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INTERBRANCH COMMISSION ON JUVENILE JUSTICE
PUBLIC HEARING

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

DATE: FEBRUARY 1, 2010, 9:54 A.M.

PLACE: PENNSYLVANIA JUDICIAL CENTER
601 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
2 Cleland, a senior judge of the Superior Court of
3 Pennsylvania, and chairman of the Interbranch Commission on
4 Juvenile Justice.

5 Today we begin two days of hearings here in
6 Harrisburg, and we anticipate concluding the ten days of
7 hearings that we have scheduled so far on February 25th when
8 we return to Wilkes-Barre.

9 Today and tomorrow we continue our examination of
10 recommendations and solutions to address the Luzerne County
11 juvenile justice scandal. This morning we have several
12 witnesses called to address the defense function and the
13 role of defense counsel in the juvenile justice system.

14 This afternoon we will turn to ethical issues with
15 representative of the -- with a representative of the
16 Pennsylvania Council of Children, Youth and Family Services.
17 And the Ethics Council of the American Bar Association will
18 be joining us. And then finally this afternoon we will be
19 hearing testimony from Pennsylvania's victim's advocate.

20 Tomorrow we will hear from the president of the
21 Pennsylvania Bar Association, representatives of the Center
22 for -- or the Pennsylvanians For Modern Courts in
23 Philadelphia, and then we will continue with testimony that
24 we have previously been working on with the representatives
25 of the Judicial Conduct Board.

1 So that will be today and tomorrow. Tomorrow we
2 will start at 9:00. I'm joined at the table today by the
3 other members of the Commission. They are Tod Allen,
4 Director of Court Advocacy of the Crime Victim Center in
5 Erie; Valerie Bender, Senior Research Associate of the
6 National Center for Juvenile Justice in Pittsburgh; Kenneth
7 Horoho, a Pittsburgh attorney and former president of the
8 Pennsylvania Bar Association; Magisterial District Judge
9 James A. Gibbons from Lackawanna County; Jason J. Legg,
10 District Attorney of Susquehanna County; Robert L. Listenbee
11 of the Chief of the Juvenile Unit of the Defender
12 Association of Philadelphia; George D. Mosee, Jr., Chief of
13 the Juvenile Division and Deputy District Attorney of
14 Philadelphia; Judge John C. Uhler, a senior judge of the
15 Court of Common Pleas of York County and former President
16 Judge of that Court; Ronald P. Williams, Regional Director
17 of the Pennsylvania Department of Agriculture and formerly
18 County Commissioner in Wyoming County; and Judge Dwayne D.
19 Woodruff, a juvenile court judge from Allegheny County.
20 We're also joined here by Darren Breslin, counsel to the
21 Commission.

22 We begin this morning's testimony, as I had
23 indicated, with representatives of the organizations
24 representing juveniles in juvenile delinquency cases. And
25 we begin with Barbara Lee Krier, who is Senior Assistant

1 Public Defender of the York County Public Defenders Office.
2 She's been a public defender for more than 23 years and has
3 received numerous recognition, including Child Advocate of
4 the Year from the Children's Rights Committee of the
5 Pennsylvania Bar Association in April of 2009.

6 Ms. Krier, if you'd please stand and take the oath.

7

8 BARBARA LEE KRIER, called as a witness, being duly
9 sworn, testified as follows:

10

11 CHAIRMAN CLELAND: Please be seated. Ms. Krier, go
12 ahead.

13

14 MS. KRIER: Thank you. I want to thank you for the
15 opportunity to appear and testify before this Commission.
16 As Judge Cleland said, my name is Barbara Lee Krier. I'm an
17 attorney with the Public Defender's Office in York County,
18 Pennsylvania, just a short 30 minute drive down the
19 interstate.

20 Over that 23 year period I've represented both
21 juveniles and adults in the public defense system in York
22 County. Including in that I've done a capital case when I
23 was doing adult work, and now myself and three other
24 attorneys in my office solely do juvenile defense work for
25 York County Families and Youth.

1 I'm also a founding member and treasurer of the
2 Juvenile Defender's Association of Pennsylvania, which you
3 may hear later today referred to as JDAP. JDAP is a
4 statewide non-profit corporation that we organized in 2006
5 for the purposes of improving access to counsel and the
6 quality of representation for indigent children across this
7 Commonwealth.

8 JDAP has over 100 members who practice in most of
9 the counties in the Commonwealth of Pennsylvania. We are
10 constituted by a board, and we have representation from
11 Montour, Monroe, Wyoming County, Dauphin County, Potter
12 County, Crawford, Bucks County, my county, Philadelphia,
13 Allegheny, and Cumberland County on our Board of Directors.

14 I'm also currently actively involved in several
15 statewide initiatives in the area of juvenile justice in
16 Pennsylvania, including the John D. and Catherine T.
17 MacArthur Foundations Models For Change Systems Reform
18 Initiative, also known as Models For Change. And they
19 include Models For Change work groups for aftercare and
20 mental health, as well as the Pennsylvania Juvenile Indigent
21 Defense Action Network, which you will probably hear
22 referred to this afternoon -- this morning and later on as
23 the Pa-JIDAN.

24 Pa-JIDAN is a part of a eight state network
25 sponsored by the MacArthur Foundation to improve the quality

1 of indigent defense -- juvenile defense and to create models
2 that can be replicated across the nation.

3 Pa-JIDAN is coordinated by the National Juvenile
4 Defense Center, which is based in Washington, D.C. And in
5 JIDAN we -- I'm on the -- sort of directing that team along
6 with Mr. Listenbee and several other members, and we've
7 expanded our JIDAN core team to include representatives from
8 JCJC, Mr. Anderson, who previously testified before this
9 Commission.

10 Judge Uhler is part of that. Judge Clark from
11 Allegheny County, Mike Pennington from PCCD, and other
12 representatives that have appeared before you. Robert
13 Stanzone and representatives from our General Assembly have
14 been involved in that JIDAN organization.

15 Today I'm speaking to you as a representative of
16 JDAP and JIDAN to explain the concerns of juvenile defenders
17 in Pennsylvania and our recommendations to ensure that the
18 serious problems that have been uncovered in Luzerne County
19 are not repeated.

20 We believe that these changes will benefit children
21 and families throughout the Commonwealth. This is my second
22 time testifying in the last week or so. Mr. Listenbee and I
23 testified before the Joint Commission -- Joint State
24 Government Commission Indigent Defense Advisory Committee
25 last week and presented similar findings. We are covering

1 all of indigent defense in Pennsylvania.

2 So in the book that you have for our presentation
3 today my resume is in Tab 1, and my testimony is under Tab
4 2, along with two memoranda explaining in more detail some
5 of our recommendations. And that would be the Pennsylvania
6 Center for Juvenile Defense Excellence, and also memorandum
7 concerning the model juvenile unit endeavor we are
8 exploring.

9 But as to our recommendations. Pa-JIDAN and JDAP
10 are in the process of developing performance and ethical
11 standards, case load standards, and compensation standards
12 for juvenile defenders and court-appointed counsel
13 representing juveniles in delinquency proceedings throughout
14 the Commonwealth.

15 We encourage the Interbranch Commission to
16 recommend the adoption of these standards by the Supreme
17 Court of Pennsylvania. We will submit the final drafts of
18 the standards to the Interbranch Commission by March 15th.

19 In addition, we recommend the development of the
20 Pennsylvania Center for Juvenile Defense Excellence for the
21 purpose of improving access to counsel and the quality of
22 delinquency counsel for children throughout the
23 Commonwealth.

24 The Center will include hopefully a statewide
25 appellate division, a training division, a policy division,

1 a model juvenile unit division, technical assistance
2 division, and a clinical program division that will
3 encourage law schools to develop programs that engage in
4 training the next generation of attorneys who will represent
5 children in delinquency proceedings.

6 In addition, we recommend a fast track for juvenile
7 appeals with a requirement that appellate courts decide
8 cases quickly.

9 In addition, there should be juvenile and appeal
10 rules that allow for stays of disposition under specified
11 circumstances. And later on I can expand on some personal
12 information I have about the timeliness of appeals that
13 needs to be corrected as soon as possible.

14 The legislature should create a post-disposition
15 avenue of relief for juveniles, thereby guaranteeing the
16 same rights currently enjoyed by adults.

17 Juvenile court judges should be required to state
18 on the record how their disposition orders further the goals
19 of the balanced and restorative justice as required by the
20 Juvenile Act of Pennsylvania while advancing the goals of
21 treatment, supervision, rehabilitation, thereby permitting
22 meaningful appellate review.

23 We recommend that children in the juvenile justice
24 system be deemed indigent and entitled to a court-appointed
25 attorney. A child's right to court-appointed counsel should

1 not depend upon the income of a parent.

2 Children and their families should be free to
3 retain counsel of their choosing, but children should not
4 have to rely on their parents in order to obtain counsel.

5 We recommend that the Pennsylvania Juvenile Act and
6 the Pennsylvania Rules of Juvenile Court Procedure be
7 amended to permit waiver of counsel in the juvenile justice
8 system in only the most extreme circumstances. Children
9 should be -- should have a meaningful opportunity to consult
10 with and be represented by counsel at all stages of a
11 juvenile proceeding consistent with the Pennsylvania Rules
12 of Juvenile Court Procedure, Rule 151.

13 If waiver is permitted, the child must have an
14 opportunity to consult with counsel before waiving the right
15 to an attorney at any stage of the proceeding. In the rare
16 case that counsel is waived, standby counsel must be
17 appointed to assist the child.

18 We recommend the Juvenile Court Judges' Commission
19 be given the sufficient resources to collect, analyze, and
20 publish data that would reveal problems similar to those
21 that have been exposed in Luzerne County.

22 In addition, the Pennsylvania Department of Public
23 Welfare should have sufficient resources also to collect,
24 analyze, and publish data about placement rates. JCJC
25 should have resources that will allow it to analyze

1 Department of Public Welfare data regarding placement
2 together with the data collected by JCJC.

3 Issues related to disproportionate minority contact
4 should be a factor in evaluating and addressing the needs of
5 the juvenile justice system. Consistent data collection
6 regarding the rates of arrest, detention, and placement of
7 children of color should be pursued and examined and
8 determined whether ethnic and racial disparities exist in
9 local juvenile justice systems.

10 We recommend that the Interbranch Commission
11 encourage the Pennsylvania Supreme Court to require
12 mandatory annual training for all attorneys who represent
13 children in delinquency proceedings. We recommend that the
14 Interbranch Commission encourage the Pennsylvania Supreme
15 Court to adopt mandatory training requirements for judges,
16 masters, and hearing officers who preside over delinquency
17 proceedings in this Commonwealth.

18 We recommend that counties adopt appropriate
19 detention screening instruments to ensure that the important
20 decisions about whether a child is placed in pretrial
21 detention are made in a transparent and even-handed way.

22 A screening instrument that works well in one
23 community may not meet the needs of a different county.
24 Detention screening instruments must be validated and
25 modified for each county to ensure that children are not

1 unnecessarily held in pretrial detention.

2 We recommend that every juvenile defender and
3 court-appointed delinquency attorney be provided access to
4 investigators, experts, social workers, and clerical support
5 staff. These support personnel are vital to ensure that the
6 attorneys representing children in the delinquency system
7 are prepared to handle the complex legal, factual, and
8 dispositional issues that arise in delinquency defense
9 practice.

10 We recommend that the Interbranch Commission
11 endorse the development of ethical and practice standards
12 for Juvenile Prosecutors Network of the Pennsylvania
13 District Attorney's Association for eventual adoption by the
14 association. These standards should be developed with input
15 and review from other stakeholders in the juvenile justice
16 system.

17 And, finally, we recommend that the Interbranch
18 Commission support the development of legal fellowship
19 programs to support juvenile indigent defense in
20 Pennsylvania with the assistance and cooperation of Equal
21 Justice Works.

22 In 2004 the American Bar Association Center and
23 Juvenile Law Center, in collaboration with the National
24 Juvenile Defense Center, published Pennsylvania, An
25 Assessment of Access to Counsel and Quality of

1 Representation in Delinquency Proceedings.

2 And I believe you all have a copy of this with your
3 materials. The report's findings are based on a 18-month
4 assessment, including responses to a 70-question written
5 survey, and site visits to juvenile courts across that
6 state.

7 Pennsylvania practices were measured against those
8 required with IJA/ABA Juvenile Justice Standards. The
9 assessment concluded that the delinquency representation in
10 Pennsylvania was best described as justice by geography.

11 This problem persists today. The quality of
12 juvenile indigent defense services varies widely county to
13 county. Pennsylvania is the only state that does not
14 provide any state funding to support indigent defense
15 services contributing to the problem.

16 The adoption of the recommendations in this
17 testimony will be an important step in creating uniform
18 access to juvenile justice systems for children across the
19 Commonwealth.

20 We support the recommendations of Dr. Sharp, the
21 Chair of the Juvenile Justice and Delinquency Prevention
22 Committee of Pennsylvania, Commission of Crime and
23 Delinquency; James Anderson, the Executive Director of the
24 Juvenile Court Judges' Commission; Robert Schwartz, the
25 Executive Director of the Juvenile Law Center; and Robert

1 Stanzione, President of the Pennsylvania Council of Chief
2 Juvenile Probation Officers that state funding be provided
3 for juvenile indigent defense, that all children be deemed
4 indigent for the appointment of counsel, and the waiver of
5 counsel by juveniles be severely restricted.

6 The challenges facing the juvenile justice system
7 in Pennsylvania have been experienced in other states. We
8 have invited experts from across the nation to address this
9 Commission to discuss how other jurisdictions have addressed
10 similar problems to those in Pennsylvania.

11 With the permission of the Commission, I would like
12 to introduce the witnesses and allow them to testify.

13 Today -- I have two other witnesses with us today.
14 Two of our witnesses from Wisconsin had airplane issues and
15 connecting flights and bad equipment, so they could not.
16 Joe Ehmann and Eileen Hirsch will not be able to visit with
17 us today or appear before the Commission.

18 If possible, we would ask that they be allowed to
19 appear on February 25th, if time allows in your next
20 session.

21 Our first witness after myself will be Mary Ann
22 Scali. She's the Deputy Director of The National Juvenile
23 Defender Center in Washington, D.C. She's a former juvenile
24 defender. Ms. Scali is a national expert on systems reform
25 who has participated in juvenile justice reform efforts in

1 jurisdictions across the nation.

2 Ms. Scali has visited Pennsylvania on many
3 occasions and is familiar with many of the challenges faced
4 by juvenile indigent defense here. She has participated in
5 reform efforts similar to those we have recommended.

6 And, finally, Cait Clark is the Director of Public
7 Interest Law Opportunities for Equal Justice Works in
8 Washington, D.C. Ms. Clark is a national expert on the
9 training of attorneys and is supervising development
10 fellowship programs that can be used to assist juvenile
11 indigent defense. Ms. Clark can offer practical suggestions
12 for the support of the reform efforts in Pennsylvania.

13 And at this time I'd be pleased to answer any
14 additional questions that you may have. And if you have
15 questions, I can interject my personal opinion as necessary,
16 but I'm here officially as a representative of the Juvenile
17 Defenders Association.

18 CHAIRMAN CLELAND: Would you prefer to hold
19 questions until after the other witnesses have testified?

20 MS. KRIER: I can do it now, because one of our
21 witnesses is missing. So it's up to the -- whatever the
22 discretion of the Commission is.

23 CHAIRMAN CLELAND: Mr. Listenbee, how would you
24 like to proceed?

25 MR. LISTENBEE: It's up to you. However you'd

1 like. We can ask questions of Ms. Krier first if you'd
2 like.

3 CHAIRMAN CLELAND: Okay. Go ahead.

4 BY MR. LISTENBEE:

5 Q Ms. Krier, you indicated that -- you used the term
6 justice by geography, a term that is found within the
7 assessment that was done in 2003. Can you please tell this
8 Commission what you mean by justice by geography?

9 A As the Commission knows, Pennsylvania is comprised
10 of 67 counties and a few less judicial districts. And our
11 state is a wide and varied geographical state. We have very
12 rural areas. We have very urban areas.

13 Mostly across the top tier of our state there are
14 no juvenile defense services that are basically a county
15 department. They have conflict counsel or they have
16 contracted attorneys who are in private practice who do only
17 juvenile defense as a very small portion of their work, of
18 their legal work.

19 And some of that is funded very unfairly and very
20 cheaply, if I may say so frankly. And they have whatever
21 volume of work that they are required to do on a very
22 limited amount of resources.

23 They don't have clerical support staff that's
24 provided by the counties in their areas. They don't
25 necessarily have access to experts or the resources of

1 investigators.

2 We've been told anecdotally that even if they ask
3 for expert assistance, they've been told don't even bother.
4 We won't even consider it by the judges that they appear in
5 front of.

6 I have the luxury of practicing in York County,
7 Pennsylvania and had the luxury of being mentored by Judge
8 Cassimatis, and continuing on in that distinguished role by
9 Judge Uhler. And the import of what has been placed on
10 juvenile delinquency in York County is not carried through
11 across the state.

12 Even though there's some counties that have very
13 little in the way of juvenile defense issues or juvenile
14 delinquency cases, I don't think the number and the volume
15 should affect the quality of representation.

16 In addition to expanding on the justice for
17 geography issue, the other component I believe of that is
18 how juvenile courts are run across this Commonwealth. This
19 is where I get my comment in about cattle calls and the
20 process of handling juvenile court proceedings.

21 In York County, Pennsylvania it's probably one of
22 the few, if only, counties that has specified times for each
23 case, for each juvenile, and the victims and the other
24 people that are involved in those cases. You do not have to
25 appear at 9:00 with 10 or 20 or more other families, other

1 cases, other victims, other witnesses.

2 We have a specific time for when your case is
3 heard. If the judges take a half an hour or 45 minutes or
4 an hour or more, if it's a contested hearings, then that
5 case is given the attention and the priority it deserves.

6 In many counties in this Commonwealth, as I said
7 earlier, I call them cattle call proceedings because they
8 start a session at 8:00 or 8:30 or 9:00. There could be 10
9 to 20 or more cases with one juvenile defender there, maybe
10 two, one prosecutor trying to manage all those people in the
11 same setting.

12 Generally there is no waiting room for anyone. So
13 you've got witnesses and victims and juvenile offenders all
14 in the same area. And it's not very accommodating for
15 anyone's needs. And just incumbent in that means that
16 you've got juvenile defenders in some of these situations
17 who have never met their clients before until that day.

18 That doesn't happen in York County. I know it
19 doesn't happen in a lot of counties, but in the counties
20 that it does happen in it should not happen at all.

21 I have plenty of notice in order for my attorneys
22 and myself to contact our families, get to know the cases,
23 know what's going on with the issues and what concerns are
24 so we don't have to waste a lot of time and come back to
25 court for repeated sessions.

1 Q Ms. Krier, you've indicated that you're involved
2 with the Juvenile Defender's Association in Pennsylvania.
3 Tell us a little bit more about the Juvenile Defender's
4 Association in Pennsylvania and kinds of activities that
5 it's involved in.

6 A We are a corporation that started about 2006. That
7 was when we officially legally started. There's been a
8 group of us from across the Commonwealth, Allegheny County,
9 Philadelphia, York, Lancaster, Cumberland County, and a few
10 other counties in between who have been getting together and
11 meeting on a regular basis to put forth training sessions.

12 We originally had a training grant that was managed
13 by the Defender's Association in Philadelphia. The Juvenile
14 Defender's Association of Pennsylvania now has taken over
15 the management of that grant. But I'd say for at least five
16 years we've been sponsoring and providing training to
17 attorneys free of charge in this Commonwealth.

18 Our biggest training is at the Juvenile Court
19 Judges Commission conference in November. And in addition,
20 we go out to Cranberry Township in the western part of the
21 state and provide training, and also up in the northern area
22 we're now doing a series of trainings for about five
23 trainings for the Luzerne County attorneys area.

24 That entity is trying to work with some national
25 organizations to bring a more professional attitude about

1 juvenile defense, to make it as a choice for attorneys who
2 want to do this work, who have no interest really in doing
3 jury trial work, and to encourage them to stay in this
4 system.

5 A lot of counties in their -- they have Public
6 Defender's Offices, usually juvenile defense is where they
7 first go in when they're hired as a fresh attorney out of
8 law school or new into the public defense system. It's
9 considered kiddie court in some counties. It's not.

10 The -- what happens to a child after the age of 10,
11 between the ages of 10 and 21, sets a pattern for what could
12 happen to them in the adult criminal justice system, whether
13 they continue to commit criminal acts.

14 So we are trying to address that, professionalize
15 it, make it a career choice for attorneys. Because it's a
16 commitment that needs to be made by local public defenders
17 and the individual attorneys themselves.

18 Q Ms. Krier, you've indicated that you're involved in
19 work to develop performance and ethical standards, case load
20 standards, and compensation standards. Why is that
21 important?

22 A There is no book that I've ever seen in the State
23 of Pennsylvania that says what does a juvenile defender do?
24 There are some national publications that will be addressed
25 later by our two other speakers. But I know my judge, Judge

1 Uhler, knows what I do and what he demands that a juvenile
2 defender knows and does in his courtroom.

3 I know several other counties their individual
4 judges know what they're supposed to do. But there is no
5 manual, no document that says this is how you have to handle
6 certain things. This is the type of things you're going to
7 handle.

8 These standards basically cover when you first meet
9 your client, trying to explain what issues you're going to
10 address. Because in law school, when I went to law school
11 in the late 70s and early 80s, there was not a career path
12 for juvenile defenders.

13 I was going to be a tax attorney when I got out of
14 law school until I met Judge Cassimatis. So the basis of
15 this is to make attorneys who want to do this work
16 understand what they're going to be facing, what types of
17 cases, what -- how important it is to treat them as -- each
18 case almost as a major felony, even if it's a minor
19 misdemeanor charge. And then to take this -- if we get
20 these standards, guidelines approved, then be able to go to
21 our County Commissioners and other funding sources and say,
22 look, this is what we really do, and this is what you need
23 to have a compensation based on. This is what you need to
24 understand. This is -- you know, just because we represent
25 people charged with crimes, it's not the be all end all of

1 it.

2 So I think the basis of that is to make sure on a
3 local level that the County Commissioners who do our funding
4 understand what we do and then have the lawyers who think
5 they want to be public defenders understand the commitment
6 they have to make and the long term issues.

7 Because in juvenile defense it's not just about
8 laws and facts of crimes and cases. As most juvenile
9 defenders know, about 50 percent of our work involves social
10 work. If we don't have social workers on our staff, we end
11 up doing it ourselves because there's a lot of trying to
12 understand kids.

13 As you know, we go down to the age of 10 up to the
14 age of 21. And trying to understand and make a client, a
15 young client, understand what's going on in their lives and
16 what choices they're making involves more than just having a
17 law degree.

18 Q You've mentioned case load standards. Can you give
19 the Commission some idea of the range of cases that you're
20 talking about for juvenile defenders, and also talk a little
21 bit about, if you know, what -- what are some of the large
22 case loads that people have in the state?

23 A I'm not real familiar with big numbers. I know
24 there's outrageous amounts of numbers. Allegheny County is
25 probably between a thousand cases per attorney. That's my

1 understanding anecdotally.

2 My county is set up a little differently. Just so
3 the Commission understands, just because a child is before a
4 court, has admitted or is found guilty of an offense, and
5 has had a disposition, either put on probation in the
6 community or placed in a residential program, that doesn't
7 mean my representation stops, or any juvenile defenders. It
8 goes on and on and on until that child is completely
9 discharged from the juvenile court system.

10 There are mandatory review hearings that a child is
11 entitled to once they're in placement. The original lawyer
12 needs to stay with that child because things come up while
13 the child's in placement that the attorney needs to be aware
14 of and be able to handle.

15 We have to be able to maintain contact with our
16 clients to make sure they're getting the services that the
17 court ordered and that the treatment plan that the court
18 ordered is in place.

19 So that's totally different. That's why the case
20 loads are hard to gauge county by county. York County, I
21 open about 500 new files every year. But my file -- I have
22 one file for that child, whether he starts at age 10 and
23 gets discharged at 21.

24 So some of my files are very large on these
25 children. But I know everything about this child in one

1 file. So the case load, I think we're recommending, is
2 between 200 and 250. That could vary. We do aggravated
3 assaults. We do the serious sex offense charges. We do
4 everything that a adult can be charged with except homicide
5 unless that's brought back to the juvenile court system,
6 which it has been in many counties, including my own.

7 So you're not just talking about little criminal
8 mischiefs or little vandalism stuff for these juveniles and
9 youth in Pennsylvania. They're committing very serious
10 crimes for very serious reasons, but I think it adds more
11 into making sure that those kids don't reoffend and get the
12 treatment they need to avoid that down the road.

13 Q Now, you've indicated that your county opens about
14 500 cases -- new cases a year, and you have three attorneys
15 handling those cases; is that correct?

16 A About three and a half. I have a limited case
17 load.

18 Q While we have information that would indicate that
19 Luzerne County opens between 800 and 1,000 a year and they
20 have one juvenile defender that's currently handling that
21 case load, would you consider that to be an excessive case
22 load for that juvenile defender, or how would you describe
23 that?

24 A That is outrageous. I don't know how that person
25 knows anything about the majority of those cases.

1 Q You've also, in your second recommendation, talked
2 a little bit about the Pennsylvania Center for Juvenile
3 Defense Excellence. And you have a list of the different
4 components of that recommendation for components of that
5 center.

6 Could you talk a little bit about the appellate
7 division and why you think that's necessary that this
8 Commission adopt your recommendation?

9 A One of the ways to monitor how common pleas judges,
10 the trial judges, have done their work or analyze their
11 thought in an individual juvenile case is the option of
12 appealing that judge's decision.

13 In all honesty, before I had extra support staff,
14 and my office now has an appellate attorney just designated
15 for appeals in York County Public Defender's Office, I did
16 very few appeals when I was the only attorney doing juvenile
17 defense in York County.

18 That has changed because of the time and the
19 analysis that goes into some of these cases. It used to be
20 -- and I confess to this attitude -- of having the best
21 interest of the child mentality. This child needs help, so
22 we might overlook something in the pretrial issue that could
23 be a winner and keep the child out of the juvenile court
24 system because their situation needs to be addressed. And
25 sometimes a delinquency system is the only system that's

1 available to do that.

2 But now with the luxury of having three other
3 attorneys that work for me in my office doing this we have
4 the time to spend on each individual case making sure we're
5 checking things out, making sure any legal issues that
6 present themselves that are in violation of their
7 constitutional rights are addressed and reviewed and
8 pursued.

9 And it's become more critical now with the changes
10 since 1995 and also the changes in the Sentencing Commission
11 Recommendations and Guidelines of Pennsylvania. Because
12 even misdemeanor acts by juveniles carry forward to their
13 adult criminal history.

14 And I think the more attention need -- now needs to
15 be paid to those children and what they're being faced with.
16 And that includes ensuring that all their constitutional
17 rights are protected as we do it for adults.

18 Q You've indicated that the best interest of the
19 child is not the appropriate standard for juvenile court.
20 What is the appropriate standard?

21 A Under the Juvenile Act it's the balanced and
22 restorative justice, accountability, competency development,
23 and a third one I never remember.

24 CHAIRMAN CLELAND: Community protection.

25 MS. KRIER: Community protection. Sorry. It was

1 on that white paper too. So I shouldn't have forgotten that
2 one. But I think it's -- in balancing all those, you still
3 have to understand children in the Commonwealth of
4 Pennsylvania and across this nation are persons under the
5 constitution, and they have the same rights as adults, and
6 that needs to be monitored.

7 It is now a broader approach. The client -- the
8 juvenile is my client. They control how I run their defense
9 with assistance from me and guidance and understanding of
10 what their options are in proceeding with their criminal
11 cases.

12 But I now am of the mindset that I need to protect
13 everyone's constitutional rights. Because if I don't do it
14 for this young man or this young woman, your child, your
15 grandchild might be the person I have to represent next.
16 And we all are entitled to that.

17 I think the best interest still comes into play
18 once the child maybe had been found guilty of some crimes
19 and maybe adjudicated delinquent, and then we have a
20 decision to be made as to disposition and what's perhaps in
21 the best interest and needs of -- based on their needs and
22 their personal individual treatment plans and goals.

23 I've been of the opinion that sometimes
24 community-based services are not consistent enough, and
25 perhaps residential treatment is needed for certain children

1 to get the intensity of their treatment done in a shorter
2 period of time as opposed to trying to do community-based
3 services for years and years and years.

4 So I think that individual decision, based after a
5 child has been found guilty of something, does go
6 technically to the best interest of the child. But before
7 you get to the -- that part you really need to pay
8 attention. This child has rights, and they need to be
9 enforced.

10 BY MR. LISTENBEE:

11 Q Let me see if I understand what you're saying. If
12 a 10 year old client who is four foot tall is standing next
13 to you at the bar of the court and they tell you that they
14 want to pursue a particular kind of a defense in a case and
15 they want to advise you how the case should be handled, is
16 that the attorney's decision to make, or is that the child's
17 decision to make? Is it the child's expressed interests, or
18 is it the attorney's evaluation of what's in the best
19 interest of the child?

20 A We are to advise our clients on what options they
21 have for their cases, what possible defenses are out there,
22 what is appropriate in the circumstances and give our best
23 opinion of what will happen to the case. But if that child
24 says I want to fight the case, I fight the case.

25 Q Okay. Let me see if I understand at the

1 dispositional level. If a child -- if the child has real
2 options of going home to community-based activity or being
3 -- going to let's say a state secure confinement, if you
4 think that the state secured confinement is better for the
5 child and the child believes that a community-based option
6 is best, and the child expresses that and there's a real
7 possibility the judge is going to go along with the child's
8 recommendation, what recommendation do you make to the
9 court?

