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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: OCTOBER 14, 2009, 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'm John M.  
2 Cleland, a Judge of the Superior Court of Pennsylvania and  
3 Chair of the Interbranch Commission On Juvenile Justice.

4           This morning our Commission begins its public  
5 hearings to assess the breathtaking collapse of the juvenile  
6 justice system in Luzerne County. It is our intention to  
7 shine light on to some very dark days of the Pennsylvania  
8 judiciary, days that have disrupted the lives of children  
9 and their families; brought shame to an entire community;  
10 and sewn seeds of distrust throughout the legal system.

11           Two judges stand criminally charged for conduct  
12 that had the unmistakable effect of harming children.  
13 Whether they are guilty or innocent of any specific criminal  
14 charge brought by the United States Attorney is not for this  
15 Commission to decide. But there is little doubt that their  
16 conduct, whether criminal or not, had disastrous  
17 consequences for the juvenile justice system that must be  
18 understood and prevented from happening again.

19           Our focus is on developing recommendations to  
20 improve Pennsylvania's juvenile justice system. That is the  
21 task that the Legislature has defined for us. It is not  
22 within the scope of what we have been asked to do to conduct  
23 criminal investigation or to pursue allegations of other  
24 misconduct in the courts or governmental entities of Luzerne  
25 County, except as those may relate to our mission of

1 improving the juvenile justice system.

2 Our concern, however, is not only the action of two  
3 Luzerne County judges. Our concern is also the inaction of  
4 others. Inaction by judges, prosecutors, public defenders,  
5 the defense bar, public officials, and private citizens,  
6 those who knew but failed to speak, those who saw but failed  
7 to act.

8 Our concern is the inaction of those who would have  
9 acted but did not have the tools needed to assess the  
10 information that might have been an early warning of the  
11 system's breakdown.

12 All of those involved, whether by action, inaction,  
13 or silence, whether by willful choice or benign ignorance,  
14 engaged in an assault on the fairness and impartiality of  
15 our legal system. It was an assault on the very rule of  
16 law.

17 This is a serious matter indeed, because an attack  
18 on the rule of law is an attack on democracy itself. The  
19 sense of community that underlies democratic government is  
20 sustained by the sure faith that law will be applied  
21 uniformly and fairly, without fear or favor, or corruption.

22 Judges, prosecutors, and defense attorneys serve as  
23 officers of the court, servants of the high calling of the  
24 pursuit of justice. And when that noble service is diverted  
25 to improper ends, we all suffer the consequences.

1           But we must remember it is not just members of the  
2 Bar who are called to pursue justice. Every citizen bears  
3 that burden. Every citizen shares that responsibility  
4 because in a democracy the pursuit of justice is the essence  
5 of civic obligation.

6           The Interbranch Commission on Juvenile Justice was  
7 created in August by an act passed by the legislature and  
8 signed into law by the Governor. The impetus was an effort  
9 among the three branches of government, the judicial, the  
10 legislative, and the executive, to learn what happened to  
11 cause such harm in the juvenile justice system in Luzerne  
12 County; to develop the means to prevent it from happening  
13 again or from happening in other courts of the Commonwealth;  
14 and to begin to repair the damage to the public trust that  
15 this scandal has caused.

16           Eleven members of this Commission have been  
17 appointed: three by the Governor, four by the legislature,  
18 and four by the Supreme Court. The members of the  
19 Commission are Tod C. Allen, Director of Court Advocacy, The  
20 Crime Victim Center in Erie County; Valerie Bender, Senior  
21 Research Associate at the National Center For Juvenile  
22 Justice in Pittsburgh; Ken Horoho, a Pittsburgh attorney and  
23 former President of the Pennsylvania Bar Association;  
24 Magisterial District Judge James A. Gibbons from Lackawanna  
25 County; Jason J. Legg, District Attorney of Susquehanna

1 County; Robert L. Listenbee, Chief of the Juvenile Unit of  
2 the Defender Association of Philadelphia; George D. Mosee,  
3 Jr., Chief of the Juvenile Division and Deputy District  
4 Attorney in Philadelphia; Judge John C. Uhler, a judge of  
5 the Court of Common Pleas of York County and former  
6 President Judge of that Court; Ronald P. Williams, Regional  
7 Director of the Pennsylvania Department of Agriculture; and  
8 Judge Dwayne D. Woodruff, Juvenile Court Judge from  
9 Allegheny county.

10 We are joined at the table by our Commission  
11 counsel, darren Breslin.

12 In late August we met together for two days to  
13 organize the Commission and to begin our preparation for  
14 these public hearings. We continued our preparatory work  
15 for two days in September and met again last night.

16 Ours is a complex task. There is no precedent that  
17 provides guidance about how to proceed with anything we are  
18 being asked to do. No such Commission has ever been created  
19 in Pennsylvania to assess a scandal of this kind and of this  
20 proportion. We are taking this step by logical step. We  
21 approach this task with a realistic view of its complexity  
22 and its importance.

23 We intend to act quickly to collect information  
24 about what happened in the Luzerne County juvenile justice  
25 system and to develop recommendations for appropriate

1 changes in law, rules of court, governmental regulatory  
2 oversight, and ethical and disciplinary enforcement.

3 In addition to our hearing today we will hold two  
4 days of hearings in Wilkes-Barre on November 9th and 10th.  
5 Other days have also been reserved for subsequent hearings  
6 which will be announced later.

7 We will conduct our hearings and adopt our final  
8 recommendations in public, to the extent that we can do so  
9 without interfering with ongoing criminal or other  
10 governmental investigations.

11 We view this public action as the first step in  
12 assuring that the veil of darkness that has permitted this  
13 scandal to develop will be lifted.

14 We intend to hear from witnesses today who can  
15 provide background information that will be useful to us as  
16 we begin next month to take testimony about the specifics of  
17 the Luzerne County juvenile system.

18 Representative Todd Eachus and Senator Lisa Baker  
19 were the prime sponsors of the legislation which created  
20 this Commission, and we welcome their presence here this  
21 morning.

22 Luzerne County President Judge Chester Muroski,  
23 since becoming President Judge earlier this year, has  
24 received plaudits for his work in leading the reform efforts  
25 underway in the Luzerne County court system.

1           Philadelphia Deputy District Attorney John Delaney  
2 will provide background information about the juvenile  
3 justice system and how it is supposed to work if the Rules  
4 of Juvenile Procedure as adopted by the Pennsylvania Supreme  
5 Court are properly applied.

6           And in the afternoon section we will hear from Carl  
7 D. Buchholz, Vice Chair of the Disciplinary Board of the  
8 Supreme Court of Pennsylvania, who will discuss ethical  
9 obligations of attorneys.

10           We had anticipated that today we would also receive  
11 testimony from a representative of the Judicial Conduct  
12 Board. That testimony, however, will be deferred until a  
13 later hearing.

14           That will give the Interbranch Commission and the  
15 Judicial Conduct Board the opportunity to address the scope  
16 of what the Board may legally reveal to us in light of the  
17 provisions of Article V of the Pennsylvania Constitution,  
18 which requires that the Judicial Conduct Board maintain  
19 confidentiality regarding its proceedings until a formal  
20 complaint is filed with the Court of Judicial Discipline.

21           Next month, as our hearings move to Luzerne County,  
22 we will hear from Senior Judge Arthur Grim who was appointed  
23 by the Supreme Court as a special master to address juvenile  
24 justice cases there.

25           We will hear from those who directly participated

1 in the juvenile court hearings, District Attorneys, public  
2 defenders, defense counsel, probation officers. And most  
3 important, we hope to hear from the children themselves and  
4 their families about what happened to them. Their testimony  
5 will help us glean an incite into the dark consequences of a  
6 breakdown in the rule of law.

7 To date, however, attorneys for the juvenile  
8 victims have told us that these children will not appear to  
9 testify. We request that anyone who can provide information  
10 useful to us to contact the Commission through the contact  
11 information which appears at our website, which is  
12 [www.pacourts.us](http://www.pacourts.us) and then click on the tab marked for the  
13 public. Further information will also appear in notices  
14 that will be published in Luzerne County newspapers.

15 It is our privilege now to welcome Representative  
16 Todd Eachus, Majority Leader of the House of  
17 Representatives. Representative Eachus has represented the  
18 Greater Hazleton area in the House since his election in  
19 1996.

20 Before being elected by his colleagues as Majority  
21 Leader of the House in 2008 he served as Chair of the House  
22 Majority Policy Committee. He was a primary supporter in  
23 the House of the legislation which created this Commission.

24 Representative Eachus, welcome. And would you  
25 stand, sir, please, to be sworn?

1           REPRESENTATIVE EACHUS: Sure.

2

3           REPRESENTATIVE TODD EACHUS, called as a witness,  
4 being duly sworn, testified as follows:

5

6           CHAIRMAN CLELAND: Thank you. Representative  
7 Eachus, go ahead.

8           REPRESENTATIVE EACHUS: Good morning, and thank you  
9 Chairman Cleland and members of the Commission. I  
10 appreciate the opportunity to offer some remarks during the  
11 first public hearing of the -- of the Commission.

12           It is reassuring to me to see how swiftly you have  
13 organized and begun scheduling public hearings on this  
14 incredibly important issue. I joined with Chief Justice  
15 Castille just a couple of months ago and witnessed the  
16 signing of this legislation with Governor Rendell creating  
17 the Interbranch Commission On Juvenile Justice. And today  
18 that Commission is a reality.

19           This issue is of paramount importance to me and my  
20 community of Luzerne County. I represent most of southern  
21 Luzerne County, and I was born and raised and raised my  
22 children in Luzerne County. To me, just like more than  
23 300,000 others that live in Luzerne County, I'm proud to  
24 call it my home.

25           However, this dark stain, as the Chairman called it

1 this morning, has done damage to the reputation of our court  
2 system and to the credibility of leadership within our  
3 community, both at the judicial, legislative, and executive  
4 branch.

5           It is heartbreaking to know that my County is now  
6 nationally known as the public corruption scandal capital  
7 where thousands of children were used as pawns in a kickback  
8 scheme by the judicial branch.

9           This "kids for cash" scandal, as it has become  
10 known, has had devastating effects on the lives of its young  
11 victims and left our entire community wondering just how  
12 this could have happened.

13           Yes, we want to know why these two judges misused  
14 their power and abused the system for their own gain. Yes,  
15 we want to know why thousands of juvenile defendants were  
16 denied their constitutional rights.

17           Yes, we want to know why so many children were sent  
18 to juvenile detention center -- this juvenile detention  
19 center for many cases, many charges that were so minor that  
20 in many other jurisdictions they would have never ended up  
21 incarcerated.

22           The why is important, but we also need to know how  
23 this happened. How were these two rogue judges able to  
24 manipulate the system for their own selfish ends? How were  
25 they able, for so long, to deny basic constitutional rights

1 to juvenile defendants? And how did no one know these  
2 abuses were going on?

3 In short, how could this have happened? That is  
4 what this Commission will hopefully be able to determine.  
5 The people of Luzerne County and all Pennsylvanians will  
6 expect this Commission to ask difficult questions about how  
7 such a tragic mischarge of justice on such a large scale  
8 could have happened here in Pennsylvania.

9 And we hope this Commission will be able to shine  
10 some light on the darkest chapters -- one of the darkest  
11 chapters in Pennsylvania history.

12 As this Commission begins to investigate the  
13 corruption scandal in Luzerne County's juvenile justice  
14 system we hope this Commission will be able to provide  
15 useful recommendations to strengthen Pennsylvania's juvenile  
16 justice system.

17 The people of Luzerne County that I represent and  
18 others in our County are hurting. The children who have  
19 been victimized by this corruption scandal have been  
20 scarred. It is my sincere hope that the work of this  
21 Commission will help heal the wounds of this terrible  
22 tragedy.

23 This Commission, in how it was created, reflects  
24 our commitment to ensuring that interests of both victims  
25 and judicial advocates are represented on this Commission.

1 In setting up this Commission we agreed that at least one  
2 member of the Commission should be a juvenile victims'  
3 advocate.

4 As a result of what occurred in Luzerne County  
5 there have been many victims who have been struggling to  
6 grapple and cope with their own victimization. In addition  
7 to the original victims some juveniles were victimized by  
8 illegal acts of individuals working in Luzerne County court  
9 system.

10 Some of those victims' parents were -- have been  
11 victimized by the system as they were required to pay for  
12 their children's illegal detention and placement, and the  
13 entire -- and the entire Luzerne County community has been  
14 victimized as a result of this apparent system breakdown.

15 The victims' advocate role on this Commission is  
16 crucial to the work as it relates to the interests, needs,  
17 and rights of victims that have -- that were taken into  
18 account as the Commission does its work.

19 The Luzerne County corruption case has certainly  
20 given a black eye to our judicial system, which beforehand  
21 was used as a national model for juvenile justice.

22 It's time to -- that we all begin to rebuild the  
23 trust in our court system, but before we can move forward we  
24 must first take a long, hard look at what happened in  
25 Luzerne County. And we must do everything we can to ensure

1 that this never happens again to any child or anyone who  
2 comes before our court system.

3 We must learn from what happened in Luzerne County  
4 and examine the systematic flaws of our judicial justice  
5 system and proceed to make sure that this type of corruption  
6 can never occur again.

7 We owe it to the people of Luzerne County and to  
8 all Pennsylvanians to ask the tough questions, and I know  
9 this Commission will do that. The Commission's work will  
10 help identify the failures in this system and what  
11 contributed to what happened here in Luzerne County.

12 Once failures are identified the Commission will be  
13 instrumental in providing recommendations to correct these  
14 system failures and make improvements where we can, both at  
15 the executive level, the judicial administrative level, and  
16 also hopefully at the legislative level.

17 I want to once again thank the Commission for your  
18 work on behalf of the children of Pennsylvania and of my  
19 community, and I wish you Godspeed in the work ahead in the  
20 coming days.

21 Just one last thing. This does mean a lot to the  
22 people that I represent and their families, many of whom  
23 we've seen in our district offices, those who -- of us who  
24 represent the citizens of Luzerne County.

25 So the work that you do is paramount to

1 reestablishing the trust and faith in our justice system in  
2 Pennsylvania.

3 Chairman, I really appreciate the opportunity for  
4 coming this morning.

5 JUDGE CLELAND: And thank you, Representative  
6 Eachus, for being here and your leadership on this issue.

7 REPRESENTATIVE EACHUS: Thank you.

8 JUDGE CLELAND: It is now our privilege to welcome  
9 Senator Lisa Baker. Senator Baker was elected to the Senate  
10 in 2007 and represents a substantial part of Northeastern  
11 Pennsylvania, including parts of Luzerne, Monroe, and  
12 Susquehanna Counties, and all of Pike, Wayne, and Wyoming  
13 Counties.

14 Senator Baker serves as Chair of the Senate  
15 Veterans and Emergency Preparedness Committee, and she's  
16 Vice Chair of the Communications and Technician Committee.  
17 She also serves on the Aging and Youth, Appropriations,  
18 Environmental Resources and Energy, and Public Health and  
19 Welfare Committees.

20 Senator Baker was a primary supporter in the Senate  
21 of this -- of the legislation which created this Commission.  
22 And Senator Baker, welcome. Could I please ask you to stand  
23 and take the oath?

24

25 SENATOR LISA BAKER, called as a witness, being duly

1 sworn, testified as follows:

2 JUDGE CLELAND: Senator, please.

3 SENATOR BAKER: Thank you, Judge. And good  
4 morning, and thank you to all of the members of the  
5 Commission for your service. You all reflect what I think  
6 we had hoped when the Bill was passed, that it would be a  
7 bipartisan, balanced approach necessary to address the  
8 remedies and reforms that are so crucial to this difficult  
9 situation.

10 We all know that you have hard work ahead. We know  
11 that you care very deeply about this system, and that you  
12 will do the right thing.

13 The perspective that I offer today is first and  
14 foremost that of a resident and taxpayer of Luzerne County.  
15 Not a week goes by without another revelation of how  
16 widespread and deep-rooted corruption is in our community.  
17 Not a day goes by without public expressions of anger,  
18 dismay, frustration over the corruption and the lack of  
19 remedies.

20 And for those who live outside Luzerne County they  
21 may have trouble fully realizing how thoroughly Judges  
22 Ciavarella and Conahan have brought disrepute on the  
23 judicial system. They've discredited state and county  
24 government and diminished public trust.

25 These hearings are essential forums for allowing

1 families, citizens, and organizations to register their  
2 emotional perspectives and to push for what they believe  
3 must be done.

