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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: DECEMBER 7, 2009, 8:58 A.M.

PLACE: BEST WESTERN MOUNTAIN INN
WILKES-BARRE, PENNSYLVANIA

APPEARANCES:

BY: DARREN BRESLIN, ESQUIRE
FOR - COMMISSION

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NOTARY PUBLIC

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1 CHAIRMAN CLELAND: Good morning. My name is John
2 Cleland. I'm a judge of the Superior Court of Pennsylvania,
3 and Chairman of the Interbranch Commission on Juvenile
4 Justice.

5 We are here today to begin our third day of
6 hearings here in Wilkes-Barre. We'll be here again
7 tomorrow. That will be four days of hearing that we've held
8 here in Luzerne County, and then we'll move to Harrisburg
9 for our hearings in January and February.

10 We have a very full schedule today and tomorrow.
11 We'll be going, looks like, until about 9:00 tonight. We'll
12 begin with the school officials. We'll have then interviews
13 with the Assistant District Attorneys who were in the
14 courtroom during the juvenile hearings, the Assistant Public
15 Defenders and juvenile probation officers who were also in
16 the hearings, and then this evening hear from some of the
17 juvenile victims and their families.

18 Tomorrow morning at 9:00 we'll begin with Zygmunt
19 Pines, who is the State Court Administrator of Pennsylvania.
20 We will continue our questioning of officials of the
21 Judicial Conduct Board, and then in the afternoon hear from
22 representatives of the Luzerne County Board of
23 Commissioners.

24 Before we begin I want to introduce the members of
25 the Commission that are here with us this morning. Tod

1 Allen is the Director of Court Advocacy of the Crime Victim
2 Center of Erie County.

3 Valerie Bender is a Senior Research Associate at
4 the National Center for Juvenile Justice in Pittsburgh.
5 Kenneth Horoho is a Pittsburgh attorney and former president
6 of the Pennsylvania Bar Association.

7 James A. Gibbons is a Magisterial District Judge
8 from Lackawanna County. Jason J. Legg is the District
9 Attorney of Susquehanna County. Robert L. Listenbee is the
10 Chief of the Juvenile Unit of the Defender Association of
11 Pennsylvania.

12 George D. Mosee, Jr. is the Chief of the Juvenile
13 Division and Deputy District Attorney of Philadelphia.
14 Judge John C. Uhler is a judge of the Court of Common Pleas
15 of York County and a former President Judge of that Court.

16 Ronald P. Williams is the Regional Director of the
17 Pennsylvania Department of Agriculture. Dwayne D. Woodruff
18 is a judge of the Juvenile Court of Allegheny County. And
19 I'm joined here as well with Darren Breslin, counsel to our
20 Commission.

21 Our first witness this morning is Clarence John.
22 Mr. John, if you'd please stand and raise your right hand to
23 take the oath.

24

25 CLARENCE JOHN, called as a witness, being duly

1 sworn, testified as follows:

2

3 THE WITNESS: I do.

4 CHAIRMAN CLELAND: Thank you, sir. Mr. John, our
5 procedure has been that one of the members or two of the
6 members are delegated to begin the initial questioning. And
7 I believe either Judge Woodruff or Ms. Bender is going to
8 begin. I'm not sure which one.

9 MS. BENDER: I will begin.

10 CHAIRMAN CLELAND: Ms. Bender, go ahead.

11 BY MS. BENDER:

12 Q Good morning, Mr. John.

13 A Good morning.

14 Q I'd like to begin by just asking you some
15 background questions.

16 A Sure.

17 Q Could you please tell me what position you hold?

18 A As of today, none. I'm retired. I was principal
19 for the last year and a half at Hazleton Area High School.
20 Prior to that I was the principal at the Hazleton Area
21 Career Center for five years. And prior to that I was a
22 vice principal for 20 years.

23 Q All in the Hazleton area?

24 A All in the Hazleton area.

25 Q Thank you. Are you aware of the school district's

1 policies that existed while Judge Ciavarella was on the
2 bench?

3 A Yes, I am.

4 Q Could you tell me your understanding of some of
5 those policies?

6 A The policies -- what we did, we only used -- most
7 of our policies we tried to deal with in-house. Very, very
8 seldom did we ever end up going to court through juvenile.
9 In fact, I can only remember going to court in the juvenile
10 system in two -- twice in the last five years, six years.

11 I never was in juvenile court other than those two
12 times. One was for a weapons charge. One was for a drug
13 charge. Our policies, we always tried to have a gray area
14 in there that we could handle whatever we could within the
15 house rather than go outside the school district.

16 Q How are your school district policies established?
17 Does the school district do them or the school board?

18 A The school board does them through the -- I would
19 say the attorney which represents our school district. They
20 write the policies. Then we send them down to PSPA. They
21 print them up, go over them, and then they send them back to
22 us.

23 Q Were you part of the development of those school
24 policies?

25 A No.

1 Q Do you know who did develop them?

2 A I would just simply say central office for lack of
3 -- I have no idea other than central office and the school
4 board and the lawyers.

5 Q Central -- do you have any information about how
6 those policies were developed?

7 A No, I do not.

8 Q As a school principal or vice principal did you
9 have any flexibility in implementing the policies?

10 A Yes, we did. Like I said, we tried to have a gray
11 area in there because not all -- same size shoe doesn't fit
12 everybody. So it depends upon the situation at times.

13 Q Could you give me an example of a gray area?

14 A Gray area would be if there's an altercation in
15 school, whether there was any physical injuries or not. If
16 there wasn't, we tried to resolve it by suspending the
17 students out of school for a cooling off period, bringing
18 the parents in, having them sign a contract that this will
19 not happen again.

20 Generally in our district it takes about five Level
21 2 suspensions to get to pre-expulsion hearing unless it's a
22 drug or something on that order. Then we can take them for
23 the first time for a pre-expulsion hearing or an expulsion.

24 Q I don't understand the level systems. Could you
25 tell me a little bit about that?

1 A Well, different systems would be smoking, truancy,
2 things in that order. Another level may be a problem on the
3 bus, bus conduct, fighting on the bus. Alcohol, drugs,
4 physical injury to a student, those would be the higher
5 levels.

6 I did give Mr. Fisher the other day a copy of all
7 our policies. He has them all.

8 Q Under your school district policies you said that
9 probably twice in the last few years you've actually gone to
10 court. Who had the ability to initiate a criminal
11 allegation?

12 A What -- in both of those indications PSP was
13 involved. And they --

14 Q What?

15 A Pennsylvania State Police.

16 Q Thank you.

17 A They were the ones who did it. We called them.
18 They filed the charges, and then I went as a witness.

19 Q And what was the role of the school resource
20 officer in those cases?

21 A The police -- the Pennsylvania State Police were
22 the ones who filed the charges. We brought them in. I
23 called them. Well, I didn't. The secretary did or security
24 did. They came down. They're the ones who did it. They
25 were not -- the school security was not involved in either

1 one of those two other than to call the Pennsylvania State
2 Police.

3 Q Okay. Before you called the State Police you had
4 mentioned that in your level system you would notify
5 parents. Is that what you usually do before criminal
6 allegation, notifying parents?

7 A Parents are always called in because they could not
8 -- State Police would not question them without either the
9 parents being there, or they would take the student out to
10 the barracks, and the parents would have to meet them there.

11 Q And the school counselor, is the school counselor
12 involved in these disciplinary procedures at all?

13 A No.

14 Q Were there any written or unwritten understandings
15 between the school district and juvenile probation?

16 A Absolutely not. Not that I'm aware of.

17 Q Would you know if Judge Ciavarella or the juvenile
18 court judge at any point in time had any input into the
19 school's disciplinary policies?

20 A Not that I'm aware of, not with me.

21 Q Okay. You had mentioned that you had never
22 attended an adjudicatory hearing?

23 A Only the last -- about three years ago and maybe
24 two years ago with the weapons charge and the drug problem.

25 Q So you attended those hearings?

1 A Yes, I did.

2 Q Did school officials usually attend a hearing?

3 A If we were the witness, yes.

4 Q And the disposition hearings?

5 A Yes.

6 Q What happened to students who were adjudicated
7 delinquent?

8 A I -- I can give you two examples, the last two
9 examples I was at. The young man that I dealt with I was
10 walking up the hall, and he was coming down, and a switch
11 blade knife fell out of his pocket. And we went up before
12 Ciavarella, Judge Ciavarella.

13 And the father was standing there. And he said,
14 where is your attorney? Where's your public defender? He
15 said, I don't make -- I make too much money. Where's your
16 private attorney? I don't make enough money. And he told
17 the lady that was there, Mrs. Kennedy, he said, Mrs.
18 Kennedy, take him downstairs and get him an attorney.

19 So we came back the following week. And when we
20 were there I had brought this child's discipline record with
21 me. And it was, oh, maybe a quarter of an inch thick. And
22 the day we left him come back to school he got in a fight,
23 and he started a fight. And when we showed Judge Ciavarella
24 the packet of information that we had then, he told them to
25 take him away.

1 Q Does your school have a zero tolerance policy?

2 A On drugs and alcohol.

3 Q And --

4 A I'm sorry. Drugs and weapons.

5 Q Drugs and weapons. And what does that mean
6 exactly, zero tolerance?

7 A It's on school property it's a no-no. It's not
8 allowed.

9 Q What do you do about it?

10 A Well, that's what we just -- exactly what we just
11 did, claim procedures. If security's there, we'd have them
12 involved. And then they'll forward it to the Pennsylvania
13 State Police generally. Mr. Zola can answer that question
14 better than I can.

15 Q And that's for drugs and weapons?

16 A Drugs and weapons.

17 MS. BENDER: Thank you. Judge Woodruff.

18 BY JUDGE WOODRUFF:

19 Q Yes. Mr. John, I have -- again, my name is Judge
20 Woodruff. Again, thank you for being here to address the
21 Commission here this morning.

22 About five minutes before the hearing I was
23 provided with a number of documents here. What I would
24 like, I would like to provide these to you, if you could
25 identify each one of them so that we know what they are.

1 And thereafter, Judge Cleland, I'd like to introduce these
2 into the record as well.

3 A Sure. Sir, these I cannot answer. This is Mr.
4 Zola's information.

5 Q Okay. Okay.

6 A So these I cannot answer on that group.

7 Q Okay. Thank you.

8 A These are also Mr. Zola's.

9 Q Okay.

10 A This last group I'm familiar with. This is student
11 discipline. This is what we copied for Mr. Fisher on Friday
12 and gave them to him.

13 Q Okay.

14 A These I can help you with.

15 Q Okay. If you could just go through those and
16 identify those for me, please.

17 A Policy No. 218 was adopted November 20th, 1980, was
18 revised October 6th of 2000. This explains the student
19 discipline, and this is what the first offense -- these are
20 what we go by, what the offenses are. First offense, second
21 offense, what can happen based upon the levels as they keep
22 going up.

23 This is what we normally do if we're following
24 through on the charges. This is the procedure what we
25 follow.

1 Q Okay. Let me ask you a few questions on that
2 particular document there.

3 A Sure.

4 Q Who -- who prepared that document? Are you aware?

5 A I would assume -- it was done in 1980. I would
6 assume it was done by central administration and the school
7 board.

8 Q And you would not have been aware of that document
9 -- I mean, you're aware of that document. You would not be
10 aware of who was there to implement those policies?

11 A No.

12 Q Okay.

13 A No. Second one, school police officer job
14 description, that would be Mr. Zola.

15 Q Okay.

16 A I can't help you with that. This is officer
17 security operations. I can help with you that. And these
18 are the police officers. These are all Mr. Zola's.

19 Q Okay. Mr. John, did your school, while you were
20 there as principal, also provide safe school reports?

21 A Mr. Zola did that.

22 Q Okay. Would you be aware of those safe school
23 reports?

24 A No, hum-um.

25 Q You wouldn't be aware of anything that was

1 contained in them?

2 A No.

3 Q But you are -- are you aware that it is also -- it
4 would provide a listing of the violent crimes in the school?

5 A That is a report he prepared every year.

6 Q Okay. And you would not look at that report?

7 A Never saw it, sir.

8 Q I'm sorry?

9 A Never saw it.

10 Q What about memorandums of understanding? Are you
11 aware of what those are?

12 A With the local police departments?

13 Q Yes, sir.

14 A No, sir.

15 Q Okay. And so you would not be aware of any
16 understanding that the school had with the local police
17 department at all?

18 A No.

19 Q And I'm assuming you would not be aware of anyone
20 that helped develop the memorandum of understanding?

21 A That is correct.

22 Q And you never had the opportunity to review either
23 the safe school reports or the memorandum of understanding?

24 A Never saw -- I never had a chance to review them.

25 Mr. Zola did send them around as far as looking at what they

1 were as far as that goes. But any input into it, no. I did
2 not have any input.

3 Q Okay. Did you have any discussions in any way in
4 regard to safe school reports or the memorandum of
5 understanding?

6 A No, sir.

7 Q You also had school policies in regard to
8 non-violent incidents, those incidents that were not part of
9 the safe schools reports?

10 A The reports that we have, the non-violent ones that
11 we call Level 1s, they're -- they're in our Policy 218. I
12 think it's 231. They're all delineated in there as to what
13 they are and what the procedures are for them.

14 I mean, there's -- there's an awful lot of things,
15 I'm sure, that goes into Mr. Zola's report from smoking
16 problems to more, you know, serious problems. And I know
17 they're all listed.

18 Q And you were not involved in the development of
19 those policies either?

20 A No, sir.

21 Q At any time?

22 A No.

23 Q Are you aware if they were updated periodically?

24 A Yeah, they are updated periodically because we
25 would get replacements inside of our policies. And like I

1 said, this one was revised October 6th of 2000. The
2 original was November 20th of 1980. So they are updated
3 periodically.

4 Q Okay. And you're not aware if Judge Ciavarella or
5 any other juvenile court judge was involved in any of these
6 policies?

7 A No.

8 Q In regard to the school policies, was there a
9 difference or separation in regard to violence policies
10 involving those kids with special needs or IEPs?

11 A Yeah. When that would happen with the IEPs, as far
12 as the student goes with an IEP, he can only be suspended
13 for up to 15 days during the course of the year. And if
14 it's a problem manifestation of his disability, it's a
15 different ball game. And that's when we used to call in
16 special ed., and they would handle that part of it.

17 Q Okay.

18 A And they tell us what we could and could not do.
19 That's their role, not mine. There's so many rules and laws
20 with special ed. You have to be very careful.

21 Q Okay. In regard to those policies, were they a
22 part of this document you have here in front of you, or is
23 there a separate document indicating those rules and
24 procedures?

25 A As far as I know there's nothing stating what we

1 can and cannot do with special ed. It was done on an
2 individual basis based upon their IEP.

3 Q Okay. You had indicated to Ms. Bender that I guess
4 your school disciplinary actions on a tier basis?

5 A Correct.

6 Q Can you go over that again, that tier basis for me?

7 A Off the top of my head generally the first -- minor
8 offenses are smoking, skipping, things on that nature of a
9 lower level. Second level may be fighting, disruption in
10 class. Another level may be where somebody is injured. One
11 of the problems on bussing, if something develops on the bus
12 because of the fact they're contained in a bus, that would
13 be a higher level. They could be suspended from bus
14 privileges based upon what happened on the bus.

15 So each situation was a little bit different
16 depending upon where and what was happening.

17 Q Okay. Let's take the first tier first. Someone --
18 there's an allegation in regard to the first tier, and that
19 was proven. What would generally happen to those children?

20 A Generally in the first tier if there was a problem,
21 minor thing, we would call the parent, have the parent come
22 in, explain to them generally what we would do is we'd
23 suspend them from one to three days or until the parent came
24 in.

25 95 percent of the parents would come in as soon as

1 you call them, even before the day was over. We would have
2 them sign a contract based upon what was involved. I will
3 not skip school anymore. I will not cause a disruption,
4 things -- there were about 14 or 15 different things in this
5 behavioral contract that we would have the parents sign.

6 Q Um-hum.

7 A And I'd be honest with you, I'd say 80, 85 percent
8 of them never happened again.

9 Q Okay.

10 A They really never happened again.

11 Q Second tier?

12 A Second tier would be three to five days out of
13 school, and they wouldn't be able to come back until the
14 third day. Generally that would not happen again. The
15 third tier would be five to ten days out of school.

16 Q Okay. And in regard to second tier, are their
17 parents also advised there as well?

18 A Oh, yes, absolutely, absolutely.

19 Q Okay. But is there a contract, or is there just a
20 three to five days?

21 A Contract. Every one involved a behavioral
22 contract.

23 Q Okay.

24 A Every one of them. And generally before the
25 children went home, if it was possible, the parents did come

1 in or we did contact them.

2 Q Okay.

3 A They were either contacted by phone or they came in
4 and picked them up. Some parents couldn't because they were
5 working, but they were well aware of it. And then we would
6 see them later on the next day or the day after.

7 Q Okay. And the third tier?

8 A Third tier is more serious. That would be five to
9 ten days out of school. Weapon could be one of them. Drugs
10 could be one. Generally with a drug situation we would make
11 them sign up with our Serento Gardens, and they could come
12 back as soon as they signed up for treatment.

13 Then they were allowed to come back in. Because
14 our job was to keep kids in school, not to keep them out of
15 school. And when they came back with a note from Serento
16 Gardens then they were allowed back in school.

17 Q In regard to the third tier, was law enforcement
18 part of that? Were they called, or were charges filed?

19 A I would say 90 percent of the time they probably
20 were. Once again, if it was an IEP student, they probably
21 weren't. We handled that within the special ed. department.

22 Q In regard to the third tier offenses, who made the
23 determination, or what group of people made the
24 determination whether law enforcement should be called and
25 charges should be filed?

1 A It was generally made with the vice principal,
2 because they're the ones who did the discipline and
3 security.

4 Q Okay.

5 A Generally it was the vice principal, sir.

6 Q Okay. And would that have been you on occasion?

7 A Yes, it would have been.

8 Q And what type of things would you look at to
9 determine whether law enforcement should be involved or not?

10 A Look at -- depends upon what was involved, what
11 kind of -- was it a weapon? Absolutely, it was zero
12 tolerance. There's no question. If it was drugs, it would
13 be the same type of situation.

14 The way I always treated students, sir, was how
15 would I handle it if this was my child? And I wouldn't do
16 anything different to anybody else's child than I would do
17 to my own. And it's very hard sometimes to make calls, but
18 you have to do what's best for the child and the parent.

19 Q Okay.

20 A It has to be a little gray area sometimes.

21 Q Was anyone else involved in that decision other
22 than the vice principal and security?

23 A Generally if it was the vice principal, it would be
24 run passed the principal also at the time.

25 Q Okay.

1 A Because it's important that the principal knows
2 what's going on in his building.

3 Q Okay. When you made the determination that law
4 enforcement should be involved here, who would you contact
5 first? Was -- in other words, was -- I guess you had a
6 resource officer, security resource officer?

7 A We did for two years. And the one lasted, I think
8 Mr. Zola will tell you, nine months. The other one lasted
9 about a year. But generally what we did since we're in the
10 township, they have no police department, we call the
11 Pennsylvania State Police.

12 Q Okay. And were charges always filed at that time?

13 A In the two situations I was involved in, yes.

14 Q Okay. You're aware of any other situations?

15 A There was -- I'm sure there were others. It's been
16 so many years.

17 Q Okay.

18 A A lot of times -- the only two times I ever was
19 called as a witness were those two times I told you about.
20 So if there were any other times, whether it went through
21 the magistrate, because sometimes it goes to the magistrate
22 also.

23 Q Um-hum.

24 A Generally our security person would go because they
25 would write up the reports, our individual school security.

1 Q Okay.

2 A They would normally go.

3 Q Now, tell me -- again, you've been involved with
4 the school district for a good number of years?

5 A Correct.

6 Q Are you aware of Judge Ciavarella ever coming to
7 the school to -- in the auditorium to address the students?

8 A Absolutely, yes, he did.

9 Q And how many -- was that a yearly thing? How often
10 did he come?

11 A No. In fact, the funny part, Mr. Zola and I talked
12 about that on the way up here. I think he said it was about
13 six times maybe.

14 Q Over what period of time?

15 A You'd have to ask Mr. Zola that question.

16 Q Okay. What period of time are you aware that he
17 ever came up?

18 A I'd say maybe in the last 15 years.

19 Q Okay. And who did he address when he was there?

20 A The students.

21 Q Only the students?

22 A Well, the teachers were there also, but they were
23 the ones. That was our focal point.

24 Q Okay. Now, did he ever have meetings with security
25 while he was there?

1 A You'd have to ask Mr. Zola that question.

2 Q Did he ever have meetings with the teachers
3 themselves, with the principal or vice principal?

4 A No.

5 Q You indicated on two occasions you were in court in
6 regard to juvenile delinquency?

7 A Correct.

8 Q On both of those -- on one of those occasions you
9 indicated that the child initially did not have an attorney?

10 A Right.

11 Q He had to come back?

12 A Correct.

13 Q On the second time, did he have an attorney at that
14 time?

15 A He was assigned one from the Public Defender's
16 Office.

17 Q Okay. On the other occasion that you went, the
18 second occasion, did that juvenile have an attorney?

19 A The first time this young lady went to court we
20 were not called by the Pennsylvania State Police. We were
21 not there. The second time I went I was there for four
22 hours, never had a hearing, never had a hearing. It was --
23 Judge Ciavarella had a civil case in the afternoon, so we
24 were coming back the following week. We went back the
25 following week, Judge Lupas was there.

1 Q Okay.

2 A And that was another -- that was a ten hour
3 situation, never testified.

4 Q Okay.

5 A But that girl did have an attorney. She was from
6 Philadelphia Juvenile Law Office or -- I think that's the
7 name of it.

8 Q Um-hum.

9 A She was there, and she did have an attorney.

10 Q Okay. On the other occasion where you did testify
11 it's my understanding you had a packet of information in
12 regard to the young man?

13 A Yes, I did.

14 Q Okay. And when did you provide that packet of
15 information to the -- to the judge?

16 A I had it with me the first time, but the first
17 time, since we did not have a hearing, because he had
18 another court case. The second time when I went up I
19 provided it to him.

20 Q Okay. And during the course of that hearing when
21 was that? Was that the beginning of the hearing? Was it
22 during your testimony? When was it?

23 A If I remember correctly, when his attorney got up
24 she made a point that he should go back to school because he
25 was an ELL student, English language learner. And the state

1 trooper I was with said, excuse -- excuse me, Your Honor.
2 He said, Mr. John has a record of his discipline. And
3 that's when he asked for it, and that's when I provided it.

4 Q Okay. At that time had the -- had you been part of
5 the adjudicatory hearing? Had that taken place?

6 A No, that was all at one time.

7 Q All at one time, okay. And prior to him -- prior
8 to you providing the packet of information had the juvenile
9 been adjudicated delinquent?

10 A Not that I'm aware of.

11 Q Are you aware of any other school officials
12 attending juvenile hearings?

13 A Yeah. I knew a few years before that one of the
14 vice principals at the high school when I was over at the
15 Career Center, he broke up a fight, and one of the
16 participants went after him. And he -- he pushed the vice
17 principal. And I knew of another time when a student pushed
18 a gym teacher into the pool. And I know they went up before
19 Judge Ciavarella also.

20 Q Um-hum, okay.

21 A I was not part of it.

22 JUDGE WOODRUFF: Thank you. Ms. Bender.

23 BY MS. BENDER:

24 Q I just have one follow-up question. Did you
25 identify tobacco use as a tier one offense?

1 CHAIRMAN CLELAND: Go ahead.

2 BY MR. HOROHO:

3 Q Mr. John, you have been a school administrator for
4 the last 20 years?

5 A About 27.

6 Q 27 years. And it has been exclusively in the
7 Hazleton School District?

8 A Correct.

9 Q And other than -- how would the Hazleton School
10 District compare, as far as number of students, with the
11 other school districts in the Luzerne County?

12 A We're -- our total school population right now is
13 10,080 students. I don't think anybody even comes near us.
14 I don't think anybody is even half the size.

15 Q Where does Wilkes-Barre School District come in?

16 A I have no idea.

17 Q Okay. You have Hanover, Hazleton, Luzerne IU,
18 Pittston, Northwest, Wyoming Valley. Would you be the
19 largest of all those groups?

20 A Correct.

21 Q Okay. You were -- were you a school administrator
22 when Columbine occurred?

23 A Correct.

24 Q And post-Columbine would you agree with me that
25 there became, not just in the Commonwealth, but across the

1 country, this idea of a zero tolerance policy?

2 A Absolutely.

3 Q And that zero tolerance policy then was a little
4 different than it is now, correct?

5 A I would say so, yes.

6 Q And it was -- in fact, the public nationally and
7 statewide was pretty much enamored by the zero tolerance
8 policy?

9 A Correct.

10 Q And I think that Governor Ridge was the Governor at
11 that time, the Department of Education. Many school
12 districts across Pennsylvania even wrote into their school
13 policy some sort of zero tolerance policy?

14 A Um-hum, yes.

15 Q Would you agree?

16 A Yes.

17 Q Now, however, 2000, 2001, definitely 2002 would you
18 agree with me that the idea of the strict zero tolerance
19 policy started to die down?

20 A I believe it's like anything else, after a while
21 everything dies down. It's only important at that
22 particular time. And sooner or later as things are going
23 on, nothing happens, yes.

24 Q Would you agree with me that as far as the
25 educational part, the focus started to shift more to -- for

1 prevention, rehabilitation, mediation than zero tolerance,
2 sending kids away and punishing them?

3 A Absolutely. I don't think necessarily just because
4 somebody does something they should be sent away. I think
5 sometimes rehabilitation, as you said, is more important. I
6 really do.

7 Q Okay. Now, the Commonwealth of Pennsylvania
8 Secretary of Education about that time, and clearly now
9 under the leadership of Gerry Zahorchak, has focused on
10 prevention, education, in addition to making sure our
11 schools are safe. Would you agree with me?

12 A Yes.

13 Q Okay. And years ago the Safe School Act was
14 passed, correct?

15 A Yes.

16 Q And I'm sure you're familiar with that, and I'd
17 like to go through that with you for a short period of time.

18 A Sure.

19 Q Okay. And the idea of the Safe School Act, Mr.
20 Clark -- or Mr. John, would be that the idea is to keep our
21 schools safe, but also to give the -- to make sure that our
22 children are educated, even those that become disruptive in
23 our schools?

24 A Correct.

25 Q Okay. And there was a big push in educating

1 schools on how to handle that with law enforcement in 2001,
2 2002, 2003, would you agree with me?

3 A Absolutely.

4 Q In fact, one of the focuses is to have this written
5 memorandum of understanding between your local law
6 enforcement?

7 A Um-hum.

8 Q I want to go over that with you in a second, but in
9 the Commonwealth of Pennsylvania through the Department of
10 Education provided forms for school districts like yourself
11 to do these MOUs, correct?

12 A I would assume so.

13 Q And they also issued from time to time what is
14 called BECs, B-E-C, to do some education for you?

15 A Um-hum.

16 Q And in addition to that they also provide funding
17 for schools, grants, to help you with security, with
18 purchasing hardware, and so forth?

19 A Um-hum.

20 Q Correct?

21 A Correct.

22 Q So, again, the idea starting in 2000, 2003, 2004
23 was prevention, a shifting of making sure that the child who
24 becomes somewhat disruptive still gets an education?

25 A Correct.

1 Q And the idea was not to shift these kids
2 immediately down to the juvenile court system?

3 A Correct.

4 Q Okay. And in the late 90s, early 2000s the shift
5 was to diversion programs and alternative education
6 programs, AEPs?

7 A Correct.

8 Q And there are AEPs available in Luzerne County,
9 correct?

10 A Correct.

11 Q And the Hazleton area I assume, at least the school
12 district, uses different AEPs?

13 A We have our own, and we do use Plains.

14 Q Okay. And which ones do the Hazleton Area School
15 District use?

16 A We use our own. We have about -- I'd say about 30
17 kids in our alternative education program. And we also run
18 a twilight program at night with about 60 students in it.

19 Q Is that the twilight program?

20 A That's the one, correct. That's at night.

21 Q And how about the Options 2 Program? Is that also
22 Hazleton?

23 A I'm not too sure about that, sir.

24 Q How about the Edwardsville Hazleton AL?

25 A That's the Plains.

1 Q That's the Plains?

2 A We do use that one.

3 Q Okay. Now, were these available to the Hazleton
4 School District during 2003, 2005?

5 A Definitely I would say 2005. I'm not too sure
6 about 2003, sir.

7 Q And because my records indicate that I guess the --
8 some of the Option Programs, the twilight programs, I think
9 was more --

10 A I think the Option Program goes through Plains. A
11 lot of it's through Plains, Options.

12 Q Now, during this period of time of '03 to '08 were
13 the other school districts in Luzerne also using AEPs? Do
14 you know?

15 A I can only -- I can only assume that they were
16 using Plains, because I was up there several times. There
17 were more students there than ours. Whether they have their
18 own, I do not know.

19 Q Now, I got some information from the Secretary of
20 Education, and the information I was provided is that from
21 the Commonwealth's perspective the Commonwealth of
22 Pennsylvania has three broad goals for education. One, high
23 student performance, high quality teaching and
24 administration in a safe, secure, and supportive environment
25 for each school and every child.

1 A Um-hum.

2 Q I assume the Hazleton School District shares that
3 perspective?

4 A Absolutely.

5 Q And, again, to achieve this -- these broad goals,
6 certain statutes, laws, regulations were passed and incurred
7 -- and schools were encouraged to follow them, right?

8 A Correct.

9 Q And one of those was Act 26? Are you familiar with
10 that Act 26 of 1995?

11 A Explain it to me.

12 Q Okay. That amended the school code by adding a new
13 section pertaining to the possession of weapons, but it also
14 added an additional nine sections in the code imposing
15 responsibilities upon schools in the following areas:
16 student expulsions, reporting, cooperation with local law
17 enforcement officials, and maintenance of records.

18 A Correct.

19 Q Maintenance of records became very, very important,
20 would you say, in late 2000, early 2001?

21 A I know we were very conscious of documentation of
22 whatever we did, whether it was weapons or anything. We
23 were very clear on that, what we had to do it.

24 Q And, again, the focus was cooperating with the
25 local law enforcement and making sure the schools also

1 protected their children and educated their children. And
2 -- correct?

3 A Correct.

4 Q And the document that was -- that many schools were
5 asked to -- all schools, public schools, were asked to have
6 on file and prepare and sign was a memorandum of
7 understanding?

8 A Correct.

9 Q Okay. And, in fact, the -- pursuant to section --
10 one of the sections, all public schools must develop a
11 memorandum of understanding with local law enforcement which
12 outlines procedures to be followed when an incident involves
13 acts of violence or possession of a weapon by any person
14 occurring on school property. Do you recollect that?

15 A Absolutely. I think that's what we -- Mr. Zola
16 gave a memorandum of understanding to Mr. Woodruff.

17 Q And would you also agree with me that after the
18 zero tolerance policy kind of died down, the focus of the
19 schools in the Commonwealth of Pennsylvania were more
20 towards a resiliency based approach in a sense of -- let me
21 try to explain what I'm saying, is that school districts
22 started programs where, or had available at least the
23 Department of Education and other community-based groups or
24 other community -- or other community-based groups including
25 the local and state bar associations began programs towards

1 anti-bullying, mediation program, social problems, or
2 solving or life skill programs?

3 A Correct. In fact, we did have a mediation program,
4 but the people who were involved, the teachers, they more or
5 less stopped doing it. It's funny you should mention the
6 bullying program because Mr. Zola just had a meeting last
7 week with the administrators on bullying. So that's been
8 ongoing in our district for quite a while.

9 Q Mr. Chair, I would ask that we -- you mark as an
10 exhibit the -- Mr. John, I've handed you what will be marked
11 as one of our exhibits. And that is a memorandum of --
12 sample memorandum of understanding, correct?

13 A Correct.

14 Q Okay. And that is -- it was provided to me with
15 information tool kits from the Department of Education. I
16 secured this information last week in preparing for the
17 testimony today. And let me take you through some of it
18 because I think it's important.

19 Paragraph B of that memo, purpose of the memo is to
20 establish procedures to be followed when any of the
21 following incidents occur on school property, school
22 response, order of events, and so forth. And then it lists
23 the various potential incidents.

24 A Um-hum, yes.

25 Q C, look at C, for instance. Further the purpose of

1 this memo is to foster a relationship of cooperation, mutual
2 support, and sharing of information and resources between
3 the parties as they work together to maintain the physical
4 security and safety of schools in the district.

5 Go down to E, law enforcement priorities.
6 Paragraph No. 2, identify those responsible for the
7 Commission of the reported incident and where appropriate
8 apprehend and prosecute those individuals.

9 Identification and apprehension procedures shall
10 involve as little disruption of the school environment as
11 practical. Let me go over to G, legal authority, and this
12 cites the provisions of act March 10, 1949 act requiring
13 that by June 30 of 1999 all school entities develop
14 implement single memorandum of understanding and of course
15 then it identifies in Roman Numeral 2 incidences requiring
16 law enforcement notification and response, Roman Numeral 3,
17 law enforcement authority response and it basically takes
18 the law enforcement what they're supposed to do as far as
19 incidences.

20 One is in A 1 G it says confer with school officials to
21 determine the extent of law enforcement involvement required
22 by the situation. Now, let me take you to page six under B,
23 custody of act ors. Roman Numeral -- or No. 1 it says
24 students identified as act ors in reported incidences may be
25 taken into custody at the discretion of the investigating

1 law enforcement officer if and then it goes A through D.
2 Take a look at No. 2. Investigating law enforcement officer
3 shall take all appropriate steps to protect the legal and
4 constitutional rights of those students being taken into
5 custody. Now, how did Hazleton school district during the
6 period of 2003 through 2008 make sure that happened?

7 A The only way I can explain that to you, sir, is my
8 own incidences. I would assume that everybody would do the
9 same thing by calling the parents, having the parents come
10 to the buildings, have the State Police, as I said before,
11 and other law enforcements take the students to the proper
12 buildings or buildings or whatever until the parents came.

13 I don't think anybody was ever involved that the
14 parents were not notified or on premise. And I would assume
15 that would be done throughout the whole school district
16 because that's what we were told to do.

17 Q Now, was there any follow up to make sure -- and
18 you worked with the State Police?

19 A Correct.

20 Q Okay. Primarily just with that law enforcement
21 agency?

22 A Years before that I was also a vice principal of
23 Hazleton Area High School, which was in Hazleton. And very
24 seldom do we ever call the Hazleton Police.

25 Q First of all, do you have a memorandum of

1 understanding signed and on file with the Pennsylvania State
2 Police?

3 A That would be Mr. Zola that can answer that
4 question, sir.

5 Q Why wouldn't you know that?

6 A I have no idea. I was not part of it.

7 Q Okay. Would you not -- so I would assume that you
8 would not review these types of documents from time to time
9 on an annual basis with your various other school
10 administrators, principals, vice principals of the various
11 schools?

12 A The only thing we would get is an update on the
13 safe school situation, which Mr. Zola provided every year.

14 Q During his update did he --

15 A It was never done -- it was just done by sending
16 papers to add to our policy.

17 Q Okay. And, again, I'm -- I'm sure Mr. Zola
18 probably has it. When I asked the Department of Education
19 or what school districts in Luzerne County had MOUs they
20 provided just two others. So you're not -- have you ever
21 seen this type of memorandum of understanding?

22 A Memorandum of understanding, no, sir.

23 Q Okay. Do you know if the Hazleton School District
24 has applied for any grants or applied for any grants to
25 assist in making their -- to implement their safe school

1 policy?

2 A I'm sure that's been done. One of the things that
3 really concerns us and the Governor's group budget, safe
4 schools and alternative education were taken out of the
5 budget. That really concerns us. So I guess what we're
6 going to have to do is look for grants to do that. But I
7 know Mr. Zola's -- he looks for every buck he can get.

8 Q Okay. Well, let me show you -- let me show you
9 what's been marked. And, again, this was information given
10 to me by the director of the Safe School Program in
11 Pennsylvania. It lists the school -- safe school grant
12 history awarded to Luzerne County, all the Luzerne County
13 school districts, from '03 to '09.

14 And there was \$479,000 of grant or free money that
15 was available through this grant process. And there was a
16 number of schools that were -- took advantage of it, and
17 some schools that didn't take advantage of it. And it
18 looked like as far as this document is concerned the
19 Hazleton Area School District did not take advantage of
20 that.

21 A Hard to believe.

22 MR. HOROHO: I know my time is limited, and I just
23 have a couple other documents, Mr. Chair.

24 CHAIRMAN CLELAND: All right. Go ahead. Do you
25 want this made -- you want this included?

1 MR. HOROHO: Yes, please.

2 CHAIRMAN CLELAND: We'll also have this safe
3 schools grant history awarded to Luzerne County document
4 made a part of the record.

5 BY MR. HOROHO:

6 Q You talked about, and there is tremendous amount of
7 information about, alternative education programs. And,
8 again, the focus of the educational -- alternative education
9 programs is before a child is sent into the juvenile court
10 system, the idea of the education program is to see if an
11 AEP might be available to them before they go -- before they
12 get sent away, correct?

13 A (Nods head up and down.)

14 Q Okay. Take a look at this recap and make sure you
15 have it in front of you. Darren, do you have it? Here's
16 what -- and I'm not -- and, sir, let me start to tell you,
17 I'm not here to point fingers at you or Hazleton or anybody
18 else, okay.

19 I think what I'm trying to establish is the
20 availability of programs that are within this Commonwealth
21 that -- that -- where children can be diverted to in lieu of
22 going through the juvenile court system.

23 Now, let's take a look at Hazleton Area SD from
24 2000 to 2009. And the count of schools, you had ten schools
25 and then nine schools, correct? Can you -- do you want me

1 to take you through this?

2 A No, I think you're probably accurate.

3 Q Now, the total incidents in, for example, 2003,
4 there were 307 total incidences. And you have -- there were
5 387 offenders. Law enforcement notification total was 43.
6 The arrest total was 143. And the alternative education in
7 that year was only two. So two -- and, again, I have -- was
8 provided all of your safety reports, and we don't have time
9 to go through those. This is just a -- correct, you have
10 safety reports that Mr. Zola provided?

11 A Yes.

12 Q And it -- and you previously testified it's very --
13 it's very specific as far as the incident, type of incident,
14 the adjudication, and so forth?

15 A Let me ask you a question.

16 Q Okay.

17 A These number offenders that are on here, could
18 these be students that were arrested out of school and
19 processed by the police departments, the various
20 municipalities, that had nothing to do with the school
21 actions, and that's why they showed up as being members of
22 our school district?

23 Q Here's what I've been told, okay. That, again,
24 these were -- this is not my document. This was prepared by
25 the Safe School Group based upon all the information that

1 the safety reports that schools like Hazleton submitted.

2 So they took that information from the safety
3 school reports and then compiled it. And, again, as I was
4 reminded, these statistics are only as good as the
5 reporters, okay. So if it was Mr. Zola reporting on behalf
6 of Hazleton, then we're going to have to rely upon Mr. Zola
7 as well as all these other school districts.

8 But -- so I really can't answer your question
9 without going back to the safety school report that
10 particular year. And I do have it, and I could probably
11 answer that in a break for you. But I guess my question is
12 that out of all the total incidents and the number of
13 arrests, you would agree with me the -- the choice of
14 schools in Luzerne County going to the AEP, not just
15 Hazleton, but some of these other ones, were fairly limited?

16 A Based upon the numbers, absolutely.

17 MR. HOROHO: That's all the questions I have, Mr.
18 Chair.

19 CHAIRMAN CLELAND: Mr. Mosee.

20 BY MR. MOSEE:

21 Q I just wanted to ask you about that hearing, the
22 first time, the young man who had the switch blade was told
23 to get counsel. You returned for the second hearing as
24 well, right?

25 A Correct.

1 Q Were you a witness to him dropping the switch
2 blade?

3 A Yes, I was.

4 Q Were you ever asked about that?

5 A I don't think so.

6 Q Were you in the courtroom the whole time throughout
7 the proceedings?

8 A Yes, I was.

9 Q Were you ever asked to leave the courtroom? It's
10 what we call sequestration.

11 A No, sir.

12 Q Was the prosecutor present?

13 A Yes, sir.

14 Q Did he ask any questions, or she?

15 A I don't think he asked any questions. He just
16 stated his case.

17 Q Did you provide the information that was in that
18 quarter inch packet to anyone other than the judge?

19 A No, sir.

20 Q Probation?

21 A No, sir.

22 MR. MOSEE: Okay. Thank you, Your Honor.

23 CHAIRMAN CLELAND: Mr. Johns, thank you. Judge
24 Uhler.

25 BY JUDGE UHLER:

1 Q Just a couple quick questions.

2 A Sure.

3 Q How did Ciavarella's appearance come about at your
4 school? Was he invited, or did he invite himself?

5 A He was invited. Mr. Zola, I believe, invited him.

6 Q Okay. And I gather the school district welcomed
7 those visits?

8 A Absolutely.

9 Q Now, with regard to your appearance at the juvenile
10 court proceedings, were there other cases pending as well?

11 A There were other people there, but they weren't in
12 the courtroom, if that's what you mean.

13 Q There was a number of people waiting their turn to
14 go in?

15 A Yes, sir.

16 Q It was kind of like were you all scheduled at the
17 same time, if you will?

18 A We were just told to be there for court, and we
19 never got in.

20 Q A 9:00 start, and it lasted ad nauseam?

21 A Well, it lasted until noon when we went to lunch.
22 When we came back he was in another court, civil court.

23 Q Okay. With regard to the -- the referrals to the
24 magistrate that you referenced, was that in Mr. Zola's
25 purview, or were you a part of that decision making?

1 A That was generally handled by in-house security
2 through Mr. Zola's department.

3 JUDGE UHLER: Okay. I'm fine. Thank you.

4 BY CHAIRMAN CLELAND:

5 Q I understand this is your first day of retirement
6 after many years of service to the schools here in Luzerne
7 County.

8 A It sure is.

9 Q You have been principal, and I suppose your
10 principals get together throughout the -- throughout the
11 County to meet on occasion?

12 A Generally at the IU.

13 Q Okay.

14 A Different types of meetings that are held.

15 Q So the IU calls the principals together?

16 A Yes.

17 Q And school security is one of the issues that you
18 talk about at these meetings I suppose?

19 A Not in Hazleton, no. We don't talk about security.

20 Q Do you talk about the reputation of Judge
21 Ciavarella as far as his relationship with the schools?

22 A No, no. My -- my relationship with Judge
23 Ciavarella was only on two occasions. Well, actually --
24 well, two -- one and a half occasions. Because the second
25 time we went back he wasn't there.

1 Q So you never heard among your meetings with school
2 principals him discussed or his reputation in dealing with
3 students?

4 A He had a reputation of a no nonsense judge. And I
5 think that was the thing that most people -- I don't want to
6 use the word admired, respected him for. I know when he's
7 talked to the students he came across very well and
8 explained to them the judicial system and how to behave so
9 they don't get to that point. It was not brimstone -- fire
10 and brimstone, if you know what I mean, when he came to meet
11 with the kids. He just explained everything the way life
12 is.

13 Q Your testimony is it's your job to keep kids in
14 school, not out of school?

15 A Correct.

16 Q And there should be gray areas, and that you would
17 treat your children as your own?

18 A Correct.

19 Q The image that we have been portrayed is that the
20 schools system used Judge Ciavarella as a way to get bad
21 kids or troubled kids out of school. Is that not -- is that
22 an incorrect impression that we've been given?

23 A I don't know who gave you that impression, but I
24 don't think that's in the Hazleton Area School District to
25 be honest with you.

1 Q I don't mean to necessarily speak about your school
2 district in particular, but the reputation in Luzerne County
3 which you've heard discussed?

4 A That has come out in the last month or so. I never
5 heard it before that until it was mentioned at our last
6 school board meeting by one of our school board members.
7 That was the first time I ever heard of it. I never heard
8 of it before until last month or so.

9 Q So in your gatherings of school principals where
10 you discussed Judge Ciavarella's reputation, that never came
11 up?

12 A I don't think he really came up as far as a topic
13 all at one time. Maybe we certainly discussed the case or
14 something, but nobody ever -- the meeting was not for Judge
15 Ciavarella.

16 Q No, I understand. Okay.

17 A Yeah.

18 Q Thank you, very much.

19 A You're welcome.

20 CHAIRMAN CLELAND: And we appreciate your being
21 here today, and we appreciate your cooperation. Thank you,
22 Mr. John.

23 THE WITNESS: No problem. Any time. Thank you.

24 CHAIRMAN CLELAND: Mr. Zola.

25

1 VINCENT ZOLA, called as a witness, being duly
2 sworn, testified as follows:

3

4 BY MS. BENDER:

5 Q Good morning, Mr. Zola.

6 A Good morning.

7 Q How are you today?

8 A Okay.

9 Q I'd like to start the same way I did with Mr. John.
10 Could you tell us a little bit about your background and
11 what your position is?

12 A My name is Vincent Zola. I'm security coordinator
13 for the Hazleton Area School District, have been for
14 approximately 15 years. Prior to that I was a police
15 officer with the Hazleton City Police Department. I made
16 the rank of sergeant. I was a patrol sergeant for that
17 department. Prior to that I was in the military.

18 My mission in the military was as a military police
19 officer. And I left the military after three years as the
20 rank of -- in the rank of sergeant.

21 Q Thank you. We heard testimony that Judge
22 Ciavarella had come to your school?

23 A Yes.

24 Q Was that at your invitation?

25 A Yes, it was, ma'am.

1 Q And why did you invite him, and what did he do when
2 he was there?

3 A We invited Judge Ciavarella to come speak to our
4 law enforcement class, which I was teaching at the time.
5 The law enforcement class is part of the Career Center, and
6 we had Judge Ciavarella come in and talk about the law
7 enforcement in general from the perspective of -- of the
8 judge.

9 He met with the law enforcement students. They
10 were able to exchange conversations. A second -- that was
11 one time. A second time Judge Ciavarella came down and
12 helped the Hazleton Area School District create a tape on
13 bullying and harassment.

14 Our students, again, from the Career Center through
15 the -- they have a -- they have a name that they call the --
16 like a video class where they teach the students how to
17 produce tapes and movies and so forth. We wanted to do a
18 in-house video using our students, our faculty, and all on
19 preventing bullying and harassment and the affects that it
20 would have.

21 So the students from that class and the law
22 enforcement class and other groups got together, our school
23 psychologist and so forth, and we produced that. We asked
24 Judge Ciavarella to make an appearance on that tape.

25 So at the end of that class Judge Ciavarella talked

1 about the legal effects of harassment and bullying on
2 students, on people.

3 Q The legal affects?

4 A You know what, I can't explain exactly, you know
5 what I'm saying. I have a copy of the tape. I'd be happy
6 to make it available.

7 Q Thank you.

8 A And one time we had Judge Ciavarella came to a --
9 it was the same day actually. He spoke to the faculty. It
10 was an Act 80 day, which is a training day. So he spoke to
11 the faculty as far as the criminal justice system, how it
12 affected students, and so forth. And then he made the tape
13 for us that afternoon.

14 Q As the school law enforcement officer you would be
15 aware of any written school policies around discipline
16 issues?

17 A I try, ma'am. Yes, I try.

18 Q You try. Do you know how those policies were
19 created?

20 A Our school board policies are basically developed
21 by the school board, the superintendent, the deputy
22 superintendent. And anyone that really has a need to
23 partake in that would be asked to provide information.

24 Normally committee meetings, the school district
25 has committee meetings. So every department is broken down

1 into specific committees, and then they meet once a month,
2 and they decide what goes on to the board agenda, what goes
3 before the board.

4 And then at those committee meetings a lot of
5 things get discussed. But most times the policies were
6 developed by the upper administration, superintendent,
7 deputy superintendent, so forth, and then moved before the
8 board, and then sent to the -- I believe it's the School
9 Board Association for -- our solicitor for review, and then
10 to the School Board Association for review, and then they
11 write it up in a formal document for us.

12 Q Did you have a chance to comment or have input into
13 those policies?

14 A I would say at some I did, yes, ma'am.

15 Q Do you remember which ones?

16 A I would say in the smoking. I remember when the
17 law changed and the state law changed that made it a
18 violation of the Pennsylvania Crimes Code to possess tobacco
19 on school district property. And then it also set the
20 parameters for school districts to follow.

21 So I would have advised on a -- how could I explain
22 it? I would have advised from like the standpoint of
23 security, how that would affect us and what would be
24 required of the school board to follow through on that.

25 Q What is your role in implementing disciplinary

1 policies?

2 A We do not. Security is -- does not do discipline.

3 Q No disciplinary policies at all?

4 A No, ma'am. The discipline is strictly left to the
5 administrator, the principal, or the vice principal of the
6 building. We do recommend -- if there's an incident that
7 one of our security officers are involved in, they may say,
8 you know, according to -- let's say it's a institutional
9 vandalism, and they do the investigation in-house. They
10 would -- they would inform the principal of what -- what the
11 Crimes Code says, all that information to help him or her
12 make that determination for the discipline.

13 Q Who has the ability to initiate a criminal
14 allegation?

15 A In -- in Pennsylvania it has to be a law
16 enforcement officer. Our security officers are able to file
17 private criminal complaint on summary offenses, which we do.

18 Q Um-hum.

19 A But anything that would go as far as a juvenile
20 petition would have to be a police officer.

21 Q As the security officer do you work closely with
22 the Probation Department, Juvenile Probation Department?

23 A To be honest with you they're in our buildings all
24 the time. We provide them a space, but we don't deal with
25 them. They have clients, and they come and visit their

1 clients, and they do their thing. You know, they -- you
2 know, I know at times I've seen them where they take them
3 for drug tests and so forth. But we basically just provide
4 them with a space when they come into our building to work
5 out of.

6 Q Is there any written or unwritten understandings
7 between the security officers and the Probation Department?

8 A Not that I'm aware of, ma'am, no.

9 Q Have you ever been in the courtroom when a child
10 for a hearing --

11 A Yes, ma'am.

12 Q -- has been present? Were you there for an
13 adjudicatory hearing?

14 A Yes, ma'am.

15 Q And a disposition hearing?

16 A As I remember, ma'am, the hearings were together.
17 I mean --

18 Q They were one?

19 A You know, the Commonwealth would provide, you know,
20 their side to it. The defense would provide theirs. And
21 then most times the judge basically would make a decision at
22 that point where it was going or put it for further
23 evaluation or research. And then, no, we weren't called
24 back if that were the case.

25 Q The students who were adjudicated in your memory,

1 what happened to those students?

2 A I was not involved in a lot of them. I'm not first
3 line basically. I'm not in the schools. I'm more of an
4 administrator role. The ones that I remember going on,
5 there was an incident of institutional vandalism on -- I
6 believe it was on the Freeland Elementary Middle School
7 where they threw an ax into the front of the building.

8 And the building's one of those -- it looks like
9 stucco, but it's actually the foam. And kind of stuck into
10 the front of that. And there were a few students on it.
11 Two of them I remember were released back to the parents on
12 some type of program or whatever. And I think one may have
13 been found delinquent. I don't remember all the specifics,
14 ma'am.

15 Q Okay. That's all right. Do you have meetings with
16 your school security officers --

17 A Yes, ma'am.

18 Q -- as an administrator? And at those meetings have
19 the officers and you discussed zero tolerance?

20 A Zero tolerance came up in the very early years ago.
21 And the district -- and the district even talked about zero
22 tolerance on crimes and that, but it doesn't work. It's
23 just -- I mean, every case has to kind of be addressed on
24 it. We like to say we're even zero tolerance on weapons,
25 but that's not the case. Because the -- I've seen any

1 number of times where students brought a knife into school,
2 and it was dealt with at the level of the superintendent.
3 The principal and the superintendent decided not to go
4 further with it into law enforcement and that.

5 Q Who makes that decision?

6 A The superintendent and the principals.

7 Q Superintendent and principals?

8 A Um-hum.

9 MS. BENDER: Thank you. Judge Woodruff.

10 BY JUDGE WOODRUFF:

11 Q Okay. Thanks. Mr. Zola, good morning.

12 A Hi, how are you?

13 Q Good to see you here this morning. I have a few
14 questions for you. First of all, in regard to the safe
15 school reports, who prepares those reports?

16 A What happens, sir, is we have an incident reporting
17 system. So every school has an incident report. So when
18 something occurs, an incident report is filled. That
19 incident report contains all the information set forth by
20 the state that they're looking for, student name, date of
21 birth information, IP information, violation, a narrative.
22 Everything is on that incident report.

23 And we did that so that we would standardize
24 because we do have ten schools. We put in the -- we put the
25 system into affect probably 12, 13 years ago, way before it

1 was required by the state to have an incident report, and it
2 just made it easier.

3 All those incident reports come back to me. I
4 review them, and I follow the guidelines given by the state
5 on what is reportable and what is not.

6 Q Okay. Who prepares the incident reports?

7 A Well, the -- usually the security officer at the
8 building or the principal. Some of our buildings do not
9 have security officers, so the principal fills it out.

10 Q Okay. And the safe school reports, do those deal
11 with violent crimes in schools?

12 A Well, we report everything, sir, including summary.
13 And I think that's what's happening here. When I hear
14 numbers of --

15 Q Okay. We'll get to that in just a moment.

16 A Okay.

17 Q But all the violent crimes in schools are supposed
18 to be part of the safe school reports?

19 A Yes, yes, sir, yes.

20 Q And in regard to those particular crimes or
21 allegations, I understand the principal is involved --

22 A Oh, yes.

23 Q -- with those? Okay. And Mr. John, how long was
24 he principal during the time you've been with the school
25 over these past 15 years?

1 A All 15 years.

2 Q Okay. And so he would have been -- you would have
3 informed him of all such allegations?

4 A Or the principal of the building.

5 Q Okay.

6 A I mean, there are ten buildings.

7 Q Okay.

8 A And any one of the reports there, sir, in one of my
9 manuals you'll see I have highlighted where security
10 officers -- the protocol where they need to include the
11 principal right from the beginning right through the end.

12 Q Right.

13 A And it's a written policy.

14 Q And in regard to those violent crimes and any of
15 the other allegations, prior to law enforcement being
16 contacted you would have discussed this with the principal
17 of the school --

18 A Absolutely.

19 Q -- correct? Okay. In regard to the safe school
20 reports which lists all such allegations, do you go over
21 that with the principal as well?

22 A Normally, sir, I do not. I turn it into the
23 superintendent of schools.

24 Q Okay. And so even though the principal would be
25 involved in all of such incidents that involve violent

1 crimes, you do not go over that report with your principal?

2 A They -- they are required to review the incident
3 report, sign off on it before it gets sent to me. So
4 they're already aware of everything that went through their
5 building. So then when I get them I merely just put them on
6 file so that if -- in the event someone needs information
7 later, we can get that.

8 Q Okay. So it's your understanding those have been
9 -- the principal's already been involved with these such
10 incidents?

11 A Absolutely.

12 Q Prior to it coming to you to fill out to complete
13 the safe schools reports?

14 A Absolutely. They have to sign off on it.

15 Q These documents here, I'd like for you to take a
16 look these.

17 A Sure.

18 Q If you could tell me what those documents are.

19 A These are the reports that we generated off of the
20 website this morning from the Department of Education
21 dealing with violence and weapons in schools.

22 Q Okay. And those would be the type of incidents
23 that would be provided on the safe school reports?

24 A Yes, sir.

25 Q Okay. And all of those would -- the principal of

1 the schools would be privy to all that information as they
2 would have to sign off on those incident reports?

3 A Absolutely, yes, sir.

4 Q And as I briefly -- I just received those reports
5 earlier today, and as I look at one of the exhibits that was
6 provided in front of Mr. John in dealing with the various
7 schools in Hazleton, particularly the Hazleton Area School
8 District, it appears that the numbers on here correspond
9 with the numbers in regard to safe school reports. So they
10 would only involve those incidents that occurred at the
11 school?

12 A Yes, I would agree with that, yes.

13 Q Okay. Now, there's also -- each school has a
14 relationship somewhat -- some kind of relationship with the
15 local law enforcement?

16 A Yes.

17 Q And it's my understanding you have memorandums of
18 understanding that would be generated?

19 A We deal with ten different law enforcement agencies
20 because of the boundaries of our schools.

21 Q Okay.

22 A So, yes, we have a memorandum of understanding with
23 each law enforcement agency according to the school.

24 Q Okay. And in regard to those memorandums of
25 understanding, who is involved in the development of those?

1 A In the beginning memorandums of understanding first
2 took place we had a -- I guess what we called them during
3 that time were principal academies. Over the course of the
4 summer we had -- the superintendent had developed training
5 sessions over the summer dealing with all the
6 administrators.

7 And when they first were developed we brought
8 forward the memorandum of understanding and what it's
9 purpose -- what the purpose was for and what we would be
10 doing with them.

11 Q How often did those meetings take place?

12 A They -- they don't -- they haven't recently.
13 Administration changes and things change. But in the
14 beginning we would hold them every summer, and there would
15 probably be four or five of them a summer.

16 Q Okay. And who was involved in those meetings?

17 A It would be the superintendent, I would be there,
18 the principals, vice principals, Dr. Carr, who's our Title 9
19 Coordinator, and the assistant superintendent. And it would
20 just depend on what the topic was at that training.