10 A I will always make the recommendation of the child.
11 However, in certain circumstances I've had judges ask me,
12 what do you really think based on the information I
13 provided, that's been provided to me, and from probation and
14 to the courts and based on evaluations? And I may disagree
15 with probation many times on specific programs. But if I
16 truly believed there's community-based services that can
17 work for that child, I am not going to recommend a state
18 secure program, not in this Commonwealth anyway.

19 Q To continue on the issue of appeals, how many
20 appeals are filed annually in the Commonwealth? Do you have
21 any idea?

22 A I don't have --

23 Q On behalf of juveniles?

24 A Yes, I have no idea. I'm not familiar with that
25 number. I just know in my office we're probably doing ten a

1 year in a third class county with a population of under a
2 half a million people. So in that kind of case load for
3 hearings. But I don't have that information. I can get it
4 for you, but I don't have that information.

5 Q All right. Do you have a sense as to whether there
6 are a large number or small number being filed in other
7 counties that are smaller than yours and counties of similar
8 size to yours?

9 A It's my experience that appeals are minimal,
10 especially in those counties that have contract lawyers and
11 don't have public defender systems because of the case load
12 they carry.

13 We've been told that some of those lawyers think it
14 takes hours to manage appeals, and they just won't do them.
15 They absolutely refuse to do them. In my county now, and I
16 think this is the recommendation that came under the
17 Juvenile Court Rules, is that the kids are now advised of
18 their rights to appeal on record just like adults are.

19 And I think it's incumbent upon an attorney -- if a
20 child needs to address that issue with their attorney, they
21 should be entitled to do that appeal, if it's appropriate
22 with guidance and support.

23 But we've been told flat out by a number of
24 counties that they refuse to do them because of the time
25 involved, and they don't get any extra money for pursuing

1 the appeal.

2 So you're taking the time and energy to handle the
3 appeal and those deadlines, but you're also maintaining a
4 case load of current clients, and then new clients that come
5 down in a normal course of business.

6 Q So are you recommending then that appellate rights
7 and also access to appellate attorneys be available to all
8 juveniles in the Commonwealth?

9 A Absolutely.

10 Q And how would that actually be structured?

11 A Through the Juvenile Defender -- the Center for
12 Excellence. One of the key components of that is an
13 appellate division. And the plan would be with the
14 technology and other issues that are now available we
15 wouldn't have to have all the attorneys here in Harrisburg,
16 if that's where the center is housed.

17 We could have them in regional parts of the state
18 or have attorneys assigned and -- to handle appeals as they
19 come through and assign them across state and come argue
20 here, if necessary, before the appellate courts.

21 But the plan would be to have a group of attorneys
22 available to handle those appellate rates or to act as a
23 consultant for an attorney who really wants to pursue the
24 appeal themselves, but have the resources and other
25 information to be able to pursue that in a effective manner.

1 Q How would that -- how would the Center be funded?

2 A We are hoping, because of the critical issue that
3 was presented by Luzerne and the issues that have been
4 uncovered there, that this -- similar to the Juvenile Court
5 Judges Commission, it should be held -- it should be funded
6 by the state under the Executive Branch, and people on that
7 board that would run the Center be appointed by the Governor
8 and make sure it's a consistent funding on an every year
9 basis.

10 Because this isn't going to be fixed in two or
11 three years. This is going to be a permanent entity to make
12 sure that everyone's rights, juveniles and hopefully expand
13 it to adults in the future, are protected implicitly.

14 Q You've recommended that there be expedited
15 procedures for juvenile appeals. What exactly do you mean
16 by that?

17 A If I could just reference a current case that's
18 been going on in York County, unfortunately for two years or
19 more. We have a young man who's been in the youth
20 development center in York County for a year and a half.
21 His case was decertified from the adult system, and then
22 appeals were had by the District Attorney's Office to
23 challenge the court's decision in that matter to decertify,
24 or transfer the child back to the juvenile court system.

25 That child has had to remain in detention that

1 entire time trying to get his education and other services
2 met. He's going to get his diploma this year, but that's
3 pretty sad that he had to stay locked up for a year and a
4 half and not get specific treatment needs addressed in just
5 a holding setting.

6 There should have been a way to expedite that
7 review by the Supreme Court and the Superior Court. I don't
8 know how that looks in other states, but that -- that should
9 not be done that way.

10 We also recently had another case that came back
11 from the Superior Court that one of our local judges was
12 reversed, and the time frame for that appeal took two years.
13 It was over a fingerprint on a clothes rack in a store, and
14 the child was convicted of burglary based on one
15 fingerprint, and that appeal took two years.

16 That's just unconscionable that that -- the child
17 had other charges, so that wasn't the only case. But if
18 that had been that child's only charge, it would have taken
19 two years to address that issue, and he would have been --
20 there is no stay in proceedings. That juvenile, if he's
21 adjudicated delinquent, is placed in a program or made to
22 participate in services.

23 So we're still spending a lot of money even if that
24 finding of guilt has now been reversed.

25 Q You indicated earlier when you were providing your

1 initial testimony that you would talk a little bit about
2 stays of disposition under specified circumstances, that you
3 had some specific anecdotal information you wanted to
4 provide the Commission.

5 A That was the one case I just mentioned, the young
6 man that's been in the detention center for almost two years
7 waiting a final disposition of his charges. I believe he's
8 now been -- had a hearing on his fact finding of our
9 juvenile court system, and hopefully in the next few days
10 we'll know his fate, so to speak.

11 And the other case was the burglary case that was
12 an appeal that took two years. I just really think it's --
13 it shouldn't take two years. There is an expedited process
14 under the appellate rules, but how that gets implemented I
15 don't know. But it needs to be a specific one for juvenile
16 appeals to expedite them, because of -- there's always been
17 a concern on the part of the juvenile court judges that I
18 know and worked with that it's important to get these
19 children's cases before the court in a timely fashion.

20 They shouldn't have to wait, you know, six months
21 to a year to even get their charges heard because the time
22 is technically, of the essence, because the child's needs
23 and treatment are changing.

24 And if he's not in school, the court system in York
25 County anyway, that's one of the primary functions, to

1 making sure that they're getting their education needs met.
2 And anything that delays that is unconscionable, in addition
3 to health and safety issues and other community issues that
4 the child presents.

5 MR. LISTENBEE: Your Honor, did you want to follow
6 up?

7 CHAIRMAN CLELAND: Well, I just want to make sure
8 we're allowing enough time for other witnesses, because we
9 scheduled them until noon. So I'll leave it up to you, but
10 I just want to make sure we're leaving enough time.

11 BY MR. LISTENBEE:

12 Q Why don't I then just have you comment briefly upon
13 the model juvenile units, and then I'll turn it over to the
14 other Commissioners who have questions?

15 A We've had conversations with one of the entities in
16 the state to try to present a proposal for Juvenile
17 Defender's Associations to come up with or design a model
18 unit and hopefully have counties compete for a grant to
19 increase the provision of juvenile defense services. Not to
20 give my county more money because I do a good job, but to
21 raise the level of juvenile defense services in other areas
22 where they are not funded appropriately.

23 We're hopefully going to get a grant from one of
24 the entities that we're dealing with in order to present
25 that and make it competitive, and then that model unit is

1 going to be based on the standards that we're writing, as
2 well as we're writing a juvenile notebook on how to practice
3 juvenile defense in Pennsylvania with the clear
4 understanding that the Juvenile Defenders and the counties
5 that apply for these to participate in the model juvenile
6 unit will raise the level of services, not just for the
7 defense of the children, but I think it would then provide
8 an opportunity for fairness and equity for victims of crime,
9 for the prosecutors to have a better idea and have better
10 prepared attorneys so you don't have continuances after
11 continuances or delays in proceedings.

12 MR. LISTENBEE: Your Honor.

13 CHAIRMAN CLELAND: My suggestion would be that we
14 probably not pursue questioning of this witness until we've
15 heard the other witnesses.

16 MR. LISTENBEE: Very well.

17 CHAIRMAN CLELAND: Unless somebody else wanted to
18 proceed differently on that. That's all right? Okay. Then
19 let's proceed with the other witnesses.

20 Before we do that, however, I do want to recognize
21 the presence here today of Senator Lisa Baker, who has been
22 a champion on the issues that we are addressing as this
23 Commission.

24 Senator Baker is attending a great number of our
25 hearings, and those that she hasn't her staff has attended

1 all of our hearings. So, Senator thank you for being here
2 and your support of these issues.

3 MS. KRIER: Now Mary Ann Scali will testify.

4 MS. SCALI: Good morning.

5 CHAIRMAN CLELAND: Before you sit down, if I could
6 ask you to stand and raise your right hand and take the
7 oath?

8

9 MARY ANN SCALI, called as a witness, being duly
10 sworn, testified as follows:

11

12 CHAIRMAN CLELAND: Thank you. Welcome.

13 MS. SCALI: Thank you. Good morning. Judge
14 Cleland, members of the Commission, thank you, very much for
15 inviting the National Juvenile Defender Center to share its
16 perspective on the systemic corruption in the Luzerne County
17 juvenile court.

18 We appreciate your time, your consideration of our
19 comments, and your ultimate recommendations. Our Executive
20 Director, Patricia Puritz, sends her regrets that she could
21 not be with us this morning, but she's asked of me to share
22 our recommendation with a specific focus on juvenile defense
23 which reflects our expertise.

24 Before I give my comments I'd like to direct you to
25 several publications that we provided to the Commission so

1 that you can take time after the proceedings to review some
2 of the pieces that we have provided to the field. You
3 should all have hard copies of these materials. Some of
4 them are in your binder.

5 The first is the ten core principals to providing
6 quality delinquency representation for public defense
7 delivery systems. The National Juvenile Defender Center has
8 worked with the National Legal Aid defender Association to
9 come up with ten principals for providing high quality
10 juvenile defense representation. These principals are here
11 before you.

12 The second document is the role of counsel -- of
13 defense counsel in delinquency court. As you heard from our
14 first testimony from Barbara Krier, the role of counsel is
15 often difficult even for the very juvenile defenders who
16 represent the children in court.

17 It is unclear for judges, probation officers, the
18 public to understand that a defender's role is really to
19 provide the voice of the child in the proceedings before
20 them. There is no other court actor who provides that voice
21 to the court.

22 It's important that we have an understanding as a
23 community and as a society that the juvenile defender is the
24 only actor in the courtroom to provide the expressed
25 interest of the child.

1 So we created this document, not just for our
2 colleagues on the bench and probation officers and
3 prosecutors, but for our own community to help dispel myths
4 about representation of best interests. That's not the
5 court that we are in today.

6 The next document is the Pennsylvania Assessment of
7 access to Quality Representation in Delinquency Proceedings.
8 You heard about this from Barbara Krier and others. I'm
9 sure that you've seen it.

10 We issued it when we were still the American Bar
11 Association Juvenile Justice Center. We left the ABA in
12 2005 and created an independent non-profit called the
13 National Juvenile Defender Center because we realized that
14 there was a gap in training, resources, and support for
15 juvenile defense.

16 This assessment provides recommendations and
17 findings about the status of juvenile defense in 2003. I'll
18 review some of the findings in my testimony. Hopefully you
19 have a DVD, or a CD-ROM I guess this is called, not a DVD,
20 of our Juvenile Defender Delinquency Notebook.

21 This is a training manual that we created as a
22 model for states to replicate state-specific training
23 manuals online. What this provides is really a national
24 resource on what defenders should be doing in juvenile
25 delinquency court.

1 You heard Barbara testify that Pennsylvania is
2 working to create a Pennsylvania-specific trial manual so
3 that Pennsylvania attorneys, in addition to guidance, would
4 have their statute to their court rules and their cases
5 together for them to understand how representing children is
6 unique and specialized.

7 There's also in your materials a copy of Defending
8 Clients Who Have Been Searched and Interrogated in Schools.
9 This is one of the fact sheets that we issued. It's
10 actually one of our most recent ones. We thought this was
11 relevant to the Commission because of the number of children
12 who are coming into juvenile courts from schools.

13 What it does is identify the issues that occur in
14 schools and provides good information for defense counsel to
15 help understand how we should push back; that we, the
16 juvenile court, are not the place to be providing services
17 to children who should be getting them in schools.

18 Finally in your binders you'll see another fact
19 sheet we put together a number of years ago in 2006 called
20 Encouraging Judges to Support Zealous Defense Advocacy From
21 Detention To Post-disposition. And we included this fact
22 sheet because what it does is it draws out from the National
23 Council on Juvenile and Family Court Judges Delinquency
24 Guidelines the recommendations that are specific to juvenile
25 defense counsel.

1 We worked very closely with NCJFCJ as we developed
2 these guidelines. And what was exciting to us is at the end
3 of our discourse they decided that in their founding
4 principles, if you look at Principle No. 7, it's that youth
5 charged in the formal delinquency court must have qualified
6 and adequately compensated legal representation.

7 So the National Judges Commission agrees with us,
8 juvenile defense is a critical area of practice that should
9 be specialized, and that defenders themselves should be
10 competent as they represent youth.

11 Judge Cleland, I did bring one copy of this that I
12 can offer to the Commission, and I also brought one copy of
13 another manual. This manual was issued by Randy Hertz,
14 who's a professor at Columbia, who worked again with us very
15 closely to come up with a guide for defenders that builds on
16 our Juvenile Defender Delinquency Notebook and provides for
17 research and analysis of what defenders must do in court.

18 When I became a public defender in the Baltimore
19 City Office Randy Hertz was called Fritz Guggenheim Manual
20 then. It was our Bible for juvenile defense. It was what
21 we turn to when we wondered how do we handle the competency
22 proceeding? How do I deal with detention because it's so
23 different than adults? It helped us understand
24 specialization in juvenile defense.

25 So those are some materials for the Commission.

1 I'm not sure --

2 CHAIRMAN CLELAND: Yes. You leave them there.
3 We'll pick them up. Thank you.

4 MS. SCALI: Okay. Great. In terms of my
5 background and history, which Mr. Listenbee has asked me
6 just to provide briefly, I am a licensed clinical social
7 worker as well as an attorney.

8 I was trained as both at Loyola University-Chicago
9 and was able to be trained as a juvenile specialist through
10 the Child's -- Civitas Child Law Program. I was a scholar,
11 and it was the early years of the program where we actually,
12 even in law school, were able to specialize in understanding
13 what it meant to represent children.

14 I feel I was fortunate in receiving that background
15 in education, and actually went into it with a hope and
16 desire to be a social worker rather than an attorney. I
17 quickly realized, however, that social work was too unruly
18 for me, and I was much more comfortable in the area of law,
19 which seemed to have better guidelines and more predictable
20 outcomes.

21 I have been a teacher for high school students. I
22 taught youth from Baltimore City, Maryland in Kenya. We
23 brought some of them to a very small village to go through a
24 couple of years of education. I have been a social worker
25 for youth at alternative day schools, and I've also been an

1 attorney. So that's my brief background.

2 The National Juvenile Defender Center serves as a
3 national training and technical assistance and resource
4 center through the juvenile defense bar. Our mission is to
5 ensure excellence in juvenile defense and to promote justice
6 for all children.

7 We believe that all children in conflict with the
8 law must have ready and timely access to well -- capable and
9 well-trained legal counsel with individualized
10 representation that is developmentally appropriate, free
11 from bias, and strength based.

12 We believe that the juvenile defense bar itself
13 must build its capacity, develop leadership, and demonstrate
14 a commitment to professionalism.

15 Quote, unfortunately loose procedures, high handed
16 methods, and crowded court calendars, either singly or in
17 combination, all too often have resulted in depriving some
18 juveniles of fundamental rights that have resulted in a
19 denial of due process, unquote.

20 This is not a statement about Luzerne County,
21 Pennsylvania. It's actually taken from a 1966 report issued
22 by the Pennsylvania Council of Juvenile Court Judges, which
23 was quoted in the landmark decision In Re: Gault.

24 Similarly, back in 1953 a chief justice of the New
25 Jersey Supreme Court held forth that the indispensable

1 elements of due process are first, a tribunal with
2 jurisdiction; second, a notice of hearing to the proper
3 parties; and third, a fair hearing. All three must be
4 present if we are to treat a child as an individual human
5 being and not to revert to the more primitive days when the
6 child was treated as chattel.

7 57 years ago this observation was made. We are
8 saddened, we are angered, and we are compelled to act as we
9 face the reality that in Luzerne County, for half a decade
10 after the year 2000, children were again treated as chattel.

11 In their 1967 decision *In Re: Gault* the United
12 States Supreme Court recognized that youth had the worst of
13 both worlds. Neither the protections accorded to adults,
14 nor the solicitous care and regenerative treatment
15 postulated for children.

16 The court observed the unique and critical role of
17 the juvenile defender. The probation officer cannot act as
18 counsel for child. His role is as arresting officer and as
19 witness. Nor can the judge represent the child. The court
20 found that the juvenile needs the assistance of counsel to
21 cope with the problems of law, to make skilled inquiry into
22 the facts, to insist upon regularity of the proceedings, and
23 to ascertain whether he has a defense, and to prepare and
24 submit it.

25 Despite this clear mandate in the Supreme Court's

1 decision 43 years later it's disheartening to consider that
2 many juvenile courts still operate without the procedures
3 set forth in this opinion. Not because these procedures are
4 absent from our law, but because human behavior cannot be
5 separated from the law. And in Luzerne County human
6 behavior transcended the law.

7 The National Juvenile Defender Center has engaged
8 in assessments of access to and quality of juvenile defense
9 counsel in nearly 20 states. As you heard in previous
10 testimony, Pennsylvania is one of those states. Assessments
11 furnished policy makers and leaders with baseline data and
12 information so they can make informed decisions regarding
13 nature and structure of the juvenile indigent defense
14 system.

15 Beyond the constitutional mandate to provide
16 children in delinquency systems with counsel, Pennsylvania
17 has a vested interest in insuring high quality in juvenile
18 defense.

19 When juvenile attorneys provide children with
20 effective representation they can improve the life outcomes
21 of children. The primary goal of each assessment is to
22 encourage excellence in juvenile defense and to promote
23 fairness for children in the juvenile delinquency system.

24 When we look back at the 2003 findings from the
25 Pennsylvania assessment of access to and quality

1 representation in delinquency proceedings, while strong
2 leadership has emerged in Pennsylvania and great progress
3 has been made in many areas, a few findings are still worth
4 noting.

5 In 2003 Pennsylvania's juvenile indigent defense
6 system was uneven, inadequately funded. Juvenile defenders
7 had little supervision, had no required training, and had
8 minimal practice standards.

9 Defenders did not have access to sufficient
10 resources, including training, support from investigators
11 and experts, basic technology, such as telephones and
12 computers, inadequate compensation.

13 In 2003 youth in Pennsylvania had limited access to
14 counsel. Many children did not have counsel at critical
15 stages of the juvenile justice process. Despite
16 Pennsylvania laws clear mandate, the harmful consequences of
17 waiving the right to counsel held forth.

18 Bureaucratic complications delayed the appointment
19 of counsel leaving youth without representation in crucial,
20 early stages of their cases, and high average case loads in
21 juvenile public defender offices prevented defenders from
22 adequately serving juveniles because they lacked the time to
23 talk to clients, investigate cases, or prepare thoroughly
24 for trial or disposition.

25 In 2003 the quality of counsel varied dramatically

1 from county to county resulting in justice by geography.
2 Many defenders did not have appropriate training in crucial
3 areas for specialization in juvenile defense, such as
4 adolescent development, communicating with children, the
5 legal implications of mental illness, detention hearings and
6 dispositions.

7 In some areas of the state defenders did not
8 regularly file pretrial motions or advocate for their
9 clients' treatment needs at dispositional hearings. Many
10 defenders rarely filed appeals or represented their clients
11 at post-disposition review hearings despite the ability to
12 do so for the child. And many defenders did not monitor
13 their clients' progress in programs or institutional
14 placements.

15 These 2003 findings that the Pennsylvania juvenile
16 justice system was uneven, inadequately funded, that
17 children have limited access to counsel, and that quality of
18 counsel varied dramatically remained true for Luzerne.
19 However, these findings do not remain true across the entire
20 Commonwealth of Pennsylvania.

21 In April of 2005, as you know, the Pennsylvania
22 Supreme Court adopted uniform rules to govern the conduct of
23 delinquency proceedings. Prior to this time each county
24 conducted matters according to its liberal rules.

25 Toward the end of 2006, as you heard from Barbara

1 Krier, a new organization, the juvenile defender association
2 of Pennsylvania, was formed. JDAP, as it is called, serves
3 as a training and resource and advocacy organization for
4 juvenile defenders across the state.

5 JDAP has taken on issues highlighted in the
6 assessment and often sites the assessment as a founding
7 document. Additionally, training resources have been put
8 toward juvenile defense from the Pennsylvania Council on
9 Crime and Delinquency, and the Juvenile Court Judges'
10 Commission took immediate action based on the assessment
11 recommendations.

12 The recommendations in the assessment were numerous
13 and were directed to various state and local entities. As
14 we look at the recommendations today they are not new. But,
15 again, we would like to highlight several that are
16 particularly relevant to the work of your Commission.

17 In 2003 the assessment recommended reworking the
18 indigence determination so that children are presumed
19 indigent for the purpose of appointing counsel as a key
20 component of a policy that would not allow any child to go
21 unrepresented at any stage of the juvenile court process.

22 We recommended ensuring that no juvenile goes
23 unrepresented at any stage of the juvenile court process.
24 We recommended adopting standards for defense attorneys
25 representing children in delinquency proceedings. These

1 standards should establish guidelines for maximum case
2 loads, minimum compensation levels allowing defenders to
3 perform their duties in a competent manner.

4 We also recommended establishing an independent
5 state level indigent defense commission and ongoing
6 comprehensive training for juvenile defense counsel. These
7 recommendations show us that despite the numerous reforms
8 since 2003, the hard work that has occurred in Pennsylvania
9 and is ongoing, and the overall high caliber of juvenile
10 justice in this Commonwealth, there is more to do.

11 Through our assessment work in Pennsylvania and in
12 other states the National Juvenile Defender Center has
13 identified ten systemic issues that impact access to counsel
14 and quality representation for youth and delinquency.

15 When you look at Pennsylvania through the lens of
16 these issues, it's important to acknowledge that these
17 issues are hard, and that Pennsylvania is not alone in this
18 struggle; that we continue to see these issues in juvenile
19 courts across the country.

20 The ten issues are timing and appointment of
21 counsel, waiver of counsel, plea bargains, case loads,
22 inadequate resources, inadequate training and supervision,
23 inadequate oversight and monitoring, juvenile court culture,
24 parity, and lack of leadership.

25 These ten issues reflect both policy and practice

1 implications, and they must be grappled with by any state or
2 agency seeking to establish an effective juvenile defense
3 delivery system.

4 For each of these issues it is necessary to ask
5 yourself what would you want if it were your child, your
6 niece, or your nephew, your cousin, or your neighbor?
7 Through this lens we would like to offer our observations
8 and recommendations as they relate to how Pennsylvania can
9 emerge as a leader in juvenile defense reform.

10 I'd like to take these issues one by one, if it's
11 okay with the Commission. Timing and appointment of
12 counsel. When and how a child gets an attorney is crucial.
13 Although youth are entitled to legal representation in all
14 stages of delinquency proceedings in Pennsylvania,
15 Pennsylvania does not provide statewide funding for indigent
16 defense services. So this mandate is often hollow at
17 initial detention hearings and in post-disposition
18 representation.

19 Important questions to ask about timing and
20 appointment of counsel are, when is counsel actually
21 appointed? What does this appointment look like? Is the
22 appointment process judge driven? Do judges only appoint
23 defenders who suit their needs? Is there time for
24 meaningful interview with a client before the initial
25 hearing so the defender can present alternatives? Is the

1 defender responsive to the needs of the child and of the
2 community?

3 Are recommendations relevant to timing and
4 appointment of counsel are that the General Assembly of
5 Pennsylvania should amend the Juvenile Act to establish a
6 presumption of indigence for the purpose of appointment of
7 counsel. This recommendation has been supported in previous
8 testimony.

9 Our second recommendation is that the Juvenile
10 Defender's Association of Pennsylvania should establish a
11 juvenile defense panel of specialized attorneys and work
12 with the Pennsylvania Supreme Court to establish an
13 appointment system that is independent from juvenile court
14 judges. This recommendation has also been supported in
15 previous testimony.

16 Our second issue, waiver of counsel. Over 50
17 percent of the youth who appeared before Judge Ciavarella
18 waived their right to counsel. This occurred despite the
19 Pennsylvania Juvenile Court Judges' Commission mandate in
20 2004 that no youth was to go unrepresented at any stage of
21 the juvenile court process.

22 Allowing children to waive their right to counsel
23 at any stage of the process leaves a child literally
24 defenseless and undoes the procedural safeguards set forth
25 in Gault so that a child would not have to navigate the

1 legal system alone.

2 Our recommendations as they refer to waiver of
3 counsel. The Juvenile Act should be amended to require a
4 youth consult with an attorney prior to waiving counsel,
5 requires standby counsel if a child waives counsel, and
6 require the use of a developmentally appropriate colloquy in
7 the event a child elects to waive counsel. Again, this
8 recommendation has been supported in previous testimony.

9 Our third issue, plea bargains. The vast majority
10 of cases in juvenile court are resolved by plea bargain.
11 Aggravating the problem, judicial colloquies are often
12 inadequate so young people do not understand the terms of
13 the plea agreement or the life-long collateral consequences
14 of having a juvenile adjudication on their record, including
15 things such as potential disqualification from military
16 service, ineligibility for student loans, public housing,
17 and for some children required life-long registration for
18 sex offenses.

19 Juvenile defenders during the time of the
20 assessment had a general sense of resignation about outcomes
21 of contested adjudications and going to trial. However, in
22 sites across the country children have been observed
23 entering plea agreements and leaving the courtroom to ask
24 what just happened to me?

25 Our recommendation referring to plea agreements.

1 We believe the collateral consequences checklist that is
2 being developed by the Juvenile Defender Association of
3 Pennsylvania should be adopted as part of Juvenile Defender
4 Performance Standards.

5 We also believe the Commission should recommend
6 that the Juvenile Court Judges' Commission and the
7 Department of Public Welfare be allocated sufficient
8 resources to collect, analyze, and publish data as it
9 relates to arrest, detention, pleas, placement, release; and
10 that this data should be aggregated by race and ethnicity.
11 Again, data collection has been supported in previous
12 testimony.

13 Case loads. Juvenile defenders case loads are far
14 too high. In 2003 juvenile defenders reported case loads
15 that varied anywhere from one case to 620 at one time. This
16 number of cases impacts every facet of juvenile defense.
17 There is evidence that because defenders' case loads are so
18 high the high rates of waiver of counsel and plea bargains,
19 despite their long term consequences, are actually being
20 used as case reduction tools.

21 Although a handful of public defender offices have
22 been able to push back and reduce case loads and institute
23 case load standards, these instances are few and far
24 between.

25 Our recommendations about case loads. The Supreme

1 Court of Pennsylvania should adopt standards for defense
2 attorneys representing children in delinquency proceedings
3 that establish guidelines for maximum case loads, minimal
4 compensation levels, and baseline performance measures
5 allowing counsel to perform at a competent manner.

6 Inadequate resources. Juvenile defenders routinely
7 operate with inadequate resources. During the Pennsylvania
8 assessment a number of alarming statistics came to our
9 attention. 15 percent of the attorneys did not have
10 adequate telephone service. 30 percent did not have access
11 to the internet, and few had adequate computers, with some
12 offices using outdated computers kindly donated by their
13 colleagues in the District Attorney's Office.

14 Access to paralegals, social workers, and experts
15 was limited in many parts of the Commonwealth. Pennsylvania
16 provides neither state funding for nor statewide oversight
17 of indigent defender services.

18 Our recommendation, as you've heard before, is that
19 the General Assembly should establish a dedicated funding
20 stream for juvenile indigent defense. We also recommend
21 that chief defenders should assure adequate resources,
22 supervision, and mentoring are allocated through their
23 budgets to juvenile defense.

24 Inadequate training and supervision. Many juvenile
25 defenders receive little juvenile specific training and most

1 have minimal supervision. Only 21 percent of the public
2 defender offices in Pennsylvania during the assessment
3 reported new attorney training on criminal law, and juvenile
4 specific training was virtually non-existent.

5 Appointed counsel and contract defenders were
6 further disconnected from trends and developments in
7 juvenile law, but they were especially removed from areas of
8 specialized practice, such as detention hearings,
9 disposition, competency, special education, mental health,
10 and the numerous other areas that juvenile defenders must
11 become experts in.

12 Even in the Public Defender's Office juvenile
13 defenders did not have access to specialized juvenile court
14 training. Adequate supervision was also lacking. Juvenile
15 defenders were typically handed files on their first day of
16 the job and told good luck.

17 Our recommendation, that Pennsylvania Supreme Court
18 should mandate annual training requirements for all
19 attorneys who represent children in delinquency proceedings.
20 Secondly, we recommend that the General Assembly should
21 allocate funding for the development of an independent state
22 level Pennsylvania center for juvenile defense excellence.

23 The center would develop divisions on appeals,
24 training, policy, model units, law school clinics, and
25 technical assistance.

1 Inadequate oversight and monitoring. Juvenile
2 indigent defense systems are extremely varied and ad hoc.
3 Many states do not have juvenile specific practice standards
4 for guidelines, and some need to amend their juvenile court
5 rules. Pennsylvania's relatively new juvenile court rules
6 ushered in numerous improvements, but they did not create
7 uniform standards for juvenile defense nor provide oversight
8 over the appointment process.

9 Appointed counsel in Pennsylvania realize that if
10 they desire future appointments, they must stay in their
11 judge's good graces, and at times this hampers zealous
12 defense when docket time is at a premium.

13 Our recommendation, as stated earlier, the Supreme
14 Court of Pennsylvania should adopt standards for defense
15 attorneys representing children in delinquency proceedings.
16 Additionally, we believe the Pennsylvania Supreme Court
17 should authorize a juvenile defense oversight commission to
18 be in place for a minimum of five years to monitor
19 improvements in performance and to report back to the
20 Supreme Court and the General Assembly on the state of the
21 reform and the progress being made.