4 In the court of public opinion all three branches  
5 of state government are judged guilty, whether for not  
6 detecting the long-running corruption or for turning a blind  
7 eye to the warning signs that things were seriously amiss.

8 My purpose today is not to find fault or to assign  
9 blame. Nor is it to overlook the well-established  
10 reputation of what is, in most ways, a very fine juvenile  
11 justice system.

12 I am here to impress upon you the imperative for  
13 reform. In this case reform means picking off a list of  
14 choices that may be disliked or may be discounted. The  
15 question is no longer one of preferred policy. The corrupt  
16 judges too easily exploited the system, so substantial  
17 safeguards must be put in place.

18 The members of this Commission bring high levels of  
19 qualification and commitment to this difficult assignment.  
20 That is what gives hope to a skeptical public that strong  
21 recommendations will result, protecting against a repetition  
22 while beginning to restore public confidence.

23 The questions this Commission has to confront are  
24 no doubt tough, hard, and unpleasant. But this is a time  
25 for serious soul-searching, not sugarcoating, and not

1 circling the wagons.

2           How could this level of corruption go on for so  
3 long and no one in an official capacity intervened? How is  
4 it that complaints that today are known to be valid were  
5 waved off until the moment the feds made an announcement?  
6 How is it that injustice could be misconstrued as tough  
7 justice?

8           We cannot write off this as a horrible situation  
9 unlikely to recur. The lesson is that someone has to keep  
10 an eye on things. As the public understands the current  
11 situation, the Supreme Court, at the top of the pyramid of  
12 the unified judicial system, does not have the capacity to  
13 keep watch over 67 county courthouses.

14           The state bureaucracy does not have time to sift  
15 through whatever data is being produced to check for warning  
16 flags, insufficiencies, and inaccuracies.

17           Various players in the juvenile justice system and  
18 county government are either intimidated or acquiescent.

19           And for reasons that revolve around a desire to  
20 protect privacy, access to proceedings by the media are  
21 barred denying an independent set of eyes.

22           The more that the system is shaded from scrutiny,  
23 the higher the risk that things will go wrong again,  
24 anywhere someone decides unjust gain is more important than  
25 just decision making.

1           You will be presented with a lot of constructive  
2 material for assembling a solid set of recommendations to  
3 all of us. The Juvenile Law Center will be prominent as a  
4 source. There is an Advocacy Alliance compiling an  
5 extensive list of reform ideas generated through the  
6 community. Not all of this may work, but some of it surely  
7 must be tried.

8           When I raised the issue of mandatory counsel there  
9 were some strongly negative reactions from within the  
10 system. But the practical question is this. If counsel is  
11 not viewed as necessary, how do you prevent another episode  
12 where counsel is aggressively discouraged and the rights of  
13 individuals tramped? Remember, the Luzerne County judges  
14 had a process that was time-effective, cost-effective, and  
15 massively unjust.

16           The same sort of reaction was received to the  
17 suggestion of media access. Elsewhere in state government  
18 changes approved in recent years opened the system to  
19 greater public scrutiny with the media as a central player.  
20 Certainly the open records law is illustrative. It grows  
21 harder to defend denying media access to judicial  
22 proceedings in the face of appalling corruption.

23           Some of those implicated and some who were merely  
24 part of the process have described an atmosphere of  
25 intimidation that permeated the courtroom and the

1 courthouse. That means a variety of professionals gave in  
2 to intimidation. What is to be done about the instances  
3 where counsel was present but did or said nothing?

4           If sufficient data are being collected, then  
5 somebody has to analyze it to see where things are that are  
6 way beyond the norm. Even though the numbers being reported  
7 by Luzerne County were seriously out of whack with the  
8 experience in other counties, the judges were seemingly  
9 confident that no one would notice or feel compelled to act.

10           Since the two judges left the bench the trend has  
11 turned sharply toward alternatives to incarceration,  
12 consistent with national direction.

13           Somebody should have looked into why two judges  
14 increasingly were relying on incarceration when the  
15 prevailing thinking around the country is otherwise.

16           The question also has to be asked in the wake of  
17 the judges' ethical and financial tangles, does the review  
18 of ethic statements and financial disclosure documents  
19 judges file need to be more thorough? A cursory look is not  
20 good enough.

21           Judge Arthur Grim is clearly the right person at  
22 the right time for reviewing the cases. His work will  
23 provide needed answers for fairly structuring the  
24 compensation that Pennsylvania's obligated to provide for  
25 the kids and families caught up in the corrupt practices.

1 They are owed much more than a profuse apology, which does  
2 nothing to repair disrupted lives.

3 From the outset I believe that Pennsylvania must  
4 establish a compensation fund to pay for education,  
5 training, and counseling needs of the kids who were the  
6 victims of injustice. Families had to pay costs associated  
7 with improper commitments and perhaps for inappropriate  
8 diagnosis after that. Fairness, fairness demands that they  
9 should recover these costs.

10 The review of the cases proves this is warranted,  
11 and it provided information that should be helpful in  
12 structuring a responsible program. Obviously the biggest  
13 obstacle in a time when budgets are taking a beating will be  
14 on deciding the appropriate and viable funding sources.

15 The recommendations of the Commission in this  
16 regard will be very important. An idea has surfaced about  
17 placing an assessment on lawyers. There might be virtue in  
18 that.

19 On the plus side, Pennsylvania has already an  
20 effective agency that can help fill the breach, the Juvenile  
21 Court Judges commission. There is no doubt as to their  
22 capacity or their diligence. We have to make sure they have  
23 the resources to do all that we ask of them in the future.

24 And the final reform is one that cannot be  
25 accomplished through law or rule. It is purely a matter of

1 attitude. There were heroes, heroes in this tragedy,  
2 individuals and groups who tried to raise warnings. The  
3 system could not or would not hear their complaints. And as  
4 we are learning, some thankfully persisted and shared their  
5 misgivings with the feds.

6 The point is, confidence that the justice system is  
7 so ethically moored and so superbly supervised as to rule  
8 out corruption has proved horribly misplaced. The judicial  
9 system has to learn to listen better to those who it is  
10 supposed to serve and protect in the same way legislators  
11 have had to listen better and be more responsive to their  
12 constituents.

13 Changes must be made. Decisions on those changes  
14 cannot await the completion of every investigation and the  
15 imposition of every sentence. There was significant,  
16 extensive, and extended wrongdoing that denied kids  
17 fundamental constitutional rights and undermined the  
18 confidence people must have in the fair administrative --  
19 administration of justice.

20 There may never be another time where it is so  
21 crucial to make a forceful statement and to take decisive  
22 action to ensure fairness in juvenile justice and  
23 accountability in judicial administration.

24 I have thought about this for a long time and very  
25 hard for many months. I've had a lot of deep conversations

1 with people inside and outside of juvenile justice. I've  
2 listened to painful stories from those victimized. And for  
3 anyone who is satisfied with the status quo, I have one  
4 final question. Do we really want a Commonwealth where we  
5 rigorously track every dollar that moves through casinos,  
6 but where we casually lose track of the constitutional  
7 rights of thousands of kids in our juvenile justice system?

8 This Commission has the power and the vision to  
9 begin righting these wrongs and to begin healing a juvenile  
10 justice system that must be the best Pennsylvania has to  
11 offer in every county of the Commonwealth.

12 Thank you for the opportunity to be here to present  
13 my thoughts, and I appreciate your hard work. And I look  
14 forward to working with you in the months ahead as you craft  
15 remedies and recommendations for those of us in government.  
16 Thank you.

17 CHAIRMAN CLELAND: Senator, thank you. And thank  
18 you for your leadership on this issue as well. If I might  
19 ask one question that I've been asked by the Commission to  
20 present to you.

21 Do you have any -- and I should have asked  
22 Representative Eachus. I apologize. Maybe bring you back  
23 up and ask you this question as well. Do you have any  
24 personal information about any complaints that were filed  
25 with either the Disciplinary Board, which regulates

1 attorneys; the Judicial Conduct Board, which regulates  
2 judges; or any other investigative agencies that presented  
3 information with regard to the issues that you have  
4 discussed? Any personal -- without naming who actually did  
5 this, any personal information that these complaints were  
6 actually made?

7           SENATOR BAKER: I've received some conversations,  
8 casual conversations. No direct copies of things that  
9 perhaps may have been filed. It's obviously been dialog and  
10 discussion with folks who were involved within the system  
11 who shared their personal stories and reflections.

12           So I -- I have not been privy to specific documents  
13 that may have been filed or presented.

14           CHAIRMAN CLELAND: So there's no information that  
15 actual complaints were filed with the Judicial Conduct Board  
16 or the Disciplinary Board or any governmental regulatory  
17 agencies other than you mentioned the US Attorney?

18           SENATOR BAKER: Not that has been provided to me  
19 personally

20           CHAIRMAN CLELAND: Thank you, Senator. Thank you.

21           JUDGE GIBBONS: Mr. Chairman, more in the nature of  
22 a request, Senator. If you have specific constituents who  
23 may have stories that -- you know, that were involved in the  
24 system in Luzerne County and they would like to come to the  
25 Commission, we would ask you to encourage them to contact

1 the Commission through our website and make arrangements to  
2 come to the hearings in November in Wilkes-Barre. Would you  
3 do that, please?

4 SENATOR BAKER: Absolutely, Justice. And I had a  
5 conversation with Judge Cleland about the concerns that many  
6 families may perhaps have in coming forward and not feeling  
7 comfortable in a setting. And one suggestion that I would  
8 offer is perhaps these young people would testify via  
9 videotape, either in an anonymous way or in a way that they  
10 might feel compelled to share those stories with you without  
11 the glare of the cameras and some of those other things.

12 So there may be opportunities or ways in which they  
13 can submit their personal feelings without -- I know you had  
14 mentioned it's been a challenge to find people who want to  
15 come forward.

16 CHAIRMAN CLELAND: We have not only one victim  
17 advocate on this panel, we have two. And so we have spent a  
18 great deal of time, preparatory time, dealing with the  
19 question of victims, how to sensitively deal with victims.

20 We're prepared to make accommodations so that  
21 they're comfortable, not intimidated, and feel like they're  
22 being heard appropriately and properly. So we will welcome  
23 the opportunity to make whatever reasonable accommodations  
24 we can if they're willing to come and talk to us.

25 SENATOR BAKER: And I would be happy to continue

1 working with Carol Lavery, the victim advocate who has been  
2 a tremendous leader in putting together some programs and  
3 resources for people in the community.

4 So perhaps through that process that we've  
5 established for victims to come forward we can work with  
6 Carol to try to address that as well.

7 CHAIRMAN CLELAND: Thank you, Senator.

8 BY MR. LEGG:

9 Q May I ask a follow up? Senator Baker, you  
10 indicated that you haven't received any documents that would  
11 be complaints to either Disciplinary Board or the Judicial  
12 Conduct Board. You say conversations you've had with  
13 persons that indicated they're filing complaints, is that  
14 what you meant to say or no?

15 A Specifically complaints to?

16 Q Have people told you they filed complaints, not  
17 that you've actually seen copies?

18 A No. Some people have suggested that, but I have  
19 not seen any of that.

20 Q People have suggested to you that they filed  
21 complaints or that complaints have been filed?

22 A That complaints have been filed.

23 BY MR. HOROHO:

24 Q Senator, I have a question. You've been a senator  
25 since 2007?



1 recommendations, an independent body that is separate from  
2 within a court structure, people talked about others being  
3 related, that there were connections between people within  
4 the court system and the like.

5 So I -- I think in some cases they were afraid to  
6 come forward, so as a result they just kept silent.

7 MR. HOROHO: Thank you.

8 MR. WILLIAMS: Judge Cleland, I think that  
9 Representative Eachus should be asked the same question.

10 CHAIRMAN CLELAND: Okay. Representative, thank  
11 you. I apologize for overlooking the request to ask that  
12 question.

13 Are you aware of any complaints that have been  
14 filed either with the Disciplinary Board, which regulates  
15 attorneys; the Judicial Conduct Board, which regulates  
16 judges; or any other governmental investigative agencies?

17 REPRESENTATIVE EACHUS: No, I'm not. But to Mr. --  
18 one of the Commissioner's questions, as a member of the  
19 northeast delegation, it would have been around 2006, we  
20 were briefed by the Department of Public Welfare, and there  
21 were a number of people who came before the delegation to  
22 talk about the increased rates of incarceration at the  
23 juvenile level in Luzerne County.

24 I think they would have been led by Mr. Cohn, who  
25 is the legislative liaison for the Department, still is, for

1 the Rendell Administration. I can't recollect exactly who  
2 the others were within the department, but there was a  
3 significant spike in incarceration which, you know,  
4 retrospectively today from having conversations with the  
5 administration did not get through in a way that helped  
6 change the system.

7           That -- that increase in incarceration, you know,  
8 looking at historical data of incarceration back over a five  
9 or six year period spiked sometime in the middle of the  
10 2000s, early 2000s, after this juvenile center was  
11 constructed and they closed the publicly held juvenile  
12 center in Luzerne County.

13           So that data was being collected by DPW as it  
14 relates to incarceration rates. And unfortunately looking  
15 back on it, it did not get through to the court system in a  
16 way that helped rectify behavior or identify it early. That  
17 would be the only information that I had that would have  
18 come to me either in my district office where I work here at  
19 the capital that related to this case.

20           It is troubling though that that kind of data from  
21 a state agency couldn't get through to the court system in  
22 order to help rearticulate a direction or review of the  
23 juvenile system in Luzerne County.

24           Hopefully you'll look closely at how the  
25 interagency communication between the executive and judicial

1 branches works and how that oversight can really be  
2 improved, I think.

3 BY MR. WILLIAMS:

4 Q Representative Eachus, who was the person at DPW  
5 that was handling that?

6 A The legislative liaison, his name is Allen Cohn,  
7 C-O-H-N. He still is the legislative liaison for the  
8 Department of Public Welfare.

9 Q Do you know if there was any follow up to that  
10 after the 2006 meeting?

11 A I know that interdepartmentally the -- the  
12 Department of Public Welfare had interactions with the court  
13 system, sir. But I'm hopeful that you can ask him to come  
14 before you to talk about how that data expressed itself, how  
15 the communication between the Department and the judicial  
16 system, I assume it's the Supreme Court that has oversight  
17 over that -- over the rest of the court system, how that  
18 broke down. Because there clearly was a breakdown.

19 They will be best suited to be able to explain that  
20 to you. But we were briefed as a delegation. It would have  
21 been Representative Phyllis Mundy; Kevin Blaum, who is now  
22 retired; a number of other members of Luzerne County and  
23 northeast delegation who would have been part of that  
24 briefing by the Department.

25 There wasn't much we could do about it

1       legislatively because the interaction was administrative  
2       and they said not to worry, that they were going to handle  
3       it. But they wanted to raise the concern with the  
4       delegation.

5               MR. WILLIAMS: Thank you for that information.

6               REPRESENTATIVE EACHUS: You're welcome.

7       BY JUDGE GIBBONS:

8               Q       Mr. Leader, do you have constituents that came to  
9       your office registering complaints during the operative time  
10       frame regarding what was going on in the juvenile justice  
11       system in Luzerne County?

12              A       I had one couple, and I'm happy to do some research  
13       to provide the information. I looked back on it. It would  
14       have been somewhere in 2006. A young couple came to me  
15       relating to incarceration of their daughter. It would have  
16       been a young girl in high school age.

17              They were out to dinner, and unfortunately there  
18       was some grievance between someone at an adjacent table  
19       regarding some theft of jewelry. That young lady was  
20       incarcerated in the juvenile justice center for a short  
21       time. But I'd have to do some research to find out what  
22       that family's name was and provide it to you confidentially.  
23       Because I do handle my case work in a confidential manner in  
24       my district office. I could see if I could find that case.

25              Q       Could you tell us what you did?

1           A     Well, I reached out to the court administrator who  
2 now is, I guess, under arrest. He's been convicted. And  
3 asked him what the terms of this were. The family expressed  
4 to me that -- that the young lady was incarcerated for this  
5 theft, that she did not have any jewelry in her possession.

6                     They were unaware that she stole anything, but the  
7 terms of the incarceration were that if she did not return  
8 the jewelry, that she would stay in the detention center,  
9 the juvenile detention center in Luzerne County, for an  
10 indeterminate period, which I thought was a strange practice  
11 as related to how the young people in the juvenile system  
12 would be incarcerated.

13                    I inquired. And I can't tell you whether my  
14 inquiry helped or didn't, but I can check back on my  
15 records.