21 We always did one on security issues, and then that
22 would fall back on me --

23 Q Okay.

24 A -- to do the presentation.

25 Q If we could, I just want to address in regard to

1 the memorandum of understanding.

2 A Okay.

3 Q How that came to be developed.

4 A That would have been through me.

5 Q Okay. And who else would be involved with that
6 development of the MOU other than you?

7 A The superintendent's office, and naturally the
8 local police department or the State Police.

9 Q Okay. So in regard to school district, anyone
10 other than you and the superintendent?

11 A Other than in the very beginning when it first
12 became policy that we would have one, that's when we first
13 had the training with all the principals, got their take on
14 it. Everyone kind of put their heads together. And to be
15 honest with you, we just kind of renew them every year.

16 It's the information -- we use the template that
17 was given to us by the Department of Education. And a few
18 of the agencies have made changes in theirs particular, but
19 we kind of just go from year to year with them now, sir.

20 Q Okay. In regard to any of these meetings, was
21 anyone from the judicial system involved in any way in any
22 of these meetings?

23 A No, sir.

24 Q Okay. If I could have you take a look at these
25 documents here. Are those the memorandums of understanding

1 for the various schools?

2 A Yes, they are, sir.

3 Q And that would be a memorandum of understanding for
4 each of the nine schools that are in the Hazleton Area
5 School District?

6 A Yes, sir. And we update them every two years.

7 Q Okay. Now, you indicated that those have been
8 updated. Were there any meetings to determine how they
9 should be updated, any inclusion, or any other procedures or
10 policies?

11 A I would say in the last few years, no, sir.

12 Q Okay. Prior to that?

13 A Just originally when we first had to start doing
14 them. That's -- that would probably be it.

15 Q Okay. So every year after the first couple years
16 you haven't met to update any of the procedures or policies?

17 A No, sir.

18 Q In regard to MOU?

19 A No, sir.

20 Q Is there any reason for that?

21 A If you look at a memorandum of understanding, they
22 were meant -- the idea behind it was great, but they don't
23 mean a lot. And I'm being honest with you. And what I mean
24 by that is, you know, law enforcement agencies follow their
25 procedures and rules. And, you know, I mean, I -- I have at

1 times had to say to law enforcement agencies, we have a
2 memorandum of understanding. You -- you need to come to the
3 school when we're calling. You can't say, well, we're not
4 coming because, you know, we're busy. So, you know --

5 Q So are you indicating that there are a number of
6 times when you called the local law enforcement and they
7 would not come?

8 A Oh, we -- I won't say many times, but at times,
9 yes.

10 Q Okay. And does that still continue today?

11 A Yes, yes.

12 Q Okay. And does that involve the violent crimes as
13 outlined and defined in the School Code -- the School Code?

14 A I would say violent crimes that involve a weapon or
15 drugs, no.

16 Q In regard to violent crimes as defined under the
17 School Code and also in the school safety report, there are
18 other crimes indicated there as well, such as possession,
19 use and possession of controlled substances. Would that
20 apply to one of those type of incidents whether the local
21 law enforcement would not come or respond?

22 A No.

23 Q What about possession, sale of tobacco, and/or
24 alcohol?

25 A We handled that internally, sir. Basically if

1 there's a violation of -- of the smoking law, our security
2 officers will file a private complaint with the magistrate.

3 Q Okay.

4 A A criminal complaint.

5 Q Is that listed as one of the definitions of violent
6 crimes under the school safety?

7 A It is.

8 Q Okay.

9 A It is.

10 Q But that is not something that you would contact
11 local law enforcement about?

12 A No, sir. It -- and the reason is we may have five
13 in a day at one building, you know, in the labs or something
14 where people are caught smoking and so forth. And to be
15 honest with you, the burden on local law enforcement would
16 be pretty great.

17 Q Okay. But it's not -- is that not part of the
18 mandate of the safe schools?

19 A Yes, it is, sir.

20 Q That they be contacted?

21 A Yes, I guess it would be.

22 Q Who makes that decision not to contact local law
23 enforcement?

24 A It has been a district -- basically district
25 administrative policy for a number of years now.

1 Q Okay. So someone would have informed you that
2 you're not to contact the local law enforcement?

3 A Yes.

4 Q Who would have informed you of that?

5 A I would say it would have come out of discussions,
6 sir.

7 Q Okay. And who would be in those discussions?

8 A It could be the superintendent. It could be a
9 committee of the board. I don't really remember where it
10 came about. I just remember that it came about that, you
11 know, we would file those.

12 Q Okay. Is that a policy that changed over the past
13 15 years? Has it always been that way?

14 A Always been that way.

15 Q You indicated that you have gone to various
16 hearings involving juveniles before the juvenile court?

17 A Not many, but I have been before some, yes.

18 Q Okay. We've had a number of individuals testify
19 here in the past. One of the issues that is of concern is
20 approximately a little bit more than 50 percent of the
21 juveniles that appeared did not have an attorney.

22 In regard -- how many times do you think that you
23 were in juvenile court?

24 A I probably was there three times.

25 Q Okay. And in regard to those three times what time

1 frame are we talking about?

2 A In the last ten years.

3 Q Okay. And all the times that you were in court did
4 all the juveniles have attorneys? Were they represented?

5 A You know, I -- I don't know to be honest with you.
6 I remember the --

7 Q Do you know who was in the courtroom at any time?

8 A I can remember the incident with the graffiti and
9 the ax. And I remember those -- there was an attorney
10 present for that.

11 Q Representing the juvenile?

12 A Representing the juveniles. But the other two I
13 don't recall.

14 Q Let me ask you this. Would you have any documents
15 or records back in your office that would indicate the
16 hearings that you were present for?

17 A Yes, probably, yes.

18 Q Okay. Would you be willing to provide that to this
19 Committee?

20 A Absolutely, absolutely.

21 Q It's my understanding that you initially invited
22 Judge Ciavarella to come and speak to a group of law
23 enforcement students?

24 A Yes.

25 Q Okay. And you also indicated that Judge Ciavarella

1 also spoke to the faculty at one time?

2 A Yes.

3 Q Okay. And who was in that faculty meeting?

4 A It was an Act 80 day. It was open to any faculty
5 member.

6 Q Okay. Would other school officials be there?

7 A Sure.

8 Q Was the principal there, vice principal?

9 A I don't know who was there, but they certainly
10 would have been welcomed to be there. I don't remember.
11 Our Act 80 days get broken down into different groups. So,
12 you know, you may have English teachers doing one thing,
13 math teachers doing another. But, you know, this particular
14 case it would have been open.

15 Q And you have Act 80 days how often throughout the
16 year?

17 A Every year the schedule changes. I think this year
18 there's seven.

19 Q And how often would Judge Ciavarella come to speak?

20 A I can only recall three times that he was in our
21 building. And once was he did a talk for the Act 80 day,
22 and then he helped do the video for the -- with the
23 students.

24 Q Okay.

25 A And one other time that he came and spoke to law

1 enforcement students.

2 Q Okay. And Mr. John also indicated that he came and
3 spoke to the students in an assembly. Are you aware of
4 that?

5 A I'm assuming that would be the law enforcement
6 students unless someone else had him there.

7 Q Okay. Are you aware of Judge Ciavarella ever
8 coming to speak to all the students as a body in an
9 assembly?

10 A No.

11 Q Okay. And so it's my understanding that when Mr.
12 John indicated that he -- that he did, you were absent or
13 you're not made aware of those -- those things, assemblies?

14 A Could be.

15 Q In regard to security, wouldn't you be aware of all
16 assemblies taking place in the schools?

17 A Well, no. Act 80 days and that are pretty much
18 based out of the schools and that.

19 Q I understand the Act 80s. But in regard to the
20 general assemblies of the students, are you made aware --

21 A No.

22 Q -- of those assemblies?

23 A No.

24 Q Okay. There's no security issues that you should
25 be aware of?

1 A Each building has a security officer that's
2 assigned to it. So if there was something going on in that
3 building that day, they would be the person that would
4 handle it.

5 Q Okay. Do they report to you?

6 A Yes, they do.

7 Q Okay. And you received no -- you don't receive
8 reports of such assemblies?

9 A Usually not. If the principal's having an
10 assembly, a spirit assembly, anything like that, no, I would
11 not be.

12 Q I'm just speaking about Judge Ciavarella.

13 A No, I wouldn't be.

14 Q When there's an incident involving a student, prior
15 to law enforcement being called, again, you would contact a
16 school principal?

17 A Yes.

18 Q To make that determination whether law enforcement
19 should be involved?

20 A Yes.

21 Q Now, that -- that decision, how was that decision
22 made? Is it made in regard to the type of allegation or the
23 type of student, or how exactly is that determination made?

24 A Our policy, our Discipline Policy 218, has a little
25 flow chart at the end of it. And you -- it kind of leads

1 the person through it. It lists a number of incidents, and
2 then leads the principal and anyone else that's involved in
3 it through the steps that have -- you know, that have to be
4 or should be met.

5 Q Um-hum.

6 A And it's pretty much followed that way.

7 Q Okay. Any other decisions that are ever made that
8 fall outside of that guideline?

9 A As far as the discipline?

10 Q Correct, or contacting the law enforcement?

11 A Sure. I would say that if injury -- any type of
12 injury, any type of weapon, which would also fall in there,
13 but I would say the severity of an incident. But I think,
14 again, that would probably fall under 218 then.

15 Q Okay. I guess my next question would be we already
16 know that there are some incidents that should be reported
17 that aren't. And so are there any incidents that should not
18 be reported that are? In other words, is law enforcement
19 ever called in regard to incidents that should go to the
20 magistrate, but instead they end up in downtown juvenile
21 court?

22 A We call law enforcement -- I'll give you an
23 example. We had a student a few weeks ago who was
24 disruptive, became to the point where she was disruptive to
25 the point where she had to be constrained. We called the

1 Pennsylvania State Police. That occurred in the Career
2 Center. We called the Pennsylvania State Police.

3 They came. They dealt with her, but they handled
4 it on a mental health evaluation, and they brought her to
5 the hospital. She was evaluated, released. There were no
6 charges filed at that time.

7 So, you know, we do call them in situations like
8 that where, you know, it's more than we can handle.

9 Q Okay. In regard to your tier system, as I
10 understand it there is suspension from school for the first
11 tier from one to three days, three to five days, up to the
12 third tier, five to ten days.

13 Particularly in regard to the second and obviously
14 the third tier where police are involved, any of those
15 students that were suspended ever not adjudicated delinquent
16 after appearing in juvenile court?

17 A I don't get involved in the discipline end of --
18 normally our security ends at the time when they're turned
19 over to the principal, unless -- unless our security
20 officer's going to testify either as a witness or --

21 Q But you would be aware of all those students that
22 were suspended from the school?

23 A In a report form I would be, yes.

24 Q Correct, okay. And in regard to those kids going
25 to juvenile court, you would be aware of those kids as well?

1 A Yes.

2 Q And would you be made aware of the outcome in
3 regard to that adjudication?

4 A Most times we do. There are times we don't get a
5 report back from law enforcement. Sometimes it's difficult
6 to get a report back from law enforcement on the
7 adjudication of it.

8 Q Okay.

9 A But yes.

10 Q But in regard to the ones that you get back.

11 A Um-hum.

12 Q Any of them not adjudicated delinquent?

13 A Sure.

14 Q That had been suspended from your school?

15 A I would have to say yes.

16 Q Okay. When was it the first time that Judge
17 Ciavarella came and spoke to anyone in your school district?

18 A Like a date?

19 Q Do you have any idea how long it's been?

20 A Oh, my God, no.

21 Q Is it some time ago, quite some time ago?

22 A I would say probably ten years ago.

23 Q Okay. So it would have been about, you know, five
24 years after you were on board?

25 A Probably.

1 Q Okay.

2 A Yeah.

3 Q How did you come up to invite -- how did you come
4 up with the idea to invite him?

5 A He was the --

6 Q Or was --

7 A -- juvenile judge.

8 Q Okay.

9 A And we were dealing with students.

10 Q Um-hum.

11 A And felt it would be appropriate to have the person
12 who they deal with as students to talk to.

13 Q Okay.

14 A Answer questions.

15 Q Okay. So I guess he came the first time, and then
16 these other issues, other meetings with the faculty and with
17 the students, that sort of developed --

18 A Yes.

19 Q -- over time?

20 A Yes.

21 Q Okay. Thank you.

22 A You're welcome, sir.

23 BY MR. HOROHO:

24 Q The answer to -- to answer Mr. John's questions to
25 me about --

1 A Okay.

2 Q -- the statistics, do you have by chance your
3 school safety annual report for '08 or '09 in front of you?
4 If not, I can show it to you real quickly.

5 A Yes.

6 MR. HOROHO: Your Honor, may I approach the
7 witness?

8 CHAIRMAN CLELAND: Sure, sure.

9 BY MR. HOROHO:

10 Q The recap that I showed Mr. Johns was for '09,
11 okay. And I indicated to him that I thought that that
12 information was received from the school safety annual
13 report.

14 A Okay.

15 Q Now, this report was prepared by you?

16 A Yes.

17 Q Pretty much from the incident reports and so forth?

18 A Yes, yes.

19 Q So first column was enrollment, 10,265. That's
20 what it says on the top of your report?

21 A Okay.

22 Q Okay. And then number of incidences, 132, matches
23 up there, correct?

24 A Okay.

25 Q Offenders was 165. That came from your safety

1 report?

2 A Okay.

3 Q The LLE involvement, 38, that's in the top
4 right-hand column.

5 A Okay.

6 Q For total arrests was 57?

7 A Um-hum.

8 Q And the assignments to alternative education was
9 two?

10 A Um-hum.

11 Q Just to double check, we went back to '00 and '05.
12 I know Mr. Johns was a little concerned about the total
13 number of offenders that year. But that, again, was from
14 your statement to --

15 A Um-hum.

16 Q And this is a very detailed report?

17 A Yes, it is.

18 Q Okay. You indicated that your -- you don't think
19 the MOUs were as effective as, I think, some people think,
20 correct?

21 A I do.

22 Q And I know the people -- Department of Public
23 Education thinks they're very important. And you heard me
24 ask the question about the goal of the Commonwealth being a
25 safe environment for schools.

1 Your -- it sounds like you're one of those front
2 line guys that we should be asking the question based upon
3 what you've seen in your experience what would be -- do you
4 have any recommendations for us or the Department of
5 Education to make our -- to fulfill that third element of
6 the goal, which is the safe school environment?

7 A I --

8 Q Can you answer that?

9 A I think first it would -- it would be important to
10 talk to the people who are on the front line in looking at
11 what the issues are. And I have in the past sat on
12 Department Ed, a few of their committees dealing with school
13 violence and so forth.

14 I sat on one dealing with security officers, SROs,
15 and so forth. And some of the things are being addressed,
16 sir. The reporting system, in the beginning the reporting
17 system was a -- if you look in the very beginning, numbers
18 were huge. Numbers were high across the board because we
19 reported everything.

20 If there was any type of incident that we felt was
21 violent, what was violent? To me two students in a fight in
22 the hall and someone gets punched in the face, to me that's
23 violent, and that's what we were reporting. We were
24 reporting all of that.

25 Then they -- then they changed it. And they

1 changed the reporting system mid-year sometimes. And say,
2 okay, well, wait a minute. Now we don't want to know this.

3 The first report came out, and school boards were
4 looking at principals and everyone's saying what's going on?
5 I mean, how can we have this many incidents in a school?
6 You know, how? And then all of a sudden you notice that the
7 numbers went from here to here, you know, the following
8 year. Less and less were being reported.

9 And I think they're trying to correct that. I
10 think the Department of Education is trying to correct that.
11 They're trying to come up with a better way of reporting. I
12 think now this year we will not be putting reports in like
13 this. We will not be responsible for the PD-360 report.

14 They will -- they are going to take it off the PIM
15 system now. So they're going to be able to go in and take
16 what information they want from each school according to
17 what the principal actually documents into the system, the
18 disciplinary system.

19 So some of the things are being addressed. I heard
20 you mention about grants and money.

21 Q Um-hum.

22 A We applied for grants and have been turned down. I
23 mean, over the years that you said money was available,
24 grant money was available, they're competitive grants. And
25 I know because I filed the grant over the last couple -- we

1 have not received that grant in the last -- sometimes like
2 this last -- the grant was for two years. So if you don't
3 get it, you're out two years of it.

4 So a competitive grant, we went for it, but were
5 unsuccessful. So that's why that money that's out there --
6 I think they need to look at how the money's being spent
7 when you do get it. I think there needs to be an audit as
8 to where does the money go?

9 If you're going to be awarded \$200,000 and you're
10 going to place cameras in the building -- because cameras to
11 us are vital, they help us to watch what's going on
12 throughout our building where you couldn't cover it with
13 manpower. It would be impossible. They help us to
14 safeguard our schools from the outside element by allowing
15 us to have cameras outside.

16 But, you know, I've been on a number of times where
17 I went to other school districts, invited to do some
18 security audits and so forth, and I would see where the
19 cameras sit in a principal's office collecting dust. No
20 one's actually watching them. No one's monitoring them.
21 And I've made that recommendation. Well, why aren't we --
22 if you get \$200,000 and you're going to buy cameras, are
23 they being used appropriately? If not, give the money to
24 someone who's willing to use it appropriately.

25 Q How effective do you think the alternative

1 education programs are, and what's your experience been with
2 them?

3 A I don't. I don't think they are effective in all
4 -- you know, and I can't talk about the whole state. I can
5 only talk about what I see.

6 Q Of course.

7 A I don't. I think alternative ed. programs are
8 missing the boat.

9 Q Why is that?

10 A I just don't think they're a good idea. They're
11 meant to keep students that are maybe having trouble in the
12 normal education process go to there. But what I see is
13 their standards are less than ours at the school. You know,
14 so if we hold our students to a standard, and you're not
15 following our standards and now you go to an alternative
16 ed., should your standards not be a little bit higher, like
17 attendance, like tardiness, like lates? Should your day be
18 less hours than a regular student?

19 I -- that frustrates me a little bit, you know.
20 And I see that. And, I mean, I see students in our twilight
21 program who go three hours a night, you know, but yet our
22 regular students are in school for, you know, the full day.
23 And our students have to be there at a certain time, you
24 know. And if you're late, then there's a discipline for it.
25 That's where I think it falls off.

1 MR. HOROHO: Thank you, Mr. Zola.

2 CHAIRMAN CLELAND: Judge Uhler.

3 BY JUDGE UHLER:

4 Q In the hearing that you attended you indicated
5 there was three youth that were the accused, if you will?

6 A Yes.

7 Q One was probably involved with the ax, and the
8 other with the graffiti. Was there only one defense counsel
9 for them?

10 A I did remember one, sir.

11 Q None others?

12 A No.

13 Q Would you be able to identify -- provide and
14 identify to our counsel as to who these youth are so we can
15 track down that transcript?

16 A Sure, sure.

17 Q The bullying program that you've referenced, is
18 that a one-time program that you developed the video, or do
19 you have an ongoing bully prevention program within the --
20 within the school district?

21 A We do. We have an ongoing program and have had it
22 for a number of years. Basically what we do is we target
23 the fourth grade level. And our security officers, each
24 security officer in that building, is devoted to doing this
25 program.

1 So they go in, and they do the fourth grade. And
2 our thought was hopefully the fourth graders move to fifth
3 grade and so forth, you know, the program, what they're
4 taught, will stick with them. They also will do any spot
5 training we call it.

6 If a teacher is having problems within the sixth
7 grade with a group of students or disrespectful and
8 bullying, we will go in and do a -- do the program for them.

9 Q Do you have any form of mediation programming
10 within the school districts or any other peer courts or
11 communication aid panels as a referral source for any of
12 these issues?

13 A Sir, over 15 years we had a peer mediation group
14 that lasted maybe five years where we bought -- brought Dr.
15 Travascus, I think his name is, out of Temple University
16 came in and did an excellent job.

17 I mean, we had -- we had a top notch peer
18 mediation, and it worked for years. Again, everything
19 changes in school districts. Administration's change, and
20 programs that aren't mine don't get carried on. And so now
21 we don't have a peer mediation program.

22 We do have in-school suspension programs. So if a
23 student is involved in something, and they don't just boot
24 them out, they go to in-school suspension. We have
25 detentions, like a Saturday detention. So that the student

1 doesn't have to miss school on a regular basis. They go to
2 detention on Saturday.

3 And we have Serento Gardens, which is a local drug
4 and alcohol organization that does counseling for us,
5 smoking -- smoker's education.

6 For a while there any student that was caught with
7 tobacco had to attend the Serento Gardens program. And it
8 was funded by the district and wasn't as successful as we
9 had hoped. But we are currently -- our new bullying policy
10 is looking at a program, such as Ovase. Just hard to get
11 off the ground.

12 I mean, you know, there's a big cost to it.
13 There's a big commitment to it because you have to -- during
14 the training you have to have substitutes for the teachers
15 that are out in the training and all. But that's our drive.
16 That's our goal. That's where we want to go.

17 JUDGE UHLER: Thank you. Thank you for being here.

18 CHAIRMAN CLELAND: Mr. Zola --

19 JUDGE WOODRUFF: Your Honor, I have one other
20 thing.

21 THE WITNESS: Yes, sir.

22 JUDGE WOODRUFF: All of the documents that were
23 identified as the safe school reports, as well as the
24 memorandum of understanding, I'd like to offer into
25 evidence.

1 MR. LEGG: Mr. Chairman.

2 CHAIRMAN CLELAND: Mr. Williams, go ahead.

3 BY MR. WILLIAMS:

4 Q Mr. Zola, who is the school psychologist for
5 Hazleton Area?

6 A We have a number of them, sir. The -- Mr. Manfredy
7 is in charge of our Special Education Department, and school
8 psychologists work through his department. I don't know
9 them personally.

10 Q Mr. Manfredy hires them for the school district?

11 A Exactly, yes.

12 Q And alternative education, have you looked at other
13 school districts to see what they're doing? Because I
14 disagree with you. I think this area a very good one.

15 A And I said that. And that wouldn't be my role. I
16 wouldn't have any role in that.

17 Q I recommend that you take a look at it.

18 A I will. I will.

19 CHAIRMAN CLELAND: Mr. Legg.

20 BY MR. LEGG:

21 Q Thank you Mr. Chairman. Mr. Zola?

22 A Yes, sir.

23 Q There's been a suggestion during these proceedings
24 by certainly witnesses that the school districts utilized
25 Judge Ciavarella to get rid of problem kids. And you've

1 been a chief -- I guess the chief security officer for the
2 Hazleton School District for about 15 years?

3 A Yes.

4 Q So you predated Judge Ciavarella. Is that your
5 perception?

6 A No.

7 Q You identified only five incidents where Hazleton
8 actually sent individuals to adjudication proceedings, but I
9 imagine there were more than that?

10 A I'm sure.

11 Q In your experience there was no concerted policy by
12 your office or anyone in Hazleton to use the court system to
13 get rid of these kids that you were having problems with?

14 A That's so frustrating, sir, to hear that. Because
15 I heard someone mention that at one of these hearings, it
16 was in the newspaper, one of our board members.

17 My background is law enforcement, so I do look at
18 things differently than educators. And Mr. John and I --
19 and he's a board member now, and it's going to be very
20 interesting because he and I have had, you know, some go
21 rounds over the years over things.

22 And -- but one of the things our district has
23 always been very up front with and a lot of reasons --
24 because the board is very strict about it. Mrs. Curry, Dr.
25 Childs, these are board members who have repeatedly and are

1 the watch dogs for the students.

2 I mean, they -- they want to know what are we
3 doing? Are we -- are we doing what's right for the student
4 first? How much -- they watch all of that. And I hear it.
5 I hear it at Committee meetings.

6 I -- I mean, I know for a fact that our security
7 budget has been cut over the years simply because, you know,
8 of the -- of the look of, well, we don't want to make, you
9 know, the district look like it's, you know, a police state
10 or something like that.

11 So, you know, our administration over the years has
12 safeguarded the students in our district. There's no -- no
13 doubt in my mind about it. They have -- they have watched
14 what goes on. They want answers to what we're doing. And
15 to be honest with you, I think it's a great blend.

16 CHAIRMAN CLELAND: I think the question --

17 THE WITNESS: Did I not answer it?

18 CHAIRMAN CLELAND: -- was is there a policy spoken,
19 unspoken, or understood, that the juvenile court should be
20 used as an adjunct to your discipline process?

21 THE WITNESS: No. Never heard that, never -- no.

22 CHAIRMAN CLELAND: Okay.

23 BY MR. LEGG:

24 Q Did you have any interaction with other school
25 district's security officers?

1 A Sure.

2 Q Were they adopting that type of approach, to use
3 the juvenile system as an adjunct discipline?

4 A No. I mean, not many -- there's no real -- in
5 school districts, and maybe this goes back to your question,
6 there is no real -- a lot of school districts use people
7 differently, utilize people, you know, like school police
8 officers or SROs. And there's a difference between an SRO
9 and a school police officer, and not many people know that.

10 They don't know the difference between a security
11 officer. They think a security officer is a police officer,
12 and they're not. Their role as a security officer is
13 basically to provide a safe haven at the schools, you know.
14 So I have never seen that. And I've been to many school
15 districts, you know, over time in school districts, and I
16 have not seen that.

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

18 CHAIRMAN CLELAND: Thank you, very much, Mr. Zola.

19 THE WITNESS: This information, sir?

20 MR. WOODRUFF: I'll take that.

21 THE WITNESS: Okay. I don't remember if this was
22 part of yours or -- I'm going to say it was, and I'm going
23 to put it with this pack. Are you interested in a copy of
24 the tape that we made?

25 MR. WOODRUFF: Yes.

1 CHAIRMAN CLELAND: Mr. Lehman.

2

3 MICHAEL LEHMAN, called as a witness, being duly
4 sworn, testified as follows:

5

6 CHAIRMAN CLELAND: I want to make sure we got your
7 right name card there. Mr. Lehman, as you've discovered
8 sitting here, we turn the questioning over to one or more of
9 the members. And Judge Woodruff has been assigned to you.
10 Good ahead, Judge Woodruff.

11 BY JUDGE WOODRUFF:

12 Q Good morning.

13 A Good morning.

14 Q Mr. Lehman, first of all, if you could just give me
15 a little history of your background, and particularly how
16 long you've been involved with the school district?

17 A My name is Mike Lehman. I've been involved with
18 the school district for a half a semester. I was there a
19 short period of time. I worked for the Edwardsville Police
20 Department for the last approximately 15 years.

21 I'm a resident of the Hazleton Area School
22 District. And when the position came available I thought it
23 would be interesting and applied for it, and I was offered
24 it, and I accepted it.

25 Q Okay. So you were SRO for a half a semester?

1 A I was there for a school year, but I got hired in
2 December.

3 Q What year?

4 A Of 2007.

5 Q And then you left there?

6 A Yes. I left there for full-time officer for the
7 Edwardsville Police Department.

8 Q That was sometime in 2008?

9 A Yes.

10 Q Middle of 2008?

11 A January.

12 Q So you were there from December of '07 to January
13 of '08?

14 A Yes.

15 Q So you were there a couple --

16 A I was there for --

17 Q A couple months?

18 A -- a couple months.

19 Q During the time that you were there for those
20 couple months were there occasions where juveniles were
21 charged -- charges were filed against juveniles?

22 A Yes.

23 Q Okay. About how many students?

24 A I'm going to say less than five.

25 Q Okay. And what was your role in regard to that?

1 A When there was an incident that took place at the
2 school, the school has a policy that they follow. If police
3 are deemed to be notified, they would notify me. I would go
4 to that school and investigate the seriousness of the crime.
5 And if an arrest was to be made, an arrest was made.

6 Q Okay. Okay. Were you only notified when the
7 school -- it was determined by the school that these charges
8 should be filed? Are you the one that actually contacted
9 the local law enforcement?

10 A No, if charges should be filed. The seriousness of
11 it, they would decide whether I was needed. I would be the
12 sole person to decide if charges were filed or not.

13 Q Would you be the person to contact law enforcement?

14 A No. I am the law enforcement there. I was the
15 school police officer. I was notified through
16 administration, principal or security director.

17 Q Okay. And would you confer at all with the
18 Assistant District Attorneys?

19 A Yes.

20 Q Okay. And in regard to these five students, did
21 you confer with each of those, or would you make independent
22 determinations?

23 A I made pretty much independent determinations on my
24 discretion if charges should be filed or not or throughout
25 an investigation.

1 Q Okay. Outside of these five students were you
2 involved with any other students?

3 A I was involved with some other incidents, but
4 nothing that deemed to be charges filed against.

5 Q Okay. Were there ever any students that were sent
6 to you that you felt were not -- did not rise to being
7 involved with juvenile court?

8 A Yes.

9 Q Where you sent it back?

10 A Yes.

11 Q How often did that occur?

12 A A handful. I don't know the exact number, a
13 handful.

14 Q Okay. What type of allegations were made with
15 regard to those handful?

16 A It would be anywhere from simple fight or smoking
17 in the school, yelling at school teachers or administration,
18 stuff like that.

19 Q Okay. In regard to the five that you indicated
20 were sent down to juvenile court, were you involved with
21 those? Did you ever attend court at all?

22 A Yes.

23 Q Juvenile court? Okay. In regard to these five,
24 were you there all five -- on all five occasions?

25 A Yes.

1 Q Okay. And you would have did the initial
2 investigation?

3 A Yes.

4 Q Okay. In regard to these five, were they always
5 represented by an attorney?

6 A I don't know. But when you're in a court -- when
7 they call their family up there, there's a group of people
8 there, mothers, fathers. I would believe they were, but I
9 don't know. 95 percent of mine were just guilty pleas.

10 Q Okay. Are you aware if any of the students ever
11 waived the right to counsel?

12 A No, I'm not aware of it. I mean, they could have.
13 I mean, I don't know.

14 Q Was there always an ADA there, Assistant District
15 Attorney?

16 A Yes, yes.

17 Q Okay. But you're not aware if each juvenile had an
18 attorney representing them?

19 A No, I'm not aware of that.

20 Q Did you have to testify in each of the five
21 hearings?

22 A No.

23 Q So some of them there was a guilty plea?

24 A Yeah. Most of them were guilty pleas.

25 Q Were all of them before Judge Ciavarella?

1 A Yes.

2 Q During the time that you were in court during those
3 five occasions was there a recommendation provided by
4 probation?

5 A I'm not aware if there was or not prior to us --
6 before the hearing. I have no idea.

7 Q Okay. After there was an adjudication, or after
8 they indicated they pled guilty, was there a recommendation
9 as to disposition by Probation Department?

10 A I don't believe so.

11 Q Okay. Did Judge Ciavarella issue a disposition at
12 that time without a recommendation?

13 A I'm not sure. We present the case. If the child
14 pled guilty, he made a decision if he should be probation,
15 detention, or just let go.

16 Q Okay. Did anyone else speak at this time, or was
17 it just the judge?

18 A Just the judge and the Defendant.

19 JUDGE WOODRUFF: Thank you.

20 CHAIRMAN CLELAND: Okay. Any follow-up questions?

21 MR. HOROHO: No, Your Honor.

22 CHAIRMAN CLELAND: Okay. Mr. Lehman, thank you,
23 very much.

24 THE WITNESS: Thank you. Have a great day.

25 CHAIRMAN CLELAND: We'll be in recess until --

1 we'll take 15 minutes until 11:15, and then we will
2 reconvene.

3 (Recess taken from 11:00 to 11:15.)

4 CHAIRMAN CLELAND: Mr. Killino, good morning.

5 THE WITNESS: Good morning.

6

7 TOM KILLINO, called as a witness, being duly sworn,
8 testified as follows:

9

10 THE WITNESS: I do.

11 CHAIRMAN CLELAND: Have a seat, please.

12 THE WITNESS: Thank you.

13 CHAIRMAN CLELAND: Mr. Killino, our procedure has
14 been to have you questioned by members of the Commission,
15 and we delegate those. So I'm not sure if Mr. -- Mr.
16 Listenbee.

17 BY MR. LISTENBEE:

18 Q Yes, Your Honor. Good morning, Mr. Killino.

19 A Good morning.

20 Q Mr. Killino, many of us have questions about what
21 was actually transpiring in the courtrooms where Judge
22 Ciavarella was -- was presiding.

23 A Yes.

24 Q And so we have a lot of questions concerning that.
25 We also have questions concerning about whether given your

1 experience in that courtroom you have any recommendations to
2 this Commission regarding the practices and whether they
3 ought to be altered or changed in any way whatsoever.

4 So the first series of questions actually focus on
5 what was -- fully focus in the courtroom. But before we get
6 there we'd like to get a little bit of background from you.

7 A Sure.

8 Q When did you become a District Attorney, sir?

9 A 2004.

10 Q 2004?

11 A Yes.

12 Q And what was your experience prior to becoming an
13 Assistant District Attorney?

14 A I had some private civil experience. I did about
15 two or three years in family law. I did a lot of custody
16 work, divorce work. I did private civil litigation,
17 personal injury, both plaintiff's work and defense work.
18 Some workers' compensation, things of that nature.

19 Q What made you decide to come to work for the
20 District Attorney's Office?

21 A I was looking for some trial experience. I didn't
22 feel that I was getting as much courtroom experience with
23 some of the private civil matters in terms of insurance
24 defense work and plaintiff's work that I would have hoped.
25 And I was looking to expand my career into the courtroom.

1 Q Once you joined the District Attorney's Office what
2 kinds of activities were you involved in terms of practicing
3 there?

4 A Well, initially it was just a situation where I had
5 come in in the summer. It was in the middle of the year,
6 and there wasn't a lot of activity taking place at that
7 time. But the common practice there was to shadow your
8 peers and to learn the different, I guess would you say,
9 procedures of how to handle things, whether it was from a
10 guilty plea, sentencing, different types of proceedings,
11 from protection from abuse, summary appeals, things of that
12 nature.

13 Q Okay. Were those in adult court or in juvenile
14 court?

15 A Those were in adult court.

16 Q How long were you in the office before you were
17 assigned to juvenile court?

18 A Well, what happened was during my initial coming to
19 the office in that summer one of the things I had the
20 opportunity to observe and see how it functioned was
21 juvenile court with one of my peers. So that kind of just
22 happened as part of the rotation of shadowing my peers to
23 get a sense of how to be a prosecutor and how it worked
24 basically.

25 Q Which attorneys were you shadowing at that time?

1 A At that time it was a gentleman by the name of Mr.
2 Jerry Novakoski.

3 Q Um-hum.

4 A Please don't ask me to spell his last name.

5 Q No. We'll go with the phonetic spelling. Once you
6 were -- when were you actually assigned to juvenile court,
7 if you recall?

8 A Well, as best as I can recall as part of a regular
9 routine would be going into, I believe, January of 2005. I
10 had been there a handful of times back and forth through
11 2004, and there was gaps in time when I hadn't been there.
12 But on a more consistent basis it was in 2005 with Mr.
13 Novakoski.

14 Q Can you tell us what procedure was used to make the
15 selection that sent you into juvenile court?

16 A Honestly I don't know other than the fact that I
17 know my superiors had been aware that I was there
18 sporadically with Mr. Novakoski. And Mr. Novakoski was
19 being moved to handle some other more serious matters in
20 terms of homicides and other things, and they needed the
21 help.

22 Because prior to that in going to juvenile court
23 throughout the summer time and into the fall I had raised a
24 concern with my superiors that I felt that I -- one person
25 could not be alone in there and handle the case load because

1 I felt that the climate was such that it was very fast
2 paced.

3 And granted that I was a newcomer, maybe that was
4 something because I was a newcomer, or maybe it was
5 something that needed more manpower.

6 Q What kind of case loads were you experiencing
7 there?

8 A To the best I can recall initially I remember
9 seeing case loads anywhere from as many -- maybe as short as
10 20 up to maybe 30, 35 at that period of time.

11 Q Is that per day?

12 A That would be for when they would set the regular
13 hearing day.

14 Q Um-hum.

15 A Which I believe at that time was about once a week.

16 Q And so 20 to 35 cases that one day a week?

17 A Yes.

18 Q And on that day how many of those cases would be
19 listed as adjudicatory hearings on those days?

20 A Well, I would say probably looking at it -- I'm
21 trying to remember, because there were cases listed for
22 hearings, and there were cases also listed for what they
23 considered placement reviews. I mean, you would probably
24 see something in the neighborhood of that 20 or more in the
25 hearing range depending on the size of the list, the time of

1 year, how many petitions got filed, that type of thing.

2 Q At the time that you were assigned to juvenile
3 court were you given any special training for it?

4 A No. Just a matter of shadowing my peers and
5 relying on what I observed in the courtroom.

6 Q Okay. Were you given any special training at all
7 when you went to the prosecutor's office in terms of what
8 kinds of standards governed the behavior?

9 A In terms of juvenile court?

10 Q No, just in terms of being a prosecutor?

11 A Other than, I believe, about six months after I was
12 there attending the basic prosecutor's course. I couldn't
13 say there was anything that specifically tied into juvenile
14 court.

15 Q Where was that basic prosecutor's course?

16 A I believe it was in Hershey.

17 Q In Hershey?

18 A Yes.

19 Q How long was it?

20 A I believe it was two days.

21 Q Two days?

22 A Two, maybe three. I want to say it was two days.
23 I could be wrong.

24 Q But to the best of your recollection there was no
25 special emphasis on juvenile court, training for dealing

1 with juvenile court?

2 A Not that I recall specifically, no.

3 Q At the time that you were assigned was juvenile
4 court considered a high priority in the prosecutor's office,
5 or was it on par, for example, with homicide cases or
6 different?

7 A It -- from my perspective it didn't seem that it
8 would be on par with say a homicide matter.

9 Q What was it on par with? I mean, what was the
10 perception of juvenile court? Was it kiddie court,
11 something that you did when you were brand new in the
12 office, was assigned to newer lawyers in the office, or how
13 was it perceived?

14 A I couldn't tell you how the assigning was going
15 prior to me getting there, but it just -- it certainly
16 didn't appear to be No. 1 on the list of things going on to
17 be very honest with you.

18 Q Um-hum. Were you -- I mean, was it -- was the
19 compensation for being in juvenile court the same as it was
20 for being in the other trial rotations?

21 A Yes.

22 Q For example, in the felonies?

23 A Yes.

24 Q It was?

25 A Yes.

1 Q Were lawyers who were in juvenile court given the
2 same status as those who were trying jury trials?

3 A Yes. There were no different gradings that I was
4 ever aware of.

5 Q Okay. When you first arrived in juvenile court who
6 was the judge presiding at that time?

7 A That would be Ciavarella.

8 Q Ciavarella. Any other judges appearing at that
9 time?

10 A Intermittently. I think there were judges that
11 would, quote, pinch hit from time to time, but I couldn't
12 remember per se who exactly came when and where.

13 Q When you were in the courtroom who was responsible
14 for the charging at that time?

15 A I'm not sure what you mean.

16 Q The charging function within the juvenile court,
17 was it the probation officers, or were you responsible for
18 it?

19 A At the time the -- we would get the petitions the
20 charges were already filed.

21 Q So probation was responsible for that?

22 A I can only assume. I don't know who -- I mean, I
23 know the officers filed the charges, and that's -- that's
24 the direction they would travel.

25 Q Once you received the charging documents what were

1 your responsibilities?

2 A To review it, make sure that I had the evidence and
3 the witnesses lined up, and be ready to proceed for a
4 hearing.

5 Q Did you ever reduce the charges or alter them in
6 any way?

7 A Only if it was a situation where -- we were guided
8 by the principles that there must always be a plea to the
9 highest charge unless there was permission from the District
10 Attorney or the first assistant.

11 However, at the same time if the police prosecutor
12 and/or the victim, depending upon at applicability of the
13 situation, had some input and wanted such a reduction, that
14 was also a consideration. And that was the normal chain of
15 command in how that would work.

16 Q Can you explain how that policy worked? You said
17 the requirement, according to your office, was that there
18 had to be a plea to the highest charge?

19 A Yes.

20 Q Unless you received direction from the District
21 Attorney himself or herself?

22 A Right.

23 Q And/or the First Assistant District Attorney; is
24 that correct?

25 A That's correct.

1 Q How did that operate? I mean, on a daily basis you
2 have 20 to 35 cases. You're in the courtroom. You reviewed
3 -- did you receive the paperwork before you went to court,
4 or did you receive it before you got to court?

5 A Depending on when I knew I would be assigned on any
6 given day, you try to get it in advance to review to make
7 sure you had witnesses and victims lined up to prepare for
8 hearings.

9 Because to be very frank, it didn't seem like a lot
10 of times that it was being taken seriously by some of the
11 personnel involved. And it was difficult to get people
12 lined up to say there's a hearing on this day, and you need
13 to be there. And you would seem to get a bevy of excuses
14 depending on who you were talking to.

15 Q You say personnel involved, which people are you
16 referring to?

17 A Speaking with either certain police officers or
18 certain victims or witnesses.

19 Q So they weren't taking it very seriously?

20 A I didn't think so at a certain time because
21 sometimes, you know, I would get the feedback that if it was
22 a day off or their department or whomever was concerned
23 about overtime because they weren't normally scheduled in
24 that shift to show up for court, or a lot of times victims
25 or witnesses would say, you know, they didn't want to be

1 bothered, or they were going on a vacation or whatever the
2 case was.

3 Q When did you get the paperwork, again, prior to
4 going to court on average?

5 A It would depend. Hopefully we would get it at
6 least a few days in advance, maybe as much as a week. But
7 it would just depend if it was assigned to me or if it was
8 being assigned to another Assistant DA. Or sometimes if
9 things, you know, were running tight with scheduling if, you
10 know, an Assistant DA would ask me to cover for them or vice
11 versa if other things had come up.

12 Q Now, again, back to the charging function -- or
13 back to the pleas. You were told that if, for example, a
14 case came in, the lead charge was aggravated assault, this
15 was an assault occurring in schools, for example, and you
16 know, the Defendant might want to plead to simple assault
17 that you couldn't actually make that decision in the
18 courtroom? That would have to be made by a first assistant
19 prosecutor or by the prosecutor himself?

20 A Unless, of course, we were always told if there was
21 a good reason. Meaning that if the victim and the police
22 prosecutor would want that reduced, then that was
23 acceptable.

24 Q So you actually had some discretion as long as the
25 victim or the police officer told you?

1 A As long as there was sufficient input, and it was
2 validated, and it could be brought to the superior's
3 attention that that was the case, then yes.

4 Q Did your office have any policies regarding
5 diversions? For example, did you have any diversion
6 programs, like youth aid panels, available to you so that
7 you could direct cases towards those programs?

8 A None that I'm aware of.

9 Q Were you aware of any diversion programs by the
10 probation office?

11 A We didn't -- I didn't do any work with probation
12 with whatever their programs were. So I couldn't tell you
13 what their programs were in that respect.

14 Q So all the cases where charges were actually filed
15 came directly into court, and you were responsible for
16 dealing with them? Is that fair to say?

17 A Well, it's fair to say that if there was a hearing
18 or if there was witnesses that needed to be called or
19 something that needed to be presented, that was how they
20 were dealt with. But diversionary programs, I'm just not
21 following.

22 Q For example, were there any special programs for
23 retail thefts, you can send to retail theft school? Or any
24 special programs for DUIs, driving while intoxicated?

25 A Specific to charges, not that I'm aware of.

1 Q Okay. You know the Juvenile Act authorizes
2 informal adjustments by the Probation Department where the
3 Probation Department can divert cases out of the system and
4 have various kinds of programs, prevention programs, for
5 example, set up. Were you aware of any informal adjustments
6 by the Probation Department itself?

7 A I had no involvement with that at all.

8 Q So every case that you're aware of came through the
9 charging and into the court for the judge?

10 A That was my understanding when they were there,
11 yes.

12 Q Did the DA's Office have any policies that
13 indicated that you were opposed to informal adjustments?

14 A Again, none that I was aware of. I really never
15 dealt with anything in the wake of informal adjustments that
16 I could recall.

17 Q Okay. Okay. What about consent decrees?
18 Prosecutors are in charge of consent decrees under the
19 Juvenile Act. Did you have authority to use consent decrees
20 in the courtroom?

21 A Again, if there was a situation where the victim
22 and the police prosecutor were comfortable with that type of
23 resolution and the court would accept it, then yes.

24 Q Let's analyze that statement you just made a little
25 more in depth. The police prosecutor, can you explain what

1 that means?

2 A Well, the police officer who filed the charges who
3 would be the affiant on the petition who would be present in
4 court as one of the witnesses.

5 Q Would that person be the person actually
6 prosecuting the case, or was that just a term describing
7 that person?

8 A That would be describing the affiant who filed the
9 charges and who would be a witness if need be during a
10 hearing.

11 Q Okay. You've indicated that if you wanted to
12 actually use a consent decree, you had to get the permission
13 of the judge; is that correct?

14 A Yes. It would have to be, first and foremost, the
15 affiant and the victim.

16 Q Can you give me an example of kinds of cases where
17 you actually used consent decrees?

18 A I don't know of any specifically off the top of my
19 head, but it could be -- for example, I'll use one of your
20 examples. Like if it was a retail theft and, you know, if
21 the victim felt that, you know, they were okay with that
22 type of resolution, and the officer was okay with it, it
23 would be presented in that manner to the court. And if the
24 court accepted it, that would be the outcome of it.

25 Q Okay. On an average week, 20 to 35 cases, how

1 often did you use consent decrees?

2 A You know, it kind of went in peaks and valleys.
3 Sometimes you could see a handful in a day, and sometimes
4 you could not see any for a while. It would just vary.

5 Q Did you keep statistics on consent decrees?

6 A No.

7 Q Did you keep any records at all on the kinds of
8 dispositions that occurred in juvenile court?

9 A No.

10 Q Did you all maintain a file system that allowed you
11 to go back and review those cases and make some
12 determinations on what had actually happened over a period
13 of time?

14 A No, not that I'm aware.

15 Q Did you ever review any of these cases that were
16 happening in court with the first assistant prosecutor or
17 with the District Attorney?

18 A It would depend if there was an issue that came up
19 that I may have had a question on, or if we had gotten a
20 call about something, whatever it may be, alerting our
21 attention to whatever the case was. I couldn't sit here and
22 recite a specific example to you.

23 Q Do you have any -- do you recall of any examples
24 where you had discussions with your supervisors about
25 specific cases?

1 A Off the top of my head it's tough to say. I know
2 that if there was ever a situation where occasionally
3 emotions would be tough in the courtroom and sometimes you
4 would see victims on one side and juveniles and whoever
5 their witnesses are are on another side.

6 Things could get heated. Sometimes there could be
7 some pushing and shoving or things of that nature or some
8 outbursts. If it was something like that, I would certainly
9 bring it to their attention just to let them know that this
10 is what had occurred.

11 Q Can you give us some indication as to how many
12 times you were actually in the courtroom? I mean, over a
13 period of years, how many years, how many times were you
14 actually assigned to the courtroom?

15 A I mean, I was part of a rotation over my period of
16 time from 2005, probably for about three years. I don't
17 know that I recall exactly how often I was in the courtroom.
18 I can tell you that there was a lot of organization and
19 preparation to get things ready to proceed for a hearing,
20 whether it was calling witnesses, victims, making sure
21 evidence was available.

22 I mean, in as much as I was there I could be there
23 several weeks in a row. There was times when I wasn't there
24 for several weeks in a row or even longer depending on if
25 other assignments or duties took me away from it.

1 Q So you were there quite a bit?

2 A Depending.

3 Q And, again, to the best of your recollection you
4 don't recall any specific instances where you actually had
5 discussions with your supervisors about specific cases in
6 the courtroom?

7 A No, I'm not saying that. I'm saying if something
8 -- if there was a question on a charge, if there was an
9 issue like I just indicated, if there was an outburst or
10 something, those would be the most common times I could
11 recall. But I can't sit here and recall any specific times
12 off the top of my head.

13 Q Mr. Killino, can you tell me who was present in the
14 courtroom on an average day?

15 A In terms of everyone?

16 Q Yeah.

17 A There was certainly the judge. There was certainly
18 defense attorneys, public defenders, Assistant District
19 Attorneys, myself, and perhaps other Assistant District
20 Attorneys assigned to certain special cases at times.
21 Victims, witnesses, victim/witness coordinators. If there
22 was interns, I couldn't, you know, recall specifically if
23 that was the case.

24 Q On an average day how many Assistant District
25 Attorneys were present in the courtroom?

1 A It would depend on the case load. Certainly one of
2 the things I had lobbied for early on was that I thought we
3 needed at least two because of the quickness of the
4 environment and the case load. That didn't appear to be
5 feasible from a manpower perspective. But when it could
6 happen, it was preferred to happen in tandem from my
7 perspective.

8 But there was also individuals who would handle
9 what I would deem special cases. For example, sex offenses,
10 a rape, a sexual assault, an arson case. Those were cases
11 that were handled by ADAs who had had them from the
12 beginning and would see them through irrespective of what
13 branch of court they were going to, whether it was adult
14 court or juvenile court.

15 Q Let's look at rape cases. Were there many of them
16 tried?

17 A I couldn't tell you off the top of my head what the
18 statistics were of what was tried and what wasn't tried.

19 Q Did you personally try any of them?

20 A Not that I can recall, no.

21 Q Did you handle many?

22 A No. The only time that would have occurred is if,
23 for example, a colleague at the last minute would have
24 indicated that they'd had an agreement worked out. And if
25 it was going to be a plea or something of that nature, and

1 they would need it to be covered, that's the only instances
2 I could recall, and for how little that may have occurred.

3 Q How were rape cases and sex assault cases actually
4 assigned? Was that just random depending upon who got them
5 in the courtroom?

6 A My understanding was that there was certain people
7 delegated to handle those types of offenses, and those were
8 the people that would see them to fruition. Again,
9 irrespective of what branch of the court they fell into.

10 Q What about arsons? Can you tell us how they were
11 assigned?

12 A In the same manner is my understanding.

13 Q Did you handle any arson cases yourself?

14 A Again, only if it was a situation where last minute
15 the person who couldn't be there would -- and, again, if it
16 was a situation where they were aware that there was some
17 sort of plea being worked out.

18 Q Were there any other types of cases to the best of
19 your knowledge that were special types of cases requiring
20 special assignments?

21 A Not off the top of my head that I can recall.
22 Those stand out.

23 Q Did most of the special cases end up as pleas?

24 A I don't know the statistics on them to be very
25 honest with you.

1 Q You've indicated that there were private attorneys
2 present in the courtroom?

3 A There would be, yes.

4 Q On your regular court day approximately how many
5 private attorneys would you find there?

6 A You know, it would depend on the list. I mean, you
7 could see as many as, you know, five, six, seven, or you
8 could see as little as one or two. It would just depend.

9 Q Were those private attorneys court-appointed
10 conflict counsel, or were they privately retained to the
11 best of your knowledge?

12 A It would be a smattering of all of the above that
13 you just mentioned.

14 Q Were there any private attorneys that regularly
15 appeared? Not by name, but just a number that you can
16 recall?

17 A You could see some of them on a fairly routine
18 basis in there.

19 Q What about conflict counsel? How many of them
20 regularly appeared in court in addition to private
21 attorneys?

22 A You know, again, it would depend. You wouldn't see
23 that an awful lot. Obviously that would be a situation if
24 the public defender had a conflict with whatever client or
25 case or whatever the situation was. I would say probably

1 less so than some of the others.

2 Q Well, according to statistics that we've been
3 provided, approximately 54 percent of the cases during this
4 period were actually cases where counsel was not appointed
5 or counsel did not appear on behalf of the youth who
6 appeared in the courtroom. Is that pretty consistent with
7 your assessment of what was going on?

8 A I mean --

9 Q Half of the cases were without counsel?

10 A I mean, in as much as I was there I would say that
11 as much as you saw lawyers, you didn't see lawyers.

12 Q So half of them would be fair to say?

13 A It appeared, yeah -- again, it would go in cycles.

14 Q For those cases where there was not counsel
15 present, many of the youth waived their right to counsel.
16 Were you present during the procedures where youth were
17 waiving the right to counsel?

18 A Generally, no.

19 Q Where did that happen?

20 A I don't know.

21 Q Did it happen inside the courtroom?

22 A The only thing I can recall happening inside the
23 courtroom was that if someone forgot to sign a form prior to
24 approaching for a hearing, and it was indicated that there
25 was a waiver.

1 Q Did you ever look at the form itself?

2 A No, never.

3 Q Were you aware whether the forms were present in
4 the courtroom or present outside the courtroom?

5 A I don't know. I -- it was no one specifically
6 telling us about forms.

7 Q Do you know whether it was the Probation Department
8 that was handling the waiver of counsel or whether it was
9 counsel appointed for the waiver process? How was that --
10 to your knowledge how was that handled?

11 A I don't know to be honest with you. I know there
12 was an accepted practice in place with the waivers. That
13 was something that the court accepted and utilized. But in
14 terms of who actually was generating and providing, I
15 couldn't tell you.

16 Q Does the prosecutor have any responsibility in the
17 waiver process to ensure that the rights are properly waived
18 in accordance with constitutional mandates to the best of
19 your knowledge?

20 A To the best of my knowledge I believe that there
21 are the basic guiding premises that any lawyer would have in
22 handling any proceedings. As far as the waiver process was
23 concerned, that was the accepted process through the court,
24 that was court was apparently satisfied with accepting. And
25 based on my knowledge and my time in handling these matters

1 and in observing my colleagues and anyone else who would
2 handle it in the DA's Office, that appeared to be the
3 accepted manner in which it proceeded. And that was the
4 manner in which everyone proceeded to the best of my
5 knowledge.

6 Q Did you -- were you present when anyone ever
7 challenged the waiver process at all?

8 A I don't -- I'm not sure what you mean by challenge.

9 Q Were you present when any lawyers or other parties,
10 the children themselves or their parents, challenged the
11 process of waiving the right to counsel in the courtroom?

12 A I don't recall any specific instances of hearing
13 anyone challenging per se the waiver process.

14 Q Do you know whether anyone in the District
15 Attorney's Office ever evaluated the waiver form and
16 determined whether it was constitutionally sufficient?

17 A I'm not aware of any.

18 Q There were public defenders who were present in the
19 courtroom. Were they present at all times or just for a
20 specific number of cases or limited number?

21 A It would depend. Sometimes they were in there the
22 entire time depending on what their case load was, and
23 sometimes they were in and out of the courtroom, you know,
24 if they were meeting with someone or depending on what point
25 in time their cases were scheduled to come up.

1 Q Did the public defenders ever raise any issues
2 regarding the waiver process?

3 A Not that I ever recall seeing, no.

4 Q To the best of your knowledge what was the
5 procedure for appointing the public defender to cases?

6 A I honestly don't know. I mean, there were times
7 that I've seen public defenders appointed in the courtroom
8 if someone had said that they didn't get an opportunity to
9 meet with the public defender. For example, people would
10 say that, you know, they went to the office. There was no
11 one there. It was closed, whatever the case was. And I
12 seem to recall that time was set aside for those individuals
13 to meet and consult and determine if, you know, they were
14 going to proceed or continue the matter or whatever the case
15 was.

16 Q How much time was set aside?

17 A I don't -- it would just depend.

18 Q I mean, on the cases that you handled, what was the
19 process? Would the judge set aside five minutes and say
20 come back after you consult with the public defender?

21 A He wouldn't set any time. He would indicate just
22 to the public defender to speak to the individual. And I
23 think it would determine -- excuse me, it would be based on
24 the complexity of the type of case.

25 I mean, if it was something probably not as serious

1 offense and everything was available and whatever
2 comfortable resolution they felt to work out, sometimes it
3 could be handled at that point in time. Sometimes it was a
4 more complex matter requiring other witnesses to be present
5 or whatever the case was. They would certainly ask for a
6 continuance.

7 Q Was that a five minute process for review and
8 determination, or was that a half an hour process? How much
9 time would the judge provide?

10 A I think it would just vary. There were no set
11 times on it that I could ever recall.

12 Q Um-hum. When the public defender was there did the
13 public defender ever describe the process whereby they made
14 determinations about whether they would actually represent
15 the children?

16 A Not that I can recall. I don't recall ever hearing
17 that or having any conversations with them based on whatever
18 their criteria was.

19 Q You mentioned that sometimes the kids went
20 downstairs and found out the Public Defender's Office was
21 closed. Do you recall what the hours were for the Public
22 Defender's Office?

23 A No, I don't.

24 Q Let's go a little further into the process. You've
25 litigated cases before Judge Ciavarella, correct?

1 A Yes.

2 Q And some of them involve private counsel, some were
3 public defenders, some were conflict counsel?

4 A Yes.

5 Q All fair to say. Were there ever pretrial motions
6 litigated in his courtroom?

7 A Sometimes.

8 Q Sometimes. How often would that happen?

9 A You know, it would just depend. I can't sit here
10 and tell you I remember an exact number, but sometimes you
11 can get a suppression motion thrown at you right then and
12 there to deal with.

13 Q Were you familiar with -- are you familiar with the
14 Rules of Juvenile Court Procedure?

15 A They came into affect in 2005.

16 Q Were you given any specific training on those
17 rules?

18 A Training, no.

19 Q Were you -- were they used in the courtroom?

20 A As much as I think that they were new to everybody,
21 they were utilized. I know that in certain proceedings, you
22 know, I may reference certain things at a certain time. For
23 example, I seem to recall it coming up with suppression
24 motions being handled, because a lot of times it would kind
25 of come up on us at the last minute. We would go in there

1 for a hearing and get the suppression motion right then and
2 there and have to deal with it.

