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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: JANUARY 21, 2010, 9:00 A.M.

PLACE: PENNSYLVANIA JUDICIAL CENTER
601 COMMONWEALTH AVENUE
HARRISBURG, PENNSYLVANIA

APPEARANCES:

BY: DARREN BRESLIN, ESQUIRE
FOR - COMMISSION

DONNA E. GLADWIN, REPORTER
NOTARY PUBLIC

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

5 Today we are in Harrisburg beginning our sixth day
6 of public hearings investigating the juvenile justice
7 scandal in Luzerne County. We will be holding four days of
8 hearings over the next two weeks, today and tomorrow and
9 then Monday and Tuesday, February 1st and 2nd.

10 Our schedule then calls for us to return to
11 Wilkes-Barre on February 25th to hear additional testimony
12 from children and their families. We anticipate at this
13 point that that will conclude our public hearings after ten
14 days of conducting those hearings.

15 Our focus for the next four days of hearings is on
16 recommendations and solutions to address the issues that we
17 have identified to date. We have invited experts from
18 various perspectives to testify over the next four days to
19 help us to develop the recommendations and solutions.

20 These will be through either live testimony or in
21 some cases through written reports. All of that material,
22 the transcripts of the testimony, the written reports, the
23 exhibits and so forth are available on our website,
24 www.pacourts.us. If you click on the For The Public tab, it
25 will take you to the Interbranch Commission where those

1 documents are available.

2 We have four witnesses scheduled for today, James
3 Anderson, Executive Director of the Juvenile Court Judges'
4 Commission; and Robert Schwartz, Executive Director of the
5 Juvenile Law Center, who will testify this morning. And
6 this afternoon Richard Gold, Deputy Secretary of DPW; and
7 then Dr. Gerald Zahorchak, Secretary of Education.

8 I'm joined by the other members of the Commission
9 here this morning. They are Tod Allen, Director of Court
10 Advocacy of the Crime Victim's Center in Erie County;
11 Valerie Bender, Senior Research Associate at The National
12 Center For Juvenile Justice in Pittsburgh; Ken Horoho,
13 Pittsburgh attorney and former president of the Pennsylvania
14 Bar Association; Magisterial District Judge James Gibbons
15 from Lackawanna County; Jason J. Legg, District Attorney of
16 Susquehanna County; Robert L. Listenbee, Chief of the
17 Juvenile Unit of the Defender Association of Philadelphia;
18 George D. Mosee, Jr., Chief of the Juvenile Division and
19 Deputy District Attorney of Philadelphia; Judge John C.
20 Uhler, a judge of the Court of Common Pleas of York County
21 and former President Judge of that Court; Ronald P.
22 Williams, Regional Director of the Pennsylvania Department
23 of Agriculture; Judge Dwayne D. Woodruff, a juvenile court
24 judge from Allegheny County. And we're joined also by
25 Darren Breslin, counsel to the Commission.

1 With that we'll begin with our first witness, James
2 Anderson, from the Juvenile Court Judges' Commission. Mr.
3 Anderson.

4

5 JAMES ANDERSON, called as a witness, being duly
6 sworn, testified as follows:

7

8 CHAIRMAN CLELAND: Please be seated. Mr. Anderson
9 is, as I said before, the Executive Director of
10 Pennsylvania's Juvenile Court Judges' Commission.
11 Ironically, although the Commission is composed of judges,
12 it is organizationally within the Office of the Governor in
13 the Executive Branch.

14 Mr. Anderson is, I think fair to say, well known
15 and highly respected among the juvenile justice community in
16 Pennsylvania, judges, probation officers, service providers.
17 Not only in Pennsylvania, but throughout the -- throughout
18 the nation he's known as an efficient administrator and as a
19 policy expert who cares also deeply about children. Mr.
20 Anderson.

21 MR. ANDERSON: Thank you, very much, Judge Cleland.
22 And I thank you for the opportunity to appear before you
23 this morning. It is the goal of the Juvenile Court Judges'
24 Commission to provide you with recommendations that can help
25 to ensure that the previously unimaginable abuse of power

1 and violations of law and procedural rule that harmed
2 thousands of Luzerne County children and families can never
3 happen again, either in Luzerne County or anywhere else in
4 our Commonwealth.

5 In doing so, however, we must ensure that we do not
6 undermine the foundational principles of our juvenile
7 justice system, the most important of which is the statutory
8 responsibility of the juvenile court judge to craft a
9 disposition in every delinquency case that is consistent
10 with the protection of the public interest, best suited to
11 the child's treatment, supervision, rehabilitation, and
12 welfare, and which provides balanced attention to the
13 protection of the community, the imposition of
14 accountability for offenses committed, and the development
15 of competencies to enable the child to become a responsible
16 and productive member of his or her community.

17 This is an incredibly important responsibility, and
18 the decisions that come with it are often difficult ones.
19 Yet many of Pennsylvania's finest judges regard their work
20 in juvenile court as the most meaningful and rewarding work
21 they do because they know they can make a difference in the
22 lives of the children and families who come before them.

23 In the view of the Juvenile Court Judges'
24 Commission, presiding in juvenile court is among the most
25 important work that any judge can ever do, and the harm that

1 has been done to Luzerne County children and families
2 remains foremost in our minds.

3 It is with this background and perspective that I
4 offer the following recommendations for your consideration
5 on behalf of our Commission.

6 In Luzerne County the transcripts of hearings
7 before former Judge Ciavarella serve to confirm that a
8 number of the -- in a number of these cases neither the
9 juveniles who appeared before the Court nor their families
10 understood the basis for the disposition that was being
11 ordered.

12 Currently the Rules of Juvenile Court Procedure do
13 not require the Court when entering a disposition following
14 an adjudication of delinquency to explain the reasons for
15 its disposition. However, in an adult criminal proceeding
16 our Rules of Criminal Procedure require the judge at the
17 time of sentencing to state on the record the reasons for
18 the sentence that is being imposed.

19 Our first recommendations would place a similar
20 requirement upon juvenile court judges. It is recommended
21 that Rule of Juvenile Court Procedure 512 be modified to
22 require the Court to state the reasons for its disposition
23 on the record at the conclusion of every delinquency case
24 together with the goals, terms and conditions of that
25 disposition.

1 In cases where the juvenile is committed to
2 residential placement this rule should also require the
3 Court to state the name of the specific program or type of
4 program to which the juvenile will be committed and the
5 reasons why that commitment to that specific program or type
6 of program is determined to provide the minimum amount of
7 confinement that is consistent with the protection of the
8 public and rehabilitation needs of the child.

9 It is further recommended that the comment to this
10 rule be modified to clarify that prior to stating the
11 reasons for its disposition the Court should give
12 consideration to the following factors: The protection of
13 the community, the treatment needs of the juvenile, the
14 educational, healthcare, and disability needs of the
15 juvenile, the juvenile's supervision needs, the development
16 of competencies to enable that juvenile to become a
17 responsible and productive member of the community,
18 accountability for offenses committed, and any other factors
19 that the Court deems appropriate.

20 We believe that these modifications will help to
21 ensure that juveniles and their families understand the
22 basis for a judge's disposition in a juvenile delinquency
23 case and will also aid in the appellate review of
24 delinquency orders.

25 The revelations about juvenile court practices in

1 Luzerne County have raised questions in the minds of many as
2 to whether things would have been different if these
3 proceedings had been open to the public. Currently the
4 Juvenile Act provides delinquency proceedings are generally
5 closed.

6 However, since March of 1996 hearings involving
7 petitions where a child is age 14 and older and alleged to
8 have committed a felony are open to the public, as are
9 hearings involving children who are 12 or older at the time
10 of alleged conduct which, if committed by an adult, would
11 constitute any of nine designated crimes or an attempt or
12 conspiracy to commit these offenses.

13 Many of the Luzerne County cases that have been the
14 subject of media reports were not serious enough to trigger
15 the open hearing provisions of the Act.

16 Our Commission has considered the issue of whether
17 additional Juvenile Act proceedings should be open to the
18 public a number of times over the years. Most recently when
19 Maggie Giannelli, staff of Senator Lisa Baker, asked us to
20 review a legislative proposal for introduction by Senator
21 Baker.

22 Ultimately Senator Baker introduced Senate Bill
23 872. That bill would essentially amend the Juvenile Act to
24 provide that delinquency hearings shall be open to the
25 public except where the court rules after a finding of

1 exceptional circumstances that it is necessary to close the
2 hearing or part of a hearing.

3 Previously our Commission considered the issue
4 during the Special Legislative Session on Crime in 1995 as
5 well as at various times when concerns were raised about the
6 impact that the Juvenile Act closed hearings provision would
7 have on our capacity to ensure that our child welfare system
8 was operating as it should be.

9 Consistent with positions that we have previously
10 taken, our Commission believes that there is benefit to
11 generally opening all Juvenile Act proceedings to the public
12 provided that important safeguards are established in
13 statute.

14 It is recommended that the Juvenile Act be amended
15 to open both dependency and delinquency proceedings to the
16 public provided that courts would have broad authority to
17 close any proceeding or any portion of any proceeding for
18 reasons relating to the protection of a child victim, the
19 safety of any witness, or when otherwise determined to be in
20 the best interest of a child, provided that attendees would
21 be prohibited from disclosing the identity of any party,
22 victim, witness, child, or other participant in the
23 proceeding, or from disclosing any information that would
24 tend to disclose the identity of any of these persons, and
25 provided that there would be a meaningful statutory sanction

1 sufficient to deter this behavior.

2 In addition, cameras should, of course, be
3 prohibited in the courtroom, and there should be a
4 prohibition on sketches of family members be drawn for
5 release to the media.

6 A critical area of concern that has been
7 highlighted by the testimony that you have already received
8 is the need to ensure that the rights of juveniles who are
9 alleged to have committed delinquent acts are protected at
10 every stage of the juvenile court process.

11 It is absolutely essential that the issue of
12 enhancing juvenile defense services, particularly indigent
13 juvenile defense services, is addressed by the Interbranch
14 Commission.

15 In late 2003 the ABA Juvenile Justice Center and
16 the Juvenile Law Center released its report entitled
17 Pennsylvania, An Assessment of Access to Counsel and Quality
18 of Representation in Delinquency Proceedings. This report
19 concluded that despite the legal mandates of the Juvenile
20 Act, there were serious deficiencies in the delivery of
21 defense services to indigent accused and adjudicated youth
22 in our juvenile justice system, and that the availability of
23 quality of these -- of defense representation varied widely
24 across the Commonwealth.

25 That year our chairman, Judge Carol McGinley, wrote

1 personally to every President Judge and every Juvenile Court
2 Administrative Judge, which included both former judges
3 Conahan and Ciavarella, to request their assistance in
4 enhancing the delivery of defense services to indigent
5 alleged and adjudicated youth in their respective
6 jurisdictions by taking several specific steps.

7 These steps included ensuring that no juvenile goes
8 unrepresented at any stage of the juvenile court process,
9 and presuming the indigence of children for the purpose of
10 appointment of counsel.

11 Currently Rule 151 of the Rules of Juvenile Court
12 Procedure requires the court to assign counsel for a
13 juvenile if the juvenile is without financial resources or
14 otherwise unable to employ counsel. It is our position that
15 in making this determination the judge is to consider the
16 financial resources of the juvenile, not the financial
17 resources of parents or guardians.

18 Our experience is that juveniles who have the
19 financial resources to employ counsel are the rare exception
20 in our juvenile justice system. It is recommended that
21 Pennsylvania Rule of Juvenile Court Procedure 151 be
22 modified to provide that courts should presume the indigence
23 of juveniles for the purposes of appointment of counsel.

24 The violations of juvenile court law and procedural
25 rule that occurred in former Judge Ciavarella's courtroom

1 involved the cases of juveniles who waived their right to
2 counsel without having been advised of the implications and
3 consequences of this critically important and potentially
4 life altering decision.

5 Rule 152 provides that a juvenile may not waive
6 counsel unless the waiver is knowingly, intelligently, and
7 voluntarily made, and the court conducts a colloquy with the
8 juvenile on the record.

9 The comment to this rule recommends that at a
10 minimum the court ask a series of eight questions to elicit
11 the information necessary for the court's determination that
12 the juvenile's waiver of counsel is indeed a knowing,
13 intelligent, and voluntary waiver.

14 This rule provides that the court may assign
15 standby counsel if a juvenile waives counsel at any
16 proceeding or any stage of a proceeding. It is the view of
17 the Juvenile Court Judges' Commission that our procedural
18 rules can and must be strengthened.

19 It is recommended that Rule 152 be modified to
20 require a juvenile to consult with an attorney prior to
21 waiving counsel at any of the following proceedings: The
22 informal detention hearing, a hearing to consider transfer
23 to criminal proceedings, the adjudicatory hearing, the
24 dispositional hearing, a dispositional or commitment review
25 proceeding, or a probation or rev -- probation modification

1 or revocation proceeding.

2 It is further recommended that this rule require
3 the appointment of standby counsel if a juvenile waives
4 counsel at any proceeding and -- any of these aforementioned
5 proceedings. And, finally, it is recommended that this rule
6 be modified to replace the guidance regarding the specifics
7 of the colloquy that is currently in the comment to the rule
8 with provisions in the rule itself that would detail the
9 specific information that the colloquy is to elicit.

10 Consistent with the current Rules of Juvenile Court
11 Procedure it is not our intention that an attorney be
12 required to be present when an intake conference is held
13 with a juvenile probation officer under Rule 311. We
14 believe that this rule modification will be an important
15 step in ensuring that every one of the increasingly rare
16 waivers of counsel by juveniles will be knowingly,
17 intelligently, and voluntarily made.

18 However, strengthening defense services throughout
19 the Commonwealth in our juvenile justice system will require
20 considerably more work, and our Commission believes that the
21 work being undertaken in conjunction with the Pennsylvania
22 Juvenile Indigent Defense Reform Initiative can be
23 critically important in achieving this goal.

24 It is recommended that the Interbranch Commission
25 support the Pennsylvania Juvenile Indigent Defense Reform

1 Initiative sponsored by the Pennsylvania Juvenile Indigent
2 Defender Action Network, which includes the development of
3 practice standards for all attorneys handling juvenile
4 delinquency cases, the development of the Pennsylvania
5 Center For Excellence in Juvenile Defense, the development
6 of a model juvenile defense unit in Luzerne County and four
7 other counties, and the development of clinical programs at
8 law schools for training the next generation of attorneys
9 who will represent children in delinquency proceedings.

10 If indigent juvenile defense services are to be
11 improved throughout the Commonwealth, it will ultimately be
12 necessary to address the funding issues related to achieving
13 this goal. A study is currently underway that could be
14 utilized to provide recommendations regarding this very
15 complicated issue.

16 Senate Resolution 42 of 2007, which was adopted by
17 the Senate in April of that year, required the Joint State
18 Government Commission to develop a bipartisan task force to
19 study the existing system for providing services to indigent
20 criminal defendants, to review how other states provide such
21 services, and to make recommendations to the Senate
22 regarding the funding of such services and the creation of
23 an entity to guarantee compliance with the Constitutions of
24 the United States and our Commonwealth in delivering these
25 services.

1 The resolution required the task force to create an
2 advisory committee that includes representatives of the
3 AOPC, the Secretary of the Budget, the Attorney General,
4 Auditor General, the County Commissioner's Association, the
5 Public Defender's Association, the Pennsylvania District
6 Attorney's Association, and others.

7 The organizational meeting of this group was held
8 in October of 2008, and the Committee has continued to meet
9 on a regular basis. I was recently invited to join the
10 Committee because of the Committee's interest in addressing
11 the specific issue of indigent juvenile defense services in
12 the Commonwealth.

13 And, in fact, Robert Listenbee of your Commission
14 will be addressing the advisory committee at its next
15 meeting on January the 26th.

16 It is our recommendation that the legislature, in
17 consultation with the Governor's Office and the Supreme
18 Court, be encouraged to utilize the study of indigent
19 criminal defense services being conducted pursuant to Senate
20 Resolution 42 to develop recommendations regarding a funding
21 mechanism for statewide indigent juvenile defense services.

22 The cases in Luzerne County that were the impetus
23 for the creation of your Commission have served to
24 underscore the need to expedite the appellate review of
25 juvenile delinquency orders. We believe that the rationale

1 for including appeals for orders involving dependency,
2 termination of parental rights, adoptions, custody or
3 paternity within the Superior Court's Fast Track Program
4 also applies to certain juvenile delinquency cases.

5 Unrelated to the Luzerne County situation, members
6 and staff of the Juvenile Court Judges' Commission have been
7 working jointly with counsel to and members of the Juvenile
8 Court Procedural Rules Committee, the Criminal Procedure
9 Rules Committee, and the Appellate Court Criminal Rules
10 Committee to develop the means to expedite appeals in cases
11 involving transfers from criminal proceedings.

12 Yet in our view there are certain orders arising
13 from delinquency proceedings that must also be subject to
14 expe -- an expedited review process.

15 It is recommended that the Interbranch Commission
16 recommend the creation of a means to provide for the
17 expedited review of orders entered in the following types of
18 cases: The transfer of a case to criminal proceedings, the
19 denial of a request to transfer a case to criminal
20 proceedings, the transfer of a case from criminal
21 proceedings, or an order of disposition following an
22 adjudication of delinquency that removes a child from his or
23 her home.

24 It is unclear whether the Superior Court's
25 Children's Fast Track Program could be expanded to include

1 these types of cases without jeopardizing the timely review
2 of the cases that are now included in this program, or in
3 the alternative, whether an entirely new process should be
4 created.

5 Regardless, the goal should be to provide for a
6 decision within 90 days of the initiation of the review
7 process.

8 Among the duties of our Commission is to collect,
9 compile, and publish such statistical data and other data as
10 may be needed to accomplish a reasonable and efficient
11 administration of our juvenile court system.

12 The data regarding the outcomes of juvenile
13 delinquency cases is reported to us by county juvenile
14 probation departments. The Pennsylvania Juvenile Case
15 Management System, the PaJCMS as we know it, an electronic
16 application used voluntarily by 64 juvenile probation
17 departments, is a key component in providing our agency with
18 the capacity to collect, compile, and publish this
19 information.

20 Currently only Philadelphia, Chester, and Cameron
21 Counties do not utilize this application. However, I'm
22 pleased to inform you that we have begun working with the
23 Philadelphia Family Court to deploy the PaJCMS in that
24 jurisdiction.

25 The PaJCMS was developed through a cooperative

1 effort of our Commission, the Pennsylvania Council of Chief
2 Juvenile Probation Officers, county juvenile probation
3 departments, and the Pennsylvania Commission on Crime and
4 Delinquency.

5 It was designed to meet the case management needs
6 of juvenile probation departments as well as to provide
7 juvenile delinquency case outcome data to our Commission
8 using a combination of state, federal, and county funds; the
9 overwhelming majority of which were federal juvenile
10 Accountability Incentive Block Grant funds that were awarded
11 to the Council of Chief Juvenile Probation Officers after
12 having been returned as unexpended funds from local -- units
13 of local government.

14 Staff from our Commission provide application
15 enhancement and maintenance, training and help desk support
16 to the county juvenile probation departments. No state
17 funds support the PaJCMS application or the hardware and
18 software utilized by county juvenile probation departments
19 to provide us with the data. The juvenile delinquency data
20 that we receive from counties is published in our annual
21 Juvenile Court Disposition Report.

22 In addition, case outcome information is provided
23 to the state police for inclusion in the central repository.
24 The case outcome information supplied to the State Police
25 through our agency, when combined with the information

1 regarding alleged delinquents that is provided to the State
2 Police at the time a juvenile is fingerprinted, comprises
3 the juvenile history record information that is maintained
4 in the central repository and is used, among other purposes,
5 in the completion of background checks for employment or in
6 the possession or purchase of firearms.

7 We are continuing to work with the AOPC and JNET to
8 develop the means to provide the transfer of information
9 from the PaJCMS to the Common Pleas Case Management System
10 administered by AOPC toward the goals of eliminating
11 redundant data entry and streamlining juvenile delinquency
12 case processing.

13 We are also in the early stages of a significant
14 project with the National Center for Juvenile Justice with
15 funding support from the John D. and Catherine T. MacArthur
16 Foundation to develop a web-based data analysis application
17 that will be available on the public website of our
18 Commission and will enable the general public and
19 policymakers alike to perform data queries and analyses of
20 aggregate juvenile delinquency disposition and case
21 processing information.

22 The court administrator, several of his key staff,
23 and I have met to discuss the data that is reported to our
24 Commission and how our agency and the AOPC can work together
25 to make the best possible use of this information.

1 We will be meeting again in April and on a regular
2 basis thereafter to discuss this issue and other issues that
3 will be best addressed through our coordinated efforts.

4 Going forward it is clear that the timely
5 submission, analysis, and dissemination of data regarding
6 juvenile delinquency dispositions and case processing must
7 be an important component of any strategy to prevent a
8 repetition of the offense that occurred in Luzerne County.

9 Our Commission stands ready to be actively involved
10 and to determine how our resources and expertise can best be
11 used in this regard.

12 It is recommended that the Interbranch Commission
13 recommend that, as budgetary resources allow, the capacity
14 of juvenile courts to provide information regarding juvenile
15 delinquency dispositions and case processing to our
16 Commission, and the capacity of our Commission to collect,
17 analyze, and report this information be strengthened.

18 Many of the children whose cases have been the
19 focus of our Commission's work were committed to juvenile
20 detention, either prior to the adjudicatory hearing,
21 following that hearing, or both.

22 With respect to the pre-adjudication detention
23 phase, our Juvenile Act provides that a child who is taken
24 into custody shall not be detained or placed in shelter care
25 prior to the adjudicatory hearing unless the child's

1 detention is required to protect the person or property of
2 others or of the child, or because the child has no parent
3 or other appropriate person to provide supervision and
4 return him to the court when required, or when an order for
5 his detention or shelter care has been made by the court
6 pursuant to the Juvenile Act.

7 Our Commission's Standards Governing the Use of
8 Secure Detention Under the Juvenile Act specifically provide
9 that when the admission of a juvenile to a secure detention
10 facility is being considered by a judge, a master, a
11 juvenile probation officer, preference should be given to
12 non-secure alternatives which could reduce the risk of
13 flight or danger to the juvenile or community, and the
14 pre-adjudication detention may never be imposed as a means
15 of punishment or to apply sanctions.

16 If secure detention is ordered or authorized prior
17 to the adjudicatory hearing, these standards require a
18 contemporaneous written statement of reasons and facts to
19 accompany the detention decision which must include, among
20 other things, the alternatives to secure detention that were
21 considered and rejected, and the reason or reasons why
22 secure detention is required and alternatives are not
23 appropriate.

24 In their present form these standards have been
25 helpful in guiding decision making regarding the use of

1 secure detention. However, we believe that decisions
2 regarding the use of secure detention can be further
3 improved if our juvenile justice system transitions to the
4 use of a validated detention assessment instrument that
5 assigns points for specific factors such as offense
6 severity, prior record, history of absconding or failing to
7 appear at hearings to produce a total risk score.

8 Once that score is determined other aggravating and
9 mitigating circumstances can be considered, and in certain
10 cases mandatory overrides that would require detention. For
11 example, crimes committed with a firearm can be considered
12 in determining whether commitment to secure detention will
13 be ordered or authorized.

14 In 2006 the Berks County Juvenile Probation
15 Department undertook the development of a state of the art
16 juvenile detention risk assessment instrument in conjunction
17 with their leadership role in our Commonwealth's Models For
18 Change system reform partnership with the MacArthur
19 Foundation.

20 The Berks County instrument is based on validated
21 instruments that are being used successfully elsewhere,
22 particularly in jurisdictions participating in the Juvenile
23 Detention Alternatives Initiative of the Annie E. Casey
24 Foundation. This effort grew out of the Berks County's
25 comprehensive strategy to address the disproportionate

1 numbers of Latino youth in their juvenile justice system.

2 Berks County's use of their detention assessment
3 instrument, when combined with the development of a new
4 Evening Reporting Center, the use of Multisystemic Therapy,
5 and other community-based programs has led to an approximate
6 45 percent reduction in the average daily populations of
7 their juvenile detention center and has allowed for the
8 elimination of 24 detention beds in the County without
9 compromising public safety.

10 Based on the success of the Berks County initiative
11 we requested the Council of Chief Juvenile Probation
12 Officers to work with us to lay the groundwork for possible
13 statewide implementation of a detention assessment
14 instrument.

15 The Chief's Council has established a Committee
16 that includes representation from our staff and from other
17 counties that have agreed to implement or are considering
18 the implementation of such an instrument.

19 It is our recommendation that the Interbranch
20 Commission endorse the modification of the Juvenile Court
21 Judges' Commission's Standards Governing the Use of Secure
22 Detention to incorporate the use of a detention assessment
23 instrument based on the Juvenile Detention Alternatives
24 Initiative model supported by the Annie E. Casey Foundation.

25 There are other important developments in our

1 juvenile justice system that are already helping to identify
2 and respond to the specific risks presented by and needs of
3 juveniles who are currently being referred to our courts.

4 Critically important in this regard are the
5 self-incrimination protections that were added to our
6 Juvenile Act in July of 2008 based on the legislative
7 proposal introduced by Senator Stewart Greenleaf. This
8 proposal grew out of the work of our Commonwealth's Mental
9 Health/Juvenile Justice Workgroup, which guides the mental
10 health and juvenile justice systems coordination component
11 of our partnership with the MacArthur Foundation.

12 Staff from the Juvenile Law Center and our
13 Commission play leadership roles in developing the
14 legislative proposal, obtaining support of various
15 stakeholders, and in advocating for its passage. Our
16 Juvenile Act now specifically provides that no statements,
17 admissions, or confessions made by, or incriminating
18 information obtained from a child in the course of a
19 screening or assessment that is undertaken in conjunction
20 with any proceeding under the Juvenile Act shall be admitted
21 into evidence against the child on the issue of whether the
22 child committed a delinquent act or on the issue of guilt in
23 any criminal proceeding.

24 These protections now in our Juvenile Act have
25 facilitated the goal of increased use of validated screening

1 and assessment instruments throughout our system. Last year
2 following a review of existing validated instruments the
3 Chief's Council endorsed the use of the Youth Level of
4 Service/Case Management Inventory, the YLS as we know it, a
5 highly regarded risk needs assessment instrument, and is
6 working closely with our staff to implement its use with
7 funding assistance through the Pennsylvania Commission on
8 Crime and Delinquency.

9 The YLS is currently being utilized by ten juvenile
10 probation departments and the state Youth Development
11 Centers that are operated by our Department of Welfare to
12 assess juvenile and family specific information in eight
13 domains that have been identified through research as key
14 elements in determining a juvenile's risk to reoffend as
15 well as to determine the strengths and needs of both the
16 juvenile and the family.

17 Another group of juvenile probation departments
18 will begin implementing the YLS this spring with funding
19 supports from PCCD. One of the most important aspects of
20 this initiative is that the results from the assessment are
21 being used to develop a more comprehensive case management
22 process for juveniles that is focused on reducing identified
23 risk factors.

24 The desired outcome of this validated risk needs
25 assessment will be used in determining appropriate levels of

1 supervision, establishing measurable case specific goals,
2 and in allocating the necessary resources to achieve better
3 outcomes from juveniles and their families, and consequently
4 for our communities.

5 It is recommended that the Interbranch Commission
6 recommend expansion of the youth -- of the Youth Level of
7 Service/Case Management Inventory risk needs assessment that
8 is currently being adopted by ten juvenile probation
9 departments and is supported by our Commission, the
10 Pennsylvania Council of Chief Juvenile Probation Officers,
11 and the Pennsylvania Commission on Crime and Delinquency.

12 The relationship between former Judge Ciavarella
13 and a former co-owner of Pennsylvania Child Care and Western
14 Pennsylvania Child care has brought to the forefront the
15 broader issue of the relationships between courts, probation
16 departments, and the many private agencies that provide
17 services to court-involved children in our Commonwealth.