16                    CHAIRMAN CLELAND: Senator, thank you. Or Senator,  
17 I'm sorry. Representative Eachus, thank you, very much for  
18 being here and I appreciate again your time.

19                    REPRESENTATIVE EACHUS: And I appreciate your work.  
20 Thank you, very much.

21                    CHAIRMAN CLELAND: Thank you. We turn now to the  
22 substantive part of our meeting this morning, which it would  
23 be presented by John Delaney.

24                    Mr. Delaney is an attorney from Philadelphia where  
25 he currently serves as the Deputy District Attorney of the

1 Trial Unit, the Trial Division. He formerly supervised the  
2 juvenile division. He lectures throughout the nation on  
3 juvenile justice issues and served on the Pennsylvania  
4 Supreme Court Juvenile Rules Committee when that committee  
5 developed the recommendations which were subsequently  
6 adopted by the Pennsylvania Supreme Court and which since  
7 2005 have governed how cases involving juvenile delinquents  
8 are supposed to be held.

9 We've scheduled Mr. Delaney to testify for about  
10 one hour, half of that to be reserved for questions from the  
11 Commissioners. Mr. Delaney, welcome. And would you please  
12 stand, sir, to take the oath?

13

14 JOHN DELANEY, ESQUIRE, called as a witness, being  
15 duly sworn, testified as follows:

16

17 CHAIRMAN CLELAND: Thank you, sir. Mr. Delaney.

18 MR. DELANEY: Good morning. Thank you, Judge,  
19 Commissioners. It's my privilege to be here. I've been a  
20 prosecutor in the Philadelphia District Attorney's Office my  
21 entire legal career for 28 years. I've split my career  
22 roughly in half, half in the delinquency system, half in the  
23 criminal system.

24 For 11 years I led the juvenile division in the  
25 Philadelphia District Attorney's Office until 2002 when I

1 was succeeded and exceeded by Commissioner Mosee. During my  
2 career in the delinquency system I was involved in a number  
3 of statewide efforts.

4 For ten years I served on the Commission on crime  
5 and Delinquency, Juvenile Justice and Delinquency Prevention  
6 Committee. For five years, from 2001 through 2006, I served  
7 as one of the initial members of the Supreme Court's  
8 Juvenile Court Procedural Rules Committee.

9 Prior to that for three years the Supreme Court had  
10 what was known as the Juvenile Court Rules Project.  
11 Prior to the enactment of the Rules in 2005 there were no  
12 statewide rules that governed the procedure in juvenile  
13 delinquency cases.

14 In 1998 the Supreme Court created a project which  
15 included, among others, Judge Uhler, to look at whether the  
16 Supreme Court should form a committee to explore the  
17 feasibility of statewide rules. There were conflicting  
18 sentiments at the time.

19 Most of the counties thought that the way they did  
20 it was the best, and they didn't want to conform to any  
21 other way. There was the sense that there was disparity  
22 between practices and communities, and there was also a  
23 moving sentiment amongst the Supreme Court that the practice  
24 of law should be uniform throughout the Commonwealth.  
25 Attorneys that practiced in different counties found very

1 different practices.

2           So for three years there was research done. There  
3 was surveys taken. There were meetings held. There were  
4 people interviewed, including all segments of the juvenile  
5 justice system. And in 2001 the Supreme Court instituted  
6 the Juvenile Court Procedural Rules Committee with two  
7 questions. Should there be statewide rules? And if so,  
8 what should they look like?

9           The initial committee was formed with nine  
10 individuals, prosecutors, defense attorneys, child  
11 advocates, four judges, and it was chaired by an academic  
12 who had long experience in juvenile delinquency law, Barry  
13 McCarthy, from the University of Pittsburgh Law School. The  
14 Committee met multiple times over several days. And, again,  
15 conducted more research into the law, into the practice,  
16 conducted surveys, conducted interviews.

17           And the Supreme Court Rules process that -- the  
18 proceedings over the Rules Committee are not public. One of  
19 the good things about that is members are encouraged to take  
20 off their individual discipline hats and argue and advocate  
21 and hopefully reach consensus about what the best rules are  
22 for the best system.

23           We attack delinquency first, dependency later. And  
24 in 2003 published proposed rules, which were available for  
25 public comment. After significant public comment the

1 Committee made recommendations to the Court, and in 2005 the  
2 court promulgated the Juvenile Procedural Rules.

3 This was all done in the context of two overriding  
4 facts. One was the Juvenile Act in Pennsylvania was  
5 significantly rewritten in 1995. Prior to that the purpose  
6 of juvenile delinquency proceedings was to remove from  
7 children committing delinquent acts the consequences of  
8 criminal behavior and to institute, therefore, a program of  
9 supervision, care, and rehabilitation.

10 In 1995 the legislature rewrote the Juvenile Act to  
11 say that in every case the Court shall pay balanced  
12 attention to three things, the protection of the community,  
13 the imposition of accountability for offenses committed, and  
14 that accountability was to include accountability to the  
15 crime victim and accountability to the community. And the  
16 program's designed to equip juveniles with the skills  
17 necessary to become responsible and productive citizens.

18 The other fact that was very clear to the Committee  
19 as we commenced our work was that there was already  
20 significant procedural direction in the form of the Juvenile  
21 Act.

22 The Juvenile Act, although a creation of  
23 legislature, is essentially procedural in nature. So we  
24 were not writing the rules in a blank slate. Not only was  
25 there a Procedure Act that governed the entire Commonwealth,

1 there were 65 ways of doing things throughout the judicial  
2 districts in the Commonwealth.

3 So our efforts were intended to do a couple of  
4 things. No. 1, to establish procedures that were uniform,  
5 to establish procedures that were simple, to establish  
6 procedures that were fair, and to establish procedures that  
7 were efficient.

8 The Rules Committee continues to exist. I left it  
9 in 2006. It meets regularly and considers items and  
10 continues to make recommendations which the Supreme Court  
11 continues to consider, and the Rules have been amended any  
12 number of times since they were initially promulgated in  
13 2005.

14 The -- with particular regard to some of the work  
15 that I believe the Commission is going to be interested in,  
16 the uniform -- the statewide rules declare -- the Supreme  
17 Court, in the standard rules, declared that local rules  
18 could no longer exist unless they were consistent with the  
19 statewide rules.

20 So it was a way for the Supreme Court to dictate to  
21 the counties that if you have a particular way of doing  
22 things that is constant with the statewide rules, you may  
23 continue to do that. If it's not, then you can't do it your  
24 way anymore. You have to do it the statewide way. Again,  
25 to effectuate the intent to make the practice uniform.

1           In particular regard to what I think the  
2 Commission's interested in, the Committee recommended and  
3 the Court adopted three rules providing for counsel. And  
4 those are Rules 150, 151, and 152.

5           Rule 150 essentially says that -- and this echos  
6 the Juvenile Act, that a child or a juvenile is entitled to  
7 counsel at all stages of any procedure.

8           That had been the law in Pennsylvania since the  
9 Juvenile Act was enacted in 1972. That did not change, and  
10 the rules reemphasized that. Rule 150 said that once an  
11 attorney was in a case, the attorney would -- and that was  
12 either by entering his or her appearance having been  
13 privately obtained or having been appointed by the Court,  
14 they stayed in the case throughout final judgement.

15           Juvenile delinquency proceedings are different in a  
16 number of significant ways from criminal proceedings, which  
17 is probably their closest analog in the law. One is that  
18 when an adult is sentenced in criminal court that adult only  
19 comes back to the attention of the Court if there's some  
20 allegation of a violation of parole or probation.

21           Juveniles are different. Juveniles who are placed  
22 on probation can have a probation reviewed at court  
23 hearings, and juveniles who are placed in residential  
24 placement must have their placement reviewed at court  
25 hearings.

1           And there was a problem throughout the Commonwealth  
2 with lawyers who represented juveniles up through the  
3 adjudication, the verdict if you will, through the  
4 sentencing, which in juvenile court is known as the  
5 disposition, and at placement review hearings never  
6 appeared.

7           So the Rules are very specific. You're in the case  
8 -- once you decide to enter the case, you're in the case  
9 until one of two things happens. A Court allows you to  
10 withdraw your appearance, or a new attorney enters his or  
11 her appearance.

12           It also provided that the motion to withdraw, if  
13 the attorney wanted to withdraw, had to be done in one of  
14 two ways. One was in open court in the presence of the  
15 juvenile. So if there was some conflict between the lawyer  
16 and his client, the Court would be aware of that and be able  
17 to address it. And the other was by filing a written  
18 motion.

19           And in either event notice had to be given for the  
20 attorney for the Commonwealth. Rule -- and the Court is  
21 instructed in Rule 150 that counsel can only be permitted to  
22 withdraw if there's good cause shown, or obviously if new  
23 counsel's entered an appearance.

24           Rule 151 talks about the assignment of counsel.  
25 And it says that if the juvenile does not have an attorney,

1 the Court shall -- and I should stop for a second and point  
2 out that in rule making and rule reading and rule  
3 interpreting, there are permissive and mandatory  
4 instructions.

5 The Court specifically and intentionally uses words  
6 differently. May as opposed to shall. There are a number  
7 of shalls in the counsel rules. And one is if the -- if the  
8 juvenile does not have an attorney, the Court shall inform  
9 the juvenile of his right to counsel.

10 If the juvenile's without resources, financial  
11 resources, the Court shall assign counsel at no charge to  
12 the juvenile. And counsel shall be assigned prior to the  
13 detention or pretrial hearing.

14 The comment to the rule goes on to say that the  
15 Court should be aware that if there are co-Defendants or  
16 multiple juveniles in the same case that may have  
17 conflicting interest, the Court has to take that into  
18 consideration in determining whether each juvenile gets a  
19 separate attorney.

20 The final rule that deals with counsel is Rule 152,  
21 which talks about waiver of counsel. And the rule provides  
22 that a juvenile may not waive his right to counsel unless  
23 his waiver is knowingly, intelligently, and voluntarily  
24 made. This has to be done on the record in a colloquy  
25 conducted by the Court.

1           If the Court accepts the waiver after conducting  
2 the colloquy, the Court, in its discretion, may assign  
3 stand-by counsel. The rule further provides that if the  
4 juvenile waives counsel, that waiver is only applicable to  
5 that particular hearing.

6           If there's a further hearing in the case, the Court  
7 has to, again, inform the juvenile of his right to counsel.  
8 And if the juvenile wants to waive his right to counsel,  
9 conduct the colloquy.

10           The comment to the rule contains the suggested  
11 elements for the colloquy. Practitioners who appear in  
12 criminal court are familiar with these elements, but the  
13 same elements that occur in criminal court when someone  
14 waives their right to counsel, they're also some of the same  
15 elements that the juvenile's colloquied about in delinquency  
16 court if he wants to plead guilty, or in the words of  
17 juvenile court, admit his delinquency.

18           I should point out that these rules were arrived at  
19 after significant discussion and debate. We looked at the  
20 rules applying to counsel in other states. We looked at the  
21 practice around the Commonwealth of Pennsylvania.

22           We looked at the data provided by the Juvenile  
23 Judges' Commission about the frequency with which juveniles  
24 waived counsel. And it was the Committees considered  
25 approach that this was the best way to address this issue.

1 The Court agreed when it promulgated the rule.

2 Your Honor, with your permission I'll stop there  
3 and try to address any questions the Commission may have.

4 BY MR. LISTENBEE:

5 Q Thank you. Good morning, Mr. Delaney.

6 A Good morning.

7 Q Mr. Delaney, when it comes to the appointment of  
8 counsel, when we're not talking here about privately  
9 retained counsel but the appointment of counsel, whether  
10 it's private counsel or public defenders, at what stage do  
11 the Rules say that counsel must be appointed?

12 A Prior to the detention or pretrial hearing.

13 Q Prior to the detention. Does it say how far in  
14 advance of the detention hearing that appointment should  
15 occur?

16 A I don't believe so. No, it just says -- Rule  
17 151(b) says prior to the detention hearing.

18 Q Now, other sections of the Rules governing the  
19 intake hearing also specify that counsel can appear at the  
20 intake hearing, but it does not call for the appointment of  
21 counsel at the intake hearing.

22 For the benefit of the Commissioners present and  
23 also the public, can you please explain to us what happens  
24 at intake hearings in the juvenile justice system?

25 A Basically a decision is made, not by a judge, but

1 by a probation officer employed by the juvenile court who  
2 looks at two issues essentially. One is is this case worthy  
3 of or in need of further court processing?

4 There are a significant number of delinquency  
5 allegations in Pennsylvania that do not get beyond the  
6 intake hearing. They can be, in the words of the Juvenile  
7 Act, formally adjusted. And I should point out there there  
8 are a number of discretionary mechanisms that operate in the  
9 Commonwealth.

10 In Philadelphia, for example, we have a program  
11 that Mr. Mosee runs called the Youth Aide Panels that divert  
12 juveniles before they enter the justice system, before a  
13 delinquency petition is filed against them.

14 There are things like Youth Aide Panels used  
15 throughout the Commonwealth. Some administered by  
16 prosecutors, some administered by police departments, some  
17 administered by county governments, some administered by  
18 juvenile courts.

19 So at the intake hearing a probationary officer's  
20 deciding does this case, based on what the juvenile's  
21 allegedly done and what I know about the juvenile's  
22 background, warrant or need further processing?

23 And second, if so, should the juvenile be detained  
24 pending that process? And if the probation officer makes  
25 the decision that the juvenile shall be detained, than the

1 juvenile has to appear for a detention hearing before a  
2 judge, or a judge-like official called a master, within 72  
3 hours of his arrest.

4 Q Okay. Mr. Delaney, before appearing you gave me a  
5 copy of a diagram of the juvenile justice system. At this  
6 point I'd like to just pass it out to Commissioners and  
7 share it.

8 I also shared with you a copy of the Pennsylvania  
9 Juvenile Court Dispositions Report prepared by the Juvenile  
10 Court Judges' Commission.

11 A Yes, sir, I have it.

12 Q Would you take a look on page four of the report  
13 and just tell us basically how many cases are informally  
14 adjusted in the State of Pennsylvania, or were informally  
15 adjusted in the State of Pennsylvania in the year 2007?

16 A This is the Juvenile Court Judges' Commission  
17 Disposition Report that covers cases disposed in the year  
18 2007, the most recent year for which aide is publicly  
19 available.

20 In 2007 there were 45,573 delinquency dispositions  
21 in the Commonwealth. In that year 6,516, or 14.3 percent,  
22 of them were informally adjusted.

23 Q Okay. Do you know whether all the counties in the  
24 Commonwealth of Pennsylvania have informal adjustment  
25 procedures, or do you know approximately how many just based

1 upon your experience?

2 A I don't know that all of them do. My belief is  
3 most of them do.

4 Q Once the informal adjustment process is over you go  
5 to the detention hearing. Can you explain to the Commission  
6 how the detention hearing process works?

7 A I can tell you how it works in Philadelphia.  
8 Within 72 hours of the arrest of any juvenile who's detained  
9 by the intake probation officer, the juvenile appears in  
10 front of a lawyer appointed by the Court to serve as a  
11 Master.

12 In Philadelphia the Commonwealth's represented by  
13 an Assistant District Attorney. The juvenile's represented  
14 by an attorney, most commonly a public defender, one of your  
15 colleagues.

16 At the detention hearing the Master reviews the  
17 delinquency petition that in Philadelphia is filed by the  
18 District Attorney. If that petition on its face makes out  
19 probable cause, that is that it is more likely than not that  
20 the juvenile committed a delinquent act or what would be a  
21 misdemeanor or felony if committed by an adult, then the  
22 case goes forward for additional processing.

23 The Master also makes the decision does the  
24 juvenile remain in custody or not? In Philadelphia the  
25 Master has available to him the juvenile's prior delinquency

1 record, which includes not just arrest and disposition, but  
2 specific information about the juvenile's adjustment while  
3 under any Court supervision and hears argument evidence  
4 which either side may present about the facts of the case or  
5 the juvenile's background.

6 At the conclusion of the hearing the Master makes a  
7 decision whether the juvenile's detained or not. If the  
8 juvenile is detained, then his adjudicatory hearing, or his  
9 juvenile court trial, has to be scheduled within 10 days of  
10 his arrest.

11 If the juvenile's released, then there is no time  
12 limit. The Rules talk about his adjudicatory hearing shall  
13 be scheduled within a reasonable time.