3 Q So was there a procedure whereby you were required
4 to receive written notice prior to a suppression motion?

5 A I don't recall the specifics or the rule, but it
6 just seemed to me that handling it right then and there as
7 you're called for a hearing and trying to proceed with a
8 hearing was a little quick.

9 Q Do you recall what the practice was prior to the
10 rules coming into affect?

11 A Not per se, but I don't seem to recall things being
12 a heck of a lot different.

13 Q What was your practice regarding discovery in the
14 courtroom, your practice?

15 A My practice on discovery? I'm not sure I know what
16 you mean in terms of discovery.

17 Q When did you provide discovery to the defense, and
18 what type of discovery did you provide?

19 A We only had the petitions. So certainly anyone who
20 came in who didn't get to see the petition and whatever was
21 contained in that petition, it was provided. Some people
22 would request it ahead of time. Some people tried to make
23 their deals or do their business in the 11th hour. But
24 there was no -- I don't remember any formal policy or
25 practice on it other than I would provide whatever was asked

1 for and allowable.

2 Q So you didn't have witness statements available for
3 the defense?

4 A If they were -- sometimes they weren't even
5 available for us. But if they were available, contained in
6 the petition, then certainly we would give them.

7 Q Were they most often provided on the day of, or was
8 that what the practice was in general?

9 A It would depend. Sometimes you would get a
10 petition and see that there are certain things missing.
11 You'd see references to statements, and you would be
12 tracking down the police officer, the affiant, to find out
13 where those statements are, we need a copy of them, and how
14 to proceed from there.

15 Q So would it be fair to say that -- that discovery
16 for the most part was the petition itself? That was what
17 was given to the defense for the most part? Is that fair to
18 say?

19 A Given that that's pretty much all we had, that's
20 all we had to give out.

21 Q And rarely would you provide actual statements from
22 witnesses or from the complainants or from any other
23 witness? Is that fair to say also?

24 A If we had them, certainly we did.

25 Q But it was rare that you had them? Is that fair?

1 A In certain points we'd have to track them down.
2 And then if we -- if we had them and we can give them, we
3 did.

4 Q If you had 20 to 35 cases, how many of those cases
5 would you actually have discovery on on a given day?

6 A It would vary. Because a lot of times you can have
7 lawyers coming up and looking at -- they've already had a
8 copy of the charges, of the petitions, and want to go make a
9 plea. I couldn't sit here and quote a number because,
10 again, it just seemed to happen in a more sporadic fashion.
11 I couldn't sit here and say that every single time there was
12 a hearing that this request was made.

13 Q After the rules went into affect October 1st, 2005
14 were the add -- how was the admissions process actually
15 handled in court?

16 A I'm not sure.

17 Q When juveniles were coming in to admit or, you
18 know, do guilty pleas how were they actually handled in
19 court?

20 A No different than I remember prior to the enactment
21 of the rules.

22 Q And how was that so that we can all understand?
23 Again, we weren't present in the room.

24 A Right.

25 Q So we're trying to get some sense from you of what

1 was actually going on.

2 A In terms of if there was an admission to a charge,
3 the judge would certainly ask how the individual was
4 pleading to it. And if the admission was obviously made, it
5 was accepted by the court, and it would move forward from
6 there in the process.

7 Q Did the judge actually do a colloquy on the record?

8 A At that time not that I can recall, because they
9 were utilizing the waiver process.

10 Q Can you explain the waiver process?

11 A Well, as far as we were aware that there was a
12 waiver that was reviewed and signed by these folks prior to
13 coming into court, and that was accepted by the court ahead
14 of time. It wasn't something we had any interaction with
15 prior to getting it.

16 Q Let's assume that was the waiver of the right to
17 counsel.

18 A Okay.

19 Q Then you're in a courtroom actually doing a plea or
20 guilty plea. Was there any special form required for that?

21 A At that point in time I don't believe there was.
22 That was, again, the observed practice of the court that I
23 had come -- come into at that point in time, had saw my
24 colleagues be a part of. So I utilized and saw the accepted
25 practice as it moved forward.

1 Q So to the best of your knowledge the judge didn't
2 require any special form in order to do a guilty plea?

3 A Not that I can recall.

4 Q Nor did he require any special sort of series of
5 questions related to whether or not there was a knowing,
6 intelligent, and voluntary waiver to the right to go to
7 trial?

8 A In terms of?

9 Q The guilty plea itself?

10 A On the record?

11 Q Yes, um-hum.

12 A Not that I can recall, at least not early on.
13 There was a point in time that that did occur.

14 Q Now, in your review of the rules were you aware
15 that there was a requirement for an admission colloquy?

16 A In terms of my review of the rules, my
17 understanding was that because this was the accepted
18 practice and this was the way it was followed by the
19 District Attorney's Office, and the court was accepting that
20 as being satisfied, that's how it was practically utilized.
21 That's the best I can tell you.

22 Q Um-hum, okay. In situations where children
23 actually admitted to guilt, what happened immediately after
24 that? What was the practice in the courtroom after that?

25 A Generally at times there would be disposition.

1 Q Did you receive any information from probation or
2 from the defense attorneys about the child that would help
3 you in the disposition process?

4 A Not really. At first I recall it when I was over
5 there with one of my colleagues that on the -- on the lists
6 there seemed to be some markings from probation.

7 And I was concerned as to why we were seeing
8 anything that they had written down on those lists. And I
9 brought that to my superior's attention for them to look
10 into.

11 Q Was that changed?

12 A I believe at some point going forward there wasn't
13 as much information. You may have seen sporadic names of
14 individuals on a case, or generally you'd see the charges on
15 the list and the individual, the police officer, who filed
16 them. But going forward I think you saw less and less of
17 it.

18 Q Let me take a step back so that I have a better
19 understanding what you mean. Can you tell us what it was
20 that was on the list that you found objectionable that you
21 brought to your supervisor's attention? Because I don't
22 think most of us actually know since we didn't actually see
23 that particular list.

24 A Right. It would be a listing of -- it would say,
25 for example, probation, or it would say --

1 Q Would you interpret that as a recommendation for
2 probation?

3 A It appeared that way. Because I'd ask my colleague
4 in the courtroom at the time when we were looking at these
5 lists. I said, why are these markings here? And they said,
6 well, those are recommendations that probation writes down
7 on the list, and they're sending us copies of the case list,
8 and they must have their notes on them. And that's for
9 example.

10 Q Would there be recommendations for placement as
11 well?

12 A Sometimes you would see certain, I guess for lack
13 of a better term, facilities listed on there. And, again,
14 that's what I brought -- one of the things I brought to my
15 superior's attention is to why are we seeing this? Why is
16 this here?

17 Q Was the judge looking at the same list prior to the
18 adjudicatory hearings?

19 A I don't know the answer to that. I could say I
20 believe so, but I don't know.

21 Q Okay. Was there any other information provided to
22 you other than the list itself of that information on it?

23 A No, none whatsoever.

24 Q Did you ever see the Probation Department provide
25 any information to the judge prior to the time of the

1 adjudicatory hearing?

2 A No. But I can tell you I know that the judge
3 oftentimes had a folder in there with the background of the
4 juvenile, the individual, you know, during that point in
5 time and would reference that at times during disposition.

6 Q Did the judge have that prior to the adjudicatory
7 hearing?

8 A I couldn't tell you.

9 Q What's your belief?

10 A Well, it seemed like all the paperwork was always
11 there for each case. So I would imagine that that was part
12 of the package that would have been there logically.

13 Q Um-hum.

14 A But I couldn't tell you at what point in time
15 anyone picked it up and looked at it at the time.

16 Q When it came time for disposition did the defense
17 attorneys argue that -- about what type of disposition
18 should be pursued by the court?

19 A Sometimes.

20 Q Was that common practice, rare practice?

21 A I would say it falls somewhere in the middle. I
22 mean, sometimes they didn't seem to have a problem with it,
23 and sometimes they would try to figure out, you know, and
24 provide different alternatives.

25 Q Now, as you indicated earlier, it was a practice of

1 the District Attorney's Office that the plea had to be to
2 the lead charge; is that fair to say?

3 A Unless, again, certain other --

4 Q Unless --

5 A Right.

6 Q Were most charges in affect -- were most pleas in
7 affect to the lead charge?

8 A Not all the time, no. Certainly you had a lot of
9 compassionate victims and a lot of compassionate officers
10 that if there were certain enumerated felonies that maybe
11 sometimes would be charged, and they thought maybe, well,
12 they didn't want to have a ongoing impact on an individual's
13 life and have it follow them around forever based on
14 whatever the circumstance was that they were amenable to
15 maybe reducing that. It would depend.

16 Q Did the -- did the judge take evidence at the time
17 of the disposition hearing?

18 A If an officer or a victim wanted to be heard, we
19 would certainly let the court know that they would like to
20 address the court prior to disposition.

21 Q Were the -- did the defense provide witnesses as
22 well?

23 A Sometimes.

24 Q Sometimes. Was there a record made of what was
25 going on at the proceedings?

1 A I would have to assume so. There was a
2 stenographer present in the courtroom.

3 Q The Juvenile Act calls for the least restrictive
4 alternative at the time of disposition. Was this a
5 principle that was followed in Judge Ciavarella's courtroom?

6 A Can you clarify what you mean by the least
7 restrictive?

8 Q Well, if probation was an option versus going to
9 Glen Mills, for example, the court says that if there is a
10 viable reason that you can send a child home on probation,
11 that that should be given serious consideration. Was that a
12 policy that was pursued in the courtroom?

13 A I couldn't tell if it was a policy. I can tell you
14 that there were times that people were given dispositions of
15 probation. There were times they were given disposition of
16 placement. But it's tough because it's such a divided
17 process. We wouldn't know or couldn't know what was being
18 viewed by the court in fashioning that recommendation --
19 fashioning the disposition.

20 Q Did the judge ever discuss why he fashioned one
21 type of disposition or another?

22 A At certain times he would reference whatever would
23 happen to be in the file and in the background.

24 Q Judge Ciavarella is said to have had a policy of
25 sort of a tough love type of policy in the courtroom.

1 Children who were found guilty and adjudicated delinquent of
2 minor offenses were often sent to placement on a first
3 offense. Is that pretty accurate?

4 A I think it would depend on the situation. The
5 common theme I seem to recall that I'm sure everyone here
6 has looked at, is aware of, was the zero tolerance policy,
7 basically offenses occurring related to school.

8 Q Can you tell us a little more about the zero
9 tolerance policy? What does that actually mean? What did
10 that actually mean in practice?

11 A Well, to be honest with you we had no real
12 interplay with it, and it was never really discussed on our
13 end. But just to hear the judge recite it, you know, that
14 he would often speak at the schools and let them know that
15 he wasn't going to basically tolerate any type of offense on
16 school property.

17 Q What kind of offenses are we talking about here?

18 A I mean, it could be anything from bringing a weapon
19 or bringing illegal narcotics to if someone was, you know,
20 an assault, whatever the case was.

21 Q What kind of assaults are you talking about?

22 A You'd see people come in, and they're -- you know,
23 there's altercations, children getting into fights.

24 Q Boys fighting boys, girls fighting girls?

25 A Sometimes all of the above.

1 Q Sometimes injuries, sometimes no injuries?

2 A Sometimes.

3 Q Are those the kinds of cases kids would come into
4 court and they would end up being sent to placement?

5 A Sometimes, yes.

6 Q You said weapons on property. What kind of weapons
7 are we talking about, box cutters?

8 A Box cutters, knives. A lot of times you'd see -- I
9 don't know what the term is now, but maybe dating myself,
10 like a switch blade or something like that. Because the
11 evidence would be brought in the courtroom and put in an
12 evidence bag by the -- the affiant.

13 Q Um-hum. And with a switch blade or any type of
14 knife, the chances are pretty good that a child would end up
15 going into placement?

16 A It would appear so, yeah.

17 Q You say narcotics. What type of narcotics are we
18 talking about?

19 A It could be anything from marijuana, crack cocaine,
20 whatever the -- you know, the case could be. Someone would
21 have a prescription pill and give it to someone else.

22 Q And that would lead to placement?

23 A Sometimes.

24 Q How long were the placements?

25 A I don't know.

1 Q Were there review hearings involved in placements?

2 A I imagine there probably were at some point, but I
3 couldn't tell you.

4 Q So -- so you're in a situation where a child would
5 come in for a fight in school, they would be sent to
6 placement, but you weren't aware as to whether that would be
7 for 30 days, 60 days, 90 days, nine months, a year, two
8 years?

9 A That's correct. We had no interplay with how the
10 dispositions were functioning or what the duration was.

11 Q But there were regular review hearings? Did you
12 participate in those review hearings, or were there regular
13 review hearings?

14 A There were sometimes review hearings. Very rarely
15 was there any participation unless there was a victim or
16 someone who had concerns that maybe the placement wasn't
17 long enough, or if someone was going to be released from
18 placement they didn't want them to have any contact with
19 them in the future.

20 Q Can you tell us what the normal average review
21 hearing was like?

22 A From what I can recall it was a matter of whatever
23 personnel were involved in supervising whoever was in
24 placement wherever they were in placement.

25 Q Would they come into the courtroom?

1 A Generally speaking, yes.

2 Q Was the child brought into the courtroom as well?

3 A To the best of my knowledge, yes.

4 Q Then how would the hearing actually transpire?

5 What would happen next?

6 A From what I recall, I believe that the -- and,
7 again, I don't know if you want to use the word facility,
8 institution, whatever individual that was showing up from
9 that respective place would obviously offer whatever the
10 judge -- offer whatever they had to offer to the judge. And
11 the judge would maybe perhaps question based on that and
12 question the child, whatever the case was.

13 Q Now, we know based, again, upon information that
14 we've received that about a little over 50 percent of the
15 children did not have lawyers. So those children who did
16 not have lawyers would come into court for review hearings,
17 those who were in placement, who would argue on their behalf
18 or present evidence on their behalf?

19 A I couldn't honestly tell you. Sometimes it would
20 be them. Sometimes they would have counsel. I mean, I
21 couldn't tell you if someone who came in before if they had
22 a lawyer prior and then brought a lawyer or vice versa, had
23 a lawyer at one point and then didn't bring one to
24 placement. I don't know what the specific statistics were.

25 Q Okay. Can you tell us basically what percentage of

1 the cases that came back for review actually had lawyers
2 come in and argue on behalf of the children? Because under
3 a lot of circumstances the lawyers are there for the
4 adjudicatory hearing but not there for the review hearings.

5 A Yeah. Again, I couldn't sit here and give you a
6 hard and fast number. I mean, it would happen. But to sit
7 there and say that there was an actual count kept, I
8 couldn't give you an intelligent answer on that.

9 Q Would it be fair to say that for most of the review
10 hearings there was no lawyer present?

11 A I don't know if I'd say most, but I would say --

12 Q Well over half?

13 A I would say perhaps over half there wouldn't -- it
14 would just depend. And then sometimes, you know, if there
15 was a concern with the victim, and there was a lawyer on the
16 other side who was brought in to argue on behalf at the --
17 that process.

18 Q When you say there was a concern with the victim,
19 would you bring victims into court for review hearings? Was
20 that a function of the District Attorney's Office?

21 A It was very rare they would contact our office,
22 notify generally the victim/witness coordinator, and say
23 that they had any concerns that, you know, wherever their
24 placement lied, that if they were going further, or they
25 were going to be released, whatever the case was, that they

1 wanted it made clear whatever their concerns were, to stay
2 away from themselves, their property, depending on whatever
3 offense was involved.

4 Q Who supervised the victim/witness coordinator? Was
5 that a function of the District Attorney's Office?

6 A That was a function of the District Attorney's
7 Office.

8 Q So you coordinated with them to let them know when
9 there was a review hearing for a child coming out for a
10 specific victim?

11 A Actually, no. They would contact us to say that a
12 victim contacted them.

13 Q How did the victim's find out?

14 A I don't know. I don't know if they were notified
15 through the court, through probation. I don't know who was
16 notifying them of the placement review hearings. I know
17 that the victim/witness coordinators would, you know, work
18 hard to probably stay in touch and see if there was anything
19 being listed down the road. And I couldn't tell you the
20 specific manner in which it occurred.

21 Q Mr. Killino, can you tell us some of the requests
22 that the victims made at the time of the victim/witness
23 hearing -- or the hearings where the victims were present?

24 A Generally what I've been telling you all along.
25 The most I can recall, they basically wanted the person to

1 stay away from them or stay away from their property or stay
2 away from their families, whatever the case was.

3 Q And those requests were presented to the children
4 and presented to the judge, and the judge made a
5 determination consistent with the request of the victims?

6 A He would certainly, you know, address that concern
7 and say that he would take it into consideration.

8 Q Let's take one step back just for clarification.
9 In looking at the hearings, the adjudicatory hearings, how
10 long did they -- how long were they, five minutes, ten
11 minutes, hour? I mean, what was the average?

12 A It would honestly depend. I would -- it would
13 depend on the complexity of the charges, the amount of
14 witnesses involved, and sometimes if there were multiple
15 juveniles involved.

16 Q Were multiple juveniles tried at one time if there
17 were no lawyers present?

18 A You know, it would depend. Sometimes there would
19 be a situation where say, for example, you had three
20 juveniles, and two of them were represented and one would
21 either decide to fashion a plea and cooperate and want to
22 testify as to, you know, what happened. And provided it's a
23 differing version of what someone else is going to testify
24 to, it would just really depend on the situation.

25 Q Were there hearings that lasted two or three

1 minutes on average, or many of them?

2 A I couldn't sit here and tell you a minute amount,
3 but I can tell you some of them could be fairly quick. I
4 know that that was one of my initial concerns, that things
5 moved very quickly trying to get things lined up and
6 presented. And at the same time things could take a while.

7 It just depends on the -- you know, if you had an
8 expert witness regarding a DUI or a drug offense, for
9 example, that would certainly take longer than say a simple
10 assault .

11 Q Mr. Killino, we weren't there, so we don't know
12 what fairly quick means. Can you kind of explain to us what
13 that meant? I mean, what really concerned you when you
14 brought it to the attention of your supervisors was that
15 things were going very quickly in the courtroom?

16 A Yes. I mean, when I say fairly quick I mean it
17 could be a couple of minutes. I mean, if I only had two or
18 three witnesses, and I'm trying to just present the
19 witnesses, and you have a whole bevy of other cases that
20 you're trying to account for, and you're being told to call
21 your next witness, and you're calling them. You're
22 presenting them. The witness is done. And you're trying to
23 find your other witness, provided that they're still in the
24 courtroom, or they're somewhere else, you're trying to get
25 them. I mean, they could be very quick in duration. I

1 think it was more based on the specifics of the charge.

2 Q Mr. Killino, let me read you a transcript from June
3 27th, 2006. And this involved -- we won't tell you the
4 juvenile's name just because we want to protect their
5 confidentiality.

6 It says, whereupon, the juvenile and all parties
7 were sworn. The court, juvenile, it says here you've been
8 charged with simple assault and harassment. How do you wish
9 to plead? The juvenile, guilty. The court, based upon her
10 admission, I will adjudicate her delinquent. How will you
11 test for drugs or alcohol today, clean? The juvenile, yeah.

12 Mr. Killino, it's our understanding that the victim
13 falls into the same category as well? The court, let's send
14 her up to the detention center. Let's do a psychological
15 evaluation. See what Dr. Vita recommends. Maybe Vision
16 Quest looks like a setting. Maybe he will recommend she
17 goes home. Obviously there's some problems here. Let's see
18 if we can get to the bottom of these problems. She's going
19 to the detention center. She will be remanded. She'll do a
20 psychological evaluation. Then we'll come back for a
21 disposition. Whereupon, the hearing concluded.

22 Is that what you mean by quick or short?

23 A Well, that wasn't a hearing. That was a plea.

24 Q That was a plea?

25 A Right.

1 Q Okay.

2 A When I'm saying a hearing -- you're saying a
3 hearing. To me I mean presenting witnesses.

4 Q Oh, you mean presenting witnesses?

5 A Yes.

6 Q Okay. Let me finish this one, because this
7 particular child comes back on the 25th of July, 2006. And
8 this is the hearing that transpires that -- for disposition
9 in the case.

10 The court, juvenile, we're here for disposition
11 relative to the court hearing that was held on June 27th of
12 2006. Would you like to say anything to the court before
13 the court imposes disposition in this matter? No response.

14 The court, I'm going to remand her and send her to
15 FACT, F-A-C-T. She'll stay up at FACT until she learns how
16 to behave, learns how to make right decisions. Once she
17 learns how to do that I'll be glad to bring her home. Work
18 on your anger problems. I don't need you to be assaultive.

19 Father, we had a plan for the juvenile if she were
20 going to come home today. The court, you can institute the
21 plan when she comes home. Now, that's a disposition
22 hearing?

23 A Yes.

24 Q Would you consider that to be quick or short?

25 A Fairly.

1 Q Or average?

2 A Probably average, but, you know, certainly not long
3 in duration.

4 Q Okay. This is obviously a child without an
5 attorney present, correct?

6 A From what it says there.

7 Q And there's no opportunity for that child through
8 the father or anyone else to present any evidence that might
9 mitigate the decision by the court to send the child to
10 placement based upon what we have here.

11 Now, is that pretty accurate? Is that an average
12 kind of hearing that occurred before Judge Ciavarella?

13 A That would seem accurate. I don't know why there
14 was no response when they were asked. I don't recall the
15 specific case to be very frank.

16 Q Okay. Now, do you have any recommendations to us
17 based upon your knowledge of what happened in the courtroom,
18 based upon your experience, and also probably a rereading of
19 some of the rules as to things that you would recommend that
20 should change in the practice of juvenile court here in
21 Luzerne County that might protect the rights of children who
22 would appear in the courtroom?

23 A I'll be honest with you, and not to sound terribly
24 naive, and maybe this is something that I'm sure a great
25 deal of you have already thought of, but one thing that

1 always struck me funny when coming in to initially handle
2 these cases and going through and then now obviously seeing
3 what's occurred in the aftermath is the focus here, as my
4 understanding, is obviously to protect their rights going
5 forward. And they should be afforded the same protection as
6 anyone else in the system.

7 And it never made any sense to me as to why there
8 would be an intake or a work up prior to any type of
9 hearing. I mean, in the adult process obviously if someone
10 is charged, they have the opportunity to have a trial or
11 plead guilty.

12 Depending upon that outcome, if they are found
13 guilty or ultimately plead guilty, there's -- generally what
14 occurs is a presentence investigation report. But, again,
15 that's after the fact. Give the court a flavor of that
16 background, the individual, whatever their history may be,
17 and then fashion a sentence.

18 Never made any sense to me as to why this intake
19 process would exist prior to ever there being a hearing. I
20 don't know what that would have to do with guilt or
21 innocence of anyone.

22 So it would seem to me that in order to prevent any
23 misgivings into the future, whatever they may be, if that's
24 taken away, it would be pretty hard to -- to move forward
25 and to do that. Because then if that doesn't exist, then

1 disposition can't exist that quickly.

2 Q Any recommendations regarding the waiver of the
3 right to counsel?

4 A Well, certainly it was a divided process. Why it
5 was a divided process, I don't know. And by that I mean the
6 District Attorney's Office always seemed to be on the back
7 end of things. Whatever system is in place with the
8 intricacies of how probation functions in that capacity with
9 the court and the relationship with the District Attorney's
10 Office, I'm not entirely sure schematically how you change
11 it. But certainly it seems like changes need to be in
12 order.

13 Q Any comments regarding the waiver of the right to
14 trial?

15 A In terms of?

16 Q Kids -- children pleading guilty without the
17 benefit of colloquies or discussions with counsel.

18 A Well, certainly I think if you take the waiver
19 practice out, I think it brings the colloquy at the
20 forefront.

21 MR. LISTENBEE: Mr. Mosee.

22 BY MR. MOSEE:

23 Q Who did you report to?

24 A The District Attorney and the first assistant.

25 Q Okay. And which did you have the most contact

1 with?

2 A You know, it would vary, but generally during my
3 time there it was the District Attorney.

4 Q Okay. And the District Attorney was?

5 A David Lupas.

6 Q Okay. And the first assistant?

7 A Jacqueline Carroll.

8 Q Okay. You talked about receiving the petition?

9 A Yes.

10 Q You initially described that as paperwork?

11 A Yes.

12 Q But we've since learned that it was just the
13 petition?

14 A Yes.

15 Q Did that ultimately evolve into a file? Did it
16 find its way into a redwell or at least a hard binder, or
17 did it just continue to be paperwork throughout its
18 existence in your office?

19 A Paperwork throughout its existence.

20 Q And where was that maintained?

21 A Well, it was never permanently maintained because
22 they were merely copies we were provided. Obviously the
23 files -- my understanding when I first came to handle the
24 cases were confidential. So we were only using the copies.
25 And the copies were to be discarded after they were done

1 unless there was going to be further work or action needed
2 on them.

3 Q What constituted the end of a case for purposes of
4 destroying that paperwork?

5 A Well, we knew would could always get it back if we
6 needed it. For example, if it was lost or if it was
7 destroyed and something came back. But obviously if -- if
8 the hearing was heard, the disposition was had, that would
9 be it at that point was our understanding.

10 Q It sounds like on rare occasions at least you were
11 present for dispositional review hearings?

12 A Well, they were part of the list, and we were
13 there. But it wasn't often that the participation was
14 required. Only if -- based on the circumstances I had
15 mentioned earlier.

16 Q And who determined whether or not your
17 participation was required?

18 A In terms of?

19 Q Did the judge say, I need you on this one,
20 counselor? Or did the DA tell you ahead of time, I need
21 you? Or did -- as a result of maintaining at least that
22 petition you knew based on somebody's scribbling on it that
23 you were going to have to be there for the dispositional
24 hearing? How was it determined?

25 A It was pretty much the latter. If we knew there

1 was going to be an issue that came up down the road, or when
2 the hearing got set the victim/witness coordinator would
3 notify us, and then we would, you know, deal with it in its
4 due course.

5 Q What was your advocacy when you were present at a
6 dispositional hearing? I mean, what did you say? We need
7 to keep him there longer? It's time for him to go home?
8 What kind of contribution would you make when you did?

9 A It's hard to make that type of contribution because
10 you're not involved in the intake process. You don't know
11 what the background is.

12 And, again, to use, I guess, the only reference I
13 have, in an adult system, you know, there's a set of
14 guidelines in place. So you have a better frame of
15 reference in understanding as to what those parameters are.
16 That did not occur here. And certainly you didn't have --
17 you weren't privy to any of that information.

18 But to the extent that you had concerns for your
19 victim or their property or whatever the case involved, that
20 was really the focus.

21 Q Is it fair to say that you also didn't know
22 anything about these facilities, what they had to offer?

23 A That's correct.

24 Q And for that reason you didn't know whether it was
25 appropriate for a particular juvenile to be sent to one of

1 these facilities?

2 A Well, again, you're trusting that the court is
3 looking at that file, that the evaluation is performed by
4 whatever is required based on the specific circumstance of
5 the evaluation, that that's how that system was functioning.

6 Q Can you give me a break down in terms of the kinds
7 of cases that you handled and the nature of the proceedings
8 with regard to the 25 to 35 cases per week?

9 A I mean, it could be anything from simple
10 harassment, or you'd see summary traffic offenses in there.
11 It could be DUIs. It could be robbery. It could be
12 aggravated assault. It could be drug offenses.

13 Q All right. And did the 25 to -- 20 to 35 also
14 include the dispositional reviews?

15 A Sometimes they were beyond that. I'm focusing on
16 what we were preparing for to present. They would be on the
17 back end of the list, so to speak. And if there was an
18 issue that we needed to address there, certainly we would
19 try to be prepared for that.

20 Q So that number would increase?

21 A Sometimes, yes.

22 Q And how about the review of, let's say, a consent
23 decree?

24 A Okay.

25 Q Six months down the road did that case come back

1 into court?

2 A Sometimes.

3 Q Okay. With regard to consent decrees, did the
4 Commonwealth require an admission in order for a juvenile to
5 receive a consent decree?

6 A We never required an admission.

7 Q Okay. What did you require?

8 A The consent of the victim and the pros -- the
9 police prosecutor, the police officer, the affiant, and if
10 the court would accept that based on the charges.

11 Q Is that something that you would discuss with the
12 first assistant or the District Attorney?

13 A If need be at the time. Sometimes they would be
14 brought to our attention the day of the hearing. And,
15 again, the guiding force was as long as basically everyone
16 was on board with it, that was acceptable.

17 Q Did you -- did you actually handle any transfer
18 cases? And that would be transfer to adult court or
19 transfer from adult court back to juvenile court?

20 A On certain occasions.

21 Q Okay. Was that one of those situations where the
22 subject matter required somebody with particular expertise
23 to handle the case?

24 A It would depend. I don't recall specifically off
25 the top of my head. But if something was going to be -- if,

1 for example, an arson case was now going to move to an adult
2 phase, certainly they would be in the loop or notified of
3 it. But to sit here and tell you I remember a specific
4 instance, I don't.

5 Q Often in Philadelphia when a case is transferred
6 from adult court to juvenile court it's because a negotiated
7 agreement has been worked out, and as a result there's an
8 admission in juvenile court. Did you handle any such cases?

9 A For an admission, no. It was more treated like a
10 preliminary arraignment at that point.

11 Q I'm talking about upon its return.

12 A Oh, upon it's return from criminal court? I'm
13 sorry. I'm going the other way. I can't recall any
14 specific instances. I'm not saying that didn't occur, but
15 I'm trying to recall any specific.

16 Q My follow-up question would have been, was there a
17 colloquy administered in that kind of case? And really what
18 I'm getting to is my assumption is that those would have
19 been more serious charges?

20 A Sometimes. And I don't -- I don't recall. I mean,
21 whatever the practice of the court was, I don't recall it
22 changing drastically in that circumstance.

23 Q What did you do the other four days of the week
24 when you weren't spending your time in juvenile court for
25 the one day?

1 A Well, I did a lot of DUI work. I did a lot of DUI
2 trials, as much as I could get. I also did white collar
3 crimes. I also was on the regular -- if you want to call it
4 regular, the monthly trial list depending on what our trial
5 terms were, depending whether it was January, March, June,
6 September, whatever the case was, and also assigned to
7 handle some homicide trials as well.

8 Q Okay. So those were adult matters?

9 A Absolutely.

10 Q And when an adult would plead guilty was there a
11 colloquy in court?

12 A Generally speaking. Or there was also a -- a
13 written colloquy that I would see defense attorneys have and
14 submit to the court.

15 Q You never signed off on those?

16 A On the adult colloquies?

17 Q Right.

18 A No.

19 Q Okay. Did you participate in the questioning?

20 A No.

21 Q Was there a colloquy after a sentencing in adult
22 court? And that colloquy would have been with regard to
23 appellate rights.

24 A Sometimes. Or sometimes if they had counsel that
25 they would -- the counsel would indicate to the court that

1 they've advised the adult of the appellate rights.

2 Q Okay. So you at least had familiarity with
3 colloquies in the adult context? Did it bother you at all
4 that none of that was happening with juveniles?

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

11 Q Did you ever participate in any other discussions
12 outside of the Luzerne County context regarding juvenile
13 prosecution?

14 A I'm not sure what you mean.

15 Q You were asked the question about training?

16 A Right.

17 Q But have you had the opportunity to talk to
18 prosecutors around the state about how they prosecute
19 juveniles?

20 A Not specifically about how they prosecute
21 juveniles. Obviously it would be in tandem if myself and
22 one of my colleagues who were assigned to those cases would
23 attend a forum or like a District Attorney's Association
24 meeting or something like that and see what's, you know,
25 going on in terms of updates. But in terms of the actual

1 day-to-day, I don't recall any specifics.

2 Q I'm getting old. Did you ever go to the Juvenile
3 Prosecutors Network meeting in Harrisburg?

4 A At times myself and one of my colleagues would
5 attend.

6 Q Sure, sure. And at those meetings did you ever
7 talk about, you know, how it was that they prosecuted cases
8 and whether that contrasted with the way that you were
9 handling things in Luzerne County?

10 A Specifically, no, not that I recall. You know,
11 really it was more taking in whatever updates and
12 information was there and listening to the round table
13 discussion.

14 Q Okay. We've heard that there was a kind of
15 chilling affect whenever a case was before Judge Ciavarella,
16 especially with regard to the advocacy on either side, the
17 defense or the prosecution. Do you feel that that was true?

18 A I feel that it was fast paced, and I did the very
19 best I could to keep up and be organized. Because the
20 biggest fear as a young lawyer going in there is that you're
21 not prepared to present what you need to present, and you
22 don't want to prejudice obviously the prosecution and let
23 down your victim or whatever the case may be.

24 Q Let me put it to you another way. Do you think
25 that if this had been another judge, you might have made

1 arguments that you didn't make in this context?

2 A Yeah. Each judge has their own personality. Some
3 of them you could say have a warmer demeanor. And some of
4 them open it up more, I guess, flexibly, if I could say
5 that. Probably not using that in the proper context right
6 now. But, you know, I think it would just depend on -- on
7 who and the situation.

8 Q I've never prosecuted a juvenile who wasn't
9 represented by counsel. How does that make you feel? How
10 do you handle that?

11 A You know, it's difficult because it's a situation
12 where you realize that they're waiving their right. They're
13 coming across. They want to represent themselves. And I'm
14 assuming you're asking in a hearing context?

15 Q An admission too.

16 A Well, admission there was really never much to
17 present beyond that they're admitting to it. So it wasn't a
18 matter of, you know, they're admitting to it, let's pile on
19 now, so to speak.

20 Q Do these admissions sometimes occur as a result of
21 the judge sua sponte encouraging the admission?

22 A I couldn't honestly tell if you they did. I don't
23 remember any quote, you know, this will happen if you do,
24 and this will happen if you don't.

25 Q What I'm referring to is the question from the

1 bench, did you do this?

2 A Well, I would believe that that would occur after
3 they've made the admission at that point.

4 Q But you don't know?

5 A I don't remember the logistics of it to be honest
6 with you.

7 Q Okay. I was asking you about your zeal as an
8 advocate in this particular courtroom. Do you think that
9 the defense was as zealous as it otherwise might have been?

10 A I think they felt they were in the same position.
11 And, again, I don't know -- I can't speak to this, but they
12 probably have a little better handle on the background of
13 whom they're representing and how that interplays with
14 whatever recommendation's going to come about. Certainly
15 better than we did, which is to say we had none.

16 Q All right. Do you have any recommendations with
17 regard to standards that might be established for
18 prosecutors in juvenile court?

19 A Well, I think first and foremost I think if I can
20 recall correctly there's a rule, and I think it's utilized
21 more in the bigger counties, it's not a mandatory rule, of
22 certification of charges, if I'm remembering it correctly.
23 And I think that's something that needs to be implemented
24 mandatorily regardless of the size of the county and
25 regardless of the amount of prosecution that comes into

1 contact.

2 Because I think if you have a District Attorney and
3 an Assistant District Attorney reviewing each and every
4 charge that comes through, and they're not on the back end
5 of it, it makes it a heck of a lot easier to evaluate what's
6 going to go through, how it's going to be prosecuted, and
7 how it may ultimately be handled.

8 I think while that is not a be all end all, I think
9 that that plays into the process of ferrotting out any
10 potential problems that could occur.

11 Q And I think your recommendation goes to what I find
12 most troubling about this, is that you had non-lawyers,
13 non-prosecutors, in fact, making charging decisions?

14 A That's correct.

15 Q Is that what you're addressing?

16 A That's correct.

17 MR. MOSEE: Okay. Thank you.

18 CHAIRMAN CLELAND: We have some brief time for
19 questioning. Just do some scheduling things. Mr.
20 Sangueldolce was also scheduled to be here and is here. My
21 suggestion would be that we might want to defer him until
22 tomorrow afternoon given the time frames that we're working
23 under here for the rest of the day. Does anybody have any
24 objection to that? Okay. Then Mr. Sangueldolce, wherever
25 you are, thank you, very much. We'll see you tomorrow

1 afternoon about 2:30. Judge Uhler.

2 BY JUDGE UHLER:

3 Q Yes. Attorney Killino, when did you graduate from
4 law school?

5 A 1999.

6 Q You described the quickness of the proceedings, and
7 I gather they were all scheduled for 9:00 in the morning?

8 A Yes.

9 Q And who else would be in the courtroom? Would it
10 be the defense attorney for other cases pending in the
11 wings?

12 A Sometimes, yeah.

13 Q And so you'd have additional defense attorneys
14 there?

15 A Yes.

16 Q You'd have your back up with the ADAs; is that
17 correct?

18 A Sometimes hopefully, not all the time.

19 Q Okay. So they were -- they were able to listen to
20 what was going on in your interaction with Judge Ciavarella,
21 the probation officer, and the defense, if there was a
22 defense attorney, the youth and family; is that correct?

23 A Sometimes, yes.

24 Q What do you mean by sometimes?

25 A If they were there.

1 Q Okay. Did everyone stand in front of the bar?

2 Were they seated at any tables?

3 A They were seated until they were called, and then
4 stood up in front of the bar for the specific case that was
5 being handled at that point in time.

6 Q They, you mean the family and the child?

7 A Yes.

8 Q Would the family and the child also be in the
9 courtroom in cases other than what they were involved with?

10 A I couldn't tell you that as a rule. Sometimes if
11 there was a case coming up, for example, there was another
12 case on deck, I think sometimes they would make their way
13 in. It would just depend.

14 Q So these hearings were not all private hearings
15 then?

16 A I mean, in terms of the people that were going to
17 be there and participating as part of that list, there was a
18 lot of people in and out of the courtroom. To say that we
19 were keeping track of who was coming in and out when we're
20 just trying to focus on our task at hand, I couldn't tell
21 you, you know, who's coming in where.

22 Q Were there any -- was there a time that there would
23 be private providers there, the placement resources, situate
24 in the room awaiting the child that had his disposition
25 pending?

1 A I couldn't tell you. I wouldn't know who they were
2 to tell you if they were in the room prior to or coming in
3 at the time. I never took notice to, you know, when someone
4 was on deck how quickly they were in the room and how long
5 they were waiting during any given proceeding.

6 Q That wasn't a concern to you as an ADA, who might
7 be in the courtroom at the time?

8 A Well, it's not that it wasn't a concern. But when
9 my back is faced to the courtroom and I'm up trying to
10 present a case to the court, I certainly don't have anyone
11 to watch the door to say who's coming in or who's coming
12 out.

13 Q Okay. Were there -- would there be occasions or
14 quick hearings in which the child said absolutely nothing?

15 A At certain points that could occur.

16 Q And that would be where defense counsel would say
17 we're admitting, and Ciavarella would go right into
18 disposition; is that correct?

19 A Sometimes.

20 Q We have prepared in advance eight transcripts of
21 proceedings in which you were involved with purportedly as
22 per the court reporter who transcribed such proceedings. I
23 don't want you to take up the time at this moment, but
24 before your departure could you verify that you were
25 involved with those proceedings, and to the best of your

1 recollection the sum total of that which is represented in
2 those transcripts as accurate? You don't have to do that
3 right now, but would you do that, please?

4 A Sure.

5 Q And would you -- I ask the counsel to incorporate
6 this as part of the record if -- assuming he verifies the
7 same?

8 A Sure.

9 CHAIRMAN CLELAND: Yes, we will do that.

10 JUDGE UHLER: That would be it.

11 CHAIRMAN CLELAND: Judge Woodruff.

12 BY JUDGE WOODRUFF:

13 Q Mr. Killino, I just have a few questions for you.
14 First of all, in regard to petitions, it's my understanding
15 that you indicated you would just get the petitions
16 sometimes that day of the hearing?

17 A If I was covering for somebody.

18 Q Okay. So only if you're covering, otherwise you
19 would have them in advance?

20 A As much as possible, yeah.

21 Q Okay. In regard to the admission pleas, that was
22 -- that was done right there in the hearing itself?

23 A Generally.

24 Q Okay. And was there any colloquy given at any time
25 by Judge Ciavarella?

1 A At that particular time I believe they were just
2 utilizing the waiver process.

3 Q Okay. And tell me exactly what the waiver process
4 is. It's my understanding there was a waiver of counsel,
5 but I'm talking about in regard to if the child admits to a
6 charge.

7 A Right.

8 Q Okay. What's a waiver process?

9 A Well, that's exactly what I was referencing.

10 Q Okay. So that's a separate -- you're talking about
11 the waiver of counsel?

12 A Right.

13 Q Okay. When there was an admission on the record
14 you indicated Judge Ciavarella never gave any admission
15 colloquy to determine if the juvenile understood what they
16 were admitting to?

17 A I don't recall.

18 Q Okay. In regard to the waiver of counsel, you
19 indicated at least on one occasion that the hearing was
20 delayed because the juvenile had not signed the form waiver
21 of counsel. Do you recall that testimony?

22 A Sometimes.

23 Q Okay. And at that time is there a form provided to
24 the juvenile to sign?

25 A I believe they were -- there were forms. We

1 weren't involved or paying attention in terms of looking
2 over their shoulder to see what they're doing.

3 Q I understand that, but you're there in the
4 courtroom. Was a piece of paper or something given to the
5 juvenile?

6 A Something, yes.

7 Q Was anything in it stated by the judge in regard to
8 that form?

9 A I can't honestly recall that there would have been.
10 I don't know.

11 Q Okay. And the juvenile would sign it and give it
12 back, and was there any -- anything on the record stating to
13 the -- stating to the juvenile to determine if his waiver of
14 counsel was knowingly, intelligently, and voluntarily done?

15 A I don't recall anything like that. It could have
16 been that, you know, it was done or it was accepted. I
17 don't know.

18 Q Okay. So as far as you know the piece of paper was
19 given to the juvenile, signed it, and it was given back to
20 the court, and there was nothing else said or done?

21 A I believe.

22 Q Okay. In regard to the Juvenile Act, it's my
23 understanding you were provided a copy of the Juvenile Act?

24 A It's in the -- the Crimes Code book, yes.

25 Q Okay. Let me ask you this. Have you ever read it?

1 A For different reference points at different times.

2 Q Do you think it's important for someone involved
3 with juvenile court proceedings to read the Juvenile Act?

4 A It should be, yes.

5 Q Okay. Are you aware that admission colloquies as
6 well as waiver of counsel colloquies are supposed to be
7 provided to the juvenile?

8 A Well, it's part of the Act.

9 Q As part of the Act?

10 A As part of the Act.

11 Q Okay. In regard to that do you believe that the
12 practice of a court overrides the Juvenile Act?

13 A Well, at the time, based on the environment I was
14 brought into, base on my observations.

15 Q I understand. I'm just trying to get your
16 understanding because we have to make some recommendations.

17 A At the time, because it was satisfied and accepted
18 by the court, and you're trusting the court's practice, that
19 seemed to be reasonable.

20 Q Okay. Now, as we sit here today do you think it's
21 proper for a court to bypass the Juvenile Act?

22 A Well, we now know it's not reasonable.

23 Q Okay. What do you think? Do you think it's
24 reasonable?

25 A I -- well, I think now there needs to be a stronger

1 system of checks and balances of everyone.

2 Q Okay. And let me ask you this final question. Do
3 you believe that it would be advantageous for those that are
4 in juvenile court proceedings to actually read and have some
5 understanding and discussions in regard to the Juvenile Act?

6 A Sure.

7 JUDGE WOODRUFF: Okay. Thank you.

8 BY MR. ALLEN:

9 Q I just have one question. Did the prosecutors in
10 juvenile court receive all the petitions that were filed, or
11 did they just receive the ones that got beyond the informal
12 adjustment?

13 You indicated you weren't aware of informal
14 adjustments occurring. You didn't give any input in those?

15 A Right.

16 Q So you didn't see any petitions regarding those?

17 A No.

18 Q So, for example, if the Juvenile Probation
19 Department dealt with the informal adjustments themselves,
20 you would never know about that; is that correct?

21 A That's correct. That is correct.

22 MR. ALLEN: That's all I have, Mr. Chairman.

23 CHAIRMAN CLELAND: Mr. Williams.

24 BY MR. WILLIAMS:

25 Q Yeah, I have one question also. I just want to

1 clarify something. You made a statement that you did go
2 back to your supervisors, Lupas and Carroll, and explain to
3 them these hearings were going quite fast?

4 A Yes.

5 Q And you did do that to DA Lupas and Carroll?

6 A Yes. I indicated that I felt that we needed more
7 manpower in the courtroom.

8 Q And you told them you needed more manpower?

9 A Yes.

10 Q And what was their response to that?

11 A Well, at that point in time they -- they kind of
12 looked at me with the usual, well, he's, you know, the new
13 guy. They weren't sure what was going on.

14 And they indicated they didn't have a heck of a lot
15 of familiarity with the functioning of the court. So they
16 had brought in some other colleagues who had been there
17 previous to that. And they wanted to focus on us being
18 prepared and what we were going to do.

19 But at the same time, because it was a manpower
20 issue, if it was possible, we would try to be in there in
21 tandem, but the logical offspring of it was at least it
22 would be more than one ADA assigned to handle those cases in
23 a rotation.

24 Q Okay. So you complained, and then they brought in
25 other colleagues, and these other colleagues were -- were

1 explaining to you what the process was?

2 A If I had any questions or how it functioned.

3 Q And did any of these other colleagues have any
4 complaints about the juvenile court system?

5 A In terms of anything?

6 Q Anything?

7 A Not that I can recall. Just that this is --
8 basically, you know, this is the system as we understand it.
9 That's how they were brought along in that system, and I
10 just felt it was very quick.

11 Q And your process is you met with them, and you met
12 with the other colleagues, right?

13 A Yes.

14 MR. WILLIAMS: Okay. Thank you.

15 BY MR. HOROHO:

16 Q The Rule 3.8, which is the special responsibility
17 for the prosecutor in accordance with professional conduct,
18 were you familiar with that rule when you began with the
19 District Attorney's Office?

20 A I'm familiar with the guiding principles of any
21 lawyer to do what's correct and ethical to the best of their
22 ability.

23 Q Okay. When Judge Lupas, then District Attorney
24 Lupas, testified before us he mentioned that when -- that
25 every Assistant DA would be -- would go to the basic

1 prosecutor school. That's what you talked about?

2 A Yes.

3 Q And also as part of their yearly training they
4 would also go to ethics training where they would be advised
5 of those special rules.

6 At any time were you advised that -- of this
7 special rule of the prosecutor, which also applied to
8 juvenile matters, that as a prosecutor you should refrain
9 from prosecuting a charge that is not supported by probable
10 cause or make reasonable efforts to assure the accused has
11 been advised of the right to counsel and the explanatory
12 comment about a prosecutor being the administrator of
13 justice and not simply as an advocate? Were you at all
14 familiar with --

15 A Well, in terms of the basic premise of ethics.
16 But, I mean, I don't recall that specific rule. Not to say
17 that it's not out there. It's not being aware of, being
18 utilized. But whatever the basic prosecutor's course had,
19 it had. But any CLEs taken after that never specifically
20 addressed that particular context.

21 Q When I asked Judge Lupas about that he said, and I
22 quote, that the -- your prosecutors were told what their
23 role was and that their role wasn't simply obtaining
24 convictions, but to seek justice.

25 How did you -- do you recollect any specific

1 instructions or directions from then District Attorney Lupas
2 as it relates to how you should perform your duties in
3 prosecuting juvenile court matters?

4 A Well, it certainly wasn't, you know, win at all
5 costs. That's for sure. But, again, being put into that
6 environment, seeing what the established practice was,
7 following the lead of my colleagues who had been there
8 beforehand, that's the way it was perceived and believed to
9 have functioned at that time.

10 Q And it sounded like you were a very effective
11 prosecutor, and your focus was on -- you said on the victims
12 and so forth. And I can understand that when the juvenile
13 was represented by defense counsel.

14 Did your approach change at all when that juvenile
15 was not represented by counsel in any sort of proceeding?

16 A Well, I think it was just a matter of, as I
17 indicated earlier, it wasn't like you were looking to go any
18 further. They had -- there was -- the waiver practice was
19 utilized. That was what we believed the accepted
20 established practice was. And it wasn't a question of,
21 okay, now they admit it, let's just keep piling on, so to
22 speak.

23 Q Justice Lupas acknowledged Judge Ciavarella's zero
24 tolerance policy or tough love policy. Did you feel that
25 your special ethical responsibilities or obligations as a

1 prosecutor in juvenile court were outweighed by Judge
2 Ciavarella's tough love policy?

3 A Well, I'm not sure what you mean by that in terms
4 of intertwining it specifically. But I can tell you that in
5 looking at it we were never told to speak out against any
6 sentencing policies of the court.

7 And at the same time, because it was a divided
8 process, without knowing what the backdrop or basis was for
9 any type of sentencing, it would be hard to understand if it
10 was effective or proper in that context.

11 Q And I have the transcript that Mr. Listenbee was
12 referring to, the disposition hearing of July 25th of '06.
13 Was there any time, whether it be a disposition hearing,
14 admission hearing, where -- and I understand you didn't say
15 a word during that disposition hearing.

16 Was there ever any time when the juvenile was not
17 represented where you spoke up on behalf of the juvenile or
18 asked the judge maybe this sentence, this disposition, is a
19 little harsh for these circumstances?

20 A Well, the problem is -- I don't believe I did,
21 because I couldn't tell you if it was harsh for the
22 circumstances without knowing the other side of it.

23 Q Okay. The other side being what the file was and
24 circumstances?

25 A Right.

1 Q You were -- in retrospect, if you were -- had that
2 information and you were a little bit better prepared, that
3 would have maybe encouraged you to speak up?

4 A Well, certainly if you knew that there was
5 something that, you know, seemed so directly out of
6 proportion that you could point to that particular instance,
7 but we didn't have the benefit of that at the time.

8 Q Judge Lupas also indicated that the feedback he
9 received about the zero tolerance -- zero tolerance policy
10 was the schools liked the policies. They saw nothing wrong
11 with the policy.

12 And did you -- did you hear any such things from
13 the schools? Did you also hear from the schools and from
14 other people that they -- they liked the zero tolerance
15 policy? Did you ever receive any complaints against it?

16 A No.

17 MR. HOROHO: That's all the questions I have.

18 JUDGE GIBBONS: Chairman, I just have a couple.

19 CHAIRMAN CLELAND: Judge Gibbons.

20 BY JUDGE GIBBONS:

21 Q You indicated that you talked to your supervisors
22 about your concerns of what was going on. Did any of your
23 supervisors ever come and observe what was going on in the
24 courtroom during that time?

25 A Not that I'm ever aware.

1 Q And you told Mr. Listenbee that you didn't keep
2 statistics. And I think you told Mr. Mosee that you didn't
3 keep files. How did you account for your time? I mean, how
4 did you -- at the end of a week or a month say, well, this
5 is what I've accomplished during this period?

6 A I'm not sure I follow you in terms of accounting
7 for time. We weren't required to account for any time in
8 any particular area.

9 Q But you didn't keep track of a case load or -- I
10 mean, how -- without maintaining files or keeping
11 statistics?

12 A No. And that was not something that was required
13 or ever told us to do.

14 Q And in the early part of your testimony you talked
15 about the policy of your office always -- in talking about
16 pleas. It always has to be a plea to the highest charge.
17 Now, the police file the charges, correct?

18 A Yes.

19 Q All right. Was there any consideration given to
20 what was provable?

21 A Certainly.

22 Q Okay.

23 A Certainly. And that would be part --

24 Q So is that part of the policy too? What was the
25 highest provable charge or just the highest charge?

1 A You would have to look at it as a whole and sit
2 down and discuss and determine. You know, if someone was
3 adamant against not dropping a charge, we would look at it
4 and say, well, can it be proven? Can it not be proven?
5 That's certainly one of the things. Along with, you know,
6 the fact that if they were -- you know, they were involved,
7 what their input would be. And if necessary, the victim,
8 depending on what their involvement was.

9 Q Well, did the absence of counsel on behalf of the
10 defendant in better than half the cases, did that enter into
11 that analysis at all?

12 A I believe at times, because I think a lot of it
13 would have to do with -- and, again, I don't remember the
14 specific instances or have those statistics, that for the
15 most part they wanted to be compassionate and not see a
16 felony follow around a certain individual irrespective of
17 whether they had counsel or not. I think it really depended
18 on the situation at hand.

19 JUDGE GIBBONS: Thank you, Mr. Chairman.

20 CHAIRMAN CLELAND: Mr. Legg.

21 BY MR. LEGG:

22 Q Thank you. Just a few questions. I'm going to
23 start with right -- with what you just said. Are you saying
24 that the Luzerne County District Attorney's Office policy
25 was the way that juveniles were treated in some degree

1 depended upon the victim?

2 A No, I'm not saying that. I'm saying that their
3 input was certainly something to be considered.

4 Q Well, are you saying that some juveniles will be
5 treated differently because they had a more compassionate
6 victim than other juveniles?

7 A I think it's a matter of looking at the totality of
8 whatever the individual circumstance was based on the
9 charges, what the nature of the offense was involved, and
10 really, you know, where they felt that -- you know, how
11 strongly they felt about it. I mean, that was certainly
12 part of the input.

13 Q Well, what about the needs of the juvenile?

14 A In terms of?

15 Q Well, in terms of what -- why they did this
16 conduct? Was it a first offense? Are their family issues?
17 Is there an education issue? As a prosecutor did you want
18 to know that information in preparing for your adjudication
19 hearings to determine if a consent decree was appropriate,
20 if a lesser charge was appropriate? How were you making
21 decisions based upon pleas unless it was just the police and
22 the victim's driving --

23 A Well, we try to get as much information as possible
24 based on the resources there, based on the individuals you
25 mentioned. However, at the same time there was nothing

1 based on whatever they were providing at intake that was
2 available to us.

3 Q Why was it not available to you?

4 A It just wasn't part of the process. We were never
5 made part of that process.

6 Q Did you try to obtain that information?

7 A No. We were never advised that we were part of
8 that process.

9 Q Well -- and I think -- I think you testified that
10 one of the recommendations you would make is that you
11 wouldn't have that process in the beginning of the case,
12 you'd wait until the adjudication proceeding was done.

13 Don't you think that's a really important part of
14 the process, to know whether an informal adjudication is
15 appropriate, to know whether a consent decree is
16 appropriate, to know as a prosecutor whether or not this is
17 a child that needs a felony conviction at this point in
18 their life? Isn't it important to have that background
19 information?

20 A Background information is one thing, but I think
21 this goes to the Nth degree of finding the totality of
22 whatever their involvement was. And I think, as we've all
23 learned, it could be abused. And I think that's the
24 balancing that I hope this Commission will undertake in
25 weighing whatever changes may come as a result of that.

1 Q Well, what was the DA's Office's position for
2 disposition? Was it just to take a no advocacy position?

3 A No. It was -- from my understanding and from my
4 experience was that if there was any input required, again,
5 based on the victim or the officer, that's really where it
6 was at.

7 Q So prior to a disposition hearing would you do
8 anything to prepare for the disposition hearing?

9 A Well, in terms of just whatever information we had
10 in front of us and seeking out if there was anything that --
11 any concerns or anything they wanted addressed. That was
12 it.

13 Q Were there discussions with probation at that point
14 in terms of whether this child needs to be placed or whether
15 or not a least -- a more respective or least restrictive
16 approach would be appropriate?

17 A We never had any discussions with probation.

18 Q And I read through the transcripts that Judge Uhler
19 showed you, and I didn't see that you as a representative of
20 the Commonwealth ever made any recommendation for
21 disposition.

22 Would that be a common practice that the
23 Commonwealth just would not make a recommendation?

24 A To the best of my knowledge and experience.
25 Because, again, we don't have any of the information that

1 would fashion what that recommendation could be or how that
2 would fit into it.

3 Q Did you ever sit there and feel as you watched the
4 dispositions and think that this isn't right?

5 A It's hard to say. Because, again, without knowing
6 what's on the other side, it's a divided process. It's
7 difficult to sit there and say that.

8 Q Didn't you want to know?

9 A Well, it wasn't part of our, how should I say,
10 purview to know that information. Because when I initially
11 raised the concerns about why certain recommendations were
12 showing up on sheets, that wasn't part of our task. So we
13 weren't involved in that process.

14 Q So you didn't want to be involved in the
15 recommendation process either to agree or disagree or to
16 look at what was fundamental to that recommendation?

17 A Well, it wasn't a matter of wanting to know or what
18 was fundamental. It was a matter of prosecuting the case
19 without bias and not knowing what that background was.
20 There was a reason we were sectioned off for it. What that
21 reason was, I don't know.

22 Q Well, you prosecute a lot of adult cases. You know
23 offender's prior histories. You've dealt with them before.
24 Isn't it the background of even an adult case, doesn't that
25 form part of the basis for a prosecutor to determine what

1 plea is appropriate?

2 A Sometimes, yes.

3 Q So why would you not want to have it in a juvenile
4 case?

5 A Well, again, I think it's a matter of ferrotting out
6 and filing down just that essential information which I
7 think is a change that may come about.

8 Q Well, the essential information was just the
9 petition?

10 A That's all we had.

11 MR. LEGG: Okay. That's all I have, Your Honor.

12 BY CHAIRMAN CLELAND:

13 Q You were in the courtroom. Can you tell us what
14 the policy was are regard to shackling juveniles?

15 A Shackling juveniles. I think it would depend if
16 they were already picked up on whatever charge they were
17 picked up on and then brought in that way. But a lot of
18 times in a hearing, a normal hearing day, that was not the
19 case.