22 Finally, the performance standards for defense
23 attorneys representing children in delinquency proceedings
24 should be used both as performance measures for attorneys
25 operating in defender offices as well as contract measures

1 in terms for appointed counsel.

2 Juvenile court culture. The culture in many
3 juvenile courts reflects our society's persistent
4 ambivalence about what juvenile courts should look like. 43
5 years after the decision, many, if not most, juvenile courts
6 operate in a pre-Gault mode as if the defense attorneys are
7 irrelevant and unnecessary.

8 As a result real lawyering often does not occur,
9 and the fair administration of justice impeded. Many
10 juvenile defenders remain unclear about their role and their
11 ethical obligations so that they conflict advocating for a
12 child's expressed interest with advocating for a child's
13 best interests. They go along to get along, and this
14 mentality is pervasive.

15 The example in Luzerne could not make this more
16 apparent. The collaboration does not have to mean
17 pacification. Juvenile court culture is where the law is
18 most impacted by human behavior. Routine activities go on
19 unquestioned. At some point the question is how do these
20 activities become routine without questioning their moral
21 turpitude?

22 Our recommendation, again, that the Pennsylvania
23 Supreme Court adopt standards for defense attorneys
24 representing children in delinquency proceedings, and that
25 the Pennsylvania Supreme Court direct each county to

1 establish a court watch program or appointed ombudsman who
2 is responsible for juvenile court oversight.

3 Parody. There is an overall lack of fairness and
4 equality in the juvenile indigent defense system for both
5 defenders and their clients. Often juvenile defenders are
6 not paid the same salary as criminal defenders in the same
7 office. Some offices also have forced rotation so that
8 juvenile defenders who want to devote their careers to
9 juvenile defense are forced to represent adults if they want
10 promotions or raises.

11 Outside their offices juvenile defenders do not
12 have parity with prosecutors. Besides these obvious
13 iniquities, the overwhelming problem with this very common
14 situation is that we must have specialization in juvenile
15 defense if we are to develop a core of excellence. And
16 these practices, this lack of parity, undermines that goal.

17 Juvenile respondents are also treated unfairly.
18 The impact of fees and surcharges for juvenile respondents
19 is significant. Thousands of dollars in fees and surcharges
20 are assessed against juvenile respondents and their families
21 to pay for detention, restitution, and victims.

22 The issues of parity are all impacted by funding.
23 So our recommendation for parity, as stated earlier, is that
24 the Pennsylvania General Assembly establish a dedicated
25 funding stream for juvenile indigent defense. And, again,

1 that chief defenders recognize juvenile defense as a
2 specialty and allocate their resources accordingly.

3 And finally, lack of leadership. In most case
4 states the juvenile defense bar itself lacks leadership.
5 Since the time of the Pennsylvania assessment we have seen
6 the Juvenile Defender Association of Pennsylvania emerge and
7 establish a voice for juvenile defense in state level policy
8 discussions.

9 Chief defenders, however, are also key players for
10 defining the values that we, as a society, project in
11 juvenile court. They are key to the distribution of
12 resources, and they are key to creating a specialization in
13 juvenile defense.

14 They are also essential to linking front line
15 defenders with judges so that there is an open dialog
16 between stakeholders. Chief judges are also crucial to
17 juvenile defense reform. They can help ensure that juvenile
18 defenders are supported in their effort to provide a
19 diligent defense.

20 As stated earlier, the Interbranch Commission
21 should recommend development of an independent state level
22 Pennsylvania center for juvenile defense excellence.

23 Pennsylvania is well within the reach of grappling
24 with these ten systemic issues identified by the National
25 Juvenile Defender Center. Our recommendations focus on

1 funding, training, supervision, and oversight and
2 monitoring, with these impacting both practice as well as
3 policy.

4 A lack of well-resourced, well-trained defense
5 attorneys across the Commonwealth means the due process
6 rights of children are violated. And Luzerne County is the
7 consequence. Tragic and long term consequences can result
8 from botching children's representation, including the
9 result that children and families are demeaned and devalued
10 in the process.

11 Still while all of these issues are serious,
12 they're not intractable. There are numerous invitations in
13 juvenile defense to draw from. Some right here in your own
14 Commonwealth. The Juvenile Indigent Defense Action Network
15 that Pennsylvania is a part of focuses on juvenile defense
16 reform in eight states.

17 In those states are many examples of the
18 recommendations we discussed today. Standards that address
19 case loads and performance, data collection at the defender
20 level, statewide funding for defender services, pilot
21 projects on early representation issues and
22 post-disposition, and the creation of juvenile defender
23 resource centers.

24 There are numerous other reform processes underway
25 today. The National Juvenile Defender Center would be

1 delighted to work with the Commission to point the way to
2 some of these positive areas of reform across the country.

3 Given the recent birthday of Martin Luther King I
4 thought it was fitting to end with his words. The time is
5 always right to do the right thing. I hope through the
6 actions and recommendations of this Commission that
7 Pennsylvania will be able to do the right thing by undoing a
8 culture of indifference and building upon a foundation to
9 establish a culture of diligent juvenile defense. Thank
10 you.

11 CHAIRMAN CLELAND: Thank you, Mrs. Scali, for your
12 work and the work that your center is doing. Thank you. I
13 think maybe we should hear from Ms. Clark, and then have --
14 make sure we have all the witnesses on the record before the
15 appropriate time, and then we can ask questions.

16 MR. LISTENBEE: Very well.

17 CHAIRMAN CLELAND: Good morning.

18 MS. CLARK: Good morning.

19

20 CAIT CLARK, called as a witness, being duly sworn,
21 testified as follows:

22

23 MS. CLARK: I do.

24 CHAIRMAN CLELAND: Please be seated.

25 MS. CLARK: Good morning.

1 CHAIRMAN CLELAND: Good morning, Ms. Clark.

2 MS. CLARK: My name is Cait Clark, and I'm the
3 proud great-granddaughter of the Pennsylvania coal miner
4 P.J. Clark. My great-grandfather arrived on Ellis Island
5 with a tag on his jacket, and it said deliver to Dunmore,
6 Pennsylvania.

7 He was seven years old, and he arrived alone. He
8 then proceeded to find work in the coal mines, which is not
9 unusual, making his way up through Wilkes-Barre, landing in
10 Scranton in different areas. He was a breaker boy and
11 picked the coal from the slate and then became a mule boy.
12 Which as you may know, the mules became blind as they were
13 down in the mines, and they needed little boys to lead the
14 blind mules.

15 And so my great-grandfather was among those during
16 that time. I think you probably heard the story. And the
17 reason I'm raising this story is because before I came here
18 my father sent me a little packet of information with the
19 story again just to remind me. Which maybe some of you
20 know, when your father is an advocate, you become an
21 advocate. And he said remember the children.

22 Remember the children of Pennsylvania have always
23 needed representation and needed a voice. And it was the
24 story of my great-grandfather's little friend who was
25 leading the mules when the -- the roof started to fall in,

1 and they said get the boys out. Get the boys out and leave
2 the mules. And one of his friends would not leave his mule.

3 So when the mining -- mine collapsed they found my
4 great-grandfather's little friend with his arms around the
5 neck of the mule both dead. And it was a moment that my
6 father has always told all six of us, our siblings, as we
7 have spent many a day in Pennsylvania.

8 We still have very deep roots in Pennsylvania.
9 Every summers I spent in Pennsylvania at a little place
10 called Skytop, a little idealic lake. And they still go
11 there since 1948. And Wilkes-Barre is where a lot of my
12 friends from Camp Tigawicka (phonetic) and other places used
13 to live.

14 So it means a lot that I'm here today because my
15 roots are here. But my heart and sole and my advocacy as a
16 public defender and as someone who's very deeply interested
17 in juvenile justice comes before you. I want to see how we
18 can help.

19 And I would just like to start, as Mr. Listenbee
20 has asked for us, to provide a little background. I did go
21 to Villanova University. So I didn't spend all my days in
22 the Poconos, but I did enjoy my business school experience
23 at Villanova.

24 And then I went to law school at Catholic
25 University, and my Master's Degree at Georgetown University

1 where I earned my LLM Degree as a prettyman fellow.

2 And in that program it's an intensive fellowship
3 which changed my life. And I will go back to a reason why a
4 juvenile case actually changed my life and why I became a
5 public interest lawyer the rest of my career and didn't go
6 to the Hogan & Hearts and the other firms, et cetera, that
7 were beckoning for many people who were graduating at the
8 top of their class.

9 I decided public interest was the place for me.
10 And I earned -- I went -- after clerking on the D.C. Court
11 of Appeals I then became a law professor in New Orleans, and
12 there also remained interested in juvenile justice as well
13 as adult public defense and started a street law program and
14 worked with Helen Prajean and others on issues that were
15 important to fairness and giving a voice to the voiceless.

16 Then I went on, after being a law professor at
17 Loyola and Tulane, teaching criminal law and procedure,
18 particularly around public defense issues. I pursued my
19 doctorate at Harvard Law School. I have an SJD from
20 Harvard, and the day I graduated my father walked up to me
21 with tears in his eyes and said I never thought a coal
22 miners great-granddaughter would ever even be on this
23 campus, let alone earn a degree from Harvard.

24 But I ended up teaching at the Kennedy School of
25 Government in the program in criminal justice policy and

1 management, and we looked at issues around public defense
2 and how we would build leadership capacity, which is one of
3 the issues that you heard before that is so critical to this
4 reform effort.

5 I was the founding director of the National
6 Defender Leadership Institute at the National Legal Aid and
7 Defender Association that teaches systemic reform at the
8 management and leadership level and culture change. Very,
9 very critical for what you're doing here today in
10 Pennsylvania and -- today and for many years to come in
11 Pennsylvania.

12 So leadership training is not only critical, but we
13 have to think about the next generation. And that's
14 probably why Mr. Listenbee invited me here today, because I
15 like to talk about the next generation.

16 Is there anything -- okay. Excuse me if I just get
17 a drink of water. I'm the director currently of the largest
18 fellowships program in the country for lawyers. I run the
19 Equal Justice Works Public Interest Law Opportunities Unit.
20 I think lawyers like long names and big acronyms. But it
21 basically means that I run a fellowships program in two
22 areas.

23 The first is we are -- we take -- if you mind me
24 saying, sort of like Robinhood. We take from the very
25 wealthy law firms and corporations, et cetera, in a good

1 way. They select fellows, and we place them in public
2 interest areas. So we're matchmakers. We find great talent
3 from around the country.

4 Last year we had 300 applications for approximately
5 50 positions. Highly competitive process of young lawyers
6 graduating wanting to do public interest work. We have --
7 in the back of your binder you'll see some highlights. You
8 put some names to faces, some of our fellows.

9 So if you look at Tab 5, it will describe what
10 Equal Justice Works does, and I will describe as best I can
11 here. And then after one other document that's a brief one
12 just describing a new initiative and why we're looking at
13 Pennsylvania as a pilot site.

14 And then you'll see some pictures and stories of
15 some of the fellows that we placed in the field who are
16 doing juvenile-related work. But we really know, as our
17 prior speaker said, we need specialists. We need people who
18 are dedicated juvenile defenders and well-trained.

19 So as the Director of the Public Interest Law
20 Opportunities Unit, the program with the law firms -- funded
21 by the law firms around the country, as well as corporations
22 and IOLTA funding, they will place fellows for two years
23 inside an office, and they're essentially social
24 entrepreneurs.

25 They do fabulous work on a social justice issue.

1 It's their dream job, and they help the host organization to
2 advance the work of that organization representing children,
3 adults, immigrants, mentally ill, a wide range of issues
4 that we can see.

5 The second area is Americorp. I run an Americorp
6 Program for lawyers. A lot of people don't realize that
7 Americorp has a lawyer program, and we take young law
8 graduates and law students. Actually this year we're now
9 going to place 600 law students in public interest offices,
10 public defender offices, and juvenile defender offices for
11 programs.

12 We have also 60 lawyers that go out every year
13 funded by Americorp, the Corporation for National Community
14 Service, and they do fabulous work in communities that are
15 in need. We hope to continue in this work area through a
16 new initiative, and that initiative is called Equal Justice
17 Corp.

18 It's just a working title, but what it is is that
19 we've realized that our current fellowship program is
20 actually prohibited to place people in public defender
21 offices for many reasons, which I won't go into.

22 And coming to that office as a former public
23 defender it was disconcerting to me because I knew that
24 there were parity issues and training issues and
25 independence issues.

1 And there was also -- Americorp, in the past ten
2 years, was reaching, I think, a little in that we were
3 expanding very rapidly in areas like mortgage foreclosure
4 prevention. And we were doing a lot of public interest
5 legal aid work, but nothing really focused on public
6 defense.

7 And many of the larger fellowship programs around
8 the country don't focus or allow law students to go right
9 into public defense and juvenile defense. So we are
10 launching what we are modeling after Teach For America.

11 It's called Equal Justice Corp because think about
12 Teach for America. Young, talented, best and the brightest.
13 We're not talking only ivy league here. We're talking about
14 people around the country who are deeply committed to these
15 issues, in particular juvenile defense work.

16 They would come and have a three year fellowship
17 placed inside those communities where they're either
18 underserved or they need human capital and human resources.
19 What we're hoping is that within -- in 2011 we will raise
20 enough private and possibly even Department of Justice
21 federal money.

22 We've been talking to the Department of Justice
23 regularly. A pool of money that will then go to certain
24 pilot states. And we would ask them to match that money so
25 that we can put fellows in for three years perhaps in

1 clusters.

2 Our goal is to cluster for cost efficiency reasons.
3 Pennsylvania is high on the list, but we know that it always
4 takes a collaboration to make something like a pilot program
5 work.

6 I want to just give you the sites where we're
7 looking. We are talking to Massachusetts, the Youth
8 Advocacy Project, one of the premiere juvenile offender
9 offices in the country, along with Mr. Listenbee and the
10 Philadelphia Defenders and others.

11 But we are looking at New York. New York State is
12 another place where they really need fellows and indigent
13 defense providers. We're possibly considering an appellate
14 fellowship in that area.

15 Pennsylvania for Juvenile Defense. We hope to talk
16 to you today and in the future about the possibility of
17 placing Equal Justice Corp fellows, young law graduates
18 eager to do this work, in Pennsylvania, perhaps even in
19 Luzerne County or other counties that you might identify.

20 And these fellows would work for three years to
21 represent those children who are voiceless and who may be
22 not voiceless, just need zealous representation and people
23 who are young and committed, and well-trained and
24 well-mentored.

25 Part of the program will include mentors that we

1 will help provide and fund, sort of like circuit riders.
2 They would travel for the more important cases. They would
3 rely on a national network of juvenile defenders.

4 The National Juvenile Defender Center, of course,
5 would be a critical player in the training and mentoring and
6 oversight, as well as what all the wonderful work going on
7 in Pennsylvania.

8 Just the other states we're talking to for pilot
9 sites are Kentucky. I just flew back from a meeting in Lex
10 -- I'm sorry, in Frankford, and we were talking with the
11 incoming bar president of the American Bar Association, Bill
12 Robinson, who is interested in this notion.

13 And we're also looking in Georgia, Alabama,
14 Mississippi, and Louisiana working with the Southern Public
15 Defender Training Center.

16 So just to let you know about the fellowships and
17 what we are planning. The goal is that we would talk to our
18 member schools. Equal Justice Works has 200 member law
19 schools. And just to let you know, our Pennsylvania law
20 schools include Drexel, Duquesne, Penn State, Temple,
21 University of Pennsylvania, University of Pittsburgh, and
22 Villanova.

23 So all of those law schools are members of Equal
24 Justice Works, and we would hope to advertise and promote,
25 which we do anyway with our current fellowships, this notion

1 of coming to do this work, these fellowships in juvenile
2 defense, in particular in Pennsylvania.

3 We really hope though to go across the country and
4 bring in great talent. On Friday I was speaking at Duke
5 University Law School and flew in in the storm late at night
6 Friday night and arrived home, and there were four e-mails
7 from young 3Ls at Duke who said, I would love to do some
8 work in Pennsylvania. I would love to come and help in any
9 way. A fellowship in 2011 would be my dream job.

10 So there's interest out there. I get about an
11 e-mail a week from lawyers or law groups and across our law
12 schools asking to do this type of work. So we hope that we
13 would specialize by improving the culture -- the culture
14 change within these offices, as the prior testimony spoke to
15 all the different elements.

16 I just want to conclude that we have a wonderful
17 opportunity here to tap a resource that we can tap into at
18 Equal Justice Works to bring about culture change. And when
19 I say that what I mean is intensive training, but it's not
20 just intensive training where somebody drinks the Koolaid,
21 comes out and says I'm a defender for the rest of my life.
22 It's really not that.

23 What we're saying is culture change in the way you
24 treat your clients, the way you speak to the -- the child,
25 their family, the judges, the way you are a zealous

1 advocate. And that's not easy. I can tell you that we have
2 lawyer after lawyer who call us saying, I'm really having a
3 hard time because I keep losing, or they laugh at my
4 motions, or it's a hard thing to do. It's really depressing
5 at times.

6 But we give them support. We give them a network.
7 We give them the opportunities to become the best that they
8 can be in terms of being a zealous advocate and representing
9 the children that need that representation with someone who
10 really cares and has a lot of energy.

11 So we hope to bring to you, if the pilot program
12 would work, some great talent, supervision, mentoring, and
13 hopefully improve the culture of juvenile defense in
14 Pennsylvania.

15 CHAIRMAN CLELAND: Ms. Clark, thank you, very much
16 for your exuberance and vision and leadership as well.
17 Thank you. Should we open this up to questions, Mr.
18 Listenbee, or would you like --

19 MR. LISTENBEE: Yes. I think if Ms. Clark could
20 tell us specifically how much would it cost, and what kind
21 of resources is she bringing, and how many lawyers is she
22 contemplating would be in a cluster? Because I think those
23 are specific issues.

24 MS. CLARK: Sure.

25 MR. LISTENBEE: And then I'd like to open it up to

1 questions from the Commission.

2 MS. CLARK: Sure. I will speak just to the -- not
3 the Americorp Program, because that could be a whole other
4 conversation. But in terms of bringing Equal Justice Corp
5 defenders, we ask that the states actually match.

6 So we basically pay our lawyers somewhere around
7 40,000 plus benefits to 50,000 plus benefits. So the states
8 that we work with match with 25,000 per fellow. With that
9 what we're hoping is to cluster a group of -- let me back
10 up.

11 Our first year when we've run the numbers we're
12 looking at 25 for the first year and approximately four in
13 each state, maybe five. But I am one not to think small.
14 So if a state comes and says we have matching money, and we
15 actually will provide some opportunities for fellows that
16 are 30 fellows, we would not stop there. We would be happy
17 to talk about that.

18 And I just want to say that we were inspired by
19 talking to Wendy Copp who founded Teach For America. When
20 she came and spoke with us she said, well, we started with
21 500 college graduates, and then now they're up to 7,000
22 plus, I think, per year.

23 Wouldn't that be wonderful to have public defender
24 young fellows coming in those numbers? But we, of course,
25 realize that there are financial limitations. But at first

1 we're thinking five in Pennsylvania matching at 25,000.

2 We would provide training -- first of all,
3 identifying and doing the whole application process across
4 the country. So we would want to bring top talent to this
5 area. We would hold the competition. We would then present
6 what we call -- we serve up an array of applications, and
7 then the host organization, would it be perhaps a committee
8 or perhaps it's a chief defender, would select that fellow
9 or those groups of fellows.

10 So it would be in the hands of Pennsylvania to
11 decide how they would choose those fellows. But then we
12 would be responsible for leadership development training.
13 And every October we fly in all 170 lawyers for leadership
14 development training in Washington, D.C. and they learn
15 everything from how to tell a story through communications,
16 how to work with legislatures, and how to -- how to file
17 motions, and how to make a great closing argument, or how to
18 negotiate, which is also a critical skill.

19 CHAIRMAN CLELAND: Ms. Scali, would you like to
20 come -- we have a chair for you here. Mr. Mosee, would you
21 like to start?

22 BY MR. MOSEE:

23 Q Thank you, Your Honor. Ms. Krier, on page five of
24 your testimony, the first paragraph seems to be an adopt by
25 reference catch-all paragraph that indicates that you agree

1 with recommendations made by several representatives,
2 prominent juvenile justice organizations, and Pennsylvania,
3 including the Juvenile Law Center.

4 However, I'd like you to clarify because the
5 Juvenile Law Center explicitly recommended that juveniles
6 should not be allowed to waive their right to counsel.
7 That, however, is not your recommendation; is that correct?

8 A These recommendations are from the Juvenile
9 Defender's Association of Pennsylvania. Because of monetary
10 constraints and other issues we're not recommending no
11 waivers ever, but as the current juvenile rules allow for
12 waiver with a colloquy.

13 So I am producing the position of our association.
14 That's my personal opinion that there should never be a
15 waiver ever in juvenile court. And there is never, ever a
16 waiver in York County juvenile court.

17 Q I'm just trying to understand the recommendation as
18 stated.

19 A Yes, yes.

20 Q The recommendation would ask that we maintain the
21 status quo as articulated by the Rules of Juvenile Court
22 Procedure and the Juvenile Act; is that correct?

23 A I think there probably needs to be clarification of
24 the current rule to make sure it's very, very restricted and
25 the use of standby counsel be mandated if there is a waiver

1 of counsel.

2 Q Your Item No. 4 in your testimony references
3 post-dispositional relief. And I just wanted to hear a
4 little bit more about that. Would that be comparable to
5 post-conviction relief under the Post-Conviction Relief Act
6 in criminal court?

7 A Yes, that's my understanding. I believe there's
8 still a constitutional right to competent counsel in this
9 state, but there is no statutory provision that the
10 Post-Conviction Relief Act applies to juveniles. So we are
11 suggesting that that needs to be amended to specifically
12 juveniles.

13 Q And we really appreciate the fact that you had
14 specific examples to help us to understand the
15 recommendations. Do you have any specific examples that
16 would help us to understand when this new act would be
17 relevant to juvenile cases?

18 A The last couple years in York County have been a
19 microcosm of some odd cases or situations that we've had.
20 One -- again, there was a case in York County of a private
21 attorney who was hired by the family to represent a child on
22 a sex offense case. And because of the circumstances of
23 that issue we basically raised an ineffective assistance of
24 counsel based on how that lawyer handled the defense.

25 At some point my office was then -- the appeal went

1 through based on an ineffective assistance of counsel. And
2 I'm not overly familiar with the facts of it, but it was
3 successful. I believe it was based on a post-disposition
4 motion before the court.

5 And it turns out that young man passed a polygraph
6 and went to treatment though, passed a polygraph, passed a
7 polygraph performed by the District Attorney's Office. And
8 I think that's just a -- an example of the ability that
9 needs to be a statutory ability to do that as needed.
10 Especially on those more serious cases, but even in
11 non-serious misdemeanor cases, but clearly the sex offender
12 cases where this young man was adjudicated delinquent.

13 And if the Adam Walsh Act ever comes to
14 Pennsylvania, even though it is in several other states, and
15 a child from Pennsylvania has an adjudication on a sex
16 offense goes to another state, they are governed by those
17 registration requirements wherever they go.

18 I think it's critical that that be made statutory
19 as opposed to just a constitutional determination that they
20 have a right to effective assistance of counsel.

21 Q And I believe that the point of the example that
22 you gave is that the juvenile was beyond his or her right to
23 appeal; is that correct?

24 A It was -- the appeal issue was as to how the
25 attorney handled the defense of that child. And that child

1 didn't have a lot of understanding of what should or should
2 not have happened in this case. And the decision, I don't
3 think, that the attorney made was knowingly made or
4 consulted with or agreed to by the child.

5 Q But the child was already in placement, 30 days had
6 passed since the order for the disposition had been entered,
7 and for that reason there was no avenue under Pennsylvania
8 law for the child to challenge his status?

9 A I believe that is how it happened.

10 Q Okay.

11 A But the judge that handled that case is on your
12 Commission, so he can probably explain that later.

13 BY MR. MOSEE:

14 Q Okay. And, Ms. Scali, I believe you testified
15 about parity. I believe you testified about parity or
16 rather the need for parity?

17 A Um-hum.

18 Q Considering that I believe that the lack of parity
19 may be more a result of counties not being on par with one
20 another rather than necessarily a deliberate attempt to
21 short shift the salaries of defenders as opposed to the
22 salaries of others, what is your response, and what is the
23 solution considering that?

24 A Well, I think that even when you look within
25 counties in Pennsylvania, so if you're not looking at a

1 state level in terms of parity, if you look at it at a
2 county level, I believe the findings are that if you look at
3 a juvenile defender in County A and you look at a juvenile
4 prosecutor in County A, that even when you just compare
5 those two salaries in an individual county that the
6 prosecutor was making, in some points, significantly more
7 than the defender.

8 The other issue of parity that I discussed was a
9 lack of parity in the office. So that in some counties,
10 let's just look at the defender agency itself, that there's
11 a lack of parity for staying in juvenile. So in some places
12 in order to get a raise or to move up a grade, you had to
13 leave juvenile defense and take on adult defense.

14 And so there was not parity between even a juvenile
15 representation as it was not considered to be a high status
16 position within the defender agency.

17 Is that okay for part one?

18 MS. CLARK: Could I just add to that, if you don't
19 mind?

20 MR. MOSEE: Thank you.

21 MS. CLARK: Because of the National Defender
22 Leadership Institute we were involved with some of the
23 leadership capacity building in Connecticut when the ACLU
24 sued the Connecticut Public Defender. And one of the issues
25 was parity.

1 And their solution, which has been working today
2 very well, so just pointing that out as an example, is that
3 they have tied the prosecutors' salary and the defender
4 salary range, including the chiefs, all the way through to
5 the investigators and social workers.

6 So they have a committee that -- that works
7 together and has been working very well with the legislature
8 on ensuring that they -- the prosecutors and defender's
9 salaries are paired. Just as an example that you might want
10 to look to.

11 BY MR. MOSEE:

12 Q Effectuating that recommendation, however, would be
13 contingent upon their being some salary ramifications at the
14 state level right now. Because there is no money that comes
15 from the state, there wouldn't be any leverage to impact
16 that; is that correct?

17 A Absolutely. I mean, we understand that now there
18 is no state money going to defender services. So it would
19 be the bearing of each county to raise those salaries, which
20 we understand at this point is not feasible.

21 Q And one last question. I don't believe any of you
22 talked about part-time status. And in Luzerne County not
23 only did we have part-time attorneys where the rubber meets
24 the road, but the chief defender is also part time.

25 Do you have any comments and recommendations with

1 regard to that?

2 MS. KRIER: My county, as I indicated earlier when
3 I started back in the 80s, we only have two full-time public
4 defenders and four part-time. We're now up to 17 or 18 full
5 time attorneys. We will not go back to part-time attorneys
6 because of scheduling issues and the way our court now
7 schedules matters.

8 But I think there is a predominant amount of
9 part-time defenders, be it juvenile defenders or adult
10 defenders, in this Commonwealth in the smaller counties
11 because of their case loads. And we're going to have to
12 accommodate that when we try to get that standard raised on
13 case loads and compensation.

14 But I truly believe there should be a full-time
15 chief in those counties, such as Luzerne's size, because I
16 believe they're the size of my county. Maybe not quite the
17 case load or the number of judges, but there's got to be
18 some standard where a county makes a commitment to public
19 defense.

20 And because we're not talking -- we don't represent
21 people that just don't have jobs. We represent a lot of
22 people who have very good jobs, but our income standards for
23 representation are very generous. And they have multiple
24 kids and lots of debt.

25 So we just don't represent the unemployed. We

1 represent hard working men and women in this Commonwealth
2 who have a lot of children who are entitled to public
3 defense, just because they can't afford thousands and
4 thousands of dollars of private defense fees.

5 And I think the adjustment -- that means you need
6 to have a chief in those counties that have the case load
7 that should be full time, and all their staff should be full
8 time. Because there's problems that occur when some of
9 those part timers represent private clients who potentially
10 have conflicts with their public defense case load. And
11 that should not happen. We are limited in my county. We
12 can not have a private practice if you're a full-time public
13 defender

14 CHAIRMAN CLELAND: Judge Gibbons.

15 MR. MOSEE: If I can -- just one follow up. If,
16 hypothetically, there was a judge who engaged in misconduct
17 that impacted the cases of juveniles represented by the
18 Defender Association, would it be a conflict for one of
19 those part-time defenders who represented those juveniles on
20 a day-to-day basis to represent that judge as part of his or
21 her private practice?

22 MS. KRIER: I think that's a no-brainer.
23 Absolutely 100 percent, yes.

24 MR. MOSEE: Thank you.

25 CHAIRMAN CLELAND: Judge Gibbons.

1 BY JUDGE GIBBONS:

2 Q Thank you. First, thank you, all three of you, for
3 taking the time to come here today. I appreciate it. Ms.
4 Clark, you struck a responsive cord with me. Both my
5 grandfathers were breaker boys in Luzerne County growing up.
6 But my questions are for you, Ms. Krier.

7 You mentioned that quickening the time for juvenile
8 appeals. Do you have a specific time frame that you'd be
9 willing to recommend to this panel?

10 A I think from adjudication of delinquency and
11 disposition there should be no reason why that cannot be
12 resolved within four to six months at a minimum. Because
13 some of the -- that is basically the time frame for -- some
14 of the placements for these children go 6 to 12 months or 12
15 to 18 months.

16 But, you know, logistically trying to get the
17 transcripts done and the preparation of the briefs and the
18 timely argument, four to six months on the smaller number of
19 juvenile cases that are actually appealed should not be
20 unmanageable.

21 Q Okay. And in the -- you touched on with Mr. Mosee,
22 your Recommendation No. 7 talked about only permitting
23 waiver of counsel in the juvenile system in the most extreme
24 circumstances.

