollection is. I made the  
21 recommendation that the matter be -- that the Board authorize  
22 a notice of full investigation, which would -- at that time  
23 the allegations would have been presented directly to the  
24 respondent.

25 My recollection, sir, my own personal individual



1 recollection, is that Mr. Puskas, the staff, and I believe  
2 fairly the Board, I would think the Lokuta matter was on the  
3 eve of trial. And, again, Mr. Puskas can -- can address this  
4 directly, but it was expected, at least in our mind, that it  
5 would be over in September, by the end of September.

6 So that, I believe, would have been the primary  
7 reason for deferral, if you will, to the October meeting. If  
8 the Board recollects it otherwise, as indicated in their  
9 statement, I can't dispute it. That's not my own personal  
10 recollection.

11 Q Well, is it your recollection that you made the  
12 request to stay or defer it pending the result of the Lokuta  
13 trial?

14 A It's my recollection, as is indicated by the  
15 memorandum, that I made the unequivocal recommendation for  
16 the NOFI, notice of full investigation. I believe that the  
17 minutes indicate that after extensive investigation Mr.  
18 Cellucci, who was a member at the time, now chair, and who's  
19 testified, moved that it be tabled. I believe it was  
20 seconded, and there might have been discussion after that.

21 Q Well, and I don't want to get into deliberations,  
22 Mr. Titus. But what I'm trying to verify, because the Board  
23 --

24 A I beg your pardon.

25 Q Yeah. I want to be fair to the Board as well.





1           A     Thank you.

2           Q     What I'm trying to verify is what the Board has  
3 indicated, that it was chief counsel's recommendation to  
4 table it. You don't recall that?

5           A     I don't.

6           Q     Do you recall it being tabled until October of 2007?

7           A     Yes.

8           Q     When was the Lokuta matter scheduled to begin? Do  
9 you know? Was it the summer of 2007?

10          A     I believe September. I believe September.

11          Q     Oh, okay.

12          A     I believe the trial itself was scheduled. And it  
13 did begin in September of 2007. As -- as was entit -- as  
14 Judge Lokuta was entitled. She had very capable counsel. It  
15 was -- it was a very contentious matter.

16                 And it went on -- the original round of testimony  
17 was in September. Then a second portion of the trial in  
18 December, a third portion of the trial in January of 2008, if  
19 I have my time line correct. And finally, oral arguments  
20 were presented to the Court of Judicial Discipline in April.  
21 It certainly wasn't over in September as anticipated.

22          Q     The statement from the Board, the April 5th, 2010  
23 statement, makes it sound as if the only reason for the  
24 continuance was that Conahan was one of your witnesses.

25          A     Sir, that's not my recollection.



1           Q     Well, would it be your policy as chief counsel to  
2 defer investigations against witnesses in order to protect  
3 them?

4           A     No, absolutely not.

5           Q     Were you concerned that if the allegations were true  
6 that are made in the anonymous complaint, that that should be  
7 something that Lokuta's counsel should know about?

8           A     Of course. And the internal conclusion was as was  
9 proven to be the case. Lokuta herself and/or someone on her  
10 staff authored that anonymous letter. But yes, your point is  
11 well taken.

12          Q     Well, would that -- would that make the need to  
13 investigate it all that more crucial prior to the trial, to  
14 know whether or not you had a bad witness?

15          A     In retrospect, absolutely.

16          Q     Now, if the Board meets every two months, would it  
17 have met again in the summer of 2007?

18          A     Every other month.

19          Q     So August of '07?

20          A     Yes, sir.

21          Q     And obviously at that point the Conahan matter was  
22 not on the agenda because it had been tabled to October?

23          A     Correct.

24          Q     October of '07 it does not make the agenda. Can we  
25 agree with that?



1 A Agreed.

2 Q Can we explain why?

3 A No, I cannot. I don't have an explanation.

4 Q Now, and I think you can answer this. I'm on a  
5 bunch of different boards, and, you know, we always -- the  
6 first thing we do at the next meeting is to approve the  
7 minutes during the previous meeting.

8 Is that a procedure that the JCB follows?

9 A Yes. Each -- each meeting the subsequent minutes --  
10 the -- the minutes of the preceding Board meeting are  
11 approved, reviewed and approved.

12 Q And on those minutes of the June, '07 meeting would  
13 have been this motion to table the Conahan complaint?

14 A I believe it would have been.

15 Q Okay. So although it may not have been on the  
16 agenda for October of '07, the minutes from the previous  
17 meeting would have reflected that it had been tabled?

18 MR. TITUS: The previous meeting would be August.

19 MR. LEGG: Oh, I'm sorry.

20 MR. TITUS: It would be reviewed in August.

21 BY MR. LEGG:

22 Q That explains it. All right. So August it would  
23 have been on. I got you. Lokuta's trial is not done by  
24 October of '07?

25 A No, sir.



1 Q At this point in time --

2 A Excuse me. Not until January of '08.

3 Q January of '08?

4 A With subsequent argument before the CJD.

5 Q Is that the reason that the Conahan complaint was  
6 never investigated?

7 A I think it's a factor.

8 Q And after the June, 2007 meeting whose decision was  
9 it not to go further with any investigation as to that  
10 complaint?

11 A I'll hold myself accountable. It was on my list.  
12 It was on my list, Mr. Legg. There was nothing nefarious or  
13 in terms of a subterfuge at all. It was not, as is indicated  
14 by the time line. I'm accountable.

15 Q Well, I guess I'm confused because initially you  
16 indicated it was serious. You wanted a notice of full  
17 investigation. And then it gets tabled, but never put on an  
18 agenda again?

19 A That's correct.

20 Q What changed between your initial response that,  
21 hey, somebody's got to look into this to just tabling it?

22 A Nothing changed. Nothing should have changed.  
23 There were administrative matters that I focused on, et  
24 cetera. Other matters that were brought before the Court of  
25 Judicial Discipline and should have been. It was not.





1 Q Just so we have our time line clear, it looks like  
2 March 24th, 2008 is when the United States Attorney's Office  
3 contacted you with reference to complaints against Conahan?

4 A That was the date.

5 Q And I'm taking that from the April 5th, 2010  
6 statement?

7 A That would be accurate.

8 Q I'm just trying to get the time line. And you  
9 responded to that on April 3rd of 2008 by actually delivering  
10 the anonymous complaint to the US Attorney's Office?

11 A Correct.

12 Q And your written answer makes it sound like you  
13 personally delivered it?

14 A I did.

15 Q Okay. The time line then indicates from the  
16 statement that on June 17th of 2008 that you would have sent  
17 a letter to the US Attorney's Office looking for information?

18 A That's correct.

19 Q That they can share. Was that --

20 A That the US Attorney's Office could share with the  
21 Board.

22 Q Okay. And information pertinent to what the JCB  
23 could do with reference to this judge?

24 A That would be fair.

25 Q Was that letter in reference to the anonymous



1 complaint or just a general inquiry in terms of, hey, do we  
2 have a bad judge here?

3 A I think a general inquiry, you know. The surmise  
4 and the speculation was -- was rampant that matters were  
5 taking place.

6 Q When -- when you say speculation was rampant, when  
7 did you become, I guess, cognizant of this general community  
8 or legal community speculation?

9 A It wasn't legal community. It was, you know, during  
10 the course of the Lokuta matter there was the underlying  
11 surmise or speculation that -- that there might have been  
12 information. It was -- it was -- I reached out to the US  
13 Attorney's Office to see if they had any information that  
14 they could and would share without intervening or interfering  
15 with their own investigation.

16 Q Okay. And you did that June 17th of 2008?

17 A That's what the statement says. Again, I don't take  
18 dispute with that.

19 Q Because you've been at least having some contact  
20 with them since March of '08. Had you had informal  
21 discussions with the Assistant US Attorney whether they could  
22 share information? Since you were giving them information  
23 did they volunteer anything or --

24 A I don't believe they did. And that's -- then the  
25 time line indicates that that's when I wrote the letter.



1 Q And just so the record's clear, can we agree at this  
2 point in time that there was never a formal referral of any  
3 matter to the US Attorney's Office?

4 A Formal referral, I agree. We can agree.

5 Q And we can also agree that there was never any  
6 official Board action to defer the 2006 anonymous complaint  
7 pending the result of the federal investigation?

8 A We can agree.

9 Q It looks like there was a deferral in August of 2008  
10 for two complaints that were received in '08?

11 A Yes, there was.

12 Q And that deferral would have been based on the  
13 federal investigation?

14 A The federal investigation, the fact that those two  
15 complaints were presented to the Board in its entirety, and  
16 the Board recognized -- it was -- it was knowledge then. It  
17 was obvious public knowledge that the prosecution went  
18 forward and preeminent and, therefore, the Board acted very  
19 quickly and properly.

20 Q Well, why didn't we include the '06 complaint on the  
21 agenda for that deferral? Had it fallen through the cracks  
22 at this point?

23 A It had.

24 Q In other words, it wasn't on your radar screen?

25 A I -- no, I can't -- I can't dispute.



1           Q     I'm just wondering.  You make a decision to defer on  
2 two complaints in '08, but you still got this one hanging out  
3 there from '06?

4           A     It was obvious that the allegations that were  
5 presented in the 2008 complaints, which consisted primarily  
6 of numerous newspaper articles and media reports that had  
7 been circulated to the public, made it obviously clear that  
8 federal charges were preeminent, that prosecution was on the  
9 horizon.  That's the reason why it took preeminence.  Should  
10 -- if your question is should the 2006 complaint have been  
11 attached?  Certainly.

12          Q     I guess my question is shouldn't some action have  
13 been taken on the 2006 complaint given now that we're almost  
14 two years into having received it?

15          A     Unquestionably.

16          Q     And your indication now is there's some internal  
17 procedures in place that will make sure that the Board  
18 addresses these complaints?

19          A     Absolutely.

20          Q     Either deferring or referring, doing something with  
21 them?

22          A     Absolutely.

23          Q     Were you involved in drafting the internal operating  
24 procedures, the new --

25          A     Yes.  As a matter of fact, I can't give you the time





1 -- time line, Mr. Legg, but I would say -- I would estimate  
2 sometime in early of 2008 I made the recommendation to the  
3 Board that because there were unwritten practices, policies,  
4 procedures, because of the fact that the Board is not static,  
5 its composition changes, that it would be beneficial to  
6 everybody to have formal procedures written.

7           Upon my recommendation a committee of two was  
8 appointed, as Mr. Klett testified. It was an ongoing  
9 procedure and expedited by the matters before the Commission.  
10 I would say that I presented -- it was -- I won't take credit  
11 for the final document, but I presented to the Committee the  
12 outline, the overall outline, and I presented probably 90  
13 percent of the material for the -- for the Commission's use  
14 and inclusion or exclusion, fine tuning, if you will.

15           Q     And obviously this provided an extraordinary,  
16 perhaps unfortunate, impetus for those operating procedures,  
17 but do you feel based upon what you know now in hindsight  
18 that these new IOPs address any shortcomings that may have  
19 existed in the system?

20           A     I'm confident that they do.

21           Q     Do you have any other suggestions outside those IOPs  
22 for what this Commission could do to strengthen the judicial  
23 discipline system in Pennsylvania?

24           A     I believe that this Commission's exhaustive  
25 analysis, I don't know what your final document will -- will



1 state, but I believe that by and large even going into this  
2 time period the structure was appropriate.

3 I believe, as I indicated before, that  
4 Pennsylvania's one of only seven states in the union that  
5 have a two-tier system. The IOPs are very detailed. I think  
6 they've been provided to you. I believe they address what  
7 are the justifiable concerns of this Commission.

8 And sitting here I don't have any specific  
9 recommendations. I believe it would be helpful for full  
10 staffing. That would be -- that would be helpful, what I  
11 consider to be full staffing.

12 Q And I guess, you know, to be candid with you, I'm  
13 not sure that we've ever been provided sufficient information  
14 to know whether or not -- what the budgetary constraints are  
15 of the JCB, how the money is allocated, where the money goes.

16 I mean, I'm certainly sympathetic to staffing  
17 issues. I think probably every prosecutor or defense  
18 attorney across the Commonwealth deals with similar issues.

19 A Certainly.

20 Q But, you know, as compared to other judicial  
21 discipline systems in Pennsylvania, is the JCB understaffed?  
22 What is their budget? I mean, is there any reason that the  
23 JCB didn't provide us with more concrete information with  
24 respect to their budget and what they're looking for and how  
25 it could be improved?



1           A     I don't know that that was asked, but the budget is  
2     a public document.  And I would state, Mr. Legg, that the  
3     Board has undertaken -- again, I believe one of the  
4     provisions of the IOPs, and something that along with the  
5     Board I have implemented, is a strict time record, if you  
6     will, which will enable myself as wearing two hats as a chief  
7     administrator of the Board and the Board itself to look into  
8     precisely the questions that you've arisen -- that you've  
9     brought to the attention.

10          Q     How many hours a prosecutor does on the average  
11     case?

12          A     Correct.

13          Q     And the number of cases they should handle, things  
14     of that nature?

15          A     Correct.

16          Q     Obviously we understand that when you take something  
17     to trial it consumes the office?

18          A     That's right.

19          Q     You may have 600 cases in a year, but if there's one  
20     in a trial, that's all you have at that point?

21          A     That's right.

22          Q     And you're saying that's kind of what happened in  
23     this situation?

24          A     Precisely.

25          Q     Lokuta was going to trial, and Lokuta basically



1 consumed the office?

2 A Was tried.

3 Q Now, I'm going to ask you just a more generic  
4 question about something that's bothering me about the  
5 judicial discipline system. I think you testified in  
6 November that nepotism is a gray area. Can you give me an  
7 idea how many complaints you get a year that involve nepotism  
8 or complaints about nepotism? Is it a big problem, a small  
9 problem?

10 A It's not a major problem, Mr. Legg. I can't provide  
11 you with a precise number at this moment. On occasion we do  
12 -- we do receive complaints about nepotism.

13 Q Okay. But it's not a major problem?

14 A It's not a major problem. It's not a major source  
15 of allegations.

16 Q In your answer -- in reviewing some of the documents  
17 that the JCB's provided us I note that one of the reasons  
18 that a complaint will be dismissed will be legal error. In  
19 other words, a litigant's complaining about something a judge  
20 did?

21 A I -- that's fair. I think more accurate, we receive  
22 many complaints, a disproportionate share of complaints, from  
23 complainants who obviously are attempting to use the Board in  
24 lieu of the appellate process.

25 Q And you don't want to get embroiled in legal review?





1 A Correct.

2 Q That's not ethics?

3 A That's right.

4 Q But are there legal errors that would rise to the  
5 level of ethical violations?

6 A Yes, sir. There would be.

7 Q And hypothetically speaking, if you received a  
8 complaint out of Luzerne County indicating that Ciavarella  
9 was denying children right to counsel, constitutional  
10 violation, would that have been legal error, or would that  
11 have been something that would have raised a red flag in the  
12 JCB?

13 A Raised a red flag.

14 Q How would you --

15 A There are --

16 Q Go ahead. I'm sorry.

17 A There are instances of legal error that arise above  
18 and beyond the routine that are readily distanced.

19 Q So a constitutional violation, is that something  
20 that would be mere legal error, or would it be an ethical  
21 violation that the Board would look into?

22 A On a case by case basis it could be looked into.

23 Q And obviously judges make mistakes? That's why we  
24 have an appellate system?

25 A Right.



1           Q     What would you be looking for, a pattern as opposed  
2     to an individual person complaining, or would it be one  
3     person would be enough?

4           A     Could be either or both.  Pattern would certainly be  
5     more egregious and would certainly draw my attention and the  
6     Board's attention.

7           Q     Hypothetically what if the litigant, a sole  
8     litigant, could show and demonstrate a constitutional  
9     violation regardless of what the appellate courts have done?  
10    Would that be something that discipline would be warranted  
11    on?

12          A     Could be.

13          Q     How do you make those judgement calls?  Because I  
14    could see where -- where a chief counsel would say, hey, you  
15    have an appellate system.  You know, you redress yourself to  
16    the appellate system.  How do you decide, and I don't know as  
17    the IOPs address this, how do you decide what constitutional  
18    violations or legal error rise to a level that warrants  
19    discipline as opposed to remedying itself through the  
20    appellate process or the PC process or something like that?

21          A     Again, it's a case by case analysis which is  
22    presented -- you know, the ultimate analysis, the ultimate  
23    final decision as to what course is taken is the Board's  
24    decision.

25          Q     There's been some media reports about verbal



1       complaints, oral complaints, telephone calls, person to  
2       person complaints to prosecutors for the JCB or counsel for  
3       the JCB.