18 The private sector services in our system are among
19 the strongest in the nation and are a critical factor in our
20 system's status as a national leader.

21 It is important for juvenile court judges to
22 advocate for needed services in their communities and to be
23 familiar with the programs and facilities that serve
24 court-involved children and families in their jurisdictions.

25 For example, it is the practice of the Allegheny

1 County juvenile court judges to regularly visit, at county
2 expense, the residential programs that provide services to
3 youth from their counties. Certain private service
4 providers have routinely underwritten the costs associated
5 with visits by judges and probation officers to their
6 programs. This and other related practices are now being
7 carefully re-evaluated by judges, by chief juvenile
8 probation officers, and by the CEOs and agency
9 administrators throughout our juvenile justice system.

10 But the bottom line is this. It is absolutely
11 essential that courts ensure that the relationships and
12 interactions between judges, probation officers, and
13 representatives of private agencies do not create even the
14 appearance of impropriety.

15 A family whose child appears before a court must
16 never be in doubt that the use of a particular program is
17 based on anything other than the capacity of that program to
18 meet the needs of their child.

19 Concerns regarding this issue led our Commission to
20 establish an ethics work group to identify the areas
21 regarding which guidance may be needed. Our work group
22 included members of our Commission, as well as an
23 experienced judge who functioned in a liaison capacity with
24 the Judicial Ethics Committee of the Pennsylvania Conference
25 of State Trials Judges, as well as representation from the

1 Council of Chief Juvenile Probation Officers in view of the
2 leadership that they were already providing regarding this
3 issue.

4 Our ethics work group ultimately developed a series
5 of questions that were posed in correspondence to the
6 Judicial Ethics Committee. In that correspondence it was
7 explained that our Commission would appreciate responses to
8 the questions, either informally or in form of a general
9 advisory, such as those which the Judicial Ethics Committee
10 offers to judicial candidates.

11 In responding to our request the Judicial Ethics
12 Committee explained that it may be helpful to address the
13 questions for the benefit of the entire judiciary, but that
14 the task of doing so may be too ambitious for the Committee
15 alone given its other responsibilities and resources and
16 because thorough analysis of the questions would require
17 participation of a broader cross-section of the judiciary
18 than is presently represented on that Committee.

19 The Judicial Ethics Committee also identified
20 several other concerns that could be alleviated if the
21 officers of the Conference of State Trial Judges and the
22 Supreme Court approve the type of participation that our
23 Commission was requesting of the Committee and offered to
24 meet with representatives of our Commission to discuss how
25 best to proceed.

1

2 Our Commission is very appreciative of the Judicial
3 Ethics Committee's consideration of our request and their
4 willingness to assist us in determining how best to proceed.
5 However, because of the importance of this issue and the
6 broader implications for all judges, we now believe that it
7 may be necessary for the Supreme Court to guide the
8 development of a more comprehensive approach.

9 It is recommended that the Interbranch Commission
10 recommend that the Supreme Court create the means to provide
11 guidance, continuing education programming, and resource
12 materials that address the ethical issues arising from the
13 interactions and working relationships between judges,
14 probation officers, and other court staff and the many
15 entities, both public and private, that provide services to
16 the courts or to individuals subject to the jurisdiction of
17 the courts.

18 The testimony that has been presented to your
19 Commission points to the need for enhanced training,
20 continuing education, and professional development for
21 attorneys, prosecutors, juvenile court masters, hearing
22 officers, and judges.

23 I've already presented recommendations intended to
24 enhance the professional development of juvenile defense
25 attorneys. In my opening statement I explained that it was

1 the view of our Commission that presiding in juvenile court
2 is among the most important work that any judge could ever
3 do. That is also the case for other professionals involved
4 in these increasingly complex proceedings that have the
5 potential to permanently alter the course of a child's life.

6 On behalf of our Commission I offer the following
7 recommendations for your consideration with respect to
8 juvenile prosecutors, juvenile court judges, and juvenile
9 court masters, and hearings officers.

10 The Juvenile Prosecutors Network of the
11 Pennsylvania District Attorney's Association is already an
12 excellent training and technical assistance resource for our
13 Commonwealth's juvenile prosecutors.

14 We believe that the Juvenile Prosecutors Network is
15 well positioned to develop a strategy to enhance the
16 professional development of juvenile prosecutors on a
17 statewide basis.

18 It is recommended that the Interbranch Commission
19 endorse the development of practice standards for juvenile
20 prosecutors by the Juvenile Prosecutors Network of the
21 Pennsylvania District Attorney's Association for eventual
22 adoption by that association.

23 Training for juvenile court judges who preside in
24 juvenile delinquency cases includes components of the New
25 Judges School, the ongoing training that is provided at the

1 annual and mid-annual meetings of the Pennsylvania
2 Conference of State Trial Judges, and the annual
3 Pennsylvania Conference on Juvenile Justice.

4 It is cosponsored by the Council of Chief Juvenile
5 Probation Officers, the juvenile section of the Trial Judges
6 Conference, and our Commission. In addition, certain of the
7 regional units of our courts of common pleas regularly offer
8 training that may include a focus on delinquency cases.

9 We believe the training for juvenile court judges
10 can be strengthened by building upon these existing
11 resources. It is recommended that the Interbranch
12 Commission encourage the Supreme Court, in consultation with
13 the Conference of State Trial Judges, our Commission, and
14 AOPC's Judicial Education Department and Office of Children
15 and Families in the courts to expand opportunities for
16 training and continuing education for judges who preside in
17 both delinquency and dependency proceedings and to mandate
18 training for newly assigned juvenile court judges.

19 At a minimum judges who are newly assigned to
20 preside in delinquency or dependency court should be
21 required to attend a one and a half day orientation program
22 within 90 days of their assignment to juvenile court. As a
23 follow up to this training a cadre of experienced juvenile
24 court judges should be available to mentor these newly
25 assigned judges.

1 And all juvenile court judges should be required to
2 participate in regularly scheduled regional forums and
3 web-based training that is designed by the aforementioned
4 entities.

5 Juvenile court masters and hearing officers play a
6 critically important role in our juvenile justice system,
7 yet there are no requirements related to their training and
8 professional development.

9 It is recommended, therefore, that the Interbranch
10 Commission encourage the Supreme Court, in consultation
11 again with the Conference of State Trial Judges, our
12 Commission, and AOPC's Judicial Education Department and
13 Office of Children and Families in the courts, to expand
14 opportunities for training and continuing education for
15 juvenile court masters and hearing officers who are assigned
16 to conduct hearings under the Juvenile Act and to mandate
17 training for newly assigned juvenile court masters and
18 hearing officers.

19 At a minimum juvenile court masters and hearing
20 officers who are assigned to conduct hearings under the
21 Juvenile Act should be required to attend a one and a half
22 day orientation program within 90 days of their assignment.

23 This concludes our recommendations. The Juvenile
24 Court Judges' Commission is deeply appreciative of the
25 opportunity to offer them for your consideration this

1 morning and for the diligence and commitment that the
2 Interbranch Commission has shown in fulfilling your
3 statutory obligations.

4 It is our sincere hope that our suggestions will be
5 helpful to you both in your efforts to strengthen our
6 juvenile justice system and to prevent the injustices that
7 led to your creation from ever happening again, either in
8 Luzerne County or anywhere else in our Commonwealth.

9 Thank you, very much. And at this time I'd be
10 pleased to answer any questions or provide any other
11 additional information that could be helpful to you.

12 CHAIRMAN CLELAND: Thank you. Mr. Allen.

13 BY MR. ALLEN:

14 Q I just have one question about training. Would you
15 consider police officers as being another group that might
16 be considered in the training through either a municipal
17 Police Training Commission or through the State Police
18 training?

19 A I think that would be an excellent idea. I'm aware
20 that they do have a juvenile delinquency component. I'm
21 certain we could enhance that, especially if we make
22 modifications to some of the procedures that we're talking
23 about here. I think that would be very helpful. That's an
24 excellent idea, and we would support that .

25 MR. ALLEN: That's all I have.

1 CHAIRMAN CLELAND: Judge Uhler.

2 BY JUDGE UHLER:

3 Q Mr. Anderson, immediately to your right are two
4 documents. I'm sorry, they're one chair over. One of which
5 is a letter dated, I believe, September 22nd, 2009 addressed
6 to Judge -- then Judge Anne Lazarus, who is chairman of the
7 Ethics Committee of the State Conference of Trial Judges by,
8 I believe, your liaison for the Juvenile Court Judges
9 Advisory Committee; is that correct?

10 A That's correct. It's dated September 29th, 2009.

11 Q Now, does that -- does that letter articulate the
12 ethical concerns and questions that had been posed to the
13 Committee itself?

14 A It does. These are the questions that were posed.

15 Q And these were the questions that the JCJC
16 considered to be at least paramount, but not all-inclusive
17 of those matters that are of concern for juvenile court
18 judges statewide as well as employees that work under them?

19 A That is correct.

20 Q With regard to those concerns, what is it generally
21 that prompted the Juvenile Court Judges' Commission to -- to
22 be concerned as to the ethical concerns related therein?

23 A Well, the -- the attention that was -- that was
24 drawn to the issue of the relationships between judges,
25 probation officers, and private agencies out of the

1 allegations involving a particular provider in Luzerne
2 County caused us to be concerned about what was happening
3 with respect to the impression that could be left in the
4 minds of families and children because of the relationships
5 that existed among private providers and judges and
6 probation officers in our system.

7 Because what we had was private agencies in
8 conjunction to distributing program materials being in a
9 position of having, frankly, to compete with other providers
10 for business. And this -- this resulted in much the same
11 kind of marketing that I think you'd be familiar with in the
12 medical community with drug representatives and physicians,
13 for example, I think, is the easiest way to describe it.

14 And we were very concerned about that appearance,
15 and so we developed this Subcommittee. We raised these
16 issues. We identified questions, and we really believe that
17 we can do some things with some minor adjustments and advice
18 to make absolutely certain that we never create even the
19 appearance of impropriety in these relationships.

20 Because our providers are -- private providers are
21 the backbone of our juvenile justice system and provide
22 excellent service. But it can be very confusing for a
23 family, for example, in the office of a probation officer if
24 they see materials or -- or any kind of -- might be a coffee
25 mug even from a provider that might be a provider to which

1 their child will be committed.

2 So it's those kind of things that we really want to
3 pay much more attention to in our system.

4 Q Were concerns voiced also, for example, for a
5 provider appearing at the very disposition hearing prior to
6 the dispositional setting awaiting perhaps the outcome?

7 A We did discuss that as well. I mean, the
8 appearance of that and the appearance, again, to a family
9 that a decision has already been made even before the case
10 has been decided is very problematic. And we were also
11 concerned about that. That is correct.

12 Q So the September letter that is before you is an
13 accurate reflection of that which was disseminated to Judge
14 Lazarus?

15 A Yes, it is.

16 Q And the correspondence received from Judge Ed
17 Friedman in December that is also with that packet, is that
18 the response received by the Juvenile Court Judges'
19 Commission as a result of the original inquiry?

20 A That is the response, yes.

21 Q And that too is the accurate reflection of that
22 which was received?

23 A It is.

24 JUDGE UHLER: Mr. Breslin, I'd ask that those
25 pieces of correspondence be incorporated into the record.

1 MR. BRESLIN: Okay.

2 CHAIRMAN CLELAND: They will be incorporated. Are
3 you going to ask just for a summary of what Judge Friedman
4 --

5 BY JUDGE UHLER:

6 Q Sure. What did Judge Friedman essentially advise?

7 A Well, Judge Friedman advised essentially that the
8 questions that were raised and in the context that we raised
9 them may have implications for judges, a more broader set of
10 judges, really all judges, than just the juvenile court
11 judges, and that in needing to address it at that level
12 would require more resources than they have.

13 It would also require some additional guidance
14 perhaps in the way of interaction with the Conference of
15 State Trial Judges and support there as well as guidance
16 from the Supreme Court as to whether it was appropriate for
17 that Committee to respond to the questions in the way that
18 we had posed them.

19 Because it was unusual for them, I came to learn,
20 upon seeing that response for the questions to be posed in
21 that way. And so based on that we felt that it really was
22 important to request the Supreme Court to provide additional
23 guidance. And also not to just have guidance coming out of
24 the Ethics Committee, but to develop training and resource
25 materials to support that guidance. So it needs to have a

1 more comprehensive approach.

2 Q Were you under the impression originally that that
3 was the mechanics as to which those questions were to
4 originally be posed to the Ethics Committee?

5 A We were. Yes, we were.

6 JUDGE UHLER: Okay.

7 CHAIRMAN CLELAND: Do I take it then that the
8 concern based on this inquiry extends beyond just --
9 although other focus is on juvenile judges, the nature of
10 the reply from the Ethics Committee seems to indicate that
11 this could have implications for problem solving courts or
12 any other judges involved with a whole range of services?

13 MR. ANDERSON: Exactly, exactly. And I think
14 problem solving courts are an excellent example in the
15 criminal justice system. But I do believe it -- it applies
16 to all judges.

17 CHAIRMAN CLELAND: Mr. Mosee.

18 BY MR. MOSEE:

19 Q You're aware that the Juvenile Act doesn't require
20 the involvement of prosecutors at critical stages, and for
21 that matter at any stages of the proceedings involving
22 juveniles. Would you support an amendment to the Juvenile
23 Act that would require the involvement of prosecutors?

24 A I -- I would support that personally. Our
25 Commission hasn't taken a position on that, but I think

1 consistent with some of the discussions that we had, we
2 would certainly be supportive of that.

3 I think that that aspect of the Juvenile Act is
4 something that in my view needs to be addressed.

5 MR. MOSEE: Thank you.

6 CHAIRMAN CLELAND: Ms. Bender.

7 BY MS. BENDER:

8 Q Good morning. The Juvenile Court Procedural Rules
9 are strong, and your recommendations would strengthen them
10 further. Do you have a recommendation for how we can
11 monitor whether they were be being followed in the
12 courtroom?

13 A Well, I think we need -- I think we need more
14 interaction, certainly. I would look forward to our
15 Commission being engaged in that process to help with that.
16 But I think, frankly, that the -- the people in the
17 courtroom are who we have to rely on to ensure that they're
18 being complied with.

19 And I really believe that all of the attention that
20 has been brought to these issues these last months have
21 resulted in significant changes throughout our Commonwealth
22 already. But it is something that is going to require, I
23 think, all of us collectively to stay on top of that.

24 But ultimately it falls to the attorneys in the
25 courtrooms, to all of the participants in the courtrooms,

1 the DAs, and the probation officers, the victim advocates,
2 of course the judges and hearing officers.

3 Q I have a similar question for detention. Could you
4 tell us how detention is monitored? Because we have strong
5 standards for detention. How is it currently monitored, and
6 how could it be better?

7 A Well, I think what we have, we monitor compliance
8 with detention in a specific way primarily to ensure
9 compliance with federal law. Our -- our situation is in
10 Pennsylvania that in order to receive federal funding we
11 have to monitor admissions to detention to ensure that
12 status offenders, non-delinquent children, do not end up in
13 a secure detention center.

14 We must also ensure that juveniles do not end up
15 being held illegally in an adult setting, in a county jail
16 or a prison. But we haven't been monitoring, specifically
17 in detail, the specific aspect of the criteria that were
18 being considered in that process.

19 I think we can improve that, but I really believe
20 the thing that would help the most is if we do this --
21 undertake this transition that we recommended to a specific
22 assessment tool that is validated so that the process of
23 deciding who would be detained would be improved.

24 And as you may be aware, detention rates and also
25 the numbers of kids in detention is really down throughout

1 the Commonwealth. So there is a lot of attention to that
2 issue right now. But I think -- I think we can improve it.

3 The thing that would improve it the most would be
4 to improve the decision making process around detention.

5 MS. BENDER: Thank you.

6 CHAIRMAN CLELAND: Judge Gibbons.

7 BY JUDGE GIBBONS:

8 Q This is kind of a follow-up to Mr. Allen's question
9 with respect to bringing police officers into the
10 conversation and training. How about school officials?

11 A I think school officials -- I think that's a very
12 important -- that's a very important issue. And I'm certain
13 that we can do some things and work in partnership, I think,
14 with the School Boards Association and others to strengthen
15 the training that's provided and, I think, encourage more
16 interaction on the local level. Because I think that's --
17 that's really what needs to happen.

18 And not just in the delinquency system. We need a
19 lot of training. We need a renewed focus on truancy-related
20 issues, and that's going to require new partnerships with
21 courts as well as schools and other community agencies. But
22 I think engaging the schools and having a strong partnership
23 locally is very important.

24 But it -- I think it's going to need to be training
25 that is really focused on the local juvenile justice system,

1 not so much statewide training focused on schools. But I
2 would strongly support that.

3 MR. GIBBONS: Thank you.

4 CHAIRMAN CLELAND: Mr. Williams.

5 BY MR. WILLIAMS:

6 Q Yes. Mr. Anderson, has there been any discussion
7 amongst the Juvenile Court Judges' Commission as to regional
8 county detention centers versus private?

9 A Regional centers versus individual county centers?

10 Q No, private centers?

11 A Versus private centers. Not -- not recently. As
12 you're aware there is a -- we do have one regional center in
13 central counties, detention center. So the concept of
14 regionalizing the centers is one that's -- that's been
15 around, but hasn't been one that's been discussed to any
16 significant degree.

17 I really think that those kind of issues do deserve
18 more attention, and I -- I would hope that we could be part
19 of -- part of looking at that. I think the issue of who
20 should provide detention services and how should that
21 process be monitored does require that we all work together
22 to look at those issues.

23 MR. WILLIAMS: Thank you.

24 CHAIRMAN CLELAND: Mr. Listenbee.

25 BY MR. LISTENBEE:

1 Q Good morning, Mr. Anderson. First of all, I'd like
2 to thank you for a very comprehensive set of
3 recommendations. It gives us a lot of food for thought and
4 some really clear recommendations.

5 I would like to talk to you a little bit about the
6 presumption of indigency for juveniles. You've made a
7 recommendation that Rule -- Pennsylvania Rule of Juvenile
8 Court Procedure 151 be changed to include a presumption of
9 indigency for juveniles for the purposes of appointment of
10 counsel.

11 Would you consider also having that presumption
12 written into the Juvenile Act in order to provide the kind
13 of assurance and long term clarity so that it will be very
14 unlikely that it will be changed and that we would encounter
15 this problem again?

16 A I think conceptually we would certainly agree with
17 that, and we did discuss whether we should be looking at the
18 Public Defender Act as well. But I think the idea is that
19 we certainly would want to accomplish that. We think
20 initially that it could be accomplished through the rules
21 process, but I think we would certainly support the idea of
22 the enactment of legislation as well.

23 Q In regards to the Public Defender Act, if public
24 defenders are to be appointed to all the children who are
25 presumed indigent, did you have or did you discuss how they

1 were going to deal with capacity issue of having more cases
2 than they might have funding to actually support?

3 A Well, we didn't talk about the specifics of the
4 funding issues. I would hope that that's something that we
5 could deal with in the context of the -- of Senate
6 Resolution 42 that I referenced. Because I think that issue
7 I would hope would be on the table.

8 If we are going to need increased capacity, if
9 we're going to try to develop a statewide system that is
10 funded in some way through this, that we're going to have to
11 consider that there may be a greater need depending on what
12 the outcome of that process is.

13 Q Also, Mr. Anderson, as regards Rule -- your
14 recommendation regarding waiver of counsel, you've
15 recommended that Rule 152 of the Pennsylvania Rules of
16 Juvenile Court Procedure be modified, and you specified how
17 that modification should be written.

18 Would you consider also in that situation that the
19 change should be written into the Juvenile Act in order to
20 provide -- again, to strengthen it and provide long term
21 continuity?

22 A I think -- we would certainly consider that. We
23 thought initially that, again, it was an issue that could be
24 dealt with successfully through the procedural rules
25 process. But I know I personally I believe that that would

1 be appropriate.

2 Q Also, just for point of reference, would you
3 consider amending your recommendation to include pretrial
4 hearings, which I believe may only be held in Philadelphia
5 County? But those are hearings where decisions are made as
6 to whether there are admissions and consent decrees and also
7 cases are referred to adjudicatory hearings.

8 A I think -- I think that probably makes -- that
9 probably makes sense to ensure that the Philadelphia
10 practices are covered, certainly.

11 Q And if I can ask you a question about the -- the
12 recommendations for the development of prosecutorial
13 standards. You've recommended that the Interbranch
14 Commission endorse the development of practice standards for
15 juvenile prosecutors by the Juvenile Prosecutors Network of
16 the Pennsylvania District Attorney's Office for eventual
17 adoption by that association.

18 Is there a reason why you were not recommending
19 adoption by the Supreme Court or adoption by the state bar
20 association or adoption by the Rules Committee as opposed to
21 limiting it to adoption by the association? If these rules
22 were adopted by the association, they could easily be
23 changed by the association.

24 We don't basically have an idea as to what the
25 procedures are within the association for either the

1 adoption or the amendment of existing rules, and we're
2 looking, again, to ensure that the problems that occurred in
3 Luzerne County do not occur again.

4 A I think that's -- that's an excellent point. That
5 was, I think, a one step at a time issue. We thought that
6 based on that preliminary work if we could get it at that
7 level, that that would be a very good starting point. So
8 not to the exclusion of the suggestions that you are making.

9 Q Well, I think one of the concerns that comes up was
10 pointed out by Mr. Mosee, which is then under the Juvenile
11 Act as currently written there are no requirements of
12 prosecutors.

13 And when District Attorney John Delaney spoke as he
14 was sitting in the chair that you're sitting in he made it
15 clear that under the rules there are no requirements.

16 So given what happened in Luzerne, it's difficult
17 as we look at it, except under the ethical rules, I believe
18 3.8, to really ask ourselves a question of what were
19 prosecutors required to do, and what was it that they didn't
20 do in conformance with the rules and regulations governing
21 their conduct?

22 And so we come away really asking ourselves, are we
23 being left with simply the ADA ethical rules to govern their
24 conduct as presently described is my understanding.

25 A Those are excellent points. And I think our

1 recommendations would probably be strengthened, and I have a
2 feeling maybe the Interbranch Commission would be encouraged
3 to look at that. So that's -- I would agree.

4 MR. LISTENBEE: Thank you.

5 CHAIRMAN CLELAND: Mr. Legg.

6 BY MR. LEGG:

7 Q Thank you, Mr. Anderson. I actually have some
8 specific factual questions that relate back to a
9 presentation you gave this Commission back in September --

10 A Um-hum.

11 Q -- prior to the public hearings being held in which
12 you provided us with some statistical information and some
13 fact as to what the JCJC does.

14 I'm going to draw your attention to some graphs
15 that are to your right, which I believe were prepared by
16 JCJC at the request of the Commission. I'm going to ask you
17 if you could just explain those briefly here on the public
18 record and what they represent?

19 A This is information that was shared with the
20 Interbranch Commission that compares Luzerne County rates
21 with respect to waiver of counsel and placement rates to
22 both on a statewide basis as well as other third class
23 counties.

24 So there were comparisons made and also a trend
25 information from 1997 up through 2008 with regard to the

1 issue of waiver of counsel and issues relating to
2 dispositions resulting in placement.

3 Q And in particular we say from 1997 forward. Is
4 there a reason that that date was selected, if you know?

5 A 1997 was the first year that Judge Ciavarella began
6 hearing cases in delinquency court in Luzerne County based
7 on our information.

8 Q And based upon what we've heard in testimony
9 relating to this Luzerne County instance, February, 2003 or
10 thereabouts is when PA Child Care was open, and July of 2005
11 western PA Child Care was opened?

12 A That's correct.

13 Q Those would be the two entities that have been
14 attached or linked to Ciavarella and Conahan. Can you tell
15 when you look at those particular -- that data that the JCJC
16 prepared can you tell me whether or not Judge Ciavarella had
17 high placement rates prior to that time as compared to the
18 rest of the state?

19 A Yes. Judge Ciavarella had high placement rates
20 prior to that time. And I think it -- the data that we had
21 would show that Judge Ciavarella's placement rates were
22 higher than statewide averages and other counties, yes.

23 Q And did Judge Ciavarella also have high waiver of
24 counsel rates prior to the opening of PA Child Care?

25 A Yes, he did.

1 Q Would it be fair to say that Judge Ciavarella had
2 higher than average rates both in waiver of counsel and
3 placements from the moment he got on the bench until he left
4 the bench?

5 A Very -- very soon after that, I believe. Yes, I
6 think very soon after he came on the bench, whether it was
7 immediately I'm not sure, the data would bear that out. But
8 certainly very early on that information would be correct
9 based on what information was reported to us through the
10 Juvenile Probation Department, yes.

11 Q And when you look at that particular graph and that
12 data, was there any type of statistical significant jump in
13 February of 2003 when PA Child Care opened; or was it, as I
14 would say, business as usual in Luzerne County relative to
15 placements?

16 A I think with respect to placements it would be
17 difficult to discern with the exception of the number of
18 placements that particularly involved a new program opening.
19 But in terms of dramatic jumps in placement, I'm not sure
20 that the data really bear that out.

21 I mean, Judge Ciavarella had high placement rates
22 as was just discussed virtually from the time that he began
23 hearing cases. You will see some -- some increase there
24 that would have been seen as a dramatic increase that was
25 related specifically to the opening of the program as a

1 treatment program. And, again, these data don't reflect the
2 juvenile detention use, but the treatment side of the
3 program.

4 Q And you also looked at the number of children who
5 were placed in Luzerne County on behalf of the Commission in
6 terms of where they were placed, different facilities,
7 treatment facilities, and things of that nature?

8 A Yes.

9 Q Can you recall off the top of your head
10 approximately how many children roughly per year were being
11 placed out of Luzerne County?

12 A I'll have to -- let me look very quickly at that
13 see which char. Luzerne County, in the total number of
14 placements involving new allegations, would be from 1997
15 through 2008. 1997 there were placements of new allegations
16 of 88 youth in '97. And then moving forward, 83 in '98; 192
17 in '99; 152 in 2000; 135 in 2001; 313 in 2002; 330 in 2003;
18 down to 240 in 2004; 219 in 2005; 217 in 2006; 219 in 2007;
19 and then 148 in 2008. Which, as you're aware, Judge
20 Ciavarella stopped sitting in juvenile court in the late
21 spring of that year.

22 Q When you looked at the different facilities where
23 children were placed were there facilities other than PA
24 Child Care that the children were placed in?

25 A Yes, there were many other facilities. That

1 information is not specifically on these charts, but there
2 were -- there were many other facilities. And I think it --
3 it's accurate that Pennsylvania Child care was not -- was
4 not the primary place to which children were committed from
5 that county.

6 Q And that was my next question. Can you say as you
7 recall from looking at the statistics whether PA Child Care
8 was, in fact, the place where the majority of the children
9 went, or was, in fact, a place where some of the children
10 went, or minority?

11 A It's more accurate to state some of the children.

12 Q And do you know off the top of your head how big PA
13 Child Care would have been in terms of bed size or how many
14 children it could have had at any particular time?

15 A I would have to check that, but we do. But it was
16 -- it was not a particularly large facility compared to
17 large institutional programs.

18 Q In that meeting in September you had referenced a
19 little bit about what the JCJC does. And at one point in
20 time you actually got involved in approaching Judge
21 Ciavarella relative to his placement rates?

22 A I did.

23 Q Can you explain a little bit for the public record
24 how that came about and what the JCJC did, or you on behalf
25 of the JCJC did?

1 A That came about through an inquiry from
2 Representative Phyllis Mundy regarding placement rates and
3 the cost of those rates. Representative Mundy requested
4 information regarding placement rates and the comparison of
5 Luzerne County rates to other -- other counties. And I
6 compiled that information through our staff, presented it to
7 Representative Mundy, shared it with her, and then
8 subsequently spoke with Judge Ciavarella about the meeting,
9 the request that was made, and provided him with the
10 information that was provided to Representative Mundy.