14 Q Based upon your experience are there any rules that  
15 specifically establish what the criteria is for releasing  
16 the juvenile or retaining the juvenile in custody at that  
17 time? And if not in the Rules, are you aware of any  
18 publications by JCJC or other governing organizations that  
19 give guidelines for this kind of a decision making process?

20 A I don't recall specifically if it's in the Rules.  
21 It's not in the JCJC about the specific information that the  
22 Judge or Master is to consider in determining whether to  
23 detain a child.

24 Q If you have the JCJC guidelines, are the judges  
25 compelled by the Rules to follow the JCJC guidelines?

1           A     No.  The JCJC do not have the force of law.

2           Q     Once the juvenile goes through the process of  
3 intake and the child is released, what happens then in terms  
4 of an adjudicatory hearing for those who are not detained?

5           A     The adjudicatory hearing in juvenile court  
6 resembles in many ways a bench trial in criminal court with  
7 some notable exceptions.  Juveniles are not entitled to  
8 bail.  If a -- let me rephrase that.

9                     An alleged delinquent in Pennsylvania is not  
10 entitled to bail.  If he's detained by the Court, he's  
11 detained regardless of how much money his family has access  
12 to.  If he's released, he owes no money to be released.

13                    Juveniles do not have the right to a jury trial.  
14 They can only be tried by a judge sitting alone.  In most  
15 other respects alleged delinquents have the same rights as  
16 alleged criminals.  They're protected by the Fourth  
17 Amendment, protection against unreasonable searches and  
18 seizures, self-incrimination, and they have the right to  
19 counsel.

20                    They have no burden of proof in the proceedings.  
21 The Commonwealth has the burden of proving them not only  
22 guilty beyond a reasonable doubt, but also by a  
23 preponderance of the evidence that they're in need of  
24 treatment, rehabilitation, and supervision.

25                    Because in Pennsylvania delinquency has two

1 elements, proof of guilt of the commission of a crime, and  
2 proof that the juveniles is in need of rehabilitation,  
3 supervision, or treatment.

4           If both of those things are proven at a hearing,  
5 which under some circumstances is open to the public, under  
6 some circumstances not open to the public, then the next  
7 step in the process is dispositional hearing, the equivalent  
8 of a sentencing hearing where the juvenile is represented by  
9 counsel. Commonwealth is represented by the Assistant  
10 District Attorney. And both sides are able to make  
11 argument, present evidence about what the appropriate  
12 disposition should be.

13           That can include a lot of background about the  
14 juvenile. It can include the Victim Impact Statement. It  
15 can include anything that either side proffers as relevant  
16 to the Judge's decision as to what should be done to, with,  
17 or for the juvenile.

18           Q     Mr. Delaney, before we go on into the dispositional  
19 aspect of the process, let's go back and take a look at  
20 consent decrees.

21                   Are consent decrees a normal part of the process  
22 for juvenile hearings in Pennsylvania?

23           A     During normal operations in juvenile delinquency  
24 cases, again looking at the JCJC 2007 report, consent decree  
25 was the most common disposition. Of the 45,573

1 dispositions, 8,399 of them, or 18.4 percent, were consent  
2 decrees.

3           A consent decree is an order by the Court placing  
4 the juvenile on pretrial supervision. There's no findings  
5 of guilty. There's no finding of delinquency. The Court,  
6 in essence, says to the juvenile, for the next six months  
7 you're going to be under supervision. While you're under  
8 supervision you're going to do the following things. And  
9 the options available to the Judge for consent decree are  
10 essentially the same available if the Judge put the juvenile  
11 on post-adjudication probation. Make an apology to the  
12 victim, perform community service, pay restitution, attend  
13 school every day, obey the lawful commands of the parent,  
14 et cetera.

15           If at the end of those six months the juvenile has  
16 completed the terms, then the consent decree is terminated  
17 and the delinquency case is withdrawn. So a consent decree  
18 is philosophically the same thing as an informal adjustment.  
19 It's a second chance for the juvenile.

20           And different than an informal adjustment, it's  
21 under the supervision of the Court, and there are usually  
22 more conditions attended to a consent decree than informal  
23 adjustment.

24           Q     So it appears that one third of the cases in the  
25 Commonwealth had been disposed of by informal adjustment

1 based upon the report; is that fair to say?

2 A Yes.

3 Q Again, back on the issue of waiver of the right to  
4 counsel that we discussed earlier. If you turn to page 13  
5 of the report, you will see that according to this report a  
6 certain number of children waived the right to counsel in  
7 the Commonwealth of Pennsylvania.

8 What is that statistic, and what was that statistic  
9 in 2007?

10 A In 3.8 percent of delinquency dispositions the  
11 juvenile waived counsel.

12 Q Now, have you taken a close look at the procedures  
13 regarding waiver of the right to counsel?

14 A No.

15 Q Would you have any recommendations as to how the  
16 procedures that exist in the Rules might be strengthened in  
17 order to reduce the number of children who are waiving the  
18 right to counsel or to protect their rights in the process?

19 A Before I answer that let me point out that in 2003  
20 before the Rules were enacted the waiver of counsel was  
21 double what it was in 2007. It was almost 8 percent. It  
22 was less than 4 percent in 2007.

23 I don't think it's my place to recommend -- what I  
24 can tell you is when the Committee debated this issue there  
25 were conflicting interests. One was there was some

1 sentiment that no juvenile at any time should be able to  
2 waive his right to counsel.

3           There were practical considerations raised by a  
4 number of Committee members about the burden that might  
5 unintentionally place on some juveniles. If, for example, a  
6 juvenile appeared in court and was offered a consent decree,  
7 had his parents present, and his parents would otherwise be  
8 able to afford counsel, and the consent decree was something  
9 that the parents and juvenile reasonably agreed could be  
10 accomplished in a very short period of time, if the Rule  
11 required he cannot waive his right to counsel, he couldn't  
12 get his consent decree that day.

13           The case would have to be rescheduled. They would  
14 have to go hire a lawyer for, depending on the county, a  
15 significant amount of money to get the exact same  
16 disposition.

17           There was also the concern that you, Mr. Listenbee,  
18 are probably more familiar with than anybody in this room.  
19 What happens in Philadelphia when juveniles are committed to  
20 placement, they have to have a hearing in front of the Judge  
21 every six months after they're placed.

22           At that six month hearing, or 12 month or 18 month  
23 hearing, the Court has to determine should the juvenile  
24 remain in placement? A significant number of the juveniles  
25 in placement do well there.

1           So, for example, at their six month hearing they  
2 might be eligible for discharge. But if the lawyer who  
3 represented him through adjudication did not appear at the  
4 review hearing, perhaps that review hearing could be  
5 continued. The juvenile remained in placement until the  
6 Court either appointed a lawyer for him or did something to  
7 bring back the lawyer that was supposed to be there in the  
8 first place.

9           And I know you and I, back when we had opposite  
10 positions in the Philadelphia Juvenile Justice System, were  
11 allied going to the Court about the problem where your  
12 lawyers, who represent the bulk of the juvenile defendants  
13 in Philadelphia. On a list of 100 review cases, your office  
14 might represent 75 of them. But No. 76 who doesn't have a  
15 lawyer, the Justice or Master says, well, this kid has a  
16 good report. I want you to represent him, Mr. Listenbee.  
17 And your lawyers admittedly are reluctant to do that because  
18 they know nothing about the young person or their case.

19           And while the report from the Glen Mills School or  
20 the Youth Development Center may say that junior is doing  
21 very well and they recommend discharge, there may be a  
22 recent incident that the District Attorney is going to point  
23 out that may result in the kid's further placement.

24           So there are conflicting interests at stake here.  
25 One is the philosophical belief that juveniles should not be

1 able to waive their right to an attorney. And I should also  
2 point out that to the best of my knowledge the Supreme Court  
3 of the United States has never decided the issue.

4 The Supreme Court of the United States is very  
5 clear about criminal defendants. A criminal defendant has a  
6 right to represent himself. So criminal defendants have to  
7 be given a right to waive their -- have to be given the  
8 opportunity, if they want to take advantage of it, to waive  
9 their right to counsel.

10 That -- that issue has not been decided as it  
11 applies to juveniles in delinquency court.

12 Q Can you --

13 A I just point out one other thing. And that is in  
14 Philadelphia at least, and I don't think the numbers are  
15 terribly different in the rest of state, of all the  
16 juveniles under court supervision, a third of them in  
17 Philadelphia are 18, 19, or 20 years old.

18 So some people, while they're in the terms of the  
19 law juveniles, in chronological terms are adults. So the  
20 Committee looked at these conflicting interests and came up  
21 with what we thought was an appropriate approach, which was  
22 a juvenile can waive his right to counsel, but it's very,  
23 very difficult. And you can only do it for that hearing.

24 Q Are you -- how do you interpret the language if the  
25 juvenile is without financial resources or otherwise unable

1 to employ counsel? Is that to be interpreted that the  
2 juvenile's resources are defined by his or her parents'  
3 resources or by the specific resources that that child has?

4 A Once again, with all due respect I'm not going to  
5 give you my answer, but I'm going to explain to you what the  
6 Committee wrestled with.

7 Q Yes.

8 A There are various ways of doing that. Some  
9 counties take the approach, Philadelphia for example, that  
10 it's only the juvenile's resources that are at stake. His  
11 -- his family resources are not in play.

12 And in Philadelphia, as you well know, the default  
13 position is we presume that the juvenile's indigent unless  
14 he shows up with a statement from his trust fund. Some  
15 counties don't take that approach. Some counties look at  
16 financial resources of the parent.

17 And the appointing authority varies a lot from  
18 county to county. This was one of the areas that the  
19 Committee looked at and saw that the practice was all over  
20 the map. But because it had significant implications for  
21 the counties' budgets and because we were not getting  
22 complaints that -- where a juvenile was in need of counsel,  
23 the county was refusing to appoint one for him.

24 This was a subject that was not specifically  
25 addressed by the Rules. So the language is passive, if you

1 will. It's up to the Court to determine whose financial  
2 resources are examined, and it's up to the Court to decide  
3 who in that jurisdiction is the appointing authority.

4 Q So it's a Court, it's not the public defender under  
5 The Public Defender Act to the best of your knowledge?

6 A No. Because the Supreme Court, when they adopted  
7 the Rules, suspended The Public Defender Act in part. So I  
8 believe that in some places that continues to happen because  
9 the Court delegates that authority to the public defender.

10 Q Okay. Based upon your experience, again, what  
11 would be your recommendation in this area? You've discussed  
12 the philosophical differences that appear during the course  
13 of discussions on the Committee, and I'm not asking you to  
14 review who took which position. But based upon your  
15 knowledge of this particular rule and on the circumstances  
16 that surrounded -- that surround the appointment of counsel,  
17 what is your position on what would be the best approach to  
18 dealing with this at this time?

19 A Let me preface my answer by saying that for four  
20 years prior to my being appointed to the Juvenile Court  
21 Rules Committee I was on the Criminal Procedural Rules  
22 Committee.

23 Since I left the Juvenile Rules Committee I've been  
24 reappointed to the Criminal Rules Committee. So I've been  
25 on the Supreme Court Rules Committee for the last 11 years.

1           One of the most difficult dilemmas Rules Committee  
2 faces is how do you get people to do their job? And with  
3 all due respect, how do you get judges to do their jobs? I  
4 can't tell you the amount of time I spent on the Criminal  
5 Rules Committee wrestling with the issue in death penalty  
6 cases where there were post-sentence motions files judges  
7 were refusing to act upon.

8           So the Committee actually entertained a proposal  
9 that was ultimately rejected that would deny a  
10 post-conviction relief act request by a defendant sentenced  
11 to death by operation of law after a certain period of time  
12 because a judge refused to act on it.

13           So I don't know the answer to your question, Mr.  
14 Listenbee. Perhaps the Commission, after hearing from the  
15 people smarter and wiser than me, will come to a  
16 recommendation for Rules Committee to entertain. That would  
17 be the appropriate mechanism for this issue to be  
18 readdressed back at the Rules Committee.

19           MR. LISTENBEE: Mr. Chairman, I would like to move  
20 on to the disposition hearings, but I would like to allow  
21 any of the Commissioners to have -- if they have questions  
22 about the right to counsel issues at this time.

23           CHAIRMAN CLELAND: Mr. Listenbee, I did check the  
24 Rule on detention hearings. The Rule does not contain the  
25 factors that the Court has to consider in determining

1 whether to detain or release a child.

2 MR. LISTENBEE: Thank you.

3 BY MR. MOSEE:

4 Q Just one question. Mr. Delaney, you mentioned that  
5 with respect to the right to counsel there's a Rule. Is  
6 there a provision in the Juvenile Act that addresses waiver  
7 of counsel?

8 A Yes. It's Section 6337 of Title 42, which says  
9 that a child is entitled to an attorney at all stages of any  
10 -- actually it says a party, and an alleged delinquent is a  
11 party, is entitled to counsel at all stages of any  
12 proceeding. If a party's without counsel, the Court's to  
13 inform that he has a right to counsel, and the Court's to  
14 appoint counsel if the party's without resources.

15 Q And in discussing whether or not a child is  
16 indigent, we talked about some counties viewing this from  
17 the perspective of the parents' income and not solely the  
18 juvenile's income.

19 Does the Juvenile Act with respect to waiver of  
20 counsel talk about the role of the parent or the power of  
21 the parent?

22 A The Juvenile Act talks about the -- that the  
23 juvenile cannot waive counsel -- it says counsel must be  
24 provided for the child unless the parent is present in court  
25 and affirmatively waive it. That provision of the Juvenile

1 Act was suspended by the Supreme Court when it adopted Rules  
2 150 to 152. One of the comments specifically sites this.  
3 It recognizes that the waiver of counsel belongs to the  
4 juvenile, not to his parents.

5 MR. MOSEE: Thank you.

6 CHAIRMAN CLELAND: Any other questions, Mr.  
7 Listenbee?

8 JUDGE UHLER: The Rules that were established with  
9 regard to waiver, both as to right to counsel and waiver of  
10 right to trial, i.e. the admission, they require, as I  
11 recall, a definitive finding by the Court that the juvenile  
12 made a knowing, intelligent, and voluntary determination to  
13 do so arising from that which is developed on the record.  
14 Those rules, I would gather, contraindicate a cattle call  
15 type proceeding; is that correct?

16 MR. DELANEY: Yes, Your Honor.

17 CHAIRMAN CLELAND: One clarification. The 3.8  
18 percent waiver figure that you have indicated, is that the  
19 -- the two thirds of the cases that are not informally  
20 adjusted, or does that -- is that across the board in all  
21 cases? If it's not readily apparent, that's okay. We can  
22 get it clarified.

23 MR. DELANEY: No, it is, Your Honor. It's -- the  
24 JCJC's report goes down to break down by type of disposition  
25 the percentage of cases in which there was a public

1 defender, Court-appointed, private, or waived counsel. So  
2 it lists, for example, informal adjustments. 15 and a half  
3 percent of the informal adjustments were done by juveniles  
4 who waived their right to counsel.

5 The -- the percentages vary, but there are at least  
6 some waivers in every type of disposition.

7 CHAIRMAN CLELAND: And when you refer to JCJC,  
8 you're referring to the Juvenile Court Judges' Commission,  
9 which is the -- an executive branch agency which provides  
10 standards for the operation of the juvenile courts; is that  
11 correct?

12 MR. DELANEY: Among many other good acts, yes, Your  
13 Honor.

14 CHAIRMAN CLELAND: Thank you.

15 BY MR. LISTENBEE:

16 Q Mr. Delaney, can you refer now to dispositional  
17 practices in juvenile court? I'm now referring to Rule 512,  
18 which covers that. Can you tell this Commission what the  
19 processes and procedures are for handling dispositions in  
20 juvenile court according to the Rules?

21 A As I said earlier, both sides are able to present  
22 evidence, either witnesses, documents, and make argument.  
23 The Rule 512 provides that the juvenile has to have an  
24 opportunity to be heard.

25 The Victim's Bill of Rights also provides that the

1 Court shall give the victim the opportunity, if the victim  
2 wants to present victim impact testimony either through  
3 testimony or through a statement.

4 And the dispositional hearing, according to the  
5 Rules, shall be informal, but orderly. It has to be  
6 prescribed, and then the Court has to issue a dispositional  
7 order at the conclusion of the hearing.

8 Q Who are the parties who are supposed to receive  
9 copies of the dispositional orders at the end of a hearing?

10 A According to Rule 516, the juvenile, the juvenile's  
11 guardian. And guardian is a term of art in the Rules that  
12 includes parent, guardian, custodian, or someone acting in  
13 loco parentis.