20 Q How about after disposition?

21 A They were -- they would leave the courtroom. So
22 sometimes you wouldn't see that.

23 Q Okay. So you never saw a juvenile actually
24 shackled in the courtroom or --

25 A Rare was the occasion. If they came in that way,

1 they were in that way. And if they left, then it was being
2 done after the fact, I would presume.

3 Q Did you handle juvenile appeals, or is there a
4 separate appeal division in your -- in the --

5 A There's a separate appeal division in the ADA's
6 office.

7 Q It appears that in 19 -- or that in 2005 there were
8 two juvenile appeals. Does that sound about right, only two
9 cases?

10 A It could be, but I didn't handle any of those.

11 CHAIRMAN CLELAND: Okay. All right. Okay. Okay.
12 Thank you, Mr. Killino, very much. We appreciate your
13 attendance and your participation in answering these
14 questions today.

15 We will be in recess until quarter to two. That's
16 just a little short of an hour.

17 (Recess taken from 12:50 to 1:45.)

18 CHAIRMAN CLELAND: Good afternoon, sir.

19 THE WITNESS: Good afternoon.

20

21 JONATHAN URSIAK, called as a witness, being duly
22 sworn, testified as follows:

23

24 CHAIRMAN CLELAND: Have a seat, sir. Thank you.
25 Mr. Ursiak, I think I saw you here this morning. So you

1 know the process and the procedure?

2 THE WITNESS: Yes.

3 CHAIRMAN CLELAND: Mr. Mosee is going to be the
4 principle questioner, I think. So, Mr. Mosee, go ahead.

5 BY MR. MOSEE:

6 Q Thank you. Would you move your name tag over so I
7 can see it?

8 A Certainly.

9 Q Thank you, sir. How long have you been with the
10 Defender Association?

11 A I was hired to work with the Public Defender's
12 Office in January of 2007, January 31st.

13 Q And did you have -- were you a lawyer at that
14 point?

15 A Yes. I had a small private practice prior -- prior
16 to that. I was originally hired part time, and since then
17 I've gone full time.

18 Q Okay. And as a part-time assistant where were you
19 assigned?

20 A My assignment was to pick up where attorney Cowley
21 left off. She had taken employment elsewhere, and I was to
22 pick up her case load.

23 Q Okay. And how were you hired for that position?
24 Were you hired by the Chief Defender?

25 A Well, ultimately I believe the Commissioners, but

1 yeah, I mean, Attorney Russin.

2 Q So the Commissioners hire everyone, including line
3 staff? I know they hired Attorney Russin. They hired you
4 as well?

5 A Yeah. I mean, through Attorney Russin.

6 Q Was there an interview process?

7 A Yes.

8 Q Okay. All right. And as a part-time attorney were
9 you assigned to juvenile court?

10 A Yes. That was part of the duties that were
11 assigned to me.

12 Q Okay. From 2003 to 2008 do you have any idea of
13 about how many juveniles were represented by your office per
14 year?

15 A I could not answer who was represented by our
16 office prior to me being employed with them.

17 Q Um-hum. Well, from the time that you were
18 employed, 2006?

19 A 2007.

20 Q 7, okay.

21 A I'd say a small number. I could not specifically
22 give you, you know, a number.

23 Q Well, attach a guesstimate to that small number.

24 A It could vary. It depended on the list. Juvenile
25 court was every week. Sometimes there might be a list of,

1 say, 20. Sometimes there could be a list of 10. It could
2 be, you know, anywhere -- it could have been a handful, say
3 four or five. Very rarely would I ever reach, to my
4 recollection, double digits as far as representing juveniles
5 on a particular day.

6 Q Okay. We learned this morning that juvenile court
7 convened once a week.

8 A It's my recollection juvenile court would be the
9 adjudications would take place on Tuesdays; and review
10 hearings, I believe, would take place on Thursdays.

11 Q I see. And were you present both days?

12 A Oh, yes.

13 Q Okay. What did you do the other three days?

14 A I had other assignments. In addition to being
15 assigned to the juvenile court, I would do adult court as
16 well. I had -- I would do appeals to the Commonwealth Court
17 from the Board of Probation and Parole, summary appeals.
18 And there was a period where I was assigned termination of
19 parental rights hearings as well.

20 Q All right. So you had adult as well as juvenile
21 court experience?

22 A Yes. And that would be a full adult assignment as
23 well.

24 Q Oh, okay. Who actually supervised you?

25 A Attorney Russin. I didn't have a --

1 Q So there was no hierarchy other than the Chief
2 Defender and the line staff?

3 A No.

4 Q All right. Was there somebody who, let's say, was
5 well-versed in juvenile court who you might go to as a new
6 attorney?

7 A No one in particular, no.

8 Q Did you receive any training when you became an
9 assistant defender for juvenile court?

10 A No, I did not. What I would do is I would -- I
11 would attend the Criminal Law Symposium down in Harrisburg,
12 and what I would try to do is apply anything I learned from
13 there, you know, to juvenile court. But nothing
14 specifically addressing juvenile court, no.

15 Q Okay. You came in shortly after the implementation
16 of the Rules of Juvenile Court Procedure. Did you receive
17 any particular instruction with regard to those rules?

18 A No. I mean, I reviewed them, tried to familiarize
19 myself with them.

20 Q All right. As to the representation of clients,
21 how long did that representation last? And I'm talking
22 about proceeding to proceeding?

23 A From adjudications to review hearings? Is that --

24 Q And to discharge?

25 A It would last throughout.

1 Q Okay. How did that occur considering that you
2 might be assigned -- were you assigned individuals? Is that
3 how that worked?

4 A Well, what would end up happening is somebody would
5 come in and apply.

6 Q Um-hum.

7 A A juvenile. And if they were found eligible for
8 our representation, then I would represent, you know, that
9 particular juvenile.

10 Q Did you have anything to do with that process?

11 A No.

12 Q Do you know when it occurred and how it occurred?

13 A It could occur -- it could occur weeks prior to
14 that juvenile being summoned to juvenile court. Certainly
15 there were instances where they would apply the day of
16 juvenile court as well.

17 Q And what was the application process? Where did
18 that occur?

19 A That would occur in our office.

20 Q And how did the juvenile know to go to your office?

21 A I -- that I don't know.

22 Q Did you ever have occasion to advise somebody about
23 the process and specifically say, this is where you need to
24 go in order to be represented by the Defender Association?

25 A I would -- I would imagine, yes, maybe I did. If

1 there was -- say, for example, there was -- a mom and dad
2 were out in the hallway with their son or daughter, you
3 know, they might ask me and I direct them to go downstairs
4 and apply.

5 Q And you mentioned that there were eligibility
6 requirements?

7 A Yes.

8 Q Can you tell the Commission about those
9 requirements?

10 A It's my understanding that the -- we go by the
11 poverty guidelines concerning how many are in a -- I believe
12 that it depends on how many people are in the household.
13 But that's about all I know. I never got involved -- got
14 involved with any of that.

15 Q Are you aware of potential clients who were
16 actually denied representation because they failed to meet
17 those requirements?

18 A No, I'm not aware.

19 Q All right. Were colloquies ever administered while
20 you were present in the courtroom for either admissions or
21 waiver of counsel?

22 A No, not on either.

23 Q Are you aware of any procedure that was in place in
24 Luzerne County's juvenile court that advised juveniles of
25 their right to counsel?

1 A Could you repeat that?

2 Q Are you aware of any procedure in Luzerne County's
3 juvenile court that advised juveniles of their right to
4 counsel?

5 A I -- I do believe that at -- at the intake level
6 they may have gone over -- gone over that with the juvenile.
7 But I can't say -- say for sure.

8 Q All right. Are you aware of a procedure that
9 actually allowed juveniles to waive their right to counsel?

10 A No.

11 Q All right. While you were in juvenile court
12 representing your clients did you ever have occasion to see
13 young people who were not represented by counsel?

14 A Yes.

15 Q And can you describe what it was that you saw with
16 regard to any -- any waiver of counsel on the record?

17 A I can tell you I -- I do not recall any time
18 through my experience seeing an on-the-record colloquy when
19 the judge was -- at the time was dealing with a juvenile
20 that was unrepresented.

21 Q You're familiar with colloquies; is that correct?

22 A Yes.

23 Q And there are colloquies conducted with regard to
24 adults in Luzerne County; is that correct?

25 A Yes.

1 Q And as part of your responsibilities I'm sure that
2 you ensure that adults had an opportunity to discuss on the
3 record whether their waiver of any right was voluntary,
4 knowing, and intelligent?

5 A Yes. I mean, I can tell you this. You know, prior
6 to me interviewing the juvenile I went over exactly what
7 their rights were, and I would try to get as in-depth as
8 possible concerning -- and review the elements of a
9 particular charge and discuss, you know, this is
10 specifically -- these are the key facts of which, you know,
11 the Commonwealth would have to establish in order for you to
12 be found guilty beyond a reasonable doubt.

13 Q I appreciate that you did that with your clients.
14 I'm talking about clients or -- I'm sorry, people that you
15 saw who had no attorney.

16 A No, no, I did not see that.

17 Q Did that bother you?

18 A Yes.

19 Q Did you ever complain about it?

20 A I spoke to Attorney Russin about that.

21 Q All right. Did it ever occur to you that these
22 might be people who needed to be referred to your office?

23 A Yes. And what I did do is I did cooperate with the
24 Juvenile Law Center concerning juveniles that would appear
25 unrepresented.

1 Q When did that cooperation begin?

2 A That would have been, in my estimation, in the
3 spring. What happened was I had received --

4 Q I'm sorry. The spring of which year?

5 A Spring of -- pardon me. Yeah, 2007. I had
6 received a phone call concerning what was transpiring here
7 in Luzerne County. I spoke to an Attorney Laval
8 Miller-Wilson. They had -- he had explained to me, you
9 know, what their point of view of what was going on. I
10 explained to Mr. Wilson that I, in fact, you know, spoke to,
11 you know, my boss about that; and that, you know, he -- his
12 comment to me was focus on the people you represent. You
13 know, do the best job you can.

14 Q I'm sorry, he being Laval or --

15 A No, I'm sorry.

16 Q -- your boss?

17 A Attorney Russin.

18 Q Um-hum.

19 A He -- we discussed exactly what could be done about
20 that. I suggested that they come up here to Wilkes-Barre,
21 maybe sit outside the courtroom and talk to people that way.
22 That didn't seem to work out well for them. And then what I
23 did was they were -- just to take a step back. I believe
24 they were in the process of trying to get together and file
25 a King's Bench Petition.

1 That's kind of what led to this. Then what I had
2 -- what I did was is I would provide them names of people
3 that I believed after that particular court date that were
4 unrepresented, and I would provide those names to Attorney
5 Wilson, Miller-Wilson, and he would go from there.

6 Q All right. I just want to be clear about this.

7 A Um-hum.

8 Q Your testimony is that you did tell Attorney Russin
9 about all of this?

10 A About?

11 Q About the problem that you perceived with juveniles
12 not being represented, and the fact that you were
13 cooperating with the Juvenile Law Center?

14 A I don't believe that I ever discussed with him me
15 talking to the Juvenile Law Center, no.

16 Q Okay. Has that ever been brought to his attention?

17 A After the fact.

18 Q All right. Okay. Well, let's get back to before
19 your communication with the Juvenile Law Center. And I'm
20 sorry, to be clear, who initiated that contact?

21 A I believe it was the Juvenile Law Center.

22 Q All right. And they reached out?

23 A Because actually, if memory serves me correct, I
24 believe that they were up there on a case, and that's when I
25 had occasion to meet with Attorney Miller-Wilson.

1 Q All right.

2 A I think we chatted after court that day.

3 Q And would that have been in the courthouse?

4 A That I cannot recall. It wasn't in the courtroom.

5 You know, I can tell you that.

6 Q Okay. Just to change the subject some. Have you
7 ever been asked to function as stand-by counsel?

8 A When?

9 Q In Judge Ciavarella's courtroom when a juvenile
10 decided to waive their right to counsel? Has he ever looked
11 at you and said, hey, Jonathan, why don't you at least talk
12 to this kid?

13 A I -- as stand-by, I do not believe so.

14 Q All right.

15 A I don't recall that.

16 Q Do you recall ever seeing any attorney asked to
17 function as stand-by counsel?

18 A No.

19 Q All right. Did you ever file a motion in a case, a
20 pretrial motion?

21 A I'm sure I have. Like a suppression motion,
22 something of that nature, yes.

23 Q And what was the judge's reaction when you would do
24 that?

25 A I mean, I could -- and I do -- I know -- I mean,

1 under the rules you could do it orally as well. I'm sure at
2 some point that had to have come up. As far as the judge's
3 reaction, I mean, you know, nothing out of the ordinary.

4 Q We've heard that these proceedings were really
5 abbreviated, and it would tend to lead one to believe that
6 maybe he didn't want to entertain a lot of discussion?

7 A I'd say that would be accurate.

8 Q And so what was his reaction to a pretrial motion?

9 A If a pretrial motion -- be it a pretrial motion or
10 to request a hearing, he'd say, okay, let's go.

11 Q All right. And did you feel that you had an
12 adequate opportunity to be heard and to advocate for your
13 client?

14 A Yeah, I believe so.

15 Q All right. If your client had determined that he
16 or she wanted to admit to the delinquent acts, was there an
17 opportunity to be heard under those circumstances?

18 A As far as disposition goes?

19 Q As far as the admission? Let me be more specific.
20 It seems to me that even in the context of an admission
21 there's an opportunity to advocate for your client. There
22 are rights that need to be protected. You may want to
23 clarify the facts.

24 A Well, I mean -- I mean, I can tell you what I would
25 do is let's say, for example, the Commonwealth agreed to

1 drop, you know, like one, two, three charges, be it, you
2 know, whatever it is. You know, I would tell the judge, you
3 know, Your Honor, the juvenile is going to make an
4 admission, and in return the Commonwealth is going to drop,
5 you know, like say Counts 3 through 5. And, you know, that
6 way we would go from there.

7 Q Were those negotiated admissions ever reduced to
8 writing?

9 A No.

10 Q So the Commonwealth didn't sign off on anything?

11 A No, I don't believe so, no.

12 Q Out of curiosity, was there ever an occasion when
13 there may have been a misrecollection of what happened
14 initially later on down the road? See, for me it's pretty
15 difficult to imagine practicing without putting things into
16 writing.

17 A I agree.

18 Q Did that ever happen?

19 A Where a plea agreement would be reduced to writing?

20 Q Where you agreed to something at one of these
21 really informal hearings, and then later on people's
22 recollection differed?

23 A I -- yeah, I would agree with that.

24 Q Okay. And so what happened? What did you refer
25 back to?

1 A At what point are we?

2 Q At the point that the confusion occurs.

3 A I'm not sure I understand your question.

4 Q I'm sorry. I'm not being clear. You're at this
5 hearing. You have this discussion. The prosecutor says
6 this is what I'm agreeing to. You say, yeah. And to add
7 further clarity, for the court's advocacy, we're going to
8 admit to simple assault, and the charge of aggravated
9 assault is going to be dismissed.

10 A Um-hum.

11 Q All right. You get to a subsequent hearing. In
12 fact, the disposition, which is on a different day.

13 A Okay.

14 Q And the prosecutor who's in court, because he
15 doesn't have a file, he says this is a -- an admission to
16 aggravated assault.

17 A I -- I can say I do not recall that ever happening.
18 I mean, is it possible that it could happen? Yes. But I
19 don't recall it ever happening.

20 Q Well, as an attorney wouldn't you want to prevent
21 even the potential for that ever happening?

22 A Yes, I would agree with that, yes.

23 Q Did you ever take any appeals in cases?

24 A I don't recall me ever appealing anything. And I
25 would review that with the juvenile afterwards, be it him or

1 her and, you know, mom and/or dad. And even the prospect
2 of, you know, say filing a motion for reconsideration,
3 things of that nature.

4 Q All right. Did your office, in fact, do appeals
5 though in juvenile court?

6 A I don't recall the period that I did juvenile court
7 appealing.

8 Q And --

9 A And we do have -- I mean, we do have an appellate
10 division, yes.

11 Q Did you have a partner? Was there somebody else
12 who worked juvenile court with you?

13 A No.

14 Q It was just you?

15 A It was just me.

16 Q All right. So you had this appellate division, but
17 you never took any appeals?

18 A No, not to my recollection.

19 Q And be specific for the record. How long is that
20 time period? How long are we talking about?

21 A Well, with me doing the juvenile court it would
22 have been, you know, roughly January 31st of 2007 up until
23 September of 2009. I'm no longer doing the juveniles.

24 Q All right. Discovery is a really important issue
25 throughout the Commonwealth with regard to trial

1 preparation. Did you get discovery in a timely fashion?

2 A I -- no.

3 Q Did you ever complain about that?

4 A I would complain, you know, to the, you know,
5 Assistant District Attorney. You know, sometimes discovery
6 would be, you know, placed into my hands the day of.

7 Q Did you ask for a continuance?

8 A I -- there were occasions, yes, where I did.

9 Q And what was Judge Ciavarella's response to your
10 request?

11 A I can't recollect any specific cases. You know,
12 maybe -- certainly I'm sure that there probably was occasion
13 where he would continue it. But I can think of others
14 where, you know, continuance was not granted.

15 Q And what was discovery? Was it anything more than
16 the petition?

17 A It -- sometimes it's -- that's all you were working
18 with depending on whether or not a statement was made, say,
19 for example, you know, to the police. You know, I would
20 obviously, you know, ask for something like that.

21 Q How much opportunity did you have to investigate a
22 case?

23 A Certainly I would have my -- you know, I would try
24 to make an opportunity. Sometimes the -- I wouldn't have an
25 opportunity. What I tried to do is shortly after I was

1 assigned to juvenile court I would -- I would have interview
2 days that would be every Friday at 1:30, I believe. And
3 what the girl up front would do is -- that ran the front
4 desk, you know, she would tell, you know, whomever came in
5 to testify -- pardon me, not to testify, for a hearing, you
6 know, Mr. Ursiak, those interview days, you know, that's
7 what, you know, I think is the best policy.

8 Obviously you got to be prepared. And that's what
9 I would try to do to, you know, better prepare myself for,
10 you know, any particular hearing.

11 Q We've heard a lot about evaluations that were
12 conducted with regard to juveniles, and often they had their
13 genesis at intake. Did you have access to those evaluation
14 reports, especially when you conducted your interview?

15 A I don't recall ever having an evaluation report.

16 Q So you would conduct this interview with very
17 little information about the case or the client?

18 A Well, what I would do is review the -- I would not
19 have that. I would review the affidavit with them, and I
20 would, you know, get, you know, what their version of the
21 events were. And in addition to that, you know, get a
22 background, you know, of what -- you know, how that juvenile
23 was doing at school, where he or she went to school, any
24 extracurricular activities, you know, things of that nature.

25 Q Do you recall ever seeing evaluation reports?

1 A At the adjudication stage?

2 Q Or at the disposition stage?

3 A No.

4 Q Are you aware of a Dr. Vita?

5 A Yes.

6 Q Okay. And what is your understanding of what he
7 did?

8 A All I know is he would, you know, issue reports.
9 Now, I would -- I would get that if he would, or attempt to
10 get that, you know, should he render a report concerning
11 placement of a -- you know, of a juvenile.

12 Q That's what I'm talking about.

13 A Oh, okay.

14 Q So you saw those reports?

15 A Yes, I would see those.

16 Q When did you get those?

17 A Sometimes it could be the day of.

18 Q All right. In your opinion were those reports of
19 high quality?

20 A I'd say they were pretty standard.

21 Q Did that bother you?

22 A I mean, yeah, it would bother me. I would not want
23 -- I mean, I don't want to see any kid be placed somewhere.
24 So, you know, usually, you know, that's what it -- the
25 report would contain is, you know, the recommendation would

1 be, you know, more than likely for him or her to be, you
2 know, placed, you know, somewhere.

3 Q So to be clear, when you said they're pretty
4 standard, you meant that his standard recommendation was
5 placement?

6 A Yeah, I would say so.

7 Q Do you -- do you know of juveniles who were sent to
8 detention solely for the purpose of being evaluated by Dr.
9 Vita?

10 A No, I can't say that. But it -- you know, it does
11 -- I would certainly say that for the most part anybody who
12 was evaluated would be detained at the juvenile detention
13 facility pending their -- their evaluation.

14 Q Did that bother you?

15 A Absolutely.

16 Q And did you complain about that?

17 A Well, what I would try to do is I would try to keep
18 the juvenile, you know, in the custody of mom and/or dad
19 pending, you know, the evaluation and the results.

20 Q How long were those detentions for the purpose of
21 evaluation?

22 A I'd -- it would be a couple weeks, at least.

23 Q All right. What was the standard amount of time
24 that would pass while a juvenile was in placement before
25 they would receive a review hearing?

1 A That I -- I could not say. It varied. You know,
2 and try to keep in mind here is that when I was put on to do
3 juveniles, you know, there were -- there were -- already I
4 was dealing with, you know, kids that, you know, were
5 placed, be it at, you know, say at a boot camp, residential
6 treatment facility, things of that nature and on probation.

7 So, you know, I was kind of -- a lot of the times,
8 you know, I'd be dealing with somebody who had already been
9 placed, or be it at a boot camp or, you know, probation, you
10 know, stuff like that.

11 Q But you had to know when the placement began?

12 A Right. And I would receive a list. And that's how
13 I -- you know, that's how I would know who -- you know, who
14 had, say, a review hearing.

15 Q A list from the court?

16 A No. That would have been provided to my office
17 through juvenile probation.

18 Q And the list would indicate when they started the
19 placement, and from that you could gauge when they would be
20 entitled to a review?

21 A It wouldn't -- the list wouldn't state when they
22 were -- when they were placed, no.

23 Q So you were dealing with juveniles in placement,
24 and you had no idea when the placement began?

25 A I mean, there would be -- there would be notes, you

1 know, on the -- you know, in the file or, you know, on the
2 front cover.

3 Q The file, is that your file or the court's file?

4 A Our file.

5 Q Okay. So the defender had files?

6 A Oh, sure, yeah.

7 Q Okay. Well, I mean, there are others who didn't.

8 A I would say for the most part, yes, yeah, we did
9 have files.

10 Q All right. And you would be present at every
11 review hearing when there was a review hearing?

12 A Yeah, yes.

13 Q Okay. Did you feel you had an adequate opportunity
14 to advocate at the review hearings?

15 A No.

16 Q Did you complain about that?

17 A No, I did not complain.

18 Q All right. You still with the defender?

19 A With the Public Defender's Office, yes.

20 Q Okay. What are you doing now?

21 A I'm doing adults, strictly the adults. I am
22 continuing with the Commonwealth Court appeals and the
23 termination of parental rights.

24 Q Have you had an opportunity to chime in on these
25 issues that have since come to light regarding juvenile

1 court?

2 A Chime in to?

3 Q Give recommendations?

4 A To a colleague or --

5 Q To your office?

6 A Yeah. I mean, you know, the young lady who's doing
7 it now, you know, if she -- you know, she has a question,
8 you know, certainly she, you know, would come to me and ask
9 me.

10 Q Okay. I'm talking about recommendations. And if
11 you haven't, then I want to give you that opportunity now.
12 Make some recommendations to this Commission.

13 A Certainly I've always -- I always felt that it was
14 -- the system was kind of backwards as far as getting a
15 background, you know, of a juvenile. It just -- it never --
16 it just never made sense to me that a kid would go in and a
17 background would take place of him or her prior to him or
18 her going into court and being found, you know, guilty or
19 not guilty. Be it through, you know, a hearing found guilty
20 or admitting, you know, some sort of wrongdoing.

21 Q Well, I don't want to debate the issue with you,
22 but it seems to me that what's problematic about what was
23 going on in Luzerne County with regard to those intake
24 evaluations was that they were finding their way to the
25 judge before the determination was made as to whether or not

1 they committed the delinquent act.

2 A And certainly I think that that's something, you
3 know, the Commission obviously should look at as well. And
4 also, while I'm thinking of it, you know, concerning
5 recommendations. You know, given what has transpired here
6 in Luzerne County, certainly I think that counsel should be
7 provided to each and every, you know, juvenile.

8 MR. MOSEE: Thank you.

9 BY MR. LISTENBEE:

10 Q Just a few questions, Mr. Ursiak. You said you had
11 files for the most part. That meant that sometimes you
12 didn't have files?

13 A I certainly can't specifically think of any case in
14 particular where, you know, no, I didn't have a file. But
15 I'm sure at some point that probably had to have arisen.

16 Q Can you clarify for us the number of cases -- given
17 the number of cases on the list, how many cases did you
18 actually represent children on? First of all, how many
19 cases were in court on an average day for adjudicatory
20 hearings?

21 A I mean, it could be -- you could have, you know,
22 one day -- again, you know, I'm trying -- really trying to
23 give you a specific answer. But, you know, one day, you
24 know, it might be ten, okay. We're just talking a full list
25 of ten, okay. There might be one week where it's 20.

1 Now, you know, one day I might have had, you know,
2 say three juveniles. There might have been a day where I
3 had, you know, say up to eight or nine.

4 Q Can you tell us what percentage of cases in a year
5 then that the public defender was appointed to? Were you
6 appointed to -- we've been told that about 54 percent of the
7 cases children did not have counsel. Of the remaining 46
8 percent of the cases did you represent 10 percent, 20
9 percent? Do you have an idea?

10 A I would say -- again, in my humble opinion I would
11 say it would probably be certainly more than 20 percent, you
12 know, upwards of, you know, maybe gees, close to all of that
13 47 percent maybe. You know, I don't -- I don't -- I don't
14 recall ever really seeing a lot of private lawyers, you
15 know, participating, you know, or representing, you know,
16 juveniles during my tenure with the juvenile court. I would
17 say that would have been, you know, somewhat sporadic.

18 Q Well, also when the waiver of counsel took place
19 where exactly did that take place, and who was conducting
20 the waiver -- getting the waiver forms signed?

21 A That -- that I don't know. I would assume that
22 that would have been done at the intake level. But, again
23 --

24 Q Did you ever see anybody actually having waiver
25 forms signed?

1 A I -- I'm not sure. I may have, but I really don't
2 recall specifically seeing -- actually seeing a waiver, be
3 it with the petition or in a file.

4 Q Did you ever see the waiver forms in court?

5 A No.

6 Q When you prepared your cases did you have
7 investigators working for you?

8 A We could. If I felt like something needed to be
9 investigated by one of our investigators, what I would do is
10 -- and this is no different than what I would do if it were,
11 you know, an adult. I would write him a memo outlining what
12 the charges are and what I would like, you know, him to, you
13 know, inquire about. And what I would do then is attach the
14 -- the affidavit of probable cause to the -- to the memo.

15 Q Can you tell us approximately how many of your
16 cases you use investigators on? Was it one out of ten, two
17 out of ten?

18 A Very, very few.

19 Q Can you give us an approximate number of what very
20 few means?

21 A All I could say is a very, very low number, very
22 rarely. That's really what I could say.

23 Q One out of a hundred?

24 A Yeah.

25 Q All right. Did you have any social workers work on

1 your staff at all for you?

2 A Social workers?

3 Q Um-hum.

4 A No.

5 Q Did you ever visit any juvenile facilities?

6 A Certainly -- I mean, I would go up to the juvenile
7 -- pardon me, the juvenile detention center. I would go up
8 there to interview, you know, someone who had applied. So I
9 would go up there. Other than that, no.

10 Q So you never went to any placement programs?

11 A No.

12 Q So you didn't have any idea really what kinds of
13 services were provided at the placement programs?

14 A True, yes.

15 Q Did you ever hire any expert witnesses to testify
16 on behalf of your clients?

17 A No.

18 Q Did you ever have any psychologists that were hired
19 by your office on behalf of any of your clients?

20 A No. And, you know, again, that kind of goes to,
21 you know, the funding. Certainly, you know, we're not
22 dealing with an exorbitant amount of money, you know, our
23 office. So no.

24 Q Did you ever hire any experts to testify on behalf
25 of your adult clients?

1 A Yes, yes, I have. As a matter of fact, I do -- I
2 did use an expert for -- for one juvenile.

3 Q One out of hundreds that you represented?

4 A That was a commitment hearing.

5 Q So one out of hundreds that you represented?

6 A Yeah.

7 Q Okay. In looking at the -- the children that you
8 represented, were you present for all the review hearings
9 that took place in court for your clients?

10 A I mean, yeah. I mean -- I mean, unless I wasn't,
11 you know, there working that particular day, I would say
12 yes. But what I would try to do is -- you know, my
13 recollection is I do believe I'd go in and out depending on
14 whether or not we're talking about a juvenile that was, you
15 know, say, didn't have counsel. I would try to speak to the
16 juveniles that I knew that were there that I represented,
17 and I would try to speak to their parents as well, you know,
18 to get a -- to get an idea -- give them an idea of what we
19 were looking at, and if there was anything that they wanted
20 me to say on their behalf.

21 Q Were you permitted to advocate on behalf of your
22 clients at review hearings?

23 A Yeah, I would do it.

24 Q What evidence did you present to the court to
25 advocate that they be released at an earlier time if you

1 didn't have any psychological reports or expert testimony?

2 What did you present?

3 A And that would -- that would be obviously, you
4 know, problematic. You know, depending on maybe say the --
5 the length of the stay, maybe what I would try to do is --
6 is try to have the parents establish some sort of plan
7 should I be able to persuade the judge to release their
8 child. You know, be it outpatient counseling, you know,
9 things of that nature.

10 But as far as experts go, no, I wouldn't use -- I
11 wouldn't have one at the review hearings.

12 Q Did you participate in all the disposition hearings
13 for your clients?

14 A Yes.

15 Q Were you allowed to -- to adequately present
16 evidence on behalf of your clients at those disposition
17 hearings?

18 A Certainly I would -- I would try. I would always,
19 you know, ask the judge to consider, you know, the least
20 restrictive means, meaning, you know, probation. Certainly
21 I know that there are occasions where I was, you know, cut
22 off, you know, by him. You know, that's it. I do believe
23 there are other times where, you know, I'd go through and,
24 you know, make my pitch, so to speak, to the judge, and
25 then, you know, he'd render his decision after that.

1 Q Did you feel that the disposition hearings were
2 fair?

3 A No. I always felt that the cards were stacked
4 against both myself and ultimately the client.

5 Q You've indicated you filed some motions for
6 reconsideration. Approximately how many would that be?

7 A I'm not sure if I even filed one, but I would --
8 you know, certainly there are times where, you know, you
9 know, maybe mom and dad, if it was domestic dispute, you
10 know, really weren't, you know, too worried about something
11 like that. Again, I'm just giving you an example. But I
12 don't recall -- I don't recall filing one though, no.

13 Q Okay. So you didn't file any motions for
14 reconsideration or any appeals, but you felt the hearings
15 were unfair, stacked against your clients?

16 A Yeah.

17 Q We've heard a great deal about the zero tolerance
18 policies of Judge Ciavarella. Can you tell us what they
19 were? I mean, what was the policy?

20 A I mean, the zero policy, the way that I saw it, was
21 that if you were -- if you were in school and had be it a
22 weapon or, you know, a controlled substance, chances are,
23 you know, him or her were going to be placed somewhere. And
24 that -- a very good chance.

25 Q You would handle clients who had those types of

1 charges?

2 A Yes.

3 Q And they were all placed, or almost all of them
4 were placed?

5 A I mean, I can't say that they all were placed, but
6 certainly there was a good number.

7 Q Were there other children who had fights in school?
8 Were those children placed as well?

9 A I'm sure there probably was, yeah.

10 Q Were there your clients who had fights in school
11 who were placed?

12 A I would -- I would say yes, probably, yeah.

13 Q Did you argue against that type of a disposition
14 for your clients?

15 A Absolutely.

16 Q What was -- did you think you had a fair hearing
17 when you made those arguments?

18 A No. Again, I felt like the cards were stacked
19 against me. You know -- you know, what I would try to do
20 is, again, you know, use, you know, the background that I
21 got from, you know, that particular child, be it, you know,
22 say for example, good grades, active in extracurricular
23 activities, be it athletics, clubs, things of that nature.

24 And what I would do is try to, you know, use that,
25 you know, to persuade the judge to place him or her on

1 probation.

2 Q Mr. Ursiak, the canons of ethics call for you to be
3 a zealous advocate on behalf of your clients. What kind of
4 tools would you say that lawyers who are in a situation that
5 you were in would need to be a more zealous advocate on
6 behalf of their clients?

7 A Well, certainly there's got to be -- experts
8 certainly play a huge role, especially when we're dealing
9 with, you know, evaluations which would lead to, you know, a
10 child being placed somewhere. Certainly that would be a --
11 something that I would like to see.

12 MR. LISTENBEE: Your Honor, I have no further
13 questions.

14 BY JUDGE UHLER:

15 Q I just have a few questions regarding the courtroom
16 environment.

17 Were all of these proceedings scheduled at one time
18 at a given day and -- like a Tuesday, I think you used the
19 reference?

20 A Yes, yes. I mean, just to give you an idea, there
21 would be -- you know, you'd get -- you'd receive a list of,
22 say, you know -- again, it would be anywhere from ten to
23 maybe 20, maybe even more. And, you know, that would be the
24 list for that particular day.

25 Q And that list would have a number of youth and a

1 number of parents, witnesses, and otherwise that were
2 awaiting the proceedings; is that correct?

3 A I wouldn't -- I never saw a list with -- with --

4 Q No, not on the list itself.

5 A Oh, okay.

6 Q But in the -- in the courtroom itself?

7 A Yes.

8 Q Would all these individuals be in the courtroom?

9 A Oh, yes, yes.

10 Q Okay.

11 A My recollection, yes.

12 Q So there was no privacy connected to individual
13 proceedings?

14 A Oh, let's say -- just so -- I think I'm going to
15 answer your question correctly. You know -- you know, you'd
16 have a proceeding, okay.

17 Q What are -- where are the other people?

18 A They would be out in the hallway.

19 Q In the hallway?

20 A Yes, yes.

21 Q Okay. So you wouldn't have at least the parties of
22 any other proceeding in the courtroom where this initial
23 proceeding is going on?

24 A Right, yes.

25 Q Would there be other attorneys in the courtroom

1 though?

2 A There may have been. There may have been.

3 Q How about private providers, those that were --
4 they're going to be the recipient of the youth that's had
5 his disposition that day?

6 A I -- I don't recall seeing anybody from say a
7 private provider sitting there while another proceeding was
8 going on. Could that have happened? It may have. But I
9 don't really recall.

10 Q Or even the proceeding that you were involved with.
11 Was there ever a private provider there?

12 A Again, are we talking adjudi -- are we talking --

13 Q We're talking adjudicated youth at the time of
14 disposition.

15 A There may have been. I'm not sure.

16 Q The list that you were provided by juvenile
17 probation, did that ever have the proposed disposition on
18 that list?

19 A I never -- when I received it, no, hum-um, no.

20 Q Did you -- were you aware that the judge had the
21 juvenile probation officer's intake report when you
22 approached this adjudication hearing?

23 A I mean, I would see what looked like a stack of
24 papers, you know, in a file.

25 Q On the judge's bench?

1 A Yes. Or it would be handed to him by, you know, a
2 representative from probation. But, yes, I mean, that -- I
3 did see that. I would assume that the recommendation, you
4 know, was in there. Now, you know, probably, and I'm
5 guessing here, you know, a background of the offender, you
6 know, things like that.

7 Q Okay. Can you -- can you share with me a
8 percentage? Was it every time that the probation officer
9 would hand the -- the report to the judge, or was -- were
10 often times the judge would immediately be picking up the
11 report from his bench?

12 A I would say often times he had it.

13 Q Often times he had it?

14 A Yes.

15 Q And did -- you never sought to review that which
16 was being provided to the judge?

17 A No.

18 Q Would you be concerned that that's some form of --
19 whether it be potential for ex parte communication with the
20 judge and reports that, while I recognize a probation
21 officer works for the judge, there could be almost anything
22 in that file?

23 A In hindsight, yes.

24 Q How are those proceedings being conducted now?

25 A That --

1 Q You don't know?

2 A Well, I mean, I was -- I did participate in
3 juvenile court, like I said, up until September. And that
4 was after Judge Ciavarella resigned from the juvenile court.

5 Q Okay.

6 A I believe that was probably, I want to say, June of
7 '08.

8 Q Okay.

9 A But no, I do not believe that that happens now with
10 Judge Lupas.

11 Q Okay. Were there cases that you were involved with
12 representing your client at adjudication hearings that your
13 client never said a word, that the judge would rely upon
14 your representation that this plea agreement's been reached,
15 and he'll move right on to disposition?

16 A Yes, I would agree with that.

17 JUDGE UHLER: Okay. I have nothing further.

18 BY MR. HOROHO:

19 Q I have some questions. Tough position to be put in
20 as a young lawyer in '07, right? You were out three years?

21 A About that. I was practicing law for about three
22 years, yes.

23 Q Your boss, Mr. Russin, when he testified talked
24 about the zero tolerance policy in '07, and it was so
25 prevalent he described it as -- as kind of a bandwagon

1 approach. Everybody was on the bandwagon. That's the way
2 that I -- this is his testimony. That's the way the
3 direction the county was going.

4 There were editorials, letters to the editor,
5 saying what a great judge Ciavarella is. Recidivism rate is
6 low. All the bad kids are being put away. It seemed like
7 we were in this community where the mindset was to lock them
8 up. The DA was getting convictions.

9 Back in '07 did you agree that was the mindset?

10 A Yes.

11 Q Did you feel as a young lawyer that there really
12 wasn't much you could do for your clients? You're going to
13 have to just play this out in his courtroom?

14 A Yeah. Did I feel that way? Yes.

15 Q Mr. Russin also indicated that your office is not
16 going to be -- any longer to be silent. Has things changed
17 much since this all came to light in your office?

18 A In my office?

19 Q Yes, in the Public Defender's Office in how you
20 approach representing juveniles?

21 A I mean, I can't say for myself because I'm really
22 not a part of that anymore. But, you know, I can say I know
23 that the attorney that -- that is -- that is doing them now
24 is very, very dedicated. I do know that both of them, you
25 know, are participating in the seminars that are available

1 out there. So I would say yes.

2 Q Mr. Russin indicated that one of the problems was
3 that his public defenders were not prepared. They did not
4 have that knowledge. Would you agree with that?

5 A Yeah, I would say that would be accurate.

6 Q And he's now committed to making sure that the
7 public defenders that appear in juvenile court are now
8 seeking full advantage of all the classes, CLEs that might
9 be available, and you've seen that change?

10 A Absolutely, yes.

11 Q And do you agree with me that the ethical
12 obligation of a public defender is one that you have to have
13 a pretty comprehensive skill set?

14 A Yes.

15 Q Know criminal law, the community, juvenile law, and
16 that clearly was not happening during this period of time
17 when -- prior to these changes being made, '06, '07 when you
18 were working there?

19 A I would say that would be accurate.

20 Q When you began you didn't have any special
21 training you testified?

22 A No.

23 MR. HOROHO: That's all the questions I have.

24 MR. LEGG: I have a few, Mr. Chairman.

25 CHAIRMAN CLELAND: Mr. Legg.

1 BY MR. LEGG:

2 Q Sir, you said that you complained to Mr. Russin at
3 one point?

4 A Yes.

5 Q So would it be fair to say you felt something was
6 wrong?

7 A Absolutely.

8 Q Okay. At that point was there any discussion about
9 reporting the conduct to any board, such as the Judicial
10 Conduct Board?

11 A Discussion between myself and Attorney Russin?

12 Q Yes.

13 A No.

14 Q Any discussion with anyone else about the Judicial
15 Conduct Board and whether you should make a complaint?

16 A No.

17 Q What about when you talked to the Juvenile Law
18 Center? Did they suggest any complaints be filed about the
19 judge's behavior?

20 A No, I do not believe so.

21 Q The District Attorney's Office, how would you
22 describe their participation in the juvenile system in
23 Luzerne County? Would you say they were active in the
24 process, or would you say that they were basically playing a
25 secondary role?

1 A I mean, I -- I wouldn't describe it as -- as, you
2 know, secondary. You know, how they handle things, you
3 know, I -- I can't answer -- answer to that.

4 Q How about consent decrees?

5 A Consent decrees, what --

6 Q How was it determined whether a child was going to
7 get a consent decree? Would the District Attorney's Office
8 approach and say this child's someone that we believe
9 qualifies for a consent decree, or was it juvenile probation
10 making that determination, or how did that happen?

11 A Well, in my experience the first thing that I would
12 try to do concerning a client was try to get him or her a
13 consent decree.

14 Q Who made that decision?

15 A Decision?

16 Q Who would you go to to discuss it?

17 A First I would go to the Assistant District
18 Attorney.

19 Q So that would be --

20 A See if there was something that we could work out.
21 I can't think of any specific instance, but I -- I -- you
22 know, I would say that more than likely what would occur is
23 they would confer with both the arresting officer and the
24 victim prior to him or her agreeing to it or not.

25 Q So those conversations would have occurred prior to

1 the adjudication proceeding or at the adjudication
2 proceeding?

3 A Concerning a consent decree?

4 Q Yes.

5 A I would try to do that prior to the proceeding.

6 Q Would you have an answer before that?

7 A Sometimes -- sometimes -- sometimes yes, sometimes
8 no.

9 Q What about juvenile probation? Would they be on
10 board with a consent decree? Would you talk to them first,
11 or were you just going to the prosecutor first?

12 A I would go to the prosecutor first.

13 Q So there didn't seem to be much communication going
14 on between the District Attorney's Office and the juvenile
15 Probation Department?

16 A Did I ever see that -- any -- I can't say that I --
17 I did or did not see any interaction between them. Like
18 say, for example, a consent decree, they may have -- you
19 know, I really -- I really don't know.

20 Q Was it common in connection with negotiating with
21 the District Attorney's Office to enter into any type of
22 stipulated dispositions where both parties would agree that
23 probation was appropriate? Something other than placement
24 would be appropriate?

25 A I don't recall that ever occurring.

1 Q So there were no negotiations, or you didn't even
2 bother trying to get the Commonwealth to agree to a
3 probationary sentence, anything like that?

4 A Would I try?

5 Q Or did you try?

6 A Yeah. I mean, yeah, I did. But, you know, I -- I
7 can say this. Yes, I did, but I do not recall ever -- it
8 ever occurring in front of the court, you know, where --
9 where -- you know, the Assistant District Attorney would say
10 well, no, judge, we agree to probation, you know, things of
11 that -- no, I can't say that ever happened, if that's what
12 you're getting at.

13 Q Yeah. Well, I was just wondering in terms of the
14 high placement rate in Luzerne County where defense counsel
15 or the prosecutor is trying to enter into anything that
16 would counter that philosophy?

17 A No.

18 Q And we read through some transcripts that an
19 Assistant District Attorney had this morning, and there were
20 -- in none of those transcripts did the Commonwealth ever
21 argue for a disposition one way or the other.

22 Was that common, that the Commonwealth would just
23 not take a position as to what was an appropriate
24 disposition?

25 A Was that common? Yeah, I would say that would be

1 accurate.

2 Q So they would prosecute the case, and then after
3 that it was whatever the judge was going to do he was going
4 to do? Is that a fair assessment?

5 A I would say so, yes.

6 Q And they weren't advocating one way or the other?

7 A Correct.

8 Q Did you feel that you had the opportunity to
9 present evidence, witnesses, and things of that nature at
10 disposition hearings, or do you feel that you were
11 handcuffed in some regard?

12 A I would say handcuffed would be a pretty good way
13 to describe it.

14 Q And did you ever file any appeals as a result of
15 what you saw in terms of people being -- children being
16 placed you didn't think should have been placed or anything
17 of that nature?

18 A No.

19 Q And finally, Mr. Russin testified, and a few others
20 testified, that the schools seemed to have jumped on this
21 zero tolerance bandwagon, and they were using Ciavarella's
22 courtroom to get rid of the bad apples?

23 A Um-hum.

24 Q Do you have that perception of the schools?

25 A Yeah.

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

2 CHAIRMAN CLELAND: Judge Uhler.

3 BY JUDGE UHLER:

4 Q Just one question. I missed it when we first
5 spoke. Did the PD's office have any involvement in the --
6 the procedure called fines court for juveniles? Were you
7 involved with that at all?

8 A No.

9 Q Were you aware that that was ongoing?

10 A Fines court?

11 Q Fines court, cost court. Youth would be brought in
12 to collect unpaid fines and costs?.

13 A I -- no, I'm not -- no, I did not participate with
14 that, no.

15 JUDGE UHLER: All right. Thank you.

16 BY CHAIRMAN CLELAND:

17 Q You mentioned the zero tolerance of the schools.
18 Were there some schools that were more zealous advocates of
19 that than others?

20 A No, I -- I can't -- I -- no, I can't say that say.
21 For example, all of the Wilkes-Barre School District was
22 more strict with it as opposed to, say, Hazleton. No, I
23 can't -- I wouldn't be able to formulate any sort of opinion
24 concerning that.

25 Q Did you ever see a child shackled in the courtroom

1 or upon being removed from the courtroom?

2 A Yes.

3 Q Okay. And was that a common practice, standard
4 policy? How did that work?

5 A Actually let's -- I'll try to break that down into
6 two parts for you.

7 Q Okay.

8 A Say, for example, child -- or juvenile was placed
9 prior to, say, the adjudication. They would come in in
10 handcuffs, okay. Let's say, for example, a juvenile was in
11 the custody of mom and/or dad prior to the adjudication and
12 left to be -- or was remanded. I could say certainly there
13 was occasion where they would be handcuffed, you know, in
14 the courtroom, you know, off to the side and then escorted
15 -- escorted out.

16 Q They're handcuffed in the courtroom and then taken
17 from the courtroom?

18 A Yeah, I believe so, yes.

19 Q Just handcuffs?

20 A Well --

21 Q I mean, do they use leg irons, use a cuff belt, or
22 anything like that?

23 A Actually it would have been a cuff belt. That
24 would be a better way to describe it.

25 Q And who -- who did that? Were there deputy

1 sheriffs that provided the security?

2 A No, it would be juvenile probation.

3 Q Juvenile probation?

4 A I believe so.

5 Q Would shackle the kids as they were leaving the
6 courtroom?

7 A Yeah. Now, I mean, I can't say that that happened
8 all the time. Certainly I'm sure there probably were
9 occasions where they would be escorted, you know, out into
10 the hallway, you know, maybe. What happened out there, I
11 couldn't tell you. They could have been handcuffed, you
12 know, in juvenile probation itself or in the hallway. That
13 I don't know.

14 Q Was there security in the courtroom?

15 A In terms of like the Sheriff's Department?

16 Q Sheriff's Department or anybody else that provided
17 security?

18 A I believe the sheriffs were there, yes.

19 Q Okay. You mentioned that you do appeals now,
20 Commonwealth Court appeals?

21 A Yes.

22 Q And when you were talking to your clients about
23 appeals in the juvenile court did you consider various
24 factors about whether an appeal would be appropriate or
25 wouldn't be appropriate, I assume?

1 A Sure.

2 Q Was one of those factors how long it would take for
3 the appeal to proceed?

4 A That -- that's a good question. You know,
5 certainly, you know, with appeal -- with the way that the
6 appellate process is set up, and I hope I'm answering your
7 question. With the way that the appellate process is set up
8 now, I mean, certainly it's plausible that a juvenile could
9 appeal an issue up to the higher courts and be done with
10 their case.

11 Q So did you actually factor that in to your
12 decisions?

13 A I can't say for a fact that I did factor that in.
14 The biggest factor that I would take into consideration
15 would be, you know, whether or not the juvenile would want
16 to do it.

17 Q Okay.

18 A And I don't recall really ever having a juvenile
19 say, you know, I want to appeal this.

20 Q That was going to be my next question. You never
21 had a juvenile ask to have an appeal?

22 A I don't recall.

23 Q Okay. And then finally we have heard it
24 represented to us that it was common for juveniles, if they
25 sought out private counsel, to be told don't bother to hire

1 me. There's nothing I can do for you. You're going to go
2 to placement or -- would that be your experience? Have you
3 heard that too?

4 A I did not hear that at the time. I did hear that,
5 you know, after, you know, everything broke. You know, it
6 was reported in the paper. But I can't recall ever hearing,
7 you know, a specific person or even actually even hearing
8 that statement made generally speaking.

9 Q Would you -- so would you say it was -- was or was
10 not common knowledge among the bar that there was little
11 that a defense counsel could do in a juvenile delinquency
12 hearing?

13 A I can't answer for -- for anybody else. But, I
14 mean, I would say in my humble opinion that, you know, the
15 defense bar knew, you know, the cards are stacked against --
16 against you concerning -- as far as disposition goes.

17 Q So there was nothing particularly secret or
18 clandestine about this? This was common knowledge at least
19 in the defense bar?

20 A I -- I -- I would believe so, yeah.

21 BY MS. BENDER:

22 Q Can I ask one question, Your Honor? Did you advise
23 your clients about having their records expunged?

24 A I'm sure that -- I'm sure that I -- that I would
25 have addressed that. I would say it was most important for

1 -- at least in my experience with both the juvenile and the
2 parents is, you know, dealing with, you know, the task that
3 was at hand concerning the adjudication and disposition.

4 It seemed to me -- it seems to me actually now
5 that, you know, that really -- you know, as far as even
6 appealing and expungement, that that really never came up.

7 Q So you didn't advise them about expungement?

8 A I can't -- I don't recall specifically addressing
9 anybody concerning expungement, no.

10 MS. BENDER: Thank you.

11 CHAIRMAN CLELAND: Mr. Ursiak, thank you, very
12 much. We appreciate your appearance here today.

13 THE WITNESS: Thank you.

14 CHAIRMAN CLELAND: And your frank and candid
15 answers.

16 THE WITNESS: Thank you.

17 CHAIRMAN CLELAND: Ms. Cowley.

18

19 VIRGINIA COWLEY, called as a witness, being duly
20 sworn, testified as follows:

21

22 CHAIRMAN CLELAND: Please be seated and make
23 yourself comfortable. Take your coat on or off at any time.

24 THE WITNESS: I'm cold. I'm cold. So I'll leave
25 it on. And I'm sure somewhere during the proceedings I'll

1 have to take it off.

2 BY MR. MOSEE:

3 Q Thank you, Your Honor. I'm going to have to make
4 the same request of you.

5 A Sure.

6 Q Thank you, very much, Ms. Cowley. Thank you for
7 being here this afternoon. When did you become an Assistant
8 Defender?

9 A 1986.

10 Q And were you already an attorney at that point?

11 A Yes, I was.

12 Q What were you doing before you became an assistant?

13 A I was an Assistant District Attorney for two years.
14 I was out of -- out of law school I did a stint at the DA's
15 Office for two years. There was a change in administration,
16 and I walked across the street and became a public defender.

17 Q So you were an assistant here in Luzerne County?

18 A Yes.

19 Q Oh, okay. All right. And how did you get hired by
20 the defender?

21 A The Commissioners hired me.

22 Q Okay. And was there an application process?

23 A I submitted a resume.

24 Q Um-hum. And then you were brought in for an
25 interview?

1 A I do not recall an interview.

2 Q Okay. You were simply appointed?

3 A Yes.

4 Q And would your testimony be the same, that there
5 was no training?

6 A Yes.

7 Q Okay. And certainly no training that was specific
8 to juvenile court?

9 A No.

10 Q Okay.

11 A I would add that our office was very good at
12 networking, that we had some very experienced lawyers on the
13 staff. There wasn't a lot of turnover. So there was --
14 there was attorneys with a good number of years experience.
15 And they were always open to mentor in a kind of an informal
16 way. But there was no formal training.

17 Q And would it be accurate to say that there were
18 attorneys who were able to mentor specifically with regard
19 to practice in juvenile court?

20 A No specifics in any court. I mean, whether it be
21 juvenile or homicide, felony trial, whatever. Anybody was
22 there to bounce a question off of. But there was nobody
23 there specifically for any type of training.

24 Q Before I go any further let me preface the
25 examination by saying that I'm going to try not to be

1 redundant.

2 A Okay.

3 Q You heard the testimony. You weren't sequestered.

4 A Um-hum.

5 Q If there's anything that I miss though, please feel
6 free to volunteer that information.

7 A Okay.

8 Q All right. But let's -- let's move to your
9 experience in the courtroom.

10 A Okay.

11 Q How often were you in court, and during which
12 period of time?

13 A Well, I believe I was a juvenile attorney from the
14 time that Judge Ciavarella took the bench. And I was there
15 every -- every week, you know, except obviously vacations or
16 sick days or whatever. But for the most part I was in his
17 court every week.

18 Q Okay. Now, you had been an Assistant District
19 Attorney, so you have a little bit of a different
20 perspective.

21 A Um-hum.

22 Q How did you feel after you went to the other side?

23 A You have to be much more imaginative on the -- on
24 the other side. You don't have the resources that you have
25 as -- as the Commonwealth attorney.

1 You -- you have to be more resourceful, more
2 imaginative, and you kind of have to get used to being
3 looked at a different way by everybody, you know, the
4 courts, the community. You know, you're no longer wearing
5 the white hat. You know, you're on the other side now. So
6 --

7 Q I guess I need some qualification. Were you a
8 juvenile prosecutor when you were in the District Attorney's
9 Office?

10 A I did some -- I did some juvenile prosecutions, but
11 there wasn't -- you know, we're talking 20 some years ago.
12 Everything was less. Case loads were less. Number of
13 attorneys were less. Homicides were less. Everything was
14 less.

15 So there wasn't really a specific assignment. If
16 you were a full-time DA, they -- there was a -- you know,
17 the book which has the assignments of who goes to what
18 judge. You got assigned out, and you also had a trial list
19 or a juvenile list or both.

20 Q Okay. Well, defense attorneys are always telling
21 me that I have more resources than they have.

22 A Yes.

23 Q What specifically are you referring to?

24 A Well, you have the police, which usually come to
25 you with the host of, you know, a great investigation

1 already happened and questions and witness lists. And you
2 have laboratories. And you have, you know, things that
3 could be tested without having to go ask for the money to
4 test it.

5 You just have the -- you know, the compile -- the
6 components of people around you are so much, whereas for us,
7 you know, the first question is, well, you know, can we get?
8 Okay, this has to be refuted. This expert witness has to be
9 refuted. Now, you know, we have to get our own. We have
10 to, you know, the investigation.

11 We had -- at that time we had two investigators in
12 the Public Defender's Office. One was a retired police
13 officer. I think he was 70. You know, so asking -- you
14 know, their typical job was to go get applications at the
15 prison and do things like that.

16 So a lot of the times you had to kind of do your
17 own investigation, go and talk to people or -- or, you know,
18 do what needed to be done. So that's -- that was my
19 perception, is that you came from where you would pick up
20 the phone and say to the police officer, hey, can you go
21 talk to this guy again? Can you get me this? Can you do
22 that? We would have to either scramble to have that done or
23 do that ourselves.

24 Q It's interesting, because at least in the context
25 of juvenile court it sounds to me like that wasn't happening

1 between prosecutors and the police, that the police were
2 actually reporting to juvenile probation?

3 A I -- I don't know. To be honest with you, I don't
4 remember what happened when I was a DA back, you know, many
5 years ago. I know a lot of times the DA's Office would not
6 have the police reports and, you know, the kind of things
7 that would be standard in an adult case prior to it reaching
8 their office.

9 So to a certain extent I guess what you say is
10 true, that there was kind of a -- more of a disconnect until
11 the day of the hearing or right before the hearing for the
12 prosecution. But I really -- I feel uncomfortable kind of
13 --

14 Q When did you stop being the assistant defender in
15 juvenile court?

16 A When I left. I left the Public Defender's Office
17 in 2007, February.

18 Q Okay.

19 A 1st.

20 Q Well, you would have been there when there was a
21 Superior Court decision that actually questioned the lack of
22 colloquies in Luzerne County. Do you recall that?

23 A I think I do. I don't know if I specifically --
24 was it for juvenile or for everybody? For -- in juvenile
25 cases the colloquies or -- or --

1 Q It was --

2 A I don't know if I remember specifically. I know
3 that there was some question over colloquies generally. So
4 let's say yes.

5 Q Did that make it a particular interest for
6 prosecutors, whether it be in adult court or juvenile court?
7 It seems to me that it would have sent a shockwave through
8 the office, and now all of us have to be aware of the need
9 for colloquies. Did that happen?

10 A No.

11 Q Why do you think that didn't happen?

12 A I mean here you got a judge reversed.

13 Q Yeah.

14 A I don't -- complacency, ease of the proceeding.

15 Q Okay. Did the chief defender ever address that
16 issue with you, make it a priority?

17 A No, he did not. But I -- I mean, again, I felt it
18 incumbent upon myself to explain to my client exactly what
19 was going to happen, what the elements of the crime were,
20 what their rights were, what was going to happen when they
21 stepped in front of the judge. So I had -- I had done a lot
22 of that or most of that.