11 Q What was the outcome of that particular meeting?

12 A With Representative Mundy?

13 Q No, with Judge Ciavarella?

14 A That was -- that was a telephone conversation. I
15 called him. We spoke about the -- we spoke about the
16 request that had been made. And as I recall he -- he shared
17 with me that, in fact, that the youth that were placed in
18 his court needed to be placed, and he only placed children
19 who needed to be placed. And that, you know, he cared a
20 great deal about -- about those decisions that he was
21 making.

22 Q And approximately when was that? Do you know?

23 A Yes. Excuse me. I'll get the exact date for you.
24 That was on March the 16th, 2005.

25 Q And just so people out there understand what your

1 function is and JCJC's function is, and the people may be
2 wondering why if you had these types of complaints why did
3 JCJC not do more? Can you explain a little bit more about,
4 you know, what your role is in this system in terms of JCJC
5 and what you can and cannot do?

6 A Well, our role is -- generally we have a role of
7 providing advice to juvenile court judges on all matters
8 relating to the care of delinquent and now more recently the
9 dependent children. And historically our provision of
10 advice has ranged to information about pending legislation.

11 We were very actively involved in the development
12 of our juvenile delinquency bench book. We developed the
13 legislative proposals that are the foundation for our
14 Juvenile Act and have done a lot of training around that
15 when our Act was changed in 1996.

16 We get calls every day in our office from probation
17 officers, occasionally from judges, dealing with how to deal
18 specifically with specific cases. So it's -- it's providing
19 advice to judges on problems that they're confronting on
20 issues that they're facing locally. That has been our
21 historic role.

22 Q It's fair to say you're advisory as well as a data
23 collecting agency?

24 A That's correct.

25 Q And you don't -- you didn't have any mandatory or

1 power, any ability to curb anything that Judge Ciavarella
2 would have been doing even if you disagreed with it?

3 A That's correct.

4 Q Now, as I recall at some point in time JCJC
5 prepared statistical data for the Juvenile Law Center filing
6 that was --

7 A We did.

8 Q -- a King's Bench Petition that was filed?

9 A We did.

10 Q How did that come about?

11 A That came about with a request that was made to us
12 from an attorney from the Juvenile Law Center who contacted
13 our agency and requested information, case specific
14 information on Luzerne County, specifically on waiver of
15 counsel. And our staff developed that information.

16 Q Would that have been information that JCJC had to
17 develop at that moment, or would that have been information
18 that JCJC would have had available already?

19 A We did not have that -- that information that was
20 ultimately shared with the Law Center developed. It was in
21 our system, but we did not have county specific data that
22 had been published in our annual report. So it was a matter
23 of going back and looking specifically at the Luzerne County
24 specific information. And we were also then looking at the
25 outcomes of those cases that -- where there were a waiver of

1 counsel, which also included the placement rate issue, or
2 the number of cases that involved placement, which was one
3 aspect of what the Juvenile Law Center was looking at.

4 Q So prior to the Juvenile Law Center contacting JCJC
5 to compile that data or that statistical analysis was there
6 anything about your annual reports or the statistics that
7 you did routinely maintain that caused any red flags or
8 bells to go off at JCJC about what was going on in Luzerne
9 County?

10 A Not -- certainly not with regard to waiver of
11 counsel. As I said earlier, that they did have -- they did
12 have high placement rates, but there were certainly other
13 counties that had high placement rates as well. So I would
14 say that our data did not cause alarms to go off with
15 respect to Luzerne County.

16 Q In other words, there was nothing about the
17 statistics themselves that stood out or made Luzerne County
18 appear drastically different, let's say, from other third
19 class counties or other counties?

20 A Their placement rates were higher, but we weren't
21 looking at that from the standpoint of an alarm going off.
22 That's certainly accurate.

23 Q Prior to the Juvenile Law Center filing their
24 petition what type of interaction did the JCJC have relative
25 to the AOPC in terms of the statistics and placement rates

1 or waivers of counsel or anything like that?

2 A With respect -- with respect to waiver of counsel,
3 I believe waiver of counsel rates were shared prior to the
4 adoption of the Rules of Juvenile Court Procedure when --
5 when the Juvenile Court Procedural Rules Project was first
6 initiated in early 2000, 2001 as a precursor in the adoption
7 of the rules.

8 So our data was, I believe, looked at during that
9 time. We have at various times provided information related
10 to research that may have been being conducted through AOPC,
11 but it was not on a regular basis that we were interacting
12 with AOPC around any aspect of our data.

13 Q So in other words, it wouldn't be a situation where
14 you would be referring certain data to the AOPC with any
15 concerns that maybe this needs to be addressed?

16 A No, we did not do that.

17 Q Since the filing of the Juvenile Law Center's
18 petition or since what has been revealed in Luzerne County,
19 has the juvenile -- or JCJC, have they begin -- is there any
20 tightening of the relationship with the AOPC in terms of
21 sharing data or indicating any troubling trends, or do you
22 see that in the future?

23 A Yes. We have met -- as I mentioned in the
24 testimony, I have met with the court administrator, my
25 detective, and several of his key staff already on this

1 issue of not just data but other issues, training and
2 broader issues beyond data. And we will be meeting again in
3 April, and we plan to meet on a regular basis thereafter to
4 discuss these and other issues, yes.

5 MR. LEGG: Thank you, Mr. Anderson. That's all I
6 have.

7 CHAIRMAN CLELAND: Mr. Horoho.

8 BY MR. HOROHO:

9 Q Follow up to those questions, Mr. Anderson, and
10 your statement about no alarms going off. I guess my
11 concern is as we move forward what do we have to review to
12 make sure the alarms do go off?

13 A Well, I think looking at -- I think looking at the
14 placement rates, particularly the issues of waiver of
15 counsel and placement rates. Now, we certainly will be able
16 to do that, and we will do that.

17 I think there is certainly the other check and
18 balance in terms of the process at the county level, in
19 terms of placements that that says in terms of how it's
20 funded it is through the needs-based budgeting process
21 through the Department of Public Welfare.

22 So there's other checks and balances there. But
23 what we will be doing will be working that information
24 specifically in conjunction with our court service visits to
25 counties and speaking with judges and probation officers

1 specifically about -- about their placement rates.

2 Q Well, is there any other organization in the
3 Commonwealth that collects the information on the juvenile
4 justice system other than yours?

5 A The Department of Public Welfare certainly has
6 specific information relating to placements that are paid
7 for through the needs-based budgeting process. So there is
8 information on placements and placement -- placement rates
9 probably as well that would be collected there.

10 Q Let me take you back to '02, '01 and '02, compared
11 to '03 and '04. You said in comparing those statistics with
12 the waiver of counsel and the disposition in Judge
13 Ciavarella's cases there weren't many changes, correct?

14 A Let me get the specific information. Placements on
15 new allegations in 2002 were 313, 2003 were 330.

16 Q Not much of a change. Nothing there that, as you
17 said, would raise a red flag or an alarm?

18 A Not -- not -- no.

19 Q Okay. Now, let me ask you, what additional data
20 would you have to receive or what additional analysis or
21 additional employees or personnel would you have -- could
22 have used at that point in time to determine if there was a
23 problem in Luzerne County to set up -- to set off, as you
24 say, alarms?

25 A Well, I think information to know whether there was

1 a problem with respect to that county or any other county to
2 make a judgement about that. The kind of information that I
3 think you would have to have would be very case specific
4 information around the types of cases that were coming into
5 court, the types of diversion opportunities that were being
6 considered, the prior record of the -- of the kids.

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

12 With the resources that we had at that time that we
13 currently have, that's a very different -- that's a very
14 different process then we're going through right now.

15 Q Yeah, I guess that's a pretty good segue to my next
16 question. 67 counties in Pennsylvania, some are very
17 parochial, some are very consistent in applying rules and
18 regulations and best practices. Is there an organization
19 you think exists in the Commonwealth now that could be the
20 best monitor to ensure that the rules and regulations in the
21 juvenile court system are being consistently applied and
22 also best practices being implemented?

23 A Well, I think clearly in terms of best practices
24 and juvenile courts and delinquency it is the Juvenile Court
25 Judges' Commission that should be in that role. I believe

1 we are in the best position to do that.

2 But I think the issue of monitoring the judge's
3 decisions and second guessing what the judges are doing
4 versus sharing best practices and ensuring that judges from
5 similar size counties or regionally are getting together and
6 are talking about resources, that's a very different issue.
7 And I think there are those -- there are those
8 opportunities.

9 But I think we want -- we want to encourage more of
10 that. I really believe that many judges who have become
11 engaged in our juvenile justice system have developed an
12 affinity for the work based on their relationships with
13 judges in other jurisdictions or their own courts who have
14 shared with them the importance of the work. And I think we
15 -- I think we need more of that.

16 Q And what additional rules do you think the JCJC
17 could take on to ensure that what happened in Luzerne County
18 would -- is not going to happen in any other county?

19 A I think certainly looking at the data that we have.
20 I think we need more timely -- more timely access to our
21 data than we're now getting. But we're -- I believe we're
22 on the verge of getting that. And I think communication --
23 specific communication about the data and what it means
24 locally with -- with the courts is something that we can --
25 we could be involved in and look forward to being involved

1 in.

2 MR. HOROHO: Thank you, very much.

3 CHAIRMAN CLELAND: Mr. Listenbee.

4 BY MR. LISTENBEE:

5 Q Mr. Anderson, you mentioned the -- in Pennsylvania
6 we have a system of strong judges. So it's still possible
7 in 2010 for a judge in a county to be very conservative and
8 to make decisions that end up with a large rate of placement
9 for juveniles in Pennsylvania; is that accurate?

10 A I think that is -- that is accurate. And there
11 certainly are judges that I've known over the years that
12 place juveniles coming before them in delinquency at higher
13 rates than judges in other jurisdictions. And I think
14 that's -- that certainly can still happen, certainly.

15 Q Is the best check on -- as you say, monitoring
16 judicial decisions or second guessing judicial decisions, is
17 the best check on that process really the appellate courts
18 and access to appellate courts through defense attorneys who
19 are well trained to file appeals and supervise the appellate
20 process? Is that the best route in the system that we have
21 set up here?

22 A Well, I think it's the best route in terms of
23 violations of the law. But I think that a strength of our
24 system is the power of the individual judge to craft a
25 disposition that that judge believes meets the risks and

1 needs that are presented in the individual case.

2 And so I think the issue of second guessing judge's
3 decision making, I think, is frankly a very controversial
4 decision. And I think that you will get different
5 philosophies. But the check and balance I think comes into
6 play in the county needs-based budgeting process as well as
7 what happened in the courtroom.

8 But every county, I believe, has an obligation to
9 work together to develop diversion opportunities, to develop
10 a philosophy that ensures that kids don't come into the
11 juvenile justice system if issues can be addressed outside
12 of that system.

13 And I think it's communicating on a continuing
14 basis that philosophy of the critical importance of that
15 juvenile delinquency record and the life long implications
16 of that record.

17 So it really takes every county to have a sound
18 juvenile justice policy and philosophy. So I think the
19 monitoring of activities in the courtroom where rights are
20 violated, absolutely, I think the appellate process is where
21 we have to go.

22 Q And you've included strengthening of Rule 512
23 relating to disposition hearings by articulating the
24 philosophy of the Juvenile Act in that recommendation there
25 so that the courts would have a clearer record upon which to

1 review the process.

2 So this -- is this intended to be one of your
3 strongest recommendations in terms of really clarifying that
4 process?

5 A It is. And I believe that that rule change, if
6 adopted, could go a long way to not only helping parents and
7 children to understand the purposes of the disposition, but
8 also to aid in appellate review if cases go up.

9 MR. LISTENBEE: Thank you.

10 CHAIRMAN CLELAND: Judge Uhler.

11 BY JUDGE UHLER:

12 Q You mentioned earlier that participation in the
13 juvenile case management system is voluntary?

14 A Yes.

15 Q Throughout the 64 counties. Should it be mandated?

16 A I don't know how we could mandate it because we
17 certainly couldn't pay for it. I think that -- I think over
18 time we will get participation probably from all the
19 counties eventually. And I think as the Common Pleas Case
20 Management System of AOPC evolves I'm certain that there
21 will be a close working relationship between the case
22 management system that we've developed for probation to
23 ensure that there is a smooth transition of that information
24 to the Common Pleas Case Management System if and when it
25 encompasses the delinquency system, which it does not now.

1 So I don't believe that we have to mandate the --
2 the JCMS as a way to accomplish that.

3 Q Is it currently an impediment that we do not have
4 full participation of all the counties at this point?

5 A I think it creates some difficulty with the
6 counties that do not utilize the JCMS. But I believe that
7 -- that in the near future I don't believe we should mandate
8 it. The counties that don't have the JCMS have to use their
9 own systems to get us the information in the way that --
10 that we have to have it received.

11 But even the counties that utilize the JCMS we're
12 still at the mercy of local IT professionals in those
13 counties to ensure that everything's in working order and
14 that they have the software and hardware they need to get us
15 the information.

16 So would it be better? Absolutely. But I -- I
17 would not recommend that we attempt to make it mandatory
18 because we could not pay for it.

19 JUDGE UHLER: Thank you.

20 BY CHAIRMAN CLELAND:

21 Q We're going to have some testimony tomorrow about
22 data collection and the use and limitations of data in
23 identifying particular problems. But you've mentioned the
24 additional resources that might be required by the Juvenile
25 Court Judges' Commission.

1 Do I take it that you -- your position is that you
2 don't have the resources now to analyze this data?

3 A My -- I think depending on what the -- the
4 responsibilities would be in terms of enhancing our
5 capacity, I think it would be accurate that we don't have
6 the resources currently to do a comprehensive analysis of
7 all the types of data that we talked about earlier and have
8 that available in a way to engage with the counties.

9 We certainly could get to parts of that. We can
10 get to it over time. But I do believe we would need
11 additional resources to do detailed analysis of the
12 comprehensive data that we have. I think that's accurate.

13 The exact amount of -- the number of staff, the
14 cost of those staff, I think we need more detail in terms of
15 exactly what we would be doing with that.

16 Q But the Luzerne County data that you generated for
17 the Juvenile Law Center would be an example of that. You
18 have that information in your database, but you didn't have
19 the resources or the staff to pull that out and understand
20 what it was?

21 A Right, yes. Now, I wouldn't -- could we have
22 pulled that out? Absolutely. Could we have identified
23 that? Should that have been an issue? Had we done that, we
24 could have pulled that out without additional resources and
25 published that information. But analyzing the case specific

1 information, looking at the individual cases and waiver of
2 counsel and where they went, that was not something that --
3 that we would be equipped to do on all counties.

4 CHAIRMAN CLELAND: If I have not done it already,
5 we'll make part of the record the data that has been
6 referred to by Mr. Legg's questioning and the letters
7 referred to in Judge Uhler's questioning.

8 Mr. Anderson, I thank you, very much for your
9 participation here today and the work that went into the
10 testimony that you've prepared for us and the
11 recommendations. Thank you.

12 MR. ANDERSON: Thank you.

13 CHAIRMAN CLELAND: We'll be in recess for 15
14 minutes until 10:45.

15 (Recess taken from 10:30 to 10:44.)

16 CHAIRMAN CLELAND: Good morning. We'll be back in
17 session. We welcome now this morning Robert Schwartz, who's
18 the Executive Director of the Juvenile Law Center. As we
19 all know, the Juvenile Law Center was at the forefront of
20 the litigation involving the juvenile justice scandal in
21 Luzerne County. Mr. Schwartz, welcome. If you'd please
22 stand and take the oath.

23

24 ROBERT G. SCHWARTZ, called as a witness, being duly
25 sworn, testified as follows:

1 CHAIRMAN CLELAND: Mr. Schwartz, welcome. You may
2 proceed.

3 MR. SCHWARZ: Thank you, Judge Cleland and members
4 of the Commission. Thank you for inviting me to share
5 Juvenile Law Center's views on the Luzerne County juvenile
6 court scandal and its implications for Pennsylvania juvenile
7 justice policy and practice.

8 The behavior of the judges and juvenile court
9 professionals in Luzerne County eroded confidence in the
10 rule of law, sabotaged the goals of Pennsylvania's juvenile
11 justice system, and harmed the very children the system is
12 supposed to help.

13 In some ways it was an aberration, but its
14 occurrence points to systemic failures that this Commission
15 must address. Over the past year many people in
16 organizations have helped to expose the egregious conduct in
17 Luzerne County, including Juvenile Law Center, the US
18 Attorney, this Commission, and the media.

19 Many narratives have emerged, some more powerful
20 than others. This morning I will discuss Juvenile Law
21 Center's thoughts on how to rebuild trust in the juvenile
22 justice system and the courts.

23 In today's testimony I will focus on issues that
24 must be addressed above all others, those related to
25 transparency and accountability. Juvenile Law Center will,

1 in the coming months, also share with the Commission and
2 public our thoughts on other issues that have emerged from
3 Luzerne that are not unique to it.

4 By way of background, Pennsylvania's juvenile
5 justice system is imperfect, but in general it is better
6 than most. When other states in the mid-1990s amended their
7 juvenile codes in wrong-headed, punitive ways, Pennsylvania
8 sought to hold youth accountable in developmentally
9 appropriate ways.

10 Pennsylvania put in place a regimen of balanced and
11 restorative justice. The state thus retained its goals of
12 treatment, rehabilitation, and supervision while increasing
13 attention to victims, to public safety, and to giving
14 delinquent youth the skills they need to become productive
15 citizens.

16 Pennsylvania retained in the Juvenile Act many
17 court principles, including the notion that youth shouldn't
18 be in the juvenile justice system unnecessarily. Many youth
19 can be diverted from it while still be taught to take
20 responsibility for misbehavior in which so many teens
21 engage.

22 The Luzerne County scandal thus comes packaged in
23 irony because the Commonwealth has long been considered a
24 national leader in the way it treats its young people
25 accused of crime.

1 In 2004, a year after cash began changing hands in
2 Luzerne County, the MacArthur Foundation selected
3 Pennsylvania to be the first state in which it would invest
4 millions of dollars as part of its Models For Change
5 juvenile justice reform initiative.

6 The Foundation felt that its investments could
7 accelerate the states pace of reform towards a more
8 effective, fair, rational, and developmentally appropriate
9 juvenile justice system.

10 There are many reasons that Pennsylvania has been
11 held in high regard. The state as a whole has had a
12 relatively low rate of incarcerating youth. Our
13 county-based system, tied to highly creative funding
14 incentives, has encouraged local innovation.

15 By giving broad powers to juvenile court judges
16 Pennsylvania created a system that is, in theory, highly
17 accountable. Juvenile courts can order a delinquent youth
18 to receive any service that is available to an abused or
19 neglected youth.

20 Our laws place a premium on using the least
21 restrictive method for achieving their goals, and there are
22 many opportunities to divert youth from the system or from
23 placement within it.

24 Pennsylvania's Juvenile Court Judges' Commission is
25 unique, and its's been an effective voice on the behalf of

1 child well-being.

2 Pennsylvania has already been a strong right to
3 counsel state. Indeed, the Juvenile Act, passed in 1972,
4 and rules promulgated by the Pennsylvania Supreme Court in
5 2005, give children a right to counsel from the time their
6 cases begin to the time they are closed.

7 Pennsylvania youth also have a right to
8 post-dispositional advocacy, which many states fail to
9 guarantee. All of these characteristics are assets.

10 Luzerne County, however, has shown us just how
11 fragile they are and how assets can so easily turn noxious
12 in the wrong hands. The strong judge modes works when
13 judges are attentive to the law. It didn't work in Luzerne.

14 The right to counsel can ensure that judges get
15 important information with which to decide cases consistent
16 with youth's due process rights. The right to counsel was
17 the illusory in Luzerne.

18 Diversion from the system recognized -- recognizes
19 that teens make mistakes, but that public safety doesn't
20 require every adolescent mistake to end up in court.
21 Diversion occurred rarely in Luzerne.

22 Luzerne County was a toxic combination of
23 for-profit facilities, corrupt judges, and professional
24 indifference. It was the love canal of juvenile courts. It
25 is unclear whether your recommendations will have a

1 superfund to support them, but they should point the state
2 to where it must invest to clean up the mess.

3 The Luzerne County juvenile court proved that
4 strong mandates alone are insufficient to ensure that youth
5 are treated fairly and that the law is followed. Reforms
6 must, of course, begin with the right mandates, but they
7 must also be accompanied by accountability and transparency.

8 The rule of law is meaningful only when it is
9 enforced, is obeyed, is documented, and is evident to
10 citizens everywhere. The five areas that I will address
11 this morning focus on linking mandates to transparency and
12 accountability.

13 I will discuss making the right to counsel
14 meaningful, ensuring a timely and effective system of
15 appellate review, opening courtrooms, and creating citizen
16 oversight, using data to provide transparency and
17 accountability, and requiring professionals to fulfill their
18 ethical obligations.

19 In the months ahead Juvenile Law Center will
20 publish reports on these five areas as well as other issues
21 that have emerged from Luzerne County. The reports will be
22 more comprehensive than today's testimony and will cover how
23 other states address these issues to ensure children's
24 well-being as well as fidelity to constitutional principles.

25 I don't know how Mr. Anderson went without taking a

1 single sip of water, which is a great feat that I can't
2 emulate, so please bear with me.

3 The right to counsel. The right to counsel is
4 significant for a host of reasons. One of the most
5 important is that children place great value on fairness.
6 There is a growing body of literature on procedural justice
7 explaining that youth more readily accept what happens to
8 them if they feel they are treated fairly. This is
9 something that parents understand. So should juvenile
10 courts.

11 Fairness includes giving kids and their witnesses a
12 meaningful opportunity to be heard. It includes court
13 orders that are proportionate to the offense. Fairness is
14 at the heart of justice, and fairness begins with the right
15 to counsel.

16 Lawyers help advance values of Pennsylvania's
17 juvenile justice system. They help probation officers and
18 courts identify youth who should be kept out of the system.
19 Lawyers help make sure that adjudications, if they occur,
20 are for offenses youth actually committed. They assist
21 courts in fashioning dispositions that advance the goals of
22 the Juvenile Act, are implemented in the least restrictive
23 manner, and are visualized to meet their client's needs.

24 In Pennsylvania, lawyers also ensure that youth are
25 safe when they are in placement, and that they are in

1 placement no longer than necessary.

2 Pennsylvania guarantees the right to counsel. The
3 Juvenile Act states, quote, a party is entitled to
4 representation by legal counsel at all stages of any
5 proceedings under this chapter, and if he is without
6 financial resources or otherwise unable to employ counsel,
7 to have the court provide counsel for him, end of quote.

8 State law expects that attorneys will be provided
9 to children so that counsel may advance all of the goals I
10 have mentioned.

11 Seven years ago Juvenile Law Center, along with the
12 American Bar Association and the National Juvenile Defender
13 Center, did an assessment of the right to counsel in
14 Pennsylvania that Jim Anderson spoke about in his testimony
15 earlier this morning.

16 We found justice by geography with high case loads
17 in many cases and waiver of counsel and funding for
18 children's lawyers varying wildly across the Commonwealth.
19 Juvenile Law Center today affirms the recommendations it
20 made in 2003 when we urged each branch of government to help
21 solve this problem.

22 American Bar Association juvenile justice standards
23 prohibit the waiver of counsel. Pennsylvania should follow
24 those standards. Pennsylvania should have an unwaivable
25 right to counsel.

1 Waiver of the right to counsel by teens is
2 particularly problematic. The MacArthur Foundation's
3 Research Network on Adolescent Development and Juvenile
4 Justice examined youth's capacities. It found that youth's
5 capacities changed through adolescence. Given their
6 immaturity, they are much less likely to make informed
7 decisions that consider risks and look to the future.

8 Youth need more support than adults to withstand
9 pressure to waive counsel. And as one scholar has written,
10 the problem becomes more acute when judges who advise youths
11 about their right to an attorney seek a predetermined
12 result, waiver of counsel, which influences both the
13 information they convey and their interpretation of the
14 juvenile's response.

15 Whether a child is eligible for a public defender
16 should not hinge on the parents' income. Every child should
17 be deemed indigent and entitled to a court-appointed lawyer.

18 We agree with the testimony that Jim Anderson
19 provided earlier today. While parents should obviously
20 always be free to retain counsel for their children, youth
21 should not have to depend upon their parents to have a
22 lawyer.

23 Luzerne County is the poster child for the view
24 that we shouldn't have to rely on parents to ensure that
25 their children have counsel. In Luzerne many parents were

1 told by lawyers, court personnel, or law enforcement that a
2 lawyer wouldn't make a difference, even if the charges
3 suggested risk of placement.

4 Many parents were told -- were not told about the
5 availability of a public defender, even if they were
6 income-eligible. Others were told that charges were so
7 trivial that nothing bad could happen to their son or
8 daughter. Under such circumstances why waste money on an
9 attorney? Still, other parents had brought the petitions
10 that led to the court hearings, creating an inherent
11 conflict of interest, and still others were angry with their
12 children for being arrested and wanted to teach them a
13 lesson.

14 Despite Pennsylvania's obligation through the 14th
15 Amendment to enforce the child's constitutionally guaranteed
16 right to counsel in delinquency proceedings, ours is one of
17 the mere handful of states that provides no state money for
18 indigent juvenile defense.

19 Other states range from paying 100 percent of the
20 cost of counsel to a smaller share. Pennsylvania pays
21 nothing. There was a brief period in recent years where the
22 Department of Public Welfare permitted counties to use Act
23 148 dollars to pay for defense counsel in a cost sharing
24 arrangement with the state.

25 This turned out to be ineffective because it

1 depended upon, A, DPW's interpretation of the Public Welfare
2 Code; and B, a county's willingness to pay its share to
3 trigger the state match. Pennsylvania needs a dedicated
4 funding stream.

5 Currently in many counties judges appoint the
6 lawyers who will appear in front of them. The Supreme Court
7 should take away that power. It is relatively simple to
8 have a panel of qualified attorneys with appointments coming
9 from a wheel.

10 The Supreme Court should work with the Juvenile
11 Defender's Association of Pennsylvania to create a system
12 that won't have lawyers fretting that zealous advocacy will
13 affect their next appointment.

14 Lawyers for kids are too important to leave to the
15 vagaries of local practice and people's guesses about costs
16 and benefits. The Commission should recommend that the
17 Juvenile Act be amended to prohibit waiver of counsel, the
18 General Assembly establish a dedicated funding stream for
19 indigent juvenile defense, while declaring in the Juvenile
20 Act that the right to court-appointed counsel should not
21 depend on parents' income, and the Supreme Court work with
22 the Juvenile Defender's Association of Pennsylvania on court
23 appointments so that judges won't be selecting the lawyers
24 who will appear before them in particular cases.

25 Providing lawyers makes appeals possible. Appeals

1 are a part of accountability. Appellate courts serve an
2 important role in guiding trial courts by interpreting the
3 law through affirming or reversing decisions made at the
4 trial level.

5 It is through the appellate process that the public
6 understands what statutes mean and how they are
7 appropriately implemented. The appellate process furthers
8 fidelity to the law and promotes uniformity across the
9 Commonwealth.

10 Appellate case law reduces justice by geography.
11 Unfortunately appeals routinely occur everywhere but
12 juvenile court. In juvenile court there are relatively few
13 appeals of adjudications, that is the findings of guilt, and
14 no appeals of dispositions. In part this is because
15 defenders have high case loads and lack of resources for
16 appeals, and because so many cases involve guilty pleas.

17 Even so, it is surprising that there are so few
18 challenges to findings of guilt because there are many
19 circumstances in which juvenile's records can be used
20 against them. It is less surprising, but equally harmful,
21 that so few challenges are made to dispositions.

22 Take H.T.'s case, which started Juvenile Law
23 Center's investigation into the Luzerne County juvenile
24 justice system. As the press has reported, H.T. was found
25 guilty of harassment for a MySpace parody. Judge Ciavarella

1 ordered her shackled and taken to a delinquency placement.