4               My question is I know how you handle anonymous  
5       complaints, and I know how you handle verified complaints.  
6       How do you handle verbal complaints?

7               A       Again, on a case by case basis.  But as has been  
8       indicated both in the written materials that have been  
9       provided and in prior testimony, invariably, and I can't  
10      think of an exception, if we receive a verbal complaint, and  
11      if the complainant provides name, address, phone number, they  
12      are sent a complaint form and requested to fill it out and be  
13      as specific as possible.

14              Q       Do you, as a practice, keep notes of telephone  
15      calls?

16              A       Yes, more often than not, yes.

17              Q       And I'll give you an example.  I have one detective  
18      who is extremely organized, and he has notebooks of notes  
19      that he has, and he has them divided by people.  So he gets a  
20      call.  He's a -- runs my Drug Task Force.  He gets a call on  
21      Joe Smith.  He makes notes and then puts that in the section  
22      of the notebook dealing with Joe Smith.

23              A       I understand.

24              Q       Is there anything like that, or do we maintain files  
25      on judges throughout the Commonwealth so if someone called



1 you and said, hey, Judge Jones is at it again. Okay. We're  
2 going -- can I have your name and address? We're going to  
3 mail you a complaint form. Please send it in, that you're  
4 keeping track of just, I guess, the general complaints?

5 A Yes.

6 Q You do do something like that?

7 A I think that's fair. And, again, some staff members  
8 are much more detailed than others.

9 Q I'm not very good at stuff like that.

10 A Nor am I.

11 Q But it seems to have a utility?

12 A Yes, it does.

13 Q And a value?

14 A It does.

15 Q What about prior complaints? In other words, you  
16 know, we all have -- I guess those of us who run offices have  
17 personnel files on our employers. Are there, for lack of a  
18 better word, personnel files on judges, even if the  
19 complaints were dismissed as being frivolous? Would it be  
20 important to keep track of the fact that a particular judge  
21 had 300 complaints filed against them? Do we do anything  
22 like that?

23 A Yes. I'm not sure that any judge has ever had 300  
24 complaints, but your point is well taken.

25 Q Yeah. I exaggerated for purposes of making a point.





1           A     I understand, yes.

2           Q     Let me ask you this.  In the adult system, the  
3 criminal system, I'm familiar with presentence reports which  
4 record arrests and convictions.  Because you've been arrested  
5 doesn't mean you necessarily did anything.

6           A     Sure.

7           Q     But it's something that we certainly look at in  
8 terms of how many times have you encountered the system.

9           A     Yes.

10          Q     And I guess that has some value.

11          A     It does.

12          Q     And I --

13          A     I did the same thing when I was in your shoes.

14          Q     Does the JCB, because from what I understand they  
15 don't get that information, the Conduct Board doesn't know  
16 when they're reviewing complaints that this judge has had 30  
17 other complaints over the course of 20 years.  Do you think  
18 that there -- that should be something that the Board itself  
19 knows about, or do you think that would be too prejudicial to  
20 the jurist?

21          A     I understand your point.  Could be considered, but I  
22 -- I would state that if it's -- well, yes, I understand.  I  
23 don't think it would be helpful or relevant or pertinent for  
24 a Board -- the Board to know that Judge John Doe or Jane Doe  
25 has had two dozen matters that have been DAPIed over the



1 years.

2           There are some jurisdictions, Mr. Legg, where we get  
3 -- some counties where we get a disproportionate number of  
4 complaints against a judge. Other counties we rarely hear  
5 from.

6           Q    I guess it depends upon a lot of factors?

7           A    Sure.

8           Q    Could be just your constituents like filing  
9 complaints?

10          A    That's right.

11          Q    Or there could be where there's smoke, there's fire.  
12 I mean, that's why the utility would be there.

13          A    I understand. I would certainly consider that and  
14 pass it on to the Board.

15          Q    I'm going to end up here, Mr. Massa, just with  
16 something that's been troubling me. As chief counsel for  
17 this organization do you feel that there would be a benefit  
18 for the JCB to have some type of oversight?

19          A    Certainly.

20          Q    Whether it be auditing, whether it be some type of  
21 independent eyes to take a look at what's going on? And I  
22 understand that would probably require constitutional  
23 amendment, but as somebody who's run this organization as  
24 chief counsel for eight years.

25          A    Yep.



1 Q Give or take.

2 A Yes.

3 Q Do you see any detriment to providing some  
4 oversight?

5 A No. Can I mention, you had asked a very fair and  
6 pertinent question 10, 15 minutes ago, what -- what  
7 suggestions would I have. I may have mentioned this in one  
8 of my prior appearances, but there -- the American Bar  
9 Association has a practice, has a Committee, if you will,  
10 which provides a totally independent, to use your words,  
11 audit of a judicial discipline entity, the Judicial Conduct  
12 Board.

13 I believe it would be invaluable. I'm -- I've been  
14 in contact with this entity. They are willing to do an  
15 audit. It would be -- with all due respect to this  
16 Commission, it would be totally -- totally independent with a  
17 capital I, not to suggest that this Commission's procedures  
18 and mission has not been.

19 It has been done in a number of jurisdictions that  
20 I'm aware of. They've shared that information with me. The  
21 way that this operates, as I understand it, is one or more  
22 permanent staffers from the ABA headquarters in Chicago is  
23 assigned to review the Judicial Conduct Board, the judicial  
24 disciplinary system in Pennsylvania, focusing on the JCB.

25 There are other, quote, experts in judicial ethics



1 from around the country. I believe a team of five or six  
2 would be -- would be sent to perform an independent audit, an  
3 exhaustive and comprehensive examination with these sets of  
4 eyes, with this degree of expertise.

5 That is undertaken culminating in, again, a very  
6 comprehensive, independent report addressing the strengths  
7 and weaknesses of an operation and making suggestions.

8 Q That would be basically, I guess, the bigger picture  
9 of how it's operating. But what about oversight in the sense  
10 of the actual complaints themselves? I know there's a  
11 confidentiality issue, but what about the fact that somebody  
12 can come in and look and say, hey, we got 636 complaints. We  
13 dismissed 92 percent of them, or whatever the number is, and  
14 comb through, whether it's every couple years, whatever, to  
15 make sure that as we -- as you admitted at one point,  
16 nothing's fallen between the cracks?

17 A Sure.

18 Q Do you see any utility from that?

19 A I think that's a point well taken, if the  
20 constitutional constraints could be addressed, and if the  
21 confidentiality of the process could be preserved.

22 Q And in the context of District Attorneys, you're  
23 probably familiar with what we call private criminal  
24 complaints, which is probably the closest thing that I do  
25 that even comes close to what you do.





1           A     Correct.

2           Q     And let's face it, the vast majority of private  
3 criminal complaints are situations where the police won't  
4 address what the disgruntled person wants done?

5           A     Yes.

6           Q     If we deny that, they have a means to appeal to the  
7 Court of Common Pleas. What do you think about a mechanism  
8 for disgruntled complainants who are dissatisfied with the  
9 system being allowed to appeal a dismissal of the complaint  
10 to some other body?

11                   I mean, perhaps the Court of Judicial Discipline as  
12 a means of ensuring that the system itself is working?

13           A     I think there is merit to that. Our -- currently  
14 our practice when we send a DAPI complaint, Mr. Or Mrs.  
15 Complainant, the Board has considered your matter and has  
16 dismissed it. Thank you for your -- your interest in the  
17 judicial system. There is no appeal to the Board's decision.  
18 I understand where you're heading. I think that has merit.  
19 I don't know how it would work.

20           Q     I don't think you'll get a lot of appeals either,  
21 but it's just another internal mechanism to provide some type  
22 of accountability and oversight for the Board.

23           A     I understand your point, and I -- I think it's well  
24 taken.

25                   MR. LEGG: Mr. Chairman, that's all I have.



1                   CHAIRMAN CLELAND: I'll open it up for some  
2 additional questions. However, I want to bear in mind the  
3 consideration already given us by the Court of Judicial  
4 Discipline and not unduly prolong Mr. Massa's testimony. Mr.  
5 Horoho.

6 BY MR. HOROHO:

7           Q     Just a few question, Mr. Massa. Returning back to  
8 your NOFI memo. Typically when you prepare a memorandum  
9 where you recommend a full investigation, in order to  
10 discharge your duties as chief counsel you do a detailed  
11 factual analysis of what's in the complaint. Can we agree to  
12 that?

13          A     Oh, yes.

14          Q     And can we also agree that those memos contain a  
15 detailed legal analysis as to whether or not the facts bear  
16 out whether or not ethical obligation -- ethical deviations  
17 of the judicial could occur?

18          A     That's what the purpose of the NOFIs -- that's what  
19 they should contain. May I make a point, Mr. Horoho, at this  
20 point?

21          Q     Sure.

22          A     I believe speaking for myself, I think particularly  
23 in matters where requests for notice of full investigation  
24 have been made and considering the fact that as I have stated  
25 our three investigators are -- have such a great degree of



1 expertise, it's going to be my personal practice to include  
2 their notes rather than, you know, an analysis or a  
3 translation, if you will.

4 I believe they are so -- so factual and so detailed  
5 and so comprehensive that it would be helpful to the Board in  
6 assessing the factual background.

7 Q Well, back to the memorandum on the '06, September,  
8 '06 anonymous complaint. You would agree with me that your  
9 NOFI was a lengthy memo, correct?

10 A It was.

11 Q It did contain all the factual basis, at least as to  
12 the eth -- potential ethical violations in the complaint,  
13 correct?

14 A Correct.

15 Q And it included a very detailed legal analysis as to  
16 whether or not the facts in the complaint would support the  
17 potential violation of the Code of Judicial Conduct?

18 A That was the intention.

19 Q Now, in reviewing Mr. Klett's testimony, and I'm not  
20 sure if you were there when he testified in December of '09,  
21 he -- he testified that until the summer of '09, this past  
22 summer, he never saw a copy of the September, '06 complaint.  
23 That testimony is still accurate?

24 A Oh, yes. I believe -- of the original complaint  
25 itself. And I believe he went further -- further and



1 explained that the memorandum had been presented.

2 Q Well, no, he didn't talk about that.

3 A That's my recollection, but go ahead.

4 Q Okay. But even though he, as well as the other  
5 Board members, in -- did not see the actual complaint until  
6 '09, as of May and June of '07 they had in front of them a  
7 very detailed memorandum which included all of the factual  
8 basis of the potential ethical violations of the complaint as  
9 well as a detailed legal analysis; is that correct?

10 A As of June -- the June, '07 meeting.

11 Q In their packet?

12 A Yes, sir.

13 Q This -- this lengthy memo -- memorandum included  
14 both. Is there anything -- is there any potential ethical  
15 violation that was included in the complaint that did not  
16 make it into your memo?

17 A I think Mr. -- Mr. Legg, I think, referred to that.

18 Q Well, there wasn't any case -- according to your --

19 A Yes, there was none.

20 Q Right. But there was the other potential ethical  
21 violations of nepotism, and you had a number of potential  
22 ethical violations that you addressed in the memo?

23 A Right.

24 Q And as a result of that you recommended in bold  
25 print --





1 A Right.

2 Q -- to the Board that there be a full investigation?

3 A I did.

4 Q Now, in reviewing all the information that the JCB  
5 has provided to us, can we agree that when the complaints are  
6 dismissed, you basically -- you do provide a small blurb of  
7 sorts as to the complaint in offering your opinion as to  
8 whether or not it should be dismissed, correct?

9 A The Board is presented with information relative to  
10 their acting to dismiss. Are you talking about the -- the  
11 vast majority, the 90 percent of the complaints that are  
12 dismissed?

13 Q Yeah. But in all those instances where you offer  
14 recommendations that the complaint should be dismissed, the  
15 complaint is actually part of the Board packet?

16 A The complaint -- the original complaint?

17 Q The complaint?

18 A No, sir.

19 Q Pardon me.

20 A The original complaint itself, the original  
21 document.

22 Q A copy of the complaint?

23 A May or may not be. Are you -- sir, again, so that I  
24 understand your question. Are you speaking of those  
25 complaints which are dismissed after preliminary inquiry?



1           Q     I'm talking about any complaint that you receive  
2 that goes on the Board agenda, correct?

3           A     And your question is is that complaint itself  
4 attached to the memorandum?

5           Q     No. Is it attached to the Board materials that you  
6 typically see?

7           A     Generally not.

8           Q     Okay. Because I saw a lot of information when you  
9 provided it that the complaint actually was -- was made part  
10 of the Board packet. Is that not true?

11          A     The complaint, as I indicated to you -- I wish that  
12 the original complaint itself had been delivered early on,  
13 but yes, that's right.

14          Q     And for -- in this complaint, this eight page  
15 complaint though never made it into any Board materials,  
16 correct?

17          A     That's correct.

18          Q     Okay. Now, the '08 complaint that you testified to  
19 was totally based upon newspaper articles, very thick pack of  
20 newspaper articles, correct?

21          A     Correct.

22          Q     And I'm not trying to create any dispersions on the  
23 newspaper accounts. My father was a newspaper man for 35  
24 years. But the '08 complaint didn't include any newspaper  
25 articles, but it did include specific facts about specific



1 cases, correct?

2 MR. TITUS: Did you mean '06?

3 BY MR. HOROHO:

4 Q '06, I'm sorry. The September, '06?

5 A Yes.

6 Q And the '08 was totally based upon -- the complaint  
7 itself was just limited to a pack of newspaper articles?

8 A That's what the -- that's what the complainant  
9 provided, yes.

10 Q Right. Yet you -- the JCB and chief counsel  
11 provided more credibility to the '08 complaint with the  
12 newspaper articles and less credibility to the September, '06  
13 complaint? Would you agree with me in that?

14 A I won't -- I wouldn't be argumentative with that.

15 MR. HOROHO: That's all the questions I have, Mr.  
16 Chair.

17 CHAIRMAN CLELAND: Mr. Allen.

18 BY MR. ALLEN:

19 Q Thank you, Mr. Chairman. Mr. Massa, I have some  
20 questions that are completely different. You've indicated  
21 earlier that about 600 complaints a year, give or take, is  
22 the approximate amount of complaints that your office  
23 receives from people?

24 A That's correct. For the past three or four years  
25 we've set a record each year.



1           Q     And approximately how many of those, what  
2     percentage, are unfounded?

3           A     I think a fair way of looking at that is 90/10/10.  
4     90 percent are unfounded obviously and readily. 10 percent,  
5     roughly 10 percent merit, in the opinion of staff and the  
6     Board, a notice of full investigation, i.e., full  
7     investigation. Of that 10 percent an additional 10 percent  
8     ultimately go to either the Court of Judicial Discipline or  
9     internal measures are taken against the judicial officer.

10          Q     Okay. And you also indicated that a large  
11     percentage of the complaints you get are complaints about  
12     judicial error, correct?

13          A     A significant -- a significant portion.

14          Q     Could you, off the top of your head as best as you  
15     can, give me an idea what the most common unfounded  
16     complaints are besides that one?

17          A     First of all, probably the predominant percentage of  
18     those complaints arrive from individuals who have been  
19     prosecuted by the District Attorneys in the Commonwealth. An  
20     example would be overwhelming evidence, waiver of trial,  
21     and/or a confession, sentenced by the judge, incarceration in  
22     either the county level or in the state correctional  
23     institution.

24                     Suddenly, without even exercising their -- the  
25     appellate process and challenging their confession or





1 conviction, they turn to the Board and make wild assertions  
2 against the judge.

3 Q So basically what you're saying is that just kind of  
4 using it as a sounding board? Here's one sounding board.  
5 I'm going to throw this at the sounding board just because I  
6 want a complaint, and I want someone to listen to me? Is  
7 that basically what you're saying?

8 A Or to be retaliatory toward the judge and be  
9 mean-spirited.

10 Q Okay. About -- off the top of your head again, I  
11 know you don't have the statistics with you, about how many  
12 complaints are what you say a percentage filed by attorneys,  
13 or do you have an idea approximately? It doesn't have to be  
14 perfect.

15 A Less than more, not a significant percentage.

16 Q Do you have some that might be filed by judges?

17 A Yes. Again, not a significant percentage, but yes,  
18 we do receive complaints filed by judges against fellow or  
19 sister judges.

20 Q Okay. So what you're saying is the majority of your  
21 complaints come from the general public; is that correct?

22 A That's correct.

23 Q What suggestions or what action are you considering  
24 taking to help reduce the number of unfounded complaints?

25 A I don't know that we could take any action. I



1 understand -- I believe where you're going, Mr. Allen, and  
2 one of the concerns that I have, I wish I had the answer, is  
3 how could -- how could the staff working in conjunction with  
4 the Board, how could we reduce the time that is attended to  
5 -- is devoted to those complaints which fall into the  
6 category of being DAPIed?