14 The juvenile's attorney, the attorney for the  
15 Commonwealth, the juvenile probation officer, any agency  
16 directed to provide treatment, and any other person as  
17 ordered by the Court.

18 Q So in theory, if a court had 20 dispositions in a  
19 courtroom on a given day, then there should be 20 orders  
20 sent around to each one of the parties that you just  
21 mentioned?

22 A Yes.

23 Q What rights do juveniles have for  
24 post-dispositional representation, and what kinds of  
25 post-dispositional actions are available to juveniles?

1           A     Well, Rule 150, which talks about attorney's  
2     appearances and withdraws, says in Rule 150(b), once an  
3     appearance is entered or the Court assigns counsel, counsel  
4     shall represent the juvenile until final judgement,  
5     including any proceeding upon direct appeal and  
6     dispositional review unless permitted to withdraw pursuant  
7     to Paragraph C.

8                 So the juvenile's right to counsel could proceed  
9     along two parallel tracks after the dispositional order is  
10    entered.  If there are further proceedings in the trial  
11    court, probation review hearings or placement review  
12    hearings, violation of probation hearings, the juvenile  
13    maintains the right to counsel.  Not only the right to  
14    counsel, by the same lawyer unless changed by the Court  
15    throughout.

16                Similarly, the juvenile has the right to appeal the  
17    dispositional order to the Superior Court.  And, again, same  
18    counsel is indicated unless the Judge orders otherwise.

19            Q     For counsel to be able to file appeals and pursue  
20    these post-dispositional remedies, are there any rules that  
21    specify that there should be a development of specialization  
22    or any type of career development for lawyers to be able to  
23    handle these -- this wide range of practices for juvenile  
24    hearings?

25            A     No.

1           Q     If -- if a child fails to file an appeal within a  
2 timely limit allowed by the Rules, are they permitted to  
3 file any type of an appeal after the 30 day period?

4           A     Well, they would have the opportunity to file -- to  
5 attempt to file an appeal nunc pro tunc.

6           Q     Is that specifically authorized by the Rules?

7           A     Not -- no. The Rules of Juvenile Court Procedure  
8 do not apply to appellate proceedings. Appeal proceedings  
9 are covered by the Rules of Appellate Procedure.

10          Q     There's some sections reserved for the Rules that  
11 specify appeals. When the original Rules were prepared and  
12 went into effect in 2005, was it contemplated that there  
13 would be appellate rules specifically for juveniles?

14          A     That was never specifically expressed by the  
15 Committee. My sense was those would be the kind of rules  
16 that dealt with giving juveniles their appellate rights.  
17 Not the regulation of appellate proceedings, but the  
18 information about how an appeal could be taken from the  
19 trial court.

20          Q     Mr. Delaney, based upon your experience  
21 approximately how long does it take for a regular appeal to  
22 go through the appellate courts and for a decision to be  
23 rendered after the appeal is filed?

24          A     By regular appeal, I only have experience with  
25 criminal appeals and delinquency appeals.

1 Q Delinquency and criminal?

2 A As quickly as six or seven months. As long as  
3 several years.

4 Q What is the average length of stay for a juvenile  
5 in placement?

6 A Nine to 12 months.

7 Q So would it often occur that if a juvenile were to  
8 file an appeal, that the placement period might end prior to  
9 the time that an appellate decision had been made?

10 A Quite possibly, yes.

11 Q Was there any consideration given to recommending  
12 or requiring by the Rules expedited procedures for juveniles  
13 so that hearings could be held and decisions made in a  
14 shorter period of time?

15 A Expedited proceedings in the trial court or the  
16 appellate court?

17 Q The Superior Court?

18 A No. Because appellate are not the purview of the  
19 juvenile court rules. They would be the purview of the  
20 appellate rules.

21 Now, I should add that recently the appellate rules  
22 have been amended to provide for what are known as  
23 children's fast track cases, expedited briefing and  
24 disposition by the Superior Court of those claims. They  
25 only apply to a subset of dependency cases.

1           Q     Was there any reason why they were not -- that  
2 particular type of practice was not extended to juvenile  
3 cases?

4           A     I'm not a member of the Appellate Rules Committee,  
5 so I do not know.

6           Q     Are you aware of any practices throughout the  
7 state, juvenile court practices by public defenders, private  
8 attorneys, that specialize in appellate practices for  
9 juveniles?

10          A     Other than your office, no.

11          Q     Were you aware of any specialized -- or the  
12 development of any kind of specialized practices related to  
13 appellate work outside or -- outside of our office in  
14 Philadelphia?

15          A     No. Nor am I aware of any specialized appellate  
16 practices in the prosecution side outside of my office.

17          Q     When you were discussing this during the course of  
18 the preparation of the Rules was there any consideration  
19 given to finding a way to increasing the number of appeals  
20 made available to juveniles?

21                     In other words, the rights are there in the Rules.  
22 The rights are there in the Juvenile Act. But in terms of  
23 actually making it possible for those rights to be  
24 exercised, was there any thought to how to do that?

25          A     We did not address appellate practice.

1           Q     Okay.  Just one final sort of line of questioning.  
2     There's a right to habeas corpus in the Rules.  Can you  
3     explain what that means?

4           A     It's the ability of the juvenile to challenge his  
5     detention by asking the Court to review his detention; and  
6     if appropriate, release him from detention.

7           Q     Can you explain how that actually operates?  
8     Suppose a child is illegally detained in a detention center  
9     in Philadelphia County.  What procedure would be filed to  
10    actually exercise that right, and who would be the person or  
11    the party required to do the filing?

12          A     Well, the prosecutor could do it.  The juvenile's  
13    attorney could do it.  The Court could sua sponte do it.  
14    The Probation Department could bring it to the attention of  
15    the Court.

16                 I don't know that anybody's required to do it.  
17    Clearly if the juvenile's lawyer believes he's illegally  
18    detained, he has the ethical obligation to address that to  
19    the Court.  The way it happens is because of the condensed  
20    time frames in delinquency court, most motion practice  
21    doesn't preclude a defense lawyer from filing a petition for  
22    habeas corpus or a motion for release.

23                 So the lawyer could file separate and apart from  
24    the regular listings of the case.  And in Philadelphia the  
25    delinquency court, every case always has a listing date.  We

1 do not, prior to the entry of the disposition order,  
2 continue cases until further notice or keep them in some  
3 sort of waiting pool. Every case has a listing date.

4 So if I was a defense attorney, and I believed my  
5 client was illegally detained, I would know when his next  
6 court date was. If it was tomorrow, I'm going to go see the  
7 Judge tomorrow. If it's beyond tomorrow, I'm going to file  
8 something with the Judge asking him to hear it tomorrow.

9 Q Okay. Are juveniles -- are there requirements that  
10 juvenile proceedings be recorded or transcribed?

11 A Yes, by the Rules.

12 Q What exactly are those requirements? For example,  
13 are they required in terms of intake hearings?

14 A I don't believe so. Can you point me to the Rule,  
15 Mr. Listenbee?

16 Q We're talking Rule 242, I think. I'm sorry. Rule  
17 127.

18 A The Rule says there shall be a recording of all  
19 juvenile delinquency proceedings, including procedures  
20 conducted by Masters except as provided by Rule 242(b),  
21 which applies to detention hearings. Intake conferences are  
22 not required to be transcribed.

23 Q Okay. Can you explain what the term recording  
24 means in a context of juvenile courts? I think there's some  
25 reference to the ability of a Court to actually use minutes

1 as opposed to requiring actual recordings and so forth.

2 A That's correct. Recording is not defined.

3 Q Okay. In light of your experiences, again having  
4 served on many different rules committees and also  
5 recognizing the need for further development rules, would  
6 you have any recommendation as to whether the requirements  
7 for intake hearings should be changed, and also the  
8 requirements for recordings actually should be changed from  
9 simply minutes to requiring actual recordings or  
10 transcripts?

11 A Again, I don't think it's my place to make  
12 recommendations. I could just point out the competing  
13 interests. As you cited earlier, across Pennsylvania a  
14 third of the intake hearings result in no further  
15 proceedings against the juvenile. So there would be  
16 significant cost involved in transcribing those.

17 There was a specific intent on the part of the  
18 Committee to not make the intake conference into a formal  
19 adversarial procedure. So while, as you said earlier, the  
20 Rules say that counsel may appear, it's not required that  
21 counsel be appointed and appear for the intake hearing.

22 In Philadelphia no prosecutor appears at the intake  
23 hearing. Victims are invited, but in the main do not appear  
24 at intake hearings. The idea was to maintain the potential  
25 to adjust the case without raising the stakes.

1           I know in my experience when I tried to work out an  
2 agreement with the other side it's better to do that in  
3 advance of a court hearing, not at the court hearing.  
4 Because if the other lawyer has all of his clients and all  
5 his witnesses there, and I've got all my people there, and  
6 I've prepared, in essence, to go to war, the default is to  
7 go to war.

8           We didn't want to make the intake conference into  
9 that kind of proceeding. We wanted to maintain its  
10 informality because the overwhelming feedback we got from  
11 around the State is that intake conferences were working  
12 for their intended purpose.

13           If anything, I was concerned about the lack of  
14 defense given to victims. But I know in Philadelphia now  
15 victims are notified of the intake hearing and given the  
16 opportunity to appear if they want to.

17           On the other side, if they're transcribed, what  
18 happens to the record? For example, if your client is asked  
19 at an intake interview, look, did you steal the other kid's  
20 copy book, and he says yes, well, if the case isn't adjusted  
21 and we go to trial, I'm going to want to use that. You're  
22 obviously going to want it not to be used.

23           So there is a lot of things that impact on whether  
24 the intake conference continues to be an informal proceeding  
25 or a formal stage of the delinquency system.

1           Q     You've said prosecutors are not required to appear  
2 and often do not appear at intake hearings. At what stage  
3 of the proceedings are prosecutors required to appear and  
4 conduct the hearings?

5           A     They're not required to appear at any.

6           Q     I'm sorry?

7           A     They're not required to appear at any. As a matter  
8 of fact, the Juvenile Act uses language along the lines of  
9 Courts shall invite the prosecutor. Now, there's case law  
10 that says the prosecutor has the right to appear whenever  
11 the prosecutor chooses to. And in Philadelphia, because of  
12 the -- because of District Attorney Abraham's commitment and  
13 the prior District Attorney's commitment to juvenile court,  
14 a prosecutor is at every listing of every case at every  
15 detention hearing, every pretrial hearing, every  
16 adjudicatory hearing, every placement review hearing, every  
17 violation of probation hearing, every probation review  
18 hearing. That's not true across the Commonwealth.

19          Q     The Rule -- can you clarify again? Do the Rules  
20 require the prosecutor to be present at the detention  
21 hearings?

22          A     No.

23          Q     To be present at adjudicatory hearings?

24          A     No.

25          Q     To be present at disposition hearings?

1           A     No.

2           Q     To be present at review hearings?

3           A     You can call it whatever you want.  The Rules do  
4 not require a prosecutor to be at any delinquency hearing.

5           Q     Do you have an opinion as to whether that  
6 particular practice ought to be reviewed and perhaps -- what  
7 other competing interests that are involved in that kind of  
8 a determination?

9           A     Resources.  And smaller counties where you may have  
10 the full-time elected prosecutor and two part-time  
11 assistants, they're responsible for any number of things.  
12 So there are policy decisions made as to what's the most  
13 important.

14                     Sometimes those policy decisions are asked to  
15 include delinquency proceedings.  And in some cases, but not  
16 all.  I'll go further.  As you know, but for the  
17 Commission's information, in Philadelphia no juvenile  
18 delinquent gets charged unless the District Attorney  
19 approves the charges.

20                     So we have a lawyer on working 24 hours a day,  
21 seven days a week who, among other things, reviews every  
22 juvenile arrest or every request for a juvenile arrest  
23 warrant to determine is there probable cause and does the  
24 case warrant prosecution?

25                     That is not true in a significant minority of

1 counties across the Commonwealth.

2 Q But that's not required by the Rules?

3 A That is not required. There's an option for the  
4 District Attorney to assume the charging function under the  
5 Rules. But if the District Attorney doesn't assume that  
6 option, it's performed by juvenile probation.

7 Q Where would we look to find the rules that govern  
8 the conduct of prosecutors once they do come into the  
9 courtroom or come to the proceedings?

10 A Govern the conduct how?

11 Q What are they supposed to do once they do come in  
12 if they're handling detention hearings, adjudicatory  
13 hearings, or if they're present in the room?

14 A Well, various rules talk about the kinds of  
15 evidence that can be proffered and the time frame within  
16 which things have to be done. So as a prosecutor I know I'm  
17 governed by those rules. But essentially my obligations are  
18 provided by the Rules of Professional Conduct.

19 MR. LISTENBEE: Mr. Chairman, I don't have any  
20 further questions.

21 CHAIRMAN CLELAND: Mr. Delaney, you have been very  
22 considerate in rearranging a very busy schedule today to be  
23 here. There may be significant other questions. Would it  
24 be possible to further -- to invite you to come back at some  
25 later hearing to proceed further on further inquiry?

1 MR. DELANEY: Yes, sir.

2 CHAIRMAN CLELAND: Okay. And we'll give you more  
3 notice so that your schedule can be more adjusted. But Mr.  
4 Mosee, any questions you want to ask?

5 BY MR. MOSEE:

6 Q Just to clarify. I believe that your testimony was  
7 that recordings do include full minutes?

8 A Yes.

9 Q Would it refresh your recollection to know that the  
10 Rules actually suspended the Juvenile Act with regard to the  
11 full minutes being considered or recorded?

12 A I'll defer to your expertise, Mr. Mosee.

13 MR. MOSEE: Thank you, Mr. Delaney.

14 MR. LISTENBEE: Thank you, very much, Mr. Delaney.

15 CHAIRMAN CLELAND: Just one question. Is there a  
16 provision in the statute or in the Rules regarding public  
17 access, either to juvenile court records or juvenile court  
18 hearings? Is that issue addressed?

19 MR. DELANEY: Yes. There are provisions in the  
20 Juvenile Act that talk about public access to records.  
21 There is a separate provision in the Juvenile Act that talks  
22 about public access to proceedings.

23 CHAIRMAN CLELAND: And do you recall offhand what  
24 those are? Is there public access? Is the press permitted  
25 to go to juvenile delinquency hearings?

1           MR. DELANEY: Absolutely. If memory serves, and  
2 again I haven't practiced in delinquency court for some  
3 time, but if memory serves, if the juvenile is 14 or older  
4 and there's an allegation of a felony, the proceedings are  
5 open to the public. And then if the juvenile is 13, and  
6 he's accused of one of a legislatively specified number of  
7 serious crimes, the proceedings are open to the public.

8           CHAIRMAN CLELAND: Okay. Thank you. Mr. Delaney,  
9 thank you, very much for your attendance here today. We  
10 appreciate very much you're being -- offering the testimony.

11           MR. DELANEY: Thank you for having me.

12           CHAIRMAN CLELAND: We're going to take a 15 minute  
13 recess and reconvene now at 11:00. Thank you.

14           (Recess.)

15           CHAIRMAN CLELAND: We are now ready to reconvene  
16 our hearing, and we welcome the Honorable Chester B.  
17 Muroski. Judge Muroski is the President Judge of the Court  
18 of Common Pleas of Luzerne County, having been elected to  
19 that position by the Board of Judges earlier this year.

20           As I mentioned in my introductory comments, Judge  
21 Muroski has received plaudits for his efforts to address the  
22 issues presented to the court system in Luzerne County.

23           He returned to his hometown of Wilkes-Barre shortly  
24 after graduating from Temple University School of Law, and  
25 during his career he's worked for Legal Services in Luzerne

1 County, served as solicitor to several municipalities,  
2 developed his own private practice, and was elected District  
3 Attorney in 1981.

4 He was elected to the bench and has been retained  
5 in 1991 and 2001. Judge Muroski, welcome. And could I  
6 please ask you to take the oath?

7

8 HONORABLE CHESTER B. MUROSKI, called as a witness,  
9 being duly sworn, testified as follows:

10

11 CHAIRMAN CLELAND: Please be seated.

12 JUDGE MUROSKI: Can I use this one?

13 CHAIRMAN CLELAND: I don't think it makes any  
14 difference.

15 JUDGE MUROSKI: Thank you. Ladies and gentlemen,  
16 when I spoke with Judge Cleland several weeks ago we  
17 discussed the possibility of my testifying before this  
18 Committee. Thank you.