2 Under the facts of the case there's an obvious
3 question as to whether her conduct, in which she said that
4 she hoped the object of the parody had a sense of humor, met
5 the elements of harassment as defined by the Pennsylvania
6 Crimes Code.

7 If H.T. had been convicted as an adult, she would
8 have had a right to bail pending appeal. She would have had
9 a reasonable chance of having her conviction reversed. The
10 Rules of Appellate Procedure must provide a fast track for
11 delinquency cases with a meaningful opportunity for a stay
12 of disposition in appropriate cases.

13 Removing children from their homes and schools is a
14 traumatic event. It should not be difficult to fashion
15 rules that govern when stays should be granted. Not only
16 did H.T. lack a meaningful opportunity to challenge her
17 adjudication of delinquency, she had no opportunity to
18 challenge her out of home placement.

19 A system that operates under the rule of law must
20 give children like her a meaningful opportunity to challenge
21 both. They must also have a chance of prevailing when they
22 challenge the disposition or sentence. Unfortunately, given
23 current Pennsylvania law, it is unlikely that an appellate
24 court would have reversed the order that placed H.T. in a
25 delinquency facility.

1 While her disposition seems harsh to us now,
2 Pennsylvania appellate courts use an abuse of discretion
3 standard to review dispositions.

4 Under this standard virtually any reason Judge
5 Ciavarella would have given would likely have been affirmed
6 on appeal. Even if an appellate court reversed Judge
7 Ciavarella saying that placement was wrong, the win would
8 not have done H.T. any good unless she had a right to a stay
9 pending appeal.

10 The appellate process is so lengthy and cumbersome
11 that H.T. would have completed her sentence and been home
12 long before a Pennsylvania court ruled in her favor. If
13 juvenile courts are to be truly accountable, there must be a
14 fast track for appeals, a qualified right to a stay pending
15 appeal, and a standard review that provides meaningful
16 oversight of juvenile court dispositions.

17 In addition, of course, there also must be
18 knowledgeable lawyers available to work on appeals.
19 Furthermore, while H.T.'s adjudication was vacated by Judge
20 Ciavarella himself after Juvenile Law Center filed a Writ of
21 Habeas Corpus, other Luzerne County youth had no redress,
22 even if they had had lawyers at trial.

23 Many were already out of the system when corruption
24 was unearthed. If they had been adults, they would have had
25 access to a post-conviction procedure based on newly

1 discovered evidence or other statutory grounds.

2 As juveniles they had no legal recourse once the 30
3 day time limit for appeals had expired, which is why
4 Juvenile Law Center had to take the extraordinary step of
5 asking the Supreme Court to exercise its King's Bench
6 jurisdiction.

7 This Commission must address the futility of
8 appeals in juvenile court and the absence of alternative
9 post-adjudication relief. The Commission should recommend
10 that there be a fast track for juvenile appeals, not only
11 for briefing, but with a requirement that appellate courts
12 decide cases swiftly.

13 We agree with the JCJC recommendation that you
14 heard earlier that there be juvenile and appellate rules
15 that allow for stays of disposition in specified
16 circumstances; juvenile court judges state on the record how
17 their orders of disposition further the balanced and
18 restorative justice goals of the Juvenile Act, while
19 advancing as well the goals of treatment, rehabilitation, or
20 supervision, thereby permitting meaningful appellate review;
21 appellate courts adopt a standard of review for dispositions
22 that is stricter than abuse of discretion; the legislature
23 create a post-conviction avenue of relief for youth; and the
24 Supreme Court work with the Juvenile Defender's Association
25 of Pennsylvania to ensure that lawyers are available who can

1 take appeals.

2 Open courtrooms. There's a reason that the Bill of
3 Rights includes a right to a public trial. Over a century
4 before the US Constitution was adopted the West New Jersey
5 Charter nicely said that public courts of justice are
6 designed to ensure, quote, that justice may not be done in a
7 corner, nor in any covert manner.

8 Citizens have an interest in how justice is
9 dispensed. Defendants don't fare well in a star chamber.
10 On the other hand, there is also a reason that juvenile
11 courts have generally been closed. The court has
12 historically been therapeutic, and its currency is often
13 highly sensitive information about a child.

14 In Luzerne County, however, privacy served the
15 interests of the judges, not the children. How then should
16 these competing interests be resolved? The trend is to make
17 juvenile courts presumptively open. Pennsylvania should
18 follow the trend.

19 Juvenile courts should be presumptively open for
20 all children regardless of offense or age. As with older
21 children charged with serious offenses, the law should allow
22 for circumstances when prosecutors or defense attorneys
23 agree that the proceedings be closed, and the juvenile court
24 itself shall maintain confidentiality of sensitive records
25 or reports.

1 Opening juvenile courts is important, but it may be
2 inadequate to curb abuses of power. Indeed, as you heard
3 earlier, Pennsylvania opened courtrooms to the public in
4 1996 in cases of older youth charged with serious offenses.
5 Juvenile courts prepared themselves for hordes of press and
6 public. No one showed up. It seemed that the continuing
7 business of juvenile court is just not that interesting.

8 There are additional ways to ensure that there are
9 eyes on the court. Local court watch programs have
10 introduced courts, and the problem of children and families,
11 to citizen observers. Ombudsmen could observe juvenile
12 court and respond to citizen concerns.

13 The Commission should recommend that the General
14 Assembly amend the Juvenile Act to make juvenile courts
15 presumptively open; the Pennsylvania Supreme Court direct
16 each county juvenile court to establish a local court watch
17 program or appoint an ombudsman that can respond to citizen
18 complaints about court processes, manners, or other issues
19 that would not be addressed by appeals.

20 Using data. This Commission's recommendations
21 should be accompanied by a data reporting requirement. When
22 we at Juvenile Law Center suspected that large numbers of
23 youth in Luzerne County were waiving their right to counsel,
24 as you heard earlier, we turned to the Juvenile Court
25 Judges' Commission.

1 JCJC collects enormous amounts of data from
2 counties and annually publishes a report that is a mix of
3 county specific and aggregate statewide data. Juvenile Law
4 Center asked for waiver of counsel data from Luzerne, and
5 JCJC unflinchingly provided it.

6 When we were concerned about high placement rates
7 in Luzerne county, we looked to DPW. Each agency was
8 supportive and worked hard to retrieve data that was useful
9 to our case, but it should have been easier.

10 Last year was the 50th anniversary of JCJC's
11 creation as an advisory board that sets standards, collects
12 and publishes data, and administers a small grant-in-aid
13 program.

14 JCJC has a tiny staff. It is severely underfunded.
15 But it has enormous influence because of its knowledge,
16 integrity, and skills. JCJC clearly should have more
17 capacity and power to analyze and publish more data like
18 those that helped Juvenile Law Center uncover the Luzerne
19 County scandal.

20 The public will benefit from having realtime data
21 provided by DPW about placement rates too. The current
22 Luzerne County Commissioners, no doubt, are thrilled to
23 discover that they are saving millions of dollars each year
24 now that children aren't being fast tracked to oblivion.

25 Having county data in realtime will also enable

1 JCJC and DPW to flag trouble spots in the state, much like
2 local jurisdictions are able to do with data based reviews
3 of child abuse cases or crimes.

4 The Commission should recommend that the Juvenile
5 Court Judges' Commission have the resources it needs to
6 collect, analyze, and publish realtime data that would
7 expose future Luzerne Counties; and that DPW have the
8 resources it needs to collect, analyze, and publish realtime
9 data about placement rates.

10 Other professionals. Children in Luzerne County
11 were treated as commodities with a for-profit provider as
12 purchaser and the juvenile court as supplier. The Luzerne
13 County juvenile court was in the business of inventory
14 control. This was done publicly and without comment from
15 other professionals in the room.

16 This is hard to believe, and it is one of the
17 sadder threads of this sordid story. Imagine if judges were
18 openly selling stolen goods in the courtroom. You can bet
19 that professionals in the room would have blown the whistle
20 in a second. But summarily moving shackled kids from the
21 courtroom to the cell room didn't bother anyone. This is
22 one of the great tragedies of Luzerne County.

23 This is not merely a failure of legislatures to
24 fund counsel or judges to appoint them. It is not just
25 about the absence of fast track appeals or the lack of data.

1 It takes a community to hurt a child.

2 Many people have asked us how could so many
3 professionals allow Luzerne County's judicial abuses to
4 continue? Prosecutors, defenders, other lawyers, probation
5 staff, all claimed to be at the unlit periphery of this
6 scandal.

7 Sometimes though what happens at the periphery is
8 the heart of the matter. It took an unprecedented breadth
9 and depth of indifference by all of these individuals to
10 allow the Luzerne County scandal to occur.

11 As author Amy Bach has written in her recent book
12 about systemic failures in America's criminal courts,
13 ordinary injustice results when a community of legal
14 professionals become so accustomed to a pattern of lapses
15 that they can no longer see their role in them. If these
16 professionals were in the dark, it was because they chose to
17 be there.

18 Pennsylvania has Rules of Professional Conduct for
19 lawyers. Rule 3.8 could not be clearer governing the
20 obligations of prosecutors in the courtroom to make
21 reasonable efforts to assure that the accused has been
22 advised of the right to and the procedure for obtaining
23 counsel and has been given reasonable opportunity to obtain
24 counsel.

25 Rule 8.3 declares that, quote, a lawyer who knows

1 that a judge has committed a violation of applicable rules
2 of judicial conduct that raises a substantial question as to
3 the judge's fitness for office should inform the appropriate
4 authority.

5 It may be hard for a defense attorney or prosecutor
6 to spot an isolated case of judicial misconduct. Luzerne
7 County involved half a decade's worth of abuse, however.
8 And if there was ever a situation in which lawyers fell
9 short of their professional obligations, this was it.

10 For reporting to be meaningful, the Judicial
11 Conduct Board must operate quickly, especially when there's
12 an allegation of criminal activity by a judge. Given the
13 JCB's responses to this Commission, it's hard for an
14 outsider to know what the JCB knew about Judge Ciavarella or
15 to come forward now with proposals that will make a
16 difference.

17 It is clear, however, that if attorneys had done
18 their jobs and reported their suspicions, the JCB would have
19 fewer excuses to hide behind. The JCB's shortcomings mirror
20 those of the attorneys in the courtroom. I anticipate that
21 we will have more to say on this topic when we issue more
22 complete reports.

23 It is troubling, however, that judges who control
24 children's lives were allowed to stay on the bench while
25 they were the targets of a serious criminal investigation.

1 Juvenile probation officers could have raised their
2 voices too. They are in a difficult position because they
3 work for judges. But probation officers in Pennsylvania
4 have enormous authority. They must not only have permission
5 to report their bosses, but a requirement that they do so
6 with whistle blower protection.

7 The Commission should refer attorneys who were
8 regularly in Judge Ciavarella's courtroom and who failed to
9 report Judge Ciavarella to the JCB to the Disciplinary Board
10 of the Supreme Court of Pennsylvania, which should address
11 the individual and collective responsibility of those
12 attorneys under the Rules of Professional Conduct 3.8
13 and 8.3; recommend that the Pennsylvania Council of Chief
14 Juvenile Probation Officers establish enforceable standards
15 for probation officers regarding reporting of judicial
16 misconduct, and that the Supreme Court and General Assembly
17 provide whistle blower protection.

18 The hearings of this Commission have gripped the
19 public. You have made an impressive start. Juvenile Law
20 Center staff looks forward to working with you and is
21 preparing reports on the issues about which I spoke today
22 and on issues that time didn't permit me to address.

23 These include the need to ban for-profit detention
24 centers in Pennsylvania, to eliminate shackling of children
25 in court, to revisit our laws on the use and expungement of

1 juvenile records, and to end inappropriate referral of
2 school children to juvenile court for typical, minor
3 misbehavior.

4 Some of our recommendations will involve money.
5 Many costs could be avoided by the reduction of unnecessary
6 referrals to juvenile court and by reducing unnecessary
7 institutional placements.

8 Ironically, Luzerne County is also the poster child
9 for how to avoid unnecessary costs. The county has saved
10 millions of dollars in placement costs since Judge
11 Ciavarella stepped down. Surely some of those dollars can
12 pay for the quality counsel for kids.

13 In the course of making its recommendations this
14 Commission will have some difficult choices. You will have
15 to accommodate or choose between competing values as you
16 strive to improve the system without undermining its
17 strengths.

18 No single recommendation will prevent future
19 Luzernes. The recommendations that Juvenile Law Center
20 advance this morning must work together to ensure that the
21 Commonwealth's children will benefit from the rule of law.

22 Many of our clients and their parents are looking
23 forward to testifying before you in February in
24 Wilkes-Barre. It is fitting that you finish your public
25 hearing phase by hearing again from those who were hurt the

1 most.

2 They and we wish you well as you help youth heal
3 and bring a generally solid Pennsylvania juvenile justice
4 system to new heights of effectiveness, fairness, and
5 accountability.

6 BY CHAIRMAN CLELAND:

7 Q Thank you, Mr. Schwartz. I'm sure there's going to
8 be specific questions about your testimony, but I'd like to
9 begin by asking you a more philosophical question. And by
10 its nature it's going to be a little bit broad-based, and
11 I'm not sure I can focus it in exactly.

12 A We'll narrow it down together.

13 Q You've talked a lot about the back end of the
14 process. There are a lot of things that a judge does or
15 can't do because of the things that happen on the front end
16 of the process.

17 Decisions about what charges are filed by the
18 police, what victims choose to prosecute or not to
19 prosecute, what the District Attorney decides is worthy of
20 court intervention, and what charges that he decides to file
21 or she decides to file.

22 And depending upon the nature of the charges, as
23 you know, a whole range of penalties is implicated. Then
24 there's the question of what the defense strategy is and
25 whether to contest charges, admit charges. And if so, which

1 charges.

2 So that implicates the whole philosophy what the
3 juvenile court is for. Are they just criminal courts for
4 little people, or is there some other function that our
5 courts -- juvenile courts should serve that we may have lost
6 sight of in this age of getting tough on crime. Do you have
7 a view on that?

8 A Yeah. The juvenile court has historically existed
9 to be a less punitive vision of the criminal court with an
10 eye towards promoting opportunities for kids to succeed in
11 life and not be permanently disabled by misconduct done
12 during the teenage years.

13 It's a court of second chances. It's a court in
14 which treatment, supervision, and rehabilitation play a role
15 in protecting the public and in increasing the chances that
16 the kids coming before the juvenile court will become
17 productive members of that public.

18 So the question really is how to balance what is a
19 punitive function. Because it was made increasingly
20 punitive in the 1995 special session and in the 1996
21 amendments. Even as we retained the therapeutic aspects of
22 it and introduced balanced and restorative justice, how to
23 do that in a way that's fair and helps the court distinguish
24 who should be in and who should be out.

25 Q It's not just the court who should be in and who

1 should be out.

2 A Well, it's all of the players associated with it.
3 I use the court very broadly.

4 Q All right.

5 A So the court has eyes and ears through its
6 probation arm, and probation officers divert youth all the
7 time. Prosecutors are involved in the diversion of youth as
8 well through youth aid panels or citizen groups that divert
9 youth. Probation officers do the same.

10 It's difficult, I think, for juvenile court judges
11 to control who gets referred to them, but even that is not
12 impossible.

13 There are examples now around the country. Judge
14 Tesky in Clayton County, Georgia; Judge Hunt in Jefferson
15 County, Alabama, in which judges entered in protocols with
16 local school districts, their school resource officers, and
17 school-based probation officers to reduce referrals of
18 school-based misbehavior in very dramatic ways to the
19 juvenile court that have made schools safer, reduced the
20 juvenile court load leaving it to attend to kids who do
21 serious things in school, and giving kids chances that they
22 might not have had otherwise.

23 So there are active roles that courts can play with
24 local referral sources as well. It's not the court alone.
25 Every part of the system has an obligation. But at the end

1 of the day it's the court that serves as gatekeeper.

2 And many judges in the State of Pennsylvania have
3 served that role. When special ed. kids have been
4 unnecessarily referred for behavior that is so clearly tied
5 to their disabilities that judges wonder why is this child
6 here, and work to get the kid back to an appropriate setting
7 in which the juvenile justice system won't have a
8 significant role.

9 And there are lots of opportunities at every stage
10 for the court to divert and to rethink about where this kid
11 belongs, how the public can be held safe -- can be kept
12 safe, and how this kid can be held accountable in
13 appropriate -- developmentally appropriate ways consistent
14 with the kid's age, disabilities, cognitive skills, and the
15 like.

16 Q So what you're suggesting is it's not just judges
17 that have to rethink what the juvenile courts are, but
18 school officials, probation officers, District Attorneys,
19 defense counsel, specific groups as to what they -- what the
20 expectations of the juvenile court is?

21 A That's absolutely right. That's a community
22 discussion. I mean, it's very interesting that as part of
23 the Models For Change effort in Berks County Judge Grim led
24 a community-based effort which Arthur Grim, the senior judge
25 who's chair of the Juvenile Court Judges' Commission, that

1 brought community folks -- community providers together,
2 school officials together in a way and said what's the
3 appropriate use of the court for different kinds of
4 misbehavior? And ended up developing diversion programs and
5 places like evening reporting centers that Jim Anderson
6 spoke about earlier that have led to a huge reduction in
7 referral to the detention center, a downsizing of that
8 center, saving the county \$2 million a year. The juvenile
9 probation is now reploting into prevention services.

10 So there are lots of ways that the court -- the
11 court is in a unique position as a leader, but it's not the
12 only player at the table. I agree with you absolutely on
13 that.

14 CHAIRMAN CLELAND: Thank you. Mr. Mosee.

15 BY MR. MOSEEE:

16 Q The Juvenile Law Center took the position that a
17 juvenile should not be able to waive the right to counsel.
18 But in your testimony you site two factors, pressure on the
19 juvenile, and the availability of counsel as being what
20 would really be problematic with regard to the whole waiver
21 issue.

22 If we were able to prohibit the pressure and ensure
23 the availability of counsel, would it still be necessary to
24 preclude the waiver of counsel?

25 A Yes, it would be. The one thing that we can't

1 change are the developmental factors that enter into a kid's
2 judgement about whether or not to waive. It's not only
3 cognitive. The research that I spoke about earlier
4 addresses what the psychologist calls psychosocial factors,
5 the ability to think about short term and long term cost and
6 benefits. Gee, I just want to go home.

7 It's one reason there's so many false juvenile
8 confessions, for example. It's because kids are very
9 interested in very short term gain. They're often
10 influenced by adults in the room who guide them to a
11 decision that may not be in their best legal interest.

12 So I think the most efficient and direct way to
13 attend to the developmental status of kids to address the
14 pressures that they face and to streamline the system is to
15 have just a routine appointment system.

16 And I appreciate JCJC's testimony this morning, but
17 I think it complicates matters to set up a system where a
18 kid has to talk with a lawyer before waiving counsel and
19 must have a standby lawyer. I don't see that we gain a
20 whole lot by creating inefficiencies in that regard when we
21 could have a lawyer in the room working with the kid
22 directly in the first instance.

23 Q Well, I guess one of the questions I would have,
24 and maybe it's a philosophical question, is if there is no
25 right to waive counsel, was it ever a right? Is there any

1 right that isn't waivable?

2 And let's think about this. There are potential
3 situations where a juvenile may, in fact, not want to be
4 represented by a counsel; and we would, and sort of the
5 other side of the coin, be forcing them to be represented.

6 A I think that's a fair point. And I actually find
7 it highly ironic that we -- at Juvenile Law Center we've
8 been asserting children's rights on almost every level for
9 the last 35 years -- that we would take this position.

10 But this one really does guarantee the exercise of
11 all other decisions. And it's -- a kid is not going to be
12 in a position to know, well, gee, you know, um, I'm now at
13 the adjudication stage. Maybe I should have a lawyer now.

14 When does it come in and out? Gee, the
15 disposition, what are my options here? How do I negotiate
16 this? I think this is ironically a much more complicated
17 system than its adult counterpart.

18 And expecting kids ages 10 through 17 to be able to
19 make judgements at the different stages about waiver is, I
20 think, beyond their capacities, and in the end putting them
21 at a huge disadvantage; and the courts at a huge
22 disadvantage; and, frankly, the prosecutors at a huge
23 disadvantage. Because it's much easier for everyone to have
24 the lawyers having these conversations rather than having --

25 Q And I certainly agree with you. I've never tried a

1 case where a juvenile was unrepresented. Nobody in my
2 division has. But what I found to be attractive about the
3 Juvenile Court Judges' Commission's recommendation was that
4 instead of pressuring a kid to waive, they're actually
5 pressuring the kid to have counsel by appointing standby
6 counsel at those critical stages. Do you think that's
7 problematic?

8 A Well, as I understood their testimony is there
9 would be a conversation with counsel in the room about
10 whether the kid should waive counsel. And if the kid waived
11 counsel, under the JCJC proposal there would be standby
12 counsel appointed.

13 I think that's problematic. I think it's just too
14 cumbersome. I think it's unnecessarily expensive in terms
15 of time. And also it's unclear to me how much knowledge the
16 standby -- that counsel in the room advising about the
17 waiver of counsel will have.

18 It's very, very different than when a child would
19 have met with me when I was doing this work day-to-day 30
20 years ago in our office and making a decision about how to
21 proceed in a case, whether to plead guilty, whether to move
22 forward. There just -- it's a different kind of
23 relationship building, and it just can't happen at the bar
24 of the court with standby counsel advising the kid.

25 Q It seems to me that whenever you discuss the

1 adolescent brain development information in this kind of
2 context that you risk having to apply the position that we
3 take with regard to counsel to all situations where
4 juveniles would waive rights.

5 Do you see that as problematic? You already
6 mentioned admissions. We then have to prohibit a juvenile
7 from admitting.

8 A Not if the child was represented. I think that we
9 get into a situation where quality counsel guiding the youth
10 would be able to protect against unwise waiver of rights.

11 Now, obviously there are going to be situations
12 where that's not going to happen. But that's part of the
13 colloquy then that the judge will enter into with the youth
14 when a decision is made about an admission, to figure that
15 out. And there actually will be cases where a kid is not
16 competent to admit.

17 There is increasing evidence about kids 10, 11, 12
18 year olds and their capacities to enter into admissions or
19 participate in the trial process. So there would be more
20 individualized questions. One would expect defense counsel
21 would be able to raise those questions in appropriate
22 circumstances.

23 Q When I talked about the right to waive and
24 situations where a juvenile might, in fact, want to exercise
25 that right you can certainly recall that in Philadelphia,

1 without mentioning the group, we have been forced to
2 prosecute members of groups which had a physical --
3 philosophical bent against anything that had to do with the
4 so-called establishment.

5 And so they didn't want to be represented by
6 counsel, certainly not court-appointed counsel. What would
7 you do for a juvenile in that situation?

8 A In that hypothetical I would still say that one
9 can't let the one case out of a thousand swallow the rule.
10 Before you -- before you know it, it becomes 10, 20, 100
11 cases. There's a lot more. Then you get Luzerne. You
12 start carving out exceptions, I think at our peril, on this
13 issue. Because in juvenile court this is just too important
14 for both what you do as prosecutors, for the information
15 that judges need to decide cases, and for the child's future
16 and well-being.

17 You know, I suppose that if we sat down, we might
18 be able to construct a very complicated way of addressing
19 that one out of a thousand case. But I think if I were
20 starting here, it would certainly be with a unwaivable
21 right.

22 Q Some would take the opposite position that we ought
23 to prescribe a rule that would address both potential
24 scenarios, and the standby counsel would not just be
25 appointed at those critical stages, but the standby counsel

1 would be available to consult with the juvenile before he or
2 she waived. Would that satisfy your concern?

3 A Well, I can see in an extreme case like the one you
4 described out of Philadelphia some years back where one can
5 say, okay, this is the way we're going to do it, and have a
6 different kind of colloquy and wrap that kid in all sorts of
7 back-up support by counsel.

8 But I would nevertheless have, as a presumption in
9 our law, that there be an unwaivable right and let the
10 courts and the prosecutors in those isolated cases figure
11 out how to deal with standby counsel. I wouldn't try to
12 legislate that in advance.

13 MR. MOSEE: Thank you.

14 CHAIRMAN CLELAND: Mr. Listenbee.

15 BY MR. LISTENBEE:

16 Q Yes. Mr. Schwartz, as regards waiver of the right
17 to counsel, one of the most problematic areas that we have
18 in the Commonwealth, I believe, involves children who are
19 present for review hearings, often who have court-appointed
20 counsel, and court-appointed counsel, because of the fee
21 structure, have failed to appear in court for review
22 hearings. They might allege that they didn't get notice.
23 But we have in Philadelphia County, and in other counties
24 across the Commonwealth, this kind of situation.

25 How would the rule that you're advocating apply in

1 situations like that?

2 A Well, in a reasonably funded system counsel would
3 have compensation commensurate with the responsibilities
4 under the law. The work load that we expect of counsel in
5 these cases starts at the beginning of the case and
6 continues through review hearings.

7 So we should pay them to do those. We have the
8 same problem in dependency court, I would add. Because
9 there are regular reviews, sometimes quite frequently. As
10 in Allegheny County, dependency court every 90 days or so.
11 And we expect that counsel should be paid to be able to do
12 the job of investigation, meeting with counsel, and showing
13 up.

14 A kid needs to know that his or her lawyer is
15 there. He needs to know who the lawyer is. And, frankly,
16 with respect to your office, there have been many
17 circumstances where post-disposition advocacy has led to
18 kids telling you about abuses in institutions, has led to
19 juvenile courts in response to your motions removing kids
20 from unsafe facilities.

21 And this happens when kids build a trust with
22 people who are advocates for them. So the rules are fairly
23 clear right now that lawyers are not expected to withdraw
24 from these cases, that they are expected to appear.

25 I don't understand why judges aren't, in

1 Philadelphia in the example you described, holding those
2 lawyers accountable. But at some point they also have to
3 pay them to do the jobs they're expected to do under law.
4 And that's related to the funding stream and the fact that
5 it's unclear right now in the Commonwealth where
6 compensation for attorneys for kids is supposed to come
7 from.

8 Q Okay. Mr. Schwartz, you asked several -- you made
9 several recommendations regarding the appellate practice,
10 and I'd really like to try and ask a few questions about
11 them because I'd like to get -- sort of drill down a little
12 bit and see if I can understand them a little bit.

13 First recommendation, there should be a fast track
14 for juvenile appeals, not only for briefing, but a
15 requirement that appellate courts decide cases swiftly.

16 When you say fast track for juvenile appeals did
17 you have a time framework in mind in terms of what you're
18 recommending?

19 A The one that Jim Anderson suggested today struck me
20 as an outside limit. The 90 days strikes me as reasonable.

21 Q That would be 90 days for?

22 A To the point of a decision in the case.

23 Q What would the briefing schedule be there, 30 days?

24 A It would have to be quicker than 30 days.

25 Q Quicker than 30 days?

1 A Pretty clearly. And, again, given how many of
2 these cases end up in pleas and how many end up in
3 adjudications, and where the facts regarding the
4 dispositions are not really in dispute, I don't expect that
5 there would be a floodgate opening of appeals. But I think
6 to the extent that there are appeals where there are
7 contested matters that there needs to be, as in any case
8 involving a kid, whether it's child protection issue, child
9 custody issue, or the kind of child custody issue that is in
10 play in a delinquency case, a fast track in which time
11 doesn't work against a kid.

12 That's the major difference that we have with kids
13 cases and those of adult cases. The facts are changing on
14 the ground while appellate courts are deciding cases,
15 whether that's a child custody dispute between parents or
16 where should this delinquent youth be? And that's time that
17 kids can't reclaim.

18 Q Okay. Also you've indicated or recommended that
19 there be juvenile and appellate rules that allow for stays
20 of disposition in specified circumstances. What did you
21 have in mind in terms of specified circumstances?