7           Keeping in mind that it's constitutionally mandated  
8 that every complaint be examined. It sometimes gets  
9 overwhelming because the Board expects and is entitled to a  
10 report, an analysis, of each complaint. I don't know the  
11 answer to that, but it's a very pertinent and fair question.

12           Q     Have you or the Board considered how to best explain  
13 to the general public what constitutes judicial misconduct?  
14 I have reviewed your website extensively. I think -- and  
15 your website is excellent. It was easy to go through.

16           There was some confusion that might be there that  
17 might be looked at. And one of the things I've considered  
18 also, and I know the Commission's talked about, is what about  
19 being able to file a complaint online? Do you think that  
20 might be something you might consider?

21           A     Two reactions. Always welcome suggestions  
22 individually, from the Commission, from the public as how we  
23 could improve our overall operations, including notification  
24 to the Board.

25           And your second point, I believe Mr. Legg brought it



1 up, I think in the November meeting. Yes, I think it's a  
2 very appropriate consideration to enable a complainant to  
3 file through the website. Certainly we'll explore that being  
4 explored.

5 MR. ALLEN: Thank you, Mr. Massa. Mr. Chairman, I'm  
6 done.

7 CHAIRMAN CLELAND: Judge Uhler.

8 BY JUDGE UHLER:

9 Q Two brief questions.

10 A Yes, sir.

11 Q Who is responsible for preparation of the agenda  
12 items?

13 A Ultimately as chief counsel I am. We have -- in  
14 addition to the three investigators and the three attorneys,  
15 very capable staff person, two of whom have been with the  
16 Board for upwards of 20 years. But it's not the -- the Board  
17 itself doesn't prepare the agenda. Staff does. I get --

18 Q Under your oversight?

19 A Correct.

20 Q No pun intended?

21 A No pun intended.

22 Q With regard to the Conahan 2006 anonymous complaint,  
23 I understand you prepared, sometime in May, a request for  
24 full investigation in 2007. But did you have any discussions  
25 with either any of the individual Board members or the



1 officers of the Board surrounding the Conahan complaint  
2 before you submitted that memorandum?

3 A I don't recall that I did, Judge Uhler. I don't  
4 recall that I did.

5 Q Is that -- would that have been a practice that you  
6 followed, discussions with the secretary or the vice chairman  
7 or the chairman regarding matters that you thought were of  
8 significant importance?

9 A I have in the past. More often than not.

10 Q Subsequent to the 2007 Board meeting surrounding the  
11 Conahan complaint wherein the matter was tabled until  
12 October, did you have any individual discussions with any of  
13 the Board members or its officers surrounding the Conahan  
14 complaint?

15 A I don't believe I did.

16 Q Is that response more affirmative, meaning you have  
17 more comfort with that response than prior to the June, 2007  
18 meeting?

19 A If your question is after the June, 2007 meeting did  
20 I have any discussions individually with any Board member or  
21 officers? I don't believe I did.

22 Q Okay. And was that the same before that meeting?

23 A Yes.

24 JUDGE UHLER: Okay. I have nothing further.

25 CHAIRMAN CLELAND: Mr. Listenbee.





1 BY MR. LISTENBEE:

2 Q Mr. Massa, do your new internal operating procedures  
3 provide any special mechanisms for reaching out to children  
4 in the juvenile justice system so that they can both know you  
5 exist and understand the procedures for filing complaints?

6 A At the moment, no, sir.

7 Q Do you foresee, also looking forward, that the  
8 Judicial Conduct Board might recommend greater transparency  
9 in terms of the types of complaints being filed and also  
10 specifics about the complaints being filed so that the public  
11 can acquire a greater degree of confidence in the operations  
12 of the Judicial Conduct Board? I understand the  
13 constitutional issues involved, but --

14 A Should -- should the information available to the  
15 public, either on our website or otherwise, be more  
16 comprehensive, more detailed, more user friendly, yes.

17 Q Do you foresee that that's a direction that you're  
18 going to go in?

19 A I would hope so. I would intend that direction to  
20 be taken.

21 MR. LISTENBEE: I have no further questions. Thank  
22 you.

23 CHAIRMAN CLELAND: Mr. Massa, thank you, very much.  
24 We appreciate your participation here today, and you are  
25 excused. Thank you.



1 THE WITNESS: Thank you for your indulgence.

2 CHAIRMAN CLELAND: Mr. Judge, we'll return to your  
3 examination, if you'd like to return to the stand.

4 CHAIRMAN CLELAND: We'll take just a two minute  
5 break, let everyone stand and stretch your legs, but be ready  
6 to resume here very quickly.

7 (Recess.)

8 CHAIRMAN CLELAND: I think we'll be back in session  
9 and resume. Again, Mr. Judge, thank you for your  
10 consideration, your understanding. We have a special  
11 appreciation as judges in the Court of Judicial Discipline  
12 for their culture. So we appreciate your accommodations  
13 throughout. Judge Gibbons, go ahead.

14 BY JUDGE GIBBONS:

15 Q Thank you, Mr. Chairman. And thank you again for  
16 your accommodation, Your Honor. I believe I left off you had  
17 described the duties and responsibilities as secretary of the  
18 JCB, and then you also indicated that you have done vice  
19 chair at one point?

20 A Yes, sir.

21 Q Okay. And what were the duties and responsibilities  
22 involved there?

23 A Simply that they go over when the chair was not  
24 available. And in my case the chair left the Board in  
25 August. So I was temporary chair until the February meeting



1 of 2007.

2 Q Who was the chair when you were vice chair?

3 A Attorney Mark Schultz.

4 Q Okay. And then you become chair when again?

5 A February of 2007.

6 Q Okay. And by the way, who appointed you to the  
7 Judicial Conduct Board?

8 A The Supreme Court.

9 Q Okay. And the Court of Judicial Discipline?

10 A The Supreme Court.

11 Q Okay. Thank you. Now, I want to focus on your  
12 capacity as chairman. At the time that you were chairman,  
13 and, in fact, any time you were on the Judicial Conduct  
14 Board, were there standards in place governing your decisions  
15 on recusal of Board members from matters?

16 A There was -- involved family members or in front of  
17 a -- an attorney in front of a court, there was a number of  
18 reasons and issues that you would consider recusing yourself.

19 Q Okay. Were they written down? Were they compiled  
20 someplace?

21 A I believe they were provided in the handbook that I  
22 received when I first went on the Board as well as in a  
23 handbook that I received in 2006.

24 Q Okay. And there were rules in place too adopted by  
25 the Board, correct?



1           A     Correct.

2           Q     Was there any kind of instruction or training for  
3 new members when they came on the Board, particularly non,  
4 you know, lawyers members or non-judicial members with  
5 respect to the issue of what would constitute reasons for  
6 recusal or not?

7           A     Not really, except what was in the handbook and the  
8 ability to work with folks that were already on the Board.

9           Q     Okay. Now, as chairman were you -- you were present  
10 during Mr. Massa's testimony. And he indicated that the  
11 Board would meet every other month. Is that your  
12 recollection?

13          A     First Monday of every other month starting February.

14          Q     Okay. And in your capacity as chairman would you  
15 have a practice or a procedure in place in advance of that  
16 upcoming -- of each upcoming meeting in terms of meeting with  
17 staff or meeting with chief counsel to basically say, look,  
18 what's -- what's on next month's agenda? What's --

19          A     No. My practice was I received the material the  
20 same as every other Board member prior to the Board meeting  
21 to review and prepare for the Board meeting.

22          Q     Okay. And you heard Mr. Massa testify that the  
23 materials, the packets that he referred to, would be sent out  
24 approximately two weeks in advance of the meeting. Is that  
25 accurate?





1           A     Yes.

2           Q     You'd agree with that?

3           A     Yes.

4           Q     Okay.  Now, you've also heard that -- and we've  
5     received testimony that you recused yourself in, I think,  
6     June of 2007 from consideration of the matter involving  
7     former Judge Conahan?  Is that -- can you recall that?

8           A     Yes.  When I received the material prior to the June  
9     meeting of 2007 I saw there was a matter in there on Judge  
10    Conahan.  And when I got to the meeting I chaired the  
11    meeting, and when it came to that issue I recused myself  
12    because I have -- had a business interest with him, and I  
13    didn't even want the appearance of impropriety.

14          Q     Okay.  Now, when you received the materials, between  
15    the time you received the materials and that June 2007  
16    meeting, did you review those materials?

17          A     Yes.

18          Q     Okay.  And is that when you saw the matter for the  
19    first time involving former Judge Conahan?

20          A     Yes.

21          Q     Okay.  And is that the first time that you were  
22    apprised of anything involving former Judge Conahan?

23          A     Yes.

24          Q     Okay.  And between the time of receiving and  
25    reviewing those materials and the June 7, 2000 meeting itself



1 did you discuss your intended recusal with anyone?

2 A No.

3 Q And so the first time you voiced your recusal was at  
4 that June 7th, 2007 meeting?

5 A That's correct.

6 Q Did you participate in other matters that were  
7 discussed during that meeting?

8 A Just like I stated, when it came to that matter I  
9 recused myself. I even left the room so there wouldn't be  
10 the appearance. I didn't want to participate in any  
11 discussion or deliberation. And when the matter was over  
12 they came back and they called me back in, and I took over  
13 the chair and finished the meeting.

14 Q Okay. Did you articulate anything to the Board at  
15 the time of your recusal for I'm recusing myself because, or  
16 did you tell them why you were recusing yourself?

17 A I believe I stated because I had a business  
18 relationship.

19 Q With former Judge Conahan?

20 A That's correct.

21 Q Okay. All right. You didn't go into detail about  
22 it at all?

23 A No.

24 Q Okay. When you first came on the Board were you  
25 ever asked to provide a list of potential conflicts, such as



1 family members, business associates, anything else like that  
2 so that staff would be able to review a conflict list?

3 A No, sir.

4 Q Do you know whether there was any kind of practice  
5 or procedure in place at the Judicial Conduct Board regarding  
6 that?

7 A I believe it was left up to the individual Board  
8 member.

9 Q As to whether or not to provide a list?

10 A No, to provide -- to recuse or not. There was never  
11 a list provided by anybody that I'm aware of.

12 Q Okay. So the requirement of the list of potential  
13 conflicts wasn't in the mix?

14 A No, sir.

15 Q Okay. Now, again, as you sat here and listened to  
16 Mr. Massa's testimony. You heard reference to a September,  
17 2006 anonymous complaint regarding former Judge Conahan, and  
18 it's the matter that you recused yourself from, correct?

19 A Yes.

20 Q Have you ever seen that complaint?

21 A No, sir.

22 Q Okay. Did you review the memo prepared by counsel  
23 in -- that was prepared and sent to you in advance of that  
24 meeting?

25 A If it was in the material, yes.



1           Q     Okay.  Is it fair to say that that's how you learned  
2     about the matter, or did you just see a list and you saw  
3     Conahan's name on the list?  Do you recall?

4           A     I don't recall, but I'm -- the reason I recused  
5     myself because it was a matter before the Board.

6           Q     Right.  All right.  And then you said that -- that  
7     you were called back in after that matter was discussed?

8           A     Yes.

9           Q     Was there any discussion at that point among you or  
10    the members of the Board with respect to the recusal?

11          A     No.

12          Q     Okay.  Since that time have you ever had a  
13    discussion with anybody at the -- at the Judicial Conduct  
14    Board regarding that matter?

15          A     No.

16          Q     Have you recused yourself from any matter involving  
17    former Judge Conahan that might be tangentially involved in  
18    something with the Court of Judicial Discipline?

19          A     Nothing has come before the court to my knowledge at  
20    this point yet.

21          Q     Okay.  Well, I believe former Judge Conahan  
22    testified in the Lokuta matter, correct?

23          A     Correct.

24          Q     Okay.  And that matter has been in front of the  
25    Court of Judicial Discipline; has it not?





1           A     I recused myself from that matter as well.

2           Q     Okay. All right. That's what I'm getting at.  
3 Thank you. Let me ask you this. Having had the benefit of  
4 sitting on both bodies, the Judicial Conduct Board and the  
5 Court of Judicial Discipline, do you think that, first of  
6 all, that that's a good idea? Do you think somebody should  
7 be allowed to sit on both Boards?

8           A     Let me answer it this way. I received a great deal  
9 of education while I was on the Board and understanding.  
10 When Justice Cappie approached me after a Board meeting in  
11 August of 2007 and said that the court was entertaining  
12 putting me on the Court of Judicial Discipline, I felt I was  
13 honored because of the work and service I did on the Board.  
14 So I really don't see a problem or conflict.

15                     And like I said, you have the opportunity to recuse  
16 yourself if there's a situation that arises, just as the  
17 District Attorney would running for Common Pleas Court would  
18 be elected. There is probably some cases that he probably  
19 has to recuse himself as well.

20           Q     Do you think it might be helpful to put into place  
21 some additional procedures whereby Board members can provide  
22 a list, for instance, of potential family members, business  
23 associates, that, you know, just as -- as a matter of course  
24 it would be deemed a conflict? Or do you think it's better  
25 left up to the individual Board member?



1           A     I think you'd have to leave it up to the individual.  
2     I'm not sure how you could foresee someone that was elected  
3     to the bench overwhelmingly -- retained overwhelmingly and  
4     being the President Judge that there was going to be a  
5     problem.

6           Q     When you were chair did you -- chair of the Judicial  
7     Conduct Board, did you make a practice of meeting  
8     periodically with chief counsel to discuss matters that were  
9     coming up?

10          A     No.

11                JUDGE GIBBONS:  Never did.  Mr. Chairman, that's all  
12     I have.  Thank you, Judge.  Thank you for your time coming  
13     today.

14                THE WITNESS:  Thank you.

15                CHAIRMAN CLELAND:  Mr. Williams.

16     BY MR. WILLIAMS:

17           Q     Yes.  Mr. Judge, did you serve on any boards or  
18     Commissions with Judge Conahan in Luzerne County?

19          A     No, sir.

20           Q     And who put your name into the Superior Court for  
21     your appointment?

22          A     The Supreme Court?

23           Q     I'm sorry, the Supreme Court?

24          A     I did.

25           Q     Were you recommended by anybody or --



1           A     Not that I'm aware of. I'm -- I would anticipate  
2 similar to this Commission here that the Supreme Court was  
3 looking for good citizens to do public service.

4           Q     You're still with the Luzerne County Arena  
5 Authority, aren't you?

6           A     Yes, sir.

7           MR. WILLIAMS: Okay. Thank you, Your Honor.

8           CHAIRMAN CLELAND: Mr. Horoho.

9 BY MR. HOROHO:

10          Q     Yes. Mr. Judge, during the time that you were on  
11 the Board of the JCB was there ever any policy that the Board  
12 had to address important issues between Board meetings? And  
13 let me try to be a little bit more articulate. The Board  
14 meets or met every other month, correct?

15          A     Correct.

16          Q     All right. So let's say an important issue comes up  
17 in letter complaint, inquiry from US Attorney's Office,  
18 District Attorney's Office, and the Board meeting's about  
19 three or four weeks away. Was there any JCB policy on how to  
20 address that as far as communicating that important issue  
21 between chief counsel and the Board?

22          A     No, sir.

23          Q     Was there ever any thought about that? And I talked  
24 about this, I think, with Mr. Massa. When I served as  
25 president of the PBA, if an important issue came up in



1 between our Board of Governor's meetings, there would be a  
2 communication, an open line of communication, between first  
3 of all, the Executive Director and myself. And then, if  
4 necessary, we would convene a conference call with our  
5 executive counsel with the officers.

6 Was that ever done during the period of time that  
7 you served on the Board, this idea of having discussions,  
8 whether informally or agendas that were done via phone call,  
9 e-mail communication to address important issues?

10 A No, sir. The -- I'm trying to sit here and recall  
11 if any communications prior to any Board meeting or in  
12 between any Board meeting, and I can recall one on a  
13 personnel matter. And there may have been one other one.

14 Q Now, you were in the room when Mr. Legg questioned  
15 Mr. Massa about the complaint in September of '06, the  
16 anonymous complaint on then Judge Conahan. Nothing was done  
17 until the June meeting.

18 Is it your recollection that there were no  
19 conversations between chief counsel and any of the officers  
20 of the JCB in between that period of time about that  
21 complaint?

22 A That's correct.

23 Q Okay. In retrospect, I'm not sure if your internal  
24 operating procedures deal with this, is there any thought of  
25 maybe instituting some sort of policy to give chief counsel a





1 little bit more direction, especially since Mr. Klett  
2 mentioned that part of the reasons between -- of getting --  
3 of implementing the IOPs is taking back the authority of the  
4 JCB from chief counsel? Any thought about implementing that  
5 type of policy?