25 Can you give us an idea of what you would consider

1 the most extreme circumstances to permit waiver?

2 A Probably in a case that is a misdemeanor charge
3 where the child is going to get maybe some form of consent
4 decree, which is not an adjudication of delinquency, or
5 informal probation, that there are no, you know, legal
6 issues or constitutional issues or due process issues where
7 the child is of normal intelligence with supportive parents
8 and a understanding of what they're facing. That would be
9 probably the extreme case where it might be appropriate.

10 JUDGE GIBBONS: Okay. Thank you.

11 CHAIRMAN CLELAND: Mr. Legg.

12 BY MR. LEGG:

13 Q Ms. Scali, I had a question regarding plea
14 bargaining, because you indicated that was one of the
15 problems. You're not saying that plea negotiations in and
16 of themselves are a problem?

17 A No, no.

18 Q Because obviously the large percentage of both
19 adult and juvenile cases are resolved through some type of
20 negotiations?

21 A No.

22 Q We would agree on that?

23 A Absolutely. What we're really hoping for is that
24 the plea negotiations be informed discussions, and that the
25 defender have time to discuss with their clients all the

1 implications and consequences of the pleas.

2 Q And you indicated that you felt that the colloquy
3 itself had to be age appropriate?

4 A Yes.

5 Q Have you reviewed the colloquies that are
6 recommended in our rules or the areas of inquiry?

7 A Yes. So since the new rules have been issued in
8 the colloquy, I do believe that's developmentally
9 appropriate. But I think, however, there was one area that
10 was suggested for improvement or amendment in that colloquy.

11 Q Okay. Does your association have any
12 recommendations in terms of what the colloquy should be or
13 should not be?

14 A You know, it's one of the areas that we're working
15 on through this new reform called the Juvenile Indigent
16 Defense Action Network, is working on model colloquies
17 across the process. Because we were actually surprised
18 ourselves.

19 We assumed that the National Council of Juvenile
20 Family Court Judges would have developmentally appropriate
21 juvenile colloquies. And it wasn't until a few years ago
22 that we realized that they didn't. And so as part of this
23 new reform process it's one of the things that we are trying
24 to develop.

25 Q Now, in Pennsylvania juveniles can be -- in terms

1 of delinquents, can be anywhere from 10 to 17?

2 A Right.

3 Q I would imagine that there's a different level of
4 understanding between those age groups. Do you think that
5 the colloquies should be different for the different age
6 groups?

7 A You know, what we've seen in some sample colloquies
8 that we've been playing with is the differentiation of
9 language. So really judges, when they're sitting on the
10 bench, have to do some analysis of the competency of the
11 young person before them, whether it's a 10 year old or a 17
12 year old, in terms of understanding their language
13 deficiencies or capabilities.

14 So that you would have -- let's, for example, talk
15 about your right to cross-examination. So for a 17 year old
16 the judge might have an initial conversation with them,
17 glean if cross-examination needed to be defined. And if it
18 did, then within that colloquy there would be simpler
19 language to describe what a cross-examination actually is.

20 You can ask questions to witnesses, either yours or
21 the ones brought in to testify against you. And so there,
22 of course, has to be some subjectivity on the part of the
23 judge.

24 Now, I don't think you can use the same colloquy
25 for an eight year old as you would for a 17 year old.

1 You wouldn't have to use the same colloquy, I should say
2 that.

3 Q Well, I guess to my experience that's problematic
4 to some degree, because it seems to me that most juveniles,
5 when the judge asks them as a question, do you understand,
6 they generally say yes.

7 A Yeah.

8 Q Or I've heard defense attorneys whisper, say yes.

9 A Right.

10 Q Do you feel that this is something that more falls
11 on the defense counsel? Because how is the judge going to
12 know when a juvenile says yes that yes means yes?

13 A Absolutely. Defense counsel has an obligation to
14 describe exactly what the rights are in the colloquy.

15 Q Do you feel there should be written colloquies for
16 juveniles that are age appropriate that the parents initial
17 as well as the counsel and the juvenile?

18 A Some jurisdictions do use written colloquies in
19 addition to the oral colloquy that occurs. I think the more
20 information you can provide to a child the better. So a
21 written colloquy that an attorney goes over with the child
22 before the proceeding, we have seen that in jurisdictions.
23 I do think it's helpful.

24 But I do think it's important that the judge
25 ascertain for themselves that they have full faith that that

1 written colloquy was actually gone over with sufficient time
2 and understanding, and not that because there's an
3 understanding that we sat outside the courtroom and
4 discussed this the judge says you talked with your attorney,
5 right? Yes. So you understand all the rights you're
6 waiving? Yes. Okay. You're ready to enter your plea.
7 That's not sufficient.

8 Q Do you feel that colloquies are necessary for
9 informal type of things that never come before the judge?
10 How do you obtain that the child understands, even in an
11 informal adjudication or consent decree, that they
12 understand their rights?

13 A Well, I think in judicial colloquies it's any time
14 when we have a series of questions we're asking a child
15 about their understanding of their rights. It's important
16 for us to have a formal colloquy.

17 In a consent decree and an informal adjustment
18 there are a lot of things that a child is agreeing to in
19 those informal proceedings. They have to understand that
20 their behavior in the future could lead to them coming back
21 to court.

22 Q So you say that those would be different types of
23 colloquies? I mean, an informal generally wouldn't even go
24 in front of a judge, let's say. I don't think anywhere it
25 would go in front of a judge. So they're not even seeing a

1 judge in that circumstance.

2 Should there be something in the juvenile file
3 indicating that some type of colloquy was performed in those
4 types of circumstances?

5 A I think absolutely. And the performance standards
6 that we're talking about with the Juvenile Defender's
7 Association is important for us to really be clear about the
8 pieces of information a defense counsel should be providing
9 to the child at the point that defense counsel attaches and
10 a child has counsel.

11 If you're talking about an intake hearing where a
12 defender's never been there before and you have a probation
13 officer, I do think we should provide some guidance to
14 probation as well on what type of language can be used to
15 held children understand any type of agreement that they're
16 entering into.

17 I mean, all of us who have worked with children
18 know you have to explain things. You have to give examples
19 to children. You have to really work hard to ensure they
20 understand whatever the interaction is that's occurring.

21 Because we speak in a foreign tongue, and we speak
22 very quickly because all of us don't have a lot of time.
23 And I think one of the most important things we can do is
24 help all of us as adults in the system do a better job
25 communicating with the children that we work with.

1 MS. KRIER: Mr. Legg, if I could just add to that
2 since I practice here. As I indicated earlier in my
3 testimony, we open like 500 cases a year for new names of
4 children that are involved.

5 My juvenile probation department does 2,000 cases
6 that are -- I never see. But on an informal basis I now,
7 because of some complications -- and York County sits
8 clustered around a number of other counties, and kids come
9 to my county and get in trouble, and we transfer disposition
10 back to their home counties.

11 I am now trying to make certain cases, where the
12 children are traveling a distance, for my public defenders
13 to be available to go to juvenile intake appointments to
14 expedite that process so they understand that we can handle
15 it this way as opposed to that way or in some of the more
16 serious cases.

17 But 1,500 kids probably a year are disposed of in
18 York County without ever having talked to an attorney. And
19 they're an informal. They're just collecting fines and cost
20 money. They're getting consent decrees.

21 Now, on the consent decrees though, if there's not
22 a private attorney involved, that file does come to me. I
23 review it, and now I send a letter to that child saying this
24 is basically what you have agreed to. If you have any
25 questions, please call this office.

1 But in other counties every allegation, every
2 failure to pay fines and costs, every status offense comes
3 before a judge. So there does need to be some understanding
4 of how to address that child and that specific situation.

5 Because they have mental health issues. They have
6 learn -- I mean, we have kids that have 60 IQs, for heaven
7 sakes, that are getting charged with criminal offenses
8 because they get placed in mental health hospitals and have
9 a tough time controlling their anger, which is why they're
10 there. And they're getting charged with aggravated assault.

11 And to have a judge just say in two minutes in four
12 pages of an order that, yes, you understood your rights even
13 though you're taking Haldol. And that question is even
14 asked of the child, what medications he's taking before he
15 went into the court proceeding that day, that's
16 unconscionable.

17 So it's not just the questions that are in the
18 Juvenile Rules of Court Procedure. There needs to be more.

19 BY MR. LEGG:

20 Q Well, and that's what I'm trying to get at. You're
21 all members of different organizations that look out for
22 juvenile rights. And what, I guess, from the Commission's
23 perspective I'd be looking for, you're making
24 recommendations. You have recommended colloquies.

25 Have your associations created these types of

1 rules? When do you want these colloquies done, at what
2 proceedings and at what level?

3 It seems to me all of that is very important in
4 determining, A, how we're going to proceed in the future in
5 terms of making sure the children know their rights. And
6 then B, how we're going to accomplish that and at what
7 levels.

8 And in Pennsylvania obviously we have many
9 different levels, and we may have different colloquies for
10 different levels. And maybe probation does some of the
11 colloquies, maybe the judge does some.

12 CHAIRMAN CLELAND: I take it from the inquiry you
13 don't have those standards now; is that right?

14 MS. KRIER: We don't have the standards. My county
15 has a three-page one that I think is written on a 12th grade
16 level. And to try to address it, I know Judge Uhler and the
17 other judges, and I -- especially if I go, if I filled out
18 that form -- because we basically have to read it to our
19 clients.

20 CHAIRMAN CLELAND: But I take it you'd be willing
21 to develop this?

22 MS. KRIER: Yes. And the Juvenile Court Judges'
23 Commission, because of -- on the sex offense cases and the
24 SORNA and the Adam Walsh, has recommended specific parts of
25 a colloquy for sex offense cases.

1 But a lot of counties use written ones, but you
2 cannot just rely on the written ones. There's got to be
3 some interaction and some questioning by the court.

4 BY MR. LEGG:

5 Q Judge, that's what I was looking for. Hopefully
6 they can submit something, either through their association
7 or otherwise, that we can consider.

8 And just one more follow up, Ms. Scali. You
9 indicated at one point that there's a culture of
10 indifference. I think that was one of your closing
11 comments. That seems to me to suggest a uniformity across
12 the Commonwealth that I think, in fairness, probably isn't
13 fair.

14 A That was only intended to reference Luzerne.

15 Q Okay.

16 A I mean, it really was a culture of indifference.

17 Q And I would agree with that, but I wanted to
18 correct the record. Because I think there's a lot of good,
19 not only juvenile defenders out there, but juvenile
20 prosecutors, that take a team approach.

21 A Absolutely.

22 Q It's not as adversarial as, say, some counties,
23 Warren, in terms of Luzerne County, where their plea
24 bargaining is you plead to the highest charge. That was
25 what they did with juveniles.

1 I think that from what I'm gathering from hearing
2 from professionals, this is a team approach that prosecutors
3 have to get in their mind as well, that this is really about
4 the child.

5 In other words, we have to look at that. And if
6 you take that team approach, I think that a lot of this
7 stuff that happened in Luzerne never would have happened.

8 A Agreed.

9 BY CHAIRMAN CLELAND:

10 Q I'd like to follow up on Mr. Legg's question in
11 that regard. Because you -- you all talked about the
12 defense function. And I'm sorry, I can't attribute this
13 quote, it was a great one, that they advocated the expressed
14 interest or the best interest in that distinction.

15 And on occasion the best interest and the expressed
16 interest do not merge as you, as a licensed clinical social
17 worker, would know better than any of us.

18 Do you have a recommendation about who ought to
19 advocate or whether we should have a structure for someone
20 in the juvenile court to advocate for the child's best
21 interests?

22 A So some states have created a very complicated
23 system of guardians ad litem, GALs, where even in a
24 delinquency proceeding if you did not have a parent or
25 another person who was responsible for the child's

1 interests, that a guardian ad litem would be appointed to
2 represent those interests.

3 In some states that we've done assessments in we've
4 seen this awful combination of saying you could be the
5 defense attorney and the guardian ad litem. So first, tell
6 me what you think the kid wants, then tell me what you think
7 is in the kid's best interest.

8 What do you see the judge doing? I mean, the judge
9 is always going to rely on what the GAL hat says versus what
10 their expressed interest hat says.

11 And what we've said at the national level is you
12 can't ask one person to embody that conflict. Someone has
13 to be in the courtroom representing the expressed, stated
14 interest of the child.

15 If the court is interested in hearing the best
16 interest, we believe the probation department has the
17 responsibility to give you what their perspective is on best
18 interest.

19 Q So are you advocating then an additional person --

20 A I am not.

21 Q -- be appointed to represent the best interests of
22 each child?

23 A You know --

24 Q Because how would a judge know that there was a
25 conflict between the expressed interest and the best

1 interest if someone doesn't bring that to the judge's
2 attention?

3 A I don't think a judge should ever expect that the
4 defense attorney is going to bring forward what they think
5 are the best interests of the child.

6 Q So for a judge to have that then there has to be an
7 additional person appointed to advocate for the child's best
8 interest, particularly at the dispositional level. I'm not
9 so much concerned about the defense level, factual defense,
10 but at the disposition level?

11 A Not -- I don't know how many states use the GAL
12 system. I'm not advocating for creating another system in
13 Pennsylvania. I do think at times that the probation office
14 and the prosecution can offer their opinions about best
15 interests. And we can also bring in experts to testify
16 about best interests. I'm not sure other perspectives on
17 GALs.

18 MS. KRIER: Judge Cleland, the best interest is not
19 really the standard as set forth in the Juvenile Act.

20 CHAIRMAN CLELAND: Yeah, I know that.

21 MS. KRIER: I know you know that. So we're not
22 advocating that that best interest standard should be
23 applied in the delinquency system. I think the dependency
24 system is where that belongs and where it's probably not
25 being real effective in some counties in this Commonwealth.

1 BY CHAIRMAN CLELAND:

2 Q I don't mean to interrupt you, but as a practical
3 matter in a disposition hearing, whether a child needs or
4 does not need drug and alcohol treatment, and the child's in
5 denial --

6 A I mean, I don't know what occurs in some counties,
7 but before the judge in our counties gets his case
8 assessment, those evaluations are done. It's very
9 expensive.

10 We do drug and alcohol assessments. We do
11 psychologicals. We do psychiatrics. We do diagnostic
12 evaluations. All that information is there, and the judge
13 needs to read it. All parties need to read it, my
14 defenders, the prosecutors, the probation staff, when they
15 staff their cases with supervisors.

16 The judge needs to be proactive in reading the
17 materials that's before him and reach his own conclusions.
18 And that's why juvenile court judges need to stay in
19 juvenile court and not be rotated like defense attorneys, so
20 they understand these kids and understand the range of
21 options and the treatment alternatives that are available in
22 this Commonwealth.

23 Because the reason MacArthur is here and has been
24 here in the state for almost seven years is because we were
25 at the forefront in Pennsylvania of juvenile justice reform.

1 And to have this blip of Luzerne is almost embarrassing to
2 many people. And it is --

3 Q More than almost.

4 A -- because of what we looked at -- looked like on a
5 national level from outside people and the work that was
6 being done in the 66 other counties in this Commonwealth.

7 But I really think it's incumbent on the judge to
8 be able to figure that out. And they have the power and the
9 authority to get whatever resources they need to make that
10 decision.

11 CHAIRMAN CLELAND: Any other -- Mr. Williams.

12 BY MR. WILLIAMS:

13 Q Yes, Judge. Thank you. Thank you all for coming.
14 You spoke of justice by geography. And as a county
15 commissioner from Wyoming County I used to have to govern by
16 geography. And we had a lot of joinders through our human
17 services and human relations and across the north tier,
18 north central, and also parts of northeastern Pennsylvania
19 that carries on today.

20 With the cost of public defenders and resources
21 being limited, especially in the rural counties, is there
22 any thought given to maybe a shared public defender or a
23 regionalized public defender's office?

24 A There have been conversations about trying to
25 develop some regional resources, especially if we do the

1 Center For Excellence trying to regionalize some of those
2 resources and opportunities. And I think the
3 regionalization would also be part of Equal Justice Works as
4 well.

5 And I agree. The quality you can get -- some
6 people don't want to live in the northern tier of
7 Pennsylvania. And to get those resources and the quality of
8 work done should be able to be regionalized. But you need
9 to understand that I believe back in the late 80s the court
10 system was to be unified in this Commonwealth.

11 And that still hasn't gotten straightened out yet
12 either because juvenile court in this county is going to
13 look a lot different. If you regionalize, there needs to be
14 some uniformity in that practice so the attorney who is a
15 regional lawyer can practice in multiple counties and not
16 have to relearn the rules in multiple counties.

17 But I think that's an option, and it's clearly an
18 appropriate option based on some of the areas. And we are
19 trying to do training in those areas in clusters so we can
20 address the specific issues of those areas.

21 Q I'm glad to hear that. Did you say the people
22 don't want to live in the northern tier?

23 A I don't think so.

24 Q No, I don't believe that.

25 A They get a lot of snow.

1 MR. WILLIAMS: The people like Bob Listenbee and
2 George Mosee's area come to the northern tier. Thank you.

3 MR. HOROHO: Judge.

4 CHAIRMAN CLELAND: Mr. Horoho.

5 BY MR. HOROHO:

6 Q Different topic, back to Ms. Scali. You talked
7 about the involvement in schools and reporting discipline
8 issues and matters with the delinquency courts. And I had
9 an opportunity while you were talking to read your flyer.

10 One of your statements in your flyer regarding this
11 issue compounding the problem, many districts are now
12 turning to law enforcement to enforce discipline rules and
13 laws on campus. And some jurisdictions now require schools
14 report a broader range of criminal activity to police
15 departments.

16 Were you made aware of some of the testimony or you
17 heard over the last hearings about the zero tolerance policy
18 of the local juvenile judge in Luzerne County and how he, if
19 he didn't strongly request, maybe pressured some of the
20 local schools to assist him in implementing that type of
21 policy.

22 And I was just wondering, you talked about how
23 schools are trying to push back on these types of policies
24 that they don't necessarily agree with with the court
25 system.

1 And I guess my first question is have you had any
2 experience in other parts of the country regarding zero
3 tolerance or a discipline policy that a judge has latched on
4 to that he or she wants to see implemented?

5 A We have. I mean, again, Pennsylvania's not unique
6 in this school issue. As a matter of fact, you guys do a
7 really good job compared to most states in not having
8 children come from the schools.

9 There is a judge named Judge Tesky, who's in
10 Georgia. And what he did was he came up with a memorandum
11 of understanding between the juvenile court system and the
12 school system, and he got the school board people, he got
13 the law enforcement people, he got the juvenile court people
14 together, and he said, look, what are we doing with our
15 youth?

16 Right now we have a system where it is a flood from
17 the schools to the court, and it's not serving the needs of
18 the children. What do we do? So they put in a system of
19 checks and balances where the schools have to say I've tried
20 counseling. I've tried anger management. I've tried this
21 disciplinary procedure where the schools have agreed to take
22 all the disciplinary measures that we would expect schools
23 to take before a child is arrested, put in handcuffs, and
24 taken to the schools.

25 And they have -- I mean, the data is astounding.

1 It's something like an 80 or 90 percent decrease in the
2 school referrals from the schools to the courts. I can --
3 I'm happy to send you a copy of the MOU that they've used or
4 put you in touch with Judge Tesky.

5 Q I guess what would be the recommendation to the
6 schools or the Pennsylvania Department of Education as
7 relates to if they receive these inquiries or pressure from
8 the local courts to implement, if it's not zero tolerance,
9 another sort of strong discipline policy; and what role, if
10 any, would the juvenile defenders play in that?

11 A So the first question is how should schools respond
12 if a court asks them to send me your children? You know,
13 the school board, I would hope, would be able to go to other
14 authorities and call people's attention to the request.

15 In Pennsylvania I'm not sure where the
16 superintendent of schools is in their authority. But could
17 they go to the Governor's Office? Is there a commission
18 that they could talk to to really talk about this request?
19 I don't know if that answers your first question.

20 Q I think it does.

21 MS. CLARK: Could I add just one piece to that? If
22 you look at the last page, there's a person named Colleen
23 Wisdom on the final tab, and that's an example of a fellow
24 who can help with exactly what Ms. Scali's saying, in that
25 the fellow provides a central point for working with the

1 school system.

2 They work with the local mediation center, the
3 judges, the defense attorneys, the prosecutors to
4 incorporate and change local policies around education,
5 discipline, zero tolerance, and they raise awareness. They
6 do clinics.

7 So that's one role that you might want to think
8 about as that bridge between the discipline and the schools
9 and the juvenile defenders and the court system could be a
10 perfect location for some fellows to perform.

11 MS. SCALI: And to tag on to that, there are some
12 jurisdictions, like in Washington, D.C., where the
13 defender's office actually has an educational advocacy unit.

14 So the role of the educational advocate is to go to
15 disciplinary hearings in schools and say, no, you know, this
16 is a formalized administrative hearing. And we're actually
17 going to implement some evidence here. We're going to call
18 in some witnesses.

19 And they require the schools to take it up a notch.
20 It's just not a child and parent showing up at a hearing and
21 the school saying, see you later, you know, come back in two
22 years.

23 So there are also other jurisdictions that have
24 really engaged the defense in the work of educational
25 advocacy. And D.C.'s not the only one.

1 MS. KRIER: If I could just address the specific
2 issue. I think the overzealousness of that Luzerne County
3 judge clearly violated some of his ethical obligations under
4 the Judicial Conduct Code that's in Pennsylvania.

5 And I think part of the underlying -- if I did say
6 it loudly, because it's probably my personal opinion. There
7 needs to be more oversight of judges in this Commonwealth,
8 and a resource for non-lawyers to report abuses by judges to
9 some entity. And an entity that really has some teeth and
10 doesn't have a two or three year investigation process to
11 address those abuses.

12 Because that's clearly beyond the realm of his
13 jurisdiction and authority to go pressure a school district.
14 I just came off a school board in York City. I don't want
15 to know -- I don't want to hear from a judge that said you
16 need change this policy because I said so. That's out of
17 their realm, out of their scope of their authority.

18 I don't like zero tolerance policies. A lot of
19 those come down from the state level, from the Assembly,
20 from different departments, and Department of Education. I
21 think that's where the zero tolerance issue needs to be
22 addressed as well.

23 Because a child who's ten doesn't have the
24 reasoning of why he could -- shouldn't pick up a pocket
25 knife that he sees laying on street. Because ten year olds

1 are real curious, and they're going to pick up anything.
2 And you suddenly get that kid kicked out of school because
3 there's a zero tolerance policy on the state level for any
4 weapons on school property.

5 But I think the judges conduct in Luzerne County
6 was clearly beyond anything he should have been allowed to
7 do, and that should have been enforced by the Supreme Court.

8 MR. HOROHO: Thank you.

9 CHAIRMAN CLELAND: I want to thank you all very
10 much for being here today and bringing your not only unique
11 local perspective from York County, but your unique national
12 perspective as well.

13 And we appreciate the efforts of Mr. Listenbee in
14 coordinating that to have you here today. And I will hope
15 that we will in some way be able to hear the testimony
16 regard -- from the other witnesses who were unable to get
17 here because of transportation problems. We will be in
18 recess until 1:30. Thank you.

19 MS. SCALI: Thank you.

20 (Recess taken from 12:30 to 1:30.)

21 CHAIRMAN CLELAND: Good afternoon. We are about to
22 resume the afternoon hearings of the Interbranch Commission
23 on Juvenile Justice. The bulk of the afternoon is going to
24 be directed toward ethical issues. And as our first witness
25 we welcome Bernadette Bianchi, who is the Executive Director

1 of the Pennsylvania Council of Children, Youth and Family
2 Services. If you'd please stand to take the oath.

3

4 BERNADETTE BIANCHI, called as a witness, being duly
5 sworn, testified as follows:

6

7 MS. BIANCHI: I do.

8 CHAIRMAN CLELAND: Thank you, and please be seated.
9 Mrs. Bianchi, go ahead.

10 MS. BIANCHI: Good afternoon. I am pleased to
11 offer testimony to this Commission today as the Executive
12 Director of the Pennsylvania Council of Children, Youth and
13 Family Services. We appreciate the opportunity to offer
14 input for your consideration and value recognition of the
15 private provider community as a key stakeholder in
16 Pennsylvania's children, youth, and family service systems.

17 PCCYFS represents more than 140 private providers
18 of child welfare and juvenile justice services who are part
19 of our statewide network. Our members offer a wide variety
20 of services, including prevention, in-home, foster care,
21 residential, behavioral health, and drug and alcohol
22 programs.

23 Many of our member agencies also offer educational
24 programming and other family and community-based services.
25 The majority of these programs and services are funded

1 through contracts with counties using a complex combination
2 of local, state, federal, and often private dollars.

3 Many of these services and supports are mandated
4 through statute or regulation, and all focus on the desired
5 outcomes of keeping children safe, supporting permanency,
6 competency development, and accountability, and ensuring
7 community safety.

8 Membership in PCCYFS is voluntary. Dues are
9 assessed based on agency operating expenses to support
10 membership services. Our scope of services and supports as
11 a membership association is defined by our strategic plan,
12 and our goals focus on efforts to influence public policy,
13 increase public awareness of issues, create opportunities
14 for professional development, ensure the fiscal stability of
15 our organization, and support membership services and
16 membership expansion.

17 PCCYFS asks that members adhere to our Code of
18 Ethics, and I have attached a copy with my testimony for
19 your review. Our governing Board of Directors does not take
20 action to exclude private agencies from membership, but
21 rather operates on the premise that inclusion best supports
22 improved practice through exposure to professional
23 development opportunities, access to information regarding
24 priorities and initiatives, and exposure to our informal
25 peer mentoring network.

1 As a voluntary membership organization PCCYFS does
2 not have authority to require compliance on any level or to
3 sanction private providers who fail to comply with best
4 practice.

5 Pennsylvania's child welfare and juvenile justice
6 delivery system is state supervised and county administered.
7 This structural relationship is established in law. Each
8 Pennsylvania county must provide or arrange for the
9 provision of a specified set of social services for
10 dependent and delinquent children and youth, which are
11 further defined in law and regulation.

12 To meet these legal mandates all counties to some
13 extent rely on private providers to deliver direct social
14 services. The history of child protection and juvenile
15 justice in Pennsylvania reflects a deep commitment of
16 private agencies and institutions dating back to the
17 mid-1800s.

18 As Jim Anderson, from the Juvenile Court Judges'
19 Commission shared with you several weeks ago, the private
20 sector is a fundamental part of our current system.
21 While the focus of this Commission's attention is on
22 breakdowns in the juvenile justice system in one county, the
23 interconnected realities of all human services systems in
24 all 67 counties must be recognized and considered in the
25 Commission's recommendations for changes.

1 I'd like to speak a bit about relationship driven
2 practices versus outcome driven practices. As previously
3 stated, many private agencies predate county programs
4 addressing community needs, including interventions with
5 juvenile defenders.

6 This extensive private provider community has
7 strong community identities, long standing relationships
8 with their local donor base. Our heritage is rich, although
9 we have welcomed new and evolving providers, both for profit
10 and not for profit.

11 Providers have been encouraged by public sector to
12 move from our altruistic grass roots basis and our family
13 and faith based operating platform to more of a business
14 model. Doing so has resulted in many providers adopting
15 marketing practices and developing public relations
16 campaigns that rival other service and product areas.

17 business plans, cost benefit, and market analysis
18 and retained revenues and investments are now part of our
19 vocabulary. Only ten years ago providers' needs to
20 understand funding streams or engage in professional
21 presentations of program effectiveness were discounted as
22 unnecessary.

23 Today, the need to understand how the complex
24 formulas of funding dollars come together as well as the
25 focus to remain cutting edge and competitive are the rules

1 rather than exceptions.

2 Despite this evolving business mentality our human
3 services system remains relationship based and driven by
4 shared concerns of professionals from both private and
5 public sectors. It is natural to gravitate toward others
6 sharing a common value base and experience on both
7 professional and personal levels.

8 The appearance of potential conflict arises when
9 those lines become blurred. While an everyone pays for
10 their own meals and lodging and drinks policy can be
11 committed to writing, it is easily forgotten in social
12 settings where time is focused on enjoying camaraderie and
13 not enhancing potential business opportunities.

14 Invitations to a private provider's open house, new
15 program presentations, or annual business meeting mirror the
16 same purposes of county invitations to planning hearings,
17 needs based budget presentations, and anniversary
18 celebrations. They're to share information and celebrate
19 successes and generate broader input.

20 Providing coffee and snacks during the meeting is
21 accepted as a simple social courtesy. However, a catered
22 dinner and an open bar at a reception could be construed as
23 an attempt to influence referrals. Where should the line be
24 drawn of acceptable social courtesies and business practices
25 and those which present an appearance of conflict or clear

1 attempt to influence business practices.

2 And even if this line is clearly drawn, who is
3 responsible for monitoring and enforcing acceptable
4 practices? These questions have been debated by providers
5 for years.

6 Recommendations. It is impossible and impractical
7 to assign a monetary value of acceptable marketing and
8 promotional items, since even a token pen could be construed
9 as a connection to an agency when noticed by a parent in a
10 juvenile probation office.

11 Adherence to a consistent code of ethical practices
12 should be presented as a clear expectation of employment or
13 professional relationships inclusive of state, county, and
14 private provider staff.

15 Consumable item guidelines are challenging to
16 define as this quickly becomes a debate over donuts and
17 coffee being acceptable while alcohol and filets are not.

18 Private agencies could be required to develop
19 standards of practice for all meetings hosted as part of all
20 purchase of service agreements. In the absence of this
21 expectation, and while there is hesitance to support the
22 zero tolerance policy related to practices referenced above,
23 there appear to be few alternatives to offer assurance that
24 the line between acceptable courtesies and attempts to
25 influence is not crossed.

1 The value of services delivered by private
2 providers should be evaluated and purchased based on
3 achievement of mutually defined and desired outcomes. Those
4 agreed upon outcomes should be data driven and
5 well-documented.