19 I understand the purpose, and I welcome this  
20 opportunity to offer my impressions regarding the  
21 mishandling of Juvenile Delinquency Court in Luzerne County  
22 during former Judge Mark Ciavarella tenure as Juvenile  
23 Judge.

24 My submissions today will be governed by  
25 constraints imposed on me by the judicial canons which limit

1 a judge's ability to speak publicly about litigation matters  
2 pending before any court.

3           While I will make every effort to inform the  
4 Commission about the atmosphere under which these events  
5 occurred and my personal perceptions and experience  
6 regarding same, due to pending litigation in both criminal  
7 and civil courts, I will refrain from any specific  
8 references to the litigation matters as well as my  
9 conclusions regarding them.

10           Also, on a preliminary note, while I fully  
11 understand the public fury regarding this court scandal and  
12 the public's justifiable sense of betrayal, I want to  
13 emphasize my belief that during the time frame in which  
14 these events took place, not only myself, but the large  
15 majority of members of the Luzerne County Court were  
16 conducting court business in a timely and proper fashion.

17           Despite this belief, I completely support the  
18 Commission's efforts to undertake a stark analysis of what  
19 went wrong and what reforms are necessary to prevent the  
20 reoccurrence of these errors and abuses in any judicial  
21 court nationwide.

22           When the complete story has been told I expect that  
23 the ultimate lessons learned will have much more to do with  
24 concepts of court governance and checks and balances  
25 designed to prevent abuses of power and to help ferret out

1 misconduct by individual judges rather than with the frontal  
2 assault which has been launched against the remaining  
3 members of the court, from some quarters, in the wake of  
4 this scandal.

5           As to the conduct of the Luzerne County Court, the  
6 undeniable fact is that for several years leading up to the  
7 scandal there were strained relationships among various  
8 court members, and meetings of the court en banc were very  
9 few.

10           However, at the same time the business of the court  
11 was getting done. The Pennsylvania Judicial Code places  
12 virtually omnibus power in the President Judge to supervise  
13 the affairs of each county court. Although my opinion  
14 eventually changed drastically, which I will explain later,  
15 until June, 2005 there had been a presumption on my part  
16 that the authority was being carried out in an authoritative  
17 but reasonable fashion by colleagues who had taken an oath.

18           Irrespective of the differences that various  
19 members of our court had with one another, there were many  
20 capable judges of Luzerne County who were doing their work  
21 consciously, including judges who carried out individualized  
22 assignments without any input or involvement from other  
23 judges.

24           I am a case in point, having handled my Orphans'  
25 Court assignment by myself for the better part of 25 years

1 virtually without incident, I'm proud to say.

2           We have gone through my resume, thank you, Judge  
3 Cleland. And we will now pick up where I entered service in  
4 1981. I served in Orphans' Court until 2005. I must advise  
5 that our concept of Orphans' Court encompassed much more  
6 than traditional Orphans' Court cases of wills, estate  
7 administration, trusts, guardianship cases for adults,  
8 adoption proceedings, and mental health commitment appeals.

9           In addition, I was solely responsible for both  
10 Delinquency and Dependency Divisions of Juvenile Court; the  
11 Family Court Division, including child custody; Domestic  
12 Relations Section, handling child and spousal abuse; and  
13 protection from abuse cases. It was often said that I  
14 presided over the emotional areas of the law.

15           In the middle of 1980s, with our ever expanding  
16 caseload in these areas, a decision was made to construct a  
17 three-story building across the street from the main  
18 courthouse to accommodate the increased staff and judicial  
19 functions for which I was solely responsible.

20           I moved my chambers to the new building in 1988.  
21 In 1996 Delinquency Court was transferred to newly-elected  
22 Judge Mark Ciavarella who had won election with jail cell  
23 door slamming television ads and promises to be tough on  
24 criminals.

25           As it related to his handling of juvenile

1 delinquents, in my view Judge Ciavarella's so-called no  
2 nonsense tough attitude intensified after the April 20th,  
3 1999 massacre at Columbine, Colorado and continued until he  
4 removed himself from Juvenile Court in late 2008.

5 His so-called zero tolerance stance was very  
6 popular with school administrators, teachers, and many  
7 police officers. Even after the federal investigation  
8 became public, in a November 6th, 2008 letter to the editor  
9 in the Times Leader a school administrator wrote: We can  
10 say from personal experiences in Judge Ciavarella's  
11 courtroom that he was always fair and firm with students.

12 His concern for safe schools was always a top  
13 priority. His dedication to working with our students  
14 created a bond of trust and confidence among them, the  
15 students and the staff. Students who had personal  
16 experiences with the Judge have expressed gratitude for his  
17 involvement in their lives.

18 His concern for their well being after adjudication  
19 is what makes him so special. He has made a tremendous  
20 difference in the school's education process.

21 That's an article in the paper. In fact, a letter  
22 to the editor. At the beginning of every school year he  
23 spoke at assemblies held in most school districts within  
24 Luzerne County, and in effect, he promised institutional  
25 placement for school-related infractions.

1           He was true to his word and became even more  
2 popular when he followed through with placements, sometimes  
3 for minimal offenses. I'd like now to read for -- it won't  
4 take long, believe me. A redacted copy of a transcript of a  
5 juvenile procedure, May 10th of 2007. The case is  
6 introduced by the court officer.

7           Ciavarella, and it's redacted. Blank, you have  
8 been charged with harassment. How do you wish to plead?  
9 The juvenile, guilty. Ciavarella, based upon her admission,  
10 I'll adjudicate her delinquent. What makes you think you  
11 have a right to do this kind of crap? The juvenile, I  
12 don't, sir. Ciavarella, why would you do this? The  
13 juvenile, I have no rationale explanation for that. I --

14           Ciavarella, did Ms. Blank ever do anything to you?  
15 The juvenile, no, personally, no. I didn't take into  
16 consideration that Ms. Blank is a person as opposed to just  
17 a school administration member at my school. Ciavarella,  
18 how long have you been at blank school? The juvenile, a  
19 year and a half.

20           Ciavarella, what grade are you in? The juvenile,  
21 I'm in my sophomore year, 10th grade. Ciavarella, where did  
22 you go before? The juvenile, blank High School.  
23 Ciavarella, you've been at blank School when I've been at  
24 blank School? The juvenile, yes. Ciavarella, you heard me  
25 speak? The juvenile, yes. Ciavarella, told you what type

1 of conduct I expected from children in that school relative  
2 to the juvenile justice system? The juvenile, yes, sir.

3 Ciavarella, told you what type of conduct I  
4 expected from the students in that school relative to their  
5 conduct towards teachers? Juvenile, yes. Ciavarella, is  
6 this acceptable? The juvenile, no, sir.

7 Ciavarella, what did I say would happen if you  
8 acted in a unacceptable way toward teachers and/or  
9 administrators? The juvenile, I don't recall, sir.

10 Ciavarella, you don't recall? You don't remember me saying  
11 if you did anything to these teachers that I would send you  
12 away? You don't remember those words? The juvenile, no,  
13 sir.

14 Ciavarella, were you sleeping? The juvenile, no,  
15 sir. Ciavarella, you can't remember that? The juvenile,  
16 no, sir. Ciavarella, it's going to come back to you because  
17 I didn't go to that school, I didn't walk around in that  
18 school, and I didn't speak to that student body just to  
19 scare you, just to blow smoke, just to make you think I  
20 would do that when I wouldn't. I'm a man of my word.  
21 You're gone. Send her up to FACT. Let her stay there until  
22 she figures it out. Thank you. Mother of the juvenile, no.  
23 That's not fair. That's not what the officer said. That's  
24 not what he said. Proceedings were then closed.

25 During my tenure in Delinquency Court the Luzerne

1 County Juvenile Detention Center, although an older  
2 facility, was used to house juveniles after a detention  
3 hearing determined that they remain in the facility until  
4 their adjudication hearing and, thereafter, until placement  
5 in a rehabilitation facility would be found if the  
6 delinquent was adjudicated delinquent and in need of  
7 institutionalization.

8           Former President Judge Michael Conahan removed  
9 funding for the County-operated juvenile center on River  
10 Street in Wilkes-Barre in 2002 ensuring its closure without  
11 discussion with the Court en banc. The building had been  
12 deteriorating and Conahan asserted it was well beyond repair  
13 announcing he would not send juveniles there and announced  
14 that he would thereafter send a license back to the State  
15 without approving -- getting any approval from the County  
16 Commissioners.

17           The State Department of Public Welfare, the State  
18 Department of Labor & Industry, and the Wilkes-Barre Health  
19 Department all disagreed with Conahan's view, that the place  
20 could not operate, and so River Street Detention Center  
21 remained closed.

22           The County soon began sending juveniles to PA Child  
23 Care, the newly-opened facility located in Pittston Township  
24 built by developer Robert Mericle for a corporate entity  
25 then owned by Attorney Robert Powell and Pittsburgh

1 businessman Gregory Zappala, when it opened in February,  
2 2003.

3 Just prior to the PA Child Care facility opening  
4 Conahan had privately signed a placement guarantee agreement  
5 with the owner that guaranteed the Court would pay an  
6 additional rental installment of \$1.3 million. This was  
7 made known only after the federal indictment in January of  
8 2009.

9 However, the guarantee was never implemented and  
10 was probably used only to assist in financing the  
11 construction of that facility. Conahan sent a staffer to  
12 the October, 2002 County budget hearing to request \$10  
13 million for placements.

14 The Commissioners gave \$8 million, but they were  
15 later forced to up it another \$2.5 million when Ciavarella's  
16 placement facilities kept submitting bills beyond the  
17 budgeted amount, including some from PA Child Care Center.

18 Former Court administrator, William Sharkey, who is  
19 currently awaiting sentence on theft charges in connection  
20 with the federal corruption probe, sent a memo to County  
21 officials at the time saying that the bill must be paid.  
22 Judicial decisions cannot be based upon the information you  
23 present. He was referring to the Commissioners. This  
24 matter is the financial responsibility of the County of  
25 Luzerne, Sharkey wrote.

1           The placement tab continued to grow. County  
2 records showed that the County budgeted \$12.75 million in  
3 2004 -- this is for placement, ladies and gentlemen -- but  
4 actual spending ran it up to \$15.8 million.

5           Commissioners budgeted \$12 million in 2005. The  
6 actual expenditures were \$13.2 million. They budgeted \$12  
7 million again in 2006 and 2007. However, the Court stayed  
8 within budget both years.

9           Juvenile placements started to decline noticeably  
10 in 2008 after Judge Lupas took over. The County budgeted  
11 \$9.59 million, and \$7.7 million was spent. The placement  
12 budget was cut further this year to \$6.5 million, and I'm  
13 happy to announce that as of October 1st, 2009 only \$2.6  
14 million has been spent, according to the Budget Finance  
15 Chief, Tom Pribula, in our County.

16           New Luzerne County Commissioners took office in  
17 January of 2004. At the end of that year they suddenly  
18 decided there was an emergency when, in fact, the County had  
19 been paying PA Child Care on a per diem basis for almost two  
20 years. They could not claim there was a capacity issue  
21 because the bed census was not at 100 percent, throughout  
22 the State or even at PA Child Care.

23           One County Commissioner pointed out that the per  
24 diem arrangement, in effect, was costing Luzerne County more  
25 money than necessary. According to the officials at the

1 Committee of 70 in Philadelphia, such a tactic is absurd and  
2 should not have been tolerated.

3 In any event, at the end of 2004 a 20-year \$58  
4 million lease to the Pittston Township facility was entered  
5 into between the County Commissioners and PA Child Care.

6 In addition, Northwestern Human Services was also  
7 contracted to oversee juveniles in the detention center 24  
8 hours a day, seven days a week, for \$193,000 a month.  
9 Statistics show the number of Luzerne County juveniles who  
10 were placed in residential treatment facilities increased  
11 significantly in 2002, the year that PA Child Care was under  
12 construction.

13 Nevertheless, an anomaly to the often cited "cash  
14 for kids - quid pro quo" theory is that the statistics  
15 gathered by Luzerne County Children and Youth show that  
16 non-secure placements, such as boot or forestry camps, far  
17 outpaced all others from 2002 to 2008 in that 2,554  
18 juveniles were placed in that type of facility compared to  
19 697 juveniles placed in secure residential facilities such  
20 as PA Child Care.

21 There has never been an allegation that there has  
22 been any kickback scheme involving the approximately 50  
23 alternative treatment facilities, group homes, detention  
24 centers, and both high security and less restrictive  
25 residential facilities.

1           The reason, I believe, for this apparent  
2           inconsistency may be the shorter length of time in  
3           non-secure facilities, usually less than 90 days, compared  
4           to the longer stays at secure facilities, such as PA Child  
5           Care, up to two years.

6           In any event, the percentage of placement stayed  
7           above 20 percent for those six years reaching a high of 25.8  
8           percent in 2007, the last year for which data was available.  
9           The statewide average remained in the 10 to 13 percent range  
10          during that time.

11          Although this material was available at annual  
12          reports, to my knowledge it was never an issue with any  
13          state entity until much later. It was never a real issue  
14          with the County Commissioners, although they stated they had  
15          a concern over the increased cost of juvenile placements.

16          In 2006 Ciavarella relocated himself from the main  
17          courthouse to Penn Place, approximately one half mile away,  
18          a building which was also being used by Magisterial District  
19          Judges. In attempting to analyze the alleged  
20          ever-increasing placements, I have found that pressure for  
21          placements by school administrators of allegedly disruptive  
22          students is not uncommon.

23          However, with Ciavarella very little encouragement  
24          was necessary. Very rarely was there any criticism of his  
25          methods. Only once in 2004 had there been a challenge

1 referred to in a February 1st, 2009 news article.

2 Reading, those complaints were first publicly aired  
3 in 2004 when the mother of 15 year old honor student called  
4 the Times Leader to detail what she believed had been an  
5 overly punitive penalty assessed to her child behind the  
6 closed doors of Juvenile Court.

7 The girl's story prompted the newspaper to run a  
8 three-day series of stories that examined the juvenile court  
9 system and raised serious questions about Ciavarella's  
10 sentencing patterns. No action was taken by any group or  
11 agency, however, until last year when the Juvenile Law  
12 Center of Philadelphia intervened.

13 The series did not have legs and received very  
14 little interest, and Ciavarella went on to be retained for  
15 another term in November of 2005.

16 In an August 23rd, 2009 article following the  
17 original indictment the Times Leader reported Ciavarella's  
18 explanation for the high placement statistics. These are  
19 his words.

20 In a series of interviews over the past four years  
21 Ciavarella adamantly defended his handling of Juvenile  
22 Court. He readily acknowledged his placement rates were  
23 significantly higher than other counties, but he insisted he  
24 did so because he was convinced that probation did not work  
25 for most youths.

1           My experience has been if you bring a child in who  
2 broke the law and put him on probation, chances are he'll be  
3 back in the system in a short period of time, he said in the  
4 May, 2004 interview.

5           If a child believes the consequences will be  
6 anything other than placement, they don't care. I have to  
7 find consequences that will get their attention, end quote.

8           Also learned after the fact was that Ciavarella  
9 allegedly helped ensure that PA Child Care had a high  
10 occupancy rate by, at times, ordering children be detained  
11 there even when members of the Juvenile Probation Department  
12 felt it was not necessary.

13           On a collateral note, however, an individual  
14 charged with preparing a recommendation was arrested on  
15 February 20th, 2009 and entered a guilty plea in Federal  
16 Court for attempting to change a recommendation for  
17 placement to one that recommended probation services.

18           This happened while an investigation was ongoing.  
19 And the apparent reason was an effort to avoid liability in  
20 a civil lawsuit in which that individual had been named as  
21 one of several defendants.

22           During this entire period of time the only  
23 information the rest of the County judges had received was  
24 from what we read in the papers. As noted earlier, very few  
25 meetings were held during the five years that Conahan has

1 served as President Judge covering the years 2002 to 2006.  
2 My recollection is there were three.

3 This represented a continuation of the pattern of a  
4 reduced meeting schedule for court en banc which had begun  
5 several years earlier.

6 After 1996 I remained a Juvenile Court judge for  
7 dependency actions, which I'm sure you know concerned  
8 children who are the victims of abuse or neglect and,  
9 whenever possible, to prevent the placement of a child  
10 outside the family. And if a placement is warranted, to  
11 return the child to the family as soon as possible.