6 A I'm having a difficult time answering that simply  
7 because as a jurist on the Court of Judicial Discipline I  
8 really think it's kind of inappropriate for me to be giving  
9 opinions on what the Board policy should be going forward.

10 Q Okay. Well, let me try to put you back on the Board  
11 in '06, '07, and '08. Mr. Massa gets an inquiry from the US  
12 Attorney's Office regarding any complaints that he may have  
13 received about former Judge Conahan. You would agree with me  
14 that instead of checking with the Board, getting authority,  
15 he acted on his own behalf? Can we agree on that?

16 A I believe he has stated to that fact, yes.

17 Q Okay. And you agree with that?

18 A Yes.

19 Q You were on the Board at that time or not?

20 A No.

21 Q Okay. In retrospect, as a Board member, if you were  
22 a Board member at that time, wouldn't that be information  
23 that you have -- especially if you were chair, wouldn't that  
24 be -- wouldn't have been some information that you would have  
25 liked to have to provide the then chief counsel, Mr. Massa at



1 that point, some direction on what to do?

2 A Chief counsel and the attorneys on staff really  
3 provide the recommendations to the Board members, and then we  
4 would evaluate and vote whether to respond to that particular  
5 issue.

6 Q Okay. Maybe you just don't -- I'm just trying to  
7 determine if there's any internal policy now that the JCB is  
8 -- is -- has in their IOPs or is considering to assist the  
9 chief counsel if an important issue comes up between Board  
10 meetings. And I haven't seen that in the IOPs.

11 A And to answer your question, I haven't been there  
12 since August of '2007. So, therefore, I really don't know  
13 what they have done or they have not done.

14 MR. HOROHO: All right. That's all the questions I  
15 have, Your Honor.

16 CHAIRMAN CLELAND: Judge Uhler.

17 BY JUDGE UHLER:

18 Q When did you first form your business relationship  
19 with Judge Conahan?

20 A We had a business relationship in the mid-1990s, and  
21 then again in the -- 2004.

22 Q Did the 1990s terminate and there was a new  
23 relationship formed in 2004?

24 A Yes, sir.

25 Q Can you share when the 1990 relationship terminated?



1           A     I believe around 1996 to 1998. We had an investment  
2 together, and then we sold that around 1998. And then I  
3 think in around 2004, 2005 we had another opportunity.

4           Q     So that I understand, you have only recused your --  
5 yourself from participating in any decision making on the  
6 June, 2007 complaint that had been brought to the attention  
7 of the Board; is that correct?

8           A     Yes.

9           Q     As well as then in your new capacity as being on the  
10 Court of Judicial Discipline with the Lokuta matter?

11          A     That is correct.

12                JUDGE UHLER: I have nothing further.

13                CHAIRMAN CLELAND: Mr. Judge, thank you, very much  
14 for your attendance here today. And you are excused. Thank  
15 you.

16                THE WITNESS: Thank you.

17                CHAIRMAN CLELAND: We will be in recess until 1:00.  
18 Members of the Commission and staff, if you just gather here  
19 for a minute. We'll be reconvene at 1:00.

20                (Recess taken from 11:54 to 1:08 p.m.)

21                CHAIRMAN CLELAND: We're ready to resume our  
22 hearings this afternoon. Our first witness is Mr. Samuel  
23 Stretton. Mr. Stretton, would you come forward, please?

24                THE WITNESS: Thank you, Judge.

25                CHAIRMAN CLELAND: Mr. Stretton, would you please



1 stand to take the oath?

2 THE WITNESS: Certainly.

3

4 SAMUEL C. STRETTON, called as a witness, being duly  
5 sworn, testified as follows:

6

7 THE WITNESS: I so swear.

8 CHAIRMAN CLELAND: Please be seated, sir.

9 THE WITNESS: Thank you.

10 CHAIRMAN CLELAND: Mr. Stretton, I previously  
11 introduced you this morning in the opening as a Pennsylvania  
12 attorney with experience in matters of judicial and attorney  
13 ethics who has represented various parties in Luzerne County.

14 THE WITNESS: That is correct.

15 CHAIRMAN CLELAND: Our practice is to have one of  
16 the Commission members undertake the questioning. And Mr.  
17 Horoho, I believe, is going to do that.

18 BY MR. HOROHO:

19 Q Welcome, Mr. Stretton. Thank you, Your Honor. Mr.  
20 Stretton, could you state your full name for the record,  
21 please?

22 A Sure. Samuel Clarence Stretton.

23 Q And your occupation, sir?

24 A Attorney at law.

25 Q How long have you been practicing law?





1           A     Since 1973.

2           Q     And your area of concentration?

3           A     There is no area of concentration. I do everything.  
4     But I try many, many civil and criminal trials, many attorney  
5     and judicial disciplinary trials, many election trials, and  
6     many civil rights. But I do everything.

7           Q     Okay. What percentage of your practice over the  
8     last 15 years has been dedicated to ethics practice, either  
9     representing members of the judiciary or members of the bar  
10    and from the discipline systems?

11          A     Probably 20 or 30 percent.

12          Q     And you are also a columnist or author of an ethics  
13    forum in the Pennsylvania Law Weekly?

14          A     That is correct.

15          Q     And since I'm an avid reader of the Pennsylvania Law  
16    Weekly, I do read your column often. And I'll compliment you  
17    on the time and effort you put in that.

18          A     Thank you.

19          Q     A couple questions about that. Are your columns  
20    specifically limited to questions that readers send in?

21          A     No. Many of the -- I wish I -- I wish I had more  
22    questions. So many times I will then create a question from  
23    a problem I see from an attorney who's sitting across from  
24    me, and so I can warn other people of the areas they might  
25    want to look into. So I do make up many of the questions.



1 But if I get questions, I respond in that fashion.

2 Q I'm going to direct your attention to your ethics  
3 forum on Monday, February 12th, 2010 where you had two  
4 questions that you raised. One had to do with whether or not  
5 a lawyer should not become an executor or of the estate, and  
6 then you had a column on the new internal operating  
7 procedures for the Judicial Conduct Board.

8 A Yes.

9 Q And that question that was raised there, that was  
10 not actually sent in by a reader?

11 A No. It was raised to me by another attorney, and  
12 then I found out about the rules, read them, and was upset  
13 with them, and wanted to comment on them. Because I try and  
14 have handled so many cases before the Judicial Conduct Board  
15 over the years. I thought they were doing a disservice to  
16 the counsel.

17 Q But the question, have there been any changes in the  
18 Judicial Conduct Board's procedures as a result of the  
19 investigations in Luzerne County? That was your question?

20 A That was my question based on the contact with that  
21 lawyer. I formulated it that way. Sometimes I use the  
22 column as a -- not just to answer a specific ethics issue,  
23 but to editorialize a little. That's one advantage you get  
24 the older you get. You have the right to do that.

25 Q You agree with me you editorialized quite a bit when



1 you answered that question?

2 A There's no question. Remember, I never hold myself  
3 out as an oracle on those matters. I just -- on that or when  
4 I'm into the nitty-gritty of judicial or legal ethics, it's  
5 only to try to warn people. Reasonable men and women can  
6 disagree with my answer, but at least I want people to think  
7 about the answer.

8 Q No, no. And, again, I think the information you  
9 provide basically -- especially in response to questions that  
10 are presented are very helpful to readers.

11 So over the years during your practice in front of  
12 the JIRB, that's the Judicial Inquiry Review Board, you  
13 appeared in front of them?

14 A Yes, before they were removed or abolished.

15 Q And then the JCB?

16 A That's correct.

17 Q And I assume you formed relationships with Joe Massa  
18 and Frank Puskas?

19 A With all the counsel there, Joe Massa, Frank Puskas,  
20 Dan Reimer. Before that, of course, Vince Quinn, in the old  
21 days of Keech and Skip Harbaugh.

22 Q Okay. Were there any times where you -- whether or  
23 not you were raising -- representing a client, where you  
24 contacted Mr. Massa or Mr. Reimer or Mr. Puskas to address an  
25 issue involved with that case where they didn't respond to



1       you?

2           A     Oh, yes.  They have a different policy than Vince  
3       Quinn had.  Their policy is more until the letter is sent,  
4       they usually will not discuss the merits of the case.  And  
5       that was different than Vince Quinn when he was there.  You  
6       could -- had an open door talking to him.

7           But their procedure is they investigate, and when  
8       they're ready to talk, when the letter is ready to be filed,  
9       that is the 20-day letter, the inquiry letter, then they'll  
10      speak more in detail.  Otherwise they usually will wait.  And  
11      I've told them I thought that was a foolish policy.

12          Q     But after -- after that issue is -- letter is raised  
13      then you have pretty much have full access to them?

14          A     That is correct.

15          Q     Okay.  Now, were there times over the -- since  
16      you've been in front of them where you had an issue of  
17      judicial discipline of concern that was not necessarily  
18      related to your client, but you wanted to bring it to their  
19      attention?  Would they make themselves available to hear that  
20      issue, complaint, comment?

21          A     Yes.  And they would then at times say, well, make a  
22      complaint.

23          Q     Pardon me?

24          A     File a written complaint.

25          Q     Okay.  Now, you were -- you provided us a statement





1 that provided some -- some of your proffered testimony today.  
2 I'm not sure if you have a copy of that statement with you  
3 today, but --

4 A I do have it here some place.

5 Q On page four of that statement you were -- you  
6 talked about your relationship with -- I think it was the  
7 bottom of page two and then on page four, with Steve Flood,  
8 who was the Luzerne County comptroller back in 2004.

9 I believe you indicated that he hired you as the  
10 solicitor?

11 A Yes. He hired me, I think, sometime summer of 2004,  
12 if I recall. Maybe it was February of 2004. And I served in  
13 that capacity until he left office -- having lost the  
14 election and left office in January of 2006.

15 Q Now, you provide and you state in your proffered  
16 statement that you and Mr. Flood became very upset when  
17 Luzerne County decided to purchase a new juvenile facility  
18 since there appeared to be nothing wrong with the old one. I  
19 believe that's what your statement said, correct?

20 A That is correct. Mr. Flood brought that to my  
21 attention. He had shifted from the concerns about the abuse  
22 of the pension funds that he had litigated and essentially  
23 stopped some problems there. And then he was looking into  
24 the juvenile center and this new management team that was  
25 brought in. And that's where he and I started to do our



1 work.

2 Q Okay. Now, on page six, top of the page, you say  
3 during this period of time Steve Flood and I had very major  
4 concerns. And I believe you talked about this is the time  
5 period '04, '05, '06.

6 And you said in your statement, there are a couple  
7 of issues that caught our attention during this period of  
8 time. One of them is your concern about the number of  
9 juveniles suddenly going to jail. Do you remember that part  
10 of your statement?

11 A That's correct.

12 Q Okay. The information that we have been provided,  
13 this Commission has been provided through -- specifically  
14 through the testimony of Jim Anderson and -- and the data  
15 that was provided to us -- and I know that this has been  
16 described as Kids For Cash by a lot of different people, but  
17 the data that was provided to us and the testimony that was  
18 provided to us kind of clearly indicated to us that what was  
19 happening in the courtrooms, specifically Judge Ciavarella's  
20 courtroom as it relates to increase in placements and the  
21 depravation of the constitutional rights of these juveniles,  
22 occurred a lot sooner than the alleged appearance of the  
23 cash.

24 And I have some questions on that, but I just wanted  
25 to refer you to Mr. -- my colleague, Mr. Legg, specifically



1 asked Mr. Anderson on page 50 of his transcript, can you tell  
2 when you look at these particular -- the data that the JCJC  
3 prepared, can you tell us whether or not Judge Ciavarella had  
4 high placement rates prior to the time as compared to the  
5 rest of the state?

6 And his answer was yes. Judge Ciavarella had high  
7 placement rates prior to that time. And he basically went on  
8 to say that there weren't any real spikes in information in  
9 the data that he received after Pennsylvania Childcare was  
10 built and was in operation.

11 So I guess my question to you is what information do  
12 you have that you can share with the Commission that would  
13 serve as a basis of your statement that after Pennsylvania  
14 Childcare was built you saw or you were concerned about the  
15 increase in -- in the juveniles going to jail?

16 A Information that we have. Steve Flood and I sat  
17 down and, of course, there were two things we were looking at  
18 once that new management team took over. One, the great  
19 increase in the management fees, and then Steve Flood showed  
20 me some documents that suggested the incarceration rate was  
21 being increased erratically.

22 He had the documents. I don't. Unfortunately Steve  
23 Flood is totally incompetent now having suffered a major  
24 stroke during the 2007 Commissioner's race out there, and he  
25 is not able to communicate unfortunately. And then he had



1 talked to Judge Muroski, the President Judge, who had also  
2 expressed those concerns, and Flood had passed them on to me.  
3 Muroski had been the former juvenile judge.

4 Q Do you recollect what Mr. Flood gave you? I guess  
5 what my concern is, what did you see in '03, '04, '05, or  
6 what did Mr. Flood see that -- that Mr. Anderson, the JCJC,  
7 and the AOPC did not see as relates to what you're saying  
8 this increase in placements to the detention centers?

9 A All I recall was Mr. Flood telling me and showing me  
10 some documents that seemed to be a greater incarceration rate  
11 than during the previous judge, Judge Muroski, who was the  
12 juvenile judge if I recall. That would have been sometime in  
13 2005 or late 2004. But I don't know what -- I thought they  
14 were just in records he had gotten from the court.

15 Q Okay. So you weren't in any -- did you attend any  
16 juvenile hearings during this period of time where you  
17 observed either constitutional rights of the juveniles being  
18 deprived or high placement rates?

19 A No, I did not -- I had no juvenile hearings up there  
20 during that time period. And we were just looking at the  
21 statistics per Steve Flood. I was relying on him as the  
22 comptroller, and he would ask my advice as the solicitor.

23 And we were concerned about, as I said, the two  
24 things. The -- three things, why they convinced the county  
25 to purchase a new building when they didn't need to.





1           Second, why they brought this new management team in  
2 that greatly increased the cost. Flood said it was like  
3 three or four times more. And, third, why the rate of  
4 incarceration is going up. And that they were the things  
5 that bothered us.

6           And then there were things in the contracts. For  
7 instance, if the county paid one day late, there was like a  
8 \$15,000 fine per day, and Flood complained about that.

9           Q     And that would be the limited sources of information  
10 for your statement about the sudden increase in the juvenile  
11 placements?

12          A     It was based on what Steve Flood told me and some  
13 documents he showed me at the time and what Judge Muroski  
14 told Steve Flood.

15          Q     Now, can you give us a time line, sir, as to when  
16 that happened? Did that happen in a meeting with Mr. Flood?

17          A     It happened both at a meeting one time in his office  
18 over in the Penn Street Building I think they called it. And  
19 then also during numerous telephone calls.

20                 Since I wasn't local up there, he and I would often  
21 speak by telephone. And I would come up periodically to meet  
22 with him.

23          Q     What, if anything, did either you or Mr. Flood do  
24 with that information that obviously caused you -- would have  
25 caused you a concern, especially somebody that practices in



1 this area? What did you do with the information that you  
2 received from Mr. Flood?

3 A We tried to have public hearings on the matter. We  
4 scheduled two of them, and then we issued comptroller  
5 subpoenas to bring in the Commissioners and others. We were  
6 interested in the documents concerning the management team of  
7 Powell and Zappala and information as to why money was being  
8 spent in the fashion it was being spent.

9 So we issued comptroller subpoenas. There was a  
10 motion to quash those subpoenas by numerous people. We had  
11 hearings in, I think, April or March of 2005 before Judge  
12 Toole, the younger Judge Toole, not the former President  
13 Judge.

14 We argued the matters, and then he never acted on  
15 the motions to quash. Later that year we had a second -- we  
16 set up a second hearing, and we set it up because Judge  
17 Muroski had approached Steve Flood and indicated he wanted --  
18 he was upset with what he was seeing with the Juvenile Court,  
19 and he wanted to come and testify. And he thought he -- it  
20 was the right thing to do.

21 He asked me to give him a comptroller subpoena for  
22 some cover, or Steve Flood, who asked me to do that. So I  
23 issued a comptroller's subpoena to Judge Muroski.  
24 Unfortunately he did not appear at the hearing.

25 He called through his lawyer, Taylor Williams of the



1 AOPC, about three or four days before. Taylor Williams I  
2 know very well. She called me and indicated she was going to  
3 seek sanctions against me for issuing a comptroller's  
4 subpoena to Judge Muroski because I was acting in bad faith  
5 knowing the whole issue of comptroller subpoenas was under  
6 advisement before Judge Toole.