6 While the influence of long standing relationships,
7 professional confidence, and mutual respect will remain
8 factors in any working relationship, transparency,
9 consistency, and accountability in practice is better
10 supported by decisions made on merit and performance.

11 Relating to accountability. While there were
12 egregious violations of ethical practices and inappropriate
13 uses of public money in Luzerne County, the overwhelming
14 majority of county juvenile probation office staff, members
15 of the judiciary, and private agencies follow acceptable
16 professional practices.

17 As a rule this adherence to ethical and accountable
18 expectations upholds public trust without attention or media
19 coverage. It is unfortunate that the actions of a few have
20 violated public trust and have unforgiven impacts on the
21 lives of so many youth and their families.

22 Our recommendations in this area include certainly
23 outliers must be held accountable and sanctioned for their
24 actions. However, the successes achieved and supports
25 offered and the public and private resources dedicated to

1 positive interventions with youth involved in the juvenile
2 justice system must be publicly presented with equal vigor.

3 Coordinated educational sessions for community
4 stakeholders and public hearings on performance and
5 allocation of resources should be made readily available to
6 the public and the media. Demonstration of the working
7 partnership of the courts and county probation offices and
8 private providers can make inroads in correcting public
9 misperceptions and instilling community confidence in the
10 juvenile justice system once again.

11 Juvenile court proceedings should also be open
12 unless such an open venue is determined to not be in the
13 best interest of the youth by the court.

14 Our two remaining areas of focus are on contract
15 language and funding. These relate specifically to the
16 direct relationship between private providers and the
17 counties that purchase services.

18 County children and youth and probation offices are
19 not required to purchase services from private providers.
20 However, the clear majority, 75 to 85 percent of direct
21 services, everything from foster care to group home care and
22 residential services, as well as an array of therapeutic
23 support and in-home services, are purchased by counties from
24 private agencies across the Commonwealth.

25 In many cases the contracted rates do not cover the

1 actual cost of the mandated services, which must be
2 increasingly subsidized by private dollars raised by
3 providers. The level of competition for referrals to
4 support the continued viability of agency programs,
5 especially in the current environment where referrals for
6 almost all levels of service are decreasing, is a very real
7 part of our service delivery system.

8 Contracts governing the purchase of services are
9 required by existing fiscal regulations, Chapter 3170,
10 applicable federal rules and local county government
11 requirements. These contracts define the working
12 relationship and payment process between private providers
13 and the individual counties purchasing services.

14 By regulation, counties must negotiate and
15 establish rates with providers. In practice, however, there
16 is little true negotiation. Even now with state reviewed
17 and confirmed maximum allowable costs, contract rates fall
18 short and are not adjusted regularly to reflect increased
19 costs and elevated requirements.

20 Unfunded mandates are the norm, and there is
21 little, if any, recognition of performance in the process of
22 selection of those services purchased. While readily able
23 to identify the strengths of our county administered
24 purchase of service system, 67 variations of contract
25 provisions present challenges to consistency, transparency,

1 and monitoring.

2 These variations are also cause for inefficiencies
3 in current practice. Counties and providers invested in the
4 development of a uniform contract template some years ago
5 resulting in its use by approximately one third of all
6 counties. Current contract language, however, reflects
7 significant variations in service deliverables,
8 documentation requirements, payment and invoicing protocols,
9 and other obligations of both parties entering into the
10 agreement.

11 Now that you have copies I think we're up to page
12 six. And there's a number of attachments, so it's not all
13 testimony that I'm going to share with you.

14 Our recommendations related to contract language
15 include the following: Regulations governing county fiscal
16 requirements, including purchase of service agreements with
17 private providers, became effective on January 1st, 1978.

18 Clearly best practice 30 years ago is not
19 necessarily the most appropriate foundation for business
20 practices today. It's time to revisit and revise these
21 governing regulations.

22 Updated conflict of interest policies, including
23 prohibitions from offering or receiving gifts, payments,
24 tokens, or other gratuities should be defined and required
25 by regulation for inclusion in contracts executed for

1 purchased services. This would support a consistent
2 foundation for enforcing ethical practices.

3 While there is much attention focused on outcomes,
4 there is little consistency in how these desired outcomes
5 are defined, tracked, or incorporated into referral or
6 service delivery practice. Private service providers,
7 county juvenile probation departments, and the overall
8 juvenile justice system would benefit greatly from the
9 implementation of a standardized outcomes reporting
10 mechanism or access to outcomes reporting software that
11 would serve to eliminate many of the individual county
12 variations currently experienced by providers.

13 Currently quality and high performing service
14 providers are not recognized through increased referrals or
15 adjusted rates while consequences for poorer performing
16 colleagues are not defined or enforced. A purchase of
17 service process focusing on state and county and provider
18 jointly defined outcomes, which includes a validated
19 assessment factoring in the needs of the youth referred is
20 needed.

21 The majority of purchase of service contracts are
22 renewed on an annual basis without in-depth review or
23 consideration of alternatives. This process has some
24 benefit in that it supports continuity for the youth
25 currently receiving services. However, it also perpetuates

1 a referral network based on history rather than documented
2 effectiveness or ability to respond to projected need.

3 Many counties sole source contracts or enter into
4 closed discussions with a preferred provider to respond to
5 new initiatives. An open and competitive request for
6 proposals and bids would increase transparency, ensure that
7 all interested providers have opportunity to respond, and
8 support appropriate and balanced competition.

9 Our last area of focus is on our funding process
10 itself. There are two primary statutory references for
11 funding for both child welfare and juvenile justice
12 services, including purchased services. Act 30 of 1991,
13 which amended Act 148 of 1976, does not include requirements
14 for payments of actual costs of mandated purchased services.

15 There is significant disparity which continues to
16 grow between the actual costs and rates paid for purchased
17 services. Cost of living adjustments in the state budget
18 and flexibility in county determinations of services
19 purchased have historically served to support individual
20 county determinations of rate increases.

21 However, few providers have been able to access any
22 increase in recent years. Clearly the Commonwealth and all
23 counties are not prepared to take full responsibility for
24 the array of mandated services that are currently delivered
25 by private agencies. Yet the private provider community is

1 being strained beyond tolerable tension.

2 A defined mechanism to ensure that adequate and
3 appropriate funding reaches the direct service delivery
4 level is needed. There are cost savings available within
5 our system if duplication of effort, clearly defined roles
6 and responsibilities and cross system communications are
7 aggressive addressed.

8 State scrutiny has served to complicate and delay
9 the county private provider contracting process. As of
10 today at the beginning of the eighth month of this fiscal
11 year there are private providers delivering services in good
12 faith without signed purchase of service contracts or any
13 payment since last July of 2009.

14 Efforts to expedite this review process and ensure
15 accountability of all involved entities must be an enforced
16 expectation.

17 Our recommendations specific to funding include
18 that Act 30 of 1991 should be amended to require that
19 contract rates cover the cost of mandated services, and that
20 sufficient funds be appropriated to ensure payments for
21 those services purchased; that this Act be amended to
22 require that all purchase of service contracts include a
23 timely payment clause, which would require payment for
24 services to private service providers within 75 days. This
25 would allow private providers to use private dollars for

1 purposes other than subsidizing and paying interest costs on
2 borrowed lines of credit.

3 Act 30 of 1991 should be amended to require all
4 purchase of service contracts to include contract extension
5 language which would provide for continuing services and
6 payment at the last contracted rate until the new contract
7 agreement is signed.

8 And starting in fiscal year 2010/11 the
9 Commonwealth should establish a protocol that would provide
10 for a review of rates for all private service providers on a
11 two or three year rotating basis, rather than annually, with
12 provisions for annual cost of living adjustments of rates
13 tied to the Consumer Price Index during non-reviewed years.

14 Purchase of service contracts between counties and
15 private providers should be for the same two or three year
16 duration, providing that the liberal and performance
17 expectations are met. Thereby changing the current system
18 focus away from process issues and facilitating a return to
19 a focus on quality of care issues.

20 Thank you for this opportunity to share our
21 recommendations and concerns. I'd be happy to answer any
22 questions. And I also would like to introduce my associate
23 director, Bruce Grim, who works with me in our Harrisburg
24 office.

25 CHAIRMAN CLELAND: Ms. Bianchi, thank you, very

1 much. It's nice having you with us also. I know you've
2 been at a number of our hearings already, and I appreciate
3 your interest in these issues. Judge Uhler.

4 BY JUDGE UHLER:

5 Q Ms. Bianchi, as a start, you referenced that the
6 Pennsylvania County -- Council of Children, Youth and Family
7 Services had adopted a Code of Conduct; is that correct?

8 A Code of Ethics, yes.

9 Q Code of Ethics. When was that adopted?

10 A It was revised and adopted when we went through a
11 reorganization in 2000 and updated in 2009 by our Board of
12 Directors.

13 Q Were any of the updates responsive to the concerns,
14 no pun intended, generated by Luzerne County?

15 A They absolutely were.

16 Q And what -- specifically in what area?

17 A No. 8, member agencies will ensure their private
18 interests, whether personal or financial, will not conflict
19 or appear to conflict with their professional
20 responsibilities.

21 I think that was the one that was -- and No. 7,
22 future and model organizations that encourage accountability
23 and reward ethical behavior.

24 Q Now, you were aware, I'm sure, of the recent
25 changes in force at the recent Pennsylvania Juvenile Justice

1 Conference, I believe in Harrisburg, wherein provisions of
2 mugs, T-shirts, coffee cups, and the like were -- as well as
3 hospitality rooms had been discouraged.

4 Had that been an issue that had presented itself to
5 your group before?

6 A We had talked about it internally over a number of
7 years. I think many providers were actually relieved this
8 past year when there was a general prohibition against those
9 give-aways, believing that it really leveled the playing
10 field.

11 More often it was larger agencies with greater
12 resources that could support one of the evening receptions,
13 and the competition around which gadgets or trinkets were
14 the most desirable took away from the true purpose of that
15 resource day, which was to focus on the value and the
16 substance of the services and supports that were offered by
17 private providers.

18 Q But for the leveling of competition, had that been
19 a concern that indeed these type of marketing tactics had
20 been employed to fill the gap in the conflict between
21 marketing competition and the ethical responsibilities and
22 making a decision based on the outcome of the program?

23 A Yes. It was a concern for many providers that both
24 displayed and had experienced, not only in the resource day,
25 but in a number of other similar display opportunities.

1 Q Had that concern been incorporated in any of the
2 Code of Ethics that had been generated?

3 A Within our Code of Ethics, other than the two
4 citations that I identified, there were never any
5 discussions of putting limits or trying to configure
6 constraints on those practices. And, again, many of the
7 private providers that displayed at the Juvenile Judges
8 Conference were not our member agencies.

9 Q Okay. With that said, if a member agency would be
10 displaying that form of conduct, was there any form of
11 sanction that could be employed by your agency?

12 A No, there wasn't.

13 Q What recommendations, other than seeking counties
14 to contractually incorporate into their service purchase
15 agreements the prohibition of those type of marketing
16 tactics, could otherwise be employed?

17 A I'm a great believer in professional development
18 opportunities and colleagues exerting peer pressure. I
19 believe that the more that we talk about improved practices
20 and different -- create different opportunities for really
21 addressing the substance of what we have to offer rather
22 than some of this additional embellishment, private
23 providers will conform.

24 They look at each other as competitors. They don't
25 want to be the outlier. I think that that kind of peer

1 pressure and professional development can bring people back
2 to a mainstream. But it will need to be a combined and
3 continual effort.

4 We still believe that the strongest conduit is in
5 county language. If there's a clear prohibition against
6 offering or receiving any such inducements, enticements,
7 then there's a stronger framework for compliance.

8 Q Now, your reference has been to county developed
9 relationships between the provider as well as the -- the
10 contracting party. Your organization or its members also
11 has occasion to interface with judges; do they not?

12 A Yes.

13 Q And does that -- and has that raised any particular
14 concern ethically or otherwise?

15 A Not to the best of my knowledge.

16 Q Would the concern of providing open bar, filet
17 mignon dinners, golf trips, those type of occasions also be
18 of concern from an ethical basis as to marketing strategies?

19 A Yes.

20 Q With judges?

21 A Yes.

22 Q And has that ever been discussed?

23 A Not directly. I am aware that often times in
24 creating opportunities to present program information there
25 are invitation -- invitations extended to members of the

1 court. Not only within Pennsylvania, but outside of
2 Pennsylvania.

3 I think since this incident was addressed in
4 Luzerne County there's a higher degree of caution over the
5 appearance of that type of invitation, but it would be
6 general cause for concern in creating that type of
7 presentation.

8 Q Now, a judge under the Juvenile Act employing
9 balanced and restorative approach to those that appear in
10 front of us have an obligation to identify community
11 resources to build upon and use competency development and
12 ability to at least attempt to retain a child within the
13 community.

14 The contention that arises, of course, is that when
15 a judge in that pursuit needs to familiarize him or herself
16 with -- with the agencies within the community or those
17 immediately with outside the community.

18 Do you have any recommendations from your agency as
19 to how that can come about?

20 A I agree that it is a necessary and critically
21 important part of raising awareness of members of the court
22 about agency programming, the facilities, the location in
23 the community, the connection with other resources in the
24 community. And there is no better way to view that and
25 witness that than to have an on-grounds visit.

1 I think that that can be well-accomplished within a
2 structured open house opportunity, presentation opportunity,
3 direct invitation specifically for that purpose. What is
4 not a necessary piece of that is often times what has been
5 connected with that is with the lavish catered dinner, the
6 appearance, again, to the public of -- I don't want to say
7 inappropriate, but lack of most appropriate use of dollars
8 directed in that venue that could be used for other
9 purposes.

10 Q Some counties allow or enable their judges,
11 probation officers, to visit perspective sites where
12 placement resources might be used in the future so that --
13 so that those resources can be appropriately evaluated.

14 That enabling includes paying the cost of -- of
15 those visits. Do you, from a -- the provider organization
16 standpoint, consider it a problem if the judge and POs were
17 allowed to lunch with the students during their visit with
18 the standard fair that the students are receiving?

19 A Absolutely not. What better way to get a healthy
20 dose of reality than to be in the reality of that
21 environment.

22 Q That likewise would be the case, I would sense,
23 that if a judge and/or PO was going to visit a child that
24 indeed had been placed?

25 A Yes.

1 Q What other concerns do you envision relating to
2 judiciary/provider relationships in the -- in the providing
3 of services to the county which ultimately impact positively
4 on the juvenile court?

5 A There's always the potential for misunderstandings.
6 I'm a great believer in open communication. I think if we
7 talk clearly about the expectations. You indicated some
8 expectation for covering costs of travel or -- as long as
9 that is up front, as long as it's disclosed, as long as it's
10 transparent, I think it supports a healthier level of
11 communication, and ultimately the public presentation of a
12 healthier relationship between the courts and the private
13 providers and members of the juvenile probation and children
14 and youth, since they're tied together for contracting
15 purposes.

16 Clear delineation of roles and expectations would
17 help in that process. And while it doesn't all have to be
18 included in contract language, it should be something that
19 is readily available for public review.

20 Q Is it a healthy relationship for a provider to be
21 situate in the judge's courtroom pending disposition with
22 the full expectancy that the judge may or more likely than
23 not be directing that child to be placed at that resource?

24 A I think my concern would rest with how the provider
25 knew that the potential existed. If they were contacted in

1 advance or discussed a specific case scenario with the
2 probation officer, that would be one reason.

3 If they were strolling down the hallway and going
4 from courtroom to courtroom and looking for those
5 opportunities, it would be viewed from my perspective as
6 inappropriate.

7 Q How about if a provider has his or her desk in the
8 -- in a judge's courtroom?

9 A I hope that never happens. That's a frightening
10 scenario.

11 JUDGE UHLER: I have nothing further.

12 CHAIRMAN CLELAND: I'd like to, I think, spend
13 about another 20 minutes, if there's questions. Mr. Legg.

14 BY MR. LEGG:

15 Q We had a -- at the previous hearing some
16 recommendations made, one of which was from Juvenile Court
17 Judges' Commission regarding openness.

18 A Um-hum.

19 Q And they had recommended that the Juvenile Act be
20 amended to provide both dependency and delinquency
21 proceedings be open to the public, although the court could
22 have the discretion to close them. How do you feel about
23 dependency proceedings being open to the public?

24 A We've talked, again, internally about this issue.
25 Because the prospect of open court hearings is not a new

1 issue. It's been debated for a number of years. Dependency
2 situations can be more challenging. We're dealing with
3 children who have been abused and neglected. There seems to
4 be a need to have a different level of protected element.

5 But if it came down to having either both open or
6 none open, I think that we would support that they both
7 being open and trust the determinations made by the judges
8 as to whether or not the openness would truly be in the best
9 interest of the child.

10 Q Do you see -- do you see a fundamental difference
11 between the two in terms of dependency and delinquency
12 proceedings, where one perhaps would be more appropriately
13 closed than the other?

14 A Yes.

15 Q And I would -- would you think the dependencies
16 would tend to be the type that you want to keep closed
17 because of the internal family problems, abuse?

18 A That's correct.

19 Q Those types of things. From your perspective what
20 type -- what does the public get, I guess, from openness of
21 dependency proceedings? What would be the positive or the
22 reasons that it would be something you should consider?

23 A For dependency hearings?

24 Q Yes.

25 A The presentation that I've often heard referenced

1 is that it really becomes a public awareness opportunity to
2 really have the full picture of the roles and
3 responsibilities of all of the entities that are involved,
4 as well as the true impacts of these situations where
5 children are abused and neglected.

6 And, again, garnering more public awareness and
7 more public support ultimately helps us build a better
8 system, improve our service delivery system.

9 Q So it would be less about the kids and more about
10 public perception? In other words --

11 A Yes.

12 Q I mean, I hear in my county as well in terms of
13 Children and Youth services, you can't stop them. They're
14 Gestapo. And I think probably some of that's fed in because
15 of the secrecy. In other words, there's no way for children
16 and youth services to combat that because they can't
17 disclose what's going on. But really in the end it's about
18 the children, right?

19 A Yes.

20 Q And overall it would be your interpretation that
21 closing those proceedings is really better for the kids?

22 A In dependency situations, yes.

23 MR. LEGG: That's all I have, Mr. Chairman.

24 BY CHAIRMAN CLELAND:

25 Q I was fascinated by your comment that there have

1 been transition over the last ten years which confirms my
2 own experience too in dealing with agencies between the
3 local faith -- an evolution from the local faith based kind
4 of organizations to a more regional, even statewide or
5 national business model.

6 A Yes.

7 Q And I suppose there are lots of reasons for that.
8 But does the formula for state funding, DPW funding, and how
9 that money is funneled through to agencies affect that? I
10 mean, that's been in transition for the last ten years or so
11 as well. Is there a cause and effect?

12 A There's definitely a connection. I don't know if
13 it's an absolute cause and effect.

14 Q Okay. All right. And could you expand on that? I
15 know we're going to get into a complicated question about
16 how Title 4 funding is done and all that sort of stuff, but
17 just generally.

18 A Where do I begin? Bruce told me to keep the
19 discussions around the funding fairly simple.

20 Q Well, I guess the reason that -- yes, you have to
21 keep it simple because of who you're talking to. But it
22 also helps us understand what the pressures are to push this
23 as a business model.

24 A Let me begin with just looking at the evolution of
25 private agencies. And the majority of private agencies are

1 not for profit, and so we've always used money. We have
2 always done a lot of revenue generation from bequests and
3 inducements to really have those reserves.

4 What we have seen change over the last ten years or
5 so is a shift in the use of those private dollars. It's no
6 longer that they are considered supplemental dollars, but
7 rather they are dollars that private providers actually use
8 to subsidize mandated services.

9 So we've taken away the flexibility and the
10 discretionary use of those dollars and really have moved
11 into a system now where because so many other dollars coming
12 into support our service array are limited, those private
13 dollars become more directly connected with just keeping
14 basic operations going. And that happens for a lot of
15 reasons.

16 The state has been very, very aggressive in looking
17 to all potential sources of federal revenue. And at the
18 same time that that has happened over the last ten years the
19 federal government has been more and more determined to hold
20 on to each and every federal dollar that they have.

21 And so we see tremendous shifts in the number of
22 federal dollars coming into Pennsylvania as well as the
23 number of children that are eligible to use those federal
24 dollars because there's antiquated criteria on which
25 children are deemed eligible for those federal funds.

1 So we have a different shift in federal dollars.
2 We have a different shift in state dollars. Up until maybe
3 five years ago there was a really flexible pool of money
4 through the tentative dollars, the temporary aid to need
5 family dollars that was really incorporated into a lot of
6 juvenile justice and child welfare funding.

7 It paid for a significant portion of detention
8 center funding. That was shifted away again because of a
9 change on the federal level and shifts in Pennsylvania
10 funding.

11 In our own budget situation this situation has
12 really caused a lot of that funding to be tainted. So I
13 think it's a lot of things coming together as well as a lot
14 of pressure put on private agencies, really small agencies,
15 mom and pop kinds of agencies, individuals who really felt a
16 desire and a commitment to youth in some way, that
17 encouragement to move away from that altruistic vantage
18 point to one of a business model to really be more
19 accountable, to be more professional in our conduct.

20 We value the professionalism of our level of
21 operations, but at the same time we've lost some pieces of
22 flexibility in being able to do things because we thought
23 that they were the right things to do.

24 So I've seen that shift directly in the ten years
25 since I've been Executive Director of the Council, but I've

1 also witnessed it throughout my social work career.

2 Q In terms of the quality of services then provided
3 to children, are you saying that shift is a positive or a
4 negative, if it's possible to be so categorical?

5 A I think that we have focused a lot of our energy in
6 very positive ways. We're really looking at how do we
7 document the effectiveness and efficiencies of how we're
8 using public dollars? There's a much higher level of
9 attention paid on outcomes and based on evidence based
10 practices where there are documented opportunities to
11 achieve quality outcomes.

12 So I think that's a positive. That really is a
13 positive. But there are also a lot of stressors added
14 because of the increased unfunded mandates that have been
15 placed upon private agencies, and how far can we stretch
16 things. And this last year has been extremely challenging,
17 partly because of the budget impasse, partly because of the
18 federal scrutiny that's occurring in Pennsylvania, and just
19 overall shifts in funds.

20 CHAIRMAN CLELAND: Judge Uhler.

21 BY JUDGE UHLER:

22 Q I'm sorry. I didn't have the benefit of the Code
23 of Ethics to skim over before my inquiry.

24 A All right.

25 Q Was there any consideration given to concerns

1 surrounding employment of -- by private agencies, profit or
2 non-profit, of family members of contracting parties or
3 utilizing those family members on advisory boards or
4 otherwise?

5 Was that -- was that a consideration or concern
6 offered by anyone?

7 A I know that we have talked about it. We've talked
8 about hiring staff who were employed by a public entity and
9 working maybe part time in a private agency. We've talked a
10 lot about aggressive recusement efforts, but I don't think
11 that our Board of Directors, at the last time this was
12 revised, thought to commit that to writing.

13 This is a fluid process. Our Code of Ethics has
14 been revised to respond to other issues and concerns brought
15 to our Board of Directors by our member agencies. So that's
16 not to say that we could not go back and revisit that issue.

17 Q Were there any other concerns brought to your
18 attention by Luzerne that have not been addressed by you in
19 your Code of Ethics?

20 A The only outstanding issue was trying to
21 incorporate some of the language so that we could more
22 closely mirror the ethical standards that we anticipate
23 being adopted by the Pennsylvania Council of Juvenile
24 Probation Officers.

25 JUDGE UHLER: All right.

1 BY MR. LISTENBEE:

2 Q Your Honor, if I may. Ms. Bianchi, I'm -- first of
3 all, thank you, very much for coming. And your remarks have
4 helped me understand how complex the issue of gratuities is.

5 And as we look towards the JCJC conference I
6 understand that they're not able to give out pens and cups
7 and so forth, but I'm not really clear that outside the
8 context of JCJC what is actually acceptable in accordance
9 with your Code of Ethics.

10 Can -- can I give a pen to a private provider? Can
11 a private provider give me a pen? Can I get a cup? Can I
12 get a calendar? Can they give me one? What is acceptable
13 and what is not now?

14 A Right now all of that that you've described is
15 acceptable. It depends upon what the provider wishes to
16 present and the willingness of the recipient to accept that
17 gift. There are no hard fast rules in any of that
18 interaction. What we have been encouraging our provider
19 members to consider is the appearance of conflict.

20 The appearance of having a cup holder full of pens
21 with agency identifications on them, and the appearance that
22 that gives to the youth and families walking into that
23 probation officer's office.

24 It's only a 29 cent pen if you order them in
25 quantity. So the monetary value means next to nothing, but

1 the presentation creates a problem. So we've been
2 addressing this within our network, our numerous work
3 groups. We have been addressing it just last week in our
4 delinquency services work group. We have an internal
5 marketing work group.

6 And so, again, from collegial support and open
7 discussion, we're trying to move folks away from those kinds
8 of practices and really looking at public presentations and
9 educational activities focusing more on the substance of
10 program outcomes, the quality of deliverables, the
11 successes, the long term stability that is supported for
12 youth by the intervention for private agency rather than the
13 give-away trends.

14 Q There's still no clear rules?

15 A No.

16 Q I can't -- can I go to an agency and take golf
17 lessons at that agency as training young people to be
18 caddies? I can still do that?

19 A If that's been past practice, you could probably
20 still do that unless that individual agency has changed
21 their internal practices.

22 Q Do you anticipate putting out a clear set of rules
23 that you can do this and you can't do that?

24 A As a voluntary membership association we don't have
25 the authority to do that. All we can do is make

1 recommendations and suggestions.

2 MR. LISTENBEE: Thank you.

3 CHAIRMAN CLELAND: Ms. Bianchi, thank you, very
4 much for your assistance here today and helping us to
5 understand. As Mr. Listenbee pointed out, it's a very
6 complex area. Obviously has subtleties that perhaps many of
7 us have not fully appreciated.

8 So thank you, very much for your participation and
9 your ongoing work in this area. Thank you, very much.

10 MS. BIANCHI: Thank you, very much for the
11 opportunity for us to share with you.

12 CHAIRMAN CLELAND: Mr. Kuhlman, if I could ask you
13 please to take the oath.

14

15 GEORGE KUHLMAN, called as a witness, being duly
16 sworn, testified as follows:

17

18 MR. KUHLMAN: I do.

19 CHAIRMAN CLELAND: Mr. Kuhlman is the American Bar
20 Association Ethics Counsel and Associate Director For Policy
21 at the ABA Center for Professional Responsibility. He's
22 traveled in from Chicago to be with us here today, and is
23 well known throughout the country as a principle drafter of
24 the amendments to the ABA Model Code of Judicial Conduct,
25 which is the model for all 50 states in the federal

1 government.

2 We're particularly interested in his comments today
3 on the issue of nepotism and the ethical issues presented by
4 the relationship between judges and service providers. And
5 we especially want to acknowledge the assistance of Joe
6 Massa, the general counsel to the Judicial Conduct Board,
7 for helping us get in contact with Mr. Kuhlman and to help
8 make those arrangements. So thank you, Mr. Massa, for that
9 help.

10 MR. MASSA: You're welcome.

11 CHAIRMAN CLELAND: Mr. Kuhlman.

12 MR. KUHLMAN: Thank you, very much, Judge. And I
13 also am very grateful to Joe for having put me in touch with
14 you. And I am indebted, as well, to Judge Uhler who has
15 shared some of the background that I did not read about in
16 the national press with respect to some events that have
17 unfolded in Pennsylvania.

18 You're in good company. They unfold everywhere.
19 And that's the reason that judicial ethics matters are high
20 on the list of important matters in the organized bar
21 throughout the country.

22 I welcome the opportunity not only to share a few
23 remarks and suggestions with you today, and I hope to be
24 able to answer at least some of the questions you may have
25 for me, but I also have already learned, as is always the

1 case when I travel around the country, listening to Ms.
2 Bianchi's remarks, I'll only warn you that you haven't heard
3 the last discussion about 29 cent pens yet. I have more to
4 say about that a little bit later.

5 I would like briefly to give you a little
6 information on where I come from and how my orientation has
7 developed. I was the disciplinary prosecutor for the Ohio
8 Supreme Court bringing charges against attorneys for
9 misconduct in the late 1970s and early 1980s. So I have the
10 experience of going after both lawyers and judges actually
11 in the unfortunate circumstances when that had to be done.

12 And after that in the mid-80s I began my work at
13 the American Bar Association traveling around and meeting
14 with all of the State Supreme Courts, including your Supreme
15 Court here in 1984, in order to work with them, all the
16 courts, considering the revocation to the Rules of
17 Professional Conduct for lawyers.

18 I became the ethics counsel for the American Bar
19 Association in 1987, and in that role I had two
20 opportunities. One from '87 until 1990, and another one
21 from the year 2004 until 2007 to be the counsel to special
22 commissions examining Judicial Code of Conduct as it had
23 been modeled by the ABA and considering that Code of Conduct
24 in terms of its need or not need for revision in order to
25 make sure that it could address developments in judicial

1 practice.

2 So to the extent that there are still flaws in the
3 ethics code, I have to take some responsibility and try to
4 be certainly deservedly modest. The commissions that have
5 revised those codes have always been composed of very
6 distinguished jurists and very distinguished lawyers.

7 I will mention a few times throughout the course of
8 my remarks, and perhaps in response to questioning, some of
9 the circumstances in which I think that the model Code of
10 Judicial Conduct, as it was last revised in the year 2007 by
11 the ABA, has provisions that are more specific than the
12 current provisions in many state judicial codes that will
13 help judges, will help lawyers, will help parties before the
14 court, and if properly publicized will even help the public
15 to better understand how ethics problems need to be
16 addressed.

17 The detail of that -- I'll give you a few examples
18 when we come to specifics in my remarks, but the -- the
19 details really are the important part of a judicial code.
20 And I know that Pennsylvania's code, in fact, has subject
21 matter that addresses and prohibits every one of the
22 practices that we saw arise in the Luzerne County
23 circumstances.