23 Q And you're, of course, talking about an admission?

24 A Right.

25 Q Okay. Did the judge ever ask you, did you do that?

1 A I believe he did. Sometimes, not all the time.

2 Q Okay. Were you present when juvenile who were not
3 represented by counsel admitted to the court?

4 A Yes.

5 Q Did you ever hear the judge ask them any questions
6 that could in any way, shape, or form be interpreted to be a
7 colloquy or at least an examination to determine whether
8 their waiver was voluntary, knowing, and intelligent?

9 A I never heard an on-the-record colloquy. But
10 before the proceedings would start -- and, again, I was not
11 at the bench. There would be an exchange of paperwork. You
12 know, parents would sign something. The juvenile would sign
13 something. And this would be in front of the judge.

14 And I don't know if at -- you know, in my case, you
15 know, maybe I'd be talking to the police officer or looking
16 at my next file or out in the hall, so I -- I don't remember
17 if I just assumed that whatever was happening prior to the
18 commencement of the case was a waiver.

19 Q Did you ever ask about that document?

20 A You know, I never did because it just -- you know,
21 a typical morning would be me handling a bunch of cases and
22 then maybe having to go to another court. Again, even
23 before Mr. Ursiak started we were -- our numbers were way
24 diminished. So I might have juvenile court at 8:15 and
25 sentencings in front of another judge at 10:30 and -- you

1 know, so it was -- it was that kind of a -- of, you know,
2 where I was attending to what I had to attend to.

3 Q Okay. Well, waiver of counsel by definition,
4 wouldn't have been pertinent to any of your clients?

5 A Correct.

6 Q However, an admissions colloquy would have been
7 pertinent to a vast majority of your clients as I see it?

8 A Correct.

9 Q And let me ask this while I'm thinking about it.
10 I've heard that every juvenile in Luzerne County comes
11 clean. That they all admit.

12 A Most of them do. I'm -- you know, I have had --
13 certainly have had hearings. But most of them do admit,
14 yes.

15 Q Okay. Well, one of the advantages, and I get to
16 say this as a prosecutor to a defense attorney, that defense
17 attorneys have is that you always get to talk to the
18 accused.

19 A Yes.

20 Q I don't always have that luxury.

21 A True.

22 Q Was the decision correct?

23 A What do you mean?

24 Q Well, when they admitted and they were found to be
25 delinquent, was that decision correct?

1 A In the -- in my cases I never had anyone admit that
2 I was not comfortable with. And I certainly never just had
3 people admit wholesale to anything. I mean, the way I
4 approached my cases would be we would get the list. I would
5 find out what the disposition was, or what the recommended
6 disposition was so that I had an idea of what was going to
7 happen to this -- this child or what they -- so I could
8 begin to posture my case, you know.

9 And then I would go to -- either to the police or
10 the District Attorney depending on whether or not I
11 perceived the District Attorney to have control of the
12 situation.

13 Q You've already established for us that your
14 resources were limited?

15 A Right.

16 Q And so it sounds to me, and you correct me if I'm
17 mischaracterizing what you just said, but it sounds like
18 your decision with regard to representing your client was
19 driven by the disposition?

20 A No, no.

21 Q Okay. Help me with that.

22 A What I'm saying is that would be one of the pieces
23 that I would get to decide what I could -- how I could best
24 represent him. If I -- if this child said to me, you know,
25 yeah, this happened. Even if they said to me, yeah, this

1 happened just the way they said it, I would never just plead
2 somebody to whatever the information -- whatever the
3 petition said without first discussing a possible plea
4 agreement to drop some of the charges or work something out
5 or to get something on the -- on the end of the
6 recommendation.

7 What I'm saying is the disposition or the
8 recommended disposition was one piece of the puzzle that I
9 needed to try to either work something out or know that I
10 couldn't and that we had to have a hearing.

11 Q All right. Did you ever try to overcome the
12 recommended disposition?

13 A Yes.

14 Q Did you ask for consent decrees?

15 A Yes.

16 Q Okay. And what was the advocacy? What was the
17 tact with regard to trying to get a consent decree?

18 A The tact would be I would talk to whoever I had to
19 talk to. If they told me that, oh, the -- the victim is
20 against it, I'd talk to the victim. If they told me the
21 police officer was against it, I'd talk to the police
22 officer.

23 You know, if a juvenile was the one, I'd go and
24 say, well, why? Why? Why is this kid -- he's never been in
25 trouble before. He has good grades or he doesn't. His

1 family, whatever argument I could make. And -- and I always
2 felt heard. I always felt like whatever argument I put
3 forth was heard, as it was heard in any other courtroom.

4 Q All right. I'm glad you clarified, because it
5 sounded to me like you were talking to the prosecutor, to
6 the victim, but was this happening in open court?

7 A Oh, no, no, no. I would be --

8 Q All right.

9 A Before we got to say it was a consent decree.

10 Q All right.

11 A You know.

12 Q And the consent decree had to be approved by the
13 court?

14 A Right.

15 Q So did you ever have to overcome a predisposition,
16 no pun intended, by the court to do something else other
17 than a consent decree?

18 A Yes.

19 Q All right. So the prosecutor's on board, the
20 victim's on board?

21 A Right.

22 Q But the judge wants to place. He wants it
23 adjudicated delinquent and place?

24 A Yes. But I have prevailed in those cases also
25 where he's wanted to. You know, I've, whatever, structured

1 an argument, used what I had, and, you know --

2 Q It's difficult for anybody to answer this next
3 question, but how often did that happen?

4 A Oh, gees. Most of the time when everybody else was
5 on board for consent decree, the judge was on board for
6 consent decree. So a lot of those times I didn't have to
7 jockey for that. What I may have had to jockey for is
8 placement on a -- on a strict adjudication. And I would say
9 he probably listened to me in half the cases.

10 Q What do you mean by that? You mean a different
11 placement or no placement at all?

12 A No placement at all.

13 Q Okay. And so there were occasions when you were
14 able to prevail even though the recommendation from
15 probation may have been placement?

16 A Yes.

17 Q All right. Now, how was it that you came to know,
18 even before the adjudicatory hearing, what the
19 recommendation of probation was going to be?

20 A Well, they -- they prepared a -- they prepared --
21 the juvenile office prepared a recommendation for every
22 list. And most of the time we were able to find that out
23 before the hearing.

24 Q And my question is how?

25 A I would ask. I would just go up and say I

1 represent, you know, Joe, John, and, you know, Elsie.

2 What's the recommendations for them?

3 Q Either in retrospect or because of what you knew at
4 the time do you believe that the judge knew what that
5 recommendation was as well?

6 A You know what, I did not know that the judge or
7 even think that the judge knew that until I heard you
8 questioning Mr. Ursiak. I really -- I just assumed that
9 what was being handed to him was the petition in the
10 courtroom. I -- I did not know that he knew that
11 beforehand.

12 Q Okay.

13 A And that might sound naive, but I really just never
14 even --

15 Q A really excellent question was asked earlier. As
16 an attorney weren't you concerned about what it was that was
17 being handed to the judge?

18 A Well, no. Because in summary appeals the judge is
19 handed the Clerk of Court's file. You know, in criminal
20 cases the judge is handed a file. So in a lot of cases
21 files are handed to the judge from the court officer.

22 So, again, either I'm naive or trusting or I just
23 assumed it was what was to be in front of him then, the
24 petition, you know.

25 Q All right. How often was the chief defender

1 present in court in juvenile court?

2 A Never, hardly ever, rarely. Pick one of those.
3 Maybe one -- you know, one of -- I -- if we ever had a
4 really big case of juvenile homicide or, you know, something
5 that would cause, you know --

6 Q Did you try homicides?

7 A Not as -- I think we only had one, and that
8 actually might have been before I was doing juvenile. So I
9 would say no.

10 Q Okay.

11 A I mean, we did.

12 Q How about transfer cases, either to criminal court
13 or back from criminal court?

14 A I don't think Attorney Russin would do that, but we
15 would have, you know, a contingent of guys with some really
16 good experience that would either recommend that. And I
17 have done a few of those also. But we've -- you know, we
18 would work together on those.

19 Q And when they came back from criminal court would
20 you handle those cases?

21 A Not all the time. It would depend on -- on what it
22 was, or sometimes it would stay with the attorney that had
23 that particular magisterial district, which was how for a
24 number of years we divided up cases.

25 Q That's where the preliminary hearing would be

1 conducted?

2 A Correct.

3 Q And this would come back?

4 A Correct, correct.

5 Q Okay. All right. You mentioned that you were
6 hired by the county Commissioners. Did they ever follow up
7 to see what your performance was, or do you recall -- in
8 Philadelphia we have these public hearings whenever it's
9 budget time. And people want to know how the money's being
10 spent. So they ask the prosecutors, what it is that we're
11 doing? The Defender Association comes in, and they're
12 questioned about their performance. Did that happen with
13 you guys?

14 A No.

15 Q Okay. No nobody ever questioned Mr. Russin's
16 performance?

17 A I -- I don't know if -- if in his -- the confines
18 of the meetings that Mr. Russin would have to go to, either
19 on budget or, you know, managerial whatever, whether or not
20 he was questioned on what his office does. I'm sure our
21 numbers were tracked and things of that nature, but I really
22 wouldn't have been privy to those. I couldn't tell you.

23 Q You know, it seems to me that there's a clear
24 correlation between the amount of money that Luzerne County
25 was spending on placement and the resources available to you

1 as a defender. Did anybody ever think that, hey, maybe we
2 need to address the exorbitant number of placements in
3 juvenile court so that we might have resources to do a
4 better job?

5 A The short answer is no. I think the number of
6 placements, naturally in light of this I'm thinking of, you
7 know, what has happened in court, what went on in court, and
8 I think the number of placements just kind of crept in my
9 mind. I don't -- I don't remember thinking, you know, wow,
10 this is an exorbitant amount. I don't know if it just kind
11 of --

12 Q Can you put your finger on a point it had
13 increased?

14 A Well, we've already talked about the zero
15 tolerance.

16 Q Um-hum.

17 A You know, which is terrible, and I hated, and --
18 but everybody else loved. It's very true. School districts
19 loved zero tolerance.

20 Q It also sounds like a lot of money was being spent
21 on evaluations?

22 A Yeah.

23 Q This Dr. Vita in particular?

24 A Yeah.

25 Q A lot of money doing evaluations?

1 A Yeah.

2 Q Did you have occasion to see his evaluations, his
3 reports?

4 A Yeah.

5 Q When did you get those?

6 A That would depend. Sometimes I would get it before
7 the hearing and have enough time, you know, to review it.
8 Sometimes I would get it the day of the hearing. A lot of
9 times it would depend on when people applied. You know, if
10 people -- naturally the later people applied, the more
11 difficult my lead in time was to -- or the smaller my lead
12 in time was to the case.

13 Q Um-hum. And Mr. Ursiak testified that his standard
14 recommendation was placement. Do you agree with that
15 assessment?

16 A I -- I really can't agree or disagree. I really
17 don't remember. I know that there have been cases that he
18 did not recommend placement for my -- you know, the kids
19 that I had had. So I really can't say that that was his
20 standard recommendation.

21 Q Do you remember much about the quality of the
22 substance of the report?

23 A I -- no. I don't remember being impressed one way
24 or the other.

25 Q Okay. And was it your experience also that

1 juveniles would be sent to detention solely for the purpose
2 of being evaluated?

3 A Most of the time I was -- I have been able to get
4 children not to be placed or detained pending an evaluation.
5 So --

6 Q So you would make that specific argument?

7 A Yes, I would. Yes, I would.

8 Q Okay. Do you have any recommendations that you'd
9 like to articulate for the Commission at this point?

10 A I think probably for a lot of years the County has
11 looked at this as kiddie court, as a training ground for,
12 you know, DAs until they go up to the big show. And I think
13 that if that attitude changes, then we'll be better served
14 and so will our juveniles.

15 MR. MOSEE: Thank you.

16 CHAIRMAN CLELAND: To maintain some semblance of a
17 schedule, I'd like to get this wrapped up for Ms. Cowley in
18 about 15 minutes.

19 MR. LISTENBEE: I'll be finished in about five,
20 Your Honor.

21 CHAIRMAN CLELAND: We'll extend as long as we need,
22 but I just wanted to give you some idea of where we are.

23 THE WITNESS: Five is okay by me. Five is good.
24 Four is even better.

25 BY MR. LISTENBEE:

1 Q Good afternoon, Ms. Cowley.

2 A Hi.

3 Q You -- can you tell us approximately how many cases
4 you handled during your tenure in court, just roughly?

5 A You know, I have no idea. I was hearing you asking
6 him numbers.

7 Q Um-hum.

8 A And numbers were kept track of in our office, but I
9 have -- I have no idea. I really can't tell you.

10 Q Would it be fair to say you handled several
11 hundred?

12 A I -- well, let -- if we average five a week, that's
13 300. So, you know, I would say that's probably an average.
14 Some -- sometimes I had 10, 12. Sometimes I had one, two.
15 So, you know --

16 Q And for how many years was that?

17 A Lots of years.

18 Q Okay.

19 A Too many years.

20 Q Did you try a lot of cases before Judge Ciavarella?

21 A I don't -- I don't think I tried a lot of cases. I
22 don't know, maybe three a month, something like that.

23 Q What can you tell us about the standards for
24 reasonable doubt?

25 A His standards of reasonable doubt?

1 Q Um-hum.

2 A Again, I always felt heard. I -- I always felt
3 that my argument was listened to. My argument was heard.
4 And that he was giving me beyond a reasonable doubt
5 standard. I -- that's -- I always felt that.

6 Q Did you ever argue for a deferred adjudication on
7 cases under the Juvenile Act, the section that permits you
8 to defer adjudication for 60 days if a child is out of
9 custody, 20 days if a child is in custody?

10 A No, I never did.

11 Q And did you ever handle any cases that were Act 21
12 cases, civil commitment cases on sex assault cases?

13 A I don't think so.

14 MR. LISTENBEE: I have no further questions, Your
15 Honor.

16 BY CHAIRMAN CLELAND:

17 Q You have been a lawyer for a long time?

18 A Yeah.

19 Q You don't strike me as a shrinking violet?

20 A No, no, I'm not.

21 Q You have thought about and reflected on what has
22 happened in the last number of years?

23 A Yes, I have.

24 Q What would you do differently now that -- from what
25 you did when you were in court then?

1 A I think I would have paid more attention. I think
2 -- I mean, there were things that I did, but I could have
3 done more. If I had a co-defendant and the other
4 co-defendant was unrepresented, I would represent that
5 child. You know, I -- I could have done more.

6 Q And I -- I didn't mean that to --

7 A You didn't mean it morally.

8 Q I should have prefaced that, because I was struck
9 what you said about creep, you know. And we started on the
10 -- on a trend, and you don't ask a question about this
11 practice and pretty soon that becomes established procedure,
12 and then pretty soon nobody's ever looked back and said gee?

13 A Yeah.

14 Q Yeah.

15 A And I think --

16 Q And is there anything that you now say there's a
17 point where we all -- I don't mean just you, I mean the bar
18 in general --

19 A Yeah, yeah.

20 Q -- that should have said wait a minute?

21 A Yeah. I -- I think maybe if I -- if I changed my
22 scope, you know. If I were representing you, and I felt
23 like I did a good job for you, and I felt like I got you not
24 to be detained, and I -- that that would be my primary
25 consideration, and maybe my scope should have been widened.

1 Q You also made reference to the fact that school
2 districts loved zero tolerance.

3 A Loved it.

4 Q Is that uniform across all school districts?

5 A I think the school districts that would be
6 considered more urban liked it more.

7 Q I'm not from around here.

8 A Hazleton, Wilkes-Barre. You know, Judge Ciavarella
9 made a big deal about going to these schools and talking to
10 these kids and telling them if you fight, you will go -- you
11 will be detained. If you bring in a weapon, you will be
12 detained. If you have drugs, you will be detained. And
13 when they got in court he would say, were you there the day
14 I talked to you? Yes, I was. Well, what did I tell you?

15 Q I'm sorry. I missed in the first part of your
16 testimony when you -- what were the years when you were an
17 Assistant District Attorney?

18 A 1985 and 1986.

19 CHAIRMAN CLELAND: Okay. Okay. All right. Any
20 other questions?

21 BY JUDGE UHLER:

22 Q Just -- were you involved with fines courts at all?

23 A Once or twice.

24 Q Tell me about that. Was that as a public defender?

25 A Yes.

1 Q A PD did represent youth?

2 A Occasionally, yes.

3 Q Occasionally?

4 A If they came -- if they came and applied. And that
5 would be the only way I would know of fine court. Because
6 we would get no other notice that this was happening. The
7 list would come from the magistrates of people that did not
8 pay their fines in a timely manner. And of those, you know,
9 the people that would then apply for a public defender,
10 which they would have a right to at that time, you know. So
11 I would say I was not in fine court every time fine court
12 happened, a few times.

13 Q Do you know how these youth that were a part of
14 this process were advised of a right to counsel?

15 A No, I don't.

16 Q You don't know what notice -- notification process
17 --

18 A I don't.

19 Q -- was utilized?

20 A No, I don't. I don't know if it was the same as at
21 an intake. I don't know that.

22 Q I get the impression that there was an enormous
23 number of youth that would be called upon to appear in fines
24 court; is that correct?

25 A I -- I would believe so. At least -- I'd say 20 to

1 30 on a list of fine court date.

2 Q And these were youth who had not paid their fines
3 and costs before the -- the district magistrate?

4 A Correct.

5 Q And often the results in those occasions that you
6 were present, were these youth placed in detention until
7 such time as the fines were paid?

8 A Yes.

9 JUDGE UHLER: All right. I have nothing further.

10 CHAIRMAN CLELAND: Thank you, very much, Ms.
11 Cowley. I appreciate it.

12 THE WITNESS: Thank you.

13 CHAIRMAN CLELAND: You can take your coat off now.

14 THE WITNESS: You know, I thought you guys were
15 going to have me a little bit more heated up, but I was
16 wrong.

17 CHAIRMAN CLELAND: We'll be in recess here until
18 quarter to four. We'll say about 20 minutes.

19 (Recess taken from 3:20 to 3:45.)

20 CHAIRMAN CLELAND: Ms. Kline, are you ready?

21

22 THERESA KLINE, called as a witness, being duly
23 sworn, testified as follows:

24

25 THE WITNESS: I do.

1 CHAIRMAN CLELAND: Please be seated.

2 THE WITNESS: Thank you.

3 CHAIRMAN CLELAND: I don't know if you've been here
4 before to see how this operates, but one of the members
5 takes care of the initial questioning, and then we pass it
6 around. And I believe Judge Uhler is going to be doing the
7 questioning.

8 THE WITNESS: Okay.

9 BY JUDGE UHLER:

10 Q Welcome, and thank you for appearing voluntarily.
11 Could you start by telling us your full name, please?

12 A Theresa Ann Kline.

13 Q And for what length of time have you been involved
14 with the Luzerne County Juvenile Probation Department?

15 A 20 years. I started full time in 1989 as a
16 secretary and got my probation officer position in 1995.

17 Q In that capacity did you have any sponsor or person
18 that facilitated your appointment with the Luzerne County
19 Probation Department?

20 A No, sir.

21 Q And I gather you're a college graduate?

22 A I am.

23 Q And did you go on for any extended study after your
24 college graduation?

25 A I'm currently in the JCJC Master's Program.

1 Q At Shippensburg?

2 A At Shippensburg, um-hum.

3 Q What role do you currently fill in the Juvenile
4 Probation Department in Luzerne?

5 A I'm currently -- my current assignment is community
6 liaison probation officer, but I wear a lot of hats. I help
7 with placement, some placement things, some intake things.

8 Q At any time were you involved with what is, for
9 lack of better expression, called the fines and costs
10 program?

11 A I was involved with it just in terms of the fact
12 that I was in the intake department at the time, or part of
13 that time, not all of that time.

14 Q So do I gather that the fines and costs was a -- a
15 byproduct of intake?

16 A The fines would come to us from the magistrate.
17 They would come to the probation office.

18 Q Okay.

19 A From the magistrate's office.

20 Q And then what?

21 A And then we would handle them. And over the years
22 we had a variety of ways we handled them. Scheduled them
23 for -- to come in, give them -- send them a letter that said
24 that they had been received from the magistrate, and that
25 they needed to pay. And the fine court was just another

1 kind of branch of what we did, what we tried to do to
2 collect fines.

3 Q Do you know the genesis as to how the fine court
4 came about?

5 A I do not.

6 Q Do you know whether or not the fine court preceded
7 Judge Ciavarella?

8 A I believe when I was first questioned about it that
9 it started, according to what we could determine, in 1999.

10 Q And that was as a result of a letter from Mark
11 Ciavarella to -- or from Brulo to Ciavarella, are you aware
12 of that?

13 A Not aware of that, sir.

14 Q With that said, when fine court would be held were
15 you -- did you participate in those proceedings in any
16 fashion?

17 A I would be in the courtroom.

18 Q And how often would this occur?

19 A The fine court?

20 Q Um-hum.

21 A To the best we could figure, I think in some cases
22 it might be once every several months, maybe three months.
23 There was a period of time, I think, when we looked back at
24 court lists that it might have been once a month for a
25 period of time. I don't recall exactly. There was no -- to

1 my knowledge there was no set amount of time.

2 Q Were you familiar with the manner of notice that a
3 youth and family would be provided as to the -- the
4 proceeding itself from the court?

5 A Yes.

6 Q What did that -- how did that notice come about?
7 Who disseminated it, and what was contained in that notice?

8 A I think the original notice that went out, once the
9 juvenile certification form appeared in our office from the
10 magistrate, they were sent a letter asking them to pay.

11 Q Okay.

12 A And they were given a certain period of time to
13 pay. I believe. I don't remember the exact wording of the
14 letter. And then if they didn't pay, they may potentially
15 be scheduled for court.

16 Q Anything else in that correspondence?

17 A Not that I -- not that I recall.

18 Q Were there any efforts made through either the
19 newly generated relationship with -- between JCJC and
20 otherwise to track one of those notice letters to the youth
21 and parents as to the schedule -- as to the process relating
22 to fines court?

23 A I'm sorry. I don't understand what you're asking.

24 Q Have you -- have you sought any of those notice
25 letters?

1 A Oh, I -- we -- I think we -- when I met with Mr.
2 Fisher I think we pulled a letter out, yes, of a file. I
3 think we located one original. I believe that we copied one
4 and gave to him.

5 Q Do you know -- would you recognize that
6 correspondence if you saw it?

7 A Yes.

8 Q Would that be a form of a summons?

9 A Not at that point. This -- this document would
10 have gone out after the letter I'm talking about.

11 Q Okay. This would have been the document
12 establishing the court proceeding?

13 A Establishing the court proceeding, yes. If they
14 didn't -- if they didn't respond to the letter, the initial
15 letter that went out, then I believe they were scheduled for
16 court. And this correspondence would go out scheduling them
17 for the court proceeding.

18 Q Okay. Were the -- was the youth advised of his
19 right to an attorney?

20 A Yes.

21 Q And how often would an attorney be present at those
22 proceedings?

23 A Sometimes, not all of the time.

24 Q I have a document that was provided me in advance
25 of this proceeding where on one occasion there was upwards

1 of 86 -- I'm sorry, 82 youth who were scheduled for that
2 proceeding. Would that be a regular undertaking?

3 A I don't think they were all that large to my
4 knowledge or to my recollection. I don't know that there
5 were that many. That particular -- when we pulled it for
6 Mr. Fisher I believe that just happened to be one of them
7 that we pulled.

8 Q And the one that you pulled was for September 13th,
9 2001, if you recall?

10 A Yes.

11 Q Let me show this to you, please.

12 A Okay.

13 Q Is that the document you referenced?

14 A Yes.

15 Q The notations that appear in that listing.

16 A Um-hum.

17 Q Is that something that would be generated by
18 juvenile probation?

19 A Yes. This is what -- are you talking about the
20 handwritten --

21 Q Correct.

22 A -- note? That's what would have happened with that
23 particular case.

24 Q After the disposition?

25 A Correct. Or before. It could have been before.

1 Q Before or after?

2 A Like in some cases -- in some cases if a juvenile
3 paid, they would be taken off the list.

4 Q What generally would happen if the juvenile did not
5 pay?

6 A In some cases the judge would ask if the child had
7 the ability -- had the money. And if not, he would remand
8 him to detention.

9 Q And the age group of these youth that were
10 appearing before the judge for this process was
11 approximately what?

12 A I would say 10 to 18, 19.

13 Q I've been handed, if you will, a document that
14 indicates a notice from what I believe to be juvenile
15 probation advising someone failed to pay. Is that the
16 letter you're referring to?

17 A No.

18 Q I didn't think so.

19 A No. There's another letter that -- that would have
20 preceded this.

21 Q Okay. Now, would there be a meeting -- okay.
22 Would you -- would you leaf through that material, please,
23 and see if you can find that letter, if you will?

24 A I don't see it here.

25 Q What would occur after you -- you would send the

1 first letter? Would you have a meeting with the juvenile
2 and the family?

3 A I believe if they disregarded the letter -- and I
4 don't recall completely to the best of my recollection. If
5 they did not come in to pay or set up a payment plan of some
6 sort, then I think they would be scheduled for court.

7 Q Okay.

8 A I think the only time they would be scheduled for
9 court is if they didn't appear to arrange some sort of
10 payment plan.

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

13 A I would say very few, if any.

14 Q Was it generally -- was the prosecutor present at
15 all?

16 A Not all the time that I recall.

17 Q What was the nature of the proceeding? Can you
18 describe what happened?

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

23 Q I have a transcript of a proceeding from 2004.
24 Were you handling fines and cost matters at that time?

25 A I never handled fines and costs. I just worked

1 sometimes in the capacity as a PO. I never handled the
2 fines and costs ever.

3 Q Were you in court?

4 A 2004, probably not.

5 Q Let me ask you if this sounds comparable to the
6 type of proceedings that were undertaken. Name of party,
7 how old are you? The juvenile, 11. You and your brother,
8 it seems you like to do the same thing, harass.

9 There was a fine imposed. You didn't pay it.
10 Disorderly conduct, engaged in another fight. So you didn't
11 pay that one. Do you have \$488.50? And the child nodded in
12 the negative. Court, very good. He's remanded.

13 He can stay there until he pays the fines.
14 Juvenile's mother, it's actually more than that. Well, I
15 got -- the court, there's -- I got something in the mail. I
16 received one in the mail that he owed \$850 for something. I
17 think it was due by the 15th of January, I believe. Ms.
18 Brulo, we didn't get that yet.

19 Court, we'll get that. By the time he gets out
20 he'll be able to go back for the next one. You're having a
21 great day. Put the cuffs on him and get him out of there.

22 Is that a standard type of proceeding that would go
23 on?

24 A I would say in some cases, yes.

25 Q Was Ms. Brulo the -- the PO that was largely

1 responsible for this form of process?

2 A Yes, sir.

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

7 A No.

8 Q Do I understand that this was a byproduct that
9 Judge Ciavarella developed, if you know?

10 A I don't know.

11 Q Do you know is it still ongoing?

12 A No.

13 Q When did it stop?

14 A I believe the best that we could tell when we were
15 looking through some of our files was 2004. I'm pretty sure
16 we had it from '99 to 2004.

17 Q How is it that the youth were released from
18 detention, if you know?

19 A To my knowledge, if they paid, if the parents paid
20 their fines.

21 Q So this was largely a -- a collection method to --
22 focused on the children, but indirectly the parents needed
23 to pay?

24 A Yes, to my knowledge.

25 Q In order to secure the release from detention?

1 A To my knowledge, yes.

2 Q Were there any other methods of treatment developed
3 by juvenile probation with regard to the referrals of
4 failure to pay fines and costs from the district magistrates
5 other than fines courts?

6 A Since that time?

7 Q Yes.

8 A There was a period of time after fine court when
9 fines would come from the magistrate. They would be opened
10 and then sent over to our restitution slash business office
11 for collection, strictly just for monetary collection. And
12 that lasted until just recently, within the last year.

13 We have been working on a diversion program whereby
14 the fines come into our office, and we send out a notice to
15 the kids to come in. And we work out a community service
16 option with them if they don't have the ability to pay.

17 Q The -- the second phase that you just described,
18 was that using a collection agency?

19 A I'm not sure about that. That was strictly handled
20 through the restitution/business office. And I don't know
21 how that worked.

22 Q And who was in charge of the restitution/business
23 office?

24 A At the time I believe Pete Namowicz was our
25 business manager.

1 Q Okay.

2 A Phyllis Mantione, I believe, was the assistant.
3 And there are a number of people who work over in the
4 department.

5 Q Okay. Did Mr. McGarry oversee any of this?

6 A I believe so, but I don't know exactly what
7 departments he oversaw.

8 BY JUDGE WOODRUFF:

9 Q Ms. Kline, good afternoon.

10 A Good afternoon.

11 Q I have a few questions here. First, just one last
12 one in regard to fine court. Was community service ever
13 offered in regard to the payment of such fines?

14 A During fine court?

15 Q Yes.

16 A Not to my knowledge, no.

17 Q Okay. What is your position again now currently?

18 A Currently I am the community liaison probation
19 officer. I'm a probation officer. My current function is
20 the community liaison position.

21 Q Okay. As a probation officer in the past are you
22 aware of the intake process?

23 A Yes.

24 Q You've been involved with that as well?

25 A Yes.

1 Q Okay. I want to, you know, concentrate on that
2 particular area.

3 A Okay.

4 Q And I -- I sort of want to go through it, you know,
5 from the beginning, once law enforcement is involved, police
6 pick up a child, one case or another, and how it gets in
7 intake and exactly what's done there.

8 A Okay.

9 Q In regard to detaining a juvenile, if a police
10 officer makes an arrest, they call intake in regard to
11 determine whether the child should be detained, or how does
12 that work?

13 A Current procedure, or --

14 Q Well, during -- when did you start with probation?

15 A I started with probation in '89.

16 Q Okay.

17 A As a probation officer in '95.

18 Q Let's talk about the years from 2003 until today.

19 A Okay.

20 Q Start with 2003 and work back up.

21 A Okay.

22 Q So at that time how was it handled?

23 A In terms of detention?

24 Q Yes. I mean, if a child was picked up?

25 A If a child was picked up by the police, the police

1 would contact the on-call supervisor, whoever was in charge.
2 I believe at the time it would have been Sandy or Mike
3 Lockney.

4 Q Okay. And they would make a decision whether this
5 child -- the child should be detained or not?

6 A Yes.

7 Q Okay. If the child was detained soon thereafter,
8 there would be a detention hearing?

9 A Yes, within 72 hours.

10 Q Okay. Would a probation -- probation officer be
11 present at that detention hearing?

12 A Yes.

13 Q Okay. Was that always before a judge, or was it --

14 A Always before a judge.

15 Q -- before hearing officers?

16 A A judge.

17 Q It would be before a judge?

18 A Yes.

19 Q And I'm assuming would that be particularly Judge
20 Ciavarella?

21 A In most cases I would say yes.

22 Q Okay. Was the juvenile represented by counsel at
23 that time?

24 A Could be. Sometimes yes, sometimes no I would say.

25 Q Okay. I'm not quite sure what sometimes means. On

1 a percentage-wise can you give me a percentage, 10, 20, 50
2 percent?

3 A I don't know.

4 Q You don't know?

5 A No.

6 Q Okay. The majority of the time that you were in
7 court were they represented by counsel?

8 A I don't know that I can give you a majority.

9 Q Okay.

10 A The best I can tell you is sometimes they were,
11 sometimes they weren't.

12 Q Okay. Let me ask you this. Were probation
13 officers directed to inform the juvenile they have a right
14 to counsel?

15 A Yes.

16 Q Is that counsel ever waived?

17 A Yes.

18 Q Okay. And how was that accomplished? How did --
19 what happens?

20 A We would talk to the parents and juvenile and ask
21 if they had counsel, if they had sought out counsel. Many
22 would say they didn't need it or they didn't want it.

23 Q Okay.

24 A And if they opted not to have it, then we had a
25 waiver of counsel form that was signed.

1 Q Okay. Let's talk about that waiver of counsel
2 form. Who prepared that form?

3 A I don't have any idea.

4 Q Okay. And who presented it to the juvenile to be
5 signed? Would that be probation?

6 A Probation.

7 Q Okay. And when was that done? Was that done prior
8 to the hearing?

9 A Prior to the hearing.

10 Q Okay. And once you got into the detention hearing
11 did you inform the judge? Was the judge informed that that
12 juvenile waived counsel?

13 A I think in most cases he would ask if the juvenile
14 had counsel, and they would say yes or no. And then he
15 would be provided with the waiver. If they had signed the
16 waiver, he would be provided with that waiver.

17 Q Okay. And once he received that waiver at that
18 point was there a colloquy given at any time or request to
19 the juvenile if he understood what he signed, if he signed
20 it voluntarily, if he -- if he --

21 A I can remember a few times him asking about that,
22 but I -- it wasn't asked all the time.

23 Q Okay. Sometime thereafter a probation officer
24 would receive the actual police reports?

25 A We would have the police reports prior to going in

1 to a detention hearing.

2 Q Okay. Would a petition be filed?

3 A Yes.

4 Q Okay. And who prepared the petition?

5 A Clerical staff.

6 Q Okay.

7 A You mean in terms of typing it up?

8 Q No. In terms of what goes on the form itself as
9 far as the listing of the charges and things. Where did all
10 that come from?

11 A Intake staff would write up the charges that came
12 on the actual allegation.

13 Q Okay.

14 A And provide those to clerical. And clerical would
15 type them on to the petition.

16 Q Okay. Now, would any of those charges be adjusted
17 in any way?

18 A Not by intake staff.

19 Q Okay. Was the Assistant District Attorney ever
20 advised as to the charges to discuss those charges?

21 A Not to my knowledge by intake staff.

22 Q Okay. Once the petition was filed and the
23 detention hearing had been concluded was there -- if the
24 juvenile was detained were there any other meetings with
25 that juvenile prior to the next scheduled court hearing?

1 A We would try to have an intake meeting with them --
2 with the juvenile and their parent to gather background
3 information.

4 Q Okay.

5 A Or Problem Severity Index.

6 Q What kind of information would you be seeking?

7 A Any family history, any school history, illegal
8 behavior, anything that -- any other charges or summaries
9 that they had incurred.

10 Q Okay.

11 A Mental health background, medical background, drug
12 and alcohol history, and then personal history.

13 Q Okay. And were the juveniles allowed counsel at
14 these meetings as well?

15 A Yes.

16 Q If they wanted?

17 A Yes.

18 Q Okay. In regard to the petition, were there ever
19 any informal adjustments made?

20 A Yes.

21 Q And what type of adjustments would be made on
22 petitions?

23 A What type of -- I'm sorry?

24 Q What type of petitions would be informally
25 adjusted, what type of charges?

1 A Low level misdemeanors. I would -- first offenders
2 in some cases depending on the charge.

3 Q Okay. Was there a written policy in regard to
4 petitions being informally adjusted?

5 A I believe at one time there was with regard to
6 taking a look at what charges would be considered for
7 informals.

8 Q Um-hum.

9 A But I don't recall what it said or when it was
10 prepared.

11 Q Okay. Are you aware of who would have participated
12 in the preparation of that particular policy?

13 A I believe Sandy Brulo, Judge Ciavarella.

14 Q Okay.

15 A Maybe the intake staff.

16 Q Okay. And so Judge Ciavarella would be part of
17 that informal adjustment policy you believe?

18 A I believe it was run through by him. I don't
19 believe he sat ever in on a meeting, but I believe it was
20 run through him or by him.

21 Q Okay. Now, I know in certain counties in regard to
22 informal adjustments it can lead to -- particularly in
23 Allegheny County we have what we call extended contracts,
24 which is similar to a consent decree without a lot of those
25 restrictions.

1 Would any of that exist here, something like a
2 extended contract?

3 A A contract with them for the informal, you mean?

4 Q Yes.

5 A Yes, um-hum.

6 Q Okay. And how long was that type of contract? How
7 long did it take place?

8 A Typically three to six months.

9 Q Okay. Were there any petitions that were basically
10 written off due to lack of evidence, victim not wanting to
11 continue, or just an error? Would that occur?

12 A I don't know about that -- about those particular
13 conditions. I know there were times when after interviewing
14 the child we felt like we -- I'm saying we as intake staff,
15 I know myself -- would not feel like it needed to go any
16 further, either in terms of the victim saying, you know, we
17 really don't want to see this young man in trouble or what
18 have you. And we would very potentially warn counsel at
19 that level, at that intake interview.

20 Q Okay. Who was all involved in the informal
21 adjustment hearings?

22 A They --

23 Q Probation would be there?

24 A They really weren't hearings. They were
25 interviews.

1 Q Okay.

2 A An intake officer would be the only person, unless
3 the child brought counsel, and the parents.

4 Q Okay.

5 A And then potentially at one point we did have a
6 very good collaborative effort with our victim/witness
7 coordinator.

8 Q Um-hum.

9 A And often times the victims would be part of that
10 intake interview as well.

11 Q Okay.

12 A And the police.

13 Q Now, would it be at the sole discretion of that
14 probation officer to determine or to confirm the informal
15 adjustment?

16 A To offer the informal?

17 Q Yes.

18 A For the most part, yes, on an individual basis. If
19 there was a question, we would confer with a supervisor or
20 with Sandy Brulo.

21 Q Okay.

22 A But for the most part at the discretion of the
23 probation -- the intake officer.

24 Q Okay. At any time where that probation officer
25 indicated that there would be an informal adjustment was

1 that ever overruled by a supervisor?

2 A Not to my knowledge.

3 Q Okay. Did Judge Ciavarella --

4 A Not that I can think of.

5 Q -- ever become involved at that point?

6 A No, not with my experience.

7 Q Okay. Did you ever hear of that, Judge Ciavarella
8 ever becoming involved at that point?

9 A No.

10 Q Once the case would go back before the court, if an
11 informal adjustment had not occurred and a regular
12 adjudication hearing was scheduled --

13 A Um-hum.

14 Q -- were you ever present when juveniles were not
15 represented by counsel?

16 A Yes.

17 Q Okay. And did the same occurrence occur then?

18 There was a written form, waiver of counsel form, to be
19 filed?

20 A Yes.

21 Q Okay. And at that time of the hearings who would
22 provide that form to the juvenile?

23 A The probation staff.

24 Q Okay. If at the -- let me just regress a moment.

25 If at the time of the detention hearing --

1 A Um-hum.

2 Q -- they had signed this waiver of counsel form,
3 were they requested or required to sign a second waiver of
4 counsel form at the adjudication hearing?

5 A I'm not sure about that. I'm not sure whether they
6 would sign a second release or not.

7 Q Okay. Would the probation officer also be a part
8 of the -- if they're adjudicated delinquent, part of the
9 disposition hearing as well?

10 A Would we be present in the courtroom?

11 Q Yes.

12 A Yes.

13 Q Okay. And what about follow-up review hearings?

14 A Yes.

15 Q Okay. In regard to those juveniles that had signed
16 previously a waiver of counsel form, would they be required
17 to sign subsequent waiver of counsel forms in those hearings
18 as well?

19 A I'm not sure.

20 Q In any of those hearings subsequent to the juvenile
21 first signing a waiver of counsel was there any colloquy
22 given by the judge in regard to waiver of counsel?

23 A I can remember on occasion him discussing attorneys
24 with kids. I can't tell you how many times or how often.
25 At the intake proc -- at the very beginning intake process

1 we would Mirandize them before we did anything and tell them
2 they had a right to counsel.

3 Q Um-hum.

4 A And if they proceeded, if they wished to proceed,
5 we would proceed with the intake. And then when they would
6 show up for court we would also ask them and direct them to
7 the Public Defender's Office.

8 Q Okay. But there was nothing outside of what
9 probation did in regard to waiver of counsel that the judge
10 took care of once they came into the courtroom?

11 A I can't say all the time. There were times I
12 recall him discussing an attorney asking a parent or a youth
13 if they wanted an attorney or if they were sure they wanted
14 to waive their right to an attorney. But that wasn't a
15 consistent conversation.

16 Q Okay. Was that a common thing that he would ask?

17 A No. I'm saying it was not common.

18 Q It was not common?

19 A No.

20 Q Okay.

21 BY JUDGE UHLER:

22 Q With regard to the intake, I gather if the child
23 had indicated to you that he planned to admit to the charge,
24 that's when you began working up your social history; is
25 that correct?

1 A Yes.

2 Q And you did advise that -- what that would include.
3 To whom would that social history be provided?

4 A We would use it to come up with a recommendation
5 that was then provided to Ms. Brulo.

6 Q Okay. And do you know whether or not Ms. Brulo
7 provided that to the prosecutor or to defense counsel?

8 A I'm not sure. I don't believe so, but I'm not 100
9 percent sure of that.

10 Q So while you were in court during the course of a
11 disposition that did not appear, to you at least, that the
12 prosecutor or the defense counsel was aware of what that
13 social history had -- had demonstrated?

14 A Correct.

15 Q Did that raise a question in your mind? How could
16 this proceeding be a fair one?

17 A Sometimes.

18 Q Did you discuss that with anyone?

19 A At the time I would have discussed it with the
20 supervisor or with the chief at the time.

21 Q And the chief at the time was who?

22 A Sandy Brulo.

23 Q Were there any offenses or offenders that you knew
24 from the very outset of the intake that these youth would be
25 placed?

1 A I would say yes based on their charges.

2 Q Were there any zero tolerance internal
3 understandings disseminated either by Sandra Brulo or
4 in-house that, for example, certain tiered probation
5 violators or particular violations that arose in the school
6 setting --

7 A Um-hum.

8 Q -- that you knew would be placed?

9 A Yes.

10 Q And can you tell me what those essentially were?

11 A To be honest with you, sir, the policy changed very
12 often.

13 Q Okay.

14 A And I -- I couldn't tell you on any given day or
15 given week sometimes. Because one day it would be one
16 policy, and it might change two days later or three weeks
17 later or two months later.

18 Q Did you have any sense as to the -- the genesis as
19 to why these policies were changing as frequently as they
20 were?

21 A Sandy would tell us it was her directive and the
22 directive of the judge, and we didn't question.

23 Q Okay. As part of your social history work up did
24 there -- were there occasions where a psychological would
25 appear appropriately?

1 A Appear appropriate to the -- to me as the intake
2 officer?

3 Q To you as the intake officer as well as to the
4 youth who had the pending proceeding?

5 A Yes, yes, based on history.

6 Q What were the mechanics of your going about
7 securing that psychological prior to the adjudication or
8 disposition hearing, or wouldn't that happen at that stage?

9 A At that stage a psychological would not be directed
10 prior to the delinquency hearing.

11 Q Okay. Post-delinquency hearing I gather that is
12 when the psychological would be directed by the judge?

13 A Yes.

14 Q Were you aware of any policy that necessitated
15 detainment of that child in order to effectuate the
16 psychological?

17 A Not a policy that I'm aware of.

18 Q Was it a practice?

19 A In a lot of cases, yes.

20 Q As intake officer and following the directions of
21 the court did you have free reign to determine who would
22 undertake that psychological?

23 A No.

24 Q How -- how was that -- what direction did you
25 follow to secure the psychological?

1 A Direction -- whatever policy Ms. Brulo put out in
2 terms of who would do the psychological. Is that what
3 you're saying or asking?

4 Q Correct, correct.

5 A I'm sorry. She would direct who we would use for
6 that psychological.

7 Q And was there one person in particular that would
8 be used?

9 A During a certain time frame, yes. And I'm not sure
10 what that time frame was. But we would use Dr. Vita.

11 Q Was he the only service that was used?

12 A Yes, to my knowledge, or most frequently I would
13 say.

14 Q Would you be the recipient of memos from Ms. Brulo
15 as to any mandated detention policies, the tiered policies
16 in all of the occasions, or would they come from anyone
17 else?

18 A They would come from her.

19 Q And she was in charge up until when, if you
20 remember?

21 A She was in charge until October of 2005. In charge
22 meaning as the chief. She still maintained an awful lot of
23 directive after 2005.

24 Q And --

25 A In terms of our procedure.

1 Q And did that continue on then from 2005 to 2009?

2 A Yes.

3 Q Was there anyone else involved in this process
4 other than Ms. Brulo?

5 A Not -- not that I'm aware of. And the process of?

6 Q The psychological recommendations?

7 A Psychologicals, no, not that I'm aware of.

8 Q Did you have any directives from Judge Ciavarella
9 himself?

10 A I did not, nor did I ever see any.

11 Q Did anyone make any suggestions that we need to
12 have more psychological evaluations?

13 A Not to my knowledge.

14 Q We understand through the reports that PA Child
15 Care was identified as a resource for many placements during
16 the time frame that you've referenced. Did you, as an
17 intake officer, make a specific residential placement within
18 the confines of your -- your recommendation to the court as
19 to what placement should be used, or was that just generic
20 that the child needs placed?

21 A Typically it would be a generic, that placement was
22 necessary if that was the case. And then placement would be
23 -- the best placement would be determined by the intake and
24 placement staff as to what services would best suit the
25 child.

1 Q What -- what was PA Child Care identified as being
2 good for a child insofar as being a resource? What was
3 their -- what was their identity insofar as placement
4 resources? Did they deal in drug and alcohol, issues
5 surrounding incorrigibility? What concerns did they
6 address?

7 A You know, honestly I didn't deal too much with the
8 placement piece of it when I was in intake. I handled
9 mostly informals.

10 Q Okay.

11 A So I didn't have a whole lot of expertise in terms
12 of what facilities best served. I know it was a secure
13 facility. And so in terms of it being, you know, not an
14 open setting. I know they have a fire setter component, sex
15 offender component. So we would look there for those
16 purposes.

17 Q As POs would you generally visit prospective
18 resource sites in order to determine what would be good for
19 those youth that you were serving as a member of the Luzerne
20 County probation staff?

21 A Our placement officers would. And we would rely on
22 the expertise of the placement staff who serviced those
23 particular placement facilities.

24 JUDGE UHLER: Okay. Very well. I have nothing
25 further.

1 BY JUDGE WOODRUFF:

2 Q Just a couple other questions. It's my
3 understanding the adjudications as well as the disposition
4 hearing were held back to back at the same time?

5 A In some cases, not all cases. In many cases I
6 would say.

7 Q Okay. And there were some cases where disposition
8 was deferred?

9 A And held until a later date, yes.

10 Q Okay. During the adjudication and disposition
11 hearings probation made recommendations in regard to
12 juveniles that had been adjudicated delinquent?

13 A During the adjudication hearings? I'm sorry.

14 Q After the adjudication hearing?

15 A After the adjudication hearings we would make a
16 recommendation, I guess, based on whatever disposition.

17 Q Okay. In regard to those recommendations, were
18 they ever provided to the judge prior to the hearing?

19 A Yes.

20 Q Okay. Were they provided to the judge prior to the
21 hearing that day or some days prior?

22 A That I don't know.

23 Q Okay. Is it possible that those recommendations
24 would have been provided not just before the hearing on that
25 day, but some days prior to that?

1 A I would say it's possible, yes.

2 Q In regard to other recommendations, particularly
3 interested in those that -- that did not require a
4 placement, were those recommendations always followed, or
5 were there sometimes where the judge indicated the child
6 would be placed contrary to probation's recommendations?

7 A Yes. There were times that probation would be the
8 recommendation, and placement would be the disposition.

9 MR. WOODRUFF: Thank you. I have no other
10 questions, Your Honor.

11 CHAIRMAN CLELAND: We have, of course, four other
12 officers that we want to fit generally within this time
13 frame. We can spill over until tomorrow afternoon, but if
14 there's any follow-up questions.

15 BY MR. LISTENBEE:

16 Q Your Honor, I just have one. You've indicated that
17 you Mirandized the youth. What was the purpose of that?

18 A Because we were going to be talking about their
19 charges that had come in from the police.

20 Q And you advised them during that time that they had
21 a right to counsel?

22 A Yes.

23 Q That also that they could remain silent if they
24 chose to do so?

25 A Yes.

1 Q What happened to -- was this -- was there a signed
2 form that they signed when you Mirandized them?

3 A Yes, sir.

4 Q Were their parents present when you did that?

5 A Yes.

6 Q Did their parents also sign the form?

7 A Yes.

8 Q What happened to those forms?

9 A They should be part of the record, part of the
10 intake packet. They would be part of the intake packet.

11 Q Now, does your -- does your intake process also
12 shield children from statements that they make during the
13 intake process? Is that part of the probation function?

14 A I don't understand your question.

15 Q In some probation intake processes statements made
16 by youth cannot be used against them during the adjudicatory
17 hearing process. Was that true of Luzerne County?

18 A My understanding, if they choose not to speak about
19 a charge, we would allow them not to speak. If they spoke
20 about the charge, I guess we were allowed to write any -- we
21 would write down any of that in their Problem Severity Index
22 or, you know, take down whatever notes we could about what
23 they chose to talk about.

24 Q Did you view yourself as an extension of the law
25 enforcement process?

1 A No.

2 MR. LISTENBEE: I have no further questions, Your
3 Honor.

4 BY CHAIRMAN CLELAND:

5 Q You indicated that if the Miranda waiver was
6 signed, it was in the juvenile file maintained by --

7 A Yes.

8 Q -- your office or the prothon -- or the Clerk of
9 Court's office?

10 A Maintained by our office until, I believe, the
11 Clerk of Courts took over. But I believe we have those.
12 They were part of the intake packet.

13 CHAIRMAN CLELAND: Okay. Thank you. Ms. Kline,
14 thank you, very much.

15 JUDGE UHLER: May I ask that the September, 2001
16 listing of youth, as well as the summons, be incorporated
17 into the record?

18 And when Mr. Fisher finds the other document that
19 was referenced as the initial letter, that that be requested
20 of Ms. Kline to identify and also incorporated into the
21 record?

22 CHAIRMAN CLELAND: Very well. Thank you, very
23 much. Mr. Skrepenak.

24 MATT SKREPENAK, called as a witness, being duly
25 sworn, testified as follows:

1

2 CHAIRMAN CLELAND: Have a seat, sir, please.

3 BY JUDGE UHLER:

4 Q Welcome, Mr. Skrepenak.

5 A Thank you.

6 Q Would you initially, for the purpose of the record,
7 state your name, please?

8 A Matthew John Skrepenak.

9 Q And can you share with us how long you've been
10 involved with the Luzerne County Probation Department?11 A I started in January of 1996 as a childcare worker
12 in our detention facility. And February of 1997 I started
13 as a probation officer.14 Q And as a probation officer what roles have you had
15 from that point forward in 1997?16 A I was a field PO. I was a school-based PO. I was
17 an employment coordinator for a short time. And I'm
18 currently -- my current position is intake officer.

19 Q And what is it that you do as an intake officer?

20 A Majority of my function is court preparation.

21 Q And in so doing what do you do?

22 A Accept incoming allegations, review the
23 allegations, make sure the necessary allegations are filled
24 out for what we need correctly. And I, in certain
25 instances, decide how to handle them informally, officially,

1 and assign them to intake officers, assign them court dates.

2 We send them out to the Clerk of Courts offices for
3 JV numbers, so on and so forth, notify juveniles and parents
4 of their adjudication hearings. I handle license
5 suspensions upon adjudication hearings. I handle scheduling
6 of detention hearings. I handle scheduling of violation of
7 probation review hearings, disposition and review hearings,
8 so on and so forth.

9 Q You indicated that just recently you became part of
10 this intake staff; is that correct? Or when did you begin?

11 A Approximately 2001.

12 Q Okay. So you were in generally as an intake
13 officer while Judge Ciavarella was overseeing juvenile
14 court; is that correct?

15 A I was.

16 Q And would you likewise prepare recommendations for
17 the court?

18 A I did.

19 Q And do you share the view that Ms. Kline has
20 expressed, that those reports generally were not shared with
21 the District Attorney's Office and/or defense?

22 A That's correct.

23 Q And does that practice remain the same?

24 A It does not.

25 Q When did that change?

1 A A few years ago. I'm not certain of when. I know
2 it has not been a practice of Judge Lupas's, but I'm not
3 sure of the exact time frame.

4 Q You're familiar with Keith Snyder from the Juvenile
5 Court Judge's Commission together with Lisa Freese and
6 others that came to work with your staff?

7 A Yes.

8 Q Are you not? And one of the recommendations by Mr.
9 Snyder to the Luzerne County program related to the -- the
10 ceasing of the historical practice of police officers
11 signing petitions to initiate the proceedings?

12 A Yes.

13 Q Was that the case, the police officers were
14 executing those petitions?

15 A Not at first.

16 Q Not at first?

17 A We started off with a chief probation officer
18 filing the petitions. At some point during her tenure she
19 then changed that policy, and the police officers did sign
20 the petitions. It has went back to now that our chief, our
21 deputy chief, signs the petitions currently and sends them
22 to the Clerk of Courts office.

23 Q Okay. So Sandra Brulo was the author of the charge
24 practice? Is that my understanding?

25 A That is correct.

1 Q And that charge practice essentially gave more
2 authority to the police officers; is that correct?

3 A I'm not sure.

4 Q Okay. Was it the practice that the petitions often
5 times were not signed until the day of the hearing?

6 A That is correct.

7 Q And hence, neither the prosecutor or the defense
8 counsel would be privy to the petition charges that were
9 before the court?

10 A That is correct.

11 Q The only thing that they would have an opportunity
12 to base their prospective actions on would be the original
13 allegation filed by the police?

14 A Correct.

15 Q I asked Ms. Kline as to whether or not there were
16 any affirmative policies of the -- of the juvenile probation
17 officer. Were you, as an intake officer, aware from the
18 very outset that this child would be detained by virtue of
19 the nature of the charge and/or his status as a potential
20 probation violator?

21 A I don't know from the onset. There were times
22 where you knew that you couldn't handle certain charges
23 informally or officially. But as far as detention from the
24 outset, there was no policy.

25 Q No policy?

1 A Not for detention, no.

2 Q Who made the determination as to whether or not the
3 child should be detained from the initiation of the charge?

4 A During the court proceeding?

5 Q Before the court proceeding?

6 A I believe the police officers requested detention.

7 Q And would that always be adhered to?

8 A Yes.

9 Q And that was, again, a direction of Ms. Brulo?

10 A I believe so.

11 Q There was no independent oversight by the Probation
12 Department to determine whether or not there were other less
13 restrictive resources in the community to avoid that
14 detention?

15 A That wasn't our function. That was handled by
16 supervisors.

17 Q But nonetheless, the police officers were given the
18 direction, not your supervisors, as to whether or not the
19 child should be detained?

20 A The police officers requested detention.

21 JUDGE UHLER: Okay.

22 BY JUDGE WOODRUFF:

23 Q Let me just follow up on that just a little bit.
24 Police officers make arrests, and they requested detention?

25 A At times.

1 Q At times?

2 A Depending on the seriousness of the charge.

3 Q Okay. And was there a request always followed by
4 probation?

5 A I didn't handle the requests, so I don't know.

6 Intake officers didn't have authorization to -- to secure
7 detention. That was always handled by our supervisors.

8 Q Okay. Are you aware if any of their requests were
9 not followed?

10 A I don't know.

11 Q In regard to detention of juvenile, are you aware
12 of any particular guidelines that were followed, such as
13 JCJC standards, in regard to detention?

14 A Again, I -- we didn't handle them duties, so I'm
15 not sure.

16 Q I asked Ms. Kline a number of questions in regard
17 to counsel for juveniles. And you were here, and you heard
18 her testimony?

19 A I did.

20 Q Okay. And you agree with everything that she said?
21 Do you have anything further to add in regard to juveniles
22 waiving of counsel?

23 A I do not.

24 Q Okay. And you're not aware of the judge,
25 particularly Judge Ciavarella, offering a colloquy in regard

1 to waiver of counsel?

2 A I don't believe so.

3 Q It's my understanding that Judge Ciavarella also
4 has some input with regard to informal adjustments. Do you
5 agree with that?

6 A No, I do not.

7 Q Okay. Did Judge Ciavarella have any input in
8 regard to any policies or procedures in regard to informal
9 adjustments?

10 A He had policies, yes.

11 Q Okay.

12 A Certain instances you couldn't handle -- I should
13 say certain charges you couldn't handle informally.

14 Q Okay. And those certain charges, those were at the
15 direction of Judge Ciavarella?

16 A Some were.

17 Q Okay. Some were such as?

18 A Any school incidents, anything to do with school.

19 Q Okay.

20 A They were not allowed to be handled informally.

21 Q Okay. Regardless of the charge, if it was a charge
22 that involved the child while on school property, none of
23 those incidents could be informally adjusted?

24 A For the most part, no. I'm sure at times there
25 were some requests for police officers to handle them

1 informally. And if you had permission from the judge or
2 from a supervisor to handle them informally, I'm sure at
3 times some were. But for the most part, no.

4 JUDGE WOODRUFF: Okay. I have no further
5 questions.

6 CHAIRMAN CLELAND: Any follow-up questions?

7 BY MR. WILLIAMS:

8 Q I have just one, Matt. You said Sandra Brulo, when
9 she was the chief, allowed the police officers to sign the
10 petitions. Was that at the order of Judge Ciavarella?

11 A I don't believe so.

12 Q It was her and her only?

13 A I believe so.

14 Q Okay.

15 A But I'm not sure. That was her order to us. I
16 don't know where her orders came from.

17 MR. WILLIAMS: Okay. Thank you.

18 BY MR. LISTENBEE:

19 Q Your Honor, if I may, just briefly. You've
20 indicated the police officers requested detention. No
21 informal for schools per Judge Ciavarella's policies. Were
22 these policies in writing?