7 At that time I told her, well, I'll withdraw the  
8 subpoena. I said he asked for it, that's why I gave it to  
9 him. I wouldn't have issued it if he hadn't asked for it.  
10 And she said, well, that's not what he said.

11 So I went back to Steve Flood, and we had the  
12 hearing without Muroski. It was essentially his fight, and I  
13 expressing some of our concerns. And I think the Republican  
14 Minority Commission, Republican Commissioner Steve Urban also  
15 appeared.

16 Q Okay. I want to have you try to focus in on when  
17 you were in front of Judge Toole, the two issues that you  
18 were really concerned about. One is the -- with your  
19 statement is the increase in the placement into the juvenile  
20 centers and any concerns you had about what was happening in  
21 the Juvenile Court system especially as relates to the  
22 constitutional rights of the juvenile.

23 When you appeared in front of Judge Toole did you  
24 prepare any pleading that we could refer to now that would  
25 include any evidence or summarize your argument in front of



1 Judge Toole?

2 A When we went to Toole at that time we were mainly  
3 seeking financial records to try to find out what was going  
4 on with these -- this management team, documents of that  
5 nature. We were subpoenaing records from the Commissioners,  
6 the County Commissioners.

7 We weren't aware that they weren't providing  
8 lawyers. We had no idea that there was no -- that the  
9 juveniles were not afforded counsel and they were being  
10 adjudicated without the benefit of counsel. That we did not  
11 know.

12 Q Did anybody complain to you at that time that the  
13 juveniles were appearing in the courtrooms in Luzerne County  
14 without counsel?

15 A No one to my knowledge.

16 Q Okay. Did you take any of the information that you  
17 presented to Judge Toole, did you take that to any other  
18 entity? For example, did you provide the same information to  
19 the Judicial Conduct Board at that period of time?

20 A Essentially went to three different people. The  
21 Attorney General was there, his people were there at those  
22 hearings. You have to understand, there was civil litigation  
23 where Judge Conahan put a gag order, and so people could not  
24 get information.

25 The Attorney General was part of that, and so they





1 appeared at our motion to quash. I had asked the Attorney  
2 General to join in with our request and for us to take some  
3 more vigorous action, but at the hearing they pretty well sat  
4 on their tail and did nothing.

5 Q Could I ask you about that? Who specifically in the  
6 Attorney General's Office did you have a communication with?

7 A I have to look at the record now. It's been five  
8 years ago. I don't recall the gentleman's name. He was --  
9 but I could dig that out of the old file.

10 Q Was it with the Attorney General himself or with an  
11 Assistant Attorney General?

12 A It was an Assistant or Deputy Attorney General.

13 Q Okay. What did -- did you provide any written  
14 communication to them about what you indicated as your  
15 concerns at that time?

16 A I had several discussions with them prior and then  
17 the day of the hearing and told them our concerns about the  
18 -- this management team and increasing costs. And we thought  
19 somewhere someone was getting some money or something didn't  
20 seem right.

21 I -- and I said it was critical we got these  
22 records. And I asked them to help us in any way they could.

23 Q Okay. You felt at that point in time that something  
24 just wasn't right. Did you take that, your hunch or your  
25 concern, to the Judicial Conduct Board, to Mr. Puskas, Mr.



1 Massa at this time? Because at this time you've obviously --  
2 you've indicated to me you had a pretty good relationship  
3 professionally with both of those individuals and other staff  
4 people of the JCB.

5 Did you give them a call and say can I sit down with  
6 you? I have some information.

7 A Yes. We also went to the Governor, Steve Flood.

8 Q Okay. Let's stay with the JCB. What time period  
9 and when did you go to the JCB with the information that you  
10 and Mr. Flood had?

11 A 2005 and 2006.

12 Q Okay.

13 A I spoke to them.

14 Q Okay. Let's start with 2005. When in 2005?

15 A Probably in the summer and fall of 2005. It could  
16 have been a little earlier because I was representing at that  
17 time Judge Ann Lokuta. It was before she had terminated my  
18 services before her trial.

19 And as part of the -- my defense of her I was  
20 pointing out to them the problems with the judges in Luzerne  
21 County, particularly with her, where they were taking cases  
22 of friends and moving them over to them to settle. And then  
23 I expressed concern about what was happening with the  
24 juvenile center, the adjudications, things of that nature.

25 And at some point I -- in 2005, I guess it was the



1 summer of 2005, Flood -- Steve authorized me to hire an  
2 investigator, which I did, my investigator.

3 Q Before you -- before you go there, let's stay with  
4 your communications with the JCB. Could you recollect or  
5 could you tell the Commission when was the first time and who  
6 you met with with the JCB that during which you expressed the  
7 concern about the information you and Mr. Flood received?

8 A I spoke with Frank Puskas several times.

9 Q In person or on the phone?

10 A On the phone. And then in 2006, during the  
11 deposition of Judge Lokuta in 2006, I outlined some of my  
12 concerns in August of 2006.

13 Q On the record during the depo or out of --

14 A On the record.

15 Q On the record?

16 A Yes.

17 Q Okay. And who did -- who was at that deposition  
18 representing the JCB?

19 A Frank Puskas, and then I guess the agent was George  
20 Delaney, and I was there with Judge Lokuta.

21 Q Okay. So is there anything else you told Mr. Puskas  
22 at that time other than what you reviewed concerning the --  
23 what you perceived to be the concerns of the juvenile justice  
24 system in Luzerne County as relates to the judges in your --  
25 and the issues that you raised, you and Mr. Flood were



1 raising? Anything else?

2 A Over that time period, the taking the cases of  
3 friends and surprisingly large settlements, the concern about  
4 the increased incarceration, concern about the Powell,  
5 Zappala team, and this great increase in cost.

6 And then at some point in 2005 and then in 2006  
7 about the results of our investigation in Florida where we  
8 discovered the house that was owned by -- I think it was  
9 Conahan's wife, and it was purchased for \$980,000. And we  
10 wanted to know where the money had come from because she was  
11 a school teacher, if you recall, during that time period.

12 I also told him my broader concerns about the  
13 players there, brought out to them that Conahan was seen  
14 eating breakfast with Billy D'Elia, the head of the local mob  
15 up there. They went to jail, I guess, cooperating.

16 Q Where were you getting this information?

17 A Steve Flood who saw them eating breakfast.

18 Q All right. So you told -- Mr. Flood didn't meet  
19 with you and Mr. Puskas, right, it was just you?

20 A Right.

21 Q And this was based upon what Mr. Flood was telling  
22 you?

23 A Um-hum.

24 Q Hold on. And then when you met with Mr. Puskas did  
25 you provide any like actual documents to confirm what you





1 were stating was accurate or any documents to corroborate  
2 what you have been told either by Mr. Flood and others about  
3 your -- the concerns in Luzerne County?

4 A Well, Frank Puskas would ask me. He said Sam, make  
5 a formal complaint. He said, I don't have enough  
6 information. I can't connect the dots yet.

7 Q Well, Mr. Legg and I were talking about that before,  
8 because you indicated in your statement that Mr. Puskas told  
9 you that there was not enough hard evidence.

10 A That's correct.

11 Q Okay. Well, was that his words or yours?

12 A He said to me, if you have evidence, give it to us.

13 Q So he didn't use the word hard? That was your  
14 statement?

15 A My statement, any real evidence.

16 Q We have reviewed a lot of complaints. And a lot of  
17 the complaints, and you will agree with me, about judges are  
18 frivolous or vivacious?

19 A About 95 percent.

20 Q And so a lot of that information in those is far  
21 from being hard evidence, right?

22 A That is correct.

23 Q So when a complainant, whether it be a lawyer or a  
24 judge or a member of the public, before they file the  
25 complaint they don't do any sort of independent investigation



1 to determine whether or not the evidence is good, bad, or  
2 indifferent? They file the complaint and then allow the JCB  
3 to do the investigation to determine if their evidence, as  
4 your word, is hard or credible, right?

5 A That is correct.

6 Q Okay. So why didn't you file a complaint with the  
7 JCB with this information?

8 A Two fold. And hindsight I wish I had done it in  
9 writing. One, I didn't think I had enough. I had a lot of  
10 speculation, guess work. Two, during the time period I  
11 thought we were going to get more, but it never panned out.  
12 And three, it was in the context of representing Judge Lokuta  
13 where I was trying to suggest to them that there was such  
14 control up there that some witnesses may not be fully candid  
15 because of their fear of jobs or retaliation.

16 As you know, I mentioned in my statement how I was  
17 with Flood when he would get calls from lawyers that said  
18 Steve, we would like to contribute to you, but we were told  
19 by Conahan you'll never win a case in the county if we do. I  
20 was actually sitting right beside him when he received a call  
21 of that nature in 2005, during his -- early 2005 during his  
22 primary election race, which he lost.

23 Q Now, you state in your statement that you hired an  
24 investigator, Mr. Palmer, to go down to Florida. He took  
25 some videos, correct?



1           A     No. He went down there and got the deed and things  
2 of that nature. And then the club had videos of -- the yacht  
3 club had videos. See, we caught on to this because the yacht  
4 club had expelled Ciavarella and Conahan. They then filed an  
5 injunction action against that, but they filed it in Luzerne  
6 County, and it was assigned to Judge Toole, the younger --  
7 the President Judge's son.

8                     We could not figure out what was going on, why they  
9 would have jurisdiction in Luzerne County. Contact was made  
10 by Chris Cullen, a good lawyer up in Scranton, who was asked  
11 to represent the people from the yacht club. They were  
12 infuriated about what was going on.

13                    And so Chris started to represent them, and then  
14 suddenly they wouldn't cooperate anymore. And then the issue  
15 was resolved down there between the judges and the yacht  
16 club.

17           Q     Well, how long --

18           A     But because of that we sent Palmer down because we  
19 wanted to find out what they were doing down there, what  
20 property they owned.

21           Q     How long was Palmer's investigation from start to  
22 finish?

23           A     He went down to Florida about three or four days  
24 down there, and then he came back. And then he had the  
25 videos of the -- of the club activities, which Steve Flood



1 took. And then he was reviewing those and turning them over.

2 Q Did you see the videos?

3 A No.

4 Q Did you view the videos?

5 A I didn't have time. Steve --

6 Q You just know that they exist based upon what Mr.  
7 Flood told you?

8 A And what Mr. Palmer told me.

9 Q And what period of time was that, what month and  
10 year?

11 A It would have been in 2005. It was either summer or  
12 fall of 2005.

13 Q So now you have more information, more -- obviously  
14 raised your level of concern about what was happening with  
15 certain judges in Luzerne County?

16 A That's correct.

17 Q You've now been practicing in front of the JIRB and  
18 the JCB for 20 odd years?

19 A Um-hum.

20 Q Do you think that a complaint signed by Sam Stretton  
21 at that point would have raised some concern on behalf of the  
22 JCB to do some investigation about that complaint?

23 A Well, I probably should have done so, but with my  
24 discussions with Mr. Puskas he said you need more  
25 information, and I never had more. So I did not -- but I





1 didn't raise it with him again in August of 2006.

2 Q Well, what information did Mr. Puskas -- you say Mr.  
3 Puskas told you to get more information?

4 A That is correct.

5 Q What was he looking for that --

6 A He was looking for a connection, a connection  
7 between the property in -- in Florida and misconduct in  
8 Luzerne County. He was looking for a connection that would  
9 show the fact they hired the Zappala/Powell team, that there  
10 was kickbacks or pay offs. That's what we were suggesting,  
11 but we couldn't prove it at the time. And without that he  
12 said it was interesting information, but it would go nowhere.

13 And I tended to agree because I saw the problems we  
14 were having from the comptroller standpoint and the threats  
15 we were getting and the lack of cooperation we were getting  
16 from other high government officials.

17 Q So is it your testimony today that based upon what  
18 Mr. Puskas told you, you didn't think if -- it was -- you  
19 thought it was worthless at that point?

20 A No. What I did was I directed Steve Flood in 2004  
21 --

22 Q And we're in 2005, 2006. What did you do at that  
23 point? You talked to Mr. Puskas?

24 A Went to the FBI.

25 Q Let me -- he said you don't have enough evidence,



1 even though -- and at that point in time was it your belief  
2 that filing a complaint with the JCB would have been  
3 fruitless, they wouldn't have done anything with it?

4 A I didn't think I had enough evidence, and I was  
5 hoping to continue to connect the dots. Remember a lot of  
6 this also is in the context of Lokuta and trying to back them  
7 off her matter based on the problems I saw with those judges.  
8 But --

9 Q Did you think --

10 A -- we went to the FBI. Sent Flood there. I sent --  
11 and Lokuta told me she went there. And -- and I represented  
12 Carolyn Menaker before. I'm representing her currently now,  
13 who's the prothonotary up there.

14 Q Did you share with Mr. Puskas that Judge Lokuta went  
15 to the FBI?

16 A Yes.

17 Q Okay. Did you tell Mr. Puskas -- who contacted the  
18 FBI?

19 A Steve Flood went to the -- Flood went to the FBI.

20 Q Did the FBI contact Mr. Flood and Judge Lokuta, or  
21 did they voluntarily approach the FBI?

22 A It's my understanding Judge Lokuta voluntarily  
23 approached them, and then Steve Flood voluntarily approached  
24 them.

25 Q And in response to that what was -- what did the FBI



1 -- what was the feedback the FBI gave Mr. Flood and Mr.  
2 Lokuta as a result of that information?

3 A Well, Judge Lokuta, she indicated she met with them,  
4 and they were starting some sort of investigation, if I  
5 recall. But Steve Flood, he mentioned he met with them  
6 several times, and, you know, they were taking -- they were  
7 taking and looking into the matters.

8 Q And she shared that with you in '06?

9 A '06 or '05.

10 Q And so that led you to believe that there was an  
11 investigation either soon to begin or had begun on the --  
12 these issues in Luzerne County?

13 A I knew the investigation had started with both of  
14 them going forward. I didn't know all the details because I  
15 did not attend the meetings with them.

16 Q Did you share that information with Mr. Puskas or  
17 Mr. Massa?

18 A I believe I did. They were aware that there was an  
19 ongoing investigation. As you know, it's not uncommon for  
20 either the attorney, also disciplinary counsel or the  
21 Judicial Conduct Board, to defer if they know there is a  
22 major criminal investigation.

23 Q At that point in time did you have enough confidence  
24 that if you filed a complaint with the JCB they could, your  
25 words not mine, connect the dots and do an investigation that



1 may have resulted in judicial discipline of a judge or other  
2 judges in Luzerne County?

3 A No, I didn't. I didn't think they had the resources  
4 or tools. That's why we went to the FBI and gave them the  
5 tools that were needed to start a prosecution --

6 Q Did Mr. Puskas tell you that they didn't have the  
7 resources at that time in '06?

8 A Well, one always knew that just as disciplinary  
9 counsel they're very limited in their resources. They have  
10 only three investigators for a statewide office.

11 Q Have you ever seen their budget? When you say  
12 everybody knew, have you ever seen their budget? Do you know  
13 exactly how much they spend on each investigation? You  
14 weren't privy to that information, were you?

15 A No, I'm not. But I aware they had three  
16 investigators that had a pretty excessive workload. You have  
17 to understand, during that time period Mr. Puskas, Massa, Dan  
18 Reimer were extremely tied up in numerous matters. I had a  
19 number of hearings and matters and cases before them during  
20 that time period, and I assume many, many other attorneys did  
21 also. It wasn't as if they had two or three cases they were  
22 looking into.

23 Q But that -- but even before they had to make a  
24 determination whether or not they had the resources, they  
25 couldn't make that determination because you didn't file a





1 complaint or others didn't file complaints?

2 A I did not file a complaint, that's for sure. I just  
3 told them about it repeatedly.

4 Q Well, in your column you seem to take issue with the  
5 fact that -- with us that we're picking on the -- us being  
6 the Commission, that we're picking on the JCB, and that  
7 they're not part of the problem. Do you think that the  
8 Commission will view your inaction of based upon that  
9 information that you have, not even filing a complaint, as a  
10 showing the lack of confidence that you had in the JCB to  
11 follow up on the complaint?

12 A No.

13 Q That they maybe weren't even part of the solution?

14 A I don't -- that would be incorrect. I didn't file  
15 it because I was trying to get more information. It wasn't  
16 lack of confidence. I just didn't think that I had enough to  
17 give to them. In hindsight I should have sent them a written  
18 complaint. My complaint though is that -- my complaint is  
19 not criticizing you for investigating all aspects, is it  
20 seemed to center on the end result being the Judicial Conduct  
21 Board taking the blame.