24 So the fact that they existed, that they occurred,
25 doesn't -- can't be read to suggest that the judicial code

1 didn't have in Pennsylvania, and doesn't have throughout the
2 United States, provisions, and some of them with a number of
3 teeth, that would prohibit the type of activity that is
4 alleged to have occurred there.

5 I think it's important everywhere that we examine
6 not only whether we have detailed enough provisions to help
7 instruct our judges, our court personnel who officially may
8 report to the judges, in most cases they do, and will help
9 instruct the parties who come before the court and even, as
10 we've already talked about or heard about in Ms.
11 Bianchi's discussion, help service providers who are
12 involved in one way or another in collaborative efforts with
13 the court in the course of its business to be able to
14 analyze situations and determine what correct conduct is and
15 what incorrect conduct would be.

16 The only other thing I'd like to note about my
17 experience that has exposed me to some of these questions is
18 that I, by coincidence in a way, had the opportunity to work
19 several years back with Robert Wood Johnson Foundation when
20 it funded its first project in the judicial arena.

21 The project was called Reclaiming Futures. And
22 some of you may be familiar with it. It took place and
23 continues to take place within the juvenile courts of our
24 country, and it was an attempt to develop novel, innovative,
25 restorative justice techniques, especially to be used in

1 juvenile court situations where the juveniles were either
2 drug or alcohol dependent.

3 It was sort of the connection with Robert Wood
4 Johnson Foundation. But one of the things that I was asked
5 to do in working with those who were exploring the contours
6 of this new concept of restorative justice courts variously
7 named throughout the country was to examine the judicial
8 provisions that seemed to apply to judges becoming involved
9 with service providers in collaborative efforts with
10 community organizations that are meant to expand the
11 involvement of a judge in the community beyond the range
12 that appeared to have been permissible under the terms of
13 the various state judicial ethics codes.

14 There was also a recognition by many juvenile court
15 judges throughout the country that a plethora of judicial
16 ethics opinions had been issued that seemed to prohibit some
17 of the activities that judges were being encouraged to
18 become involved in in working in these community
19 collaborations and in sometimes doing their everyday work
20 within the courts.

21 And so I was able to assist in the process of
22 reviewing all of that literature, and I was able to help
23 with the various judges who were involved with Reclaiming
24 Futures project to develop a guide book.

25 I'll share with you at the end of my remarks a very

1 quick review of eight tools or eight considerations that
2 judges can take into consideration when they are evaluating
3 a potential situation to determine whether or not there is
4 likely to be some harm that is going to occur, and whether
5 there is, as there always ought to be when there's a
6 potential harm, some type of restriction already in place
7 that they need to be aware of and with which they need to
8 comply.

9 To back track just a moment, when the ABA last
10 undertook its three year project to revise the judicial
11 ethics rules it had four major considerations in mind.
12 Three of them I'll identify with not much more than simple
13 declarative sentences, and the fourth is the one that I
14 think we'll find is the most relevant to the discussion
15 today and to the work of the Interdiscipline Commission.

16 The first was simply the vast increase in the
17 amount of money that is being put into judicial elections
18 throughout the country. And with the recent decision of the
19 Supreme Court and the Citizens United case, that subject is
20 now absolutely catapulted to the top of the charts in terms
21 of importance, no matter which way you go in agreeing or
22 disagreeing with the decision.

23 But that was one of the things that the ABA knew
24 needed to be examined to see whether or not the provisions
25 of the code are instructive enough and clear enough, most

1 specifically with respect to the question of
2 disqualification, potential disqualification, of judges.

3 We're also talking about potential disqualification
4 of judges in these other situations that we'll talk about
5 more today.

6 The second concern was that as technology has
7 changed court procedures have changed, and the way that
8 people research matters, including judges research on the
9 internet and a number of other technological changes,
10 suggested that the provisions of the code could be looked at
11 to determine whether anything needed to be done.

12 And some of the changes that have been recommended
13 to all of the states now by the ABA have to do with just
14 that.

15 The third area had to do -- and for those of you
16 who have been exposed, seen anything about the new judicial
17 code as we call it, it is very differently organized. And
18 I'm going to spend only 60 seconds with an unabashed
19 recommendation of the superior organization of the new code
20 knowing that I helped to organize the code in 1990.

21 So we didn't get it quite right back in 1990, but
22 the two iterations we've moved forward, those who are
23 working in judicial discipline commissions and those lawyers
24 who represent judges in judicial proceedings and those who
25 represent the people who have complaints against judges,

1 some of them bonafide all seem to be agreeing that it is
2 easier to work with the newly organized code, easier to find
3 things. The organization follows the restatement of law
4 format which most of us are familiar with.

5 And the last of my 60 seconds, the case law that we
6 are all going to need to continue to look to is going to
7 develop according -- along the lines of the revised judicial
8 code. 13 states have already adopted it.

9 Now, to the fourth of the issues that caused us to
10 reconsider the code or re-examine it. It is the
11 proliferation and expansion of the number of restorative
12 justice courts, drug courts, special juvenile courts,
13 collaborative justice courts. They have a variety of names
14 throughout the country, but they are attempts to reconceive
15 the role of the judge in many circumstances.

16 And as I suggested before, they sometimes allow the
17 judge to move outside of that comfortable sphere of
18 everything that was -- the limits described by the code of
19 judicial conduct and in the Pennsylvania Code.

20 The four critical requirements that I think have to
21 be in place so that counties and states everywhere will have
22 as few instances of the Luzerne experience as possible are
23 these:

24 First of all, the rules have to be in existence.
25 The description of what judges may and may not do have to

1 exist. I mentioned before in the Code of Judicial Conduct
2 they do exist, but in the Pennsylvania Code -- so I am going
3 to make a recommendation to the Commission.

4 The provisions are, in many instances, general
5 descriptions of types of activity without sufficient, I
6 think, explanatory comment and without sufficient detail to
7 allow a judge to be fully on notice and to easily, or at
8 least responsibly, thoughtfully examine a potential
9 involvement, whether it be the service provider, whether it
10 be instructing staff of the court who are involved with
11 service providers to make sure that the right thing occurs.
12 So they have to exist.

13 With respect to the variation of the restorative
14 justice court models throughout the country, it is beginning
15 to appear that an additional set of procedural guidelines or
16 rules may need to be developed that describe the exact
17 actions of these new courts.

18 What are the things that take a judge out of her or
19 his ordinary role, urge that judge, for example, to be
20 engaged in an ex parte communication that it might seem the
21 judicial code prohibits? And can a paralegal -- or to take
22 a laymen's term and describe it as a game of paper,
23 scissors, rock. Can a set of regulations be developed that
24 the courts of our states can adopt and say, if there is a
25 provision in the judicial code that appears to prohibit your

1 being engaged in something that is a practice of one of
2 these new either experimental or now tried and true new
3 types of courts, then the following procedural rules take
4 precedence.

5 You are, in fact, for these purposes, allowed to
6 follow a different rule that exists, as much as we are
7 committed at the American Bar Association to try to have
8 uniformity in the way judges address judicial ethics
9 matters.

10 And I especially, on behalf of the ABA, because I
11 am one of the people who gets to be out in front and go out
12 and meet with people in all different states, we are all
13 aware of the fact that there are variations from state to
14 state.

15 Several states -- and I would recommend as another
16 recommendation to the Commission, I would recommend that the
17 several states that have developed special sets of rules for
18 their juvenile courts, for their district justice,
19 restorative justice courts, domestic violence courts, those
20 rules be examined and considered for adoption alongside the
21 Code of Judicial Conduct so that when a judge encounters a
22 situation in which he thinks that there is a provision that
23 would prohibit her from doing what she has been instructed
24 to do or invited to do, encouraged to do, will have the
25 protection and the comfort of being able to say, well, we've

1 adopted a short list of additional rules that apply to
2 incorporation of the domestic violence or the juvenile
3 justice courts.

4 The second thing that has to occur if ethical
5 problems are going to be avoided by judges and those whom
6 they instruct is that not only do the rules and procedures
7 have to exist, they have to be taught.

8 And the teaching needs to begin in law schools.
9 The teaching can even be backed into the public -- our
10 public education programs so that our school children are
11 brought up to have some modest familiarity with what the
12 general concepts of judicial ethics are about.

13 But to be more practical and realistic about it,
14 lawyers in training, who are going to have thrust upon them
15 or they're going to have to willingly take upon them when
16 they are sworn into practice before all of you who are
17 judges and all of our courts, an obligation to, as the ads
18 in this post 9/11 era that we see posted on public busses
19 tell us, are going to be obliged to, if they see something,
20 say something.

21 Because the reporting requirements that are
22 contained in the judicial codes are critical. If people are
23 familiarized with those and made aware from the very
24 beginning that there are obligations both in the rules that
25 lawyers are obligated to follow and very specific

1 obligations in the judicial code that say that each judge is
2 obligated to be aware of what is occurring around her and is
3 obligated to make a report under certain circumstances.

4 A very detailed recommendation here, a very precise
5 and perhaps picayune recommendation that I would make is to
6 recommend that in Pennsylvania the model provisions that the
7 ABA has developed be examined to determine whether they
8 don't provide a little bit of additional detail for judges
9 to -- and a little stronger teeth perhaps for judges to
10 recognize when they are obligated to report either
11 misconduct or their belief that misconduct has occurred.

12 In this connection there is a global issue with the
13 codes of conduct throughout the country that I think has
14 been resolved or is being resolved in one direction.

15 And what I would also recommend for -- for thought
16 in Pennsylvania, and that is that the provisions of the
17 various judicial codes had in the past said the judge should
18 do this, and judge should do that.

19 However aggressively that language might be used in
20 an attempt to prosecute a judge for a violation after an
21 ethics rule, I think it is virtually unarguable that if you
22 tell a judge that she shall or shall not do something, it is
23 far clearer than to use the precatory language that is
24 contained in the -- several of the state codes still.

25 But that is -- that choice of the precatory rather

1 than the mandatory is falling by the wayside. There are
2 only four jurisdictions that I'm aware of now that have a
3 set of ethics rules that judges should follow, not that they
4 shall follow.

5 So you've created -- you have put the rules into
6 existence, and you've given them some detail so that they
7 are really helpful. You have made sure that judges are
8 educated when they first become judges, when they have
9 continuing judicial education programs.

10 They're educated as to what these provisions are,
11 which includes a review of the notorious instances in which
12 the rules have been violated that sober each of us up.
13 Lawyers have been educated now. Maybe you've even helped
14 the public to understand that judges who are taught about
15 these things are routinely in the main doing the ethical
16 thing.

17 You have to also have the mechanism and make sure
18 that it is an efficient mechanism to enforce those rules.
19 So the freedom of parties, whoever the delegated authority
20 is in any state, to make the investigations, the funding to
21 make sure that those investigations can occur in an
22 efficient manner, and in as timely manner as is appropriate
23 while still affording the ordinary due process protections
24 to a judge is fundamental to the operation of any judicial
25 disciplinary system.

1 And I think that also publicizing the work of a
2 state judicial system. I'm not -- I wouldn't bore down to
3 the detail level of analysis to say -- to question, although
4 it's always worth considering the point at which the public
5 should know what is going on in the judicial discipline
6 system, there are appropriate points, and there are points
7 in time when it would not be appropriate to necessarily
8 share information with the public.

9 But that procedure, I think, is always worth
10 reviewing to determine whether you're effecting the proper
11 balance between the confidence of the public, that your
12 enforcement system is actually at work, and the -- because
13 we are a nation with a rule of law.

14 Whether the rights of all the parties to the
15 proceeding, the respondent judge, the parties who are
16 bringing the complaint, whether those rights are being
17 balanced and protected at the same time.

18 I want to go back just quickly to the observe and
19 report model. The judicial codes of many states had already
20 been revised when the ABA did its most recent revision, and
21 we picked up on a revision from those states to address
22 questions not only the greater detail provisions on when
23 judges must report both misconduct of other judges and
24 misconduct of lawyers who are practicing before them, but
25 also an obligation to consider questions of judicial

1 disability and judicial impairment and take some appropriate
2 action in order to see that an appropriate authority is
3 advised when there appears to be serious interference with
4 the judge's performance.

5 It is a very difficult issue to address. The -- I
6 would applaud all of the commissions that have grappled with
7 that question because those commissions are, in the main, a
8 host of judges themselves. We suspect that maybe a person
9 at some point will suffer a disability or impairment, but
10 the inclusion of provisions in a judicial code that
11 establish an obligation and set out a procedure for judges
12 to be able to make reports in order to see that judges who
13 sometimes can't even recognize a disability or an impairment
14 are given the opportunity to address the situation and
15 resolve the matter as best can occur.

16 Now I'd like to conclude with a very brief review
17 of what I would -- have identified as eight considerations
18 that judges who are engaged in either an involvement with a
19 service provider, former collaboration, let's say with some
20 government or community organization that has asked for the
21 judicial participation in order to round out the input that
22 they are getting on how to advance the goals of restorative
23 justice.

24 Eight considerations that a judge would need to
25 take into account. And I think it would be fair -- I have

1 distilled these pretty much from the existing literature of
2 ethics opinions. But at the risk of displaying a bit too
3 much, at least some, hubris, there are ethics opinions, and
4 then some of you may agree with me, there are ethics
5 opinions.

6 They are not all the best reasoned opinions that
7 are out there giving us guidance in the different
8 jurisdictions. By and large I would say that the opinions,
9 the advisory ethics opinions in Pennsylvania, have always
10 been well-reasoned, and I think are very, very useful. And
11 I won't name states, but there are a lot of situations in
12 which the advice that has been given may have been given
13 with the best motive other than abundance of caution.

14 But without due consideration for the latitude that
15 judges need to have in order to achieve the goals of even
16 the most traditional types of court operations, but also
17 some of the newer techniques that are involved in both
18 judging and following up some involvement with those who are
19 before the court at sentencing and prior to -- prior to
20 sentencing, the first is a relatively straightforward and
21 simple consideration.

22 Judges can't be going off and participating in
23 anything that is literally going to interfere with their
24 judicial duties.

25 Very simple concept. You have it in your judicial

1 code now, but judicial duties come first. And you just
2 can't -- so as a matter of the commitment of time, something
3 would have to give if as -- as a means of effecting
4 procedures for the operation of your courts, your special
5 rules, or even your special court provisions to permit a
6 judge to be involved in something.

7 If she doesn't have the time, you either have to
8 say she can't be involved, or you have to see whether you
9 have the flexibility to do something about her schedule, her
10 administrative duties, in order to accommodate.

11 There are ways to accommodate the time crunch that
12 may occur, but that's the first. And it's a very simple and
13 straightforward one.

14 The second is what any lawyer or judge, I hope,
15 always knows to do, and that is you must check to be sure
16 that there is no specific prohibition against what you're
17 doing.

18 And this, again, is something that relies upon the
19 education of judges and of the people who deliver services
20 to the court. So I certainly applaud the sort of efforts
21 that Ms. Bianchi spoke of before of organizations of service
22 providers and service providers themselves examining, being
23 familiar, having their own set of rules as to what can and
24 can't be done. But judges need to be able to look at code,
25 to be well-organized, and to have the right research, tools

1 and to say, okay, this type of organization I simply cannot
2 collaborate with them.

3 A simple example, an organization that is composed
4 primarily of those who support of victims of domestic
5 violence, the appearance of impropriety that violates any
6 number of other concepts that I'll get to briefly. But
7 there are plenty of types of organizations that can be
8 identified where there's a specific prohibition and the
9 question has been answered and the judge knows that she
10 can't do it.

11 The third issue is whether or not any activity that
12 the judge will be engaged in is going to require or somehow
13 even encourage the release of any confidential information
14 that she is otherwise prohibited from revealing.

15 Now, there may be a narrow set of circumstances in
16 which a specific procedure might justify that. I do not
17 profess to know the detail of many of these procedures. But
18 were that to be the case, it would be necessary to have a
19 specific procedural rule for that court operation as I
20 suggested earlier.

21 But failing the need for that, and I'm not sure
22 that there would be too many needs for that, any
23 collaborations, any participations, involvement, simply have
24 to be sure that they respect -- allow the judge to continue
25 to respect her obligation of confidentiality.

1 The fourth, which in terms of one of the diagrams
2 might certainly intersect a bit with the third, is the ex
3 parte communication prohibitions of the judicial code cannot
4 be violated.

5 So that also has a bit of the -- is brought up a
6 bit when you're talking about an organization that may have
7 only one -- may be aligned with one party, the juvenile or
8 the state or the prosecutor, whatever, or it may be a
9 communication with those who are providing treatment at a
10 certain stage, especially in those situations in which the
11 contact with treatment providers can occur prior to the time
12 that there is a sentencing in a case.

13 And where, as ordinary ex parte rules would
14 prohibit that, there appear to be a number of circumstances
15 in which the ability to communicate in order to best
16 interest the situation is something that need -- might need
17 to be provided for. But the ex parte rule analysis is going
18 to be a critical part of any -- anything that the judge
19 needs to investigate.

20 There is a small set of circumstances in which
21 judges are invited, encouraged, to participate with types of
22 organizations within the community that, in fact, may
23 themselves appear before the court.

24 And in those circumstances generally I think the
25 authority is sound that judges simply aren't able to -- they

1 aren't able to sit on the boards of those organizations or
2 community -- community groups. They are probably not even
3 allowed to advise them. Especially if they have a
4 particular orientation as opposed to being broad-based.

5 The majority of the, I think, solid and
6 well-reasoned ethics opinions that exist analyze the
7 composition of organizations with which a judge might seek
8 to be associated and determine that the breadth of
9 participation from people with all different points of view
10 is going to be critical in determining whether or not it's
11 appropriate for a judge to be -- to be involved and
12 identified.

13 And, of course, the appearance of partiality is the
14 issue there. Whether a judge is always heard or seen or
15 recognized, whether she's noted in the paper or seen on
16 television as being -- appearing for her participation and
17 appearing at a luncheon where an organization of entities to
18 support domestic violence victims, the public has to have
19 some question about whether there is some partiality that is
20 likely to be manifested as much as one might make a lawyer
21 the argument that, well, of course we're all against
22 domestic violence, and we always have sympathy for the
23 victims of domestic violence. It is unfortunately not that
24 simple and straightforward.

25 And it's especially not that straightforward if you

1 happen to be a person who is accused of having engaged in
2 domestic violence yourself. And you are also entitled to be
3 able to know that a judge, at least in appearances, that a
4 judge is considering that it is an even playing field when
5 you and the alleged victim come before her.

6 The next of the issues is that the organizations
7 generally need to have a connection under the current codes.
8 In the Pennsylvania Code, the need to have a clear
9 connection with either the improvement of the law, the legal
10 system, or the administration of justice. So if they are
11 about some aspect of the treatment, let's say in the case of
12 treating juveniles, that doesn't truly have a connection
13 with the law of the legal system or the administration of
14 justice, you are most likely, as a judge, not going to be
15 able to participate in that.

16 Organizations need you, as a judge, for your
17 expertise as a judge and for your understanding of what
18 happens in the court proceedings and how people have come to
19 the court. But judges are not to be consulting on subjects
20 other than those that are within their true area of
21 expertise.

22 Collaboration can't be allowed to compare the
23 judges impartiality in performing any of her judicial
24 duties. So it may not be an immediate connection with the
25 cases that are before her, but if it suggests that the judge

1 has a particular orientation that might be viewed as being
2 partial to one side or the other, the collaboration is one
3 that probably should not occur.

4 And, finally, this is something that Ms. Bianchi
5 spoke to, and I think Judge Uhler spoke about earlier. The
6 grandfather or grandmother of all ethical considerations,
7 one that some people are a bit uncomfortable with for its
8 potential overbreadth, but the appearance of impropriety.

9 This can be, for most people, a final litmus test
10 or call it a litmus test or a smell test that says, does
11 this appear to constitute an impropriety? Because if it
12 does, then judges who need to be identified as being as
13 close to above reproach as is possible should be avoiding
14 that kind of conduct.

15 And your code has it. The ABA code, after a lot of
16 wrangling back and forth, decided to retain more posterity
17 in the concept of the appearance of impropriety. The only
18 qualification that I would add to that for those of you who
19 might get a little nervous about the potential overbreadth
20 of that consent is that impropriety has to be not judged
21 according to the standards of a reasonable person.

22 So -- and that's where I concluded. I didn't talk
23 about -- much about the 29 cent pen, but I'm back to the 29
24 cent pen. And while I'm not unsympathetic at all to the
25 notion that people will look at something and raise -- or

1 have a question arise in their minds, it may or may not be
2 reasonable to believe that the existence of a pen from a
3 particular party suggests that a judge is going to be
4 partial. And that will be left under the appearance test,
5 under the smell test, that a judge can perform to his or her
6 discretion in order to make the decision.

7 But it always needs to be a reasonable person's
8 standard for making judgements about what a judge is
9 considering to make.

10 CHAIRMAN CLELAND: I wonder if I could short
11 circuit and jump to -- before we turn over to Judge Uhler
12 the question of nepotism.

13 MR. KUHLMAN: Sure.

14 CHAIRMAN CLELAND: The common understanding of
15 nepotism is that a person in authority hires a relative or
16 close friend, and the subtleties of nepotism are frequently
17 discarded.

18 Would it be fair to say that if a position is
19 filled by a person with bonafide qualifications after a fair
20 selection process for a position that advances the interests
21 of the institution that it would not be nepotism if the
22 person happens to be related or a close friend to the person
23 who made the hire?

24 MR. KUHLMAN: Well, to be honest --

25 CHAIRMAN CLELAND: I know there are lots of

1 subtleties here, but we have a working definition.

2 MR. KUHLMAN: I haven't looked up the working
3 dictionary definition of nepotism and whether it is
4 necessarily an undeserved appointment to a position of a
5 family member, or whether it is simply basically the
6 appointment of the family member.

7 But it -- depending upon how you answer that, if
8 the answer is yes, that's nepotism. There then, I think,
9 could be acceptable nepotism. So my sense is that nepotism
10 is the unwarranted or unfounded hiring of a person who would
11 not otherwise have been qualified.

12 And I note that the Pennsylvania code does not use
13 the term nepotism. And the -- did I mention an ABA code?
14 It does. And it -- just having the word helps to some
15 extent. But the -- and there is also a fairly good
16 paragraph of commentary in the model Code of Judicial
17 Conduct about nepotism that I think could be hopefully
18 considered.

19 But you want it as specific -- as I said, you want
20 a specific mention of the things that you want judges to be
21 aware of and to avoid. And you could add to the language
22 that simply says a judge shall make an appointment.

23 Now, as I said a couple of times earlier, all of
24 the problems that have been publicized and that have arisen
25 are addressed under the code because your code says you

1 shall make an appointment based upon qualifications and
2 impartial appointment based on qualifications.

3 So at a certain point in small towns, I think as
4 many of you may know, inevitably somebody's niece ends up as
5 a clerk in the court, and it's fine. It can work out just
6 fine. So you may have to do an -- each judge has to analyze
7 every situation in order to determine whether it's
8 appropriate or not.

9 CHAIRMAN CLELAND: Thank you. Judge Uhler.

10 BY JUDGE UHLER:

11 Q You've enumerated your eight points best practices,
12 if you will, of the code, and those contemplate an
13 introspective member of the judiciary. What I gather then,
14 given your description that the judge who doesn't care, who
15 doesn't adhere to the constitution, the statutes, the rules,
16 the Code of Judicial Conduct, then you must rely upon the
17 others who appear in front of that judge as well as the
18 others who are aware in a personal setting of what that
19 judge is doing to make the appropriate reporting; is that
20 correct?

21 A Yes.

22 Q And would that then also extend to the -- to the
23 enforcement body who is charged with the responsibility of
24 appropriately disciplining that judge, they need to act as
25 well?

1 A Absolutely. And there are model standards in --
2 every state has its standards as developed. There are some
3 model standards. I am not especially knowledgeable in the
4 developments of the model standards for judicial
5 disciplinary enforcement as the ABA has developed them,
6 although they are done in the same part of the ABA where I
7 work, and they are available. And, of course, there is a
8 lot of case law on due process that has to apply to a
9 judge's facing charges and everything.

10 But, yes, you have to have a well-developed and
11 well-enforced mechanism that -- and as I mentioned before,
12 balancing. There are due process rights of judges as
13 respondents, and so they have to be respected. And judges,
14 like everybody else, are considered innocent until proven
15 guilty. But you got to get chop-chop. You got to get to
16 work and make sure you do it.

17 Q In a prompt fashion?

18 A In a prompt fashion.

19 Q You've been shared, I know, the liaison
20 correspondence between the Juvenile Court Judges' Commission
21 to the State Advisory Board for the State Conference of
22 Trial Judges, which was entered into an exhibit, I believe,
23 at our last hearing which enumerated a number of identified
24 relationship questions that -- that a juvenile court judge
25 would have with private providers, if you will.

1 As to those questions do you believe that there's a
2 -- a ready answer for those, or are these issues that would
3 require further development of our Code of Judicial Conduct,
4 further expansion or declinations of the various
5 circumstances that have arisen?

6 Can you offer us any recommendation from a
7 perspective of an ethicist, if that's the appropriate
8 term, to assist us in making recommendations to the court,
9 to the legislature, and to the Governor?

10 A I could, Judge. The first thing that struck me
11 that is a sort of preliminary remark I'd like to make
12 though, and I presume that the Commission is familiar with
13 those questions that were iterated in that exchange, is that
14 a good number of them have to do with conduct of people who
15 are not judges or judicial officers.

16 And so my expertise and the way things simply work
17 is that the state judicial ethics code for -- is going to
18 apply to judges. And the judicial ethics code, except for
19 the couple of references that say that a judge shall not
20 allow a person who works for her to do something that she
21 could not do herself, that's -- that's not a very good way
22 to reach the conduct of other people who -- depending upon
23 how the courts are set up. Administratively may not be a
24 close and clear supervisory connection or whatever.

25 So I would have to separate and say that there are

1 -- I think approximately half of those questions were
2 specifically about whether a judge may do something. And
3 those are matters that I think you have to -- have to
4 explore.

5 For instance, the acceptance of benefits, gifts,
6 benefits, tokens from service providers. And in the context
7 of how federal judges were looking at that particular
8 question during the ABA's three years of deliberating on the
9 code, the junket, which believe it or not could be a junket
10 to Gstaad to be skiing or to go to a very, very fancy place
11 in New Zealand and hear a discussion of regressive economic
12 analysis presented by major corporations as an educational
13 program, was just a sort of amplified, if you will, version
14 of the same sort of thing that judges in more ordinary
15 mundane set of circumstances face when they're offered the
16 opportunity to attend a football game or to have a round of
17 golf in the neighborhood or whatever.

18 And the current Pennsylvania code, as I understand
19 it, and I hope I'm not missing anything. I've only had a
20 chance to look it over in the last few days. But the
21 current Pennsylvania code, I think, could stand to be
22 re-examined from two standpoints. One is that the
23 provisions that spell out what gifts a judge may take and
24 what gifts a judge may not take, and there are variations on
25 gifts and loans and scholarships and all sorts of things, is

1 not replete with detail.

2 And there are some state code provisions modeled on
3 the ABA that are much more detailed in order to perform an
4 analysis and say the item of no particular value given for
5 purely honorific purpose is okay, another item isn't.

6 The ABA code actually does set a value limit on
7 gifts that judges may receive, but more important the code
8 could have in Pennsylvania, as it seems to lack now, a
9 provision that requires disclosure of what is accepted.

10 We don't need to require disclosure of a hot dog
11 and fries, but we probably do need to know if the fanciest,
12 most expensive country club round of golf is worth \$400 on
13 Saturday morning, and the judge has been invited three times
14 in the course of a year.

15 We probably ought to know that, and there ought to
16 be a provision in the code that says at a certain threshold
17 disclosure may be required.

18 Now, you may -- although I note that it doesn't
19 appear to be in the judicial code for Pennsylvania now, you
20 may have ethics in government provisions statutorily in
21 Pennsylvania that already may require that. I'm not sure.
22 But I think those are two examples of ways that I think that
23 the -- you could consider analyzing these problems.

24 You can try to write opinions about them and answer
25 them as a matter of judicial advisory ethics opinion. But

1 because of the almost infinite variety of situations that
2 can arise, if you can start doing that with some more
3 detailed authority on which you write those opinions, I
4 think you're on solid -- better ground.

5 Q The gifting, is that -- the predicate to that
6 raising the concern level would be whether or not that party
7 is one that the court is indirectly contracting its services
8 with?

9 A Right.

10 Q Or appearing before that court as opposed to a
11 party who globally is throwing a party for all the United
12 States judges in the Commonwealth and the United States.
13 There's a distinction there; is there not?

14 A Absolutely.

15 JUDGE UHLER: Okay. I have nothing further.

16 CHAIRMAN CLELAND: Mr. Legg.

17 BY MR. LEGG:

18 Q Do you have any opinion regarding the
19 confidentiality of disciplinary proceedings for judges?

20 A As I said, I am not the expert at the ABA certainly
21 about judicial disciplinary proceedings. There doesn't
22 appear to me, I'll speak personally now, to be a considered
23 reason to differentiate from the way we treat lawyer
24 disciplinary proceedings, which is at the point where there
25 is reasonable cause to believe that a violation has

1 occurred.

2 Most of the model standards and most of the state
3 rules say that at that point the existence of a complaint in
4 the file should be made available to the public. Prior to
5 that the interest in -- in being able to maintain the status
6 quo bolstered by the notion that we're all innocent until
7 we're proven guilty and the continued efficient
8 administration of the courts in most circumstances, I think,
9 would support maintaining confidentiality until there is a
10 determination by the appropriate investigative authority
11 that there's reasonable or probable cause to believe that a
12 violation has occurred. And at that point I would recommend
13 that it be available information.

14 Q In other words, in your view once probable cause
15 existed for some type of ethical misconduct, at that point
16 the public should be made aware of it?