22 A I think there has to be some intersection of
23 serious offenses and the amount of evidence in support of
24 the adjudication, the chances of success on appeal. There's
25 a fairly standard list that courts use and that the criminal

1 courts use in figuring this out.

2 On the adult side at some point the offense becomes
3 too serious and the kid is -- or the adult is exposed to too
4 much time to allow bail pending appeal. But it's also
5 recognized, and in fairly less serious offenses, the
6 community will not be jeopardized. I think this is the
7 hardest -- actually the hardest challenge for the Commission
8 and for the appellate system, and the most difficult part of
9 the testimony that I offered today.

10 Because if indeed a kid is appropriately
11 adjudicated delinquent and the order of disposition is
12 necessary for that person's well-being and for public
13 protection, one wants it to happen as soon as possible.

14 On the other hand, if there's an inappropriate
15 adjudication, as we saw in Luzerne, or the placement is not
16 matched to the kid's needs or the necessities of public
17 protection, we don't want kids removed from home, school,
18 friends unnecessarily for any amount of time. Those are
19 very, very traumatic.

20 How we balance that must relate to some measure of
21 the evidence presented, the seriousness of the offense, and
22 the likely probability of prevailing on appeal.

23 Q Your third recommendation seems pretty consistent
24 with Mr. Anderson's recommendation regarding dispositional
25 orders. Would you concur with that?

1 A Absolutely. I mean, we -- appellate courts should
2 know the basis for a juvenile court's decision. And the
3 juvenile court decision should explain why this disposition
4 is consistent with Pennsylvania's Juvenile Act's purpose of
5 balanced and restorative justice. And I think that that's
6 -- if you -- if that was -- if that had happened in Luzerne
7 County, far fewer kids would have been placed.

8 Q Mr. Schwartz, on this fourth recommendation can you
9 please explain to me exactly what you mean? Appellate
10 courts adopt a standard of review for dispositions that is
11 stricter than abuse of discretion.

12 What standard are you actually recommending, and
13 who actually would develop such a standard and implement
14 such a standard? Would the courts do it? Would the
15 legislature do it? Aren't there some constitutional issues
16 involved with the legislature getting involved? How do you
17 see this coming about?

18 A I think the appellate courts are going to have to
19 develop this. And this would be a recommendation to the
20 appellate courts. Scholars on the bench would take a look
21 at the way cases are decided and say -- as Judge Spath did,
22 for example. Many of you may remember him. I'm looking
23 around. You're probably not old enough.

24 Back in the mid 70s when the Juvenile Act was first
25 -- was first passed and took a look at the cases involving

1 dependency cases. How do we review these cases? What
2 standards do we use? There needs to be clear and convincing
3 evidence of X. There needs to be clear necessity for Y.

4 This is the way we interpret the statutes because
5 the stakes are so high. To have an abuse of discretion
6 standard is essentially an anything goes standard, and we
7 need something better than that. Precisely in what way is
8 something, I think, should emerge through an appellate
9 practice.

10 And one reason that we have so many problems is
11 that there are no appeals now in which folks can raise this
12 issue.

13 Q Do you know of any scholarly articles or any
14 reports or any other courts that have developed such a
15 standard so that we can take a look at it and better inform
16 ourselves about it if we're going to be making a
17 recommendation?

18 A I'm sure we could find some. We'll get back to
19 counsel. And the reports that we issue next month we'll try
20 to address that issue more clearly.

21 Q Okay. As regards to reports, before I finish up
22 these last two points, the Commission has set a date of
23 March 15th for reports to come in. So we'll have a chance
24 to review them and incorporate them into the recommendations
25 so that our report can be completed by May 31st. So are you

1 planning to make additional submissions prior to that date?

2 A Yes, we will.

3 Q You've also recommended that the legislature create
4 a post-conviction or post-disposition, if you will, avenue
5 of relief for youth. What exactly did you have in mind
6 there?

7 A Something that would have enabled the children of
8 Luzerne County to go to The Court of Common Pleas and then
9 the Superior Court to say we have new evidence that
10 something was amiss in Luzerne County, and that there were
11 violations here that should be addressed. And even though
12 30 days have elapsed, this adjudication should not have
13 happened.

14 Q Are there any statutes in the nation that you know
15 of that might serve as a model for us to take a look at so
16 that we could make a recommendation based upon best
17 practices or even suggestions or articles that we could take
18 a closer look at?

19 A Yes. I mean, there are some post-conviction
20 opportunities from other states. We've done some research
21 on this looking at Ohio, Oklahoma, Montana, and some other
22 states also have some post-adjudication relief mechanisms,
23 and we'll share those with the Commission.

24 Q Okay. Thank you. Finally, you make a
25 recommendation that the Supreme Court work with the Juvenile

1 Defender's Association of Pennsylvania to ensure that
2 lawyers are available who can take appeals.

3 By way of full disclosure, I'm president of the
4 Juvenile Defender Association of Pennsylvania.

5 A Congratulations.

6 Q Thank you. What did you have in mind in terms of
7 the court working with the Juvenile Defender's Association?
8 Are you recommending a statewide appellate office that would
9 address issues of appeal thereby making it possible for
10 children and families to have a direct access to the
11 appellate courts?

12 Are you recommending regional offices? Are you
13 recommending that a small law firm of lawyers be established
14 to handle appeals? What are you recommending?

15 A We're not. I think that you should work that out
16 with the Supreme Court. Because I think that there's going
17 to be some combination. I mean, in Philadelphia, for
18 example, you have an appellate unit that is vigorous and
19 effective.

20 Outside of Philadelphia there may be a regional
21 need. So I think it's a question of, again, cost and
22 benefits. We're not proposing trying to create an appellate
23 unit in every defender office in every county. We -- we do
24 think that our recommendations need to be conscious of cost
25 and to be reasonable.

1 But there are states, for example, Minnesota, that
2 has a statewide juvenile defender appellate unit, and all of
3 the local defenders refer cases there. That is a model.
4 One could do any of the models that you suggested and make
5 them effective. We were not proposing a particular one.

6 Q Okay. In your testimony you've used the term
7 justice by geography. And that's a reference in articles
8 that have been used across the Commonwealth. I think based
9 upon your findings in this report, the assessment that was
10 done, which I always carry close to me so I'll know what's
11 going on, but can you explain what you mean by justice by
12 geography in kind of practical terms so we can understand it
13 better? And without making reference to any specific
14 counties, but can you kind of give us an idea as to what you
15 mean?

16 A Well, we refer to justice by geography as being
17 that the outcomes in -- for similarly situated kids in --
18 charged with similar offenses with similar backgrounds are
19 treated wildly differently because of local practice.

20 The juvenile court rules are designed to address
21 that to a large degree and to have things more uniform. But
22 the issue, for example, on waiver of counsel. If every
23 county has a different indigent standard, as pretty much
24 happens right now, and a different way of determining
25 indigency in deciding whether or not it would be a

1 court-appointed counsel, then a child who commits an offense
2 on one side of City Line Avenue in Philadelphia will have a
3 different likelihood of having a court-appointed counsel
4 than a child on the other side.

5 We really shouldn't have a system that is that
6 random. That's justice by geography.

7 Q Okay. And, finally, you have made reference to the
8 presumption of indigence and also waiver of counsel. And
9 your recommendation is that these be implemented by way of
10 the Juvenile Act.

11 Mr. Anderson, preliminarily though, he agreed with
12 some questioning that suggested that they be implemented by
13 way of a change in the procedural rules. What is your
14 recommendation in comparison to Mr. Anderson's? Why is one
15 better than the other, or should both be done? Is there a
16 third way that we should do it, maybe Supreme Court rules?
17 How do you recommend that we deal with this issue?

18 A I think they should both be done. The virtue of
19 the rules is that they could be done quickly because I know
20 that many of you are on the Rules Committee.

21 The virtue of the statute was implied in your
22 questions to Mr. Anderson earlier, which is that you have a
23 standard that is durable and declares to the world what
24 Pennsylvania stands for.

25 Our juvenile code has a different clout than our

1 rules. What do you do in Pennsylvania? This is what our
2 law says, and it shouldn't be easy to change. Rules can be
3 implemented quickly, but they can also be changed easily as
4 well.

5 MR. LISTENBEE: Thank you, Your Honor.

6 CHAIRMAN CLELAND: Judge Woodruff.

7 BY JUDGE WOODRUFF:

8 Q Mr. Schwartz, again, thank you for coming here
9 again before us. I do have one particular -- two particular
10 questions, but I just want to do some background before we
11 get there.

12 First, in regard to waiver of counsel, I think I'm
13 in agreement in regard to waiver of counsel for juveniles.
14 As in Allegheny County we do not allow any juveniles to
15 waive counsel. But after listening to your presentation,
16 your testimony, as well as JCJC, as I look at it the most
17 important thing is our children, our juveniles, have
18 counsel. And I think under both presentations that is the
19 underlying case in principle I think we all agree with.

20 And one of the underlying things of that is the
21 immaturity, perceived immaturity, of our juveniles. We know
22 that their brain functionality has not advanced to that of a
23 general adult. And I think that's probably one of the
24 reasons as well why we have juvenile court.

25 With that being said, I guess as I think Mr.

1 Listenbee asked you before, but if you can sort of reiterate
2 that to me in regard to stays for juveniles. And in your
3 testimony you indicated you would request stays of
4 disposition in specific circumstances. What would some of
5 those circumstances be?

6 A Again, this is a sort of intersection of the weight
7 of the evidence, the nature of the kids, disabilities
8 treatment needs, likelihood of prevailing on appeal on the
9 questions that are being raised, and whether or not it would
10 matter, for example, whether the disposition starts two
11 months from now, three months from now, or does it have to
12 start today?

13 I mean, there are lots of kids who are out awaiting
14 trial. There's a time gap. We know that kids function
15 before they get to court in the community quite often, those
16 who aren't detained. So we're already making judgements and
17 have seen kid's ability to function.

18 I think at the end of the day it's going to be
19 factors that courts should consider and that the appellate
20 courts will have to review on whether stays should be
21 granted. There are states that allow for stays pending
22 appeal.

23 Frankly, there aren't many stays pending appeal in
24 juvenile court across the United States. But it's taking a
25 look at the mix of factors in individual cases and what has

1 happened between the time of arrest and the time of -- and
2 the time of the decision that will give you, as a judge,
3 Judge Woodruff or Judge Cleland reviewing that at the
4 appellate level, enough information to say let's leave the
5 kid at home right now while we decide this. Or, no, the
6 chances are this is going to be an affirmation. Let's get
7 the kid into treatment right away.

8 Q Okay. I guess one of the concerns that I have is
9 when there's an adjudication, prior to the adjudication
10 occurring obviously there's time that passes by. The
11 majority of that time comes from the number of cases that we
12 have in juvenile court actually getting into the courtroom.

13 So, yes, the kid is normally at home unless there's
14 a serious offense, firearm offense, where they may be
15 detained during those times, but we try to keep that to a
16 minimum. One of the -- one of the issues that we have is
17 continuation of cases for variety of different reasons.
18 That too, I believe is a problem, particularly juvenile
19 court having cases continued, whatever the reason may be.

20 As we look at juveniles I think we can all agree
21 that if a juvenile is adjudicated of an offense or if they
22 had committed an offense, one of the things that needs to
23 take place is the disposition needs to start immediately.
24 As we know juveniles, their attention span is not very long
25 at times.

1 And so if they committed an offense, you know, two,
2 three years ago, now all of a sudden they're going to be
3 held accountable for that. You have to take into account
4 those two or three years that have passed because now, you
5 know, the juvenile may be taken away from the home, and it's
6 difficult for them to comprehend why that is.

7 And so in regard to a stay, two questions. One is
8 in regard to the probability of that appeal prevailing as
9 well as those other circumstances, you know, who do you have
10 in place or what agency or Committee is going to make that
11 determination? As well as how do you balance, you know,
12 that additional time from adjudication to the actual
13 disposition to take place?

14 In Allegheny County, if there's an adjudication, we
15 take -- we do the disposition that same day. Very rarely is
16 disposition deferred unless it calls for a placement of this
17 child and we just don't have a place right then.

18 So, I guess, you know, who's going to make the
19 determination as to whether an appeal has a potential to
20 prevail, what type of agency? And how do you balance if
21 there is a stay with the mind of a juvenile?

22 A Well, at the end of the day it's going to be the
23 appellate courts that will take a look at whether or not a
24 stay should be granted. That's true in almost any
25 situation. You go to the trial court first and then the

1 appellate court.

2 Q Okay. If I could just interject right there. That
3 being the appellate court, again, we're talking about fast
4 tracking. And we're talking about juveniles, you know, 90
5 days. You know, if they're particularly placed outside the
6 home, and those the ones I'm most interested in, in 90 days
7 they could be on their way back home.

8 So, you know, is that stay part of the appeal by
9 the time it comes back? Are you indicating that a response
10 to the request for a stay be done sooner than those 90 days?

11 A Well, the response has to be done sooner. I mean,
12 the response has to be done fairly quickly. And by having
13 quality counsel, you as the trial judge and the appellate
14 courts should have information sufficient to make a
15 judgement about whether to grant a stay.

16 I would say that I do absolutely appreciate the
17 point you're making about the child who should have -- who
18 needs a very prompt response, and the juvenile court system
19 is designed to operate quickly, and should.

20 At the same time we're here today because hundreds,
21 if not thousands of kids were placed outside of their homes
22 who shouldn't have been who had no appellate relief and
23 wouldn't have had any relief even if they had lawyers to
24 take appeal because they would have been home by the time
25 their cases were heard. That's the problem here.

1 Q Okay.

2 A Yeah. So it's -- at some point there's going to be
3 an obvious balancing test. And as I said, I don't think
4 this is going to happen in that many cases given the way we
5 operate and that most -- as the criminal courts, most of
6 these cases are pled out in any event. But there does need
7 to be an opportunity for kids who are aggrieved, as the
8 Luzerne County kids were, to say wait, you know, I don't
9 want to go to Pennsylvania Child care. It's not right for
10 me.

11 BY CHAIRMAN CLELAND:

12 Q Could you envision a system of appellate review
13 that would not have all the procedural protections that an
14 adult criminal case might have given the unique nature of
15 the juvenile court that would expedite the appellate review
16 of some -- of some sort, in effect, a second opinion?

17 A Sure.

18 Q But not have a full blown procedural due process
19 and all the other things that have slowed down the appellate
20 review process?

21 A There could very well be ways to fashion a more
22 streamlined system than this.

23 Q Okay. You wouldn't oppose that?

24 A No.

25 CHAIRMAN CLELAND: I think I may have cut you off,

1 Judge Woodruff.

2 MR. WOODRUFF: No. Thank you.

3 CHAIRMAN CLELAND: Mr. Legg.

4 BY MR. LEGG:

5 Q Mr. Schwartz, a few questions. First, would you
6 agree with the general statement that the strength of
7 Pennsylvania's juvenile systems, or one of the strengths, is
8 the independence and strong juvenile judges that can make
9 decisions based upon the individual needs of each juvenile?

10 A Yes.

11 Q And would you agree with me that that type of
12 system requires us to provide or place a substantial amount
13 of trust in the juvenile judge?

14 A Yes.

15 Q And also provide that judge with discretion to make
16 decisions based upon individual circumstances?

17 A No.

18 Q Okay.

19 A Not unfettered discretion.

20 Q Well, I would agree they can't abuse their
21 discretion.

22 A But it's discretion structured by principles and
23 hierarchy of decision making. It's -- a judge ought not to
24 be thinking about more restrictive when less restrictive is
25 available as an example. There are sequences. So, of

1 course, we want judges to use their wisdom. That's why
2 they're judges. But this is not an anything goes system.
3 And if the rule of law is to operate, there needs to be some
4 structure within which discretion is exercised.

5 Q But you wouldn't be advocating in the juvenile
6 system creating guidelines like they have in the adult
7 system?

8 A That's correct.

9 Q So obviously judges in the juvenile system have, I
10 would say, more discretion let's say than a judge sentencing
11 in the adult system?

12 A They do.

13 Q And in both cases, whether it's the adult system or
14 it's in the juvenile system, generally review of sentencing
15 or disposition orders is an abuse of discretion standard?
16 You would agree with that?

17 A Well, it is now for sure. But, of course, on the
18 adult system, with sentencing guidelines and parameters for
19 judges, it operates really to regulate judges who operate
20 outside those boundaries.

21 There are really almost no boundaries right now set
22 in law for decisions related to disposition in juvenile
23 court. So while there is an abuse of discretion standard,
24 it's very ad hoc, and that creates problems.

25 The idea of tying dispositions to the purposes of

1 the Juvenile Act through statements of wisdoms and
2 correlating, you know, whether or not the evidence supported
3 the findings, I mean, one could have whether -- a standard
4 that says ask whether there was substantial evidence to
5 support the judge's finding that required out of home
6 placement and elevate the inquiry when kids are removed from
7 their homes.

8 Abuse of discretion is too wide open in a system
9 that has nothing to structure it.

10 Q Well, I guess I'm concerned because an appellate
11 court won't have the opportunity to observe the juvenile,
12 won't have the opportunity to see testimony, won't have
13 opportunity to observe witnesses to understand the victim
14 impact on a personal level.

15 And I guess how is an appellate court going to
16 second guess the decision of a juvenile court judge,
17 assuming that they follow the proper procedures and
18 considered all the appropriate criteria which would be what
19 is necessary to exercise the discretion?

20 What's an appellate court going to do to second
21 guess that? How would that be an effective mechanism of
22 protecting juvenile rights?

23 A Well, the way it would be done is by examining the
24 opinion that the trial judge arrived at in support of the
25 order and to see whether there's evidence to support what

1 the trial judge claims. If that had happened in Judge
2 Ciavarella's court, you would have seen a lack of evidence
3 to support the claims that he would have made, and it would
4 have been fairly easy for an appellate court to do a second
5 guessing.

6 The appellate court would rely on your brief in
7 support of the judge's decision. This is -- I think we're
8 not asking the judges to work without a net entirely. I
9 mean, you're providing information. The trial judge is
10 providing information.

11 And as I said, this is not going to happen in that
12 many cases. There's just not that many cases that go to
13 trial where the evidence is in dispute in juvenile court.

14 Q I want to move on to the JCJC issue.

15 A Yeah.

16 Q Because you indicated that you wanted more funding
17 for JCJC to do something, and I guess that's what I'm trying
18 to get at. Because Mr. Anderson testified this morning and
19 indicated that they have the capacity to do what they do
20 now.

21 And, in fact, they had the capacity to do what the
22 JLC asked them to do when a specific statistical question
23 was asked. They don't have the capacity to do
24 individualized, in other words, to go out and look at
25 particular cases in counties.

1 Is that what you're advocating for them, to have
2 some type of investigator to go out when they see
3 statistical anomalies, to go out and investigate those? I
4 guess I'm trying to verify what do you think they need more
5 funding to do?

6 A Well, from my perspective as an outsider observing
7 the agency I think they do need more staff to examine data
8 and to identify statistical anomalies and to ask questions
9 of judges about the reasons for those anomalies.

10 They may be perfectly acceptable reasons, but we've
11 been approached over the last year by statisticians who've
12 given us lots of different charts to show how they would
13 have used data and how it might be used if you had a regular
14 review process and enough staff to take a look at what was
15 going on. It doesn't mean that anomalies are wrong. It
16 just -- it does suggest that an inquiry ought to be made.

17 The other thing is that JCJC -- well, wouldn't
18 necessarily be reviewing individual cases. There are -- in
19 a new way it currently does speak to judges when it hears a
20 saying that a truant is being held in an adult jail, for
21 example, or that there's a complete misuse of power. It
22 uses its influence that way. I think it ought to be able to
23 have more authority than just its reputation.

24 And this is very complicated, because as Judge
25 Cleland mentioned at the start of the day, JCJC is in the

1 Executive Branch and is connecting to judges. It ought to
2 be able to have some direct contact with the Supreme Court
3 in some way even -- I think it's sort of a mess of a flow
4 chart, and this is just my take on this.

5 But that if it's going to have authority over
6 judges, as the public, I think, incorrectly expected it had
7 when Luzerne broke, then the lines of authority need to be
8 cleaned up.

9 Q So when you said, yes, the statisticians provide
10 some type of analysis, those would be things JCJC's not
11 doing right now?

12 A Well, they're collecting data, but there's a lot of
13 county based in, and it doesn't get aggregated. They don't
14 have time for it. There's not necessarily a demand for it,
15 and they're not surveying the whole landscape.

16 We asked -- we, the Juvenile Law Center, asked for
17 very specific data so we could do some comparisons of
18 Luzerne County waiver rights with respect to other counties,
19 and they responded to the individual request very
20 effectively.

21 But if they had staff, and as some states do, to do
22 data reviews and take a look at what's going on in different
23 jurisdictions in the state, they might have been in a
24 position to identify problems earlier. Right now they've
25 been eviscerated with budget cuts, and they're just not

1 healthy for them or for kids.

2 Q Well, the data's there though. We can agree on
3 that? And there's other agencies, such as the Auditor
4 General or agencies like that that can crunch data to do
5 periodic reviews of what is out there, right?

6 A Sure. But you actually do want people with some
7 knowledge about what data means to be doing the data scans
8 because they know what questions to ask. And my guess is
9 that the Auditor General wouldn't fall into that category.

10 Q When you went to the JCJC that was for purposes of
11 filing a King's Bench Petition, or getting the data to file
12 the King's Bench Petition?

13 A Yeah. Getting the data to help us decide whether
14 to file the King's Bench Petition.

15 Q And obviously what JCJC provided to you confirmed
16 that a King's Bench Petition needed to be filed?

17 A That's correct.

18 Q And just for the public, can you explain what a
19 King's Bench Petition is and why the JLC filed it?

20 A Yes. It is, as you might gather, an archaic kind
21 of petition going back to royal times. It's a power that
22 the State Supreme Court has to exercise its equity
23 jurisdiction to see that justice is done. And it's where
24 people go who have no other relief through the normal
25 channels of appellate or post-conviction procedure.

1 As I mentioned, most of the kids that we had
2 contact had long since passed their 30 days for taking an
3 appeal. Many of these kids wanted their lives back. The
4 only way that can happen, we thought, was if we found a
5 court with the authority to do something about what had
6 happened in Luzerne. And the King's Bench Petition was the
7 vehicle we chose for that.

8 Q And you had statistics from the JCJC to indicate
9 that over half, I guess, of the juveniles in Luzerne County
10 were basically being denied the right to counsel?

11 A That's correct.

12 Q And at that point it was your -- your belief that
13 they were basically not having proper colloquies and things
14 of that nature?

15 A Yes. It was not only our belief, but as we began
16 to get transcripts and take a look at what was happening we
17 saw that they were not.

18 Q So you knew that their rights were being violated?

19 A Yes.

20 Q Okay. And, in fact, as I recall several agencies
21 actually joined in that King's Bench Petition, the Defendant
22 of Public Welfare and Office of Attorney General?

23 A Yes. We asked both whether they would file Eachus
24 briefs in support of the petition, and both did. Not taking
25 the position, again, on, you know, how kids who do bad

1 things are treated, but very much taking a position that all
2 kids should be treated fairly.

3 And DPW, I think, was also very much concerned
4 about the very high placement rates emerging out of Luzerne.

5 Q And that petition, from what I recall, was filed
6 April, 2008?

7 A April -- yes, April, 2008.

8 Q Was denied with a puerperium decision in January of
9 2009?

10 A That's correct.

11 Q Was there anything about that experience -- you
12 didn't make any recommendations about King's Bench powers or
13 the supervisory authority of the Supreme Court. Is there
14 anything about the frustration that the JLC underwent in the
15 King's Bench process after doing all this homework,
16 verifying that children's rights were being violated, having
17 the Office of Attorney General and the Department of Public
18 Welfare joining your petition, is there anything with
19 reference to that experience that you would recommend in
20 terms of any recommendations we would make to the Supreme
21 Court about their supervisory authority, especially through
22 its King's Bench powers?

23 A I think our recommendations would go to a broader
24 set of issues about oversight of juvenile courts along the
25 lines that we talked about today and appellate remedies. We

1 were very disappointed, obviously, in the first decision of
2 the State Supreme Court in January of last year. Especially
3 since we had the support of the Attorney General and support
4 of the Department of Public Welfare.

5 And to this day we don't know what happened there.
6 I would say since February of last year the court has
7 responded with great energy, and to the fact that over 6,000
8 cases have been reversed I think is an important statement
9 that they've made in the way that they've exercised their
10 jurisdiction.

11 Q And, finally, with respect to the Judicial Conduct
12 Board, based upon the investigations that the Juvenile Law
13 Center had done and through the statistics as well as
14 reviewing transcripts, did the Juvenile Law Center file a
15 complaint relative to Judge Ciavarella and his antics or his
16 behavior in the courtroom with the Judicial Conduct Board?

17 A We did not.

18 Q Okay. Would you agree you criticized some of the
19 professionals in the courtroom for not complying with Rule
20 8.3? Do you believe that the Judicial Law Center, when you
21 became aware of the denial of rights and the judge's
22 conduct, should have filed a complaint with the Judicial
23 Conduct Board under Rule 8.3?

24 A We thought we could expose it more quickly on
25 behalf of our kids through a public declaration directly

1 with the Supreme Court.

2 Q The King's Bench Petition?

3 A With the King's Bench Petition.

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

5 BY MR. HOROHO:

6 Q We don't plan it this way, but Mr. Legg has let me
7 give a good segue to a couple follow-up questions. You
8 touched on this a little bit in your testimony today and
9 your report, but my recollection when you presented to this
10 Commission a number of months ago you talked about the bar,
11 the local bar, being very intimidated. Do you -- can you
12 tell us what the -- what your basis was for that statement?

13 A The basis for the statement that the local bar was
14 intimidated was just words that we had heard from families
15 who had made contact with lawyers in Luzerne and who were
16 told it's not going to make any difference. Don't bother.
17 There's nothing we can do.

18 So we -- I don't know if intimidate is the right
19 way -- right word precisely, but certainly the local bar
20 wasn't feeling its oats, didn't feel that it could do very
21 much in the face of a judge who was going to ignore them.

22 Q Not necessarily to defend their inactions, but if
23 they felt intimidated, do you think that may have been one
24 of the reasons why they didn't meet their professional
25 obligations?

1 You seem to be very tough on the local bar here.
2 You say the lawyers fell short of their professional
3 obligations. Given the -- you know, the sense of what was
4 happening in Luzerne County at least as you've indicated,
5 that they were intimidated, would that be a reason why you
6 think they didn't report this conduct?

7 A No. I don't think that they were intimidated in
8 the sense of fearing for their physical well-being.

9 Q How about their financial well-being?

10 A Well, I think that they certainly felt intimidated
11 with respect to their financial well-being in failing to
12 speak up in open court. But the vehicles that -- for
13 attorney -- judicial discipline have available are quite
14 secret. The -- that attorneys weren't speaking up there is
15 very, very surprising.

16 Q Do you have any reason to believe that the reasons
17 that the lawyers did not speak up to the appropriate agency,
18 which you would agree with me would be the JCB, would be a
19 belief that they thought that JCB was ineffective to handle
20 these complaints?

21 A I don't know. I mean, I've reviewed many of their
22 testimony in front of this Commission, and I have not
23 gathered from the testimony of many of the lawyers who
24 appeared before you that that was the reason. I don't think
25 that they gave the JCB much support.

1 Q Are you proposing any changes to the Rules of
2 Professional Conduct?

3 A Not today.

4 Q Do you think that your -- one of your
5 recommendations is referring lawyers who readily appeared in
6 Judge Ciavarella's courtroom to appear in front of the
7 Disciplinary Board. How do you feel or why do you feel that
8 recommendation would curb abuses that occurred in Luzerne
9 County?

10 A Well, I think it would curb future abuses if
11 lawyers knew they had a responsibility to speak up, that we
12 are indeed officers of the court in the noblest sense. The
13 -- this was a collective effort. While there are
14 individuals, I think, who clearly came through, the
15 Disciplinary Board will sort out this collective
16 responsibility and give meaning to 8.3.