22 And that would be a real injustice, I thought, and  
23 just not an accurate reflection of what was going on up there  
24 in Luzerne County during that time period. Everyone -- I  
25 certainly could have done better. We certainly tried when I



1 was the comptroller/solicitor to get information. I worked  
2 real hard at that. We were frustrated every step of the way.  
3 And then Flood lost the election. I asked the new  
4 comptroller, the comptroller, now the Commissioner, to  
5 cooperate. She never would meet with us.

6 She refused to talk to us. Asked if we could  
7 continue to subpoena things, just never responded to us.  
8 Asked our solicitor to meet with me so there could be a  
9 transition, never would on these matters.

10 But yeah, I think I can do -- I could have done  
11 better. But I also think that you're making a mistake if you  
12 want to end up blaming the Judicial Conduct Board for these  
13 problems. I don't see it.

14 Q All the information that you secured through your  
15 relationship with Judge Lokuta, your professional  
16 relationship with Judge Lokuta and Mr. Flood, did you take  
17 that information or contact the JCJC by any chance to let  
18 them know what your concerns were?

19 A The Judicial Conduct Board itself?

20 Q No, the Juvenile Court Judges Commission, Jim  
21 Anderson?

22 A No.

23 Q How about AOPC?

24 A No, I did not contact -- I -- I didn't look at the  
25 AOPC as an investigating agency. And I do a lot of business



1 with the AOPC, but it's usually them defending, and I'm  
2 proceeding.

3 Q Now, you're familiar with the September 28th, 2006  
4 what has been referred to as the anonymous complaint filed  
5 with the JCB?

6 A I'm familiar now. I wasn't familiar with it back  
7 then.

8 Q Okay. When did you first come in contact with it?

9 A Sometime in -- I think it was this year or last  
10 year. I think Bill Fisher might have told me about it or  
11 maybe Judge Lokuta or her lawyer sent me a copy. I'm trying  
12 to remember who sent it to me. I was not aware of it back  
13 then.

14 Q You were aware of it in '06 or '07?

15 A '06, '07, '08. I think it was probably 2010 or late  
16 2009 I was not aware of that.

17 Q Do you have any knowledge as to who authored that  
18 anonymous complaint?

19 A Absolutely none. Having read it I can take a good  
20 guess.

21 Q Who's your -- what's your guess?

22 A I would say Judge Lokuta because of a lot of the  
23 information contained in there. I don't think it's Steve  
24 Flood.

25 Q In -- once you reviewed that complaint was there



1 information in that complaint that you already were privy to?

2 A I forget what was in there now. I'd have to see it  
3 again.

4 Q Well, some of the things that we just talked about  
5 today, nepotism, case fixing?

6 A That's why I thought it was Judge Lokuta when I saw  
7 it. Because, I mean, we had complained bitterly on her  
8 behalf to taking cases and -- of their friends and putting it  
9 elsewhere. And I told you they had -- when Flood first got  
10 elected about that campaign victory meeting raised everyone's  
11 concerns.

12 Q Do you think other lawyers or judges had the same  
13 information that you had that was included in this complaint  
14 prior to the complaint being filed?

15 A Well, they had a lot of it because we had the public  
16 hearings, and we spoke out about our concerns about the high  
17 rates and everything else. It was -- the newspapers were  
18 there. We had two public hearings on those matters, and it  
19 was pretty highly publicized that we were fairly well  
20 criticized at the time.

21 Q And you would agree with me that between comparing  
22 anonymous complaints that are of an anonymous nature filed  
23 with the JCB and ones that are filed by judges and lawyers,  
24 that the ones filed by judges and lawyers give more -- are  
25 given more credibility by the JCB?





1           A     I wouldn't say that. I certainly look at lawyer's  
2     complaint, but it's my understanding, the way I've always  
3     dealt with them, they deal with all the complaints. They  
4     take them all very seriously and look at them, whether it's  
5     from someone sitting in jail serving multiple life sentences  
6     or, you know, someone on the bar. They look at them the  
7     same. It either has merit, or it doesn't have merit.

8           Q     Well, complaints similar to the one filed on  
9     September 28th, 2006 with Sam Stretton's name on it would  
10    have provided a little bit more credibility?

11          A     Probably would have.

12          Q     And others like you that practice in that area?

13          A     It probably would have. But I did tell them about  
14    it. We had a number of conversations. But I don't blame  
15    them. I don't think we had enough, and I don't think they  
16    had enough. You got to understand, they don't have -- this  
17    investigation now, and what we've seen happen as a result of  
18    a massive federal investigation, witness -- witnesses getting  
19    immunity, witnesses getting squeezed, that's why you have  
20    this information now. It was not forthcoming back then.

21          Q     Okay. Let me turn to page 12 of your statement.  
22    You say that the JCB, or Judicial Conduct Board, did  
23    everything it could. Now, they -- the JCB has provided us a  
24    lot of information. I guess what we're looking for, as this  
25    issue developed were you provided either by Mr. Massa, Mr.



1 Puskas, any Board member on behalf of the JCB any  
2 information, were you privy to any information about how they  
3 were handling complaints, why they didn't address complaints  
4 that would serve as a basis for your statement that the JCB  
5 did everything it could?

6 A Well, during the time period, you know, I -- I've  
7 never been privy to a Judicial Conduct Board meeting.  
8 They're confidential. We're not allowed to go there even  
9 when we represent a judge. We're not allowed to go into  
10 their meetings.

11 But in talking to Mr. Puskas, Mr. Massa, Mr. Reimer  
12 during the time period I have a pretty good sense of what  
13 they would accept and what they wouldn't.

14 Q Well, did any of them tell you why they didn't act  
15 on the September 28th, 2006 complaint? That's kind of what  
16 we're looking for? Anybody call you up and say we got these  
17 anonymous complaints, we're deferring them, referring them,  
18 holding on to them?

19 A No one called me about the anonymous complaint. But  
20 in discussions -- remember, I'm representing judges over the  
21 years. It's been going on beyond Judge Lokuta. At times I  
22 would inquire if there was anything more going on. And in  
23 essence, I was pretty well told there was a federal  
24 investigation, and they would defer.

25 Q Okay. When did they tell you that? This is



1 important for us.

2 A 2008 maybe, 2000 -- February of 2009, sometime in  
3 2008.

4 Q Sometime in 2008. Sometime in 2008, early 2008?

5 A I think Frank Puskas, he and I discussed it. And we  
6 noted there was an ongoing -- or he noted there was an  
7 ongoing federal investigation, if I recall. But, you see, I  
8 knew the practice.

9 Q Wait. Mr. Puskas told you in early 2008 that there  
10 was an ongoing investigation, and did that serve as the basis  
11 for why the JCB did not act on the anonymous complaint in  
12 September of '06?

13 A It wasn't quite that kind of conversation. I  
14 probably -- I called him about some judge I was representing,  
15 and then when the conversation was done I might -- often  
16 times I would ask him what's going on with Judge Lokuta?  
17 Because I was interested in her proceedings, and I was  
18 fascinated with the approach her lawyer had taken. So -- I  
19 thought it was suicidal at the time.

20 And so we would then get talking about that matter.  
21 And then we -- I mentioned again the problems with our  
22 friends Conahan, Ciavarella, the crew up there, and ask if  
23 they had any more information. And at some point during one  
24 of those there was a mention that, you know, we're aware that  
25 the FBI was investigating, and we're awaiting results. But I



1 can't pinpoint a date for you, 2008, 2009.

2 Q Did anybody from the JCB ever tell you that they  
3 were not acting on the anonymous complaint because of the  
4 Judge Lokuta matter?

5 A No.

6 Q Did you have any other conversations with anybody  
7 else from the JCB regarding the anonymous complaint or any  
8 matters concerning Conahan -- then Judges Conahan and  
9 Ciavarella other than Mr. Puskas?

10 A No.

11 Q Ever had any discussions with Mr. Massa?

12 A No. I mean, I had a lot of dealings with Joe Massa,  
13 but we usually just discussed those other cases.

14 Q Any off the cuff discussions at the end of the  
15 conversation? Oh, by the way, what's going on with Judges  
16 Ciavarella and Conahan up there in Luzerne County?

17 A Not that I can think of until recent times.

18 Q Okay. Have you ever had those types of  
19 conversations with any members of the Board, the voluntary  
20 Board members of the JCB?

21 A No. I usually don't talk to the members of the  
22 Board. Because the protocol is when they're deciding --  
23 they're prosecutorial, but they're also quasi-judicial. So  
24 you can't actually call them and have ex parte  
25 communications.





1           Q     Just a few more questions, and then I'll have the --  
2 my other fellow Commissioners ask you some questions. But  
3 turn to page -- if you can turn to page 15 of your -- of your  
4 statement.

5                     You said -- this is your statement -- I never saw a  
6 bar association and its members so intimidated in any county  
7 as I saw in Luzerne County in late 1999 up through Ciavarella  
8 and Conahan years. Lawyers would not cross them. Now, what  
9 was the basis for that statement?

10           A     Several fold. One, just watching the plight about  
11 the lawyers who wanted to contribute but were afraid to  
12 contribute. Two, talking to lawyers. I went to Dickinson  
13 Law School. That's Dickinson Law country up there. I knew a  
14 lot of the lawyers up there. And talking to lawyers and  
15 asking them why people were letting certain things continue  
16 and expressing their fear that it may have an adverse impact  
17 on their practices during that time period.

18                     They were the major things, conversations with other  
19 lawyers, the concerns, and the --

20           Q     Well, What did they express to you? What was going  
21 on that concerned them?

22           A     What they expressed to me was obviously there was  
23 some concerns about cases being moved around. There was  
24 concerns about some of the issues that we raised, Steve Flood  
25 and I raised, with the juvenile center. But they were afraid



1 to speak out.

2 Q Did anybody raise any issue with what was happening  
3 in juvenile court matters, especially as it relates to the  
4 adjudication of juveniles, any complaints about that?

5 A Not specifically with lawyers. Most of them weren't  
6 aware. They were aware of our concerns about the cost  
7 factors with the juvenile center and things of that nature.

8 Q Did any of them express to you a concern that there  
9 were not colloquies happening in judge then -- then Judge  
10 Ciavarella's courtroom, or that there was a high placement  
11 rate to -- to the detention centers?

12 A None of the lawyers expressed that. That was my  
13 concern with Flood in which we tried to express. And then  
14 Judge Muroski's concern to a lessor extent.

15 And then also just to follow up. I saw what  
16 happened with Judge Muroski when he backed off. So that's  
17 when I realized that the intimidation factor was fairly  
18 strong in Luzerne County. And if you wanted to practice up  
19 there, you kept your mouth shut.

20 Q Did you ever view anything inside any of the  
21 courtrooms in Luzerne County, you personally, that would  
22 serve as a basis for your statement that the local lawyers  
23 there were very much intimidated through the Ciavarella and  
24 Conahan years?

25 A I've tried some cases up there during those years,



1 of course. I saw how they treated me. They sentenced me to  
2 jail and \$2,500 fine in 2001 when I was representing Jerry  
3 Datey in his criminal charges at the time.

4 But lawyers approached me afterwards, and a couple  
5 lawyers said to me things like you should have seen us. We  
6 would have fixed it for you. That's how we do things up  
7 there. We don't -- you know, things of that nature. So I  
8 got a sense of sort of the culture up there at the time. But  
9 I -- I saw how they tried to intimidate me.

10 And then similarly with -- when I had -- before  
11 another judge, the judge's name is Medico, the constant  
12 threats of contempt. I can imagine if I was up there and  
13 that was my major base of practice how that could cause you  
14 not to want to speak out in these matters.

15 MR. HOROHO: Mr. Stretton, thank you, very much.  
16 Mr. Chairman, that's all the questions I have.

17 BY CHAIRMAN CLELAND:

18 Q I have just a couple questions to ask. Mr.  
19 Stretton, I don't want you to take this or be implied or  
20 interpreted as any sort of personal criticism. I'm genuinely  
21 trying to understand the faults and defects in our system.

22 But let's deal with the personal knowledge that you  
23 had, let alone connecting the dots. You just mentioned that  
24 you had been held in contempt of court yourself, and  
25 according to your statement, sentenced to five days in jail



1 and a \$25 fine. And then you say it was a sham?

2 A It certainly was a sham. I can tell you exactly  
3 what happened.

4 Q Well, I guess my concern -- my concern is your  
5 reaction. Did you think it was appropriate or would have  
6 been obligated to file a complaint with the Judicial Conduct  
7 Board over that?

8 A You know, I never thought of it that way. I was so  
9 doggone mad at them. You know, I filed an appeal. And, of  
10 course, the Superior Court reversed.

11 Q I'm trying to understand why a lawyer would be  
12 hesitant to file a complaint when, as you said, it was a  
13 sham?

14 A I think I -- remember, that was in 2000, 2001. I  
15 saw that more as retaliation for myself speaking up on behalf  
16 of Carolyn Menaker. We filed several freedom of information  
17 requests, and we were litigating issues involving a computer  
18 system. And I saw it more as a getting back at me. I didn't  
19 quite see the broader picture that I later saw.

20 Q So you saw it as retaliation and intimidation?

21 A Well --

22 Q Wouldn't that be worthy of filing a complaint?

23 A I thought it was very heavy handed, but I mean, I  
24 represent a lot of lawyers in contempt and seen a lot of  
25 things in my lifetime. I've tried about 800 jury trials, and





1 God knows how many non-jury trials in my life. I've seen a  
2 lot of heavy handedness in the courtroom. I don't usually  
3 report it unless I think it goes over the top.

4 I thought Ciavarella was wrong at the time. I  
5 didn't understand what -- in 2000, 2001 what I understood  
6 later. I did tell my friends at the Conduct Board about -- I  
7 said that bastard down there. I remember driving up. I was  
8 on trial in Lancaster, and they sent the sheriffs to get me.

9 I remember driving up and calling Ciavarella's  
10 chambers saying, look, I'll be up there. He said don't  
11 bother, just report to the prison. We'll bring you over in a  
12 few days. I said, hell, I want my hearing. And then I get  
13 up there, and he had called the TV stations. They were  
14 there.

15 And then a couple of the political cronies came out  
16 of his chambers and berated me. I had called Ernie Preate,  
17 who I had just gotten reinstated the year before and said,  
18 Ernie, could you come down? Look at this guy. He's going to  
19 put me in jail. I want you to come and go to -- I have to go  
20 to Corey Stevens, who's the Superior Court Judge up there.  
21 Corey Stevens had been my roommate in law school. And I  
22 said, okay, can you get me out? And of course only then they  
23 convinced them not to put me in jail.

24 Q But that didn't persuade you to file a complaint  
25 with the Judicial Conduct Board?



1           A     No.  What it persuaded me to do is one --

2           Q     The answer is you didn't?

3           A     I didn't.  Partly because we had the trial coming up  
4     with Datey, and Datey did not want me to raise any -- he  
5     wanted to go to trial with that judge.

6           Q     And then in 2004 when you were representing Mr.  
7     Flood and he was held in contempt for what -- you say he was  
8     held in contempt for a bogus reason.  Did that prompt --

9           A     I didn't represent him on that, but that was -- he  
10    went down to Florida, fantasy baseball or something like  
11    that.  And they waited until he went down and then had a  
12    contempt hearing without him.

13                    He -- he told me about this.  I'm not sure I was his  
14    solicitor then.  But when he came back then he was litigating  
15    that issue.  I thought it was upsetting, but I didn't think I  
16    had enough that he said he hadn't produced some information.  
17    And, you know, he was down in Florida, but yeah.

18           Q     I guess what I'm trying to understand is you've  
19    outlined some very serious issues here, let alone the kids  
20    for cash and all the criminal stuff and everything.  We have  
21    two situations which you characterize as bogus that you've  
22    amplified here now as efforts at intimidation, or you  
23    perceived it that way, but it didn't prompt a complaint.  And  
24    I guess that's what I want.  Why is it that lawyers don't  
25    file complaints in situations like this?



1           A     Well, I can tell you my thought process as best I  
2     can gather.  And of course sitting here now with what I know  
3     I wish I had.  But when I go into court I go into court every  
4     day of my life.  I'm on trial every day.  There's not a day  
5     I'm not some place.  I see a lot of good judicial conduct.  I  
6     see a lot of bad judicial conduct.

7                     I see judges having good days.  I see judges having  
8     bad days.  I've see judges scream, curse, yell.  I've seen  
9     judges hold people in contempt and apologize, and I've seen  
10    judges act wonderful.