23 A They were understood. There were policies that you
24 couldn't handle -- there were policies by Judge Muroski that
25 were in writing. The policies that Judge Ciavarella created

1 I don't believe were in writing, but they were understood.

2 Q You say policies by Judge Muroski that were in
3 writing?

4 A Correct, correct.

5 Q Which ones?

6 A There was an order signed several years ago where
7 there were certain charges that could be handled informally
8 and certain charges that needed to be scheduled for court.

9 Q Okay. Do you recall what those were?

10 A I don't.

11 MR. LISTENBEE: I have no further questions, Your
12 Honor.

13 BY MR. HOROHO:

14 Q The policies of Judge Ciavarella, when you said
15 they were understood, how do you understand them if you
16 don't receive them in writing? Did you personally receive
17 these orally? How were they communicated?

18 A Well, we had zero tolerance policies, anything that
19 was associated with school. Anything in dealing with school
20 you knew could not be handled informally without his
21 authorization. That was his -- his policy.

22 Q Well, how --

23 A But they weren't written. He expressed that to us.

24 Q Okay. In what, in meetings?

25 A Yes.

1 Q When were those meetings held?

2 A He met with the probation office on several
3 occasions as a staff.

4 Q Were you present then?

5 A I was.

6 Q Okay. And how did he present that to you?

7 A I'm not sure. I don't recall. I know we've had
8 several meetings with him in his tenure.

9 Q And this zero tolerance policy, was that very
10 prevalent throughout his tenure as -- as the -- being a
11 juvenile judge?

12 A I believe so.

13 Q Was that clearly articulated as -- as -- as far as
14 the -- what he wanted done in juvenile court and probation
15 as related to that?

16 A I believe so.

17 Q And your interpretation of that was anything
18 related to school was going to be officially handled through
19 the court by the judge?

20 A He wanted it scheduled in front of him, correct.

21 Q Even if there was a skirmish on property between
22 two students that never had any incidents that typically
23 would be handled informally, that would go -- have to go in
24 front of Judge Ciavarella?

25 A Unless you had his prior authorization, yes.

1 Q And how would one get his prior authorization?

2 A Sometimes officers would request informals.

3 Q You mean --

4 A Sometimes school officials would request informals.

5 Q Okay. And how would that be communicated to the
6 judge? Somebody call him up?

7 A Actually on the written allegations they filed
8 there was a spot to check officially, informal, consent
9 decree. And some of the school officials or some of the
10 arresting officers would check an informal and request an
11 informal.

12 Q Okay. And then how would that be presented to the
13 judge?

14 A You would go over to speak to the judge and ask for
15 his authorization to complete an intake informally.

16 Q In chambers?

17 A Yes.

18 Q Would -- was anybody there on behalf of the
19 juvenile?

20 A No.

21 MR. HOROHO: That's all the questions I have.

22 BY MR. LEGG:

23 Q Mr. Chairman, if I may, just one question. Sir,
24 could you describe just generally the involvement that the
25 District Attorney's Office had in dispositions? We've had

1 some testimony today that really they weren't making any
2 types of recommendations or advocating anything.

3 Was that your experience, that the District
4 Attorney's Office just sort of went along with whatever
5 probation's recommendation was, whatever the judge wanted?

6 A That's correct.

7 Q They weren't fighting for one way or the other?

8 A They were not.

9 Q They -- no one was coming down to your offices or
10 anybody from the prosecutor's office trying to say, what do
11 you think of this kid? What do you think we should be doing
12 with them, nothing like that?

13 A Not at that time.

14 MR. LEGG: Nothing further.

15 BY JUDGE UHLER:

16 Q Judge Cleland, just -- was Sandra Brulo supportive
17 of zero tolerance policy?

18 A I'm not sure if she was supportive of it. I don't
19 know.

20 Q Did she ever indicate that she was not supportive
21 of it?

22 A She did not.

23 Q Did she approach her supervision of the juvenile
24 probation staff from a social worker perspective or from a
25 law enforcement perspective?

1 A I would say both.

2 JUDGE UHLER: Both, okay. Thank you.

3 CHAIRMAN CLELAND: Mr. Allen.

4 BY MR. ALLEN:

5 Q I just have one question. It's kind of related to
6 what Jason said. We mentioned informal adjustments and the
7 District Attorney's Office. You said you had a list of
8 incidents that couldn't be handled by informal adjustment
9 that the judge provided you.

10 Did the District Attorney provide you with any
11 lists of anything that could be handled by informal
12 adjustment?

13 A I don't believe so.

14 MR. ALLEN: Thank you, Mr. Chairman.

15 CHAIRMAN CLELAND: Mr. Skrepenak, thank you, very
16 much.

17 THE WITNESS: Thank you.

18 CHAIRMAN CLELAND: Ms. Zera.

19

20 ANGELA ZERA, called as a witness, being duly sworn,
21 testified as follows:

22

23 CHAIRMAN CLELAND: Please have a seat.

24 BY JUDGE WOODRUFF:

25 Q Ms. Zera, I'm Judge Woodruff. I do not have very

1 many questions for you today, but I do have a couple.

2 First, if you could just tell me your current employment?

3 A I'm currently a supervisor of the Probation
4 Department.

5 Q Okay. And how long have you been part of the
6 Probation Department?

7 A I began as a probation officer in February of 2002.

8 Q Prior to 2002 had you had any involvement with
9 probation or the court system?

10 A I worked as a childcare worker in Luzerne County
11 Detention Center on River Street in Wilkes-Barre.

12 Q And how long were you there?

13 A From July of 2001.

14 Q And prior to that?

15 A Prior to that I was an assistant manager.

16 Q And you've been present here in regard to the prior
17 two witnesses' testimony?

18 A Yes.

19 Q In regard to waiver of counsel for juveniles, do
20 you agree with everything that's been said by both of them
21 thus far?

22 A Yes.

23 Q Okay. And have you been present during the
24 presentation of the waiver of counsel form to juveniles?

25 A Yes.

1 Q And can you tell me how that process went and who
2 was present during that time?

3 A The waiver of counsel before court?

4 Q Yes.

5 A The day of court it would have been their fourth
6 notice from our office. They would come out. They would
7 report for court. And you would ask them upon checking in,
8 do you have an attorney with you? If they did not have an
9 attorney, we would ask them did they want an attorney? If
10 they wanted one, you would send them down to the Public
11 Defender's Office on the second floor.

12 Q Okay.

13 A If they did not want one, you would explain to them
14 that the waiver that we were giving them was a waiver of
15 their right to counsel, that they were saying they were not
16 going to have an attorney represent them in court, and that
17 they were told to read it in full and sign, their parent and
18 the child.

19 Q Okay. Okay. Did anyone explain thoroughly to them
20 what they were signing exactly other than indicating it was
21 a waiver of counsel?

22 A If they asked, you know, what does this mean, you
23 would say to them, it's telling the judge that you are going
24 to represent yourself today, that you are not going to have
25 an attorney here to represent you.

1 Q But if they didn't ask, there was nothing further
2 indicated in regard to that form?

3 A Well, that was told to everyone when they came
4 there. It wasn't -- we didn't just hand them the form and
5 say sign this. We told them it was waiving the right to
6 counsel, that they had a right to have somebody represent
7 them other than themself in court.

8 Q Okay. Once that form was signed and the case went
9 into court before Judge Ciavarella did Judge Ciavarella
10 offer a colloquy in regard to that waiver of counsel?

11 A At times, not a formalized. He didn't read from a
12 book, but he did ask at times some kids if they had a -- an
13 attorney, that they were there for serious charges, didn't
14 they feel they needed an attorney.

15 Q Okay. And when you say at times, it's our
16 understanding that over 50 percent of the juveniles did not
17 have counsel. So in regard to what -- at times, what
18 exactly do you mean by that?

19 A I've seen him ask kids with felony charges. I've
20 also seen him continue proceedings when kids are felonies
21 and they didn't have attorneys there.

22 Q Okay. And have you also seen times where those
23 cases were not continued even though they didn't have
24 attorneys?

25 A I'm sure, yes.

1 Q Okay. It's my understanding that probation also
2 made recommendations in regard to disposition of cases.
3 Previous witnesses indicated that placement or disposition
4 recommendations were provided to the court prior to the
5 disposition hearing. Is that your understanding as well?

6 A I don't know that. I've never delivered
7 recommendations to the judge. I do know that there was a
8 sheet that had recommendations on it. It was our court list
9 that was generated. I don't know if the judge received it
10 prior to.

11 Q Okay. When is that court list generated?

12 A I believe the week before court.

13 JUDGE WOODRUFF: Okay.

14 BY JUDGE UHLER:

15 Q When were you elevated to your new role as what
16 again?

17 A Supervisor.

18 Q And when did that happen?

19 A September of 2007, I believe.

20 Q And I gather you likewise have been very active in
21 -- actively involved with Lisa Freese and Keith Snyder?

22 A Yes.

23 Q As a result of your review of past practices and
24 the newly developed practices, do you have any further
25 recommendations to this Commission as to how your services

1 could be improved to the community?

2 A To the community?

3 Q Um-hum.

4 A I -- we are in the process actually of trying to
5 look for diversion programs, and I think that that's a good
6 way to move from the practice of old to new.

7 Q To date do you have any diversionary programs?

8 A The only one that we have we worked on, and it is
9 still a work in progress, but we developed a fines program
10 as a diversion program instead of bringing the kids before
11 the court first. Or instead of just issuing the fine to
12 them, if they have hardship in paying, we are working with
13 them for community service hours to satisfy the fine from
14 the magisterial level.

15 JUDGE UHLER: Thank you. I have no further
16 questions, Mr. Chairman.

17 CHAIRMAN CLELAND: Mr. Allen.

18 BY MR. ALLEN:

19 Q I just have one about -- it's about your
20 relationship with Judge Ciavarella. How long have you known
21 him in a work capacity?

22 A Probably I've known him about, I would say, 27
23 years, 26 years. And he was a neighbor.

24 Q Did you get a chance to -- when you were hired was
25 he aware that -- who you were?

1 A I'm sure.

2 MR. ALLEN: That's all I have, Your Honor.

3 BY MR. MOSEE:

4 Q Judge, just a couple questions. Were you the
5 person who actually gave the waiver form to the juveniles
6 who were proceeding into court?

7 A I was at times.

8 Q Did you receive any training to do that, how to
9 field the questions, how to respond?

10 A No, I did not.

11 Q All right. Did you ever run into any problems with
12 that? I'm curious.

13 A Yes. People would ask, I don't know, questions.

14 Q They'd ask for legal advice, right?

15 A Well, they would ask for legal advice. I was told
16 I wasn't to give them a direct yes, you should or no, you
17 shouldn't.

18 Q Okay. Who told you that?

19 A Sandra Brulo. And I believe there's a memo
20 regarding that.

21 Q Do you have that memo?

22 A Not with me.

23 Q Okay. Do you recall any other forms of
24 instruction, maybe that's a better word, with regard to how
25 to give the waiver form?

1 A No.

2 MR. MOSEE: Okay. Nothing further.

3 BY MR. LISTENBEE:

4 Q If I may again, Your Honor. Were you also
5 responsible for doing the Miranda -- giving Miranda
6 warnings?

7 A Yes.

8 Q Were you given any instructions in terms of how to
9 give Miranda warnings?

10 A No.

11 Q Were you told that was a legal process and,
12 therefore, you could not give legal advice at the time you
13 gave the warnings?

14 A I was not told that it was a legal process. I was
15 told that I could not give legal advice as far as should
16 they have an attorney.

17 Q All right. Which came first, Miranda warnings or
18 the waiver of right to counsel?

19 A The Miranda warning was the first thing our office
20 always started with. It was -- other than saying hello, my
21 name is Angela, you would say, I have to read you your
22 rights today.

23 Q Okay. Do you still have the same practice?

24 A I believe so.

25 Q Have you received any advice from Keith Snyder or

1 Lisa Freese that that is an appropriate or inappropriate
2 process?

3 A No. Actually I believe that they said our process
4 during intake was a very good process, and they actually
5 gave us good reviews regarding that.

6 MR. LISTENBEE: Thank you, very much.

7 BY CHAIRMAN CLELAND:

8 Q Just one question as soon as I get the document.

9 A Sure.

10 Q You are the juvenile probation officer supervisor.
11 Do you supervise a specific program or what -- supervisor of
12 what?

13 A I currently supervise 19 field -- field officers.

14 Q Okay. Does that include school-based officers?

15 A We don't have school-based officers at this point
16 in time. Everybody has been put into the community-based
17 category.

18 Q What I have here is two documents with three sheets
19 of paper, but they're the waiver of right to counsel forms.
20 And if you could just confirm which form you're using
21 previously, which form you're using now?

22 A Well, the answer to that would be none. We don't
23 do waiver of counsel at this point in time. The old waiver
24 is this first page that you handed me. The new waiver,
25 which came about approximately, I believe, 2007, was the one

1 that we were using prior to stopping the entire practice.

2 CHAIRMAN CLELAND: Okay. I'm sorry. I guess I
3 misunderstood the question. I thought you asked if they
4 were doing waiver of counsel now.

5 MR. LISTENBEE: I'm certainly curious. I was
6 asking if they were doing Miranda warnings at this point.

7 BY CHAIRMAN CLELAND:

8 Q Okay. I'm sorry. So you're doing Miranda
9 warnings, but not the waiver of counsel?

10 A That's correct.

11 BY MR. LISTENBEE:

12 Q When did that practice stop? That's fairly recent?

13 A The waiver of counsel? I couldn't tell you when
14 exactly it stopped.

15 CHAIRMAN CLELAND: When you refer -- I'm sorry,
16 were you --

17 MR. LISTENBEE: No, I'm fine, Your Honor.

18 BY CHAIRMAN CLELAND:

19 Q When you referred to the first waiver of rights,
20 that was the single page document --

21 A Yes.

22 Q -- is that correct? And then subsequently that
23 went to -- we have it as two pages, but it's front and back
24 of the same page; is that correct?

25 A That's correct.

1 CHAIRMAN CLELAND: Okay.

2 BY JUDGE UHLER:

3 Q That was in 2007?

4 A I believe so.

5 Q And the first one was in 2001?

6 A That I don't know.

7 JUDGE UHLER: Okay.

8 MR. LISTENBEE: Your Honor, could those be added to
9 the record as well?

10 CHAIRMAN CLELAND: Yes, we'll make those part of
11 the record.

12 BY CHAIRMAN CLELAND:

13 Q Did you say you supervise 17 probation officers?

14 A 19.

15 Q 19?

16 A Yes.

17 Q Okay. What is your background and training in
18 probation? Are you in the Master's Program?

19 A No.

20 Q No?

21 A I have a Bachelor's of Criminal Justice from Temple
22 University, and I have already graduated with my Master's
23 from the Shippensburg program.

24 Q So you've already been through the JCJC program?

25 A Correct.

1 Q Okay. When did you do that?

2 A I was in that program from 2004 to 2006.

3 Q It had been a previous representation that Judge
4 Ciavarella didn't support training and going to conferences
5 and meetings and so forth, but that's a major commitment
6 both by you and the Probation Department to go through that
7 program?

8 A Yes. And there have been many that have gone
9 through the program. He was very much in support of that
10 program.

11 Q Could you compare and contrast what it's like
12 working in the Juvenile Probation Department now as it was
13 -- as opposed to what it was when Judge Ciavarella was the
14 juvenile judge?

15 A I don't really see a big difference, sir. And I
16 know that that sounds strange, but I don't.

17 Q Okay. How so?

18 A Probation officers in our department have always
19 done what they were told to do. We have always done our
20 job. We always looked out for the best interest of the
21 children, and we still remain doing that.

22 Q Okay. So as far as the work of the Probation
23 Department, that work has not changed in your view?

24 A In my view we still conduct our intake interviews.
25 We still tell children four times before court that they

1 have the right to an attorney.

2 Q Okay. Have the court hearings changed any?

3 A To some degree, yes, some not. This morning we had
4 a four minute non-adversarial hearing. I know that the time
5 frame has been a big deal, so I've been watching. But a
6 colloquy was read.

7 Q You -- you don't think that this is a big deal?

8 A No, sir. I do. I do.

9 Q Okay.

10 A And it's been a big deal to our entire department.

11 Q But you went through the JCJC program. You got
12 your Master's Degree in the midst of all of this. And did
13 that training and education pay off in terms of the work of
14 your department do you think?

15 A I'm pressing forward to get programs, as I had been
16 taught to do, yes.

17 Q But in 2004 when you -- when you completed that
18 program?

19 A In 2004 when I completed that program I would still
20 say yes. I had the knowledge of what else was out there,
21 and at that point in time, even though I was an intake
22 officer, we were asking the questions, why can't we use this
23 or why can't we move to this? Yes.

24 Q Okay. There has been some criticism of the
25 Probation Department and the probation officers. You're the

1 supervisor. Do you want to take a minute to defend or say
2 anything about your workers? I want to give you that
3 opportunity too. We want to be fair.

4 A I -- just as I've already said. We have a great
5 group of people who have always looked out for the best
6 interest of kids, all of us. I believe if you ask them, the
7 big question has been why didn't we know?

8 We didn't see the man you're describing. The man
9 you're describing as a monster came in every day and greeted
10 his staff, talked to us more often than not about the job
11 being a vocation to help children.

12 He took time to sidebar and console and hug
13 parents, and he went to see these kids graduate. He helped
14 them get into college.

15 Now, if you're asking about the department and its
16 function, yes, things are different. It's not as hostile as
17 it once was. And our department does know how to complain.
18 We complained a lot about Ms. Brulo, which led to many
19 meetings. And that was a time when, I believe, she was
20 moved. When we saw wrongdoing we complained.

21 JUDGE WOODRUFF: I have a couple other questions.

22 CHAIRMAN CLELAND: Go ahead.

23 BY JUDGE WOODRUFF:

24 Q Ms. Zera, is it Zera?

25 A Yes.

1 Q You're not an attorney?

2 A No, I am not.

3 Q Okay. But are you aware -- you are aware of
4 juveniles having a right to counsel?

5 A Yes.

6 Q And not only in regard to the hearing itself, but
7 also in regard to admissions?

8 A Yes.

9 Q Okay. Are you also aware that as a requirement for
10 those juveniles not only at every hearing to be indicated
11 their right to that, but also for colloquies to be provided?

12 A I am now.

13 Q Okay. Do you believe that Judge Ciavarella was
14 aware that colloquies should be provided in regard to
15 admissions as well as waiver of counsel?

16 A I can't speak for him.

17 Q Okay. Are you aware that there was an incident
18 involving Judge Ciavarella sometime previous in regard to
19 waiver of counsel of juveniles?

20 A Until recently, no.

21 Q Okay. But this is the same man that you're talking
22 about that's only in regard to looking out for the best
23 interest of the juvenile?

24 A Yes.

25 Q Okay. And even though those juvenile rights have

1 been violated?

2 A Yes.

3 JUDGE WOODRUFF: Okay. Thank you.

4 MR. HOROHO: Your Honor.

5 CHAIRMAN CLELAND: Wait just a second. Okay. Go
6 ahead. Go ahead.

7 BY MR. HOROHO:

8 Q Just a couple questions. You mentioned that you
9 changed the probation officers from a school-based to
10 community-based?

11 A I didn't. The department did, yes.

12 Q Okay. When did that happen?

13 A I'm not sure.

14 Q And do you have a recollection of why it happened?
15 What was the reasoning behind it? What is the basis for it?

16 A I believe it was around the time of layoffs when we
17 lost officers. And due to case loads changing and officers
18 being lost in our department they went to -- they wanted to
19 go to a lessor standard.

20 School-based had to spend 70 percent of their time
21 in the school. The community-based gave them a better reign
22 as far as getting out into different areas to see the kids.

23 Q And you heard prior testimony about Judge
24 Ciavarella's zero tolerance policy?

25 A Yes.

1 Q You agree that he had such a policy?

2 A Yes.

3 Q Did you agree with that policy?

4 A At the time I guess not.

5 Q Did you do anything to voice your objections to
6 either your supervisor or the judge or any other court
7 personnel about your lack of acceptance of the zero
8 tolerance policy?

9 A I didn't. I didn't say that I accepted -- didn't
10 accept it. I'm not sure what your question is.

11 Q Well, you said you -- you -- you didn't accept it.
12 You didn't agree with it. Did you voice any complaints to
13 anybody about the fact that Judge Ciavarella had this zero
14 tolerance tough love policy?

15 A I thought that I said I didn't have a problem at
16 the time with it.

17 Q Oh, you didn't have a problem?

18 A I did not.

19 Q Okay. So you accepted it?

20 A I knew it was a policy.

21 Q What was your personal belief about it?

22 A I can tell you that in many cases, not even zero
23 tolerance, I didn't always agree with Judge Ciavarella or
24 disagree with him in cases. There were times where he put
25 kids away that I would recommend that he would -- should

1 have probation. But there were also the flip side, if you
2 recommended probation -- or placement, and he put them on
3 probation. I just believe that to be judicial discretion.

4 MR. HOROHO: That's all.

5 MR. LISTENBEE: Your Honor, if I may just --

6 CHAIRMAN CLELAND: Just very quickly.

7 BY MR. LISTENBEE:

8 Q You've -- you -- Judge Lupas testified before us
9 that placements have been reduced significantly in Luzerne
10 County since he became the family court judge. Are you
11 aware of that?

12 A I don't know statistics, sir.

13 Q Well, he indicated that several million dollars in
14 placements have been -- several million dollars have been
15 saved by the reduction in placements. Are you aware of that
16 at all?

17 A I don't know that, sir. I'm not in charge of
18 placements in my department.

19 Q Do your probation officers, are they engaged in
20 making recommendations for placement or for probation?

21 A No, the -- which officers?

22 Q The 19 that you supervise?

23 A No. They would recommend -- they would come and
24 tell me about a violation. The violation would then go to
25 court.

1 Q Are the people who violated ever recommended for
2 placement?

3 A Oh, yes.

4 Q Are they recommended -- were they recommended in
5 larger numbers with Judge Ciavarella than they are now under
6 Judge Lupas?

7 A No.

8 Q Is Judge Lupas placing more or less than Judge
9 Ciavarella did?

10 A Less.

11 Q Do you think that's in the best interest of the
12 children, that fewer of them are being placed than they were
13 before?

14 A Not always.

15 Q Are you recommending that more of them be placed in
16 their own best interests?

17 A I would have to say it should be looked at on an
18 individual basis. I don't -- I don't believe that just
19 because of a charge you should determine whether a child
20 should have probation, informal, or -- I was not taught that
21 in our system we should just look at a charge.

22 MR. LISTENBEE: I have no further questions.

23 BY CHAIRMAN CLELAND:

24 Q Understand, Ms. Zera, we're not being finger
25 pointing at you. We're trying to understand the policies of

1 the department which you're responsible for implementing.
2 So don't take anything that we said here as being personally
3 directed at you.

4 I'm going to ask you one last question, and you can
5 -- if you'd rather not answer this, you don't have to answer
6 it. You said you've known Judge Ciavarella for 27 years. I
7 have no idea how old you are, but I bet you're not very much
8 older than that?

9 A That's right.

10 Q So you've known him for a long time, probably as a
11 friend, acquaintance, parent of colleague, whatever. You
12 are perhaps the only person that's come here to say very
13 much kind about Judge Ciavarella.

14 We heard testimony earlier this afternoon of a
15 transcript where he sent an 11 year old boy away to
16 detention for not paying a 400 and some dollar fine. And
17 you testified about him as a person that comes down off the
18 bench to hug parents and go to graduation ceremonies.

19 I can't understand this dichotomy Of personalities
20 and what we're dealing with here. If you want to take a
21 minute to try to enlighten us, I'd give you that
22 opportunity. If you feel uncomfortable and would rather
23 not, I won't press you.

24 A I can only testify to what I've seen. I understand
25 it sounds how it sounds.

1 Q Oh, it doesn't sound any way. I'm just trying to
2 understand.

3 A He would go to graduations at Glen Mills to see the
4 kids graduate, take pictures with their families. He would
5 help kids get into college. He would talk to the staff
6 about being a parent.

7 The -- at one point in time when we all complained
8 about him wanting to take our kids to appointments, he would
9 say, when parents aren't going to be parents, you be the
10 parent. It's just what he told us.

11 CHAIRMAN CLELAND: Okay. All right.

12 BY JUDGE UHLER:

13 Q John, she mentioned one thing that's just triggered
14 another -- one final question, and then it's over. You
15 indicated he went to Glen Mills to attend graduation
16 ceremonies?

17 A Yes.

18 Q Other members of your staff did as well; did they
19 not?

20 A The -- typically the probation officer who was
21 their -- their probation officer that placed there, yes.

22 Q And occasionally Ms. Brulo?

23 A Yes.

24 Q And are you aware that Glen Mills would sponsor
25 their room, and they would stay overnight for a number of

1 days?

2 A I don't know that.

3 Q Okay. Who would know that within the department?

4 A I don't know.

5 JUDGE UHLER: All right. Thank you.

6 CHAIRMAN CLELAND: Thank you, very much, Ms. Zera.

7 Thank you.

8

9 TOM LAVAN, called as a witness, being duly sworn,
10 testified as follows:

11

12 CHAIRMAN CLELAND: Please be seated.

13 THE WITNESS: Thank you.

14 BY JUDGE WOODRUFF:

15 Q Mr. Lavan?

16 A Lavan, yes.

17 Q Lavan, okay. Good afternoon. I guess it's still
18 afternoon or close to evening time.

19 A Close to evening.

20 Q I only have a couple questions for you. First of
21 all, can you tell me your current position?

22 A I am a placement officer. I'm a probation officer,
23 but I handle the children that are in placement.

24 Q Okay. And how long have you been in that capacity?

25 A Approximately ten years.

1 Q Okay. One of the few questions that I have for you
2 in regard to the placement of kids, your involvement in
3 regard to the initial placement, is there another probation
4 officer as well as you? How does that work?

5 A If I could, please. We have three probation
6 officers who currently handle children in placement. We
7 divided the facilities amongst ourselves. That way we felt
8 that we knew the facilities well enough, and the facilities
9 had one contact person that if the facility had a question,
10 they knew to contact Probation Officer Lavan or Probation
11 Officer Magyar or Probation Officer Symons.

12 We're the three currently in the placement --
13 placement unit.

14 Q Okay. Did you -- were you involved prior to
15 placement, or do you become involved with the juvenile once
16 that juvenile's actually placed?

17 A I may become involved prior to placement.

18 Q Okay. In regard -- did you ever make any
19 recommendations or participate in the formation of
20 recommendations for a juvenile to be placed?

21 A Yes, I did.

22 Q Okay. Have you ever been advised by any party that
23 PA Child Care had to be full?

24 A Yes, I was.

25 Q And who advised you of that?

1 A Sandy Brulo.

2 Q Okay. Did she confer with anyone at that time in
3 regard to advising you of that, or you think she made that
4 on her own?

5 A I don't know if she conferred with somebody or not,
6 sir.

7 Q Okay. Did she just make that indication to you on
8 one occasion, or did it depend on, I guess, the occupancy of
9 PA Child Care?

10 A It -- that was originally stated to me when PA
11 Child Care was first opened.

12 Q Okay.

13 A Once the residential facility came online.

14 Q Okay. And what was your response to that?

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

20 Q Okay. Any -- any other ideas you had other than
21 that?

22 A I just felt -- at that point I know Judge
23 Ciavarella had stated in the past that he wanted a facility
24 closer to home, and that at this point this was a way of
25 getting kids closer to home so the families could

1 participate in various therapy and counseling along with the
2 child.

3 Q Okay. Did -- after you received that advice from
4 Ms. Brulo did that change any of your recommendations for
5 possible placement?

6 A I did -- I make recommendations, but they had to be
7 approved by her. I didn't make the final recommendations.

8 Q Okay. Were any of your recommendations changed by
9 her?

10 A I do not know, sir.

11 Q Okay. It's my understanding that if a child had
12 been placed, you would be -- you would continue with that
13 juvenile during that placement?

14 A Correct, correct.

15 Q Did you continue with any juveniles that were
16 placed where it was your recommendation that they not be
17 placed?

18 A If the -- if the child was placed?

19 Q Yes, sir.

20 A Yes. I still continue with the juvenile as long as
21 I was the one in charge of that facility.

22 Q I guess my question is did you ever make a
23 recommendation for a child not to be placed, yet the child
24 was placed?

25 A I don't remember that I -- if I did or didn't, sir.

1 Q Okay. Were you in the courtroom during the time of
2 disposition?

3 A Yes, I was.

4 Q Okay. And you do not recall whether any kids were
5 placed when the recommendation by probation was not to be
6 placed?

7 A Do I recall if they were placed when the
8 recommendation wasn't?

9 Q Correct.

10 A Yes.

11 Q Okay. So there were times that juveniles were
12 placed when probation did not recommend that?

13 A Yes.

14 JUDGE WOODRUFF: Thank you.

15 BY JUDGE UHLER:

16 Q As placement officer would you visit the placement
17 resources?

18 A Yes.

19 Q Would you also attend graduations?

20 A I attended a graduation at Glen Mills on one
21 occasion.

22 Q And who attended that with you?

23 A Probation Officer Norm Magyar, who was in charge of
24 the facility; Judge Ciavarella; Sandy Brulo; and Probation
25 Officer Theresa Kline.

1 Q What was the length of stay?

2 A Overnight.

3 Q Overnight. And do you know whether or not the
4 county paid the -- the tab for those individuals at the
5 motel or hotel? How were -- what were the accommodations?

6 A We stayed at a local hotel.

7 Q And do you know whether or not Luzerne County paid
8 for that?

9 A I do not know, sir. I think it might have been
10 Glen Mills, but I'm not quite sure.

11 Q Can you -- did you dine in the hotel, or were you
12 provided dining elsewhere?

13 A After the graduation ceremony Glen Mills had a
14 reception for all the probation officers, judges, and people
15 of that nature.

16 Q Tell me about that. Where was that held?

17 A On Glen Mills grounds.

18 Q And can you describe the offerings, the food, the
19 drink, et cetera?

20 A It was basically an open bar type situation with
21 hor'dourves set up.

22 Q And for what length of time?

23 A I believe approximately maybe four hours.

24 Q Okay. And you described the probation officers
25 from Luzerne County. Were there other officers from other

1 areas?

2 A I believe so, but I'm not quite sure.

3 Q Were there other judges present?

4 A There were other judges present at the graduation.
5 Whether they attended the ceremony afterwards or not, sir, I
6 don't know.

7 Q When you would make a pleasant -- a placement
8 recommendation to Sandy, I gather that was the track as to
9 how that would proceed?

10 A Correct.

11 Q Would you identify what resource you thought was
12 best for the child?

13 A Yes, I would.

14 Q And you knew these resources well enough to do
15 that?

16 A Yes, I do.

17 JUDGE UHLER: Okay. I have nothing further.

18 CHAIRMAN CLELAND: Mr. Allen.

19 BY MR. ALLEN:

20 Q I have a question about your placement team. How
21 many people are on the team besides the three probation
22 officers?

23 A I'm going have to back track, sir. As placement
24 numbers have come down, people have been moved out of the
25 unit and placed either in -- in other capacities within our

1 -- within our office.

2 At a height there was six placement probation
3 officers. We are now down to three.

4 Q Okay. This six group or three group, did anyone
5 else besides Sandra Brulo, of course who had to approve it
6 all, is anybody else on your placement team, or was it just
7 the probation officers that were considered placement
8 officers?

9 A Correct.

10 Q So you didn't have any -- anybody else on the team
11 like, for example, victim/witness coordinator, anything like
12 that to help you make placement decisions?

13 A We have a victim/witness coordinator, but they
14 never helped us in making placement decisions, no.

15 Q And then after you made your decision -- did you
16 make them as a team, or did you decide yourself who was
17 going to go where? Did each individual make it, or did the
18 group work together?

19 A The group worked together. We would -- sometimes
20 the intake officer would come into us and say, I have a
21 child with certain needs. What do you feel would be in his
22 or her's best interest? And we would sit down and talk
23 about it and come up with a recommendation.

24 Q And the intake officer would actually work with you
25 on that?

1 A At times.

2 Q Anybody else?

3 A No, sir.

4 MR. ALLEN: That's all I have, Mr. Chairman.

5 BY MR. HOROHO:

6 Q Going back to your testimony that Judge Woodruff
7 asked you about the placements and when you're in court and
8 you recommended non-placement and Judge Ciavarella did not
9 follow that and placed the child. During the period of time
10 from '03 to '08 on a monthly basis how many times did that
11 occur?

12 A I couldn't answer that. I swear, I really don't
13 know.

14 Q Is there some documents or statistics that we could
15 ask you to review that you could tell us that?

16 A I don't even know if -- what documents would exist,
17 sir, at this point.

18 Q Can you give us an estimate of percentage of how
19 many times you -- how many times, first on a monthly basis,
20 would a decision have to be made or a recommendation that
21 you would make either placement or non-placement?

22 A I would have to back up. If the recommendation was
23 coming from me, sir, it would be for placement and not
24 probation, being that I was in the placement unit.

25 Q Okay. But there were times when you -- where you

1 recommended non-placement where the child was still placed?

2 A That would come from the intake office or from
3 Sandy Brulo, sir. I would not make that because I was in
4 the placement unit.

5 MR. HOROHO: That's all the questions I have.

6 CHAIRMAN CLELAND: Mr. Williams.

7 BY MR. WILLIAMS:

8 Q Tom, you stated that when PA Child Care took over
9 the management of the Pittston facility you were trying to
10 bring some children back from Western Pennsylvania?

11 A From different facilities in Western Pennsylvania,
12 such as New Castle, which is a secure unit out on the other
13 end of the state.

14 Q Um-hum. And are you aware of a shelter facility
15 that's in Schuylkill County?

16 A Northwestern Academy.

17 Q Northwestern Academy?

18 A Yes, sir.

19 Q Have you ever recommended that any of the clients
20 be housed there?

21 A Yes, I have.

22 Q And how many, in the last three years say?

23 A Last three years or so?

24 Q Yeah.

25 A We -- approximately I have -- I have Northwestern

1 Academy. That's part of my duties. I currently have 12
2 children there right now. So I would say within the last
3 three years I'm going to say somewhere around 50 to 55.
4 That's not an exact number.

5 You have to understand, sir, that Northwestern
6 Academy has a number of different programs.

7 Q I understand it well.

8 A Okay.

9 Q I understand it well.

10 A All right.

11 MR. WILLIAMS: I'm just trying to get it in my head
12 why PA Child Care is used so much and Northwestern Academy
13 wasn't. Northwest Academy has a lot of programs in their
14 facility also to be used to rehabilitate these children at a
15 lessor cost to Luzerne County. Just -- I just had that
16 thought in my head. I just wanted to express it. That's
17 all.

18 CHAIRMAN CLELAND: Mr. Mosee.

19 BY MR. MOSEE:

20 Q What form was your recommendation in? Was it in a
21 written report, or was it oral?

22 A Oral, sir.

23 Q And you would make that recommendation to Chief
24 Brulo?

25 A We would have daily meetings concerning all the

1 children in detention to discuss what was going on with them
2 as far as their cases. And at that point I may have made my
3 recommendation as to certain placement.

4 Q And you would never make that recommendation in the
5 form of a written report?

6 A No, sir.

7 Q We've heard that the judge would become aware of
8 the specific recommendation even before the adjudicatory
9 hearing. Were you aware of that?

10 A No, sir, I wasn't. Only the fact that, as was
11 stated earlier, the court list that was generated prior to
12 the day's hearings would have the recommendations on it.

13 Q You didn't write it on that list?

14 A No, sir.

15 Q And you indicated that you were sometimes in the
16 courtroom for the disposition?

17 A Correct, sir.

18 Q Because the disposition often occurred at the same
19 time as the adjudicatory hearing. Were you there for the
20 adjudicatory hearing as well?

21 A Yes, sir.

22 Q Were you aware that the judge was being provided
23 with the information about the disposition before the
24 adjudicatory hearing?

25 A I knew that he had a packet of information, yes,

1 sir.

2 MR. MOSEE: Thank you.

3 THE WITNESS: You're welcome.

4 BY CHAIRMAN CLELAND:

5 Q Two quick questions.

6 A Yes, sir.

7 Q Since you made the placement recommendations was it
8 the practice that the placement facility would be present in
9 court at the disposition hearing?

10 A Sometimes.

11 Q And who arranged that?

12 A The placement officer who had that particular
13 facility.

14 Q Based on some assumption that the placement
15 recommendation would be followed through by the judge?

16 A Correct, sir.

17 Q You indicated that when Pennsylvania Childcare was
18 built you had an instruction that the beds had to be full?

19 A Correct.

20 Q When Western Pennsylvania Childcare was built did
21 you get a similar instruction?

22 A I did not handle Western PA Child Care. PO Norm
23 Magyar, Probation Officer Magyar handled that when we
24 utilized that. I could not answer that, sir.

25 Q Were you in charge of Pennsylvania Childcare?

1 A I was in charge of the one here in Pittston.

2 Q Did you move children from the one in Pittston to
3 the one in the western part of the state?

4 A I don't believe so.

5 Q You don't think that that happened?

6 A I don't think that it happened.

7 CHAIRMAN CLELAND: Okay. Thank you.

8 BY MR. LEGG:

9 Q Mr. Chairman, if I may. Sir, when PA Child Care
10 opened I want you to think prior to it opening and then also
11 after it happened. Did you see any marked difference in the
12 amount of placements that Judge Ciavarella was doing prior
13 to 2003 and then after 2003?

14 A No, I did not.

15 Q So there wasn't -- in your view in terms of the
16 number of children being placed, it was business as usual,
17 at least in terms of your numbers?

18 A To the best of my knowledge, yes.

19 Q So there wasn't anything that stood out to you that
20 all of a sudden we're placing a lot more kids?

21 A Again, to the best of my knowledge, no.

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

23 BY MR. LISTENBEE:

24 Q Your Honor, if I may. Sir, there's been a
25 reduction in placements, a substantial reduction, since

1 Judge Lupas took over?

2 A (Nods head up and down.)

3 Q Has there been an increase in delinquent conduct in
4 your county since then?

5 A I couldn't answer that to be quite honest with you,
6 sir.

7 Q Have you had any more problems with the youth that
8 have been released on probation as a result of them being
9 released as opposed to being put in placement?

10 A The youth that are being released on probation at
11 times will come back before him for violation or probation
12 hearings, yes.

13 Q How does he handle those violations and probation
14 hearings?

15 A He may let -- it depends on the severity of the
16 violation. He may let them go home. Or based upon the
17 recommendation from the probation officer who handles the
18 case, placement could be warranted.

19 Q Nevertheless, there's been a significant reduction
20 in placements; is that accurate?

21 A Yes, sir.

22 Q Can you give us some indication to the best of your
23 knowledge as to what -- what type of a reduction there's
24 been, in numbers or amounts of money?

25 A Oh, the numbers have gone down significantly from a

1 high of probably over -- approximately 200 to approximately
2 70 now.

3 Q From 200 to 70?

4 A (Nods head up and down.)

5 Q In what period of time did that occur?

6 A Well, probably from the time Judge Lupas took the
7 bench, which was in June of -- I want to say '08, I believe.

8 Q Do you still consider that the best interest of the
9 children is being served even given that we've had a
10 substantial reduction in the number of placements?
11 You're the placement expert.

12 A That's the first time I've been called an expert,
13 but that's okay.

14 JUDGE UHLER: You'll accept it?

15 THE WITNESS: I'll accept it. Thank you, Judge.

16 Do I think -- could you please say the question again?

17 BY MR. LISTENBEE:

18 Q Do you still consider that the best interest of the
19 children in Luzerne County is being served even given that
20 there's been a substantial reduction in the number of
21 children that have been placed?

22 A Yes, sir, I do. And that's based upon one of the
23 things that Mrs. Zera had said earlier. We have a very
24 dedicated staff who work very hard with the kids on their
25 case load trying to do what's in their best interests.

1 Q Have you developed new probation practices to deal
2 with the number of youth that are not being placed?

3 A I would not know that, sir, because I still -- I'm
4 in the placement unit. I would not know that. I couldn't
5 answer that.

6 Q But you do have staff meetings where these issues
7 are discussed, don't you?

8 A Yes, we do. And I believe one of the things that
9 was discussed earlier was -- was something to do with fines,
10 trying to divert those from court and trying to have the
11 community service projects, things of that nature.

12 Q Have you talked to many of the youth that you think
13 might have gone into placement under Judge Ciavarella but
14 aren't going to placement under Judge Lupas?

15 A Children who went under Judge Ciavarella?

16 Q Children who might have gone, meaning that under --
17 under a different regime, a different era, they would have
18 gone into placement, but under Judge Lupas they're not going
19 to placement?

20 A I wouldn't have talked to them, sir, because they
21 wouldn't be on my case load. I'm not trying to pass the --

22 Q No, no, I understand. You handle placements.

23 A Yes.

24 MR. LISTENBEE: I got you.

25 CHAIRMAN CLELAND: Thank you.

1 BY JUDGE GIBBONS:

2 Q Mr. Lavan, you talked about the graduation at Glen
3 Mills?

4 A Yes.

5 Q Are there similar festivities at other sites, other
6 facilities that you're aware of? Have there been?

7 A As far as ceremonies at other sites?

8 Q Ceremonies -- well, that you described an overnight
9 stay and the open bar and food? I mean, does that happen at
10 other facilities?

11 A At other facilities?

12 Q Yeah, where you send -- where you place children?

13 A Not that I've dealt with, no, sir.

14 JUDGE GIBBONS: That's all. Thank you.

15 CHAIRMAN CLELAND: Thank you, very much, Mr. Lavan.
16 Mr. McGarry.

17

18 PAUL MCGARRY, called as a witness, being duly
19 sworn, testified as follows:

20

21 THE WITNESS: I do.

22 CHAIRMAN CLELAND: Please be seated. Judge Uhler.

23 BY JUDGE UHLER:

24 Q Good afternoon. For purposes of the record would
25 you please state your name?

1 A Paul S. McGarry.

2 Q Mr. McGarry, what is your current role with the
3 County of Luzerne?

4 A I am currently the Director of Human Resources for
5 the Luzerne County Courts.

6 Q When did you begin with the Luzerne County Courts?

7 A In my current position?

8 Q No, when you started?

9 A I started --

10 Q At the outset?

11 A I started with Luzerne County in July of 2008 as a
12 fiscal officer in the Juvenile Probation Department.

13 Q Did you say 2008 or 1998?

14 A Thank you. 1998.

15 Q Prior to that point what was your background?

16 A I was the township administrator for Hanover
17 Township. My background is in government management. I was
18 the city administrator for the City of Pittston,
19 Pennsylvania. And I spent a few years as a newspaper
20 editor.

21 Q Okay.

22 A Until I saw the light and came back to the bright
23 side.

24 Q Very well. So in your capacity as township manager
25 and involved with the City of Pittston, do I understand then

1 that began your -- your educational process with regard to
2 municipal government from the fiscal side?

3 A That's correct.

4 Q And you became a fiscal officer in 1998. Did you
5 have a sponsor as part of the system in order to acquire
6 that position, or did you just simply apply?

7 A I found out the position was available, and I
8 applied.

9 Q How did you find out?

10 A Someone told me that they were looking for someone
11 in the department.

12 Q You don't recall who?

13 A I don't recall.

14 Q What was your role as a fiscal officer in 1998?

15 A I was in charge of purchasing, payroll, contracts.
16 The -- for the -- for the Probation Department, which
17 included at that time the operation of a juvenile detention
18 facility.

19 Q So you were involved with both the Probation
20 Department and the detention facility?

21 A The detention facility was run by the Probation
22 Department.

23 Q To whom did you report at that time?

24 A The President Judge, Judge Augello.

25 Q From that time forward what was your next

1 assignment?

2 A In 2000 -- early 2000 I was tasked by then still
3 President Judge Augello to take over the responsibilities of
4 Director of Probation Services.

5 We had decided at that point -- the courts had
6 decided to combine the Juvenile Probation Department and the
7 Adult Probation Department and the collection activities in
8 both departments into one unit -- they were each housed in
9 different -- different buildings within the county -- in
10 preparation for the new facility at Penn Place where they're
11 located now.

12 I was tasked with putting together the
13 administrative plan to have them combine services.

14 Q So I understand Judge Augello, President Judge
15 Augello, was still in that role when you undertook this new
16 assignment?

17 A That's correct.

18 Q Who was the juvenile delinquency judge at that
19 time?

20 A In the beginning it was Judge Muroski, and then
21 later Judge Ciavarella.

22 Q Did you report to either of those two judges in any
23 capacity?

24 A No.

25 Q So your sole responsibility then was to the

1 President Judge?

2 A That's correct.

3 Q And in the role of collections were you involved in
4 any fashion in fine court and the development of that
5 concept for juvenile probation?

6 A Actually, if anything, I was -- I was involved in
7 the elimination of fine court. Fine court was established
8 apparently during the period of time in which the two
9 departments were operating separately. And it was handled
10 by the Juvenile Probation Department.

11 They had their own collection unit, their own
12 staff, and they were handling this fine court. Subsequent
13 to combining the two units into the Department of Probation
14 Services sometime in 2003 I became aware of the fact that
15 they were holding these hearings, these fine court hearings,
16 because the staff that I was overseeing were assigned to go
17 to these hearings.

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

24 Q So I understand you undertook the role as being
25 Director of Probation Services in 2001, and that you did not

1 learn of this fines court until 2003?

2 A Well, yes. Because in 2001 we were -- I was in the
3 process of putting the program together. It wasn't until we
4 moved into our new facilities and were actually one combined
5 unit at Penn Place that I had actually direct oversight over
6 everyone who worked for me.

7 Q So that process impeded your ability to learn of
8 this program?

9 A That's correct.

10 Q From 2001 to 2003?

11 A That's correct.

12 Q What else did you do then as Director of Probation
13 Services other than that which you described?

14 A I was in charge of Human Resources. I was in
15 charge of the management of the administrative operation of
16 the entire department. I was -- I was in charge of the
17 purchasing, of payroll, of contracts, and basically of
18 making sure that everybody had a place to sit and also
19 handling the Human Resources issues, discipline, et cetera.

20 Q Now, to whom did you report during this period of
21 2000 to 2002? Judge -- President Judge Augello was no
22 longer President Judge, correct?

23 A That's --

24 Q At one point?

25 A At one point in time, yes. Then I -- then I would

1 have -- then I reported to the current President Judge,
2 which at that time was Judge Conahan.

3 Q Okay. What interface did you have with Judge
4 Conahan?

5 A Well, I -- he was -- he was my superior.

6 Q Okay.

7 A I reported to him on matters involving budgetary
8 issues, hiring and firing, management issues.

9 Q Okay. You mentioned hiring and firing. We can't
10 help but note that your name has appeared in a number of
11 court documents, particularly those surrounding Judge
12 Lokuta's issues before the Judicial Conduct Board.

13 Are you aware that your name's been bandied about
14 in those records?

15 A No.

16 Q Let me follow up on -- on these comments that have
17 been made, if I might, and see if, indeed, these exchanges
18 indeed occurred between you and Sandra Brulo as reported by
19 Judge Lokuta's counsel in the judicial conduct matter.

20 Her -- this is on page 12 of the -- of the brief
21 indicating that Brulo claims mostly everyone in the Adult
22 Probation Department -- Division was related to Judge
23 Conahan or Court Administrator William Sharkey, who are
24 cousins.

25 At an unknown date Brulo claims that Paul McGarry,

1 former Director of Probation Services, who Brulo states was
2 demoted to Human Resources Director by Judge Ciavarella,
3 told Brulo that in the Hazleton office you did not have to
4 go too far to get a kidney if you needed a kidney
5 transplant. Is that your quote?

6 A Is it my quote?

7 Q Did you say that?

8 A I --

9 Q Or something --

10 A I probably said something similar to that.

11 Q -- akin to that?

12 A Yes.

13 Q Now, she references a -- a demotion to the Human
14 Resources Director by Judge Ciavarella. Was that really a
15 demotion?

16 A No.

17 Q Maintained the same salary?

18 A That's correct.

19 Q No skip in your compensation?

20 A No.

21 Q And how is it that that came about? Do you know?
22 Why did that change from Director of Probation Services to
23 Human Resources Director come about? Was there any incident
24 that took place?

25 A No. Judge Ciavarella actually had hired Larry

1 Saba, who was made Deputy of Probation Services. I was
2 directed to -- to mentor him on the -- on the
3 responsibilities of the job, which I did for a period of
4 about a year.

5 At which time he was subsequently promoted to
6 Director of Probation Services.

7 Q The Lokuta brief also is another source of
8 reference to yours truly, and I ask if indeed this
9 transaction or comment transpired.

10 On page 13 of the brief it indicates that in
11 October, 2005 Paul McGarry advised Brulo that President
12 Judge Conahan was transferring her to a new position. Was
13 that -- was that the correct way that this happened?

14 A No.

15 Q Judge Conahan was responsible for that?

16 A I'm -- I'm sure you -- I'm unsure of what you're
17 asking me.

18 Q Okay. I'm just asking was it Conahan that directed
19 you to advise Brulo of her new position?

20 A Yes, yes.

21 Q Okay. And that new position was called the Deputy
22 Director of Forensic Programs, and Brulo claims that she was
23 told that the new position had no job description and
24 virtually no duties. Was that a correct --

25 A No.

1 Q -- statement of the interchange between you and
2 Brulo?

3 A Not at all.

4 Q Can you share with me what -- what her assigned
5 duties were at that time?

6 A I gave the investigator a copy of her job
7 description. Her -- what happened in that period of time
8 was that there was a change in the structuring of the
9 department where prior to that period of time Ms. Brulo was
10 the -- was the Chief of Juvenile Probation, and there was a
11 Chief of Adult Probation, Michael Jordan.

12 Michael Jordan left the County's employ, and at
13 that time it was decided that there would be a -- two deputy
14 chiefs, one in charge -- one in charge of each unit, the
15 adult unit and the juvenile unit, and that there would be --
16 that Ms. Brulo would be the Director of Forensic Programs
17 because her expertise was in the area of -- she was a
18 licensed social worker.

19 She was very knowledgeable in the field of -- of
20 placement, of programs, and that she would be responsible
21 for making recommendations to the judge on sentencing, which
22 was her primary responsibility, and for overseeing and
23 training the intake staff.

24 Q Do you know whether or not when this position was
25 created that there, in fact, was a job description and was

1 that --

2 A Yes, there was.

3 Q -- provided to her at the time that she undertook
4 that role?

5 A Yes.

6 Q Or was it sometime later?

7 A No. My recollection is that at the time of the
8 position, the time she was put in the position, she was
9 given a job description which explained her duties.

10 Q Do you know who prepared that job description?

11 A She and I did.

12 Q And who requested that that job description be
13 prepared?

14 A Well, that was -- we have a job description for
15 every job in the court system. So I guess I did as a
16 director -- as -- I was also at that time in charge of Human
17 Resources for the entire court system.

18 Q Correct, correct.

19 A So all of our positions have job descriptions.
20 Every job in the court system has a job description. So
21 prior to approaching the salary board about the creation or
22 the change of title, it would be necessary to prepare a job
23 description.

24 Q So she was told that this position was being
25 created for her, correct?

1 A Yes. It was a -- she was being transferred to that
2 position, yes.

3 Q And after that or contemporaneous with that is the
4 time that the two of you began working on that job
5 description?

6 A Yes.

7 Q Okay. Now, getting back to your fiscal
8 responsibilities with regard to the court services,
9 contracting, the purchases, et cetera.

10 It's my understanding that you were the signatory
11 on the one-page contract employing Dr. Vita; is that
12 correct?

13 A Yes.

14 Q Is it correct that the county commissioners were
15 not co-signatories on that document?

16 A Yes.

17 Q In your experience from Pittston and the Township
18 did that concern you that the -- that the authority, the
19 employing authority, did not have a signature ratifying that
20 document?

21 A It was not a contract in the sense of a -- of an
22 employment contract. It was a fee agreement, which
23 specified the amount that he would be paid for -- per hour
24 for each case that he handled. Each case that he handled
25 was referred to him by a signed court order from the judge.

1 And so it was not a contract in the term that it set an
2 amount to be paid.

3 And it was the policy at that time within the court
4 system, and actually within other departments within the
5 county, that department heads were allowed to enter into
6 contracts. That subsequent now has been changed, but at the
7 time that was permissible.

8 Q Which came first, Judge Ciavarella's order or your
9 signed agreement with regard to the employment of Dr. Vita?

10 A It was not an appointment. It was a -- it was a
11 fee agreement.

12 Q Which came first?

13 A I'm --

14 Q Was it the court order or the fee agreement?

15 A Well, the court order would have been on each case.
16 On the case of John Jones, if he felt that a -- that a
17 psychological evaluation should be done, he would sign a
18 court order, and on Mary Smith he would sign another one.

19 Q So the pre -- the fee agreement antedated -- was
20 executed by you before the court order?

21 A Yes.

22 Q Okay. Now, that -- that circumstance had been
23 challenged; was it not, by DPW?

24 A Yes.

25 Q And indeed there was some criticism surrounding not

1 having that -- that process, the process of appointing a
2 psychologist, or court ordering a psychologist using your
3 terminology, without putting that out to bid? Is that a
4 fair summary of what was said by the DPW?

5 A Yes. Which we, by the way, disagree with.

6 Q I understand that. But that was the criticism?

7 A Yes.

8 Q When you indicated you disagreed with it, were
9 there efforts made to audit that contractual relationship
10 with Dr. Vita and the county by DPW?

11 A They did audit the -- yes, they did audit that.

12 Q Was there full cooperation by the county with the
13 DPW auditors surrounding that particular issue?

14 A Yes.

15 Q Were there any indications of any withholding of
16 information?

17 A No.

18 Q Likewise, with regard to an attorney, whose name I
19 can't pronounce, Sepkowski or something like this, who was
20 appointed by the courts and utilized as an Orphans' Court
21 Master, but sums of money from the Children and Youth
22 Services were being diverted from that money source to the
23 Orphans' Court matters, which negated --

24 A No, that's not correct.

25 Q That's not correct? What's not correct about it?

1 A The -- he was hired -- or he was court -- he was,
2 again, a court officer appointed as a -- as a custody
3 master.

4 Q Okay.

5 A And he was paid as a custody master.

6 Q Okay. Through what source of funds?

7 A From the county budget.

8 Q Not foree (phonetic)?

9 A No.

10 Q There was no criticism made by the Department of
11 Public Welfare?

12 A Yes, there was. There was -- but you're asking me
13 was there criticism? Yes, there was.

14 Q And what was the essence of that criticism?

15 A They felt that we were circumventing -- that we
16 were using money that was coming from the state for the
17 guardian ad litem.

18 Q In Children and Youth Services matters, dependency?

19 A Right.

20 Q Okay.

21 A To pay Attorney Sepkowski. You have me confused.
22 I can't even think of his name right now.

23 Q I can't pronounce it, so we're in the same boat.

24 A Okay. Again, we disagree with their finding. He
25 was paid from an account in the county budget for custody

1 masters. When the check would come from Children and Youth
2 to the county it was placed in an account, an income
3 account, which was for custody masters.

4 Q Custody in the context of custody proceedings?

5 A Yes.

6 Q Not dependency proceedings?

7 A Right.

8 Q And these funds were coming from Children and Youth
9 Services?

10 A Yes, apparently.

11 Q All right. Again, with regard to that audit
12 process, was that welcomed by the county? Was there any --

13 A The county -- the county instituted it.

14 Q The county instituted it. So there was no stalling
15 or anything along those lines with that?

16 A No.

17 Q With regard to the -- I believe it's been fairly
18 well disseminated by the media and so forth, the anonymous
19 complaint that was lodged with the Judicial Conduct Board.
20 Are you familiar with that document?

21 A Only what I've read in the newspaper.

22 Q Did you -- did you ever read the entire document?

23 A No.

24 Q That document contains a number of alleged
25 connections, interfamilial social connections, between Judge

1 Conahan and/or Judge Ciavarella with county court employees.
2 I'm just making that background comment.

3 Having said that, were you ever asked as Human
4 Services Director --

5 A Human Resources Director.

6 Q Human Resources Director to employ someone that you
7 didn't have a position for, for example?

8 A No.

9 Q Were you satisfied that all of the individuals that
10 you were involved with the hiring process, and you said you
11 were involved with hiring processes?

12 A That's correct.

13 Q Were -- did you ever engage in hiring someone that
14 you did not feel was qualified for the position?

15 A No.

16 Q And how did you go about determining those
17 qualifications?

18 A I interviewed every client. I -- we -- we did --
19 every -- every applicant was interviewed. Sometimes as --
20 maybe as many as 50 or 60 people for one or two jobs. We
21 checked their references. We did background checks on -- as
22 we narrowed it down. I rated every -- every application.

23 They had to have the basics of -- to meet the
24 requirements of the job. Obviously in almost every case we
25 had many, many more people who were qualified than jobs

1 available. Then my procedure is that I would send a list of
2 recommended candidates to the President Judge for his
3 consideration, more than the number of positions, and he
4 would make a decision based -- based upon those recommended
5 candidates.