17 We have very important responsibilities. I don't
18 want to pontificate or, you know -- I wasn't there. The
19 number of cases, the number of years, the sort of savagery
20 with which the kids were removed from the court in Luzerne
21 County is just something that -- at least from where we sit,
22 it's something we just don't understand how folks could just
23 avert their eyes and say that this was not my problem.
24 There is nothing to be done about it. And I'm not in a
25 position to sort out the various degrees of responsibility

1 for that, but the Disciplinary Board is.

2 Q You heard me talk to Mr. Anderson about the alarms
3 not being triggered and the red flags not going up. And
4 you're obviously familiar with the number of counties and
5 the complexities that exist because of that number of
6 counties.

7 Do you think there is a current organization that
8 has the ability or potential ability to act as an oversight
9 -- a very effective oversight group or to monitor to ensure
10 that rules and regulations in the juvenile justice system
11 are being consistently applied and best practices are at
12 least being considered, if not implemented?

13 A I don't think there's an organization that
14 currently has the capacity to do that. It's one reason that
15 we suggested local courts develop ad hoc remedies, including
16 citizen observers or ombudsmen.

17 You know, if -- one has to be careful because you
18 really don't want ombudsmen hearing complaints about the
19 adjudication or disposition, but one -- you can imagine an
20 ombudsman hearing information about kids being dragged away
21 from court, not being able to speak with their parents,
22 whether people really knew whether they were waiving their
23 rights to counsel, what was going on as a pattern and
24 practice, and then bring that to the attention of the
25 Supreme Court.

1 I mean, there -- there are multiple ways of doing
2 this, and we're not suggesting single solutions. But I
3 think there is a lot of local innovation to be done to give
4 citizens trust in the juvenile courts.

5 And I think in the interest of the local courts and
6 prosecutors, defense attorneys, to have citizens see more of
7 what they do and to see how they do it. Because so many
8 folks here do it very well. And that would restore trust a
9 lot more than having no vehicle for redress, which is pretty
10 much what folks have now.

11 MR. HOROHO: Thank you.

12 CHAIRMAN CLELAND: Mr. Allen, last question.

13 BY MR. ALLEN:

14 Q Yes. I have a question, and this involves
15 adjudications. Do you know of any states or anywhere that
16 has juries during adjudications?

17 A Yes. There are roughly 10 to 12 states that
18 provide jury trials in some instances in juvenile court.

19 Q Do you think that might be an appropriate thing for
20 our Commission to consider as a possible remedy to some of
21 the issues that occurred in Luzerne County?

22 A Yes. I think on the fact finding stage that there
23 will be certain circumstances where a jury would be
24 absolutely appropriate. Especially where the stakes are
25 high for the adjudication and the collateral consequences is

1 great. I don't think it would happen very often. It
2 doesn't in those states. Or it doesn't in adult court now
3 for lots of different reasons. But given the turn that the
4 Juvenile Act did take in 1996, jury trials we think would be
5 appropriately -- appropriate in some cases.

6 MR. ALLEN: Thank you, Mr. Chairman.

7 CHAIRMAN CLELAND: That was the next to last
8 question. Judge Uhler.

9 BY JUDGE UHLER:

10 Q Did you give any consideration whatsoever to filing
11 a complaint to the Judicial Conduct Board at any stage of
12 your involvement with this issue?

13 A Not that I recall, but I'll -- I'll turn to my
14 colleague to say whether my memory is -- no, we didn't. We
15 decided to go directly publicly, as I mentioned to Mr. Legg,
16 to -- through the King's Bench route.

17 Q Was there any reason for not doing so?

18 A Well, we actually thought that the sort of exposure
19 of Judge Ciavarella's conduct was so great that it would
20 have been apparent to everyone that he was abusing his
21 power. Looking back now, I suppose we could very well have
22 filed something with the Judicial Conduct Board too. But
23 right now at the time we felt very strongly that we could
24 get fairly quick relief for hundreds of kids immediately
25 through the King's Bench route.

1 JUDGE UHLER: Thank you.

2 CHAIRMAN CLELAND: Thank you, Mr. Schwartz, for
3 your participation here today and for the recommendations
4 that you have presented to us.

5 MR. SCHWARTZ: Thank you.

6 CHAIRMAN CLELAND: We'll be in recess until 1:15 if
7 we can pull this off. So we'll reconvene at that time.
8 Thank you.

9 (Recess taken from 12:14 to 1:07.)

10 CHAIRMAN CLELAND: Good afternoon, and welcome to
11 the afternoon session of this day of hearing by the
12 Interbranch Commission on Juvenile Justice. We're pleased
13 to have with us as this afternoon's lead-off witness, Mr.
14 Richard J. Gold, who is the Deputy Secretary of the Office
15 of Children, Youth & Families of the Pennsylvania Department
16 of Welfare.

17 His is a huge responsibility. He's responsible for
18 the management and oversight of Pennsylvania's child welfare
19 system, including juvenile justice services, foster care,
20 and adoption, as well as all statewide abuse prevention
21 efforts.

22 Secretary Gold, thank you, very much for being with
23 us here today. If you would please stand to take the oath.

24

25 RICHARD J. GOLD, called as a witness, being duly

1 sworn, testified as follows:

2

3 THE WITNESS: I do.

4 CHAIRMAN CLELAND: Thank you, sir. Judge Uhler.

5 BY JUDGE UHLER:

6 Q Mr. Gold, I understand you prepared a statement
7 that you'd like to offer. Would you provide that statement
8 to us, and then we'll follow it up with questions? And
9 thank you for coming and participating with us.

10 A Thank you, Judge. Good afternoon, Judge Cleland,
11 Judge Gibbons, Judge Uhler, Judge Woodruff, and members of
12 the Intergovernmental Commission on Juvenile Justice.

13 I am Richard Gold, Deputy Secretary for the Office
14 of Children, Youth & Families of the Pennsylvania Department
15 of Public Welfare, and I appreciate the opportunity to meet
16 with you today.

17 With me today is Ted Dallas. Ted is the Executive
18 Director, Secretary -- Executive Deputy Secretary for the
19 Department of Public Welfare whose office oversaw the
20 financial audits that are described in my testimony.

21 In background, Pennsylvania's child welfare system
22 is state administered and county operated. Approximately 80
23 percent of the funding comes from a combination of state and
24 federal funds. The remaining 20 percent is required match
25 funding by the counties.

1 DPW, through the Office of Children, Youth &
2 Families, administers the child welfare program through the
3 development and issuance of policies and procedures and
4 through its licensing and monitoring processes.

5 In Pennsylvania state law prescribes the
6 administration for the child welfare system, including
7 providing the minimum standards and the reimbursement of
8 funds to the counties for their provision of approved
9 services.

10 Our primary focus is always on the safety,
11 permanence, and well-being of the children we serve.
12 Through annual inspections of county children and youth
13 agencies, as well as licensed private child service
14 agencies, our office reviews the services received by the
15 children and families to ensure the quality of services
16 provided and purchased.

17 Additionally, through reviews of annual county
18 budget requests and subsequent expenditure reimbursement,
19 OCYF monitors the financial commitment and spending of a
20 county with regard to the children and youth services they
21 deliver.

22 The financial review focuses on the reasonable --
23 reasonableness and necessity of the county request and
24 whether the county budget plan focuses on the state's goals
25 of increasing safety, improving permanence, safely reducing

1 reliance on out-of-home care, particularly residential
2 institutional programs, and decreasing re-entry into
3 placement.

4 In addition to the reviews and inspections
5 conducted by the Office of Children, Youth & Families, the
6 Department's Bureau of Financial Operations acts in the
7 capacity of the Department's internal auditors and conducts
8 in-depth financial audits of counties and licensed
9 facilities to determine actual cost of services and to
10 ensure that the agency costs are reasonable, consistent with
11 applicable cost principles, and are cost effective.

12 The BFO audits are conducted according to an annual
13 agency audit plan which is derived through long term
14 department planning or at the inception of an issue or
15 problem identified by a departmental office.

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

22 At that time OCYF had fully licensed the facility
23 as we determined that it met all state requirements for the
24 operation of a safe and secure facility. However, after
25 Judge Conahan's October, 2002 pronouncement departmental

1 representatives reviewed the facility and concluded that the
2 River Street Center was safe and satisfactory to house
3 juveniles.

4 Subsequent to the Department's announcement Judge
5 Ciavarella, I hope I said his name correctly, criticized the
6 Department's opinion, as well as our plan, to renew the
7 River Street Center's license saying that the facility had a
8 multitude of problems.

9 In December, 2002 Judge Ciavarella's criticism was
10 followed by Judge Conahan's official action to remove all
11 funding from the county budget for the River Street Center
12 and his stated intention of closing the facility.

13 Thereafter, the court returned the River Street
14 Center's license to the Department closing the facility.
15 This action ended our licensing oversight of the River
16 Street Center.

17 In February, 2003, after the Department inspected
18 and approved for licensure, the Pennsylvania Child care
19 facility opened. It was the Department's understanding that
20 the facility would house county juveniles, both
21 pre-adjudication and adjudicated, for a two to four year
22 period while the county built a new detention center on
23 county-owned land near the Valleycrest Nursing Home in
24 Plains Township.

25 In August, 2004, during the annual licensing

1 inspection of the facility, the Department reviewed a copy
2 of the first certified audit of Pennsylvania Child care.
3 The audit identified a 28 percent profit equaling \$1.2
4 million during the initial ten month start up period. This
5 information raised concerns, and the DPW audit of the
6 facility was proposed and added to the DPW annual agency
7 audit plan.

8 In 2004 the Department learned that Luzerne County
9 was considering entering into a long term lease of the
10 Pennsylvania Child care facility. Upon receiving this
11 information the Department altered its planned audit
12 schedule to make the Pennsylvania Child care an immediate
13 priority and notified the county leadership of our decision.

14 The Department also requested that the county
15 postpone the vote on the long term lease until the
16 conclusion of the Department's audit. The county proceeded
17 with a vote prior to the audit conclusion, and in November,
18 2004 the county approved a 20 year lease with Pennsylvania
19 Child care.

20 In December, 2004 Pennsylvania Child care filed a
21 court action against the Department and then Luzerne County
22 controller, Steve Flood contending that pursuant to a
23 subpoena issued by Controller Flood the Department was going
24 to release, quote, trade secrets, end of quote, of
25 Pennsylvania Child care.

1 As part of the lawsuit Pennsylvania Child care
2 sought an emergency injunction barring the release by the
3 Department of any of the alleged trade secrets and also
4 sought to seal the lawsuit.

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

12 In November, 2005 the Pennsylvania Superior Court
13 overturned Judge Conahan's order sealing the lawsuit, and in
14 August, 2006 the Pennsylvania Supreme Court returned the
15 case to Luzerne County.

16 At that time the Department continued the audit of
17 the Pennsylvania Child care, which had previously begun in
18 2004. On February 6th, 2007 the Department issued the
19 initial draft audit report of Pennsylvania Child care and
20 requested a written response to the draft report.

21 Upon receipt of the Pennsylvania Child care's
22 response on March 8th, 2007 the Department recognized the
23 immense dispute and controversy revolving around the audit
24 and decided to conduct what's called a code reader review of
25 the draft audit report, which included meeting with

1 officials and counsel representing Pennsylvania Child care.

2 Subsequently the Department reissued the draft
3 report on September 25th, 2007. Upon receipt of responses
4 from Pennsylvania Child care as well as Luzerne County
5 Children and Youth Services, the final and publicly
6 available audit report was issued on January 11, 2008.

7 The audit, which I attach to my testimony, found
8 that Luzerne County payments on the lease exceeded
9 reimburseable costs by approximately \$2 million per year.
10 The audit also found that the county could have built three
11 juvenile detention centers for the cost of what it paid to
12 lease Pennsylvania Child care facility.

13 Upon receipt of the Department's audit, Luzerne
14 County officially voted to terminate the long term lease
15 with Pennsylvania Child care, and thereafter entered into
16 negotiations with Pennsylvania Child care to terminate the
17 lease.

18 In June, 2008 the county informed the Department
19 that an agreement was reached between itself and
20 Pennsylvania Child care regarding the lease termination.
21 Following the audit on May 20, 2008, OCYF informed all
22 counties that use the facility that as a result of the audit
23 we reduced the maximum allowable state reimburseable rate
24 consistent with the findings in the audit.

25 As a result, regardless of the contract rate

1 Pennsylvania Child care negotiated with any county, the
2 Department would only reimburse up to the new maximum
3 amount.

4 In addition to the Pennsylvania Child care Center,
5 the same organization built another facility in Butler
6 County called Western Pennsylvania Child care. BFO did an
7 audit of that facility. The results of that audit became
8 final and public May, 2009. And I have attached a copy to
9 my testimony.

10 Similar to the audit of the Luzerne County
11 facility, the Department found patterns of unreasonable and
12 unallowable costs and recommended that the per diem at this
13 facility be reduced. These findings will be incorporated in
14 the maximum allowable state reimbursement for the facility
15 in future years.

16 Another audit was conducted in Luzerne County
17 regarding psychological evaluations provided to alleged and
18 adjudicated delinquent youths by the brother-in-law of Judge
19 Conahan. The audit found that the agreement between the
20 Luzerne County courts and the psychologist was not
21 competitively bid, was never approved by the County
22 Commissioners, and was not the standard county purchase of
23 service agreement used by the county Juvenile Probation
24 Department.

25 Additionally, the audit found questionable costs in

1 the amount of \$836,636. The questioned practices and costs
2 have been addressed by the county going forward, and we
3 believe that the current process conforms to the appropriate
4 rules and regulations. I've attached a copy of that audit
5 as well to my testimony.

6 In conclusion, the mission of the Department of
7 Public Welfare is to provide services to the most vulnerable
8 populations in our Commonwealth. In order to accomplish
9 this, the Department works closely with many partners,
10 including the counties, the courts, providers, and other
11 agencies and commissions.

12 It is our hope that working with other departments,
13 the Department will be able to identify and curtail any
14 future problem akin to what this Commission is currently
15 investigating.

16 Without question the Department believes that all
17 youth who are subject of delinquency proceedings pursuant to
18 the Pennsylvania Juvenile Act have a right to counsel.
19 And if indigent, to court-appointed counsel.

20 In addition, placement numbers and costs must be
21 more transparent and must be made available on a regular
22 basis to the public so that all persons can question why
23 county statistics are contrary to similar counties and to
24 the Commonwealth as a whole.

25 Thank you, very much for giving me the opportunity

1 to testify. And I'm more than available to answer any and
2 all questions.

3 BY JUDGE UHLER:

4 Q Thank you, Mr. Gold. Is it expected that Mr.
5 Dallas may be called upon to answer any particularized
6 questions?

7 A Possibly.

8 JUDGE UHLER: Perhaps he should likewise be sworn
9 in before we --

10

11 TED DALLAS, called as a witness, being duly sworn,
12 testified as follows:

13

14 MR. DALLAS: Yes, I do.

15 BY JUDGE UHLER:

16 Q Mr. Gold, as I understand your opening statement,
17 clearly the actions of Luzerne County surrounding the
18 detention center raised, for lack of better expression, a
19 red flag and the attention of the Department and what is
20 going on there; is that correct?

21 A Correct.

22 Q Prior to that point were there any other red flags
23 that the Department was alerted to, if you know?

24 A I don't know, Judge. I don't think so before 2002.

25 Q I gather then insofar as audits surrounding the

1 county's activities, that would have been on the structured
2 planned audit system that -- of the Department; is that
3 correct?

4 A Correct.

5 Q Now, you indicated that -- that as a result of the
6 county's actions, specifically the court's actions, this
7 prompted, No. 1, an evaluation as to the appropriateness of
8 the detention center on at least two occasions to which the
9 Department confirmed, and it was found safe and appropriate,
10 and you indicated that the court returned the license to the
11 Department. Is that a normative behavior?

12 A No.

13 Q Has that ever occurred before?

14 A Not to my understanding, and not to my experience,
15 Judge.

16 Q Typically that would be the responsibility, if you
17 will, of the county; is that correct?

18 A Yes. There are some counties though, Judge Uhler,
19 where the detention center is under the jurisdiction of the
20 court. So the licensing and the correspondence from my
21 office to that county regarding the detention center goes to
22 the designated judge. Not -- it's not my understanding that
23 that was Luzerne County's situation.

24 Q Is there a regulatory process or policy in which
25 the Department interfaces with counties when there's

1 suggestion of a need to close a detention center and/or
2 wings of a detention center?

3 A Absolutely. We are -- our office is responsible
4 for all licensing of new facilities as well as annual
5 license inspections of existing facilities, both county run
6 and private.

7 What raised flags to us is that this was not a
8 facility that was giving us concern, the River Street
9 Center. There are a number of detention centers throughout
10 our Commonwealth that because of their age we are working
11 with counties to either replace those facilities or to make
12 necessary renovations or changes.

13 But that -- that's very much a collaborative
14 process between the Office of Children and Youth, the
15 county, and most times the county and the court as one.

16 Q With regard to that process that you referenced,
17 was that followed in any fashion in the closure of the
18 detention center at Luzerne County?

19 A No, not at all.

20 Q To whom does the Department report? I would -- as
21 -- I would assume the Governor and the Secretary and the
22 legislature. Do you have any other reporting requirements?

23 A Some days I feel I report to everybody.

24 Q Okay. Fair enough.

25 A But officially I report to the Secretary of Public

1 Welfare, and as a member of the Executive Branch to the
2 Governor. We're constantly having meetings and answering
3 questions of the legislature as well as the public. I'm
4 very pleased with our openness in our office to be available
5 to public questions and responses.

6 Q Is there any built-in systemic reporting to the
7 courts and to the Probation Departments?

8 A It is -- it is -- I guess I would call it a dotted
9 line relationship. The Office of Children and Youth
10 reimburses for contract services used by county probation
11 offices and county juvenile courts. But unlike child
12 welfare where, as county employees, we're involved with
13 their criteria -- their credentials, their reimbursement and
14 other things, our relationship with the juvenile justice
15 system is one that hopefully is getting stronger every year
16 in having more and more communication as to our mutual
17 needs, our similarities, and respecting our differences.
18 But in a reporting sense, Judge, no.

19 Q Do you have any recommendations as to how that may
20 be further improved?

21 A I only have the greatest and utmost respect for the
22 Juvenile Court Judges' Commission and Jim Anderson, who I
23 believe testified earlier this morning, its Executive
24 Director. During my tenure our two offices have built a
25 strong partnership of working together to resolve mutual

1 problems.

2 That's not to say we can always agree, but there's
3 always communication. And each of our positions are well
4 known to the other. So that the -- the response hopefully
5 is always one that's reasoned and built on a consensus.
6 That kind of relationship must continue for our system to
7 flourish.

8 Recently we've included more of the barge
9 principles in our -- in our principles so that instead of
10 having child welfare and juvenile justice, we're really
11 trying to look how do -- how -- how are we working together
12 to serve the children, youth, and families who many times we
13 both touch, both the juvenile justice system, the child
14 welfare system, the behavioral health system, the drug and
15 alcohol system, the mental retardation system?

16 In today's world there is no separate doors. These
17 children, these youth, these families are known to many of
18 our systems. And the more integrated that we work, the more
19 efficient we can be, and hopefully the better we can serve
20 their needs and make them better citizens.

21 Q Very well. In your summary surrounding the PA
22 Child Care audit you indicated that the first certified
23 audit of PA Child Care warranted then the follow up DPW
24 audit. Was the first certified audit one prepared by PA
25 Child Care, or was that one generated by DPW?

1 A The first was a -- one generated by their own
2 certified public accountants.

3 Q Okay.

4 A And by and large during annual inspections we do
5 ask to see the agency's certified audit. In this one it did
6 raise significant red flags.

7 Q Now, is PA Child Care a for profit or a not for
8 profit entity?

9 A It is a proprietary for profit.

10 Q Does the Department have any position, as some of
11 our earlier witnesses have taken, that we should, as
12 juvenile court judges, be dealing mostly with not for profit
13 entities?

14 A In reality our system is built on not for profit
15 entities. The -- we have few proprietary corporations doing
16 business in Pennsylvania. I know that in other states that
17 situation is different. But in Pennsylvania the majority of
18 the -- of the community resources are provided by not for
19 profit.

20 From an intellectual point of view and, you know,
21 I'm proud to say as a member of the Pennsylvania Bar for 31
22 years -- I had to do the math for a second -- I've
23 represented both not for profit and for profit corporations.
24 There is integrity, honesty, and veracity in both.

25 Should we, as taxpayers, look to see how much money

1 is going toward profit? Absolutely.

2 Q That said, and in the findings that were ultimately
3 determined by DPW in its audits where there was a -- I
4 believe a \$2 million per annum overcharge on the respective
5 leases entered into, what recourses does the Department have
6 other than withholding monies and approval and seeking it
7 back?

8 A Well, Judge Uhler, we are in an uncomfortable
9 position. Our relationship is not with any private provider
10 when it comes to reimbursement. We fund counties. Counties
11 enter into contracts with providers.

12 In the last few years we have started a process
13 whereby on a statewide basis we are determining maximum
14 allowable state and federal reimbursement. This was a new
15 procedure for us and one where we're still working to make
16 it a smoother one. But this situation was only one of many
17 that led us to do this enterprise of really looking
18 carefully to make sure our state and federal dollars that
19 DPW and OCYF are responsible for, are they being -- are they
20 reimbursing for allowable and reasonable costs?

21 So to answer your question directly, we would have
22 had to take money away from Luzerne County, and Luzerne
23 County did not have the money to give back to us due to
24 their exigent circumstances.

25 So because of the good work of Commissioner Mary

1 Ann Petrilla, who came to the -- to the Commissioners during
2 this audit process, so she was a new person for us to deal
3 with, she has acted and the Commissioners now have acted in
4 concert with us.

5 And what we have said to them is if they proceed
6 against the corporation and recover any of the funds that
7 were misappropriated, that money would come back to DPW.
8 But if they're unsuccessful, we don't want to take funds
9 away from other kids who need those funds just as much.

10 Q So that I understand, I think the county enters
11 into the contract with the provider? DPW has an oversight
12 responsibility of those contracts through audits and
13 otherwise? And indeed then the county is a conduit for the
14 federal and state dollars through DPW?

15 A Correct. Unlike other states, which are state run
16 child welfare systems, we don't contract with private
17 providers. The arrangement is all through counties.

18 Q There is a licensure aspect in which you do have
19 some oversight?

20 A The licensure -- the annual licensure process is
21 one where we do look at certain financial information, but
22 mostly it's a safety and the provision of services
23 inspection.

24 Q Focusing on the dollars and cents, we've heard
25 testimony from victims and their families that there was a

1 -- an economic obligation incurred while the youth were in
2 placement.

3 Traditionally it's my understanding that the not
4 for profit corporation and/or the for profit corporation,
5 they don't charge any rent or any ongoing monthly or weekly
6 cost to the -- directly the family or youth? The monetary
7 obligations arise through what is called a support
8 obligation that's enforced through domestic relations in
9 which DPW, which is the initial conduit of the funds, seeks
10 reimbursement from the families predicated upon charts that
11 indeed have been established by the Rules of Civil Procedure
12 under domestic relations. Is that a correct summary?

13 A That is, Your Honor. By -- by regulation any child
14 who is placed, either dependent or delinquent, the county is
15 responsible to file a support petition so that a review
16 occurs to see what, if any, support -- financial support the
17 family can contribute for the placement. Any funds that
18 aren't collected defray the Department's costs.

19 Q And that obligation is predicated upon the family's
20 income, the number of children within the family, and the
21 other factors considered under the Rules of Civil Procedure?

22 A Yes.

23 Q Mr. Schwartz testified this morning advancing the
24 premise that the public would benefit from having realtime
25 data provided by DPW about placement rates incurred

1 respectively by the counties in this Commonwealth. Would
2 you be supportive of that?

3 A I would, Your Honor. I -- I profess that our data
4 collection is antiquated for the Office of Children, Youth,
5 & Families. And it's one that this administration is trying
6 to advance our ability to have -- to get realtime
7 statistics.

8 Presently we do get statistics from counties
9 regarding placements. Our formal process is about six
10 months behind from a time point of view. So I cannot
11 describe it as contemporaneous.

12 It also doesn't include all youth. It's more tied
13 to federal reimbursement. And many of these -- many of the
14 delinquent youths are not eligible for federal
15 reimbursement. So might not -- they may not be part of that
16 data collection.

17 For the past year or so, and I guess I'm proud of
18 this, although it's very rudimentary, we've been having
19 counties report statistics on a monthly basis to us. And,
20 in a sense, just counting heads so that on a monthly basis,
21 or soon thereafter, we at least can see trends in real time.

22 And the Office of Children, Youth, & Families,
23 along with JCJC, along with many of our other partners in
24 this system, have really reached out to those counties where
25 we see trends that are contrary to other counties.

1 The placement rates throughout the Commonwealth
2 have been decreasing. In child welfare in one year we've
3 decreased by 12 percent safely the number of children in
4 out-of-home care.

5 In most jurisdictions, and in particular Luzerne
6 County, the numbers have decreased significantly even after
7 Judge Lupas took over in Luzerne County and started working
8 in that position and really studying what was going on there
9 on a day-to-day basis.

10 We have extended our services to these counties.
11 We have a lot more power over child welfare than, let's say,
12 juvenile placements. It's more hopefully a kind invitation
13 upon my office bringing to that county information that
14 shows that they're not in sync with the rest of the
15 Commonwealth.

16 Q Do I understand from your testimony that there are
17 some collaborative initiatives between JCJC, the Department,
18 and perhaps the AOPC to perhaps get a better handle on
19 juvenile placement indicators?

20 A The -- there's a tremendous partnership and a
21 growing partnership between the AOPC, JCJC, and the Office
22 of Children, Youth, as well as with the Pennsylvania
23 Commission on Crime and Delinquency, which also initiates
24 and funds services for this population.

25 One initiative is on a monthly basis. We've picked

1 16 counties to really go there on a monthly basis and drill
2 down with the counties what their placement and service
3 needs are. This -- you know, I myself took five counties
4 and visited five counties, at least two of them are
5 represented on this panel.

6 I visited York County, which is your county, and
7 Judge Woodruff's county of Allegheny, as well as
8 Philadelphia, Erie. And I picked Luzerne County to be my
9 fifth. And obviously I picked it because of this
10 controversy. I also picked it because of the -- under the
11 new leadership of that county they're really seeking a
12 partnership with us.

13 And I'm very proud to say of the good work that's
14 being done in Luzerne County -- that's not to at all take
15 any attention away from the abominations that occurred
16 there. But out of that tragedy I think there are seeds and
17 flowers of a great tomorrow. And as much as we need to make
18 sure this never happens again anywhere, it's my position we
19 also have to praise the change that's occurring in a county
20 that is still, you know, rumbling from this earthquake.

21 Q I could not help but pick up on your reference that
22 you were a member of the bar for 31 years. And of course,
23 in your capacity as Deputy Secretary you were informed by
24 way of audits of irregularities, overcharges involving
25 Luzerne County and the private providers for PA Child Care

1 as well.

2 Were there any -- was there any information that
3 would trigger a feeling or an action by you to notify either
4 the Disciplinary Board or the Judicial Conduct Board of any
5 of the information the Department received?

6 A I am sad to say that until the -- the controversy
7 broke, the connection between the judiciary and the private
8 provider was not clear. And that included, you know, visits
9 to Luzerne County even while the situation was going, visits
10 where the Department said to a large group, there's
11 something wrong here in your numbers.

12 And at least Judge Ciavarella was in that meeting.
13 Wasn't pleased at all with being questioned as to the
14 practices of the jurisdiction. And then, you know, I
15 received a formal reprimand for questioning how out of sync
16 this county was to all the other counties of Pennsylvania.