11                    And I always view myself as trying to uphold and  
12    support the judiciary.  It's been my whole practice.  I  
13    believe in our system.  I absolutely believe it.  The  
14    attorney discipline -- I've reported a lot of attorneys in my  
15    life, and I've reported judges in my life.  I believe in the  
16    process.  I think it's a wonderful system.

17                    At times I understand the pressures judges are  
18    under, both from being -- trying before so many and also for  
19    representing so many.  So sometimes I'm give them the benefit  
20    of the doubt they had a bad day in certain situations.

21                    So I just don't at the drop of a hat because I think  
22    a judge could have done better or was wrong that day go.  But  
23    if I think it's a pattern of corruption, of course I would  
24    go.

25                    And that's -- in Luzerne County it became clear to



1 me that there was stuff in the mix. I couldn't connect all  
2 the dots, and then we were out unfortunately. I did raise it  
3 with Frank Puskas and others. I should have done it in  
4 writing. But I don't think there's much they could have done  
5 with that information knowing their resources at the time.

6 And I think it was a wise decision on their part to  
7 probably wait, as they did, until the federal investigation  
8 was done because that federal investigation where their  
9 resources revealed information I couldn't get and they could  
10 have gotten.

11 And I also, as I mentioned earlier, was upset that  
12 the other agencies, the Governor and other agencies that  
13 turned their head to some of our concerns and did nothing.  
14 And all of that I found very upsetting.

15 Should I have filed a written complaint without --  
16 you know, with just the -- sort of what I put here in my  
17 statement? Yeah, I probably should have. But I'm not sure  
18 they could have done anything with it at the time.

19 But to answer your broader question, why don't  
20 people complain about judges generally? Because --

21 Q Well, let's say attorneys?

22 A Attorneys. Because we like to give them a little  
23 leeway. I mean, I've been in your courthouse a number of  
24 times. I put up with -- I love him, but I put up with him,  
25 Judge Wolf for that one case. And I was mad as heck at him,





1 but I couldn't report him. A judge had told me I wasn't  
2 allowed to mention the word reasonable doubt in my closing  
3 speech and things of that nature, but I understood him. I  
4 understood. He was 81 years old. I wasn't going to ruin his  
5 career by turning him in. I like to give some leeway. And  
6 that's what I think most lawyers do.

7 Q One more question, and then I'll turn it over. But  
8 you've expressed confidence in our system of judicial  
9 discipline?

10 A I do.

11 Q And you've also expressed, as early as 2000 or 2001,  
12 a judge which you felt was being intimidating, abusing power,  
13 abusing the judicial office, and it took until January of  
14 2009 to get that judge out of office.

15 Do you see an inconsistency there? And if so, how  
16 would you improve the system to prevent that?

17 A Well, I can tell you how to improve the system. I  
18 don't see an inconsistency, because I don't think there was  
19 enough evidence to get him out of office until the federal  
20 government did what they had to do with their resources.

21 What has to be done is you have to better fund the  
22 Judicial Conduct Board and the Attorney Disciplinary Board.  
23 They're grossly underfunded. They are not -- they don't go  
24 out and look for things. They react to what they're told.  
25 And they react to what -- if you can give them a lot of



1 information, they'll be much better as resolving it than if  
2 they have to go out and develop it themselves.

3 They don't have the resources. Remember, during  
4 that same time period, 2005, 6, 7 there was several major  
5 investigations going on that was taking a lot of time. Judge  
6 Lokuta, Judge Deleon, Judge Berry, and some others that were  
7 very substantial.

8 It's not as if they were sitting there drinking beer  
9 all day. There were a number of judges who I found that they  
10 did a very credible job. So I -- I just -- unfortunately  
11 when you're dealing with a small county it sometimes is very  
12 difficult to get information about the judicial officers that  
13 can be proven at the clear and convincing standard that you  
14 need.

15 CHAIRMAN CLELAND: Thank you.

16 THE WITNESS: Thank you.

17 CHAIRMAN CLELAND: Any questions? Mr. Legg.

18 BY MR. LEGG:

19 Q Mr. Stretton, just a few follow up because I want to  
20 make sure the record's clear on this. You said that in  
21 August of 2006 on the record in the Lokuta matter you put  
22 concerns --

23 A Listed my concerns.

24 Q -- into, I guess, deposition testimony or on the  
25 record of a deposition?



1           A     I was representing Judge Lokuta.  At the end of her  
2 testimony I outlined some of my concerns about the Luzerne  
3 County judges.

4           Q     Now, let me go through what I think you said it was,  
5 and then correct me if I'm wrong, okay.  That there was  
6 problems in the juvenile justice system in terms of an  
7 increased detention rate for juveniles?

8           A     I'd have to see exact -- I talked to Puskas so many  
9 times, and then I can't -- I'd have to see exactly what I  
10 said.  It's on record.  I just don't have the deposition  
11 anymore.

12          Q     Well, prior -- had you raised the increased  
13 detention rate as an issue?

14          A     I certainly had raised it.

15          Q     You had?

16          A     Yes.

17          Q     And had you raised the Powell/Conahan connection as  
18 an issue?

19          A     Yes.  And then the -- the Bill D'Elia to Naples  
20 connection.  I told him about the bank and all that stuff.

21          Q     Well, let me ask you this because you -- your --  
22 you're talking about connecting the dots.  You're indicating  
23 an increased detention rate.  You raised an issue about the  
24 new detention center and the costs?

25          A     Right.  With the Powell/Zappala.



1           Q     You raised an issue about the Powell/Conahan  
2 connections?

3           A     That is correct.

4           Q     You raised the issue about what seemed to be living  
5 above their means with a million dollar house in Florida?

6           A     That's correct.

7           Q     And also concerns over a judge's connection with the  
8 mob or organized crime?

9           A     Meeting with D'Elia and then the bank up there in  
10 Naples.

11          Q     And finally you would have raised the issue of case  
12 fixing, that is attorneys friendly with the judges getting  
13 assigned to those judges and getting large settlements?

14          A     I told them about the cases being taken from Judge  
15 Lokuta, and I told them that anecdotally that I relayed in  
16 here at the first meeting where the lawyer asked them --  
17 asked the lawyer where's the ten thousand. I wasn't present  
18 at that meeting. It was Flood.

19          Q     So would all that have been made prior to or at the  
20 August, 2006 deposition?

21          A     It would have been prior to, and then during that  
22 deposition I outlined some of the concerns. I forget which  
23 ones I outlined in the deposition. I'd have to read it  
24 again. But some of those concerns are there. I just don't  
25 remember how far I went.





1 Q Well, let me ask you this.

2 A Remember, it was in the context of telling them,  
3 leave her alone. You've got bigger problems here.

4 Q Well, let's talk about leave her alone. They  
5 expended a substantial amount of resources on the Lokuta  
6 matter?

7 A That's correct.

8 Q We agree with that?

9 A No question about that.

10 Q I think you've been quoted as an extraordinary  
11 amount of resources were dedicated to the Lokuta matter?

12 A A lot of their time was spent on that because of the  
13 number of witnesses and the length of the hearing.

14 Q How many witnesses?

15 A During the trial, I remember when we were listing --  
16 remember, I didn't try the case. I was out at that point. I  
17 think they had like 40 or 50 witnesses, and we listed 40 or  
18 50 or more witnesses, maybe a couple hundred if I recall the  
19 initial review. I don't know how many witnesses they  
20 actually called that attended the hearings. It was in excess  
21 of 20 or 25, I believe. I don't know.

22 Q Well, clearly then if the JCB wanted to do an  
23 investigation, they could have done an investigation? They  
24 can interview 10, 20, 30, 40, 50 witnesses?

25 A Yeah. But this was simple stuff like her demeanor



1 on the bench. You know, the court reporter X comes, I was  
2 there. I saw that. Or a clerk lied saying she didn't do  
3 this, or she made me clean her floor, something like that.  
4 It wasn't conflicted stuff. I couldn't -- there's a  
5 different type of complaint.

6 Q Well, wouldn't it require interviewing people either  
7 way?

8 A Yes.

9 Q I mean, case fixing, you can look at a docket to  
10 determine who's getting cases and what the settlement amounts  
11 are, right?

12 A That's right.

13 Q So that's not difficult?

14 A It's not difficult to see, but it's very difficult  
15 to prove if there's quid quo pro. Someone comes in, well,  
16 there's an injury, that injury, and whatever, and this is a  
17 fair settlement, and the defense agreed to it. So, I mean,  
18 it's not as easy as you might think. You got to be careful  
19 Monday morning quarterbacking.

20 Q Well, let me ask you this putting Monday morning  
21 quarterbacking aside. Why would you put this on the record  
22 in the Lokuta matter as opposed to filing a formal complaint?  
23 That seems to be a rather informal action on the part of  
24 attorneys to place statements or concerns on the record about  
25 another judge. Was that your form of making a complaint to



1 the Judicial Conduct Board?

2 A In a backhanded way, yes, but my main purpose  
3 obviously was to try to help Judge Lokuta and point out that  
4 some of the witnesses, the judges, had some baggage. And  
5 there were a lot of people who were witnesses against her who  
6 were under their employment and things of that nature. That  
7 was what I was trying to tell them. But, yeah, in a  
8 backhanded way. But I've already given my explanation. And  
9 you're right, I should have written -- I should have filed a  
10 written complaint.

11 Q Mr. Puskas is going to testify as well to these  
12 conversations. I just want to make sure the record is clear  
13 as to what he said in response. Did he tell you he didn't  
14 have enough evidence?

15 A He said give me evidence. He said file a written  
16 complaint.

17 Q Okay.

18 A And we'll investigate.

19 Q And as a prosecutor that would have been my response  
20 to you, file a complaint?

21 A That's a fair response.

22 Q Put your money where your mouth is, I guess, for  
23 lack of better word?

24 A That was the right response. And I never filed a  
25 complaint.



1 Q Because somebody who's dealt with the Conduct Board  
2 you know that they initiate their investigation as a result  
3 of complaints?

4 A That is correct.

5 Q And by you not filing a complaint they were never  
6 able to initiate their investigation at least as to what you  
7 were contending?

8 A That's probably a fair statement. That would have  
9 helped if I had filed something in writing. So that was my  
10 fault.

11 Q At one point in your statement to this Commission  
12 you indicated that the JCB did everything that it could, and  
13 I'll quote on page 13. You said that the Conduct Board did  
14 their duties in a diligent fashion?

15 A Referring to their conduct over the years and how  
16 they prosecuted and pursued complaints of judicial conduct  
17 that I'm familiar with.

18 Q Because Mr. Massa testified this morning and  
19 conceded that, in fact, the 2006 anonymous complaint got lost  
20 between the cracks. You would agree that that is  
21 inappropriate?

22 A I'd be surprised he said that because I've had  
23 discussions with him on that. It was my understanding that  
24 he presented it to the Board, but tabled it because they knew  
25 there was a pending federal investigation. That was my





1 understanding.

2 Q Well, in fact, there's a written answer that says  
3 they actually tabled it because of the Lokuta trial, not  
4 because of any federal investigation. Does that surprise  
5 you?

6 A If that was signed by Joe Massa, it would surprise  
7 me. If it was signed by their counsel, it would not surprise  
8 me.

9 Q Well, would it surprise you that Mr. Massa, in May  
10 of 2007, recommended to the full Board that a full  
11 investigation be conducted on Conahan and Ciavarella?

12 A That Mr. Massa recommended that?

13 Q Yes. Does that surprise you?

14 A That wouldn't surprise me, because I've been talking  
15 to him all along. And that based on that letter it wouldn't  
16 surprise me at all. At that point things are starting to  
17 unravel up in Luzerne County.

18 Q Well, if you know things are starting to unravel and  
19 Joe Massa is trying to get an investigation going, why not  
20 file your own complaint with reference to the things that  
21 you'd endured during your times in Luzerne County? I mean,  
22 isn't it important that the Conduct Board have as much  
23 information as possible?

24 A They knew all that. I told them. I mean, I told  
25 them the stories. Remember, I deal with these guys every



1 day. I talk to them. I -- you know, we're friendly. I've  
2 told them the stories. I told them the stories about my  
3 contempt. I've told them all along. It's not like I hid  
4 anything.

5 My mistake was not putting it in writing. But,  
6 again, they're great stories, but they don't go anywhere  
7 until you get Powell and Mericle and others starting to  
8 cooperate. That's where -- and that's where -- how this case  
9 got broken open. And that's because of the resources of the  
10 federal government. If Powell hadn't broke and others, you  
11 wouldn't see a case. But --

12 Q Well, had you -- I mean, you practice all over the  
13 place. Were there other counties where you were experiencing  
14 this type of intimidation?

15 A Sure.

16 Q And heavy handedness?

17 A Absolutely. I tried in almost every county in the  
18 state.

19 Q And your practice is just to -- in telephone calls  
20 with JCB counsel to tell them about your experiences but  
21 never, in fact, to file formal complaints?

22 A I file formal complaints against judges, but at  
23 other times I do it other ways. I write articles about it.  
24 I complain to the judges there. I can tell you if you want a  
25 list of counties where things have been wrong, and I've



1 complained. They haven't changed anything, but at least I've  
2 complained.

3 Q And, again, that's why you put it on the record in  
4 the Lokuta matter, and that would have been August of 2006?

5 A It was in the deposition in August of 2006. There's  
6 always a fine balance, you understand, between making a  
7 complaint against a judicial officer and letting it go  
8 thinking that he or she is having a bad day or giving the  
9 judicial officer the benefit of the doubt. You can't just  
10 sit there and put the judicial officer under the microscope.  
11 I mean --

12 Q Well, I mean, in fairness, Mr. Stretton, you've  
13 testified to experiences in Luzerne County that are expanding  
14 two to three, four years involving Ciavarella and/or Conahan  
15 that involve not only sham contempt proceedings, but you  
16 contend that Conahan was involved in intimidating lawyers to  
17 avoid making contributions to your client; that, in fact,  
18 Conahan was involved in case fixing and your client witnessed  
19 him request \$10,000 from an attorney, to another judge  
20 intentionally sitting on a motion and doing nothing with it,  
21 to allegations that your other client could verify that there  
22 was case fixing and cases being removed from her and assigned  
23 to other judges, increased detention rates, relationships  
24 between Powell and Conahan.

25 I mean, there was a lot there. And I guess I'm



1       trying to understand that if we're supposed to figure out  
2       what attorneys need to know to report a jurist, what was it  
3       about what you had that wasn't enough? You just couldn't  
4       connect the dots?

5           A     No, I didn't have the total picture back in 2001. I  
6       had what they did to me. I had some concerns with the  
7       prothonotary, though our plight then was more with the  
8       Commissioners.

9                     2004, 2005 with the combination of Lokuta and Flood  
10       and my representation I started to see a pattern in that  
11       particular matter. We started to try to develop evidence.  
12       We got frustrated. Flood loses. Talk to Puskas about it,  
13       talk to their office in these matters.

14                    Some of the things, you know, you don't always have  
15       total free hand. Steve Flood did not want me to go to that  
16       conversation at that victory party. He told it to me two  
17       years later, and he did not want me to go and make a  
18       complaint. So I'm stuck with the attorney/client privilege.

19                    There were other things that he wanted me to deal  
20       with in a different perspective. His focus was more --  
21       although certainly he was interested in the cases being moved  
22       over, his focus was more on the juvenile justice center and  
23       the large amounts of money that was being spent on Powell,  
24       and that was his concern.

25                    So I didn't quite look at the problem the same way





1 back then. But I did see the concerns, and I wish I had gone  
2 forward, though I don't think it would have made much of a  
3 difference. But we did try to tell a lot of people.

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

5 CHAIRMAN CLELAND: Judge Uhler.

6 BY JUDGE UHLER:

7 Q As I understand your testimony, the hearing  
8 regarding production of financial records of the  
9 Powell/Zappala management team was in 2005; is that correct?

10 A There was two hearings. The first one would have  
11 been in March or April, I believe, or maybe early May of  
12 2005. The second one, I believe, was August. We issued  
13 comptroller subpoenas, and then they filed motions to quash,  
14 about four different motions to quash. And then we argued  
15 that before Judge Toole.

16 Q And no decision was ever rendered?

17 A Never. Still pending to this day.

18 Q Okay. Did you check the 703 forms that Judge Toole  
19 would have had to file regarding --

20 A The notices.

21 Q Regarding disposing of pending matters?

22 A No.

23 Q Is that not something that you could have checked?

24 A Well --

25 Q It's a public document?



1           A     Well, obviously I could have checked it. I just --  
2 I knew he wasn't going to decide.

3           Q     All right.

4           A     Because we --

5           Q     With that --

6           A     We knew about his gambling debt, and we just figured  
7 that was the pressure that was put on him at the time.