12 Luzerne County Children and Youth share that  
13 philosophy. In addition to the obvious benefit to the child  
14 and family, there is an economic benefit to the County as  
15 the sizeable cost of placement are avoided. I'm talking  
16 about dependency cases now.

17 Unfortunately, once the juvenile center opened,  
18 slowly but surely the social services to these children and  
19 their families became difficult to obtain. There were  
20 waiting lists for parenting classes, family assessments,  
21 drug and alcohol evaluations and treatment, as well as other  
22 specialized services.

23 Parents had to wait sometimes months to be given  
24 these services. This resulted in a child being in placement  
25 longer than necessary when the child hadn't done anything

1 wrong while the parents waited to complete services and the  
2 County had to pay to keep the children in placement.

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

7 Dependency expenditures at the end of the third  
8 fiscal quarter -- excuse me, the dependency figures and the  
9 delinquency figures were massively different, and I'll  
10 explain that in a moment.

11 Children and Youth Services was \$800,000 under  
12 budget. This was the money I needed for the services I  
13 needed for the kids in dependency actions. Get this one.  
14 The budget for the Delinquency Court was \$2 million over  
15 budget for their respective programs.

16 This budget figure, which I've just referenced,  
17 were provided to me by Children and Youth and did not  
18 include the cost associated with the long term lease and  
19 additional management costs associated with the PA Child  
20 Care facility in Pittston Township. That was a separate  
21 bill.

22 Justification for these expenditures was the  
23 claimed low juvenile delinquency recidivism rate. However  
24 -- many argued, however, that the low rate of recidivism was  
25 misleading because a large number of juveniles remained in

1 placement until they reached majority and sometimes longer.

2           Unfortunately, there are no statistics on how many  
3 delinquents entered the criminal system after their release  
4 as an adult. At that time a State study had concluded  
5 Luzerne County had one of the lowest recidivism rates for  
6 dependent care placements. We got those kids out of  
7 dependent placements as soon as we could if we had the  
8 services available.

9           After a number of attempts to develop a stream of  
10 funding I decided to make a formal effort directed to the  
11 County Commissioners. And I wrote a letter on June 15th,  
12 2005 that's attached, outlining my concerns and threatening  
13 to use my contempt powers to make sure services would be  
14 available and paid.

15           A few days later Conahan issued an order  
16 transferring me effective the first week in September, 2005  
17 to Criminal Court. I did not react antagonistically and, in  
18 effect, shrugged it off to the media. However, there was  
19 very little doubt in my mind that Conahan expected me to  
20 retire because I had not handled a criminal jury trial since  
21 1981 when I was the District Attorney.

22           I stayed, and I presided over everything they  
23 assigned to me. Parenthetically, I was interviewed by a  
24 paper, and on July 10th, 2006 they ran a story about my new  
25 duties, and I said it's been fine. It's like Vatican II

1 when they changed the mass. The celebration is still there  
2 in the sense that the formality is there. However, the  
3 ritual is a little different. It didn't take me long to  
4 pick up on the ritual.

5 When I returned to the main courthouse I welcomed  
6 an opportunity to interact with the new several judges I  
7 really didn't know. I really didn't know them because they  
8 were elected and they had taken bench during my 17 year  
9 hiatus in the Domestic Relations/Family Court Building.

10 Over time I gathered rumors about the large number  
11 of juveniles being institutionalized for legally  
12 insignificant acts, usually school-related, brief hearings,  
13 exorbitant amounts of money paid to a psychologist,  
14 Conahan's brother-in-law, and stories about a magnificent  
15 condo, a Powell jet, million dollar yacht. And with my own  
16 transfer to encourage my retirement, I thought something was  
17 not right.

18 I made arrangements to speak with the FBI and did  
19 so on several occasions in 2006. I disclosed all I knew, my  
20 concerns and suspicions. Over the years there were other  
21 contacts between the FBI and myself, even after January,  
22 2009 indictments.

23 Some time in 2 -- March, 2009 after the original  
24 indictments of Conahan and Ciavarella, Martin Carlson, the  
25 acting US Attorney from the Middle District called me and

1 offered thanks for my help early on.

2 Prior to this, in late April of 2008, the Juvenile  
3 Law Center again raised concerns over the operation of  
4 Delinquency Court. And effective June, 2008 Ciavarella  
5 relinquished his role and assigned David Lupas to assume  
6 responsibility for the Delinquency Division of Juvenile  
7 Court.

8 I worked with Judge Lupas to acquaint him with the  
9 general manner in which I had previously administered the  
10 Court, along with statutory changes enacted after I left.

11 After the indictments and my election as President  
12 Judge I began an in-depth evaluation of the Delinquency  
13 Court. I found that psychological evaluations had been  
14 ordered in an excessive number of cases.

15 A Times Leader article dated November 11th, 2008  
16 reported the findings of a State audit, including the  
17 purchase of service agreements, were not competitively  
18 procured and were awarded to Dr. Frank Vita, the  
19 brother-in-law of the President Judge.

20 At a minimum this presents the appearance of a  
21 conflict of interest, the audit stated. The audit also  
22 revealed 40 percent to 50 percent of Vita's written reports  
23 were comprised of copied and pasted standardized footnotes.  
24 Copying and pasting also resulted in one instance where an  
25 evaluation references a different child than the one

1 purported to be evaluated, the audit says.

2 The audit focused on cost to the State Welfare  
3 Department from July 1st, 2001 to December 31st, 2007.  
4 Vitae received \$1.1 million from the County for evaluations  
5 during that time period. \$836,636 reimbursed from the  
6 State.

7 The audit says, Vita performed an average of 124  
8 evaluations per year for the Court, or 10.3 evaluations per  
9 month. After June of 2008 when the responsibility for  
10 Juvenile Court was transferred to Judge Lupas, Court ordered  
11 evaluations dropped to an average of four a month, mostly  
12 psychiatric evaluations determined by Judge Lupas as being  
13 necessary.

14 After my election as President Judge I immediately  
15 directed that Dr. VIta's services be terminated. In the  
16 past, during my tenure in Delinquency Court, I appointed  
17 Children's Service Center, a non-profit organization, to  
18 conduct evaluations and continued to use them until I was  
19 removed from Dependency Court in 2005.

20 We resumed using Children's Center, and we had --  
21 they have proven to be as reliable as they had been in the  
22 past.

23 We have also utilized the services of Northeast  
24 Counseling. The average cost per evaluation performed by  
25 Dr. Vita was \$1,635, approximately 3.6 times the rate

1 charged now that the evaluations are being funded primarily  
2 through a different entity involving Medical Assistance  
3 dollars, the audit says.

4 The preliminary audit, released in January, 2008,  
5 also criticized the County for entering into the detention  
6 center lease because it allowed PA Child Care's ownership to  
7 reap unreasonable profits at the expense of the County,  
8 State, and federal taxpayers.

9 County Commissioner Chairman Maryanne Petrilla said  
10 County officials are still waiting for the State's final  
11 release of its audit on the Pittston Township Center. The  
12 final audit will indicate whether the County must pay back  
13 more than \$1.6 million in reimbursements that the State  
14 deemed unallowable expense.

15 The State reimburses the County for some juvenile  
16 detention and placement costs, but County taxpayers must  
17 foot a portion of the bill, says County Budget Finance Chief  
18 Tom Pribula. Taxpayers have also argued that State  
19 reimbursement still comes from tax dollars.

20 The County has received 1.7 million in  
21 reimbursements for placement costs to date. State welfare  
22 officials have been encouraging County Court to use more  
23 in-home or community programs that have proven results.

24 I was concerned that school administrators were  
25 still petitioning too many juveniles with matters that quite

1 frankly should be resolved in the school, so I directed the  
2 intake staff of Juvenile Probation to scrutinize delinquency  
3 petitions to determine whether they merited court action.

4           Although there was not a specific directive to  
5 limit school-brought delinquency petitions, school  
6 administrators were advised that the so-called zero  
7 tolerance policy was no longer in effect resulting in a  
8 marked reduction in petitions filed.

9           The most compelling action taken by Judge Lupas in  
10 his administration of Delinquency Court has been the huge  
11 reduction in out-of-home placements with considerable  
12 savings in placement-related costs.

13           For example, in June of 2008 when Judge Lupas was  
14 assigned the Juvenile Delinquency Court there were 148  
15 juveniles in placement contrasted to the October 1st, 2009  
16 figure of 65 juveniles resulting in the 2010 court budget  
17 being \$2.5 million less than last year when we reduced it by  
18 \$2.8 million, a direct result of Judge Lupas's  
19 administration of the Juvenile Delinquency Court.

20           Additionally, the total expenditure for detention  
21 services for juveniles awaiting disposition hearings, or in  
22 some cases post-adjudicated juveniles waiting placement,  
23 reduced from just over 1.2 million for years 2'07 to 2'08 to  
24 785,149 for year 2'08 through 2'09.

25           While cost alone should never be the determining

1 factor in the administration of justice, these figures show  
2 how the actions of the previous juvenile delinquency judge  
3 impacted on the County and state budgets.

4 Of additional note has been the cooperation of  
5 Judge Lupas and the Juvenile Defenders Association in  
6 arranging studies, training sessions, including earmarking  
7 grant funding for National Juvenile Defender's Summit taking  
8 place in Colorado, and funding for additional positions for  
9 public defenders and other attorneys handling juvenile  
10 delinquency cases. These enhanced efforts may well  
11 establish a model for this state.

12 Since the indictments were announced there has been  
13 considerable media and public criticism about why didn't the  
14 judges do anything? They had to know. An objective  
15 analysis is in order.

16 Juvenile Court is closed court with limited media  
17 coverage. Most times the courtrooms were limited to Court  
18 and staff, Assistant DAs, public defenders, private  
19 lawyers, prosecution witnesses, and many times school  
20 officials.

21 In late April of 2008, as a result of publicity  
22 surrounding the petition filed by the Juvenile Law Center to  
23 the Pennsylvania Supreme Court seeking extraordinary relief,  
24 I first learned that the waiver of counsel in Luzerne County  
25 juvenile delinquency cases was ten times the state average

1 for years 2005 and 2006.

2 Prior to that I had never received a letter or any  
3 notice of the systematic deprivation of counsel. I do not  
4 recall any news coverage regarding these issues except for  
5 the 2004 incident regarding placement.

6 The sound that resonated loudly from Ciavarella's  
7 courtroom was his no nonsense, zero tolerance approach,  
8 particularly in school cases. Also, no real audit or cost  
9 analysis was provided until recently, and the remaining  
10 members of the Court are as astonished as our citizens over  
11 the outrageous profits made by PA Child Care and Dr.  
12 Vita.

13 Since assuming Juvenile Delinquency Court  
14 responsibilities, Judge Lupas has been steadfast in  
15 requiring counsel for each child, most times a public  
16 defender, and in conducting an extensive colloquy before  
17 accepting an admission.

18 This is in stark contrast to what we learned after  
19 the fact had been Ciavarella's practice of ignoring  
20 rudimentary concepts of due process and the right to  
21 counsel.

22 On the occasion of the rededication of the  
23 100-year-old courthouse, keynote speaker, Justice Matt Baer,  
24 observed: Two of my colleagues had become corrupt, and  
25 there was nothing in history that could suggest that could

1 happen. Justice Baer continued. It was so ungrounded in  
2 any historical event. It was so beyond anything in our  
3 collective experience that in good faith we failed to see  
4 the possibilities.

5           During my 15 years in Delinquency Court from 1981  
6 to 1996 a media release was issued after every session which  
7 included identification of the juvenile's sex, age,  
8 municipality, number of prior appearances, the adjudication,  
9 and finally the disposition, i.e., Placement, probation, or  
10 other disposition plan without revealing the juvenile's  
11 name.

12           Our Court is considering reinstating this practice,  
13 and I submit this Commission should consider recommending an  
14 amendment to the Pennsylvania -- for a Pennsylvania Juvenile  
15 Act along these lines.

16           As President Judge over the last nine months I have  
17 been under a directive to provide monthly reports to the  
18 Pennsylvania Supreme Court outlining what our Court has done  
19 to rehabilitate our policies and procedures.

20           While I do not have the authority to release these  
21 reports, the Commission may want to explore with the Supreme  
22 Court the possibility of gaining access to this -- to these  
23 materials.

24           Generally the reports outlined what I have  
25 presented here today, along with many other actions taken in

1 various areas of court administration. Most significant is  
2 the manner in which we now conduct our court.

3 We have limited the authority of the President  
4 Judge to make decisions without input from all members of  
5 the Court. We continue to work together to develop ideas to  
6 address the concerns of the bar, and most important our  
7 citizens.

8 I believe Chief justice Castille has recognized our  
9 efforts favorably stating in a letter that the High Court  
10 has noted areas of progress and improvements and procedures  
11 designed to ameliorate some of the problems inherited and  
12 the procedures enacted by the previous administration.

13 Those words are greatly appreciated, and in order  
14 that a degree of uniformity exists in all judicial districts  
15 I am hopeful that the Rules of Judicial Administration be  
16 modified to ensure participation of all members of the Court  
17 en banc regarding designated areas of Court administration.

18 Simply put, it is my opinion that the absolute  
19 authority of the President Judge over court affairs and the  
20 abuse of power regarding same, coupled with the improper  
21 conduct of another judge, have been the principle cause of  
22 the scandal which has necessitated the Governor and the  
23 legislature to create this Commission.

24 I am hopeful that my testimony today will assist  
25 you members of this Commission with meeting your charge to

1 make recommendations to improve the Pennsylvania Juvenile  
2 Justice System, prevent the reoccurrence of similar events,  
3 and to recommend necessary changes in state statutes and  
4 state and local practices, rules, policies and procedures.

5 CHAIRMAN CLELAND: Thank you, Judge.

6 MR. WILLIAMS: Judge Cleland, can I question the  
7 witness?

8 CHAIRMAN CLELAND: I think we will defer to Judge  
9 Uhler, and then we'll turn to you.

10 BY JUDGE UHLER:

11 Q Judge, you indicated that certain issues that you  
12 became aware of prompted you to contact the FBI in 2006?

13 A Yes, sir.

14 Q Can you share whether or not you had, at an earlier  
15 time, concerns that either dealt with ethical management of  
16 the Courts by Conahan and Ciavarella and/or financial  
17 management of the juvenile justice system prior to your  
18 approaching the FBI?

19 A Okay. We have to go back to what I had indicated.  
20 I wasn't even in the same building with these people.

21 Q I understand that. You were isolated.

22 A Completely isolated. However, once in a while  
23 stories would filter over. Now, we have to remember this.  
24 I went to the FBI in 2005. No indictments until 2009, okay.  
25 You have to understand that this method of ripping off the

1 County and, in effect, depriving these kids of their rights  
2 was so, so contrived in so many labyrinths that I had no  
3 idea, and I don't think anybody else had any idea, that  
4 there was money involved.

5 I didn't realize there was money involved except  
6 for the excessive use of luxurious items toward the end of  
7 this, which really got my back up. Because then I knew  
8 something was going on. I didn't know how they did it, but  
9 I knew something was going on.

10 Q Did you discuss these concerns with any of your  
11 colleagues?

12 A Yes.

13 Q And what was their sense as to what was going on?

14 A Well, some of them said, oh, come on. That can't  
15 really be. And I just told them what I knew, and we  
16 discussed it, and we talked about it. And at that time I  
17 really wasn't that close with them, and they didn't realize  
18 that I had gone to the FBI. And when I told them I had gone  
19 to the FBI then they, I think, began to take the thing more  
20 seriously.

21 Q It was evident by the reports that you had  
22 referenced and as to the zero tolerance policy, the -- the  
23 appearance at the school auditorium sessions of Judge  
24 Ciavarella regarding his zero tolerance policy and his get  
25 tough policy, that indeed there was almost a sense of

1     prejudgement that had been made surrounding these youth and  
2     the disposition.

3             Were there any concerns articulated by your  
4     colleagues, by yourself, raising question as to whether or  
5     not there should be a report to the Judicial Conduct Board  
6     regarding lack of impartiality or bias? Did anyone consider  
7     that approach?

8             A     Did not consider that approach because we did not  
9     really understand how serious the situation was. I think,  
10    Judge, when you put yourself into a situation where you're  
11    running your calendar and you're running your court and  
12    you're trying to keep abreast of what you're doing,  
13    sometimes it's difficult to understand what somebody else is  
14    doing half a mile away.

15            Q     It was though known, and well known, that the  
16    hearings were brief?

17            A     Absolutely.

18            Q     And largely youth would be appearing before Judge  
19    Ciavarella without an attorney. Are you saying that not  
20    even the public defenders or DAs raised concerns about the  
21    lack of impartiality?