17 A Well, whatever the standard is for the state. I'm
18 not proficient enough, I don't think really, to declare that
19 probable cause has to be the determining factor. But the
20 point at which it is determined that a prosecution will go
21 forward.

22 Q Well, we've heard some experts in the juvenile
23 justice field testify that they believe the juvenile
24 proceedings, delinquency proceedings, should be more open to
25 the public.

1 In fact, some of the experts have testified that
2 they would open them entirely from 10 year olds to 17 year
3 olds unless the judge found good cause to close them. Do
4 you see any type of irony in the sense that juveniles, if we
5 opened all these juvenile proceedings for children, yet
6 maintained closed proceedings, or at least closed
7 allegations as to judges, do you see any irony in that type
8 of approach?

9 A Please don't be offended. I will say no, but I
10 think it's out of my ignorance of the significance of the
11 revolution in the juvenile court in the delinquency
12 proceedings. I -- I'm just not familiar enough with what
13 their testimony has been as to what the value of it is.

14 What is the reasoning, the primary reason for doing
15 that? I was able to cite at least what I think is one good
16 reason for keeping confidentiality until there's probable
17 cause for the sake -- well, two reasons, the continuing to
18 keep the business of the court going, and to also bolster
19 the notion that a judge is innocent until proven guilty
20 balanced against the public's interest.

21 Now, there is a subset of judicial complaint
22 matters that involve usually serious criminal behavior where
23 states have struck -- have at different points said they've
24 either identified subject matter in saying if it is a
25 complaint with respect to the following type of criminal

1 behavior, we will automatically suspend the judge and, you
2 know, we may not even really see the information in our
3 file, but we will take action.

4 I guess in trying to explore the difference, and I
5 won't know the answer -- be able to give you an answer I
6 think directly to your question, but I think if I were
7 exploring the difference between the two, I suppose one of
8 the things that I would focus on is that the purpose of a
9 disciplinary proceeding is to protect the public from a bad
10 judge.

11 And if we don't really know that it's a bad judge,
12 and one side of the information is going to get out, another
13 side isn't, I don't know that that serves any really good
14 purpose.

15 In the delinquency proceedings where there are two
16 -- we now take it for granted, but we hope that both sides
17 in -- in delinquency proceedings are ably represented, then
18 really both sides are going to be heard.

19 Q And I guess in that analogy in fairness once
20 something was filed against a judge, it would be opened, it
21 would just be the investigatory stage that would be closed,
22 and I suppose that would be a distinction?

23 A Yes.

24 Q Is that a fair characterization?

25 A Yes, absolutely.

1 Q And as someone who's an expert in ethics, would it
2 be fair to say that to some degree that protects the
3 integrity of the bench in the sense that spurious
4 allegations or frivolous claims aren't aired to the public
5 and picked up by the press for publication when they haven't
6 been proven?

7 A Yes. And there were -- I think each of us has a
8 different relationship or sense of what the affect of modern
9 media coverage is on either promulgating truth and giving
10 sunshine to illuminate things or maybe facilitating more
11 misunderstanding and blowing out of proportion of things.

12 I'm not even sure where I come down on that issue.
13 But I think the -- the notion that a charge against a
14 lawyer, and I'm going back 30 years now when the first
15 fights occurred in the states about whether lawyer
16 disciplinary matters should be made open early on, people
17 said, well, you know, I want to know if there are five
18 complaints against that lawyer.

19 I do not want -- well, people complain against
20 lawyers. I Presume many, if not all, of us in this room are
21 lawyers, and people complain against lawyers for all manner
22 of reason. And even in the best of ju -- of lawyer
23 investigation systems, I think it's fair to guess that 60 to
24 70 percent of the complaints are not valid complaints.

25 That's a fairly dangerous issue to fool around with

1 when you're talking about the respect of the judiciary for
2 the judges.

3 Q Now, with respect to lawyers, you have informal
4 disciplines that are never public, and the same applies in
5 Pennsylvania to judges. How do you feel about that where a
6 disciplinary entity has determined that there is probable
7 cause or sufficient evidence to prosecute, but defers
8 prosecution and does an informal type of discipline?

9 Do you think the public should have a right to know
10 in those circumstances where there is sufficient evidence,
11 but it may be a first offense, you know, in terms of the
12 judges? Where would you come down?

13 A Again, I am not the expert by any means. I would
14 hope that one could calibrate and say that the informal
15 admonition should occur only where there doesn't appear to
16 be a threat to the public, where there's good principled
17 reasoning on the part of the censuring entity, that this is
18 not a public -- a matter of concern that necessarily has to
19 go to the public.

20 And I may be falling right back into my earlier
21 suggestion about protecting the person. What the value is
22 of a -- of the public knowing that a judge wrote a letter of
23 recommendation on stationary that perhaps she ought not have
24 written, is that a matter that the public really needs to
25 know about, or is that perhaps in a category -- I'm thinking

1 that I might fit it more into a category of in order to have
2 the efficient administration of justice and making sure that
3 our judges toe the line, we will watch those things, and if
4 they seem to have made an error, we will say, that was not a
5 good thing to do. But it is not something that -- but it's
6 -- flip a coin.

7 MR. LEGG: Okay. Thank you.

8 CHAIRMAN CLELAND: Judge Uhler.

9 BY JUDGE UHLER:

10 Q Yes. One final question, Mr. Kuhlman. Thank you
11 so much for your appearance here this afternoon. Do you
12 have a position relative to deferral of a pursuit of a
13 complaint before a conduct board by the conduct board by
14 virtue of referral to a prosecution agency where there may
15 be, may not be criminal misadventures, but there's other
16 allegations of ethical issues? Is it appropriate given the
17 need for promptitude to have such deferral?

18 A I would hope, Judge, that that's always going to be
19 answered based upon the specifics of what type of behavior
20 is involved. Because you could -- you could certainly have
21 an allegation of criminal behavior that it would reflect on
22 the judge's respect for the law, but it wouldn't raise any
23 question of the judge's impartiality in handling a domestic
24 relations matter or whatever, a juvenile court matter.

25 And that's just one example. I think there are so

1 many different examples where if a particular alleged
2 criminal conduct suggests that the public -- and I keep
3 going back to this notion of the sense that you know what,
4 is the public in danger of having this person out there?
5 Then an investigation either could be undertaken concurrent
6 with the referral rather than deferral, but referral of the
7 matter as well to a criminal agency or simply an interim
8 action.

9 When some thing's are serious, if it was murder, in
10 most jurisdictions a judge is removed temporarily if she's
11 accused of murder, and she isn't permanently removed based
12 upon the fact that there are charges pending. But they say,
13 you know, this is not -- this is not what we want to do,
14 but.

15 Q Based upon your response do I understand those
16 issues from your perspective should be dealt on a case by
17 case basis as opposed to a blanket rule in deferral based on
18 referral?

19 A I would certainly think -- I would favor when there
20 are charges about things that are going on in the court that
21 are matters of -- clearly matters covered by judicial ethics
22 rules, that are potentially harmful, and at the same time
23 they may give rise to criminal prosecution, it isn't your
24 business to determine whether it's prosecuted as a crime or
25 not.

1 It's just to be reported, and it's for somebody --
2 some other authority to decide whether or not they will
3 proceed with that. But -- and certainly with the notion
4 that we are doing this judicial discipline work in order to
5 protect the public, we would like to get there sooner rather
6 than later.

7 If there is a legitimate argument, and you have
8 separation of powers issue that will come up, certainly if
9 there is a legitimate argument that you will impede the
10 progress of a criminal investigation, then you're in a tug
11 of war with a prosecutor's office. And you may win and you
12 may lose.

13 CHAIRMAN CLELAND: Judge Gibbons.

14 BY JUDGE GIBBONS:

15 Q Thank you, Mr. Chairman. Thank you, Mr. Kuhlman,
16 for coming and speaking with us today. Do you have a
17 position on the wisdom of mandatory continuing education for
18 judges, including ethics?

19 A Well, Your Honor, I have a sort of irreverent way
20 to respond to that. In some of my time to entertain myself
21 I actually am an aerobics instructor. It's a lot of fun.
22 And in Illinois, until a couple of years ago, I had a
23 continuing aerobics instructor education in order to
24 maintain my certification. But I didn't have to have
25 mandatory CLE for a lawyer, which I found a little absurd.

1 I'm personally a very strong believer in continuing
2 -- mandatory continuing legal education.

3 Q Are there jurisdictions that require that for the
4 judiciary?

5 A Yes, yes.

6 Q Okay.

7 A Yeah. And both Cindy Gray at the American
8 Judiciary Society and Constantina Janis at the American Bar
9 Association and the judicial decision would be a great
10 resource. If you want to ask me to get the information, I'd
11 be glad to. But they're great resources on where each of
12 the states line up on continuing CLE for judges.

13 JUDGE GIBBONS: Thank you.

14 MR. KUHLMAN: Sure.

15 CHAIRMAN CLELAND: Mr. Horoho, did I see a
16 question?

17 MR. HOROHO: No.

18 CHAIRMAN CLELAND: Mr. Mosee? Mr. Kuhlman, thank
19 you.

20 MR. LISTENBEE: Your Honor, we were debating who
21 was going to ask the question.

22 CHAIRMAN CLELAND: Oh, I'm sorry.

23 BY MR. LISTENBEE:

24 Q A question with legal ethics for lawyers.

25 A About?

1 Q Legal ethics for lawyers. We have been asked as a
2 Commission to recommend that the lawyers that were involved
3 in Luzerne be referred to the Disciplinary Board because of
4 their conduct that they've testified to here.

5 I'm not sure if you're familiar with the conduct,
6 but basically some lawyers were -- have indicated that they
7 had not read the appropriate statutes, the Juvenile Act,
8 Rules of Procedure, and that they were not aware of the
9 practices that -- that govern their behavior in the
10 courtrooms.

11 I guess my question would be would you have a
12 comment upon that type of a situation upon the
13 recommendation that we make those referrals to the proper
14 disciplinary authorities?

15 A Well, let me think about it, and I can think about
16 two things at one time. You as a Commission -- I got to
17 think that one through first. I did want to emphasize, or
18 emphasized earlier, the need if you've got a system, you've
19 got rules that apply to lawyers that say that they will
20 report their belief that a violation of the judicial code
21 may have occurred. They have an obligation. Ignorance of
22 the law, not a defense.

23 If you're going to have these rules, yes, you have
24 to enforce them and have to train lawyers to recognize
25 situations and have to say in addition to your knowing what

1 judges should and shouldn't be doing and what you should and
2 shouldn't be doing, there's this whole group of rules that
3 have to do with you being responsible for making the reports
4 when something bad is happening.

5 And so I -- I guess to give you half an answer, I
6 certainly have no problem with the notion that lawyers who
7 knew that something like that was happening didn't make a
8 report ought to have that conduct investigated.

9 And then whether they have a valid defense, whether
10 their defense may be taken in mitigation, whether it may be
11 exculpatory or simply mitigating at the end of the
12 investigation is for the lawyer discipline entity to decide.

13 But to have someone -- now, in Illinois, and in
14 most of the states, each of us as a lawyer, if we have
15 information that is not privileged, we have an obligation to
16 report what we consider to be evidence of misconduct by
17 another lawyer.

18 It's a pretty high -- pretty high bar. There's no
19 doubt, or low bar depending upon how you describe it. But
20 so as I say, I guess I wouldn't presume to understand the
21 status of your Commission enough to feel qualified to say
22 you as a Commission ought to be making a recommendation of
23 discipline.

24 But if it helps you at all to consider whether you
25 want to do that to hear me put one argument out that that

1 sort of thing needs to be investigated and people need to be
2 held accountable. And whether they are severely disciplined
3 or just slapped on the hands can be left in the hands of the
4 disciplinary authority. That's the way I would view the
5 situation.

6 MR. LISTENBEE: Thank you.

7 BY MR. HOROHO:

8 Q Judge, I do have a question. You were talking
9 about the concurrent investigations, criminal and also the
10 ethical. And you talked about making sure that the ethical
11 investigation, or the investigation into ethical misconduct
12 you were concerned about impeding the criminal
13 investigation.

14 Do you have any comment as to who -- in that
15 situation would the ethical group, the judicial group
16 investigating the ethical misconduct, would that be -- would
17 they defer to if the -- to the federal government if they
18 were doing the criminal investigation compared to a county
19 office? And how long would one have to wait before the
20 criminal investigation was concluded?

21 Do you have any comments about, you know, when you
22 were talking about impeding, how -- in the context, how
23 would one -- how would the judicial group be impeding the
24 criminal investigation?

25 A Well, in any number of cases the witnesses you

1 might need to get testimony from or the information that you
2 might need to seek could be from people whom the -- if it
3 were a federal case, who are going to be thereby tipped off
4 as to what it is that is going on, that there is an
5 investigation occurring, and that somebody knows about
6 certain -- certain conduct.

7 And as soon as they are tipped off by virtue of
8 that, they can choose to disappear. They can take some
9 actions that will, you know, attempt -- because they may be
10 implicated. They could be coconspirators in a criminal act,
11 and some evidence has to be adduced by the investigative
12 authority, and they know that they could get it by going to
13 talk to somebody in a certain position.

14 Q Well, how much --

15 A That's going to blow the case.

16 Q How much communication or should there be ongoing
17 communication with either the federal or the county group
18 who's doing the criminal investigation before the judicial
19 discipline system renews the investigation on their part?

20 You would agree with me that if the criminal
21 investigation would take one, two, or three years, and it's
22 found out later that there was criminal conduct that judges
23 were conducting on the bench, that that would be obviously
24 very much a mischarge of justice as it relates to the
25 ethical misconduct? How do we avoid that from happening?

1 A I think as long as the conduct is related to the
2 judge's judicial ethical obligations, as well as her
3 obligations to follow -- to comply with the law, then any
4 disciplinary agency could legitimately say we have a serious
5 situation on our hands here, and we should proceed to do
6 something about it.

7 But you're going to have to -- every case is going
8 to have to be analyzed in terms of whether it's really --
9 you know, you can break the law in any number of ways, and
10 the only violation of the ethics code for judges that's
11 going to occur is the provision in the ethics code that says
12 a lawyer shall comply with the law.

13 Now, you're supposed to respect all the laws, and
14 you're supposed to do all these other things that you do
15 only as a judge uniquely. If the only issue is a drunk
16 driving matter, but maybe there were seven people killed,
17 maybe it's going to be a huge car accident, then that's an
18 issue.

19 Then this probably doesn't -- unless somebody else
20 comes forward and says the judge, as we all know, she's a
21 drunk. She's been terrible all along, and she doesn't show
22 up for court. You know, then you're always having to look,
23 what does this group have in its hand, and what does this
24 group have in its hand, and what are their respective
25 purposes?

1 And unless their purposes are counter -- you know,
2 are against each other, a concurrent investigation can
3 occur. But you want to have something that you can feel in
4 your hand, not something that is only going to be
5 prosecutable if there's a criminal conviction.

6 MR. HOROHO: Okay. Thank you.

7 CHAIRMAN CLELAND: Mr. Kuhlman, thank you, very
8 much for your attendance here today and --

9 MR. KUHLMAN: Thank you, Your Honor.

10 CHAIRMAN CLELAND: -- your effort that you do on
11 this issue nationwide. We appreciate very much your help.
12 Thank you.

13 We'll take a ten minute recess, and then we'll be
14 back here at quarter to four.

15 (Recess taken from 3:25 to 3:37.)

16 CHAIRMAN CLELAND: Good afternoon. We're ready to
17 resume the afternoon session of the Interbranch Commission
18 on Juvenile Justice. Our first witness this afternoon is
19 Carol Lavery. Ms. Lavery, would you please stand to take
20 the oath?

21

22 CAROL L. LAVERY, called as a witness, being duly
23 sworn, testified as follows?

24

25 MS. LAVERY: I do.

1 CHAIRMAN CLELAND: Ms. Lavery, welcome.

2 MS. LAVERY: Thank you.

3 CHAIRMAN CLELAND: Carol Lavery is the Executive
4 Director of the Victim Resource Center and is the
5 Pennsylvania Victim's Advocate. She has -- the Office of
6 Victim Advocate represents the rights and interests of crime
7 victims before the Board of Probation and Parole, Department
8 of Corrections, as well as advocate for victims in a variety
9 of other contexts.

10 Ms. Lavery is also president of the National --
11 National Organization of Victim Assistance, which is a
12 non-profit organization based in Washington, that seeks to
13 promote the rights and services of victims of crime.

14 She has a particular expertise in our work in that
15 she is a resident of Luzerne County and has attended
16 faithfully, I think, almost all of the hearings that we have
17 had to date.

18 And we appreciate your service, your expertise, and
19 your willingness to share that with us today. Ms. Lavery,
20 go ahead.

21 MS. LAVERY: Thank you, Judge. I would like to
22 start though just with a very quick correction in that that
23 sounds like a somewhat dated bio of mine, and that some of
24 those positions are my former positions. The executive --
25 current Executive Director of the Victim Resource Center

1 would be surprised to hear that I am still there.

2 CHAIRMAN CLELAND: I stand corrected.

3 MS. LAVERY: That's certainly understandable.

4 Thank you for this opportunity to speak to you this
5 afternoon. I'm truly grateful and -- truly, truly grateful
6 for this opportunity to talk to you about the victim's
7 perspective as you gather your input and make
8 recommendations through this phase of your work.

9 So many individuals have been victimized by the
10 failure of the juvenile justice system under Judge
11 Ciavarella during his tenure on the bench in Luzerne County.
12 His actions are tantamount to what we in the victim service
13 world call an incidence of mass violence which leaves in its
14 wake unimaginable destruction and loss which overwhelm the
15 community's ability to represent -- to respond and to heal.

16 And incidences of mass violence have many levels of
17 victims, and as is true in Luzerne County today. And those
18 include the thousands of victims whose -- who are juveniles
19 and their families who have come before the judge to be
20 ridiculed, pushed into debt, and deprived of their freedom
21 and of justice as we know it in Pennsylvania's juvenile
22 justice system.

23 But those victims also include all of those
24 professionals who work within that system in Luzerne County
25 and are now being painted with a broad-brush stroke very

1 often in the media as hard-hearted, incompetents who only
2 hold their jobs due to nepotism and cronyism.

3 Those victims also include all of the people,
4 including myself, as residences of Luzerne County who have
5 learned to dread the daily news reports of investigations,
6 arrests, indictments, and graft. Residents who are
7 characterized as accepting, if not, embracing that greed.

8 Communities that are described as backward with the
9 ever-present buzz word culture defined as to mean in that
10 county as corrupt, pinless, and powerless.

11 And lastly, but certainly not least, victims
12 include those individuals who suffered victimization at the
13 hands of those juveniles who were adjudicated before Judge
14 Ciavarella whose cases have been or will be expunged and
15 vacated despite the real acts of financial, physical, and
16 emotional violation committed against them by those
17 juveniles.

18 Since March of last year a state and a county level
19 task force has come together facilitated through the Office
20 of the Victim Advocate to identify and address needs of all
21 of those categories of victims comprised of representatives
22 of the courts, prosecution, defense, social service, victim
23 service, family advocates, and state and county government.

24 The Luzerne County Juvenile Justice Task Force
25 continues to assist the community with resources, enhanced

1 communication, technical assistance, and information. While
2 the needs and rights of each of those victims are critically
3 important to all of us and have been the focus of much of my
4 work over the last year, I will be -- I will at this hearing
5 focus on the category of victims who suffered victimization
6 at the hands of the juveniles, what we have come to call the
7 original victims of crime.

8 You have, through these hearings, heard from
9 representatives of the others, but to date not the original
10 victims. And so I will try today to give them some voice.
11 I want to begin with the words of a mother and father who
12 recently wrote to me about their child who was assaulted at
13 school by another student on the heels, days after, the
14 Virginia Tech massacre.

15 The assault left their child bruised, emotionally
16 traumatized, and fearful. According to the parents, the
17 juveniles -- the juvenile was adjudicated and put on
18 probation, and most important, was ordered to stay away from
19 their child.

20 In the words of those parents, there are so many
21 warning signs -- I'm sorry. In the words of those parents,
22 much of the analysis which followed the Virginia Tech
23 massacre basically said there were so many warning signs,
24 and so few stepped up to say anything.

25 Well, we stepped up and did the right thing. We

1 wanted to make certain there was a record of this event in
2 the event that the Defendant assaulted someone else in the
3 future.

4 Now, because of what has happened, vacating -- and
5 to summarize, vacating and expunging all the cases, there
6 will be no record of the assault on our child. Now this
7 individual can be near our child. They had felt that the
8 system had worked for them and their child. They're no
9 longer sure that that child is safe at school.

10 They asked, what about the victim? That same sense
11 of futility has been echoed many times from parents of child
12 victims who have reached out. One mother talked of her
13 efforts with her own son to persuade him that the best way
14 for them as a family to deal with the aggravated assault
15 upon her by a group of juveniles was to seek justice through
16 the juvenile justice system, not for her son to retaliate
17 against those juveniles.

18 She said that what followed had been a life's
19 lesson for her son. The juveniles were adjudicated
20 delinquent, were placed, a record was created that would
21 follow them if they went on to commit other crimes.

22 She now does not know what to say to her son. She
23 does not understand what's happened, why her case has been
24 expunged and vacated. What her son will do over time? Will
25 he place his trust in the juvenile -- in the justice system

1 in the future? Will she place her trust in the justice
2 system?

3 Actually everything's working well, but my fingers
4 today. I can't separate the pages. Another mother talked
5 of her young child having been sexually abused by a juvenile
6 family member. As a result of her perseverance and what we
7 who work in this system call cooperation with the law
8 enforcement and judicial process and the prosecution of this
9 juvenile, he was adjudicated delinquent.

10 But as is often true in interfamily abuse or
11 assault, it came at a great personal cost. The mother and
12 the child are now estranged from many of the rest of the
13 family. And they felt that either it should have been
14 handled internally within the family, or that she and her
15 child were, in fact, lying, and it really never happened.

16 Well, there had been some reconciliation over the
17 last few years. Once Judge Ciavarella's actions were called
18 into question, the estranged family is once again convinced
19 that the juvenile, in fact, never committed the abuse that
20 the mother -- and the fact that the mother and child, in
21 fact, were lying. But the judge was crooked, and he
22 convicted an innocent child.

23 The mother talks of not knowing what to say to her
24 child, what to say about the importance of their courage in
25 telling their story to the police and to the courts, about

1 why their family members are hostile about seeking help from
2 the law about justice in the future.

3 To each of these parents, their efforts to do the
4 right thing in seeking justice in the juvenile justice
5 system now seems to have been in vain. Many of the victims
6 talked about the fact that the juvenile did have an attorney
7 present, and many talked about learning in the courtroom
8 that the child had a previous history of criminal behavior.

9 For these victims, as well as those who said that
10 the juvenile was never placed in a treatment facility, they
11 find the fact that the cases are being vacated and expunged
12 as incomprehensible.

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

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

23 In Pennsylvania juvenile's justice system since
24 1995 meeting victims' needs and rights has become an
25 intricate part to achieving justice. The monograph entitled

1 Juvenile Justice in Pennsylvania published by the Juvenile
2 Court Judges' Commission in 2004 defines the mission of the
3 state's juvenile justice system as community protection,
4 victim restoration, and youth redemption.

5 These guiding principles include that the system
6 shall ensure the harm to the crime victim and community is
7 understood and considered by the decision makers throughout
8 the juvenile justice process. And this system is not just
9 unless it is restorative.

10 While it may be the goal of all of us to adhere to
11 each of these guiding principles, the real test of our
12 understanding and acceptance of principles is not in our
13 everyday work, but it is in time of crisis. Crisis such as
14 that that has occurred in Luzerne County in the entire
15 juvenile justice system today.

16 And so I urge you during your difficult and your
17 important task to model for Luzerne County and for all of us
18 who work in and alongside the justice system your undeniable
19 belief in those principles.

20 And so I recommend that the framework for your
21 recommendations made by the Interbranch Commission, as well
22 as the context for each recommendation, must model the
23 balanced approach required of Pennsylvania's juvenile
24 justice system, and that the restorative justice philosophy,
25 which equally addresses the needs for youth redemption,

1 community protection, and victim restoration, be considered
2 in each one of those deliberations and conclusions.

3 Your steadfast and your demonstrable adherence to
4 those principals will help lead us all back to the pathway
5 of justice and juvenile justice in Pennsylvania. I have
6 talked to so many victims over the last year, and most
7 recently over the last few weeks, as they are just learning
8 about their case and what is happening through this process.

9 And as many of you know, it was just last week that
10 there was a decision that every one of the cases that came
11 before Judge Ciavarella over that time period would be
12 expunged and vacated.

13 And so that information is just getting out. The
14 fact that it is just getting out, it is not understood. It
15 is very difficult for victims, let alone, the community, to
16 understand what this means. It doesn't fall into their
17 construct, their understanding, of the legal process. And
18 so they are struggling, and they are reacting.

19 What is so important for them and for all of us is
20 that we maintain our sense of justice as all of that
21 information finally unfolds. From a mother whose young
22 child was sexually assaulted by a neighbor boy who was
23 subsequently adjudicated delinquent, she says that she has
24 never understood why the boy continued to remain at home.
25 And she has never -- and she has ever since feared for her

1 own child's safety. And her child does not understand why
2 he or she is not allowed to go outside and play. Why the
3 neighbor boy can stare and can laugh, and why the child is
4 being punished and not the neighbor boy.

5 She says that when I found out that the juvenile --
6 that his record had been expunged, I could not believe it.
7 I still am mortified that something like this could happen.
8 It is like being assaulted all over again. That boy
9 committed a horrible crime, and now it's as if it never
10 happened. Where are the rights for my child? Where is the
11 justice?

12 This should have never happened. He should still
13 have the charges on his record. He committed the crime, and
14 now it as if he didn't. It is as if the system is
15 protecting the criminals instead of the victims. My child,
16 as well as our family, have to live with this forever. My
17 child's innocence was taken from him or her forever, and the
18 juvenile should also have to live with what he did on his
19 record forever.

20 Sometimes the loss that victims feel is very
21 tangible. And, of course, what we understand as restoration
22 or restitution is a very important part of the victim's --
23 helping victims. While victims and their advocates are
24 relieved that Judge Grim has advised that he believes the
25 victims, the original victims, would not be required to

1 repay restitution as their cases are vacated, the loss of
2 unpaid restitution is described by victims as an injustice.

3 This tangible financial loss is parallel to the
4 loss wide recorded by the local press and the focus of civil
5 suits being brought by many juveniles and their families for
6 the recovery of fines and costs and the fees paid for their
7 placement.

8 May the original victims of the juvenile crime, nor
9 the juveniles and their families, have as one of the
10 juvenile justice system's guiding principles require being
11 returned to their pre-crime status to the greatest extent
12 possible.

13 And so I recommend that a restitution program must
14 be created to determine and pay the financial losses
15 suffered by the juveniles and their families resulting from
16 the failure of the juvenile justice system in Luzerne County
17 and the court-ordered financial losses left unpaid to the
18 original victims of crime committed by the juveniles
19 adjudicated in that system.

20 I have a number of recommendations that require
21 funds in my recommendations. Each of those is, of course,
22 based on the fact that there are limited budgetary
23 constraints. And anything that, of course, needs to move
24 forward has to fall within those budgetary constraints.

25 Members of that task force that I mentioned earlier

1 are involved in attempting to determine if any existing
2 federal funds can be identified for the use -- for these
3 purposes. If those funds are not available, I recommend
4 that the legislature, within the budgetary constraints,
5 consider creation of a special fund to reimburse victims in
6 this unique situation for the victim's unpaid restitution.

7 The amount of funds needed is unknown at this time,
8 although the District Attorney's Office and juvenile
9 probation within Luzerne County are actively attempting to
10 determine the total need.

11 While the goal of financial reparations is a
12 difficult one to achieve, especially in incidences of mass
13 violence, such as September 11th, it is achievable. It
14 requires a unique approach tailored to the situation, and it
15 requires funds to do so.

16 Many of the victims who I -- who I heard from
17 talked about not having received their restitution, and
18 many, many of them were very angry about that. Many victims
19 talked also about their frustration over the loss of not
20 only restitution, but personal and irreplaceable items of
21 sentimental value.

22 They talked of burglaries of family heirlooms, the
23 grandparents' jewelry, of coin collections that were never
24 recovered. They spoke of personal items saved to pass along
25 to their own children, war medals and work and retirement

1 mementos destroyed in burglaries and in arsons. And for
2 some victims the lack of any recognition or remorse or
3 apology from the juvenile has increased the harm once these
4 cases have been vacated and expunged.

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

8 Much of the testimony today before you has focused
9 on professionalism and quality of service provided by key
10 actors in the juvenile justice system in Luzerne County and
11 elsewhere. Their knowledge of and adherence to ethical and
12 legal principles, rules of law, and commonly accepted
13 practice standards are key to the breakdown of the system.

14 In keeping with the restorative justice model, the
15 legal rights of victims under Pennsylvania law and
16 established standards of service are intrical to the quality
17 of justice and have been the focus of some prior testimony.

18 Since the year 2000 when the legislative rights of
19 crime victims in Pennsylvania were extended to Pennsylvania
20 -- through Pennsylvania's Crime Victim's Act and expanded to
21 encompass juvenile justice system service standards,
22 including ethical standards, have been developed for
23 victim/witness coordinators who most often work within the
24 juvenile probation or District Attorney's Office.

25 Victim/witness coordinators are positions generally

1 funded through the Pennsylvania Commission on Crime and
2 Delinquency, Victims of Juvenile Offender, or what we call
3 VOJO, Grant Funding Program, and are employed to carry out
4 the mandated responsibilities of probation offices and
5 prosecutors under the act.

6 While some leadership and promising practices have
7 emerged over the years, due to high staff turnover, the
8 isolation of the coordinators and limited training
9 opportunities specific to their work, programming has not
10 evolved as rapidly as expected, and quality remains sporadic
11 and often dependent upon the expertise and experience of
12 individual practitioners.