6 Q Did you ever receive any input from the President
7 Judge to you to add someone to the list?

8 A No.

9 Q It was the President Judge though who ultimately
10 called the shots?

11 A That's correct.

12 Q And is that across the board with all court
13 employees?

14 A Yes.

15 Q I'm going to try to quickly go over some comments,
16 if it's in keeping with the Chairman, or should I conduct
17 this by way of deposition at a later time with regard to a
18 number of alphabetical lines of consanguinity that have been
19 alleged in the complaint?

20 CHAIRMAN CLELAND: I think you can keep going here.
21 My only concern is that we've got children coming at 7.

22 BY JUDGE UHLER:

23 Q That's -- would you -- would you be willing to
24 participate in a later deposition to --

25 A Absolutely.

1 Q -- deal with these various other issues?

2 A Absolutely.

3 JUDGE UHLER: Very well.

4 JUDGE WOODRUFF: I have no further questions at
5 this time.

6 MR. LISTENBEE: No questions, Your Honor.

7 CHAIRMAN CLELAND: Mr. Mosee?

8 MR. MOSEE: No.

9 CHAIRMAN CLELAND: We can go until 6. Do you want
10 -- do you have a --

11 THE WITNESS: There is one thing I wanted to say.
12 I know that when Ms. Brulo testified before this body she
13 indicated that at some point in time she spoke to me as her
14 immediate supervisor and told me of concerns she had about
15 the operation in the department.

16 I want to be very clear that at no point in time
17 was I Ms. Brulo's immediate supervisor.

18 BY MR. WILLIAMS:

19 Q Who was her immediate supervisor?

20 A When she was the Chief of Juvenile Probation, which
21 is the vast period of time that's under discussion here, she
22 reported directly to the President Judge.

23 Q Okay.

24 A When she became the Deputy Director for Forensic
25 Programs, at her strong insistence as a matter of fact, she

1 reported directly to Judge Ciavarella.

2 MR. WILLIAMS: Thank you.

3 CHAIRMAN CLELAND: Mr. Legg.

4 BY MR. LEGG:

5 Q Thank you. Mr. McGarry, with reference to Judge
6 Uhler's questions, I guess maybe a more generic question
7 might suffice. Did you find that a lot of relatives of
8 Judge Conahan were making the lists, the recommended
9 hirings, and that he was then making decisions whether to
10 hire one of his relatives versus someone else?

11 A During the period of time that I was doing the
12 interviewing that -- there certainly were some.

13 Q Well, I think you made the comment, I guess you
14 confirmed that you made the comment about the kidney in
15 Hazleton. What did that mean?

16 A That's an old joke taken out of context, I suppose.

17 Q A valley joke?

18 A Yes, yes.

19 Q Okay. Can you explain it to those of us that
20 weren't valley people?

21 A Attorney Gibbons would probably understand that
22 more than most.

23 Q It has to do with all the families are
24 interconnected? Is that generally what you were saying?

25 A Yes, yes.

1 Q So it wasn't an indictment or anything with respect
2 to any hiring practices per se? It's just that happenstance
3 that they were all related?

4 A There were -- again, Judge Bill Sharkey was Judge
5 Conahan's cousin. He wasn't hired by Judge Conahan. He was
6 there before Judge Conahan was elected to the bench. One of
7 Bill Sharkey's children worked in that office.

8 I mean, there were -- again, the Hazleton office
9 tended to be staffed by people from Hazleton. A lot of
10 them, you know, were interconnections.

11 Q So nothing about those interconnections caused you
12 concern as the Human Resource Director?

13 A Well, they were all -- they were all there before I
14 was -- before I took over those responsibilities, or the
15 vast majority of them were.

16 Q So while you were the Human Resource Director there
17 was nothing about the hiring practices that caused you
18 concern about any nepotism in the courthouse?

19 A No.

20 MR. LEGG: Okay.

21 BY MR. HOROHO:

22 Q Was it necessary always to send out more than one
23 name on a -- for a position?

24 A Yes.

25 Q Why was that?

1 A That was the procedure that the President Judge had
2 directed me to handle -- to do.

3 Q Did you ever receive any letters of recommendation
4 or calls from the then President Judge about any potential
5 applicants?

6 A I would get letters of recommendation from elected
7 officials within the -- with -- from judges, from district
8 magistrates, from county commissioners, from mayors, and
9 that was not an unusual thing. But pretty much would also
10 span the entire list of applicants.

11 Q Any letters that were like intermediaries for -- of
12 the Judge Conahan or Judge Ciavarella? I'm writing on
13 behalf of Judge Conahan, or Judge Conahan mentioned to me
14 that there's this opening, and that this applicant has
15 applied, and I -- I highly recommend this applicant,
16 anything like that?

17 A There may have been. There may have been in some
18 cases. It would not have been a usual thing, but I won't
19 say it never happened.

20 MR. HOROHO: That's all the questions.

21 BY JUDGE GIBBONS:

22 Q Was there ever any discussion, regardless of who
23 was the President Judge, about nepotism and whether it was a
24 bad idea or a good idea or anything at all?

25 A Again, in -- in these cases we were interviewing

1 for an entry level position in probation. The people had
2 college degrees, many of them Master's Degrees, experienced
3 in the field. Some of them had interned with us. There
4 were many, many, you know, highly qualified people. Many
5 more than we ever had jobs for.

6 Q I understand that, but that wasn't my question. My
7 question was was there any discussion by the President
8 Judge, or judges as a whole, with respect to the pros and
9 cons of a nepotism policy in hiring?

10 A We do have a nepotism policy.

11 Q Is it adhered to?

12 A Yes. The nepotism policy covers direct family --
13 family relationships.

14 Q And how long has that been in place?

15 A Since 2000. But, again, using the definition of
16 family, husband, wife, mother, father, children.

17 Q Right.

18 A That's what the -- that's what the state law says.
19 There are no -- none of those circumstances. None of Judge
20 Ciavarella's or Judge Conahan's husband, wife, children, or
21 parents were employed.

22 MR. LISTENBEE: Your Honor, if I may.

23 CHAIRMAN CLELAND: Mr. Williams.

24 BY MR. WILLIAMS:

25 Q Okay. Why did you feel it was not necessary to get

1 the county commissioner controller's signature on that fee
2 agreement?

3 A It was -- at the time that it happened -- first of
4 all, when I -- the individual we're talking about, Dr. Vita,
5 was -- he was actually recommended for the -- to do the work
6 by Sandy Brulo. They were using him on a case by case basis
7 during the year 2000, I would believe, or 2001. It became
8 -- when it was brought to my attention that we had no fee
9 agreement with him, I said we should get a document which
10 says this -- that there are some guidelines under which what
11 he's going to charge us.

12 And so I initiated a one-page fee agreement that
13 said that he would do this for this amount of money, and
14 that's what it was. It was because every case -- again, if
15 nothing was referred to him, he would not have made a penny.
16 If Judge Ciavarella --

17 Q But still all contracts and agreements should be
18 signed by the county commissioners?

19 A That was not the --

20 Q Read the County Code. It's there.

21 A That was not the policy at the time.

22 Q I'm not talking about policy. I'm talking about
23 County Code.

24 A Again, I --

25 Q The county commissioners signed the checks for Mr.

1 Vitae; did they not?

2 A Mr. -- Dr. Vita --

3 Q Did they not? The county commissioners signed the
4 check for Mr. Vita?

5 A Yes.

6 MR. WILLIAMS: Thank you. Then they should have
7 been notified.

8 CHAIRMAN CLELAND: Mr. Listenbee.

9 BY MR. LISTENBEE:

10 Q I just want to clarify one thing regarding the
11 nepotism policy. President Judge Muroski testified before
12 us in Harrisburg that there were a number of people that he
13 dismissed. I believe the number was 28. Is that an
14 accurate number?

15 A That he dismissed?

16 Q Yes, were dismissed under his supervision?

17 A I have no knowledge of that. You're talking about
18 the people who were layed off as a result of the budget
19 cuts?

20 Q Layed off as a result of the budget cuts, yes?

21 A There were 57 positions that were affected by the
22 budget cuts.

23 Q He seemed to leave the impression with me that many
24 of those people were layed off because of nepotism rather
25 than simply because of reduction in force due to budget

1 cuts. Is that an accurate impression, or did I just
2 misunderstand what he was trying to communicate?

3 A Well, I don't know what the judge said. The people
4 who were let go were dismissed under a category we call
5 non-disciplinary separation. They were layed off. They
6 were eligible to collect unemployment compensation. They
7 were eligible for unused vacation and sick leave. It was a
8 procedure -- none of them were -- were discharged for cause,
9 if that's what you're asking me.

10 Q Were they discharged because the jobs themselves
11 were not real jobs, because they didn't have real work to do
12 within the county government? That was the impression I was
13 left with. Maybe I just misunderstood.

14 A Not -- no, they were -- again, we lost ten
15 probation officers. You know, and as was testified before,
16 I mean, they've had to reshuffle their entire operation as a
17 result of it.

18 Q So you -- just to be clear, you're saying they were
19 not layed off because of nepotism? They were layed off
20 because of budget cuts? Is that what you're telling us?

21 A That's to the best of my knowledge. And if
22 something else was done, it was certainly not -- and I
23 handled the layoff of every employee that was layed off. I
24 was never made aware that there was anything other than the
25 budget cuts that were the reason why they were being

1 dismissed.

2 Q You say to the best of your knowledge. You're the
3 person in charge, so you're the only one that would actually
4 have knowledge, whatever the reasons for the layoffs,
5 correct?

6 A I handled -- I personally handled the layoff of
7 every person.

8 MR. LISTENBEE: Thank you.

9 BY MR. LEGG:

10 Q Mr. Chairman, if I may follow up. Dr. Vita, we've
11 heard testimony that he is an inlaw, I believe, a
12 brother-in-law to Judge Conahan. Were you aware of that?

13 A I became aware of that probably two years after he
14 started working for us.

15 Q And that inlaw relationship, that would not violate
16 the nepotism policy?

17 A No.

18 Q Okay.

19 A Not the state code, nor the county's policy.

20 BY CHAIRMAN CLELAND:

21 Q Could you just give us some idea of the scale of
22 the number of people that you supervise? This would be
23 court administration, judge's staff, juvenile probation,
24 adult probation?

25 A Domestic relations.

1 Q Domestic relations, and district magistrate courts?

2 A District magistrates, yes.

3 Q How many people are we talking about?

4 A About 450.

5 CHAIRMAN CLELAND: Okay. Thank you. Okay. Thank
6 you, very much, Mr. McGarry. And we may be in touch with
7 you for some subsequent depositions. Thank you, very much.
8 We'll be in recess until 7:00.

9 (Recess taken from 6:00 to 7:15.)

10 CHAIRMAN CLELAND: Good evening. We are ready to
11 convene this evening's session. We are a little bit late.
12 I apologize if I inconvenienced any of you that have been
13 here in anticipation that we would start right at seven, but
14 it has been a very full day for us.

15 We started at nine this morning and have been going
16 through pretty steadily today. So the dinner break took
17 just a few minutes longer than we had anticipated. So I
18 thank you for your cooperation and your patience.

19 This evening we are going to be hearing from the
20 victims of -- of the policies and procedures that we've been
21 hearing about in the days of testimony that we've taken here
22 in Wilkes-Barre and in Harrisburg.

23 This is a reminder to us that court policies and
24 court procedures have real life consequences for people,
25 both good and bad. And that as we think about the proper

1 reforms for your juvenile justice system, it's important to
2 understand the real life experience of people that have gone
3 through that system.

4 So we are very appreciative this afternoon -- this
5 evening that representatives of that group of people are
6 here to share their stories and experience with us.

7 Now, we realize fully that these people that we're
8 going to be hearing today and people and their parents are
9 only representatives. There are many more. There are
10 hundreds of more stories that we would like to hear, but
11 various circumstances will prevent that. But we very much
12 appreciate the willingness of those who are here to share
13 their experience and -- and be with us here this evening.

14 By way of explanation, unlike all other witnesses
15 who have testified before this Commission, we are going to
16 use only initials and not identify the witnesses by other
17 names.

18 The reason for that being that you will recall that
19 by order of the Supreme Court all records of these juveniles
20 have been expunged, and it would serve no good purpose to,
21 in a public forum, use juvenile's names when their records
22 have been expunged. And, therefore, we will preserve and
23 protect, to the extent that we can, their anonymity at least
24 with regard to their names.

25 By the same token we realize, as they do, that this

1 is a public forum, that there are television cameras here
2 and reporters and still media. So that is part of the
3 understanding as we proceed with this testimony this
4 evening.

5 So with that we'll begin with A.K. and R.K. Good
6 evening. Mr. Diller?

7 MR. DILLER: Yes.

8 CHAIRMAN CLELAND: If you would please raise your
9 right hand to take the oath.

10

11 A.K. AND R.K., called as witnesses, being duly
12 sworn, testified as follows:

13

14 CHAIRMAN CLELAND: Please be seated. And, again,
15 behalf of the Commission I want to thank you for being here
16 today and sharing your story with us. Our practice and our
17 procedure, as you know from your meeting in the green room
18 before we came in here, is that only the members of the
19 Commission will be asking questions, and the others may ask
20 at some later time, okay. I'm not sure who -- Ms. Bender?
21 Mr. Allen.

22 BY MR. ALLEN:

23 Q Thank you, Mr. Chairman. Welcome. Thank you. And
24 either one of you may begin, and I'm sure you probably have
25 it set up how you want to do it. And however that is is

1 fine with us if you want to start.

2 MR. DILLER: Would you like them to just tell their
3 story?

4 MR. ALLEN: Exactly.

5 MR. DILLER: Okay. Why don't you start?

6 A.K.: From which point?

7 MR. DILLER: We had thought that you would ask
8 questions.

9 MR. ALLEN: I certainly can. If you would like me
10 to ask questions, I have them here.

11 MR. DILLER: Do you want to start, or do you want
12 him to ask questions?

13 A.K.: Whichever.

14 MR. DILLER: Why don't we start -- why don't you
15 start and tell about what happened after you were basically
16 arrested by the police?

17 A.K.: After I was arrested, okay.

18 CHAIRMAN CLELAND: I'm going to ask you to speak
19 real loudly right into that microphone, okay?

20 A.K.: I'm sorry. Okay. After I was already
21 arrested?

22 MR. DILLER: How old were you?

23 A.K.: I was 14 at the time.

24 MR. DILLER: Okay.

25 A.K.: Basically what happened was -- this is going

1 a while back ,so it's very hard to remember. Okay. Well,
2 in the courtroom proceeding I did have a lawyer at the time,
3 so -- but -- in no way did -- was it brought up to -- for me
4 to ever get a lawyer. So from my mother, she told me to get
5 one.

6 R.K.: She's very nervous.

7 MR. DILLER: Why don't -- maybe you could elicit a
8 little bit of the information you would like?

9 BY MR. ALLEN:

10 Q Certainly. Would you object if I asked you what
11 charges you were -- you were charged with?

12 A Vandalism. I was elicited to about 86 counts of
13 vandalism.

14 MR. DILLER: And also institutional vandalism, but
15 she wasn't found guilty of that.

16 A.K.: No. Basically I was charged for the -- just
17 the accounts for the whole town of West Pittston, all these
18 charges for the whole town of West Pittston. I -- one cop
19 tried to charge me for all these crimes. Anything found on
20 a stop sign he charge -- tried to charge me for. And it
21 wasn't even anything bad. It was just anything with a felt
22 pen he tried to charge me for.

23 MR. DILLER: What kind of things were written on
24 the signs?

25 A.K.: Very childish things, nothing bad. Nothing

1 gang like. Just silly things like vote for Michael Jackson.
2 Just very childish things.

3 BY MR. ALLEN:

4 Q Do you remember the intake process? Do you
5 remember what that was, where the probation officer -- you
6 first met with probation staff? Do you remember that?

7 A No, not at all, none of that.

8 MR. DILLER: Was there an intake process for you?

9 A.K.: For me?

10 MR. DILLER: Like with the Juvenile Probation
11 Department?

12 A.K.: I don't --

13 R.K.: Before her court hearing, no, there was not.

14 MR. DILLER: Yes.

15 MS. BENDER: So you went right from the --

16 R.K.: The police station. We were sent a letter
17 and told that the hearing is on this date. Please come to
18 the courtroom of Judge Ciavarella.

19 MS. BENDER: Okay.

20 MR. ALLEN: Do you remember who else was in the
21 courtroom with you at the time of the hearing with the
22 judge?

23 A.K.: My co-defendant was (name removed).

24 MR. DILLER: You probably should not mention the
25 name. There was a co-defendant.

1 A.K.: I'm sorry. It happened --

2 MR. DILLER: Okay.

3 MR. ALLEN: Besides the co-defendant was there
4 other officials there?

5 A.K.: Officials?

6 MR. ALLEN: Like the police or the District
7 Attorney, people like that?

8 R.K.: There was the officer who arrested her, and
9 there was the Assistant District Attorney. And a councilman
10 from West Pittston who testified against her was in the
11 room. And I don't really know who else -- whoever belonged
12 in there, I guess.

13 MS. BENDER: You said you hired your own attorney?

14 A.K.: Yes, I did, Mr. Joseph Sklarosky, Sr.

15 MR. ALLEN: Was there a trial? You said there were
16 people that testified. Was there actually a trial held
17 where people did testify?

18 A.K.: Yes, there were. But most of the cases
19 against them were thrown out because the charges were just
20 very -- it was all hearsay. Everything the people said was
21 basically hearsay. So a lot of their things were thrown out
22 in the court case.

23 MR. ALLEN: Were they thrown out because your
24 attorney objected to them?

25 A.K.: I honestly can't say because I don't

1 remember.

2 R.K.: And I was sequestered, I think the word is,
3 because I was testifying. So I was sent out. So I don't
4 even know what happened for most of the trial until when I
5 got in there. And the councilman that was saying she was
6 guilty was actually describing the two girls that were out
7 in the hallway.

8 It -- it's such a crazy case that the officer had
9 told us that if she didn't plead guilty to every single
10 charge, that he was going to make sure he got to see Judge
11 Ciavarella on a day that Penn State had lost the previous
12 weekend, because Judge Ciavarella will send all of them to
13 jail if Penn State loses.

14 MR. DILLER: I'd like to ask you a question about
15 that. Before your daughter's hearing started was there a
16 discussion between Judge Ciavarella and the officer?

17 A.K.: That was actually in the courtroom.

18 MR. DILLER: Tell about that.

19 A.K.: In the courtroom they were actually --
20 instead of listening to our case they were talking about the
21 recent football game that was on the night before. And a
22 large portion of the court case was about a football game.
23 And I didn't feel like it was taken very seriously at all.
24 So instead of listening to our case we were talking about
25 football.

1 MR. ALLEN: After the case was over what did the
2 judge -- what did the judge rule?

3 A.K.: He ruled guilty.

4 MR. ALLEN: And did he immediately go into a
5 disposition, what's called a disposition, where he would
6 have sentenced you? Or did he -- did he wait until later to
7 do that?

8 A.K.: He immediately went into a disposition.

9 R.K.: He had said, I am gonna -- even though they
10 couldn't prove all these counts, he said that he was gonna
11 use them as an example for the town of West Pittston and
12 charge them with everything and gave them a real high
13 restitution, which would have -- I found afterward -- out
14 afterwards it would have caused them to become felons.

15 And after hearing that the other person's attorney
16 had got -- was talking to the -- it was either the head of
17 that city council or the Mayor, and they waived it -- the
18 restitution because it was just beyond belief.

19 And her probation sentence and everything there was
20 no end to it. There was no date. It wasn't like, well,
21 here you have six months. It was an open-ended thing. And
22 as far as I understood, they had her until she was 21 at the
23 latest. So we had no clue what was going to happen to her.

24 MR. ALLEN: What was the dis -- what did the judge
25 -- where did the judge order? Did the judge order you for

1 placement somewhere?

2 A.K.: At first he ordered me to go to Camp Adams,
3 but because I have a medical condition I got placed to PA
4 Child Care.

5 R.K.: After being --

6 A.K.: After being there for about a day and a half
7 I got moved to PA Child Care.

8 MR. ALLEN: And how long did you spend at PA Child
9 Care?

10 A.K.: Pa Child Care, I was there for about two
11 days before I had a seizure, and I got released.

12 MR. ALLEN: Was there another hearing after --
13 after?

14 A.K.: Yes, there was another hearing.

15 MR. DILLER: Perhaps the two of you could tell
16 about when you had the seizure and then the events of that
17 day. And, mom, perhaps you could tell how you learned what
18 happened.

19 R.K.: Well, I had -- I had been in contact with
20 both Camp Adams first and with -- well, first probation
21 officer -- office when they took her that day in shackles in
22 the courtroom. They shackled her. And I went in. And I'm
23 a mother. I'm upset. And I told them, she can't go without
24 her medicine. She was a brittle di -- or a epileptic at the
25 time. She was not stabilized.

1 The seizures are not caused by stress, but stress
2 can bring a seizure on. Her seizure disorder started at the
3 exact same time that she got in trouble from -- with this.
4 And they said, nope, she has to go now. I said, but you
5 don't understand. If you don't let her take her medicine,
6 she will go into a seizure.

7 So in the meantime after I got -- the two people
8 from Camp Adams said we'll wait. Go and get it. Because I
9 told them, it will take a half hour at the most back and
10 forth. I brought the medicine back. I gave her the
11 medicine. I got on the phone with the Camp Adams nurse.

12 And then when I found out -- they called me the
13 next day and said she was being transferred because they
14 decided after they got her there that there's no hospital
15 within 40 miles, if she should take a seizure.

16 So they're going to place her down here in
17 Pennsylvania Childcare. She went down there, and I talked
18 to the nurse down there both days. I explained the
19 situation. I said, I can predict when she's going to have a
20 seizure. Her stress level is too high. She's going to have
21 one.

22 Well, she ended up banging her head -- her mouth
23 and head off the cement wall next to her cot or bunk bed or
24 whatever it is. So they -- apparently they brought the --
25 the mattress either in the middle of the floor or out into

1 the -- wherever the aides were that can watch her. And it
2 did break her braces. She was afraid to tell me that for a
3 little while. It took her about a month before she finally
4 told me that had happened.

5 The way I found out about the seizure -- I said,
6 call me any time, day or night, if she has a seizure. My
7 ex-husband's friend's wife works there as an aide. She
8 called me at 5:02 in the morning and said your daughter just
9 had a seizure. I'm not supposed to be calling you, but I
10 know you want to know. And she had remembered the name.
11 She knew who her father was.

12 And that was the only person from up at PA Child
13 Care that contacted me. And this -- now, when I tell you
14 she takes seizures you got to understand, she was brittle,
15 but she was taking grand mal seizures. And because of all
16 the stress of this later on I had to have her life flighted.

17 I almost lost her because of seizures because of
18 the stress they put her under. And I don't know if -- if
19 you're a parent, you'll understand. It's bad enough your
20 child's taken away, but then to almost lose her because of
21 all the stress and because the judge refused when he let her
22 come home to go back to school.

23 She -- he put her on house arrest, wouldn't even
24 let her go to school. When you have every drunk in the
25 world going and getting DUI and house arrest and goes to

1 work and goes here and there. This kid was an A student and
2 couldn't even go to school. I'm sorry.

3 MS. BENDER: Please don't be sorry.

4 R.K.: No, I'm fine. I'm sorry.

5 MS. BENDER: There's really no need to be sorry.
6 I'm a mom, and --

7 R.K.: It still tears at my heart like it just
8 happened. And the way he conducted his court in doing this
9 -- and I know I jumped ahead so far, and I apologize. But I
10 felt you needed to know the affect it has to this day on me.
11 I can't stand to have her out of my sight for too long.

12 I worry because of that short amount of time and
13 what happened in that short amount of time and almost losing
14 her.

15 MR. DILLER: Now, I have a question. You said that
16 the sentence was indefinite. It wasn't for a certain finite
17 period?

18 R.K.: Nope.

19 MR. DILLER: Did something -- because of this
20 seizure, did that -- did that change things?

21 R.K.: She was -- after the -- the day of the
22 seizure I was called by a probation officer, a gentleman. I
23 don't remember his name. He told me to be in Judge
24 Ciavarella's courtroom at a certain time. I don't recall
25 the time.

1 Now, she had just taken a grand mal seizure, and
2 they bring her in in shackles and handcuffs. And I did ask
3 somebody, please hold her up because I -- with a seizure
4 they get very tired afterwards, and they're like -- they
5 could be like rag dolls for hours.

6 And when they -- when I -- when I got called up to
7 go up with her, of course, I put my hands around her, you
8 know, only to hold her up to support her. And he had told
9 her, he said -- and these aren't exact words, but they're as
10 close as I can remember. There's people with worse
11 illnesses in jail. Don't think I won't throw you back. And
12 he let her come home on house arrest that same day.

13 MR. DILLER: Let me ask you about that house
14 arrest. Did he let her go to school?

15 R.K.: No. The principal of our school, I don't
16 know if you need to know the name or anything, he told me,
17 because I was on the phone with him constantly. He tried
18 for -- it was approximately one month he said he tried for
19 at least three to four times a month to get this judge to
20 let these girls back to school.

21 They were A students. They weren't your typical,
22 you know, bad person. They just made a childhood mistake.
23 They wrote with a Sharpie marker on five street signs. They
24 --

25 MR. DILLER: Now, in terms of -- so your daughter

1 was an A student?

2 R.K.: Um-hum.

3 MR. DILLER: And was any -- was there anything done
4 for her education when she was --

5 R.K.: No, nothing. What they told me they
6 couldn't because -- I can't remember the reason, but there
7 was -- there was a reason I couldn't get a teacher sent from
8 the school home to her. I forget what that reason was. I
9 think it was because it wasn't a medical condition that she
10 was home.

11 And I don't know how to home school. You have to
12 be -- have certain things to be able -- to be able to home
13 school them. And I had to work on top of it.

14 MR. DILLER: Did your daughter pass that year?

15 R.K.: Yes, she did, with Bs and Cs, but she still
16 passed.

17 MR. DILLER: And prior to that she had not been a B
18 or C student?

19 R.K.: Nope, she was an A student. She was student
20 of the month in -- when we had lived in Connecticut, and in
21 the 8th or -- 7th or 8th grade at this same school. And I
22 just want to let you know because of this every year I went
23 to all the teachers conferences and met with her teachers.
24 And the one thing they all told me is she wasn't before and
25 she's since got -- when she got out of high school she

1 became very introverted.

2 She never left the house in her teen years -- in
3 her young teen years after this. It was a rarity. I had to
4 force her to go to her own prom just to have some kind of
5 high school experiences. She never went to football games,
6 never went to anything. And I -- I feel it was from what
7 happened that one time. The first time she ever left our
8 little town, the very first time and got in this little bit
9 of trouble.

10 Which yes, you know, she should maybe have gotten a
11 little bit of punishment, but not an ax thrown at her. And
12 it's taken a lot of years for her to come out of that shell.
13 And I blame him for that.

14 MR. ALLEN: Is there anything else you would like
15 to -- anything that you would like to add?

16 R.K.: I'm sorry.

17 A.K.: I think she covered everything.

18 MR. DILLER: One thing about the story perhaps that
19 I'll just raise that I know I'm going to ask you. In the
20 courtroom was an identification made or an improper
21 identification made of you, and what was said about that?
22 Do you know what I'm referring to?

23 A.K.: Oh.

24 R.K.: Yes.

25 A.K.: What was his title though?

1 MR. DILLER: It doesn't matter. Who --

2 A.K.: There was an accusation by -- I -- the
3 councilman. That was it. Thank you. He -- he tried to
4 accuse me and my co-defendant -- the co-defendant. But
5 instead of accusing me and her of the crimes he accused two
6 people that were also trying to go against us. So he
7 described them who had -- who had black hair at the time,
8 who had short black hair at the time.

9 MR. DILLER: And you have blonde hair?

10 A.K.: I had long blonde hair down to my waste. So
11 instead of accusing me and my co-defendant he was sitting up
12 there on the trial accusing these two girls the entire time
13 with the description.

14 MR. DILLER: Did this improper identification of
15 you move the judge in any way to think maybe you're not the
16 person who might have done this thing?

17 A.K.: It didn't seem to affect him at all.

18 MR. DILLER: Okay.

19 MS. BENDER: Do you have any idea how long the
20 whole process took when you were in court? Were you there a
21 long time or a little bit of time?

22 A.K.: It felt like an eternity, but --

23 R.K.: Well, there was people before you being
24 tried and everything.

25 A.K.: The whole thing took probably, what, about

1 20 minutes, the whole thing.

2 R.K.: Maybe, maybe.

3 A.K.: I would say a good 20 minutes.

4 R.K.: Maybe 20 minutes, a half an hour, if that.

5 And just -- just so you're aware too, when I finally got her
6 back in school I talked to the -- at that time this school
7 had a police officer from that local town in the school
8 district. And I had talked -- I -- the other co-defendant's
9 mother and I had to go and meet with him, and we did. And
10 he told me directly that it was common knowledge that Judge
11 Ciavarella told all the police forces that if you don't want
12 them to be sent away, don't bring them in front of him
13 because he's sending them all away.

14 MS. BENDER: I know it's been a few years now, and
15 this isn't from mom because I think I can get what your
16 answer would be, but you haven't said a whole lot. Could
17 you tell me what your perception is of the juvenile justice
18 system today?

19 A.K.: Today? It definitely needs to be fixed,
20 because I seen too much corruption with it. So I feel it's
21 very flawed. So being from the inside of it and just seeing
22 how it works, I just see -- it has too many flaws today, and
23 it just needs to be fixed.

24 MS. BENDER: And how do you think this experience
25 affected your life overall?

1 A.K.: I've learned not to -- I've learned that
2 people aren't always -- people we put in power just aren't
3 always the ones we should trust. Like I thought I could --
4 Judge Ciavarella, I thought maybe he could see I wasn't a
5 bad kid. Yes, I did deserve a slap on the wrist. Yes, I
6 did deserve to be punished. Did I deserve what I got? No.
7 Was I punished too harshly? Yes. And I just -- I just --
8 what I got out of it I really shouldn't have. I just think
9 I was punished too harshly, and I just don't think it was
10 very fair.

11 R.K.: Could I just make one more comment too?

12 MS. BENDER: Absolutely.

13 R.K.: At the end when we finally found out she was
14 getting off -- going off of probation, a week prior to that
15 now they were found as misdemeanors. Judge Ciavarella told
16 the -- had the probation officer call us, and he ordered a
17 DNA testing of her.

18 And I had called my lawyer, and I said what is
19 this? I was -- I was really -- I couldn't believe they
20 wanted a DNA for that. And that's when he told me. He
21 said, he can't do that. It's a misdemeanor. I said, why do
22 they want a DNA? I still to this day don't understand it.
23 And he didn't get it. He never did get the DNA, but he had
24 ordered a DNA for her. The girl -- the probation officer
25 told me. I -- I don't get it. I really don't get it.

1 MR. ALLEN: That's all I have, Mr. Chairman.

2 CHAIRMAN CLELAND: Thank you, very much for coming
3 here and sharing your story with us. Thank you. Good luck
4 to you.

5 A.K.: Thank you.

6 R.K.: Thank you for listening. Merry Christmas to
7 all.

8 CHAIRMAN CLELAND: Should we bring up the next
9 ones? Are we going in the order that's on my list here?

10 MS. BENDER: No, unless you have those numbers by
11 yours.

12 CHAIRMAN CLELAND: I do. D.G. and M.G. Good
13 evening. Would you please raise your right hand and be
14 sworn?

15

16 D.G. AND M.G., called as witnesses, being duly
17 sworn, testified as follows:

18

19 CHAIRMAN CLELAND: Thank you, and please be seated.
20 You've already met with Ms. Bender and Mr. Allen in our
21 green room

22 D.G.: Yes, yes.

23 CHAIRMAN CLELAND: And so you know how we're going
24 to proceed here, right.

25 M.G.: Yes.

1 BY MR. ALLEN:

2 Q Hello. Thanks for coming.

3 A How you doing?

4 Q Do you have a statement you'd like to make, or I
5 mean, I can ask you questions. I've got a list of them
6 here.

7 A Yeah, that would work if you'd ask me the
8 questions.

9 Q Certainly. What charges were filed against you

10 A Propulsion of missiles.

11 Q At the time of -- of the intake -- do you remember
12 the intake hearing with the probation staff where they first
13 talked to you?

14 A Very vaguely. I don't remember all the details to
15 it really.

16 Q Did you have an attorney with you at the time?

17 A No, I did not.

18 Q Did anyone read you your rights or anything, tell
19 you that you should have an attorney there?

20 A No, they did not.

21 MR. DILLER: How old were you?

22 THE WITNESS: I was 12 years old at the time.

23 BY MR. ALLEN:

24 Q Do you remember the intake probation officer? Did
25 they explain to you about any diversion programs they might

1 have? You ever heard that word before, diversion program?

2 A I'm not sure.

3 Q Consent decree, informal adjustment, those words
4 sound familiar to you?

5 A No.

6 Q They are very formal legal terms. But at intake,
7 at the intake process, they're words that should pop up that
8 should be brought up by the intake staff. Did you admit to
9 the charges, or did you deny them?

10 A I admitted to them.

11 M.G.: In the courtroom.

12 BY MR. ALLEN:

13 Q Okay. In front of what judge?

14 A Judge Ciavarella.

15 Q Do you remember who else was present in the
16 courtroom at the time? Not co-defendants, but other types
17 of people?

18 A There was lots of people in the courtroom at the
19 time. I don't exactly -- I know there was other people
20 being charged that were sitting around the corners of the
21 courtroom already in handcuffs and shackles.

22 And I don't -- there was lots of people behind us
23 too. I don't know who they were. They were the families of
24 the people or --

25 Q Were those all people from other cases, or are they

1 all with your case?

2 A No, they were people from other cases.

3 Q At the hearing in front of the judge was -- was
4 District Attorney -- was there a District Attorney present
5 that you can remember?

6 M.G.: No, not that we know of. The courtroom --
7 if I can, the courtroom was filled, and I mean filled. It
8 was packed. It looked like a marketplace. There were, as
9 D.G. said, a number --

10 MR. DILLER: Don't use his name.

11 M.G.: Okay. I'm sorry. As he said, there were a
12 number of people that were in yellow -- they were children,
13 young people, not adults, in orange jump suits with the
14 belts and the hands and the shackles on the feet standing
15 kind of like off to the side where we were.

16 As I recall, nobody was identified as any District
17 Attorneys or anybody else being there. I don't know whether
18 you want to just question D.G. first and -- I'm sorry,
19 question my son first and then -- and then ask me.

20 MR. ALLEN: I mean, you can answer the questions
21 together if you want to take turns, if that's easier.

22 M.G.: Can we tell the story?

23 MR. ALLEN: You certainly can tell the story. In
24 fact, that's easier for me if you do that.

25 M.G.: Okay. My son was 12 years old, as he said.

1 He was a boy scout. He had gone through cub scouts. He had
2 gone all the way through and got the Arrow of Light, which
3 is the highest that you can get in the cub scouts and
4 decided he wanted to be a boy scout. So he was in the boy
5 scouts.

6 And two young kids' brothers came to the house one
7 day and asked if D.G. could go for a bike -- I'm sorry, my
8 son could go for a bike ride. And I let them ride the bike.
9 And they rode the bike kind of like up and down our street.

10 The next day they came back, asked if he could go
11 again, and they went. About 6:00 at night we get a knock on
12 the door and six State Police Officers in three cruisers
13 pull up to the house and tell me that my son was involved in
14 some kind of rock throwing thing on the expressway, and they
15 wanted to question him.

16 Well, he wasn't home at the time. So when he came
17 they suggested that we go to the police barracks, the State
18 Police barracks, and they wanted to question him, which they
19 did. Never advising any of us that we could have a lawyer,
20 should have a lawyer.

21 I repeatedly asked -- I'm not a lawyer. I'm a
22 school teacher, but I knew enough to ask, do we need
23 somebody? No, we're just going to take some -- some
24 statements and stuff.

25 And that said, they did make a statement to, I

1 believe it was my son, that if his story matched the other
2 boy's, then that would probably be the end of it. They
3 would just whatever. If it didn't match, then they'd
4 probably have to have a hearing in front of Judge
5 Ciavarella.

6 And, of course, they said the stories didn't match.
7 Now, my son said from the get go he did not throw any rocks.
8 The older boy did. And I know the older boy did it because
9 I teach in a school district in the building where this boy
10 was. And after the whole thing took place this boy admitted
11 he's the one that threw the rock.

12 In any event, my son said he did not throw the
13 rock, didn't make any difference. We went to an intake
14 hearing, and when we went to the intake hearing I asked
15 again, do we need a lawyer? Do we need some kind of legal
16 representation? No, we're just going to take some
17 information.

18 What was odd about our case was that the probation
19 officers had said to us, this particular case is coming
20 through here really fast. It seems like somebody has an
21 agenda here because it doesn't work this fast.

22 So we went through that. And after that we felt
23 that maybe we should get a lawyer. Didn't have the money
24 for it in all honesty. So a very good friend of mine put up
25 the money for the lawyer.

1 We contacted a lawyer. We went up and talked to
2 the lawyer. Took D.G. -- took my son aside and questioned
3 him separately and then questioned my husband and I.
4 And he said he would check out the area where the accident
5 happened on the expressway. He would check into the reports
6 about how much damage was done to -- none of which ever
7 happened, never checked anything.

8 We had a second meeting with him, at which time he
9 said that he was going to recommend that we plead guilty and
10 throw ourselves on the mercy of the court because Judge
11 Ciavarella was tough, but he was fair.

12 I have to preface that by saying that teaching in
13 the school district in a middle school he was -- Judge
14 Ciavarella was a friend of our superintendent, and he was
15 very often invited into school assemblies to speak to the
16 kids about his zero tolerance policy and how he ran his
17 court.

18 And at one point he said to the kids, do you know
19 who I am? You don't ever want to come in front of me. But
20 I want to tell you, you should be frightened of me, but I'm
21 fair.

22 If you come in front of me the first time and it's
23 not something major, I'll give you a break. But if you come
24 to me the second time after you've done something, I'll
25 throw the book at you. And I recalled him saying that.

1 That stuck in my head.

2 So when all of this took place that stood out.
3 Then we had an interesting thing happen. We were waiting
4 for him to go to -- to his hearing in front of Judge
5 Ciavarella, and a priest that we knew offered to talk to
6 Judge Ciavarella and see if he could find out what was --
7 what was going on, what -- if he could help D.G. -- help my
8 son anyway.

9 He talked to Judge Ciavarella. He called my
10 husband and I to come to the rectory, and we went -- when we
11 went up there he said that Judge Ciavarella was going to
12 send him away. Now, that was before he had any information.

13 MR. DILLER: That was before any hearing or any
14 court proceeding?

15 M.G: Right. He was going to send him away. So
16 the priest's recommendation to me was to prepare my son to
17 go away, which I didn't do because I honestly felt that he
18 didn't do anything, and nobody could do something like that.

19 And as it so happened when our hearing came the
20 clerk -- courtroom, filled as it was, it lasted about three
21 minutes. Our lawyer was there. He had a folder, which I
22 brought some of the stuff. First handed it to Judge
23 Ciavarella, and he kind of looked like this.

24 And he happened to pick out this commendation that
25 we have that Governor Ridge had sent to my son when he

1 attained the Arrow of Light. Took that, and he opened it
2 up, and he started yelling at my son. And his words were
3 something like, well, Mr. Big Shot Boy Scout. So you have a
4 commendation from Governor Ridge.

5 Well, Governor Ridge is now head of Homeland
6 Security. Perhaps I should call him and tell him we have a
7 terrorist loose on the streets of Luzerne County. And he
8 ordered that my son be taken away.

9 So they shackled my son and handcuffed him and took
10 him off to the side. And I asked to speak, and he said it
11 wasn't going to change anything he did. My son was going
12 away. And I still insisted on speaking. And I reminded him
13 of what he said at the middle school about being tough, but
14 being fair, and the fact that my son was a scout, and it
15 made no difference. He sent him away anyway.

16 I passed out. They had to clear the courtroom. It
17 was in the newspaper the next day, and the clippings are
18 here if you would like to see them. They sent him to Camp
19 Adams for, they said, at least 35 days, but they always
20 threatened you with if he -- if he didn't fall in line, if
21 we didn't pay the money we were supposed to pay for his keep
22 there, then it could extend and extend and extend.

23 Two weeks after he was sent away there was a
24 newspaper article in about a young fellow, and I have that
25 also, who was 17 years old, and he ran over and killed a man

1 on Market Street in Luzerne. Ran a stop sign or a red light
2 speeding, killed the gentleman.

3 He came in front of Judge Ciavarella, and Judge
4 Ciavarella gave him probation and said he was a good student
5 and he deserved a break. My son was the youngest in the
6 history of Camp Adams to be sent to Camp Adams at that point
7 at 12 years of age. He spent 35 days there.

8 Two or three days after he was there they made them
9 run a football field. They would do, what was it, D.G.,
10 seven laps, ten laps every day?

11 D.G.: 15, 20, I think it was.

12 M.G.: Okay. I got a phone call from the
13 pediatrician's office saying that they got a call from Camp
14 Adams and that my son was having difficulty breathing. So
15 they said they could not get any information, nobody -- none
16 of the probation officers at the camp would give him any
17 information, but they did ask if he had any allergies.

18 Of course he did, and my son tried to tell them
19 that at the camp, and they accused him of being a liar
20 because the nurse and the doctor's office didn't have the
21 right chart. And she told the probation officer, no, he
22 didn't.

23 I couldn't find out what was wrong with him, and I
24 was -- I was really uptight. So I don't recall whether I
25 called one of the other probation officers first or not and

1 couldn't get them, and then I called Sandra Brulo. And I
2 told her what the story was, and I asked if I could speak to
3 my son, and she told me absolutely not.

4 And I said to her, he's having a breathing problem.
5 He has allergies. I need to speak to him. Nope, can't talk
6 to your son. At which point I said to her, he has rights.
7 He has to be allowed to talk to me. And she said to me, he
8 has no rights. He gave them up when he decided to be a
9 criminal. And I never did get to talk to my son.

10 Obviously he's okay. There were some other things
11 that entered into it too. My husband is a cancer patient.
12 He was diagnosed with cancer when he was 40 years old. When
13 this happened he was going through chemotherapy. He's
14 disabled because of the cancer. Doctor feels a large part
15 of the cancer was brought on by stress.

16 So when this happened the doctor wrote a letter to
17 Judge Ciavarella asking if he would please consider home
18 confinement or community service or something for what had
19 happened. Judge Ciavarella wrote back, and we have those
20 letters too. I think you do too. He denied it, so my son
21 had to serve the 35 days.

22 I think that's basically it. There's -- like I
23 said we -- I have the clippings here if you want to see
24 them. Oh, if you're interested, D.G. wrote letters home.
25 They're very telling. He write -- yeah, my son wrote these

1 letters, and he talks about how he misses everybody. He got
2 to call me two weeks after he was there.

3 They weren't allowed phone calls. And when they
4 did it was -- what was it, like a five minute phone call or
5 something like that.

6 D.G.: Five minutes.

7 M.G.: He'd get on the phone, and he'd start to
8 cry. And I'd cry. And nothing ever got -- got anywhere,
9 but I have the letters. I have paperwork too. Camp Adams
10 -- this is paperwork that they gave or I got at some point
11 in time. And I found this interesting, that the history of
12 Camp Adams and as -- as it went on, and I guess they
13 incorporated, they went from making \$250,000 a year with the
14 placement of children in 1984 to \$1 million in 1991. And in
15 the year 2001, which was shortly before my son was placed,
16 \$13 million. My son was placed in August of 2002.

17 BY MR. ALLEN:

18 Q If you mind if I ask, how much was the tuition for
19 -- for your son to go there?

20 A It was -- I know there's -- we have a paper here,
21 \$300. I don't recall if that was a one time thing or if
22 there was more than that. I believe we also had to pay for
23 damages to the -- the police officer's window. I don't know
24 if I told you that either. It was an off duty State Police
25 Officer. And the off duty State Police Officer had a

1 brother who was a magistrate. And somebody in the probation
2 office had said they were pushing to have this pushed
3 through the court. They wanted him placed. And that's what
4 happened.

5 Q And the other question I have is when you were
6 meeting with your attorney did -- after the disposition,
7 which of course, obviously was unfair, did your lawyer
8 explain to you that you had a right to appeal this?

9 A No, no. When it was over he just kind of walked up
10 to us and he said, well, he said, I think we did okay. D.G.
11 -- your son should be all right. If you have any questions,
12 you can call me, and I'll see you in 35 days. That was the
13 end of that.

14 MR. DILLER: If I could comment on that. I wasn't
15 the lawyer.

16 M.G.: No.

17 MR. DILLER: But the witness testified that the
18 lawyer recommended that he plead guilty even though he
19 wasn't guilty. And just having been a lawyer who sometimes
20 practiced before that judge, I can say that that was not
21 crazy advice. Because the alternative could have meant --
22 would not have meant that he would be found guilty, but
23 would more likely have meant that he would have been placed
24 for a much longer period of time.

25 So while people say, well, you pled guilty, in that

1 courtroom there weren't a lot of alternatives.

2 M.G.: But that was like being coerced.

3 MR. DILLER: It was.

4 M.G.: We were coerced into doing that. Because
5 for one thing -- and that was something else. We weren't in
6 a financial position to put out a lot of money for
7 attorney's fees. And -- and this particular lawyer had
8 said, should you decide at some point -- I think it was a
9 few minutes before we went in to see Judge Ciavarella. He
10 said if you're going to change your mind and you want to go
11 through a trial, we could do that. But, of course, that's
12 going to be a lot more money because then I have to do a lot
13 of information and stuff like that, which we didn't have the
14 money for. And as a result my son got placed.

15 BY MS. BENDER:

16 Q May I ask your son one question? How do you feel
17 that your experience with the juvenile justice system
18 affected your life from the time you were 12 until now?

19 A Terrible. I don't know if I can trust anyone in
20 Luzerne County again because of it.

21 Q So it's not only the justice system, it's the
22 police officers?

23 A Yeah.

24 M.G.: It was -- it was -- you know, it was awful.
25 As I said, I'm a school teacher. He was raised -- he was a

1 scout, and he was raised to be -- to tell the truth, to
2 respect police officers, all the things that your parents
3 teach you, respect police officers, teachers, doctors,
4 lawyers, whatever, judges, and he did.

5 And he told the truth, and -- and he suffered.
6 Because whether he lied or told the truth, he was going away
7 anyway. And the sad thing is that I knew he was going away
8 before anything ever happened.

9 And there was nothing -- and I did try. I -- I
10 tried to talk to people. I called the attorneys. I called
11 attorneys that you've had here testify. And the first
12 question out of their mouth when I tell them the story was
13 and who's the judge? And I said Judge Ciavarella. Nope,
14 sorry. Can't help you.

15 I couldn't get anybody to even consider looking at
16 that -- the case. So we did the best we could. And it has
17 -- it has colored my opinion. For good or bad I find myself
18 -- as a teacher I would say to the kids -- because we had
19 the zero tolerance in the school, which got expanded to be
20 even as much as if you go and push somebody and get in an
21 argument, you're going away, and everybody knew it.

22 So as a teacher I'd be advocating all the time,
23 keep your hands to yourself. Don't do this. Don't do that.
24 You don't want to end up in this court because it's not
25 going to be good.

1 In fact, I had a principal come to me saying you
2 shouldn't be telling the kids about Judge Ciavarella. And
3 maybe he was right. But I honestly felt I was trying to
4 prevent a tragedy that we experienced.

5 This is not something that my husband and I will
6 ever get over. He's back on chemo again. It's just this
7 constant all the time. And like I said, it's sad. My son
8 is now 19 years old.

9 If the police cars come down the street to talk to
10 somebody else, he comes in the house because he doesn't want
11 to be around them. He doesn't want to have anything to do
12 with it. That's sad. That's sad. That's not the way it
13 should be.

14 MR. ALLEN: That's all I have, Mr. Chair.

15 BY CHAIRMAN CLELAND:

16 Q Just two -- I think you just answered my one
17 question. You're 19 now?

18 A Yes.

19 Q Okay. What school district?

20 A Wyoming Valley West.

21 CHAIRMAN CLELAND: Okay. Thank you.

22 M.G.: D.G. did become an Eagle Scout.

23 CHAIRMAN CLELAND: Congratulations.

24 MS. BENDER: Congratulations.

25 CHAIRMAN CLELAND: Any other questions?

1 MR. MOSEE: Just one. You told us what you did at
2 the disposition. Did your attorney say anything?

3 M.G.: Your Honor, here's my client's folder, if
4 you would like to look at it. There's some letters there
5 from some teachers and the priest and this and that. And
6 that was it.

7 MR. MOSEE: Thank you.

8 CHAIRMAN CLELAND: We will have the record
9 corrected so that any reference that you made to a name will
10 be changed to an initial.

11 MR. DILLER: Thank you.

12 CHAIRMAN CLELAND: And we appreciate very much your
13 story and your willingness to come here and to help us learn
14 from your experience in a positive and hopefully
15 constructive way. And I hope that that will in some way
16 make up for your experience and bring some positive gain out
17 of your circumstances. Good luck to you.

18 MR. LISTENBEE: Your Honor, may I have a question?

19 MR. WILLIAMS: It's great that what you went
20 through and came back and became a Eagle Scout. It shows a
21 lot about your character.

22 MR. LISTENBEE: Would it be appropriate to copy
23 some of the material that's been provided and appropriately
24 redact it?

25 CHAIRMAN CLELAND: Absolutely. Do you want to

1 supply -- the easiest thing to do would be maybe for you to
2 just supply a copy of that rather than leave it with us and
3 have it returned.

4 MR. DILLER: Sure. That's what I'll do.

5 MR. LISTENBEE: That will be redacted so the names
6 are not in there.

7 CHAIRMAN CLELAND: If that's all right with you.

8 M.G.: You mean just take his name out because I
9 kept saying it, yeah.

10 CHAIRMAN CLELAND: No, we'd like to have his --

11 M.G.: I brought -- and I brought copies for you.
12 Some of these are the original, but absolutely.

13 CHAIRMAN CLELAND: Then that will be part of our
14 record, and we'll make that part of the formal record of
15 this proceeding.

16 M.G.: Okay. Sure.

17 MR. DILLER: Are you willing to give up your
18 originals like that, or should I copy them?

19 CHAIRMAN CLELAND: Why don't you copy them? We
20 don't want the originals.

21 MS. BENDER: Thank you, very much.

22 CHAIRMAN CLELAND: We'll next call on E.M. Good
23 evening. Would you raise your right hand to be sworn?

24

25 E.M., called as a witness, being duly sworn,

1 testified as follows:

2

3 THE WITNESS: I do.

4 CHAIRMAN CLELAND: Would you please have a seat?

5 BY MS. BENDER:

6 Q Hi. Thank you for being here.

7 A Thank you. Thank you for what you're doing.

8 Q You're quite welcome. You said that you would be
9 comfortable giving us some of the facts of what brought your
10 son into the courtroom originally?

11 A Absolutely. In -- and I have notes because there's
12 been so much that's gone on. In 2004 my son jumped on my
13 Mercedes Benz and broke the emblem, which landed him in
14 placement with a couple of PO violations, which we can get
15 into next, for four and a half years.

16 He did not commit a crime in the community. It was
17 against me. My son's father had passed away on his 9th
18 birthday. He was having some difficulty adjusting to that,
19 some emotional issues, and I looked for help.

20 Q So did -- when your son broke the emblem on the
21 Mercedes you called the police and asked for help?

22 A I did. I did. I knew the chief of police of
23 Laughlin at the time, and we -- we discussed it, and he felt
24 that let's just give him a little scare. We'll put him in
25 front of Ciavarella and scare him just a little bit, scare

1 him straight.

2 Well, that 2004 incident landed him two to four
3 months in PA Child Care and eight months in Kids peace.

4 Q When you went in front of Judge Ciavarella did you
5 have an attorney?

6 A I did hire my son an attorney for that first
7 hearing. The attorney said plead guilty. He'll go easy on
8 you, which landed him 12 months in placement.

9 Q What happened next?

10 A I did not know there was a trial process available.
11 I was not -- I did not know that there was an appeal's
12 process available. My son spent 12 months in PA Child Care
13 and Kids Peace.

14 In December of 2005 there was an incident where it
15 was right around the holidays, and my son was very sad that
16 his father wasn't around. And understand that my son was a
17 straight A student, very active in baseball, basketball,
18 football. And he decided to take some trash bags and throw
19 them around the house.

20 So I called the police department, who I must say
21 were wonderful, and they calmed him down the first evening.
22 The second evening we really couldn't get him to calm down.
23 So I called probation saying please help me out.
24 Immediately violated him, put him in front of Ciavarella.

25 Q So he -- excuse me for stopping you. He was

1 violated because of -- he was throwing around trash bags,
2 and he was a little out of control the night before?

3 A Correct.

4 Q Okay.

5 A He ended up in PA Child Care again.

6 Q For how long?

7 A He was in there that time, I believe, for a week.

8 In March of 2006 he decided to -- his probation officer
9 stopped by the house to visit him. And he was acting up
10 again. That incident was right around the time his father
11 had passed. And he grabbed my purse, and he took out a
12 bottle of Xanax that were prescribed to me. I said, J.G. --
13 excuse me. I said, please give me back my pills. He
14 immediately handed the pills over.

15 The probation officer violated him. He was placed
16 in front of Ciavarella, sent to PA Child Care and Camp
17 Adams.

18 Q Do you know what charge he violated him on

19 A I believe it was possession.

20 Q Of drugs?

21 A Of a -- of a substance.

22 Q Okay.

23 A From that point I was court ordered to privately,
24 even though my son had two different types of health
25 insurance, privately pay and privately see Dr. Frank Vita,

1 not knowing he was Conahan's brother-in-law. Cost me
2 thousands upon thousands of dollars.

3 In May of 2006 my son said to me, mom, look what I
4 bought at school. He had three Vicodin in his possession.
5 Now, knowing that the history with his father passing, I
6 immediately called Dr. Vita and said, I'm nervous. What do
7 I do? Should I take him to a hospital? He violated him.

8 My son tested negative for having that -- for
9 having any drugs in his system. He was in -- he was
10 sentenced -- he was put in front of Ciavarella, several
11 months in PA Child Care, sent to Colorado Boys Ranch, again
12 to PA Child Care, and to George Junior Republic to testing
13 negative to any drugs in his system, but having them in his
14 possession landing him an additional three plus years in
15 placement.

16 Q How old was he when he first came into the system?

17 A 12. He was 12 years old. Ciavarella and I had
18 some media battles. I -- in the courtroom. As the last
19 mother stated, no one was identified, so you really didn't
20 know who was there. I trusted probation. They said, you
21 don't need a lawyer. He's going to be sent home. I
22 believed probation.

23 The intake hearing, did not have one until after
24 his hearing. That lasted, as -- as the previous mother
25 stated, for three to five minutes. That's all the hearings

1 lasted for. He was not read any of his rights. He was not
2 told he could have an attorney. I didn't even know that
3 there was a trial available to him.

4 And he was -- Ciavarella had a habit of assuming
5 guilt. Everybody was guilty that came into his courtroom.
6 So one day -- and I'm not normally a disrespectful person.
7 One day I stood up in a packed courtroom. It was always a
8 packed courtroom. It did look like a meat market. And I
9 called him out on it.

10 And I said, until the day I die I will find out who
11 you're in bed with or who is giving you money because what
12 you are doing doesn't make sense and is absolutely
13 disgusting. And he said, I will hold you in contempt. I
14 said, go ahead. I don't care. And that was years ago.

15 Q You said that during your child's violation of
16 probation hearings you never had an attorney because someone
17 told you you didn't need one?

18 A Probation.

19 Q Probation told you you didn't need an attorney for
20 those hearings?

21 A Correct, correct.

22 Q Did they give you some indication then of what they
23 thought was going to happen?

24 A He would come home.

25 Q He was going to come home?

1 A Um-hum.

2 Q At some point in time did you find out that you
3 could appeal, that there is an appeal process?

4 A No. The on -- well, actually let me rephrase that.
5 There was one point during this whole thing where after
6 Ciavarella and I fought in the newspapers consistently that
7 he decided to take my son out of my home and put him with
8 his grandmother.

9 Now, my son was a straight A student, very active
10 in sports. I went to see an attorney for myself, and I was
11 told that it would take at least nine months to be appealed
12 and between 10 to \$25,000. So my best bet was to just go
13 and talk to Ciavarella. And this is after it's out in the
14 media. We're fighting with each other.

15 He called me a degenerate scumbag. I was a
16 successful business owner in Luzerne County. I went to
17 every politician, everybody I could think of that I knew to
18 ask for help. So he said just -- just -- so I did. I went
19 to Ciavarella's chambers. Your Honor, I'm sorry. I'll do
20 whatever you say. It didn't matter. I had hurt his ego.

21 Q What's the relationship like between you and your
22 son now?

23 A As you can tell, he's not sitting next to me. He's
24 very angry at me. He's angry at the system. He doesn't
25 trust anybody. It's not -- it's not good.

1 Q How old is he now?

2 A He's 17. He'll be 18 in February.

3 Q And what is he doing?

4 A He is now expecting a child because he felt no one
5 loved him. So the first person who loved him, that's where
6 he is.

7 Q Okay. I know that you have a statement that you
8 prepared that you wanted to read. Before you read it is
9 there anything else you want us to know?