17 Q The formal reprimand came from who?

18 A Oh, you know, I guess I misbehaved. But I didn't
19 think I did, but I just think by questioning this group
20 there was -- you know, who is he to come to our county and
21 do that?

22 Q Can you share the timing of this meeting that you
23 referenced?

24 A It was in the summer of '07.

25 Q Okay.

1 A So Judge Ciavarella was still sitting. I believe
2 Judge Conahan was already retired. But their numbers were
3 just out of sync. I'm -- I will also tell you that after
4 that meeting people in Luzerne County saw me as an ally.

5 Again, I had no idea what was going on other than
6 numbers, other than costs. I knew about these audits that
7 were ongoing, but they weren't final yet. And within the
8 Department the workings of BFO are separate than the
9 operating offices, and we received the report from them and
10 then work with them as to how to consider how the office
11 will act on their audit.

12 So it was really just looking at costs and
13 statistics. Plus the county was always broke. And that's a
14 concern to us because counties have a lot of -- tremendous
15 responsibility for the care and welfare of so many of the
16 vulnerable citizens that the Department of Public Welfare
17 serve.

18 Q With regard to the issues of funding, Bob Schwartz
19 also referenced this morning a prior practice of the
20 Department surrounding compensating, in part, for defense
21 counsel for indigent. And he indicated that much of that
22 was predicated also upon the county's willingness to pay its
23 share as well.

24 I understand that that program's no longer in
25 effect. Do you have any comments that you would like to

1 offer surrounding the responsibility, if any, of the DPW to
2 facilitate that?

3 A I view my role as the Deputy Secretary for the
4 Office of Children and Youth as really being partners with
5 the counties. They are not recipients or subrecipients or
6 non-entities, but rather we need to work together. So I --
7 I -- I did understand the -- the financial burden on a
8 county for reimbursing for indigent representation in
9 delinquency matters.

10 And I encouraged that if they had unspent Act 148
11 funds, which is the funding through my office, that we would
12 consider favorably requests that they use any of that excess
13 or unspent Act 148 funds, and we would use -- we would
14 reimburse up to 50 percent, which is the percentage we use
15 for cost for proceedings in juvenile court.

16 I -- that program has stopped, and it stopped for
17 several reasons. The first and foremost is the economic
18 downturn of the Commonwealth, the nation, and the world.
19 And the ability to be more flexible now is much tighter than
20 before. I guess I may have been the -- the cheerleader for
21 getting those costs reimbursed because I -- I do have a
22 great feeling that if we have the best representation of all
23 parties under the Juvenile Act, judges will make the best
24 decisions.

25 And specifically the Juvenile Act does not permit

1 the reimbursement so that Act would have to be amended.

2 JUDGE UHLER: I've exhausted my time allotment,
3 Judge Cleland.

4 CHAIRMAN CLELAND: Questions? Mr. Legg.

5 BY MR. LEGG:

6 Q Mr. Gold, Mr. Schwartz testified earlier this
7 morning that the Juvenile Law Center filed a King's Bench
8 Petition. Are you familiar with that?

9 A Yes.

10 Q I believe it was filed in April of 2008, and the
11 Department of Public Welfare joined that?

12 A Yes.

13 Q Filing a Eachus brief?

14 A Yes.

15 Q Were you part of the decision to join with the
16 Juvenile Law Center in that particular petition, or did
17 someone else make that decision?

18 A Both Mr. Dallas and I were part of that decision.

19 Q Can you explain to this Commission what you saw in
20 terms of the Juvenile Law Center's petition that caused the
21 Department of Public Welfare to get involved in that?

22 A We saw an injustice being done, and one that we
23 thought was appropriate for the Supreme Court of
24 Pennsylvania to take King's Bench jurisdiction and hear the
25 case.

1 We all know that litigation is a time consuming
2 process, and one way to shorten that for a very important
3 matter is for the highest court to take original
4 jurisdiction in a matter and deal with it. Especially
5 because the subject matter dealt with the lives of children
6 and youth as well as the conduct of the judiciary
7 themselves.

8 Q What, if anything else, did the Department do after
9 it became aware of the knowledge or what the Juvenile Law
10 Center had uncovered in terms of unrepresented juveniles as
11 well as waivers of counsel and perhaps constitutional
12 violations in juvenile court in Luzerne County?

13 A Our -- our role would be a financial one. So what
14 we did was we are now saying to counties, this is the
15 maximum amount that we will reimburse. This was a change in
16 process, not a change in principle. But the -- the
17 determination of the maximum amount of state and federal
18 funding for any particular placement is now resting with the
19 Commonwealth.

20 And hopefully when a county is contracting for
21 services they look at the website that we've established for
22 them. They see what the maximum amount of re -- state and
23 federal reimbursement is, and they use that as part of their
24 contract negotiations for a rate. This is our ability to
25 make sure that things that are not allowable for

1 reimbursement are not included.

2 Q Now, I believe Representative Eachus testified at
3 our initial hearings in this matter that he attended a
4 meeting that involved the Department of Public Welfare and
5 other leaders concerning costs. Is that the summer of 2007
6 meeting that you're referring to?

7 A No. That was a meeting that I believe resulted in
8 the creation -- the legislation that created this
9 Commission. Secretary Estelle Richmond attended that
10 meeting, and that was in the spring of 2008. And I --
11 again, anything I learned I learned from Secretary Richmond.
12 But I believe it was Representative Eachus, members of the
13 Governor's Office, Secretary Richmond, Chief Justice
14 Castille to discuss how do we proceed with this controversy?

15 Q The meeting that you referenced then, the summer of
16 2007 meeting, who would have been at that meeting?

17 A I was.

18 Q Okay. You and who else, representatives of Luzerne
19 County? Are we talking commissioners?

20 A It was in Luzerne County. I go to lots of counties
21 and meet with counties. So this was -- this was a
22 needs-based budget meeting where I come and review what the
23 county has submitted and go over questions that I have as to
24 why are you asking for this? Why aren't you asking for
25 this? Why are you asking for this? Why aren't you asking

1 for this? So it would be in the normal course of business
2 that I would raise why are your placement costs so high?

3 Q Prior to that meeting had any other outside
4 entities contacted the Department of Public Welfare about
5 placement costs in Luzerne County?

6 A I'm not aware of it.

7 Q In particular, I believe Mr. Anderson testified
8 this morning that at least one state representative had
9 contacted the JCJC about the amount of money Luzerne County
10 was putting out in placement costs.

11 Had any representatives or anyone from the
12 legislature contacted DPW to your knowledge about placement
13 costs?

14 A Not to my knowledge.

15 Q So that summer of 2007 meeting would have been you
16 and commissioners, Judge Ciavarella?

17 A Commissioners, the human service director, the
18 children and youth director, the deputy probation -- chief
19 probation officer, Mr. Johnson.

20 Q Was there a judge there?

21 A Judge Ciavarella.

22 Q And basically you were really given no answer for
23 why their costs were so out of whack?

24 A No.

25 Q Or out of sync I think is the word that you used?

1 A Right.

2 Q So in the summer of 2007 you knew that their costs
3 really didn't fall in line with other counties of similar
4 size. And then in April of 2008 you saw the King's Bench
5 Petition.

6 At that point, as a member of the bar, did you
7 consider making any report to the Conduct Board, the
8 Judicial Conduct Board, about your meetings with Judge
9 Ciavarella, your attempts to try to get this county in line?

10 A I did not. Judge Ciavarella said nothing at the
11 meeting.

12 Q Oh, okay. You said you were reprimanded, I
13 thought, at one point?

14 A I think it went afterwards. My visit was not
15 welcomed after the meeting.

16 Q Oh, what gave you that impression? You mean in the
17 press or in --

18 A No, no. You know, a complaint was made about me.

19 Q Oh, okay. You don't know who made that complaint
20 then?

21 A (Shakes head from side to side.)

22 Q All right. I got you. But in any event, you
23 didn't have -- you didn't feel that you had enough
24 information at that point to make any types of complaints,
25 or you just thought the King's Bench Petition would resolve

1 it?

2 A I had -- you know, sadly to say I had absolutely --
3 it never crossed my mind that this kind of arrangement
4 occurred. My experience as an attorney in Pennsylvania was
5 one of total integrity with courts. I never would have even
6 thought that such an arrangement could have occurred. So it
7 was beyond the pale of my imagination.

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

9 CHAIRMAN CLELAND: Mr. Listenbee.

10 BY MR. LISTENBEE:

11 Q Thank you, Your Honor. Mr. Gold, as I understand
12 your testimony, the Department of Public Welfare has a
13 position where you are currently in favor of the funding of
14 juvenile indigent defense?

15 A As of this year we cannot afford -- we don't have
16 the funds to reimburse.

17 Q So you don't have the funds to reimburse, but as a
18 matter of policy are you in favor of the principle?

19 A Personally I am.

20 Q Okay. What is your recommendation to the
21 Commission in terms of how juvenile indigent defense should
22 be funded in Pennsylvania, if not from the Department of
23 Public Welfare?

24 A Well, if it's from the Department of Public
25 Welfare, then the -- the funding code -- the funding law

1 would have to be amended, which states specifically what
2 services are reimbursed under the -- the section dealing
3 with proceedings pursuant to the Juvenile Act. And
4 representation costs for alleged delinquents are not listed.

5 Q Okay. As you know, part of our mandate is to make
6 recommendations to ensure that what happened in Luzerne does
7 not happen again.

8 What would be your recommendation, both based upon
9 your experience as an attorney and having been involved in
10 funding various counties across the Commonwealth, to -- what
11 funding mechanism would you recommend to ensure that the
12 indigent defense bar itself was structured in a way so that
13 this type of problem that we had in Luzerne County would not
14 happen again?

15 A In -- in different economic times I would, you
16 know, strongly advocate within the Department to look at
17 changing the law. But I have to be honest, Mr. Listenbee,
18 we barely have the funds right now to fund what we're
19 mandated to fund.

20 So I would not encourage or support new legislation
21 that would take money from one mandated service to fund
22 another service. So any kind of economic cost to the
23 Department of Public Welfare would come at great pain to
24 other areas within the Department of Public Welfare.

25 And at this point we are not in a financial growth

1 position. And so the -- the needs-based budgets are getting
2 to be more and more and more tight. And I honestly could
3 not say that there would be funds to fund that.

4 Q I understand your position in that regard. Can you
5 give us some idea as to what these -- the size of the
6 funding was when you were actually providing funding from
7 the Department of Public Welfare?

8 A It was several million dollars.

9 Q Okay. And can you tell us how many counties were
10 involved in the funding then?

11 A About 10 to 12.

12 Q Out of the 67 counties?

13 A (Nods head up and down.)

14 Q Thank you.

15 A But that doesn't mean that only 10 to 12 counties
16 were reimbursed for indigent representation. It is my
17 understanding that most counties do, and that it's from the
18 court budget.

19 Q When that funding was available did you have any
20 mechanisms whereby funding that you would send to a county
21 would go directly to a public defender office and that the
22 funds would be used directly in the juvenile unit as opposed
23 to simply going to the county?

24 A We have no ability to direct any of the funds that
25 -- the millions of dollars that we distribute to counties.

1 The counties provide to us a plan. We review a plan. We
2 determine need, and we return -- determine reasonableness.
3 We do not line item costs based on that plan.

4 So none of our allocations are directed for any
5 particular services.

6 MR. LISTENBEE: Thank you.

7 CHAIRMAN CLELAND: Mr. Williams, did you have a
8 question?

9 BY MR. WILLIAMS:

10 Q Yes. Mr. Gold, in your testimony you made the
11 statement -- I believe you made the statement that Judge
12 Conahan withdrew the funding for the River Street Detention
13 Center?

14 A Yes.

15 Q Without county approval?

16 A It appeared to be his decision, Mr. Williams.

17 Q Okay. And also on the psychological services, I
18 believe we were told that there was a service agreement that
19 was made between the county and the psychologist, but it was
20 -- that was approved by Judge Conahan also?

21 A I believe the contract was with the court.

22 Q With the courts?

23 A It wasn't -- it wasn't the normal contract used by
24 the county juvenile probation office.

25 Q Right. We did not -- they did not go through the

1 County Commissioners on that -- we questioned the County
2 Commissioners, and they said they did not approve that.

3 I notice you also spoke that you were trying to
4 find ways to recoup this money. Is there any way that you
5 can recoup the money for the psychological services now?

6 A Again, it would be recouping our funds from the
7 county. The contract was by the county with the
8 psychologist. And so our redress would be to get the money
9 from the county. And Mr. Williams, we now know that the
10 funds that we distribute to Luzerne County, if we took any
11 money back, it would hurt current kids.

12 Q That's for sure. That's for sure. The River
13 Street -- the inspection of the River Street facility that
14 was conducted by your office, were there any discrepancies
15 in that building at all?

16 A It was an older building, Mr. Williams, but it was
17 well maintained.

18 Q Um-hum.

19 A It was safe. It met all of our regulations. And
20 there are older detention centers in operation today than
21 the River Street Center.

22 Q I know when we questioned Commissioner Urban he
23 said for about \$2 to 3 million he could fix that up and it
24 would be a real nice detention center rather than paying
25 that 20 year lease. And I understand now that that would

1 have been three times -- they could have built three
2 detention centers for the amount they paid?

3 A Yes.

4 Q So now I understand where he's coming from the \$2
5 to 3 million to rehabilitate the River Street facility.
6 What is your -- your opinion of regional detention centers?

7 A We have a number of regional detention centers
8 throughout the Commonwealth, and they seem to work very
9 well. The partnership is between a number of counties.
10 Most of the time the -- the management is by a joint group
11 of either county administrators or commissioners, and it --
12 it does make it a more viable enterprise by including a
13 number of counties as opposed to a facility for a county.

14 Q The ones we have now, are they mainly in western
15 Pennsylvania?

16 A A large one is in Centre County.

17 Q Centre County, okay.

18 A Which serve a number of central and western
19 counties. And there are some in the western area.

20 Q Thank you.

21 A Mr. Williams though, I have to say that there are
22 -- there are youth in -- from other counties in -- in
23 facilities in other -- so a county might contract with a
24 detention center in another county. So that if there is --
25 you know, if there are too many kids in their own facility,

1 they might ask another county.

2 MR. WILLIAMS: That's understood, yeah. Thank you.

3 CHAIRMAN CLELAND: Mr. Secretary, thank you, very
4 much for your testimony here today. Just one very technical
5 point. You mentioned that you thought there was a meeting
6 between Secretary Richmond and the Chief Justice and others
7 that led to the creation of this Commission in the spring of
8 2008. Would that have been 2009?

9 MR. GOLD: Yes.

10 CHAIRMAN CLELAND: Okay.

11 MR. GOLD: I forgot we were in 2010. That's -- I
12 just went back into the future, so forgive me. But yes, it
13 was 2009.

14 CHAIRMAN CLELAND: Okay. And the documents that
15 are a part of your testimony we will also have made part of
16 the record.

17 MR. GOLD: Thank you.

18 CHAIRMAN CLELAND: Thank you, Mr. Secretary. I
19 appreciate your presentation here today. And Mr. Dallas as
20 well, thank you.

21 MR. DALLAS: Thank you, very much.

22 CHAIRMAN CLELAND: Instead of taking a recess I
23 think we will just proceed on with Dr. Zahorchak. Doctor,
24 before you sit down, if I could ask you to stand and raise
25 your right hand and take the oath.

1 GERALD L. ZAHORCHAK, called as a witness, being
2 duly sworn, testified as follows?

3

4 DR. ZAHORCHAK: I do.

5 CHAIRMAN CLELAND: Dr. Zahorchak is the Secretary
6 of the Pennsylvania Department of Education, and he has
7 served in that position since October of 2005 after a
8 distinguished career at virtually all levels of education in
9 Pennsylvania, as a teacher, principal, superintendent, and
10 football coach.

11 So, Doctor, thank you, very much for being here
12 today. We appreciate your participation. And Mr. Horoho,
13 you're going to take the questions.

14 BY MR. HOROHO:

15 Q Thank you, Mr. Chairman. Mr. Secretary, welcome.

16 A Thank you.

17 Q I note that also before you became Secretary of
18 Education in '05 you were the Deputy Secretary of Education,
19 that began in '03?

20 A That's correct.

21 Q Also I saw that you've been educated primarily from
22 Pennsylvania schools, Johnstown High School, Saint Francis
23 College, now University, got your Masters in Indiana
24 University and your doctorate at Penn State?

25 A Correct.

1 Q You did sneak out of the Commonwealth to go to a
2 place called Harvard I see?

3 A For a summer session on study skills to become
4 qualified there, Milton Academy.

5 Q And one thing that's not on your resume that would
6 peak our interest, especially my colleague to my right, is
7 that you were inducted in the Saint Francis College Hall of
8 Fame for football?

9 A I was.

10 Q Scholar athlete that's done well. Congratulations.

11 A Thank you, very much.

12 Q We asked you here today to talk about school
13 discipline and the interaction between the schools,
14 especially as it relates to the juvenile justice system.
15 Before we start talking a little bit about that, could you
16 be kind enough to describe for the Commission the
17 interaction between the Department of Education and the
18 public schools in Pennsylvania, and maybe give us a little
19 background about the number of students enrolled in public
20 schools, how the public schools are governed in the domain
21 that the DPE has?

22 A Okay. Happy to do so. Our agency at the
23 Department of Education is just that, an agency. Our school
24 districts and our -- our career technical education programs
25 and our intermediate units are also agencies, local

1 education agencies.

2 Those agencies have commissioned officers, usually
3 CEOs or superintendents, typically superintendents. Those
4 superintendents are sworn, commissioned officers
5 representing the agencies, take an oath just like I do as
6 Secretary of Education representing the agency called the
7 Department of Education.

8 We have 500 school districts. As well we have 29
9 intermediate units, and we have 135 charter schools.
10 Collectively a little over 3,000 school buildings led
11 typically by school principals. And we have about 1.8
12 million students attending kindergarten through 12th grade.

13 Our relationship is mostly a supportive one where
14 we try to help schools bring students to high levels of
15 attainment, achievement, and also do well with school
16 climate and ensuring that students have safe places to go
17 that are -- are helping to build young people.

18 We relate typically through the intermediate units
19 to the school districts. So from 29 intermediate units who
20 are an extension of our capacity to support the 500
21 superintendents or CEOs.

22 We have -- we have some expectations for ensuring
23 that we're looking, as required by law, at some areas, that
24 schools are complying with certain areas like distributing
25 funds, dealing with federal funds, special education funds,

1 and their rules that go with those various systems of
2 federal and state governments that come either through the
3 agency or directly to the school districts.

4 Q And the number of public schools in Luzerne County,
5 do you have that number offhand by any chance?

6 A I do. Luzerne County has eleven school districts,
7 one charter school, and three career and technical education
8 centers. They enrolled about 43,800 -- a little more than
9 43,800 students in this past school year ending 2009.

10 Q In preparing for your testimony, Mr. Secretary, I
11 note in the information that I was provided that the
12 Commonwealth of Pennsylvania has three broad goals for
13 education. One, high student performance, high quality
14 teaching and administration, and a safe, secure, and
15 supportive environment for each school and every child.
16 Would that be correct?

17 A That's our State Board of Education, which is the
18 regulatory body for education, their last retreat, out of
19 that retreat arose those three goals. That's correct.

20 Q I kind of want to focus on the third one,
21 especially as it relates to the interaction with the
22 juvenile court and justice system.

23 Are there any specific regulations, state codes
24 that relate to school discipline, and how were they
25 administered?

1 A Well, there are regulations. Under a part of our
2 school code is a chapter, Chapter 12, that deals with
3 student behavior and conduct, so a wide variety of issues.

4 As well there are state laws that deal with
5 expectations for schools. There are as well, you would
6 note, case laws the whole way up through the Supreme Court
7 that sort of give us the frame.

8 And, again, as agencies we only act within the
9 boundaries of the law, a regulation, or the law that was
10 decided through the court system.

11 Q Can you provide us any particular examples, in
12 fact, some examples maybe in the last year or two of how
13 your Department has addressed difficult discipline or
14 truancy issues and how -- and what type of models you have
15 used to approach those types of problems?

16 A Well, one thing we did on truancy, because there's
17 so many laws, parts of the school code, even parts inside
18 the code and outside the code that obviously are not clearly
19 understood. Some vague enough that cause coherency
20 problems, and some that literally contradict one another.

21 We had spent well over a year inviting county
22 judges and district level judges as well as Commission on
23 Crime and Delinquency and -- and school personnel to work
24 with the Department of Education to provide guidelines on
25 truancy.

1 And we went a little further and provided tool kits
2 on how can you work within a single framework on a issue
3 that could become too vague, too ambagious? How can we
4 create some coherency to truancy. So that's one area that
5 we worked together on.

6 Currently we are working to create proposed school
7 climate standards. We would be the third state in the
8 nation following Illinois and Ohio to have actual standards
9 for school climate.

10 And so we're anticipating school climate standards
11 that help in terms of prevention and intervention as we work
12 every day to build students.

13 Q Could we turn our attention to the issue of
14 discipline? I would assume you would agree with me that
15 there is a role and importance in the discipline in the
16 school system.

17 And how would -- what is the approach of the
18 Commonwealth and your Department as relates to keeping
19 schools safe?

20 A Well, we think a couple of things. One is prepare
21 teachers and principals to make sure they understand how to
22 help young people develop in terms of their ability to get
23 along, their interpersonal skills. And that doesn't happen
24 by accident. That happens systematically.

25 As well we think we need to help principals lead

1 buildings that are responsive to children from simple things
2 like how do you come off the bus with groups of children to
3 passing through hallways or working in the cafeteria. Three
4 big areas we know are in places where -- become places where
5 children are vulnerable and can get into all kinds of
6 things.

7 But I think it's critical to note too that schools
8 are places that are responsible for the education of the
9 whole job. So developing children in terms of their
10 abilities to get along inside of caring environments is our
11 goal.

12 And our goal too is to help ensure that schools are
13 built with universal design. Universal design can be
14 defined as we expect all kinds of children to come. Some
15 children who are on the -- all children who are across a
16 spectrum of disposition in terms of temperament, children
17 with various types of disabilities, cultures, races, et
18 cetera. We expect that our students can come to places that
19 have universal design.

20 So when we do the architect for schools and
21 classroom we keep in mind universal design, sort of like
22 when you build a building. You make sure that building has
23 the ramps and the elevators and the braille and more so that
24 everyone can come.

25 And we help, again, as a goal not only get to

1 achievement, but get to a child that can, as the business
2 community has been coming for for a long time, possess the
3 interpersonal skills, temperament, disposition to get along
4 with other people.

5 Q Can you describe the -- how the school-based
6 discipline process interacts with the juvenile justice
7 system, Mr. Secretary?

8 A I can. And I'm glad you asked that question
9 because these are two separate systems, both under umbrellas
10 of laws and expectation. One deals more on the juvenile
11 justice side with crime and behavior out of the boundaries
12 in the criminal code. The other is school where we're into
13 prevention, but we're also into boundaries.

14 And kids can lose their right to an education or
15 their right to come to the place where their education is
16 being primarily held through a discipline proceedings. In
17 both cases there's a similarity that they're afforded due
18 process.

19 So they are notified, and they're given an
20 opportunity to be heard. And as you take away a student's
21 right to participate in education at the place where he or
22 she normally should come for more days, the expectations for
23 formalities that take place and proceedings that take place
24 for a child to determine whether or not a child's going to
25 be outside of the school placement become steeper, more

1 involved.

2 So we look at, for example, the due process, the
3 notice through opportunity to be heard in one to three days
4 being fairly simple. But it gets more rigorous if you're
5 going to suspend a student for 3 to 10 days. And after 10
6 days it becomes known as an expulsion.

7 And a lot of formalities, including the right to be
8 represented, to cross-examine a witness, have public or
9 private hearings, the right to be represented, have a
10 transcript. It's a serious matter.

11 But even if a child is expelled, a child then,
12 according to the law, has a number of days to work with his
13 or her parents to find an appropriate education and is
14 compelled to do so.

15 And if after that short period of time expires is
16 unable, then the school district again becomes responsible
17 for the continuation of that child's education, even though
18 the child is expelled. That's the system of education.

19 The system of the criminal courts, often times the
20 school systems yield to the judicial system. Meaning if a
21 child's involved in a crime that ends up taking the child
22 into the courts, district level or beyond, the schools
23 normally yield and await the outcome.

24 They may simultaneously begin due process on an
25 expulsion hearing or a suspension hearing, but they're also

1 waiting. And sometimes the court system takes children
2 away. Very infrequently will the court system come back by
3 design and notify the school district of what the issues
4 were, what the outcomes of those issues were.

5 Often times children will just not appear for
6 school. And, you know, other children or families sometimes
7 will say, here's what's happening. But it's not an official
8 designed system to intercept.

9 So my point in answering your question is there are
10 two separate siloed systems working on their own. Sometimes
11 they intercept, like our work with truancy. Sometimes they
12 intersect, like our expectation under the law to have
13 memorandum of understanding with police departments.

14 Sometimes they intersect not by design, but
15 haphazardly. And often times they have really no
16 understanding of what the other system is all about. It's
17 difficult enough, as you would know, inside the judicial
18 system for juveniles to say everyone involved understands it
19 the same way.

20 We're not kidding you when we say inside of our
21 education system, in terms of student behavior and conduct
22 and expectations, that everyone understands it the same way.

23 Go back four years before our guidance on truancy
24 and ask any assistant principal how should you respond, and
25 you would have had a variety of answers. Same thing in the

1 judicial system no doubt.

2 So that describes, I think, our relationship.

3 There are some compelling reasons that we get involved with
4 each other, like the memorandum. Sometimes because it's the
5 good of all of us to get involved, like the truancy tool
6 kit.

7 Q In fact, your MOUs, you have provided the
8 Commission a -- and I'll mark it as an exhibit, the Summary
9 of Laws Concerning the Discipline of Students in Public
10 Schools. I think you have it in front of you, Mr.
11 Secretary, No. 4.

12 We heard testimony from a principal in Hazelton
13 about MOUs. Have they -- have you found those to be an
14 effective communication tool with law enforcement? And what
15 has been your experience as far as the cooperation of law
16 enforcement with implementing the school discipline?

17 A It's -- my own findings anecdotally, it's as
18 situational and it's as varied as there are people.
19 Sometimes it's very, very sincere and very well cared for.
20 Other times it's just a matter of the mechanics of getting
21 signatures in both places. Probably the majority of times
22 it's something in between those two extremes.

23 Q Now, we've heard a lot of testimony over the past
24 couple months about zero tolerance, and I know you have a
25 deep history in education. Could you provide the Commission

1 your thoughts and comments as it relates to zero tolerance
2 policies, their use and effectiveness?

3 A First of all, I think zero tolerance has to be
4 thought of differently as it's defined in the judicial
5 system than it is in the education system. In school
6 systems policies related to zero tolerances -- tolerance
7 would be decide -- decided locally by governing boards
8 whether or not they want a policy on student conduct that
9 ends with zero tolerance for something.

10 There are pitfalls, of course, when you think about
11 the possibilities. And we experience what happens in zero
12 tolerance places. For example, in my own experiences being
13 one time a principal in a rural school, I had a young man
14 who was brought to my attention who had a firearm in his
15 possession, actually in his trunk.

16 Now, zero tolerance for firearms would have caused
17 me to say, I could care less about any of the details.
18 That's the case, closed. You'll be expelled from school.
19 But as that starts, and rightfully so in the law for
20 firearms, it says the superintendent can use some
21 discretion, even though it's called a zero tolerance policy.
22 And sometimes that can go to extremes.

23 Here's a case where the young man's family,
24 grandfathers and others, were using the vehicle hunting and
25 left one of the firearms in the trunk that came to school.

1 When you dug into that it was as real as real gets. That's
2 happened with hunting knives as well. Or a five year old
3 that ends up bringing something for show and tell like broad
4 scissors that people want to skip over a right to a zero
5 tolerance policy and then apply the consequences.