13 In addition, just as has become evident in the
14 failure of the Luzerne County system, adherence to victim's
15 legislative rights by the court's probation and prosecutors
16 is inconsistent. A means for victims to seek recourse when
17 their rights are violated remains illusive. This is true in
18 both the juvenile and the criminal justice systems in
19 Pennsylvania.

20 According to a survey conducted by PCCD in 2004
21 professionals who work in the system did state that they
22 believed that those rights violations or adherence to the
23 rights was not consistent.

24 Over one quarter of the respondents to a survey, 28
25 percent, responded that victims of juvenile offenders in

1 personal injury crimes or burglary are not effective and
2 consistently afforded their opportunity to offer prior
3 comment in their -- in their jurisdiction regarding the
4 reduction or dropping of any charge.

5 What's very interesting is the wide inconsistency
6 in the response survey according to the type of profession.
7 Over half, or 56 percent, of the responding juvenile
8 probation officers felt this right available through the act
9 but was not consistently afforded, while 100 percent of the
10 juvenile court judges and district attorneys felt it was
11 provided consistently.

12 According to the draft results of a summary that
13 the Pennsylvania Crime Victim's Rights -- Pennsylvania Crime
14 Victim Right's survey conducted in December, 2008 by PCCD,
15 those similar inconsistencies were reported, and a sample of
16 those would be in the juvenile justice system.

17 59 percent of respondents said that they were
18 informed of their right to access information regarding
19 whether or not a juvenile was detained or released after an
20 arrest. 31 percent say they were not informed. 26 percent
21 of respondents indicated that they had requested the right
22 to access information, and that right was -- was enforced --
23 and that right was enforced, but 13 percent said that right
24 was not enforced. And, again, it's a long study, but those
25 are samplings of some of the inconsistencies.

1 Both the professional barriers faced by
2 victim/witness coordinators working in the juvenile justice
3 system and the inconsistency reported in these surveys
4 demonstrated a need for strong leadership, training,
5 technical assistance, and advocacy within the juvenile
6 justice system.

7 While some of that is provided through PCCD and by
8 the Office of the Victim Advocate, an individual is needed
9 with specific juvenile justice service experience and
10 advocacy experience and expertise to provide the needed
11 assistance.

12 And so I do recommend that a victim advocate
13 position for victims in the juvenile justice system be
14 created through an amendment to the Crime Victim's Act to
15 parallel the victim advocate position as defined by the Act.

16 Responsibilities, independence, and confidentiality
17 of services of both of these positions must be further
18 defined and clarified through the Crime Victim's Act to
19 ensure that the positions represent the rights and interests
20 of crime victims before the legislature, the administration,
21 and justice systems as appropriate.

22 These positions are another appropriate victim
23 advocacy entity must be empowered with the responsibility
24 and authority to investigate allegations of victim's rights
25 violations for the purpose of assisting and advocating for

1 those individual victims, providing training and technical
2 assistance as necessary to the responsible justice agency,
3 tracking reports and allegations, and reporting egregious,
4 purposeful, and repeated violations to the appropriate
5 oversight bodies.

6 As Dr. Ronald Sharp, chairman of the Juvenile
7 Justice and Delinquency Prevention Committee, or JJDPC, of
8 PCCD testified to you on January 22nd, the JJDPC will be
9 asked at the February 11th meeting to commit funding to the
10 creation of this position and hopefully to have it
11 operational by July 1st of this year.

12 They will be asked to continue a commitment to the
13 position in the hope that the Commonwealth will create such
14 a position. I request that the legislature, within
15 budgetary constraints, consider amending the Crime Victim's
16 Act to address these issues and allocate funds to support
17 services to be provided.

18 Details on that -- that type of position,
19 relationship with the Office of the Victim Advocate, PCCD,
20 with the JCJC, Juvenile Chief's Associations, and other
21 state agencies, of course, need to be worked out over time.

22 In talking to victims of juvenile -- the juveniles
23 adjudicated in Luzerne County, as is the norm, I heard a
24 variety of reports about their experiences with the process.
25 As is usual, there are inconsistencies in the perception of

1 victims as to their treatment, their rights, and the outcome
2 of due process.

3 Many had high praise for the victim/witness unit or
4 victim advocates and spoke of being kept well informed and
5 supported. Some talked of the local police keeping them up
6 to date prior to the hearings. One person spoke of feeling
7 that she was treated fairly and respectfully by all of the
8 criminal justice professionals she encountered.

9 She believes that Judge Ciavarella's decision,
10 which was placement of the juveniles, was fair considering
11 their crimes. Another person reported that he felt that the
12 police kept him informed from the very beginning. The
13 District Attorney's Office was with him every step of the
14 way. He had no complaints about the process at all. He got
15 the money he was owed and was notified when and where he had
16 to be at all times.

17 Everyone that helped or had a hand in the case
18 treated him very well. A few said that they had no
19 opportunity to comment on the reduction of charges or plea
20 agreements and did not have any opportunity to speak to the
21 Assistant District Attorney prior to the adjudication
22 hearing.

23 Others said that they had been given such an
24 opportunity and felt well informed and supported. Some felt
25 that they were treated well by the judge during their -- the

1 hearing. A few said that they had no opportunity to speak
2 during the hearing. Some said that the judge was severe in
3 his comments to the juvenile, but considered it appropriate
4 in regard to the child's crime.

5 Some were surprised and others unhappy with what
6 they perceived as rough treatment of the juvenile by the
7 judge, and some were concerned about the lack of legal
8 representation at the time. In one person's words whose
9 home was burglarized by a juvenile, I was present at this
10 juvenile hearing and wondered why he was not provided legal
11 representation at the time.

12 Having never been present at a similar hearing,
13 however, I then felt that this must probably be normal
14 procedure for a juvenile who had appeared previously before
15 Judge Ciavarella, as I remember the then judge remarking to
16 the juvenile as he reviewed his record.

17 In hindsight, my initial suspicion had obviously
18 been correct, but due to the overpowering array of control
19 by the judge, I did not feel at the time that I was in a
20 position to speak up regarding this at the hearing.

21 In a sense I suppose I felt as disempowered as the
22 shackled juvenile must have felt. In addition, when the
23 verdict was announced I was shocked that there seemed to be
24 no provision for rehabilitation, only incarceration for the
25 juvenile. This person goes on to talk about his sense of

1 injustice as he never received any restitution after the
2 fact.

3 One person said that an assault upon her son was
4 not dealt with fairly by the judge. She stated that the
5 juvenile was placed on probation and told to attend anger
6 management. She stated that subsequently she was able to
7 speak to Judge Ciavarella about the severity of her son's
8 injuries, which were captured in photographs.

9 The judge told her that he had not seen any
10 photographs, and that it was the District Attorney's
11 responsibility to show him those photos at the time. She
12 felt that considering the juvenile's history of bullying
13 other children, he should have been placed for treatment.

14 Her son felt that the conclusion was unfair. She
15 had high praise for the support that she had received from
16 victim services and for others in the system.

17 A fundamental understanding of the impact of crime
18 upon victims in the communities and their reactions to
19 victimization must be developed among all professionals who
20 interact with victims within the juvenile justice system.

21 This understanding increases the capacity of those
22 professionals who interact in a productive fashion and
23 develop better working relationships. An understanding of
24 victimization and the needs and rights of victims would also
25 enable these professionals to further define and understand

1 their roles and responsibilities on behalf of victims and
2 victim's rights within the system.

3 In addition, those juvenile justice professionals
4 who interact with youth in the system and who are
5 responsible for the youth's accountability to victims need
6 to have a thorough understanding of victimization in order
7 to communicate and represent those issues to the youth.

8 All juvenile justice professionals who are
9 responsible for any level of decision making, which would
10 incorporate victim input, also need that same level of
11 understanding. And so it is recommended that mandated
12 training for probation officers, district attorneys,
13 aftercare specialists, and other juvenile justice officials
14 must be modified or expanded to ensure that they fully
15 understand their legal responsibilities to victims of crime
16 under Commonwealth law, rules and regulations, to increase
17 their capacity to interact effectively with and on behalf of
18 victims of crime, and to better assist juveniles in the
19 system, understand and take responsibility for the impact of
20 their crimes upon the victim.

21 Victims as members of the general public have no or
22 little understanding of the system, which is very evident in
23 many of the comments that I have read to you so far. The
24 individual victims' understanding of what has happened and
25 what their expectations are and should be is very clear in

1 some of the confusion and lack of understanding.

2 And as a result victim/witness coordinators and
3 victim advocates who work with victims in the juvenile
4 justice system are often called upon to explain to victims
5 the principles and process of that system.

6 And so it is also recommended that mandated
7 training for victim/witness coordinators and victim
8 advocates working within the juvenile justice system must be
9 modified or expanded to ensure that they fully understand
10 the provisions of the Juvenile Act as well as the principles
11 of restorative justice and the balanced approach, and that
12 their obligations is to assist victims who wish to pursue
13 perceived violations of their statutory rights.

14 The process that was created by the Pennsylvania
15 Supreme Court to respond to the failure of the juvenile
16 court system in Luzerne County brought to light a number of
17 questions about the specifics of the legal rights of victims
18 of the Crime Victims Act.

19 Included in those issues were the notification
20 rights of victims as well as the procedure for what
21 notification -- for that notification and the prosecutor or
22 probation office responsibility to victims regarding
23 expungement of juvenile records and vacating of the cases.

24 While the conclusion of those involved in this
25 issue was that the victims were to be notified of, and that

1 notification was to occur prior to the expungement, a more
2 formal review of this issue, and that's in addition to
3 specific procedures for carrying out this right, need to be
4 developed and disseminated to the responsible parties.

5 And so it is recommended that the rights of victims
6 and notification of the expungement and/or vacating of a
7 juvenile's record and relevant responsibilities of the
8 District Attorney's Office or juvenile probation office must
9 be defined in the context of a crime victim's right to be
10 notified of the termination of the court's jurisdiction as
11 per the Crime Victim's Act, Section 11.201.13.

12 When the Victim's Services Advisory Committee of
13 PCCD, in coordination with the PCCD Juvenile Justice and
14 Delinquency Advisory Committee, proposed to the Governor in
15 1998 that the Crime Victim Act incorporates for victims
16 within the juvenile justice system in their report proposed
17 expansion of Pennsylvania's Victim's Bill of Rights to
18 include victims of juvenile offenders.

19 Including among those recommendations was that, in
20 quotes, the Juvenile Act must be amended to ensure
21 consistency with the provisions of the proposed Bill of
22 Rights for victims of juvenile offenders. Pennsylvania's
23 Juvenile Act is the foundation upon which the juvenile
24 justice system stands.

25 Professionals working within that system are

1 generally thoroughly trained in the provision of that Act,
2 which among other things, defines the roles and
3 responsibilities.

4 Since the time that the Crime Victim's Act was
5 amended to include the juvenile justice system it has become
6 even clearer that incorporating relevant provisions from that
7 Act into the Juvenile Act would strengthen the understanding
8 and acceptance of victim's rights as a mandated component of
9 the system with full and equal weight to receive achieving
10 justice.

11 And so it is recommended that the Juvenile Act
12 should be amended to incorporate relevant provisions
13 contained within the Crime Victim's Act specific to the
14 rights of victims within the juvenile system, the roles and
15 responsibilities of the juvenile probation officers and
16 prosecutors, and penalties to be paid by juvenile offenders
17 towards the crime victims compensation fund.

18 In particular, I recommend that at least the
19 specific sections relevant to the juvenile justice system
20 which are contained within the following sections be
21 incorporated into the Juvenile Act, and that includes
22 11.201, which is the rights of victims; 11.211, which is
23 responsibility of victims of crime under the basic Bill of
24 Rights; 11.213, which is responsibilities of the
25 prosecutor's office; 11.216, which is the responsibilities

1 of juvenile probation office; and 11.1101, which is costs
2 imposition in he juvenile section, which is 11.1101(a)(3).

3 A second recommendation contained within the above
4 report by PCCD is that stable funding sources should be
5 created to ensure the delivery of these rights. The work
6 done by PCCD prior to making these recommendations included
7 soliciting input from a wide range of stakeholders.

8 The report states a guaranteed source of funding is
9 necessary to ensure the delivery of services under the
10 proposed legislation along with an anticipated corresponding
11 increase in the utilization of crime victim's compensation.

12 The report estimated that the cost would be
13 approximately \$3.8 million annually. The report recommended
14 a number of options to generate funds, including a victim
15 services panel assessment of adult offenders and such things
16 as fees for driver's learner permits.

17 In response to this report the legislation enacted
18 in the year 2000 also was paralleled with an allocation of
19 \$3.7 million in the budget at the time. Over time that
20 funding has remained somewhat stable, although declining
21 slightly until this year, 2009/2010 budget, when the line
22 item was reduced to 1.298 million.

23 While PCCD has scrambled to maintain the funding
24 through federal justice assistance grant recovery funds and
25 statewide services dollars, the -- from the criminal justice

1 system, these supplemental funds will not be available for
2 future years.

3 It is noteworthy that annually over 41,000 victims
4 and over 14,000 witnesses are served by victim/witness
5 coordinators in the juvenile justice system. Since these
6 rights are required under the law, the counties will need to
7 find a means to support the prosecutor, probation office
8 with resources to continue these services if they are cut at
9 a state level.

10 The principles of the juvenile justice system also
11 mandate that these services to victims continue. And so
12 within considering budgetary constraints it is recommended
13 that funding for victim/witness coordinators providing
14 services to victims in the juvenile justice system through
15 the victims of juvenile offenders state line item should be
16 restored to prior levels, which is 3.2 million, not 3.8, but
17 3.3 million average, to ensure that staffing and resources
18 are available to district attorneys offices and juvenile
19 probation offices to provide mandated rights and services,
20 and/or an identified stable funding mechanism must be
21 created to develop a reserve fund from which these services
22 can be underwritten.

23 A consistent theme throughout the deliberations of
24 the Commission has been the need for transparency of the
25 juvenile justice proceedings. The openness of courts and

1 hearings to the public has a varied impact on victims.
2 Victims of sexual assaults, interfamilial assaults on abuse
3 and crimes involving child victims are often concerned or
4 even dissuaded from engaging in the justice system for fear
5 of the loss of privacy in open courts.

6 While the trend continues to move in the direction
7 of open juvenile courts, it is critical that the privacy
8 needs which enable many of these victims to participate
9 where what is often, again, referred to as cooperating with
10 the juvenile justice system, must be addressed.

11 And so it is recommended that any recommendations
12 concerning increasing public access to juvenile hearings and
13 other court proceedings must incorporate requirements that
14 the court consider or address privacy needs of victims,
15 particularly juvenile victims.

16 The inconsistency of the provision of the legal
17 rights to be afforded victims has been addressed in some
18 courts through the act of involvement of the judge during
19 the adjudication for other juvenile proceedings.

20 This promising practice in which the judge during
21 the hearing questions the juvenile probation officer and/or
22 the prosecutor as appropriate as to whether they provided
23 the victim with their rights, such as whether or not the
24 victim was given the opportunity to comment on a potential
25 reduction of charge or a guilty plea has provided leadership

1 from the bench on the importance of adhering to the law
2 regarding victims.

3 In some courtrooms the judge will explain to the
4 victim what his or her rights are and ask if they understand
5 the rights and whether or not the right was provided. These
6 practices, if institutionalized through law or through court
7 rule, while adding only a few moments to the proceedings,
8 would bring a new and higher level of compliance.

9 The goal for victim's rights is every victim, every
10 time. This change in law or rule would ensure that that
11 goal is achieved. And so it is recommended that the
12 Juvenile Act or the Rules of Juvenile Court Procedure as
13 appropriate should be amended to require the judge to
14 determine on the court record whether the mandated victim's
15 rights required by the juvenile probation and the
16 prosecutor's office have been provided to the victim.

17 Victim advocates and other juvenile justice
18 professionals know people who do not fall into distinct
19 categories of victim, parent and juvenile, defendant.
20 While individuals can cross over from one category to
21 another in different instances, they can also fall into more
22 than one category at a time.

23 The institutionalized response to those individuals
24 often fall short of their needs. Parents who are also the
25 victims of the juvenile who is being adjudicated in the

1 system are a special category of persons who have multiple
2 needs for which the system is often inadequate in
3 responding.

4 Most of us are very aware of parents who are
5 victimized by the child, and as a result of the adjudication
6 become financially responsible for the child's treatment.
7 In addition, the parents who are physically, emotionally,
8 and/or financially abused or assaulted by the child could
9 develop a real fear for their safety, and important special
10 needs victims for whom adequate services have not yet been
11 defined.

12 They are sometimes faced with mandatory sessions in
13 the presence of the abused child, either pre or
14 post-adjudication, where they must make decisions about the
15 welfare or placement of that child.

16 They may be forced into mediation sessions with
17 that child despite the fear of retaliation for their actions
18 during these sessions. As a result, neither the parent nor
19 the child has their needs met, and the treatment or
20 placement solutions become inadequate, if not dangerous.

21 And so it is recommended that specialized services
22 and practice improvement initiatives should be developed to
23 address the needs of parents who are also the victims for
24 which the juvenile is being adjudicated. The safety needs
25 of these victims need to be continually assessed for these

1 cases consistent with the principles of domestic violence
2 intervention and incorporated into support and interactions
3 with parents in relation to their legal responsibilities for
4 the juvenile.

5 In conclusion, I appreciate this opportunity to
6 address victim's issues and needs within the juvenile
7 justice system. The recommendations which I have put before
8 you are those which I believe will take the system closer to
9 the goal of achieving a balanced and restorative response to
10 the juvenile, the community, and the victim.

11 They are -- they are also issues brought to light
12 or reinforced by many conversations with the individual
13 victims injured through the failures of the Luzerne County
14 juvenile justice system and the work of the Luzerne County
15 juvenile justice task force and in conversation with --
16 conversations with my colleagues working in service to
17 victims throughout the Commonwealth.

18 I do sincerely hope that I have been able to
19 clearly convey to you some of the victim's voices that I
20 have heard. Unfortunately, I have also heard repeatedly
21 that many, many more chose to remain silent because they
22 believe that it would do no good.

23 It is for every one of them that we must find
24 solutions that restore their hope and their faith in our
25 justice system. This tragedy is theirs also, and it is

1 very, very personal. Thank you, and I'm available for
2 questions.

3 CHAIRMAN CLELAND: Ms. Lavery, thank you, very much
4 for your very thoughtful and comprehensive testimony. We
5 were very aware as a Commission from the outset that there
6 were two categories of victims. There were those juvenile
7 victims, but there was also the victims of the underlying
8 crime, the original victims as you referred to them.

9 So I'm glad that we have finally been able to give
10 an opportunity, even indirectly, for them to have a voice
11 and for us to hear the very practical and personal
12 consequences of this juvenile justice tragedy.

13 There really is a third category of victims here
14 too. Every victim of the Commonwealth is a victim when the
15 rule of law is attacked, and it is a act of mass violence as
16 you described it. So I don't believe that there is anything
17 that any of us on this Commission can do to make it right.
18 If we knew what to do, we would certainly do it.

19 But I think that we all can say that we're sorry
20 that it happened to all of these victims in whatever
21 category they fall, particularly that it happened to them at
22 the hands of a system that we care about so deeply and that
23 affected them so horribly.

24 All that we can do as this Commission is listen,
25 consider carefully and thoughtfully what we've been told,

1 and hope that we can take these very personal tragedies and
2 turn them into a public benefit. And to the extent that
3 that provides some comfort to those victims, we hope that
4 that serves that end. But we also know that that's only a
5 limited and partial restitution for the damage that they
6 suffered on so many accounts.

7 So thank you for your testimony here today. Are
8 there questions?

9 BY MS. BENDER:

10 Q I just have one question. Ms. Lavery, you've
11 mentioned the hundreds or maybe even thousands of victims
12 that need to be notified of the expungement.

13 A Yes.

14 Q Does the District Attorney's Office and the
15 victim/witness program have the resources to make those
16 notifications?

17 A That is an interesting question. I believe that
18 they are attempting to make -- at least go through the
19 process of sending out the notifications. The process of
20 identifying which cases require notification is probably
21 going to be a long, very steady one.

22 I think this process is going to last for a very
23 long time, and it's a long roundabout way of saying that
24 they -- I believe that the work will get done with the
25 resources that are currently in place, but because of that

1 lack of resources, it will take a long period as opposed to
2 a very short time.

3 I do believe that they need assistance and ongoing
4 consultation as issues develop for them. And those
5 resources are currently not available to them or not as
6 great, which they should be.

7 Q I was just going to ask that since this is new
8 ground for victim/witness people. As far as referrals for
9 counseling or assistance for the victims, have referral
10 sources been identified?

11 A For -- if we're talking about the original victims.

12 Q The original victims?

13 A Okay. And, again, please note that as I opened I
14 have spent very much time working with the children and
15 their families as victims. Again, my remarks were, in fact,
16 focused on the original victims at this point in time. The
17 -- there had been counseling programs identified to serve
18 the original victims of crime, primarily for counseling
19 services.

20 The Victim's Resource Center in Luzerne County has
21 been provided some resources to add some staffing to provide
22 some level of services. If, in fact, even a -- you know, a
23 small percentage of those thousands of victims step forward,
24 of course they would be overwhelmed with those processes.

25 As this unfolds -- and, again, just the recent

1 process of notifying victims of what is occurring generates
2 a great deal of phone calls. I spent a great deal of time
3 on the phone with victims over the last few weeks because
4 the District Attorney's Office had sent a letter to about 60
5 of them stating that I would be speaking before the
6 interbranch, and if they wished to make any comments to me,
7 to send me some information.

8 And I did receive -- about one half of those
9 actually did call and either spoke to my staff or myself.
10 We spent a great deal of our time trying to explain to them
11 what all of this meant.

12 There is an absolute misunderstanding or lack of
13 understanding and conclusion about what all of these -- this
14 does mean. I sincerely hope at some point there is an
15 opportunity for a group of professionals, for judges, for
16 lawyers to be able to come to Luzerne County in a very open,
17 public forum, be able to provide, through the media or again
18 in a public forum, an explanation of what all it is.

19 Not a defensive one, of course, but just a real
20 explanation. This is not in any of our constructs of what
21 law is. And so it is very, very difficult for people to
22 understand.

23 And I know that was a very roundabout answer to
24 your question.

25 Q That's okay. Has anyone been identified to do what

1 you've been doing for the last couple of weeks in taking
2 these calls? I assume that your office isn't going to take
3 them forever.

4 A Nobody has, and that is a significant issue. Which
5 is why, again, I'm making the strong recommendation that
6 someone be -- a position be created that would be able to
7 provide that kind of service and/or answer questions.

8 People are, of course, contacting the
9 victim/witness coordinators at the District Attorney's
10 Office. There are two of them. They, in addition to all of
11 the other work that they are responsible for in keeping up
12 their general -- their normal cases, have been trying to
13 answer some of those questions.

14 But, again, their understanding of exactly what all
15 of this means, of course, is very, very limited. There
16 absolutely is a need. I will say that my office, my -- the
17 members of my staff are there mostly to provide assistance
18 to victims who are requesting input into parole decisions at
19 the state level as well as previous decisions at the
20 Department of Corrections.

21 Fortunately we have a few people on staff who do
22 understand the juvenile justice system, but that just
23 happens to be what it is. Much of that work as a result has
24 fallen on me. And, again, we are not at all set up to take
25 on this additional -- plus, again, there's always that issue

1 of calling a state public person for local needs.

2 And I'm a strong believer that local services
3 should be provided locally.

4 MS. BENDER: Thank you.

5 CHAIRMAN CLELAND: Mr. Allen.

6 BY MR. ALLEN:

7 Q Thank you for coming, Ms. Lavery. We appreciate
8 it. I have one question about restitution. Restitution has
9 always been something that's bugged me as a victim advocate.
10 It's something where victims always seem to get the short
11 end of the stick, and it appears to me that in Luzerne
12 County that's probably going to happen, and I hope it
13 doesn't.

14 One of the things that, as I recall, occurred
15 several years ago was that each county was mandated, and I'm
16 not sure if it was the bench book that mandated or policies
17 and procedures, to set up a revolving restitution fund for
18 victims of juvenile offenders. Are you familiar with that?

19 A Yes.

20 Q Could you kind of give us some incite as to how
21 that's supposed to work?

22 A Within Luzerne County?

23 Q Well, if -- specifically Luzerne County, but in
24 general how each county was supposed to establish this fund.
25 Give us some background.

1 A Actually I cannot comment on how specifically each
2 county was supposed to have set that up. I'm sorry. I am
3 familiar with the concept in that it was to be created. I,
4 again, am not familiar with how. I do know that in Luzerne
5 County, until last year -- for this year for the first time
6 they have instituted a fund from which juveniles who are --
7 will be -- are being adjudicated now may work -- do some
8 community work, and their restitution will be paid from that
9 fund.

10 That had not been existing prior to -- within the
11 last year. So they have moved forward to make that happen.

12 Q Now, this is -- this is, let's say, for example, a
13 particular juvenile is working to pay their own restitution
14 off; is that correct?

15 A Yes.

16 Q Are you aware of any funds that are set up, just a
17 general fund, that a board can take money out of that fund,
18 pay off some of the restitution or all the restitution of
19 the victim, and then just assess the juvenile money to pay
20 back the fund?

21 A There are some counties who have instituted that
22 process. And, again, I do not want to -- I'm concerned
23 about saying which ones in case I am not accurate on that.
24 I do know that that concept has been out there. There are
25 counties that have worked who are creating that type of a

1 process, but that -- that is rare.

2 What normally happens is a fund is created, either
3 -- in the past one of the ways had been through grants from
4 the Commission on Crime and Delinquency to create some type
5 of a work program where the juveniles would be paid. Again,
6 and it would go into a fund -- or it would come from that.

7 Many of the funds themselves actually come from
8 additional costs and fines that are paid into the system.
9 Often, in fact, more from adult court as opposed to -- or
10 criminal court as opposed to juvenile court costs and fines
11 that are kept at the local level. And whether or not --
12 there's always been some question, is that legal or not
13 legal?

14 And I really, again, don't know the exact answer to
15 that as opposed to -- for instance, I do not know of any
16 counties or a state level that says here's \$10,000, start
17 your fund and go from there.

18 Generally the counties create the need to come up
19 with ways to do that. I believe there were also at least
20 one county that from funds that were recovered from a drug
21 -- sales of drugs, homes, that there was initial fund that
22 was created, and they started from that.

23 So there have been some very creative ways that
24 counties have tried to address this, and I cannot tell you
25 how successful they have been at this point.

1 Q Well, I'm not going to testify. Erie County has an
2 excellent program that's similar to that. Actually
3 donations come in from solicitations from different
4 organizations throughout the community, and they pay money
5 into the fund.

6 The fund is actually run by a non-profit
7 organization that was established by the county, and it's
8 not even an entity of the county. It's a separate
9 independent entity. And actually 92 percent of the
10 restitution in Erie County is collected for juveniles
11 through this fund and through other efforts by our juvenile
12 Probation Department.

13 A Yes.

14 Q And it's run by our juvenile probation department,
15 and they do an excellent job with it. I'm sure it's a
16 model, and I'm sure there's some other models.

17 A Yes. Actually Erie County is one of the -- one, if
18 not the top, county that we often will turn to for advice
19 and/or to provide assistance to other counties because of
20 their promising practices in restitution. Absolutely.

21 MR. ALLEN: Thank you, very much. Thank you, Your
22 Honor.

23 CHAIRMAN CLELAND: Mr. Listenbee.

24 BY MR. LISTENBEE:

25 Q Yes, Your Honor. Ms. Lavery, just two questions.

1 One, do the original victims, as you referred to them, do
2 they understand what our mandate is with the Commission?

3 And the second question along with that is is there
4 any way that you would recommend that we communicate
5 effectively with them, particularly when it comes time for
6 us to -- to present the report that we have to write?

7 A I do not believe that they truly do understand the
8 purpose of this Commission. Again, so much of that, of
9 course, is going to rely on the local media reports. And
10 the exact mission of this group has probably not made that
11 clear.

12 That has been part of trying to explain to people
13 what is happening, if there is a sense from many that you
14 will be able to. As Judge Cleland said, unfortunately you
15 do not have the power to make this right for them. And
16 that, again, is just, as you said, because of the total
17 confusion out there about what is going on. And the
18 community also is being inundated, not only what's going on
19 with this, but with all of the other corruption, arrests,
20 and the remedies that are being put in place.

21 And it is very confusing and overwhelming. And
22 unless you follow it almost daily you lose track. And as a
23 result of that -- and plus, again, there is that -- that
24 desire to, you know, not read the paper, not watch the news
25 because of what the new report is.

1 And so there are some difficulties there as far as
2 communicating. I think there are many ways that that can
3 happen. I do believe in the forums being able to be present
4 and to go back -- you have done such a wonderful job of
5 being present in Luzerne County. I think that has been a
6 good message to the community by showing up there.

7 When you are ready with your final recommendations
8 I would strongly request that you go back to the community
9 to provide some forum and possibly, again, open public forum
10 in order to present what your recommendations are and some
11 very thorough explanations of that.

12 Again, not in an adversarial type of situation, but
13 one that I think that would be very helpful that also then
14 you are not totally dependent on how it is reported in the
15 news media. You can have that opportunity to do that in
16 person in some way, even if a delegation does that. It
17 would be very helpful.

18 MR. LISTENBEE: Thank you

19 CHAIRMAN CLELAND: Ms. Lavery, again, thank you
20 very much, and we appreciate your --

21 MS. LAVERY: Thank you.

22 CHAIRMAN CLELAND: -- participation here today.
23 Thank you. We are adjourned until 9:00 tomorrow morning.

24 (Whereupon, the hearing was adjourned at 4:41 p.m.)

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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9 _____
Date

_____ Donna E. Gladwin, RPR

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