8           Q     That presumption from your vantage point, why then  
9 did you not file a complaint with the Judicial Conduct Board  
10 surrounding a violation of Canon 3, Subsection 5 wherein  
11 judges are to promptly dispose of business before the court?  
12 That would be a fairly straightforward complaint; would it  
13 not?

14          A     Yes. But I mean, boy, if I did that with every  
15 judge, I would have half the judiciary. I'd have a complaint  
16 against them.

17          Q     We're talking about a decision that was called for  
18 in 2005 and had not been resolved by 2009. I would dare say  
19 that more than half the judiciaries resolve their decisions  
20 within that time period. And particularly if they had not  
21 noted that pending opinion on their 703 form, they'd be in  
22 jeopardy.

23          A     From that perspective you're right. But the  
24 perspective I had was when January 1st, 2006 came around I  
25 was out of office. Flood was out of office. Case was done,



1 and a new comptroller, now the Commissioner/comptroller, told  
2 us, you know, it was over. So everyone knew that. So --

3 Q You're still an officer of the court though; are you  
4 not?

5 A Absolutely. But remember, I'm familiar with the --  
6 I mean, there's some cases, as you know, where judges have  
7 90, 100 cases beyond that 90 day limit three or four years  
8 where there's only minor discipline. I am familiar with  
9 that. But, I mean, I -- Judge, what you're trying to do is  
10 put every -- you're trying to put a microscope and say do  
11 this. You should have reported. We can't do it that way.

12 The courtroom is a fluid situation. And I -- I  
13 would very much feel that it would be a gross disservice to  
14 the bench if a lawyer complained every time a judge maybe was  
15 a little heavy handed or un -- or perhaps a little out of  
16 line. I see that every day of my life.

17 Q I'm sure you do, and I concur with your concern.  
18 But at the same time, as I understand the concerns that you  
19 had before you in 2004, 2005 was concern surrounding how  
20 assignments were made, issues surrounding the -- the -- the  
21 connectivity between Ciavarella and Conahan and here dealing  
22 with a very important financial piece of information  
23 regarding the decision making. This -- this was just not an  
24 ordinary decision under ordinary circumstances.

25 A That -- I would agree 100 percent. And in hindsight



1 you're absolutely right. I was neglectful of my duties. I  
2 should have done the written complaint. And I agree.

3 CHAIRMAN CLELAND: Mr. Stretton, thank you. We  
4 appreciate you're being here. In some ways you've served as  
5 a surrogate for a lot of lawyers who didn't file complaints.  
6 And it's been our effort to try to understand why that is and  
7 what impact, if any, that has on our judicial system.

8 So while you're the one on the hot seat, it's not  
9 directed at you personally. And we appreciate your  
10 appearance here today and the incites that you have offered.

11 THE WITNESS: Thank you, Judge. Thank you, very  
12 much.

13 CHAIRMAN CLELAND: We're going to take a -- we'll  
14 take a ten minute recess and then reconvene at 20 minutes to  
15 three.

16 (Recess taken from 2:25 to 2:38.)

17 CHAIRMAN CLELAND: We are, I think, ready to resume.  
18 Our last witness of the hearings is Mr. Puskas. Mr. Puskas,  
19 we identified you this morning as the Assistant Deputy Chief  
20 Counsel to the Judicial Conduct Board.

21 THE WITNESS: That's correct.

22 CHAIRMAN CLELAND: Okay, Deputy. And we appreciate  
23 you're being here this afternoon. And Mr. Legg will do the  
24 questioning.

25 BY MR. LEGG:





1           Q     Thank you, Mr. Chairman. Mr. Puskas, I'm actually  
2     glad that we're running a little bit over, because I think  
3     you had the chance to listen to Mr. Stretton's testimony.

4           A     Yes, I did.

5           Q     And one of the reasons that we had you come was  
6     basically a result of an article that appeared in one of the  
7     legal papers, which -- in which Mr. Stretton contended that  
8     he had conversations with you concerning Luzerne County.

9                     And I guess my question for you is after hearing Mr.  
10    Stretton testify is there anything you'd like to add,  
11    correct, or amend to his testimony concerning either A, your  
12    conversations; or B, what he put on the record in the Lokuta  
13    deposition?

14          A     My recollection is the first time that I ever heard  
15    any information from Mr. Stretton regarding Conahan,  
16    Ciavarella, or the juvenile detention facility was at the  
17    August 25th, 2006 deposition of Judge Lokuta.

18                     I have no recollection of any such conversations or  
19    any information coming in 2005. This is the date that I  
20    remember, and it is on the record during that deposition what  
21    he had to say about it.

22                     MR. TITUS: Could I note at this point, that  
23    deposition is not a public document. It was not filed in the  
24    Lokuta proceedings. It's not a public document. If it was,  
25    we could have produced it under seal if you wanted to see it



1 to review it. He does have a recollection, however, of what  
2 was said. And certainly I don't have a problem with his  
3 testifying.

4 BY MR. LEGG:

5 Q Well, if Mr. Puskas would be more comfortable  
6 submitting the deposition, it will speak for itself, I  
7 suppose. But if he would like to publicly correct anything  
8 that he viewed as errors by Mr. Stretton, I think this is his  
9 opportunity to do so. So I would allow him to make that  
10 decision.

11 A Well, I think I would like to clarify by mentioning  
12 precisely what I recall. I mean, if this becomes an issue  
13 that the Commission would like to see that deposition under  
14 seal, that's a different matter.

15 There were two points in that deposition that Mr.  
16 Stretton mentioned a particular topic that's of interest to  
17 this Commission. What he told me was that in the past he had  
18 represented, as solicitor, the comptroller of Luzerne County,  
19 the prothonotary of Luzerne County. The statement that I  
20 believe he made was he had issued subpoenas, comptroller  
21 subpoenas, to Conahan and Ciavarella on the juvenile justice  
22 center about problems there.

23 He also mentioned that Judge Michael Toole had sat  
24 on a hearing they were supposed to have for nine months until  
25 Flood went out of office. He further mentioned that Judge



1 Muroski had approached him through Comptroller Steve Flood  
2 about being subpoenaed to talk about problems with the  
3 juvenile justice center.

4 I think that's how Mr. Stretton termed it. He  
5 didn't say detention facility. That was all he said during  
6 that deposition. Mr. Stretton never explained, detailed,  
7 defined, outlined, or provided any documentation or  
8 information or discussed any information if it existed about  
9 what those problems were.

10 He did not explain specifically what evidence he was  
11 trying or hoping to obtain through those subpoenas. He did  
12 not reference or allude to a criminal kickback scheme, to  
13 disproportionate placement of juveniles being an issue, or to  
14 depravation of juvenile rights. He said nothing about that.  
15 All he said were problems there, which he did not define.

16 Now, during the -- you have to understand the  
17 context in which he brought this up. It was probably -- it  
18 had to be over two or three hours into what was a five hour  
19 deposition, and I was discussing a particular matter with  
20 Judge Lokuta that involved -- I think there might have been  
21 five -- five eye witnesses to an event that was testified at  
22 trial. This was at trial, an incident in Luzerne County  
23 Courthouse that occurred on June 10th, 2004 on the third  
24 floor in a hallway near Courtroom 4, I believe.

25 And there were witnesses -- two witnesses who came



1 from Judge Augello's staff, his executive secretary, his  
2 tipstaff, there was a deputy sheriff. There was somebody  
3 from the jury board room. There was a deputy court  
4 administrator who was sort of the focal point for Judge  
5 Lokuta in this incident where he was approached by her for an  
6 impromptu meeting, which he said he could not have with her  
7 at that time because he was taking his wife to an oncology  
8 appointment.

9 Her reaction was unreasonable and outrageous  
10 according to the evidence that we presented at that trial.  
11 But this particular incident is what I was focusing on. And  
12 the issue that I confronted was how do I present this to the  
13 Board, because from the beginning of Judge -- of Mr.  
14 Stretton's representation Judge Lokuta's position was that  
15 Judge Conahan was targeting her. This was what she saw as  
16 her nemesis.

17 Didn't explain why he would have been targeting her,  
18 mind you, but this was the position. And so Judge Lokuta,  
19 and this was her trial position, was claiming that Judge  
20 Conahan controlled all of these people.

21 And I said, well, this is a dilemma for the Board.  
22 How are they going to look at this evidence and say all of  
23 these people are just -- they're being controlled by Conahan,  
24 and that's why we don't believe them about this particular  
25 incident?





1           And in that context Mr. Stretton brought up this  
2 other information. My perception at the time was, well, it  
3 looks like he's just trying to point the finger at another  
4 judge about him being problematic in some respect but not  
5 saying what it is. I didn't see the real relation of what I  
6 was inquiring about at the time. What is -- what does  
7 subpoenas and Steven Flood and the juvenile center have to do  
8 with what I'm talking about here? I did not see any  
9 correlation to that.

10           After the deposition I met with Mr. Stretton in my  
11 office, as I would with any attorney after a deposition, to  
12 discuss, well, where do you see the case going? Is it  
13 necessary for Judge Lokuta to return for a part two of the  
14 deposition? Because there was so much information to cover  
15 because the allegations and the claims made against Judge  
16 Lokuta were broad in scope, and it just required a lot of  
17 examination of many different issues to get to the bottom of  
18 it.

19           And in my office I don't recall exactly what we  
20 discussed, but I'm sure that Mr. Stretton would be correct,  
21 although I don't agree with his time, that I would have made  
22 the statement to him, if you have something, file a  
23 complaint. Give it to us. I would have told that to any  
24 attorney. If you're saying that a judge is also doing  
25 something wrong, file a complaint with our office, and we'll



1 look at it just as we do any other complaint. Mr. Stretton  
2 never did file anything.

3 Q Would that have been the context, Mr. Puskas, of the  
4 totality of conversations that you would have had with Mr.  
5 Stretton regarding these issues?

6 A Well, I recall -- if I remember correctly what he  
7 testified here today, that he was mentioning sort of a number  
8 of conversations about these issues. That is not my  
9 recollection. I think Mr. Stretton is mistaken about that.

10 As I said, August 25th, 2006, that is where I  
11 pinpoint him bringing up this information to me. If there  
12 was any kind of reference to it, it had to have occurred  
13 after that. But I don't recall any extensive conversations  
14 about that.

15 I certainly don't recall any mention of Powell or  
16 any of these characters that were involved in that scheme.  
17 And I do not recall him also -- this I want to clarify --  
18 ever mentioning to me that Judge Lokuta went to the FBI.

19 This makes no sense to me because during the summer  
20 of 2007 when we had to file pretrial memoranda, which  
21 included our witness lists, that is when Judge Lokuta listed  
22 in her list she wanted to call federal investigators.  
23 And I spent time fighting trying to identify who these people  
24 were and for what purpose she was calling them because it was  
25 very vague.



1           It simply said call federal investigators, they were  
2 unidentified, to talk about the scope of an investigation  
3 that was not clarified or identified. And the court order  
4 was you had to give the names of the people you were going to  
5 call and a bit of information about what purpose you were  
6 calling them.

7           And this really didn't illuminate that. And  
8 eventually the order would have come down that she would have  
9 been prohibited from calling them unless she identified them.  
10 Instead she pulled them off her list and never identified  
11 them.

12           And if I had known she was going to the federal  
13 investigators for some reason earlier than that, I would have  
14 had some inkling. I did not know. That is why I was trying  
15 to get this information.

16           So that makes no sense to me that he would have told  
17 me that. If he did tell me anything like that, I think his  
18 time line is wrong. He could have mentioned that in the  
19 future, because Sam Stretton is one of these types of guys  
20 that you will talk to him on the phone. He's very affable  
21 and friendly. And toward the end of a conversation he would  
22 get on other things.

23           He is correct that sometimes he would inquire about  
24 the Lokuta matter, the prosecution of that, because he been  
25 the attorney until Judge Lokuta had fired him in 2007.



1           Q     I took him through some of the things that he would  
2 have verbally told the Board, and I just want to clarify.  
3 Because I think you've indicated he did not make those  
4 statements.

5                     He did not tell you about increased detention rates?

6           A     No, he did not.

7           Q     He did not tell you about the Powell/Zappala team  
8 and the new contract and the connections?

9           A     No, no.

10          Q     He did not tell you about the million dollar house  
11 in Florida and connections between Powell and Conahan?

12          A     See, I have no recollection of that -- that kind of  
13 information coming to my attention. I just -- I don't.

14          Q     Did he tell you about the -- what he said was the  
15 case fixing, the friends of the judges being -- getting their  
16 cases assigned to the judges and having large settlements?

17          A     I don't believe he told me that. I think he may  
18 have mentioned the fact that Judge Lokuta had problems with  
19 cases being taken from her list or interfered with. And this  
20 also is something that came out at trial. But if you're  
21 saying for hefty settlements, no.

22          Q     There's a difference between having cases reassigned  
23 and having them reassigned for purposes of fixing?

24          A     There was information, and this even came out at  
25 trial, that Conahan would -- for example, Judge Lokuta would





1 deny a continuance, and he would grant a continuance. I  
2 think another case he had reassigned. None of these were  
3 juvenile cases that were talked about at trial. So I can't  
4 -- I can't definitively say that somewhere along the line  
5 Stretton might not have mentioned that to me. But specific  
6 things you're saying about settlements --

7 Q Case fixing?

8 A -- no.

9 Q And, finally, I think he indicated he expressed some  
10 concern over Judge Conahan meeting with a reputed member of  
11 organized crime?

12 A He may have mentioned that. But that would have  
13 been, again, post-2006, past that deposition date. Because  
14 he certainly didn't talk about it there. And I have no  
15 recollection of -- of a conversation about that. It's  
16 nothing that I -- you know, if -- and I'm pretty careful  
17 about things. I will memorialize things, and I have no  
18 memorialization of this kind of information.

19 Q Any conversations prior to August of '06 and  
20 previous years?

21 A On that topic that you're -- about the juvenile?

22 Q Well, anything relating to Conahan and Ciavarella  
23 where he would have --

24 A I have no recollection of anything prior to that  
25 date, no.



1           Q     Was there ever any point in time when you told him  
2     there wasn't enough evidence to move forward or indicated  
3     that he would have to do the investigation?

4           A     No, I would have never said that.  What I would have  
5     said is if you have something, if you're making a claim  
6     against another judge, file a complaint.  And my own  
7     impression was Sam Stretton wasn't the kind of attorney who  
8     would have shied away from putting his name.  There were  
9     maybe one or two occasions where he mentioned to me, and this  
10    would have been in 2006 after that deposition, that he and  
11    Judge Lokuta were working on a complaint that he wanted to  
12    file against Conahan, but I never saw it.

13                   And what I would have expected to see is something  
14    with his signature on it.  Because he told me he was working.  
15    He did not define the parameters of what that complaint would  
16    have contained.  He just simply said they were working on  
17    something, but I never saw anything filed.

18           Q     So as you sit here today you can -- you don't really  
19    recall a lot of conversations between Mr. Stretton regarding  
20    these issues?

21           A     No.  I mean, I've had conversation with Stretton --  
22    Mr. Stretton certainly when he was representing Judge Lokuta.  
23    But the types of conversations that he may be referring to,  
24    you know, if he mentioned some of this, that was well passed  
25    his representation, I think, when things were in the media.



1 And he might have made a comment about this, well, I remember  
2 back then I was trying to uncover this. That's what my  
3 recollection is.

4 MR. LEGG: That's all I have, Mr. Chairman.

5 CHAIRMAN CLELAND: Any other questions? Mr. Puskas,  
6 thank you, very much --

7 THE WITNESS: You're welcome.

8 CHAIRMAN CLELAND: -- for your attendance here  
9 today. Do we have any other matters or business to -- oh,  
10 before -- before you go, Mr. Puskas and Mr. Titus, do we want  
11 that deposition under seal? Do you want the transcript of  
12 the deposition?

13 MR. LEGG: I would suggest, yes.

14 CHAIRMAN CLELAND: Could that be provided with the  
15 understanding that that would be under seal?

16 MR. TITUS: Yes.

17 CHAIRMAN CLELAND: Okay. Thank you. Anything else  
18 to come before today's hearing? I would anticipate that at  
19 this point that this concludes the formal public business of  
20 the Commission, and we stand adjourned until the formal  
21 meeting at which the recommendations and final report will be  
22 adopted. The date for that yet to be set. We are adjourned.

23 (Whereupon, the hearing was adjourned at 2:55 p.m.)

24

25



1           I hereby certify that the proceedings and evidence  
2 are contained fully and accurately in the notes taken by me  
3 on the hearing of the above cause, and that this is a  
4 correct transcript of the same.

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\_\_\_\_\_ Date

\_\_\_\_\_ Donna E. Gladwin, RPR

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