6 So there can be pitfalls with zero tolerance. And
7 back to our goal of saying, you know, these punitive
8 approaches often times from the literature will end up
9 exacerbating the level of volume of poor behavior in any
10 particular community.

11 If that's your focus, you'll end up with more
12 results and create maybe a culture counter to what you
13 intend.

14 Q And what's the current policy as it relates to
15 involving law enforcement in the juvenile justice system,
16 Mr. Secretary?

17 A In terms of the school district's involving
18 juvenile justice?

19 Q Right.

20 A Besides the memorandum of understanding, which
21 clearly tells the actors, principals, and superintendents
22 how to behave in certain incidents where crimes are
23 committed. And the judgement, once law enforcement is
24 contacted, of whether or not something gets tallied in a
25 report as something like disorderly conduct or aggravated

1 assault or something in between becomes determined by the
2 law enforcement who are trained to make those kind of
3 judgements.

4 So the interaction typically is under the umbrella
5 of a memorandum of understanding and a framework that's
6 within that memorandum.

7 Q Now, in preparing for your testimony you were made
8 aware that the information -- some of the information that
9 the Commission received is that from a period of time of
10 2003 to 2008 there were inappropriate referrals of school
11 children to the juvenile court in Luzerne County for
12 typical, minor misbehavior; and that those infractions
13 caused some of these students to be not only removed from
14 their school, but from their homes to detention centers.

15 And did I ask you to review the data that you had
16 available to you during that period of time as relates to
17 Luzerne County and the school discipline -- how school
18 discipline issues were heard in Luzerne County during that
19 time?

20 A You did. And if you can give me a second, I can
21 locate -- first of all, as we looked at those data along the
22 way, during those years referenced 2003 to 2008, there was
23 never a time period where we believed that anything was red
24 flagged.

25 First of all, if the Department of Education and

1 our Safe Schools Office receives a complaint, or anywhere in
2 the Department receives a complaint, we get them to that
3 office and we investigate that complaint. Something's not
4 right.

5 So we would -- we would -- and often do follow up
6 on that situation. We also receive reports and data as part
7 of the requirements of federal and state laws. If we see
8 something in the report that shows warning signs, we react
9 to it.

10 If there's something technical -- and we also rely
11 on commissioned officers at their school district agencies
12 who swear in in an oath to do their job with fidelity. So
13 when they give us reports we assume -- and rightfully so,
14 1.8 million students going to school 180 days a year -- we
15 assume the accuracy of those reports because the
16 commissioned officers are swearing that they are accurate
17 reports.

18 There was nothing in Luzerne County in the reports
19 that we collect. There were no complaints. First of all,
20 there were no red flags brought up with -- for example,
21 recently in the nearby school district there was zero
22 incidents of disruptive behavior. Well, that's a technical
23 red flag. You'd say, well, that's -- something went wrong.
24 Let's investigate that.

25 And there were no parts of the report that would

1 indicate anything that's unusual in terms of students who
2 were being adjudicated or expelled from school. The numbers
3 just didn't show that along the way.

4 Q Any complaints from parents or students about how
5 the students were being disciplined in Luzerne County during
6 that period of time as far as being inappropriate?

7 A With regard to the information that I looked at, I
8 don't -- I'm not aware of any complaints.

9 Q I thought from -- how about from the school
10 officials, superintendents, principals, did any of those
11 folks call you and say we have an issue here? We're getting
12 pressed to bring law enforcement in -- involved with
13 disciplining our students. Any complaints from that end?

14 A No.

15 Q How about law enforcement? Did they contact you at
16 all?

17 A No.

18 Q Now, if they would have, if any of -- if you would
19 have received complaints during that period of time, what
20 would the Department of Education -- what support -- what
21 programs would have been available to assist the local
22 schools to handle that type of discipline problem -- problem
23 that they were having disciplining their children?

24 A Well, if it were discipline problems -- for
25 example, you may recall the Allentown School District had

1 some issues with practices, policies, procedures related to
2 discipline. We got on the ground there. We helped them
3 revamped their expectations for programming. We helped them
4 with their rewrite of their Student Code of Conduct and did
5 a number of other things.

6 We've done that in many school districts. In some
7 school districts, like Bedford County, all five school
8 districts we helped with the PCCD's grant to them in
9 enacting a project that prevented the project called raising
10 healthy children.

11 In the Harrisburg School District we support their
12 efforts as they help kids with a program called Promoting
13 Alternative Thinking Strategies. So there's a varied
14 response from us depending on situations in the school
15 district and needs.

16 If it's a comprehensive need, we think
17 comprehensively.

18 Q So clearly there were programs in support to
19 Luzerne County to avoid having the students to go through
20 the juvenile justice process?

21 A Well, there are supports. There are -- you know,
22 we -- I would not take the leap today to say I would try to
23 judge the judgement of people who are saying something
24 should be in the judicial system. That's a place of its
25 own, it's own responsibilities and behaviors.

1 There were plenty of supports -- we have supports
2 for how to operate alternative education programs, how to
3 intervene with students when they're not doing so well. And
4 it's sort of normal. And then how to do it at large as a
5 school district in prevention.

6 I always think the literature's pretty accurate
7 when it says it's pretty much 80/15/5 as a pyramid goes.
8 Where if you have a fairly good school climate and clear and
9 consistent boundaries, you know, 80 percent of the students
10 will come every day.

11 Your disciplinarians working in leadership probably
12 won't know them. And 15 percent of the students come in and
13 out and sometimes cross over the boundaries, and you deal
14 with them.

15 And five percent of the students are students who
16 you see a lot. Here in the case of Luzerne County, you
17 know, in the alternative education programs, those programs
18 that are set up as part of the school district, partnering
19 with the school district but off -- off site typically for
20 children who have greater needs, needs smaller, closer
21 responsive educators to continue their education, only 1.2
22 percent of the entire Luzerne County school last year was
23 enrolled in such a program.

24 So that five percent theory says probably there was
25 other places where some of the kids were going, but a lot of

1 the students were probably being continued in their
2 education in the regular school.

3 Q And can you take a few moments and provide us any
4 recommendations that you may have as relates to not only
5 strengthen what the school discipline process in Luzerne
6 County as relates to the juvenile court system, but other
7 counties?

8 How we can avoid what happened in Luzerne County?
9 Could you give me -- I assume you gave that some thought.
10 And if you have any recommendations, it would be very much
11 appreciated.

12 A A couple things. One thing is the people often
13 times, and not in the whole system, in both of our systems
14 we have the type of people who have studied development of
15 human beings as pretty much a primary focus. But I can tell
16 you educators are not required to do that, neither are
17 people going through most of the judicial system, including
18 police officers.

19 So not having that understanding often times
20 creates poor person/student environment, municipal or school
21 fit mismatches. Just that alone would be a healthy
22 recommendation, that as much human development knowledge
23 coming to our folks who are working on the ground closest to
24 children, teachers, principals, superintendents, police
25 officers, district judges, court system, if we could have

1 more of that.

2 If we also could look at our own organizations in
3 terms of conduct and behavior and really help understand
4 clearly the characteristics and component parts of each of
5 those two silos. Because, again, I think there's a lot of
6 incoherence inside the silos.

7 And then if we could ask the question once we
8 clearly understand, where are the intersects that we need to
9 do a lot better at? Just an example of awkward intersects,
10 a policeman entering a school building, a police officer
11 talking to a principal. Sometimes that's very awkward
12 stuff. Two different sets of training. Two different
13 missions, if you will.

14 And those kind of things can be the kinds of
15 intersects that after understanding our systems very well
16 and having more people with the base understanding of human
17 development that we can start to declare and start to work
18 out where are we naturally and where should we be
19 interfacing together by design, not by good examples that
20 are serendipitous or haphazard.

21 Q And you provided us a document called the
22 Resiliency Wellness Approach. How does that -- does that
23 fit into any of the recommendations as relates to school
24 discipline and the interaction with the juvenile court
25 system?

1 A Yeah. When we think of it, you know, we have all
2 types of kids on your panel. There's all kind of
3 temperament, dispositions. It's fairly centered probably,
4 but in real life people, by their nature, are different. We
5 can bring kids to places where they can get along. They can
6 react well if we help develop them.

7 So resiliency is the idea of getting kids to a
8 place where they can always come back to a center and do
9 that because of our helping them build assets, or what in
10 the literature they call protective factors.

11 How many protective factors as opposed to dwelling
12 on risk? And a lot of times people do -- in the medical
13 model, you dwell on risk after the incident. But in the
14 preventative wellness model you say, well, before the
15 incident we can do blood pressure and stress and eating and
16 exercise and sleep and the kinds of things that would make
17 us well.

18 We do the same thing in resiliency. What other
19 kind of protector factors that we can help build students,
20 for students, with students, inside of students? And frame
21 that in a way that it's not so complex.

22 Getting kids engaged meaningfully in their
23 education environment, in their classroom or school
24 building. And not some kids, but all. Making sure kids
25 have opportunities to bond. Making sure kids learn

1 sequentially skills, skills for thinking positively, skills
2 for getting along, but by design. Skills for avoiding risky
3 behavior.

4 Of those things, making sure you have clear and
5 consistent boundaries so you don't have a principal that
6 says, I told this kid a million times. It's not a kid's
7 problem when that happens. Clear design for the boundaries
8 and what happens as consequences when those boundaries are
9 crossed. Clear and consistent boundaries and higher
10 expectations for kids.

11 When kids achieve, generally speaking when they're
12 on an achievement track, very few achievers are crossing
13 boundaries.

14 And, finally, in resiliency framework it's
15 unconditional support. That no matter what, even though
16 sometimes you have to go to an alternative placement because
17 of boundary, you're not leaving us.

18 Expulsion in school and resiliency literature
19 doesn't mean to the streets because that just perpetuates
20 more of undesirable behavior, and maybe parents later who
21 raise children with undesirable behaviors. So unconditional
22 means that, that you never give up on kids.

23 Now, that's awkward sometimes when talking to the other
24 silo. And that's where we need to have mutual
25 understanding. But resiliency fits because it's part of

1 that human development repertoire that we hope teachers and
2 principals and others have.

3 MR. HOROHO: Mr. Chairman, I'm sure I took up more
4 of my time than has been allotted. I turn over the witness
5 to the rest of the Commissioners. I would ask to be marked
6 Exhibit No. 1, the Secretary's curriculum vitae; No. 2, the
7 summary of the laws concerning discipline of students in
8 public schools; and No. 3, the resiliency wellness approach
9 exhibit referred to in the Secretary's testimony.

10 CHAIRMAN CLELAND: They are admitted and made part
11 of the record. Mr. Allen.

12 BY MR. ALLEN:

13 Q I have a comment and maybe a question to follow up.
14 I think it's interesting you mentioned how the systems can
15 work together, whether it's the juvenile justice system and
16 the school system. I come from a very long police
17 background, many of those years spent on a college campus,
18 so I understand what you're talking about.

19 But I want to kind of pound it home a little bit
20 because I think it's important. It's not only important
21 when the principal calls the officer into the office because
22 of something that happened that one of the teachers found
23 out or someone -- another student reported to the principal,
24 but when a police officer comes to the principal's office
25 because of something they discovered out there that was

1 criminal behavior, and then they caught one of the students
2 doing it on your campus, on the school district's campus, or
3 maybe to and from school or something like that, something
4 that the officer became aware of.

5 And also that the officer be alerted to the fact
6 that that disciplinary system is available to them as a
7 resource that's alternative to using the juvenile justice
8 system as a resource. Meaning they can refer that
9 particular student to the principal, and that might be able
10 to fulfill their -- the officer's feelings that they're
11 doing the proper thing by not filing a petition or an
12 allegation of delinquency with the juvenile court.

13 How do your memorandums of understanding work with
14 the police department that you're aware of? Do they have
15 provisions for disciplinary action?

16 A They do. And they have protocols as a framework.
17 And the local community determines their resources and
18 abilities, their capacity to fill in under the framework.

19 MR. ALLEN: Okay. Like I said, I wanted to pound
20 that home. Thank you, Mr. Chairman.

21 DR. ZAHORCHAK: I appreciate that.

22 CHAIRMAN CLELAND: Mr. Mosee.

23 BY MR. MOSEE:

24 Q Frankly I was a little bit surprised by your
25 testimony and your characterization of the two systems as

1 separate and apart. You even characterized them as silos.
2 I'm wondering if you perceive that because you're in a silo.

3 It's surprising to me that you kept referring to
4 the criminal justice system, the members of the Commission
5 who are equipped to characterize it as the juvenile justice
6 system. And it's a distinction without meaning to many
7 people, but it's a very important distinction from our
8 perspective.

9 I heard you mention, I think, a specific example of
10 not being notified when a juvenile is actually placed, that
11 the school doesn't find out about it. I would point out to
12 you that there's a provision in the Juvenile Act that
13 requires the juvenile justice system to notify the school
14 about the disposition after a child has been adjudicated
15 delinquent.

16 And, in fact, I believe that there are fiscal
17 ramifications for the school district. I've said all of
18 that to indicate to you that I think part of the problem may
19 be a lack of education on the part of the school districts
20 and the Department of Education about the juvenile justice
21 system, which I think was, in fact, one of the reasons why
22 what happened in Luzerne County was able to happen.

23 Unfortunately they were taught by a corrupt source.
24 The one person who was giving them information about the
25 juvenile justice system was the subject of why we're all

1 here today.

2 If the school officials in Luzerne County had had
3 some basic information about the juvenile justice system,
4 then we might not be here today. And so what I'm suggesting
5 to you is that we got to break down those silos. You got to
6 break yours down, and we have to make sure that we're
7 available to teach those who want to learn and who need to
8 learn about what our respective responsibilities are, what
9 our jobs are, and what the reality is in terms of not just
10 the law, but what it is that we hope to accomplish.

11 Mr. Listenbee and I are involved with initiatives
12 that actually help young people to develop better
13 relationships with law enforcement. And in the process of
14 doing that we actually help them to understand what the
15 court systems's all about.

16 Another example of, I guess, a formal entree into
17 the schools is a legislative mandate for Philadelphia which
18 requires that every young person returning from placement
19 going to a reentry program, and we call it the Re-entry
20 Transition Initiative Welcome Return Assessment Process,
21 RETIWRAP, which has helped to develop a stronger bond
22 between juvenile justice and the School District of
23 Philadelphia.

24 But it remains to be seen whether or not we can
25 grow that. And so, again, I was surprised by your

1 testimony. And I would strongly encourage you, as the man
2 at the top, to make sure that not only does Pennsylvania
3 adopt a philosophy that encourages a closer relationship
4 between law enforcement, juvenile justice, and the schools,
5 but that that philosophy flow down to where the rubber meets
6 the road, and that every school district is encouraged to do
7 the same.

8 A Thank you.

9 BY MR. LISTENBEE:

10 Q If I may. Mr. Secretary, just briefly. Bob
11 Schwartz this morning talked about Judge Tesky from Georgia,
12 and he has worked out and developed memorandums of
13 understanding between the juvenile justice system and the
14 school district.

15 As a direct result of those developments the number
16 of children who have transitioned into the juvenile system
17 from the school districts has been reduced significantly
18 without any threats to the security of the school systems
19 themselves. And I would encourage you to take a look at
20 that.

21 The question I would ask you is are there any
22 models that we can look at in Pennsylvania, any districts
23 that would serve as -- provide us with best practices on how
24 these silos have been broken down? If there are, perhaps
25 you can give us some information on that because we would

1 certainly like to know so that we can make recommendations
2 that perhaps other districts here follow suit.

3 A I appreciate that. And we do have good examples of
4 how school districts and police departments and the juvenile
5 justice system in counties are working well together. So I
6 would be happy to share that.

7 Often times it's a group of superintendents in the
8 intermediate unit that have determined that they are out
9 with the parents. And they worked well with the juvenile
10 justice system in their particular county.

11 The program that I mentioned in Bedford County is
12 one too that includes the district judges. A lot of times
13 in truancy the fine is an option, but so is sort of
14 adjudicating parents to an educational program. The problem
15 too often is no one has the educational program developed.

16 In this Raising Healthy Children Model there is the
17 parent program. Those six components that I talked about,
18 meaningful engagement, expectations, and bonding, and clear
19 and consistent boundaries, and skills, and unconditional
20 support. Same framework. Not surprisingly is in that
21 particular approach to working with the parents, that's in
22 their home environments.

23 I appreciate the comment made about the silos, and
24 certainly I couldn't agree more that we have 100 percent of
25 the responsibility to start to work at making these kind of

1 recommendations, not only to your Commission, but to others
2 to have a better understanding, more coherence, and a -- a
3 clear intersect where we do work well together up and down
4 those systems. Thanks to both of you.

5 CHAIRMAN CLELAND: Mr. Gibbons.

6 BY JUDGE GIBBONS:

7 Q Doctor, just to follow up on that. I mean, what
8 we've learned in our job here is the intersect that happened
9 in Luzerne County was Judge Ciavarella was coming to schools
10 and saying, if you come to juvenile court, you're going
11 away.

12 And that appears to have been met with a great deal
13 of support by the school districts that he visited, and
14 visited year in and year out. And that support was echoed
15 by the county's District Attorney.

16 And it just seems to me that there's something
17 wrong in the educational system if, you know, that's going
18 to be the extent of the intersect and the interplay with the
19 juvenile justice system, if they're going to support that
20 wholeheartedly, which they apparently did for many years.

21 A Well, Your Honor, I can tell you that no doubt
22 there's something wrong. The educational system is large.
23 All people involved there were robbed. Some people may have
24 been wrong because they were yielding too much or didn't
25 possess the efficacy in self that would say there's

1 something wrong with this.

2 Maybe yielding because of reliance of going over to
3 a system that they don't fully understand. So the point,
4 again, is it's larger than the interactions you'd have in
5 your county not to be left alone, that there has to be a
6 statewide umbrella of how do we do the education process?

7 What does it mean to become certified as a
8 superintendent of schools or certified as a school leader,
9 as a principal? What kind of understanding of the juvenile
10 justice system should you have?

11 Because, quite frankly, if you look at program
12 approvals of the programs we approve to provide
13 certification to those two types of school leaders, this
14 isn't a part of it. And I take your point with all
15 sincerity.

16 MR. GIBBONS: Thank you.

17 CHAIRMAN CLELAND: Mr. Legg.

18 BY MR. LEGG:

19 Q Thank you. Doctor, I just have a few questions.
20 And I signed quite a few of these memorandums as District
21 Attorney of my county. And every time I sign them I kind of
22 have a feeling that it seems almost redundant that I would
23 expect school officials to report criminal activity if it
24 occurred on school property.

25 But what disturbed me a little bit is we've had

1 some recommendations, and I think one of the presenters this
2 morning indicated one of the recommendations was to have
3 schools handle more things internally.

4 As a prosecutor I guess that bothers me, and I
5 think that would promote the silo approach to some degree
6 because you'd have different school districts handling
7 things differently as opposed to more of a team approach
8 like we do in our county where we actually discuss with the
9 school officials what is appropriate given this student's
10 needs.

11 And how do you feel about that as somebody who's
12 dedicated their life to education? Do you want your
13 administrators making these types of decisions as to this
14 kid should be reported to law enforcement and this kid
15 shouldn't? Or how do you see this evolution of these
16 memorandums of understanding?

17 A Well, in the student behavior expectations the
18 principal serves as quasi judge. They listen to two sets of
19 facts, often that are contradictory. They apply it to
20 school behavior and make determinations. If there's a clear
21 crime, I, in my own practice, say if it reaches the red
22 flag, and we know what some of those are, a weapon on school
23 property, drugs or alcohol, if you commit assault, those are
24 crimes, and we should have the -- either the school police
25 or the community municipal police involved.

1 But I think you're smart in the way that you
2 worked. You worked with your schools to determine the
3 thresholds. What is it? Just as we work with police
4 officers to discern the difference between disorderly
5 conduct and -- and simple assault or aggravated assault.

6 There are a lot of cases where, you know, we would
7 have to be fairly -- we'll have to become really good and
8 clear about our expectations. Because I know eventually the
9 police would start to say, look, every time one child bumps
10 another in middle school into the lockers, please stop
11 calling us.

12 You know, and that could happen if we give the
13 wrong set of expectations to our school officials, who also
14 serve the role in the school behavior zone as the district
15 judges or quasi district judges.

16 So I think you're smart when you say let's get the
17 systems working together. And we should make the
18 recommendations to do that across the Commonwealth first,
19 and then into local districts and communities, to school
20 buildings.

21 And also make sure our faculty understand too.
22 Because their coherence, their understanding, could become
23 very, very helpful and lead them to become less and less
24 frustrated along the way that no one's doing anything.

25 I've had experiences where -- you know, as a

1 superintendent of schools personally where we saw a complete
2 transformation of our relationship with our community, our
3 community police, and kids, and adults because of the work
4 we've done with resiliency, just helping people understand
5 conceptually what that is deeply, and then helping build
6 skill sets that teachers and principals can start to apply
7 and make sure the whole community is in on that.

8 We had honestly the city manager and police
9 officers actually teaching these courses alongside of
10 teachers to agencies and parents and providers and other
11 teachers as we were doing the conceptional building, and
12 then we started framing how are we going to get along?

13 And we saw thousands of out of school suspension
14 tallies and thousands of in-school suspension tallies. And
15 one of our predominantly struggling buildings become less
16 than 400. Our police officer imbedded in the building
17 actually ran the comprehensive suspension program that we
18 called it.

19 And it ended up with a lot of after school
20 activity, a lot of summer time activity when the police and
21 the school community were in great partnership following
22 each other's lead constantly transformed where thousands
23 became less than 400 total tallies, none of them out of
24 school. That's kind of a shift that can happen if you pay
25 attention.

1 Q I think you gave a good example about the kids
2 bumping in the hall, because I get calls like that from some
3 of the local police as well saying, you know, we're not
4 babysitters. Why do we have to go up there for that? But
5 is that an education thing for the police as well?

6 Do you see, as I do, a value to the police
7 responding even to minor incidents just in the sense of even
8 if we don't do anything, the fact that the students
9 understand that this is a partnership with the law
10 enforcement; and that, you know, even though minor things
11 are taken seriously, even if there's no prosecution or any
12 type of petitions filed?

13 But is that what we're talking about when you say
14 silos? We've got to get people more involved in terms of
15 understanding that even responding to minor incidents, it
16 may be an inconvenience, but it's important?

17 A I think it's about you and me and the juvenile
18 justice system talking a heck of a lot more together.
19 Because I'm sure that we will come up with those intersects
20 and framework to clear this up.

21 I think today if I would just knee jerk and start
22 to respond to words that I heard, or you would hear some
23 words from me, it may create the wrong kind of reaction. Or
24 -- or seemingly the right, but not really the same
25 intentions.

1 So it's going to take some work to get these two
2 silos broken down to become one system on behalf of
3 juveniles, young people, as they're developing positive
4 behavior surrounded by positive people giving them
5 opportunity to develop into human beings while they're still
6 in very vulnerable ages.

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

8 CHAIRMAN CLELAND: Mr. -- Judge Uhler.

9 BY JUDGE UHLER:

10 Q Does the Department of Education maintain an active
11 and extensive clipping service, news resource service,
12 surrounding school districts and their policies?

13 A We have a daily news clip that comes out to just
14 about everyone in the Department.

15 Q And does that extend back to the 2004, 2007 time
16 frame?

17 A It did.

18 Q You indicated that there were no indicated problems
19 within the Luzerne County School District system. The
20 publications that surrounded the tandem of zero tolerance
21 between the educators, the school system, and the juvenile
22 court, I gather, that was not considered a problematic issue
23 that would have triggered any further action by the
24 Department of Education?

25 A Yeah. It was not unusual language nationwide, the

1 idea of people struggling with what does zero tolerance mean
2 in a particular community. So that alone, the red area
3 related to zero tolerance, would not have triggered a
4 response from us that there's something serious. That was a
5 quite common conversation going on across the Commonwealth
6 and across the country for those years.

7 Q And that rhetoric included suggestion that there
8 was almost automatic detention. Would that have -- or
9 should that have triggered concerns from the Department?

10 A It would have -- it would have had the data started
11 showing up that supported that. There was nothing in the
12 data reports that we collected which showed up.

13 Q And in order to secure that data report, I'm not
14 talking about in-school detention, placement detention?

15 A I understand.

16 Q Would you have followed through with that?

17 A There is a good likelihood. I can't go back and
18 second -- you know, do -- rerun this. I'm not sure.

19 JUDGE UHLER: Thank you.

20 BY CHAIRMAN CLELAND:

21 Q The -- this question of zero tolerance, I suppose
22 there's lots of ways you can define zero tolerance and lots
23 of different contexts in which you can apply whatever the
24 definition is. But for our purposes I suppose what we're
25 talking about is that the schools were perceived, at least

1 in Luzerne County, to dump their problem kids on to the
2 juvenile court for whatever sanctions the court found was
3 appropriate.

4 And based on your testimony I take it that the
5 Department policy would be that that is not a sound
6 educational procedure; is that correct?

7 A That's correct.

8 Q Okay. And so how -- how is it that we insensitize
9 the breaking down of these silos in terms of a
10 recommendation -- or recommendations from this Commission?
11 How is it that we go about encouraging law enforcement, the
12 courts, principals, superintendents to get together and talk
13 so that we're not dumping our kids on each other and
14 developing the kind of resiliency that you're talking about?

15 A I think a lot of that incentive comes from the
16 possibility of the results shifting. When I said if I would
17 have -- and I did, come into my school district in that
18 middle school and say I can take thousands of those tallies
19 and turn them into hundreds, once you start the practice and
20 you're serious about it, and a lot of it is in that clear
21 and consistent boundaries area, just being really clear
22 about what happens when behavior occurs that's out of bounds
23 and how often you tolerate the same kind of behavior before
24 it shifts up a level, just that kind of clarity goes a long
25 way. So incentive there.

1 If I'm promising the police department on one hand,
2 you're not going to be called here every day, three times a
3 day. You may as well work here. And in this case that was
4 part of the solution. But you're going to have more
5 capacity to do the rest of your work.

6 You will also have greater results in the
7 classroom. You'll have more students who are attended and
8 attentive to learning. When I start showing the outcomes,
9 the expected outcomes of this kind of work, I think school
10 folks, and I do believe people in the juvenile justice
11 system, will indeed see that as incentive enough to get to
12 work with us.

13 And I think we have willing participants. I don't
14 think people do these jobs because they want to create
15 problems for other people. They do these jobs because they
16 really want to help prevent our -- or make systems that
17 resolve problems for other people.

18 So I do think those kind of incentives internally
19 inside of people, intrinsic values that people naturally
20 have, will lead to a lot of our abilities to work together.

21 Q The Department of Education pays a per diem to the
22 school district for each child and day in school; is that
23 correct?

24 A That's correct.

25 Q And if a child is in placement, the school district

1 doesn't get that per diem. Would that be correct also?

2 A That would depend on whether or not that student's
3 enrollment is no longer counted, whether or not attendance
4 at the new site is counted. Typically if it's a detention
5 placement, the --

6 Q Okay. I guess that's true, yeah. I -- what I was
7 trying to get at was is there a financial incentive to
8 keeping kids in school that would be cost savings or cost --
9 or fee generating or somehow that would cause the kind of
10 conversation that we're talking about here?

11 A I want, Your Honor, to be able to think that
12 through a little bit and respond to the Commission in a
13 second way as well.

14 CHAIRMAN CLELAND: Okay. All right. Thank you.

15 DR. ZAHORCHAK: Okay.

16 CHAIRMAN CLELAND: Mr. Secretary, thank you, very
17 much for being here. We appreciate your candor, your
18 leadership in this area. And thank you, very much.

19 DR. ZAHORCHAK: Thank you all. Thanks, very much.

20 CHAIRMAN CLELAND: We are adjourned, and we will
21 reconvene at 9:00 tomorrow morning.

22 (Whereupon, the hearing was adjourned at 3:06.)

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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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Date

Donna E. Gladwin, RPR

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