10 A I think it says it all in my statement.

11 Q Would you like to read it now?

12 A Yes. This is probably the most difficult part of
13 this entire hearing. As a mother you cannot understand what
14 I am feeling unless you experienced what I did. As a mother
15 your duty is to protect your child and want the best for
16 them.

17 When you believe in the judicial system and know
18 something is wrong and you reach out and cry for help with
19 no response, it is quite frustrating. Living in a small
20 community everyone talks. I believe that most of the other
21 judges, the District Attorney, the ADAs, and many attorneys
22 who represented juveniles knew what was going on, or at the
23 least something was going on, but no one had the courage to
24 take a stand.

25 They didn't commit the crime, but they turned a

1 blind eye. I was told on several occasions to stop fighting
2 with Ciavarella in the media, but I wouldn't. The rights of
3 my child and what my family was going through was much more
4 important than what the community thought of me.

5 I always said that the truth would come out. I
6 wish it hadn't taken this long. I sent a complaint via the
7 internet to the Disciplinary Board asking for help. I went
8 to the District Attorney's Office. I spoke to several
9 attorneys. I talked to the newspapers, the radio stations,
10 psychologists, teachers, et cetera, and where did it get me?
11 Nowhere.

12 The financial impact that it had on me was
13 tremendous. The impact it has had on my reputation as a
14 business owner was devastating. But in the end I was right.
15 Call it self validation, but it doesn't give my son back the
16 four and a half years -- I'm sorry -- that he lost for
17 jumping on my Mercedes and breaking off my emblem.

18 I've had to go to counseling for years, and they
19 tell me to forgive myself. Really? I can't. I won't until
20 the day I die. I didn't protect my child. The court system
21 didn't protect my child. It ruined many years of his life
22 that aren't going to be able to be replaced.

23 I feel like a horrible mother who let her son down
24 when he needed her the most. The guilt is indescribable. I
25 wouldn't join -- I wouldn't join any class action lawsuit

1 because I don't want any part of the dirty money that flows
2 through Luzerne County.

3 If my testimony here today will prevent one child
4 or family from going through the hell I had to go through,
5 then I did what was right. I am going to use this as a
6 positive in trying to form a support group for those
7 families affected by this tragedy.

8 But my question is, where was everyone? Didn't
9 anyone care? If it had been your child, would you have done
10 more? If one influential judge, attorney, or elected
11 official had the courage to stand here in front of all of
12 you and say, yes, I knew something was going on, and even
13 though I didn't commit the crime, I turned a blind eye,
14 it may help many of us continue the healing process.

15 Although that probably won't happen since they took
16 an oath. And God forbid someone decides to act unselfishly
17 and own up to what they did versus worrying about themselves.
18 But that seems to be the way Luzerne County works.

19 It is my opinion that most elected officials and
20 those who dealt with juveniles and Ciavarella knew that
21 something was wrong even if they didn't know about the cash
22 kickbacks. They knew because a lot of noise was made. Not
23 only by myself, but other -- other families as well. No one
24 who took an oath to protect the constitution of the United
25 States of America did the right thing by contacting the

1 proper board.

2 I would highly suggest looking into the improper
3 conduct of all those individuals because this could have
4 been stopped a long time ago before so much damage had been
5 done to so many children in other placement facilities.

6 I'm -- I'm sorry if I'm angry. I'm sorry if I
7 don't condone the behaviors of many in Luzerne County's
8 judicial system. But given what I have gone through and
9 these other families, do you really blame us? And I thank
10 you for your time. That's all.

11 MS. BENDER: Thank you, so much. I'm so sorry that
12 you and the other families have gone through all of this.

13 THE WITNESS: Thank you.

14 CHAIRMAN CLELAND: Judge Uhler.

15 BY JUDGE UHLER:

16 Q Would you mind sharing who was District Attorney
17 when you contacted their offices?

18 A Attorney Lupas.

19 Q And when did you contact the Disciplinary Board?

20 A It was right after Ciavarella -- what Ciavarella
21 did after I confronted him in his courtroom was I had a
22 successful salon and day spa that had had a fire, and there
23 was a civil matter that was occurring. And when he was an
24 attorney, the contractor for my civil matter was one of his
25 clients. He attempted to bring me up on criminal charges,

1 and that -- and obviously it was shot down, and Judge Lupas
2 now refused to honor Ciavarella's wishes. So at that time I
3 contacted the Disciplinary Board.

4 Q Is this the Attorney Disciplinary Board or the
5 Judicial Conduct Board?

6 A It's the -- there's a website, and I believe it was
7 the dis -- we were trying to figure that out. It was one or
8 the other I contacted.

9 Q Okay. All right.

10 A And that's also when the attorney, the District
11 Attorney, I told him the story. The Commissioners knew
12 because I gave them my files. They asked because when they
13 broke the story about Dr. Frank Vita, the Commissioners --
14 the one commissioner asked me to bring in my son's folder.
15 I went to the probation office. They all cleared out. Do
16 you know who handed me the file? Ciavarella.

17 And he said, who are you releasing this to? I
18 said, none of your business. He said, if you don't tell me
19 who you're releasing this to and you so much as jaywalk in
20 this county, I'll have you locked up. I said, I'm releasing
21 it to the media, and I walked out.

22 JUDGE UHLER: I have nothing further.

23 CHAIRMAN CLELAND: Thank you, very much for being
24 here today and sharing your story with us. And I hope that
25 we can have something good and positive come of this as

1 you've asked and requested.

2 THE WITNESS: Please. Thank you. Thank you for
3 your time.

4 MR. DILLER: Before you ask A.A. questions, perhaps
5 I could make a comment.

6 CHAIRMAN CLELAND: Sure. Let me administer the
7 both, if you don't mind first.

8 MR. DILLER: Sure.

9

10 A.A., called as a witness, being duly sworn,
11 testified as follows:

12

13 MR. DILLER: Why don't you move over? I just
14 thought given the very powerful testimony we just heard that
15 I would comment, if I could make a comment of my own,
16 because I do have a specific recommendation that addresses
17 something that the previous witness said.

18 And when the previous witness said someone must
19 have known, someone must have felt something was going on, I
20 would like to bring to the Commission's attention a
21 Pennsylvania Supreme Court decision called District Office
22 of Disciplinary Counsel versus Robert B. Surrick, which is
23 located in the 561 Pennsylvania Reporter, 167, 749 Atlantic
24 2nd, 441, and it was decided in the year 2000.

25 And in this case the Pennsylvania Supreme Court

1 suspended a lawyer for five years, for my read, for
2 criticizing and accusing a judge of bias.

3 And to me this case is a very, very chilling case.
4 Because if lawyers do know -- do have a feel for something
5 but don't have the evidence in hand, this case tells them to
6 keep their mouth shut or speak at very severe peril.

7 And I -- I -- my suggestion to the Commission is
8 that a very easy recommendation would be to legislatively
9 overturn the Surrick case so that lawyers can feel protected
10 when they -- if they choose to speak out.

11 I think probably also whistle blower protections
12 that should be considered by this court or by this
13 Commission for recommending -- recommendations to the
14 legislature. But the Surrick decision I know is a
15 particular -- to me a real problem that potentially kept
16 anyone who didn't -- who might have said something from
17 saying something.

18 BY MS. BENDER:

19 Q Ms. A and mom, thank you, very much for being here.
20 And I -- I'm sorry that you have to be here. There are
21 circumstances that brought you here. You said you might be
22 comfortable in telling us what got you into court to begin
23 with?

24 A Yeah. My sister had a little issue at my mother's
25 house, and she came to my father's house where I lived, and

1 my mother sent a police officer to get her.

2 And the police officer came to my house, and I was
3 trying to talk to him about what was going on, and he didn't
4 want to hear what I had to say. So my mother lives about a
5 mile and a half down the road. So I walked to her house,
6 and on the way there the police officer was passing me, and
7 I gave him the middle finger.

8 And he pulled over in the middle of the road on a
9 windy road, we live in the country, and got out of the car
10 and left the car running in the middle of the road with my
11 sister in the car and tried to arrest me for giving him the
12 middle finger.

13 So we had a little argument, you know. I didn't do
14 anything wrong. And he eventually arrested me and took me
15 to the police station. And from the police station I was
16 there for a few hours. My dad came to get me. And a few
17 weeks later I had to go to a meeting at the probation office
18 where they told me that I was going to have to go to court,
19 and that I really didn't need a lawyer because it wasn't
20 really a big deal.

21 And they sent me to the Public Defender's Office.
22 Me and my father talked about it, and I said it's not a
23 really big deal. So we agreed that we wouldn't hire a
24 lawyer. We would just get a public defender. And when I
25 went to court -- before we went into the courtroom I met the

1 public defender. She just kind of briefed me on -- you
2 know, like made sure she got the facts right on the case.

3 And we went into the courtroom, and we were
4 probably in there for two minutes in front of the judge.
5 He flipped his stack of papers in my face and told me this
6 was my record, and it was about this thick. (Indicating.)
7 And I didn't have a record. I never even had detention in
8 school. I was on the Honor Roll. I was a Girl Scout. I
9 was a member of the YMCA. I was in Bible school. I was in
10 every club, ecology, newspaper, year book, dance from middle
11 school to high school.

12 And he just told me to go sit down, and he put the
13 -- they put the shackles on me, and away I went to PA Child
14 Care.

15 MR. DILLER: I'd like to put out too that giving
16 the middle finger to the police, or anyone else, is
17 absolutely not a crime, and there is myriad case law that
18 it's First Amendment protected. So on those facts she
19 committed no crime at all.

20 BY MS. BENDER:

21 Q Ms. A, how old were you at that time?

22 A I was 16.

23 Q You were 16 years old. And you said you had no
24 previous record, but you met with a Public Defender's Office

25 A Um-hum.

1 Q When did that happen? You said before the hearing?

2 A The same day when we met with the --

3 Q The same day?

4 A -- probation. We went over to the public defender.

5 Q And how long were you sent to PA Child Care for?

6 A I was there about two months. I was there from the
7 beginning of October until the first in December. It was
8 like a week after December. And then I got sent to -- I got
9 sent to a place called Adelphoi Village outside of
10 Pittsburgh in Jeanette for about six more months because I
11 -- while I was in PA Child Care I had a psych eval with the
12 doctor who was --

13 MOTHER: Dr. Vita.

14 THE WITNESS: Who was the judge's brother-in-law.
15 And he told me that I had anger issues. I was narcissistic and
16 a whole slew of other things that I'm not. And I went --
17 they were going to send me to Camp Adams, and then they told
18 me that I -- no, I needed more of like a structure. I don't
19 know. So he sent me to a girl's home.

20 BY MS. BENDER:

21 Q Can we -- I mean, this happened so fast. It's
22 almost -- you told the story as fast as it happened in court
23 almost. Can we just back up a wee little bit? When you
24 were in the courtroom did you admit to the charges?

25 A I don't -- I didn't say a word.

1 Q You didn't say a word, nothing?

2 A The public defender, all she said was good morning,
3 judge.

4 Q And that was it?

5 A Um-hum.

6 MOTHER: Threw the papers at her and sent her away.

7 BY MS. BENDER:

8 Q Okay. I hardly know what to say about that. What
9 else would you -- how did that affect you? I mean, here you
10 are, a young woman who's done everything that you knew how
11 to do right.

12 A Well, then at the time in PA Child Care I would say
13 it's a jail actually. Not to be disrespectful, but the
14 school there -- I asked them what would happen to my
15 academics when I went back to high school, how would I get a
16 grade? They said they don't give grades.

17 The work that we did, we colored. It was like
18 preschool. We colored. We did basic math, things that I
19 did in second grade. And when they sent me to Jeanette they
20 had to actually -- I completed every course that they had
21 there already.

22 They had to order one book for the classes for me
23 for just me, and I taught myself. The teacher was busy with
24 -- not to say there was anything, you know, with other
25 girls, but they were just not the same academic level. They

1 were bad. They had gotten kicked out of other places. And
2 I taught myself, and I took my own tests, and I was my own
3 teacher there.

4 So I would say that kind of -- well, that affected
5 my -- my academics that year. But when I went back to
6 school I was back on the Honor Roll and back doing
7 everything I was doing.

8 And I right now attend Bloomsburg University with
9 criminal justice. And I'm in the SPA, Student Parent
10 Association, and Criminal Justice Society. And I'm studying
11 for my LSATS. I want to go to law school in Carlisle.

12 Q That's fantastic. It's amazing what you've been
13 able to accomplish through what you've come through. Let me
14 ask you just a couple more questions about what happened
15 with the courtroom.

16 When you went -- did you go in front of Judge
17 Ciavarella for review hearings?

18 A No.

19 Q So there was no --

20 A I've never seen him in my life before.

21 Q So when you were in PA Child Care or when you were
22 in Adelphoi Village there were no hearings that --

23 A Hum-um.

24 Q For him to find out how you were doing there?

25 A Well, when I came home, when they were releasing me

1 from Adelphoi Village, I seen him the same day that I went
2 home.

3 Q The same day?

4 A Yeah. And he --

5 MOTHER: Months later.

6 THE WITNESS: He told me good job, and he doesn't
7 want me to see me back in his courtroom again. And it looks
8 like I made progress.

9 MR. DILLER: Could I bring something out?

10 MS. BENDER: Yes.

11 MR. DILLER: When you were in front of Judge
12 Ciavarella for the first time, even though as I stated
13 giving the middle finger isn't a crime, was the police
14 officer there to testify about what you did?

15 THE WITNESS: No.

16 MR. DILLER: Was there anybody who was an actual
17 witness who might have been there to testify about what you
18 might have done?

19 THE WITNESS: No.

20 MOTHER: Her sister. Her sister was there.

21 MR. DILLER: Did -- did anyone testify?

22 THE WITNESS: No, no one spoke.

23 MR. DILLER: And I bring that out to indicate that
24 guilt was assumed.

25 BY MS. BENDER:

1 Q And the judge had a file when he was talking to
2 you?

3 A I don't know what he had.

4 Q A file?

5 A He had something. It wasn't mine.

6 MOTHER: It certainly wasn't hers, no.

7 BY MS. BENDER:

8 Q But he did have something in his hand already?

9 A Um-hum.

10 Q Can you tell me how -- obviously you've overcome an
11 awful lot. You've overcome this experience. Can you tell
12 me though how it has affected you otherwise?

13 A Well, while I was there I was depressed and upset
14 and things a normal person would be if they were taken from
15 their family. But I honestly don't think it -- I mean, I
16 get upset about it, but I don't think that it really
17 negatively affected me.

18 MOTHER: It actually made her strong, very strong.
19 And she'll make a difference in this state because she will
20 --

21 MS. BENDER: Mom's going to make you cry, right?

22 THE WITNESS: No.

23 MOTHER: She will overcome this.

24 MS. BENDER: Now, I can see that it's hard for you,
25 mom. Do you want to tell us how it's impacted you?

1 MOTHER: I can't talk about it without crying.

2 THE WITNESS: Well, she has rheumatoid arthritis,
3 and that is -- the doctor said that got worse -- well, it
4 started when I was there. And she said it was -- part of it
5 was due to the stress of that. And I was all the way in
6 Pittsburgh, so we live here. That's hours away from here.

7 That was so much travel, and somebody was there
8 every week, between her and my father, my sister, my
9 grandparents every week, every single week. There was one
10 week they didn't come because of a bad snow storm.

11 MOTHER: We wrote letters. She was able to come
12 home to visit I think every other weekend towards the end.

13 THE WITNESS: Starting Easter. I missed every
14 holiday until Easter.

15 BY MS. BENDER:

16 Q Is there anything else you would like to tell us
17 about this whole experience, anything we should -- what do
18 you want us to learn or do because of what happened to you?

19 A Well, I was just learning in school that the panel
20 that oversees the judges and lawyers are judges and lawyers.
21 So not that you can do anything about it, but I think it's a
22 joke. Who's going to stop a judge and a lawyer if it's only
23 their peers who are watching over them?

24 Q So that's one thing you would like to see changed,
25 somebody watching over the judges and lawyers?

1 A (Nods head up and down.)

2 Q Anything else would you like to tell us?

3 A (Shakes head from side to side.)

4 MS. BENDER: I think you are a remarkable young
5 woman, and I congratulate you on all that you're doing.

6 THE WITNESS: Thank you.

7 CHAIRMAN CLELAND: Judge Woodruff.

8 BY JUDGE WOODRUFF:

9 Q Quick question. It's my understanding you were in
10 two placements?

11 A Um-hum.

12 Q The first one being PA Child Care?

13 A Um-hum.

14 Q And now when you went from there to Adelphoi was
15 there a court hearing?

16 A No.

17 Q So you -- there was an initial court hearing, and
18 then there was a court hearing at the end of your placement?

19 A Um-hum, yeah.

20 Q How long were you at PA Child Care?

21 A About two months.

22 Q And how long were you at Adelphoi?

23 A About six.

24 Q So it's like eight months before --

25 A Um-hum.

1 Q In between you didn't see any --

2 A Yeah.

3 Q Didn't come back to court?

4 A I seen a probation officer in PA Child Care. I
5 seen him -- well, I seen him, physically seen him before.

6 Q Okay.

7 A But I only spoke to him one time when he told me
8 that I was going to be leaving.

9 Q Okay. So the only review hearing that you had was
10 at the end of the eight months?

11 A Um-hum.

12 JUDGE WOODRUFF: Thank you.

13 BY MR. LISTENBEE:

14 Q Judge. Ma'am, you said that when you were in court
15 you had a public defender, a female public defender there
16 with you?

17 A Um-hum.

18 Q Did she tell you about any appeals that you could
19 file after the hearing, or did she talk to you at all after
20 the hearing?

21 A I didn't speak to anybody afterwards. My father
22 actually then got a lawyer and tried to appeal it. They
23 said it would take too long, and it would cost some crazy
24 amount of money to do it. And it -- my time would run out
25 before I -- before I would get anything done with the

1 appeals.

2 MR. LISTENBEE: Okay. Thank you. That's very
3 helpful.

4 BY MR. MOSEE:

5 Q Judge. Was the police officer there at the
6 hearing?

7 A No.

8 Q Did --

9 A I didn't hear anything from him afterwards at all.

10 Q Did the judge even talk about the facts of the
11 case?

12 A He did say that I had no respect for authority, and
13 if I had anything to say for myself, and that was it.

14 MR. MOSEE: Okay. Did you have to make a financial
15 contribution to support her stays at both locations?

16 MOTHER: Yes.

17 MR. MOSEE: Can you tell us about how much that
18 was?

19 MOTHER: Honestly I don't remember.

20 THE WITNESS: Well, my father told me that it was
21 \$150 for child support. I don't know if he said every two
22 weeks or every month. I don't know. And then he had to pay
23 some kind of fees, supervision fees. And then in addition
24 to that, like all the travel all the way out there.

25 MOTHER: And in the beginning we had to pay

1 something too before we left when they took her away. They
2 sent us down to some place, and I had to pay like some
3 hundred -- a couple hundred dollars.

4 MR. MOSEE: Thank you.

5 BY MR. LEGG:

6 Q Ma'am, was there any discussion during this about
7 what's called a consent decree or anything of that nature?

8 A No.

9 Q Even with your defense attorney there was no
10 discussion about you being a first time offender?

11 A No.

12 Q What about with the Probation Department, any
13 discussions with them about that?

14 A No. When we met with the probation before I went
15 to court, like months before I went to court, she didn't
16 really do much except for make us argue. She kind of just
17 tried to bring up past issues and didn't really get through
18 much except for argument.

19 Q Do you recall the prosecutor being active at all at
20 your hearing, or if a prosecutor was even there?

21 A Yeah, but I don't remember him saying much at all.

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

23 CHAIRMAN CLELAND: I hope you know that we wish you
24 well in your law studies.

25 THE WITNESS: Thank you.

1 CHAIRMAN CLELAND: And that you graduate from law
2 school and make us all proud.

3 THE WITNESS: Thank you. Well, I hope to be a
4 guardian ad litem so this doesn't happen to kids in the
5 future.

6 CHAIRMAN CLELAND: Good for you. And it's obvious
7 your mother is still proud. Thank you, very much for
8 coming.

9 MOTHER: I just have to say one thing. The woman
10 who was here before me, I agree with a lot that she said.

11 THE WITNESS: But she can't say it because she's
12 too upset.

13 MOTHER: I had contact with people too help, and
14 they turned me away because they said it wasn't -- couldn't
15 do anything, that the judge was going to do what he wanted
16 to do.

17 CHAIRMAN CLELAND: Okay. Thank you.

18 MS. BENDER: Thank you.

19 CHAIRMAN CLELAND: A.L., good evening, I guess we
20 are now. Could you please raise your right hand to take an
21 oath? Are you going to be testifying too?

22
23 A.L., called as a witness, being duly sworn,
24 testified as follows:

25 CHAIRMAN CLELAND: Thank you. Please be seated.

1 BY MR. ALLEN:

2 Q Welcome. I didn't know how you wanted to do this.
3 It's up to you. You certainly can read your statement if
4 you wish. Or if you want, I can ask you questions.

5 MR. DILLER: How would you prefer?

6 THE WITNESS: It doesn't really matter.

7 MR. DILLER: Why don't we start, and please
8 interject?

9 BY MR. DILLER:

10 Q How old were you when you first encountered the
11 justice system?

12 A I was 13.

13 Q What was -- what were you accused of doing?

14 A I was charged with simple assault and harassment.
15 It started out with an argument with another girl in school.

16 Q And I'm just going to ask you not to talk about
17 some of the underlying facts, just what you were accused of
18 doing.

19 A Okay. I was accused of pretty much -- well, I was
20 fighting. And I got charged with simple assault and
21 harassment.

22 Q Okay. In school?

23 A Um-hum.

24 Q By the way, you were 13. How old was the other
25 girl?

1 A She was 15.

2 Q Is she -- I mean, we can see that you are slight.
3 How -- was the other girl the same size as you?

4 A No.

5 Q What was she bigger or smaller?

6 A Bigger.

7 Q Okay. And what happened with the court system?

8 A I arrived in front of Ciavarella and --

9 Q Did you have to go before -- have like an interview
10 with the Probation Department first?

11 A No. I didn't go in front of anybody. I just got a
12 letter in the mail saying I had to go see him. I went to
13 see him June 27th, 2006, and he asked me if I pleaded guilty
14 to the fight, to the charges, and I said yes. And --

15 BY MR. ALLEN:

16 Q Not to interrupt you, did you have an attorney
17 there at the time?

18 A No.

19 Q Did anyone tell you you had the right to an
20 attorney?

21 A No.

22 Q I'm sorry to interrupt you. Go ahead.

23 A That's okay. And he asked me to plead guilty or
24 not guilty. I said guilty. He got pictures from the other
25 girl. And he looked at the pictures, and he looked at me,

1 and he said that I was to be remanded to detention. I went
2 to detention.

3 MR. DILLER: Where?

4 THE WITNESS: In PA Child Care. I was there from
5 June 27th to July 16th. And they transferred me for bed
6 space to Western PA Child Care July 16th of 2006. And then
7 they transferred me back down to Pittston, well, PA Child
8 Care, July 23rd. And then July 24th around 3 a.m. they took
9 me that same night to Camp Adams for bed space, and then
10 stayed there until July 25th.

11 I had court, and he -- I was only there for about
12 two minutes both times, and the second time he told me that
13 I was to go to Camp Adams for 90 days. I went there for 90
14 days, and I came home on probation. And then I had gotten
15 into another argument with another girl, and I went before
16 the judge again. And I pleaded not guilty, and I was not
17 not guilty, and he remanded me back to detention. This was
18 March 20th of 2007. And he remanded me back into detention.

19 Then the probation officer, I do not remember his
20 name, he came to detention and he told me that my parents
21 were picking me up, and I was going to be released on
22 indefinite house arrest.

23 So I got put on the -- on the ankle monitor, and he
24 told me I would be on it for two weeks. And that was from
25 my probation officer, Mr. Philips. And after two weeks went

1 he told me that they didn't have any paperwork. It was
2 indefinite. So then I said okay. I was on the ankle
3 monitor for March to June.

4 I got another probation violation. I don't
5 remember what the exact charges were for. And he sent me to
6 -- this was in July 20th of 2008 now. He took -- he put me
7 in front -- I went in front of Ciavarella. He sent me to PA
8 Child Care. And then at about 4:00 that afternoon he told
9 me I had to go up to -- well, the probation officer and my
10 staff from PA Child Care told me I had to be sent back up to
11 Western PA Child Care again for bed space.

12 And a couple days later -- I never went back to
13 court, but I got told that I was going to stay in Western PA
14 Child Care for six months. And then I went in front of the
15 judge January 9th of 2008, and that's when I got released on
16 indefinite probation.

17 BY MR. ALLEN:

18 Q When you originally -- you said you -- the original
19 first hearing you had in front of the judge, you had -- you
20 admitted to charges then; is that correct?

21 A Yes.

22 Q Did the judge tell you what that meant to you, what
23 -- what it meant by admitting the charges?

24 A No. He just asked me if I pleaded guilty or not
25 guilty. I looked at my parents, and I knew I got into a

1 fight. So I pleaded guilty thinking I got into a fight, so
2 I'm guilty of fighting another person.

3 And then as soon as I pleaded guilty it was over,
4 and he told me I was to be remanded to detention.

5 MR. DILLER: When you pleaded guilty did anyone --
6 did the judge or anyone else say to you the things that the
7 Commonwealth would have to prove in order for you to
8 actually be guilty of the crime you were charged with?

9 THE WITNESS: No. After I pleaded guilty the
10 Defendant's parents said that they have pictures that they
11 would like the judge to see. He got the pictures. He
12 looked at them, and that's when he looked at me and said I
13 was to be remanded to detention, and it was over. He
14 grabbed me by the arm and told me to go with her.

15 I asked her where I was going. We went into a
16 small room on the right. She put the belt and the cuffs on
17 and the shackles, and I sat in the holding cell for about
18 three hours and went to detention after that.

19 BY MR. ALLEN:

20 Q During this hearing do you remember if there was
21 someone there from the District Attorney's Office?

22 A I do not. I don't recall seeing anybody other than
23 the Defendant and --

24 Q Well --

25 MR. DILLER: Well, you were the Defendant.

1 THE WITNESS: I mean the victim and who she was
2 with, like who she was with.

3 BY MR. ALLEN:

4 Q You said you didn't have an attorney?

5 A No, I did not.

6 Q Did the judge explain to you what it meant to not
7 have an attorney? Did he ask you if you wanted an attorney?

8 A No.

9 Q And he never read you information about what your
10 rights are?

11 A Not that I can recall. I do not recall him saying
12 anything about -- the court hearing happened so fast. It
13 was pretty much I was guilty. He looked at the pictures,
14 and I was gone, and that was the end of it.

15 Q How do you feel about all this? What do you think
16 about the juvenile justice system?

17 A I feel that it -- it's horrible pretty much. I
18 didn't really learn anything out of it except the fact that
19 I'm a victim, and Luzerne County is pretty much corrupted.
20 And it's not really too much positive things that came to me
21 through it. I can't go to school. I can't be in big
22 groups. I can't go out with my friends.

23 I want to be around my family a lot. My father had
24 a stroke. I couldn't see him for a long time. I was five
25 hours away right next to Ohio for six months. He's

1 disabled. My father lost his home. And I can't say there's
2 anything positive that came out of it for me.

3 MR. DILLER: Maybe I can ask you. Why did your dad
4 lose his home?

5 THE WITNESS: They told him in order for me to come
6 home January 9th of 2008 that he had to pay \$1,100. I don't
7 even know what -- he didn't even know what it was for, but
8 he just gave it to them because he didn't see me, and he
9 wanted me home. And he had to pay \$1,100 twice.

10 When I asked for home passes I told them my father
11 was sick. My father didn't tell me he had a stroke because
12 he didn't want me to be depressed, and he didn't want me to
13 get in any trouble because he wanted me to come home.

14 I asked them if I could even have a day pass. I
15 didn't care if I was handcuffed and shackled. I at least
16 wanted to see my father for a little bit. I hadn't seen
17 him. He can't drive five hours. He was disabled. They
18 went over it and told me that since my father -- they got
19 told my father wasn't on his death bed, so I wasn't allowed
20 to see him unless he was on his death bed.

21 MR. DILLER: Do you want to stop?

22 MS. BENDER: You can stop.

23 MR. DILLER: Do you want to stop?

24 THE WITNESS: Maybe.

25 MS. BENDER: Are you okay to answer some other

1 types of questions? If not, it's okay. We can stop.

2 THE WITNESS: Yeah, I'm okay.

3 BY MS. BENDER:

4 Q You talked about getting transferred from place to
5 place to place. One time you said at 3:00 in the morning.

6 A 3:00 in the morning they called my father, and he
7 asked them why I was getting transferred at 3:00 in the
8 morning when I just -- I mean, I came home -- I came back to
9 detention that night. I arrived there around 11 p.m. They
10 woke me up at 2:30, told me to get dressed, and me and
11 another girl went to Camp Adams because there was bed space
12 from people that, I guess, was coming from police stations
13 or something.

14 Q So obviously there were no hearings at that time of
15 night? You just got transferred?

16 A No, just got transferred.

17 MS. BENDER: Mom, would you like to tell us --

18 AUNT: I'm her aunt.

19 MS. BENDER: Aunt then. Would you like --

20 AUNT: Only thing I know, I tried to help her in
21 2006 and 2007 because I knew she shouldn't have been locked
22 up, and I got nowhere with that. I just, for my brother
23 because he was disabled, tried to help him because he's a
24 single father. And I tried to get her some kind of help to
25 get her out. There was nothing I could do.

1 BY MS. BENDER:

2 Q During all of this did you have psychologicals or
3 psychiatric evaluations or anything?

4 A I had a psychological evaluation July 13th with --
5 I don't remember his name, the doctor. And he told me that
6 he was going to recommend me to be home, to get released to
7 go home and have Act weekends at Camp Adams for three months
8 instead of spending the whole three months there. But I
9 didn't even see him at the court hearing the next time I
10 went there.

11 Q So that never happened?

12 A No. I did the three months straight at Camp Adams.
13 I also saw him after I got released in 2008, and he asked me
14 if I did the Act weekends. And I told him I never had no
15 Act weekends. I did a whole three months. And he was
16 looking through his files, and he told me that he didn't
17 understand why. He thought I was going to be doing the Act
18 weekends for three months.

19 MR. DILLER: You mentioned that you can't go to
20 school anymore?

21 THE WITNESS: No, I cannot.

22 MR. DILLER: Why is that?

23 THE WITNESS: I can't be in big crowds. I can't be
24 around other -- I don't know how to say it. I can't really
25 -- I don't know if it's anxiety. I've been diagnosed with

1 anxiety and post-traumatic stress disorder. I can't -- if
2 there's somebody like looking at me, I want to say, what are
3 you -- like I can't be around in groups of people anywhere.
4 I like to stay home. I like to be around my parents a lot.

5 When I go out, if I go out, I always make sure my
6 sister is with me, one of them, and they always come. I
7 can't be away from my family. So that's why I went and got
8 home schooling. I got a medical reason, and I got home
9 schooled. And now I'm a straight A student even though I'm
10 in home schooling. It's my last year.

11 BY MS. BENDER:

12 Q Were you in -- you were in regular school before?

13 A Yes. I was in regular school before. I tried to
14 go back to school, but it felt like I couldn't -- I don't
15 know if it was -- I can't completely blame it or anything on
16 being locked up, but I can say that since I came home from
17 only being with the same people every day after day after
18 day I can't -- I couldn't go from one period to another
19 period in my classes. I couldn't go from sitting in a --
20 like, you know, for an hour in first period and then going
21 and having to see all those people in the hallways for next
22 period.

23 I couldn't really talk to teachers. I couldn't
24 really talk to anybody if I had a problem. I would go to
25 the nurse, and I'd call my parents and tell them I'm sick.

1 I need to come home. And then I just stopped going to
2 school. I was getting truancy fines. I didn't care. My
3 parents used to try to walk me to school, but I could not.
4 I just couldn't stay there. So that's why we had to figure
5 something out.

6 Q Are you getting As now?

7 A Yeah.

8 Q Tell everyone what your future plans are?

9 A Going to college for criminal justice to be a
10 private lawyer.

11 Q And before that do you have plans?

12 A I'm thinking about going to Coast Guard after I get
13 out of high school.

14 MS. BENDER: Other questions that anyone else has?

15 BY JUDGE UHLER:

16 Q Just who was the they that said you had to pay
17 \$1,100?

18 A I don't know who it was. My father knows, but I
19 don't know. I don't even know what he had to pay \$1,100
20 for, but I don't really think he knew what the \$1,100 was
21 going towards. But he just knew that he had to pay it or
22 they were going to give me another six months up in Western
23 PA Child Care. They weren't going to release me.

24 Q The -- you talked about the girl and her family in
25 the courtroom. Do you know whether or not there was a

1 victim's advocate from the DA's Office helping them at this
2 hearing?

3 A I don't -- I don't know. I don't recall seeing
4 anybody.

5 JUDGE UHLER: Okay. Thank you.

6 CHAIRMAN CLELAND: Thank you, very much for being
7 with your -- being with us and being brave enough to do
8 this. And I think you and A.A. are going to be a pretty
9 formidable law firm. Good luck to you.

10 THE WITNESS: Thank you.

11 CHAIRMAN CLELAND: E.H. Good evening. Are you
12 both going to testify?

13

14 G.H. AND R.H., called as witnesses, being duly
15 sworn, testified as follows:

16

17 MS. BENDER: Let me just repeat, thank you for
18 being here.

19 CHAIRMAN CLELAND: Just for the record, we have
20 E.H.

21 MOTHER: G.H and R.H.

22 CHAIRMAN CLELAND: G.H. and R.H.

23 MS. BENDER: E.H. is their daughter.

24 CHAIRMAN CLELAND: Okay. Fine. Thank you.

25 BY MS. BENDER:

1 Q Thank you for being here. And as we've said to
2 everyone who's been brave enough to come forward, I'm sorry
3 that you have to be here. But we're really glad that you
4 came to help us tonight.

5 When we talked a little bit earlier you said that
6 you would be willing to tell us a little bit about what
7 brought your daughter to court in the first place.

8 A Right. In 2005 my daughter was involved in a
9 accidental rock throwing. She was out with her friends
10 throwing rocks over the telephone wires to see who could
11 throw the highest. One of the neighborhood children come
12 out and actually got hit in the mouth, and her mother
13 pressed charges, even though it was an accident.

14 And they made a big deal, and three months later
15 she ended up in court in front of Mr. Ciavarella.

16 Q How old was your daughter?

17 A She was 15 at the time.

18 Q Okay.

19 A She was adjudicated a juvenile and sentenced to
20 indefinite probation. We had problems with her because once
21 she was put on indefinite probation she didn't see any light
22 at the end of the tunnel, and she totally went right off the
23 wall.

24 And by that I mean she was facing a lot of
25 depression, a lot of anger issues because she didn't feel

1 like it was right, and she started running away.

2 When she ran away the one time in January of 2006,
3 which is right before she turned 16, her and her two friends
4 went to this man's house who is -- I don't know if I'm
5 allowed to say his name. Am I allowed to say his name?

6 MR. DILLER: Don't say his, ma'am.

7 THE WITNESS: But he went and bought them booze got
8 them drunk, and then while she was unconscious raped her.
9 For three weeks we had no idea what was wrong with my
10 daughter other than that she was angrier than usual, and she
11 didn't know how to deal with things.

12 We don't know how to deal with her. We tried to
13 get her into more counseling. She was -- her TSS was there
14 trying to help us. And the next thing we know February 13th
15 we get a phone call from her school, and we were told to go
16 pick her up at school because my daughter and her two
17 friends were drunk. They went to school drunk.

18 We got there. My daughter's in the back of one
19 cruiser. The other girl is in the back of another cruiser.
20 And the third girl had been taken to the hospital. The
21 probation officer at the school who was her probation
22 officer then proceeded to tell us that she was screaming
23 rape, and that the other girl that was in the other cruiser
24 was backing her up saying that she had been raped.

25 The school did nothing except make her resign from

1 the school. We had to enroll her in another school. Before
2 that though we ended up -- her probation officer told her
3 that -- told us that day, take her home, let her sober up,
4 and then bring her down to Penn Place the next day, which is
5 what we did.

6 We went to the Probation Department like he told
7 us, and the next thing I know is they told us that they were
8 going to send her to PA Child Care, for us not to get in
9 contact with her for a couple days, not until the hearing
10 was set for her to go in front of the judge. We didn't see
11 her for a couple days.

12 Q Could we stop for one minute so that I can
13 understand? The first time that your daughter was in court
14 did you have -- did she have an attorney?

15 A Yes. We had my worker's comp attorney. He was
16 just there just to make sure everything went okay the first
17 time.

18 Q And that was the time she got probation?

19 A Right.

20 Q And so this will be the second time she's coming in
21 front of the judge?

22 A Right, right.

23 Q Okay.

24 A We found out when the hearing was, and my husband
25 and I decided that we were going to try to sneak in to see

1 the judge, which we did. 8:00 in the morning we're right
2 there sharp at Penn Place, and we're asking people, how do
3 you get to Judge Ciavarella's office? We want to go talk to
4 him. Because I felt like he needed to know that this kid
5 had been raped.

6 And just for the record, her rapist is in jail
7 right now thanks to my daughter's testimony. So he can't
8 hurt anybody else's kid. I mean, she -- I'm not saying
9 she's perfect, because she wasn't, but she did not deserve
10 what she got. She did not deserve to be sent to Vision
11 Quest and not get counseling to where she's now a nut case
12 who doesn't get --

13 BY MS. BENDER:

14 Q Wait.

15 A Don't say that.

16 Q Wait. You went to court on the charges that your
17 daughter was drinking?

18 A Yes.

19 Q In the school?

20 A Yeah. We did sneak in to see the judge, and we did
21 tell him.

22 Q You snuck in to see the judge, and you told him
23 about your daughter's situation and what had happened to
24 her?

25 A Yes.

1 MR. DILLER: What did your judge say to you when
2 you told him your daughter's been raped?

3 THE WITNESS: He said it does not matter. She has
4 to pay for what she did, and do not mention it in my
5 courtroom.

6 BY MS. BENDER:

7 Q So was the hearing the same day?

8 A Yes.

9 Q Okay. So you went into the courtroom, and what
10 happened after that?

11 A We went into the courtroom. We were standing up
12 there. He already had everything decided. He said Mrs. H,
13 we're going to remand your daughter back to PA Child Care.
14 We're going to have a psych eval done on her, and then I
15 will decide what to do with her.

16 And that's what they did. They sent her back
17 there. During that time that she was there the day of the
18 psych eval we go down there because Dr. Vita had wanted us
19 to be there for some reason. And we arrived to find my
20 daughter is totally hysterical.

21 They switched rooms, and the girl that they
22 switched her room with had hepatitis B. They did not switch
23 the toothbrushes. Nobody told her the toothbrushes were not
24 switched, and she used that toothbrush. She was hysterical.
25 It took us almost three months before they could get the

1 tests to make sure she didn't have the hepatitis B.

2 And we tried to calm her down. We got her to where
3 she was okay. And then after the psych eval we went home.
4 And we're waiting to hear, because we were told by the
5 judge's officers in the court and also by the probation
6 officer, you will get a phone call from us telling you when
7 the hearing is so that you can be there.

8 Q Before the hearing did you talk to Dr. Vita at all
9 about what he was going to recommend based on the psych
10 eval?

11 R.H.: Yeah. We talked to him, and he says that
12 she got all the hostility built up in her, and he's going to
13 send her home.

14 MS. BENDER: So that he was recommending that she
15 be sent home?

16 R.H.: Yeah, recommending to the judge.

17 BY MS. BENDER:

18 Q Okay.

19 A But she didn't get sent home.

20 Q What happened?

21 A What happened was this one Tuesday I'm upstairs.
22 He's down in the cellar doing his stuff, and I'm upstairs on
23 my laptop. And I get this phone call from Philip Nardiello,
24 who was the Vision Quest probation officer, welcoming my
25 daughter -- welcoming me and my husband and my daughter to

1 the Vision Quest Program, that the hearing that they had
2 this morning went so well, and it was so good that -- you
3 know, this will do her so good.

4 And I went woe, woe, woe. What the heck are you
5 talking about? What hearing? And he says, we had the
6 hearing today. And I said, well, how come we weren't
7 notified? Oh, Ms. H, you were notified. We were never
8 notified of that hearing.

9 My daughter to this day thinks that we abandoned
10 her that day, that we didn't care enough to go. And that is
11 terrible for any child to feel, especially when she's been
12 locked in a cold, heartless facility like PA Child Care to
13 begin with where you're not allowed to hug your kids.
14 You're not allowed to kiss them. You're not allowed to
15 touch them.

16 Kids in this juvenile system now do not have any
17 rights whatsoever. The common criminal, murderer has more
18 rights than what my daughter had, and that's wrong. And
19 that's why I'm here today, because I want you guys to do
20 something about it.

21 And she was sent to Vision Quest, which was totally
22 wrong for her.

23 Q And you found that out by telephone?

24 A Yes.

25 Q How long was she sent there for?

1 A She was sent there the end of March to around -- I
2 think it was the end of June where she ended up getting sent
3 to the Meadows, which is a psychiatric hospital.

4 Q Okay.

5 A For cutting. She took a pencil and started cutting
6 herself.

7 Q And how long was she at the Meadows?

8 A She was there for two weeks, and then they sent her
9 back to PA Child Care.

10 Q There was no hearing though?

11 A There was -- I think wasn't there -- was there a
12 hearing after she --

13 R.H.: There was no hearing until she come back --
14 when she come back from the Meadows she got -- it's called
15 FTA, failure to adjust.

16 G.H.: Failure to adjust.

17 R.H.: And that's when Ciavarella decided to send
18 her to another placement.

19 G.H.: And that was Bridgeview, which is in
20 Wilkes-Barre. And she was there -- she excelled there
21 because it was close to home. It went like Vision Quest,
22 which was four hours away from us.

23 R.H.: It was family oriented.

24 G.H.: We were there. My mother, my husband,
25 myself, my other daughter would go and visit her a couple

1 times a week, and she excelled there. Then she got out of
2 there. She still kept having these problems from having
3 been locked up from Vision Quest and worrying about this.

4 And she's gotten where she's -- I don't know if you
5 would call it psychotic, but she worries about everything.
6 She can't be around us without feeling anger. That's why
7 she's not here now. We didn't even tell her we were coming
8 because we didn't want her to be upset emotionally.

9 BY MS. BENDER:

10 Q While she was in any of these placement sites did
11 she receive any help for --

12 A The rape?

13 Q -- the rape?

14 A No, no, not a bit. This is what my problem with
15 his system is. He took her. We had victims resources
16 already set up for her. We had counseling already set up
17 for her. He totally disregarded any of that and sent her
18 away anyhow. And he's almost destroyed my family.

19 Q I asked you earlier what your relationship with
20 your daughter is now. Do you want to share that?

21 A We're -- we're close, but we argue all the time
22 because she is afraid to trust anybody. And if I tell her
23 you need to do this, and you need to do that because this
24 will help you, she will not do it because she doesn't trust
25 me anymore.

1 She doesn't trust any doctors. She will not go to
2 counseling. I'm this far -- I'm hoping to get her back into
3 counseling, but I don't know whether she's going to go or
4 not.

5 Q How old is she now?

6 A She'll be 19 in January.

7 MR. DILLER: We've heard a lot about how angry she
8 was, but I -- you know, it's good to remember she was like a
9 young girl. And this is just a copy of a letter she sent to
10 her mom and dad. And you can see it has all kinds of hearts
11 on it. And at the bottom it says I heart you both. So it's
12 worth remembering that whatever issues she had, she was like
13 a young, vulnerable girl.

14 G.H.: Right.

15 BY MS. BENDER:

16 Q Sure.

17 A Can I say one more thing?

18 Q Absolutely.

19 A My daughter right now -- and it's common knowledge
20 that when you have a rape victim who does not get treated,
21 she either goes very promiscuous or --

22 MR. DILLER: Don't.

23 THE WITNESS: No.

24 BY MS. BENDER:

25 Q Okay. We can just skip that part.

1 A All right. I'll withdraw that.

2 Q Obviously you -- it's hard for you to --

3 A Yes, it is.

4 Q -- trust the system anymore?

5 A Yes, it is. It is. The only thing --

6 Q What could we do as commissioners, what could we do
7 to help restore your confidence in the system?

8 A I don't know. I'll be honest with you, make it
9 more available, make more help. Telephones where people
10 know that they can call and get more help. Not just a
11 nation -- or what do you call it, a state help line, but
12 like a help line that's strictly for the parents and the
13 children who have gone through --

14 Q This system?

15 A -- what my kid's gone through, what all of those
16 children have gone through.

17 R.H.: I think it's -- what you guys should try to
18 do is give these kids rights, to know that they have rights
19 in the juvenile justice system.

20 G.H.: Right, right.

21 R.H.: Because what was taken off of these kids,
22 these kids didn't even know they had the rights they had.
23 They were treated like common ordinary criminals, and it
24 does so much damage to a young child like that. And it -- I
25 mean, our -- our daughter is withdrawn. She's -- she

1 doesn't have no goals in life. She used to have goals in
2 life. She don't have nothing now. We worry about her. She
3 don't live home no more.

4 G.H.: Yeah.

5 R.H.: And, I mean, there's -- it's a traumatic
6 affect.

7 G.H.: She had to quit school because the education
8 system in those places are lousy.

9 R.H.: She tried to go back to school twice, and
10 she couldn't do it because she -- every time she was
11 excelling or doing something in school, either at PA Child
12 Care or a placement or Vision Quest she was always moved to
13 another one, moved to another one. And the kid didn't even
14 know what grade she was in, what to start her in.

15 MS. BENDER: We've heard from a lot of moms this
16 evening. I'd like to hear from dad's perspective. How has
17 this impacted you?

18 R.H.: Terrible. Terrible. Like she says, our
19 family just fell apart. It's like when Ciavarella took my
20 kid he released a monster back to me. I mean, we tried
21 doing everything for her, but she tries -- she blames us for
22 putting her where she is. And it was all Ciavarella's ill
23 doings that did this. And I got a lot of hate and a lot of
24 anger in side me for that man. I just --

25 MS. BENDER: That would be pretty common feeling.

1 G.H.: And we have gone to the newspapers.

2 R.H.: I contacted the Judicial Board, the conduct,
3 through the computer, and I never heard anything. I also
4 contacted the JLC. JLC never even come back and -- didn't
5 even reply to our e-mails. But now when it comes forward
6 and all these kids are affected like they are, you know,
7 it's too late. Now somebody's going to hopefully do
8 something.

9 MS. BENDER: Other Commissioners have questions?

10 MR. HOROHO: Question, going back to that hearing
11 that you didn't receive notice of, did you ever receive an
12 explanation as to why you weren't notified of that hearing?

13 R.H.: No. We went to the -- we went to the next
14 hearing in front of Judge Ciavarella when he was sending her
15 to another placement, and we made it known that we were
16 never notified. And he said, did you notify the parents?
17 And the clerk went, yeah, I notified them. Okay. He
18 notified you.

19 G.H.: But they never did, not ever.

20 BY MR. HOROHO:

21 Q Was your daughter notified? Do you know?

22 A She was in PA Child Care.

23 Q She was notified?

24 A Yeah, she was brought from PA Child Care.

25 Q How about your probation -- her probation officer?

1 Did you ever offer -- ask them to give you an explanation of
2 why you weren't notified?

3 R.H.: No.

4 G.H.: No. They claim we were, but we were not
5 notified.

6 R.H.: I mean, we -- we'd be there because we
7 called our child ever since day one. And we traveled 200
8 miles down the south mountain in Pennsylvania --

9 G.H.: Lost a vehicle.

10 R.H.: -- every other weekend to visit her. I
11 mean, we would be anywhere for this kid. And we would not
12 miss that hearing, because I was looking forward to going in
13 front of him before he send her away again. But he just
14 sent her right away.

15 BY MR. HOROHO:

16 Q Now, you were commenting about on the website of
17 the Judicial Conduct Board. Is that the website that you
18 went on?

19 A Yes, the website.

20 Q And we heard testimony from the chief counsel that
21 the website is much easier for the public to get on and file
22 a complaint. Did you find that to be accurate?

23 A Yes.

24 Q Did you actually file a complaint?

25 A Yes. I'll take a lie detector test. I filed a

1 complaint, and I never heard anything about it.

2 Q You never received a response?

3 A Nope.

4 Q You actually -- did you do it online, or did you
5 send something in?

6 A I done it online. Because I told my wife, I said,
7 we got to do something. I says because, I mean, this guy is
8 -- I don't know what he's trying to do. So I'm trying to
9 find out who his boss is. And I researched the internet,
10 and I found out that Judicial Board of Conduct.

11 Q Okay.

12 A And I did e-mail them, but they never replied back
13 to me.

14 CHAIRMAN CLELAND: Judge Uhler. I'm sorry. I
15 thought you were finished.

16 BY MR. HOROHO:

17 Q When did you do that?

18 A When did I do that?

19 G.H.: I believe that was -- I think it was the --

20 R.H.: She was locked up about a year, I think.

21 G.H.: 2007, yeah.

22 CHAIRMAN CLELAND: Did you by any chance keep a
23 copy of what you sent?

24 R.H.: This is what I had told the investigator. I
25 says, I'm trying to find that e-mail because, see, I

1 switched processors on the computer, and I got my other one
2 up in the attic. And I'm trying to find that. Because if I
3 find it, it's going right to him.

4 CHAIRMAN CLELAND: We'd like to see that.

5 R.H.: We did contact Governor Rendell, and we did
6 ask him as well. And he's seen the letters, and he referred
7 the letters to Richard Gould.

8 CHAIRMAN CLELAND: Judge Uhler.

9 BY JUDGE UHLER:

10 Q Speaking of Richard Gould, at the time of the
11 incident at the school where your daughter and someone else
12 -- her friend came apparently under the influence and she
13 was yelling rape and the friend was confirming that and that
14 was also discussed, I gather, with the probation officer the
15 following day; is that correct?

16 A Yes.

17 Q Was there -- was there a process known as child
18 lining undertaken at that time that you have a prompt
19 inquiry from the Department of Public Welfare surrounding
20 these investigations of the rape?

21 A No. Well, we did have though -- she was -- she did
22 testify about a month and a half later in April.

23 Q Of that --

24 A In front of a closed circuit TV over on -- where
25 that Thomas D. Saxton building is where he was on the TV and

1 her and I were in the room. And she was testifying to the
2 judge there against -- that's the only thing.

3 Q This is a month and a half after the issue that
4 occurred at the school?

5 A Yeah. She was already in Vision Quest.

6 Q Okay. So a month and a half after you took her to
7 Penn Place she was testifying, so charges were promptly
8 filed then against this individual for rape?

9 A Yeah. He's in jail right now.

10 Q I understand that.

11 A Yes.

12 Q But were charges promptly filed?

13 A Yes. He was -- I've got papers stating that.

14 R.H.: In PA Child Care they talked to her when we
15 brought it to their attention.

16 G.H.: In September of 2006 he pled guilty.

17 R.H.: And she made a deposition in PA Child Care.

18 She wrote a letter of what happened to her and then was

19 given to the proper authorities.

20 BY JUDGE UHLER:

21 Q Were there ever any review hearings surrounding how
22 your daughter was doing in placement before Judge
23 Ciavarella?

24 A No. Because there was only the FTA, the failure to
25 adjust hearing.

1 JUDGE UHLER: I have nothing further.

2 CHAIRMAN CLELAND: I'm advised by counsel that
3 apparently there's a letter confirming the date of the
4 conviction that you can supply. You don't have to do it
5 now, but I think he said he's aware.

6 MR. DILLER: Okay. I may have. I'm not sure.

7 G.H.: I might have it, because I have a whole
8 bunch of them.

9 MR. DILLER: But it sounds like the hearing that
10 she was describing where the -- he was describing was the
11 preliminary hearing.

12 G.H.: This one right here, yeah.

13 MR. BRESLIN: Yeah, let me have all of them,
14 please.

15 G.H.: Here, I'll just give all of them to you.

16 CHAIRMAN CLELAND: This appears to indicate that it
17 was a guilty plea on December 1st, 2006.

18 MR. DILLER: Concerning the rape?

19 CHAIRMAN CLELAND: Statutory.

20 G.H.: Right. But she testified like in April of
21 that year.

22 MR. MOSEE: Preliminary hearing maybe.

23 G.H.: Yeah. In front of that -- where he was on
24 the TV screen.

25 MR. DILLER: That would be a preliminary hearing in

1 this county.

2 CHAIRMAN CLELAND: It appears it was conviction for
3 unlawful contact to a minor, F2. Sentencing scheduled for
4 March 12th, 2007.

5 MR. DILLER: I also have a copy here of a May 14th,
6 2008 letter concerning their contact with Governor Rendell's
7 website.

8 CHAIRMAN CLELAND: Mr. Mosee, you had questions.

9 BY MR. MOSEE:

10 Q Before your daughter was sent to Vision Quest you
11 indicated that Dr. Vita promised that his recommendation was
12 going to be that she come home?

13 A Yeah. He led us to believe that she was going to
14 be coming home.

15 R.H.: We -- excuse me.

16 MR. MOSEE: I'm sorry. Go ahead.

17 R.H.: We talked to him in the Penn Place when he
18 was going out the door. We asked, you know, what's his --
19 going to be his recommendation? He says, oh, she got a lot
20 of anger inside of her, but we're going to send her home.

21 BY MR. MOSEE:

22 Q Did you ever see his written evaluation and
23 recommendation?

24 A No, we never saw the -- we never saw his
25 recommendation, but we did get papers.

1 R.H.: I think --

2 THE WITNESS: We did get papers.

3 R.H.: -- we requested to get papers.

4 THE WITNESS: Yeah, that showed what he thought of
5 her behavior and stuff like that.

6 BY MR. MOSEE:

7 Q Was it consistent with what he told you?

8 A I didn't think so. Did you?

9 R.H.: No.

10 MR. MOSEE: Mr. Diller, did you ever get the
11 evaluation?

12 MR. DILLER: No, I did not represent the family at
13 the time.

14 THE WITNESS: Yeah.

15 MR. DILLER: But no.

16 BY MR. MOSEE:

17 Q Okay. I'd be interested to see that evaluation to
18 see whether or not it reflected what he told you.

19 A All right.

20 R.H.: I do have a copy of it at home.

21 THE WITNESS: Yeah, because we saved all of them.
22 I was going to bring it tonight, and then I thought, well,
23 maybe I just grabbed that stuff.

24 CHAIRMAN CLELAND: Judge Woodruff.

25 MR. DILLER: And I'm just going to just confirm as

1 I look through every piece of paper to see if I do have it.

2 CHAIRMAN CLELAND: Judge Woodruff.

3 BY JUDGE WOODRUFF:

4 Q Yes, just a couple questions. I understand you
5 went to see Judge Ciavarella?

6 A Um-hum.

7 Q Did you go to his chambers?

8 A Yes. We didn't even know it was him because I --
9 we had never even seen him before.

10 Q Okay.

11 A And the guard that led us in there told us to sit
12 down off to the side, which we did. And there was a short
13 little man making his own coffee and stuff like that. He
14 says, can I help you? And I says, yes, we're looking for
15 Judge Ciavarella.

16 Q Okay.

17 A And he says, well, what can I do for you? And I --
18 that's when I told him. We need to speak to you about my
19 daughter.

20 Q Okay. Did you -- did you introduce yourself? Did
21 you tell him exactly who you were?

22 A Yes.

23 Q Okay. And he still had talked with you at that
24 time?

25 A Yes. That's when he said it doesn't matter. It

1 does not matter. She has to be punished for what she did.

2 Q Okay. And then later there was a hearing later
3 that same day?

4 A Yes.

5 Q And in that hearing did you try to say anything at
6 that time?

7 A He told us not to. He said do not bring it up in
8 my court.

9 Q Okay. Thank you.

10 A Which we didn't understand why.

11 Q Okay. Thank you.

12 A Thank you.

13 MR. LISTENBEE: No questions.

14 CHAIRMAN CLELAND: Anyone else? Again, let me
15 repeat the appreciation that we all feel as members of this
16 Commission as we exercise our responsibility to address some
17 of the things that you have brought to our attention
18 tonight. And, again, thank you, very much for your courage
19 for being here and being able to do this in a public forum.

20 It will be helpful not only to us, but maybe to
21 many other families who have the opportunity or will have
22 the opportunity to see this.

23 THE WITNESS: Thank you for being here for us, and
24 I want to thank the senators and the representative that
25 have helped along this too.

1 CHAIRMAN CLELAND: Thank you.

2 THE WITNESS: Thank all of you very much.

3 CHAIRMAN CLELAND: I would ask to the extent that
4 there's any media left in the room that -- that you extend
5 some consideration and courtesy to the family members and
6 the juveniles that have testified here so that we can
7 protect whatever measure of privacy they've been willing to
8 sacrifice to come and assist us and not to make their
9 problems more difficult.

10 With that we'll stand in recess until 9:00 tomorrow
11 morning.

12 (Whereupon, the hearing was adjourned at 9:28 p.m.)

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1 I hereby certify that the proceedings and evidence
2 are contained fully and accurately in the notes taken by me
3 on the hearing of the above cause, and that this is a
4 correct transcript of the same.

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9 _____
Date

_____ Donna E. Gladwin, RPR

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