22            A     No, sir. There were no concerns raised by any  
23    public defender, private lawyer. As a matter of fact, it's  
24    strange. I'll probably get in trouble for this. One of the  
25    private lawyers who appeared in that court is now suing the

1 County, if you can see how ironic that is. He didn't find  
2 anything wrong when he appeared in the court, but now he's  
3 suing the County.

4 Q Ciavarella and Conahan were known to be friends; is  
5 that not the case?

6 A Close friends, yes, sir.

7 Q And Conahan had preceded him as President Judge,  
8 and that was -- Ciavarella as President Judge, and that was  
9 by way of election; is that correct?

10 A Yes.

11 Q You, I gather, are probably the longest in  
12 seniority of the current bench; is that correct?

13 A Yes, sir.

14 Q The -- when the election came about after Conahan's  
15 five year term ended was that a contested election for PJ at  
16 that time?

17 A I did everything I knew how to get myself elected,  
18 and it didn't work. I only had --

19 Q So you were a candidate?

20 A I was a candidate. However, when it got down to  
21 it, I didn't have the votes. I was missing one vote. I  
22 just didn't push the candidacy because I knew I couldn't do  
23 it.

24 Q So I gather then the 8-0 vote that was certified to  
25 the Supreme Court was a courtesy to reflect unanimity to the

1 PJ?

2 A Well, it was -- it wasn't a courtesy. It was an  
3 attempt to demonstrate that we were together for whatever  
4 reason. It wasn't a good thing. And perhaps we should have  
5 stuck to our guns. However, in order to demonstrate to the  
6 general public that we had a unified court, we thought it  
7 best to go along. Not the right decision.

8 Q The -- the issues surrounding the employment of  
9 staff within the court system and/or court-related  
10 operations it appears, and we cannot always believe what we  
11 read in the press, but there is a significant amount of  
12 nepotism involved with the court processes. Does that  
13 continue now under your tutelage?

14 A Well, quite frankly I haven't hired anybody. I  
15 just fired 28 people.

16 Q Okay. So would you agree that that -- that that  
17 was a concern?

18 A Yes, sir.

19 Q And that that nepotism facilitated almost a  
20 protective shield, if you will?

21 A Absolutely.

22 Q Of any wrongdoings within the system?

23 A You are absolutely on point, sir.

24 Q Did you or any of your colleagues recognize that  
25 this nepotism, the hiring of individuals who are related to

1 or connected with either Conahan or Ciavarella, did -- were  
2 there any complaints registered as to those concerns? Would  
3 that have gone --

4 A Registered by whom, sir?

5 Q Your fellow judges?

6 A Well, there's sometimes some astonishment by what  
7 was going on, but what could we do? That goes back to what  
8 I attempted to address, that something has to be done about  
9 the absolute power of a President Judge. He doesn't have to  
10 take a vote. He can appoint anybody he wants.

11 Q With regard to what could you do. Were any  
12 complaints or queries made to the OPC or to the State Ethics  
13 Committee or to any of the disciplinary code enforcement  
14 agencies?

15 A I understand that another judge made some  
16 complaints, yes.

17 Q And when did you learn of that?

18 A Sometime after my discussions with the FBI.

19 Q And would that have been the complaint that's been  
20 also reported?

21 A I believe so, yes, sir.

22 Q Were there any indications of any other complaints  
23 made to either of those disciplinary authorities or  
24 authorities that could intervene on behalf of the court  
25 system?

1           A     Only what I read in the paper. We probably read  
2 the same thing, sir.

3           Q     With regard to the hiring practices itself, had it  
4 been institutionalized that the President Judge was the sole  
5 determiner as to who came on board?

6           A     Yes.

7           Q     With regard to the detention center, I believe you  
8 indicated that Conahan had directed a withholding of funding  
9 for that unit?

10          A     Well, not only -- he just closed it down and sent  
11 the license back to the State and said we're not using it  
12 anymore. Never talked to the judges about it. County  
13 Commissioners didn't take him on. The Department of Public  
14 Welfare didn't take him on. Nobody took him on. They just  
15 accepted it.

16          Q     Is that typically a decision -- do not detention  
17 centers fall under the executive typically?

18          A     In the sense of the County?

19          Q     Yes, sir.

20          A     Yes. It's their center.

21          Q     So the County enabled this to happen?

22          A     Yes, sir.

23          Q     Were there hearings conducted surrounding these  
24 issues?

25          A     No.

1 Q No?

2 A Nothing.

3 Q Had there been any hearings conducted in which the  
4 media had been kept away from it, such as PA Child Care  
5 issues?

6 A We didn't have to worry about keeping the media  
7 away from any kind of meetings because there were no  
8 meetings.

9 Q Okay. Or hearings?

10 A No hearings. Sir, I'm trying to -- again, this  
11 was never discussed with anyone. It was not discussed with  
12 the court en banc. We're talking about the closure now. We  
13 had absolutely no input in that whatsoever, none.

14 Q What about the --

15 A Let me finish. The -- when they decided to get  
16 into the lease, the 20-year \$58 million lease, the County  
17 had a number of hearings, and they had citizen input. And  
18 I'll be very candid with you, there was quite a reaction. I  
19 believe our taxpayers were very, very unhappy about that  
20 whole situation in which the court had nothing to do with.  
21 They could have shut that thing down. They didn't have to  
22 do it.

23 Q What policy had been developed, if any, with regard  
24 to an educational framework for the judges? Was there  
25 encouragement to attend the State Conference of Trial

1 Judges, mid-winter and summer meetings, for additional  
2 education, or the JCJC conferences?

3 A There was never any encouragement to attend  
4 anything. The belief of those individuals during their  
5 administrations was that if we kept the -- if they kept us  
6 away from each other and we had no discussion process, then  
7 they could continue what they were doing.

8 Q When you assumed a position as President Judge were  
9 you given authority and check writing -- from the check  
10 writing standpoint over any court set-aside funds?

11 A I have access to them. I have not spent a nickel  
12 of the money. We have just agreed to give the County a  
13 million dollars out of that funding. We announced that last  
14 week at our budget hearings. So out of that fund, which we  
15 have not tapped, we're giving the County a million dollars.

16 Q Are you aware whether or not it's common practice  
17 for a court to have such funds available to itself, and/or  
18 are they typically incorporated into the internal operating  
19 funds of the County?

20 A Both. That depends on where you are and how big  
21 the county is. For instance, let me give you an idea. Out  
22 of the fund you're talking about we haven't spent anything,  
23 but we anticipate that we're going to be buying some  
24 cruisers for our probation officers. The funds have been  
25 used for those kind of expenses.

1 Q How is that funded?

2 A Funded by the monies that we receive for probation  
3 supervision, and basically probation office provides a lot  
4 of money. I'm talking about the adult probation officer,  
5 not juvenile.

6 Q Not juvenile?

7 A I'm talking about adult probation officers.

8 Q You indicated that the President Judge has too much  
9 authority?

10 A Absolutely.

11 Q How would you recommend that being approached?

12 A Well, I think that there should be required on a  
13 regular schedule court en banc meetings. I think it's not  
14 right that there's only a court en banc meeting if the  
15 President Judge needs your signature on something.

16 And that's the only time with Conahan we ever had  
17 court en banc meetings. He needed us to sign off on  
18 something. And that was very rare. I think there ought to  
19 be meetings at least twice a month.

20 We've been doing our meetings every two weeks. And  
21 when I first started we had our meetings every week because  
22 we had so much -- so many things on our plate that we spent  
23 literally hours trying to figure out what to do in certain  
24 areas. It was -- it was chaos, absolutely chaos.

25 We have the County after us. There was a lawsuit.

1 One thing I did fail to mention. Ciavarella sued the County  
2 in an effort to enjoin them from cutting our budget, and  
3 that lawsuit was ongoing. We met with the County  
4 Commissioners. We got a real figure that we had to trim our  
5 budget. We brought our budget in line, and I terminated the  
6 lawsuit.

7 Q Do you believe the term limit of five years is too  
8 short or too long for a President Judge?

9 A I think it's just right if you -- if he does his  
10 job the right way.

11 Q Is there any vehicle for a -- for the judges to  
12 deal with a rogue President Judge?

13 A I thought you were going to go there. Recall. It  
14 can't happen unless they change the Rules of Judicial  
15 Administration. Not a bad idea though.

16 Q Had the -- had your colleagues sought bench  
17 meetings?

18 A Say?

19 Q Had your colleagues and/or you sought regularly  
20 scheduled bench meetings?

21 A I've asked to put things on the agenda, and I was  
22 basically -- I wasn't told, but it came back through a  
23 secretary, you know, next time we have a meeting we'll get  
24 that on for you. For instance, when I was really pressing  
25 on what had happened in my funding stream being cut back in

1 2005 I wanted to meet with everyone. It just didn't happen.

2 Q And did you feel that you had a vehicle by which --  
3 or a remedy by which you could correct this deficiency?

4 A Yes. I was going to -- as I indicated, I was going  
5 to -- I was going to contract with whatever entity would  
6 provide the services. And if the County didn't pay I was  
7 going to hold somebody in contempt.

8 Q Perhaps my question wasn't as articulate as it  
9 should be. I meant did you have -- have a feeling that you  
10 had a remedy as to why you could not attain a meeting with  
11 the President Judge?

12 A Well, I'll tell you what, toward the end -- during  
13 that time frame Conahan didn't talk to me. He had no  
14 conversations with me. He ignored me. I just -- I didn't  
15 exist. You got to remember I was across the street. He  
16 didn't have to put up with me.

17 Q Is that the same with your other colleagues?

18 A No. I had a cordial relationship with them.  
19 However, I didn't know them because of what had happened and  
20 the lack of collegiality in the form of getting together for  
21 meetings. It just didn't happen.

22 Q With regard to recent issues that are arising under  
23 the recommendations of change to Judge Lupas from the  
24 Juvenile Court Judges' Commission, I believe you were the  
25 recipient of a letter dated July 30th, 2009 from Keith

1 Snyder. Do you recall that?

2 A I remember something coming in, yes, sir.

3 Q I'd like to have this document incorporated into  
4 the record. The practice that Keith Snyder and his  
5 associates had challenged or made recommendations to the  
6 Luzerne County Juvenile Courts included an issue surrounding  
7 who was the -- the preparer of the petitions.

8 It's my understanding from the report that  
9 historically the police departments had been the preparers?

10 A And school administrators.

11 Q And the recommendation was that that be curtailed  
12 and the petitions be prepared by either the Probation  
13 Department and/or the District Attorney's Office. Has that  
14 been implemented?

15 A I believe that Judge Lupas is now directing that  
16 the POs, probation officers, prepare petitions.

17 Q And that would be filed in a timely fashion so that  
18 the child and family have their accorded due process rates I  
19 trust?

20 A Yes. And something else we've done, and I probably  
21 should have mentioned. We have decided that Judge Lupas is  
22 now not only doing delinquency, he's doing the dependency.  
23 I think both courts should be administered by the same  
24 judge. Many times we'll have cases in which a child will  
25 have one foot in each court. And they should have the

1 ability, sir, to transition back and forth depending on  
2 where the appropriate services should be.

3 Q And there's often dual adjudication?

4 A Exactly. So we have Judge Lupas doing both right  
5 now.

6 JUDGE UHLER: That completes my questioning.

7 CHAIRMAN CLELAND: Mr. Allen, any questions?

8 MR. ALLEN: No, Mr. Chairman.

9 CHAIRMAN CLELAND: Mr. Williams?

10 MR. WILLIAMS: First I must apologize to Judge  
11 Uhler for interrupting him.

12 JUDGE UHLER: No apologies necessary.

13 BY MR. WILLIAMS:

14 Q Judge Muroski, first let me make a statement that I  
15 believe that people did know in Luzerne County and didn't  
16 come forward. I believe school districts and police  
17 officers, probation departments, and many others knew what  
18 was going on. And I want to thank you for coming forward  
19 and bringing light to this situation. You should be  
20 commended for that.

21 A Thank you.

22 Q But questions that I have, would you agree that the  
23 County Commissioners of Luzerne County should have appealed  
24 the Conahan's court order to remove County taxpayer dollars  
25 from the general fund for this? I'm speaking as a former

1 County Commissioner. I want you to know that.

2 A Commissioner, they didn't have to do it.

3 Q No, they didn't. But the County Commissioners  
4 could have appealed that decision?

5 A Well, the decision was one that in my view exceeded  
6 the authority he had. How does a President Judge close down  
7 a detention?

8 Q Exceeded Conahan's authority?

9 A Yes. Exactly my point.

10 Q But your County Commissioners could have appealed  
11 that decision?

12 A They could have.

13 Q And did not, the financial decision, and did not?

14 A They didn't have to appeal anything. They could  
15 have just ignored it and said you don't have a right to do  
16 that and we're not going to let you do it. We're going to  
17 get a new set of keys, and we're going to open the place up.

18 Q Exactly. Also there were references to many  
19 contracts, one with Dr. Vita. Who approved those contracts?

20 A That -- to this time there is some confusion, all  
21 right. Some way -- and I haven't been able to put this  
22 together. Somewhere along the way some of them may have  
23 been approved by some administration figure in the County  
24 chain, all right, but not brought to the Commissioners'  
25 attention. It was not properly bid is the point. But

1 somewhere along the line.

2 Q Then the taxpayers in Luzerne County should not  
3 have to pay that bill?

4 A You're right.

5 Q Because it was not approved by the County  
6 Commissioners?

7 A He has been paid, and in my -- well, again, I  
8 should not give you my legal opinion, but I think you know  
9 where I'm trying to go. Certainly something can be done by  
10 the County to investigate the possibilities of --  
11 investigate the possibilities.

12 Q You mentioned that one County Commissioner was  
13 worried about the cost of this. Can you share with us the  
14 name of that County Commissioner?

15 A That was Gregory Skrepenak.

16 Q And in your disposition hearings for juveniles in  
17 Luzerne County were any of those disposition hearings held  
18 by a juvenile master?

19 A No. They were all -- every disposition hearing was  
20 held by Conahan -- excuse me, by Ciavarella.

21 MR. WILLIAMS: Okay. Thank you.

22 CHAIRMAN CLELAND: Judge Gibbons, I think you were  
23 the next in line. And then Judge Woodruff, I believe you  
24 had some questions.

25 BY JUDGE GIBBONS:

1           Q     Thank you, Mr. Chairman. Mr. Muroski, you  
2 indicated that you went to the FBI, I believe, in 2005?

3           A     Five. Excuse me, 2006.

4           Q     2006?

5           A     2006.

6           Q     Okay. Did you go at all and make any attempt to go  
7 to the Judicial Conduct Board?

8           A     I didn't do that for this reason. Through my own  
9 sources I knew that there were -- was an investigation going  
10 on by the FBI about other matters that they had a concern  
11 about. I didn't want, as a -- as a former prosecutor I  
12 didn't want to go to the Conduct Board because I knew that  
13 they would make some inquiries, and perhaps information  
14 would go to the individuals I was concerned about, and they  
15 could start preparing whatever they had to prepare to  
16 protect themselves.

17                     I didn't feel comfortable going to them for that  
18 reason. I went to the outfit I knew was investigating at  
19 that point in time other matters concerning these two. And  
20 I thought that it would be best to go to them because they  
21 have an interest in them already.

22                     And instead of going to the Conduct Board, which in  
23 effect would look at it and probably refer it out, I went to  
24 where I thought they would refer it.

25           Q     The -- do you know whether any of your colleagues

1 on the bench went to the Judicial Conduct Board during this  
2 time?

3 A I believe that there was a statement made by one of  
4 the judges, yes, that there was contact made with the  
5 Conduct Board.

6 JUDGE GIBBONS: Thank you, Mr. Chairman.

7 CHAIRMAN CLELAND: Judge Woodruff.

8 BY JUDGE WOODRUFF:

9 Q Thank you. Your Honor, first of all, I want to  
10 applaud you on the work that you've done thus far and as  
11 well as the work that's still ahead of you. I just have --

12 A Not far ahead of me, sir. I'm gone the end of  
13 December.

14 Q I just have a few questions. How many judges are  
15 hearing juvenile cases now?

16 A Just one.

17 Q Just one. That's Judge Lupas?

18 A Yeah. And as I said, he's also now -- I've taken  
19 him completely out of civil litigation, and he is completely  
20 in charge of Juvenile Court, both divisions right now.

21 Q Okay. Until recently he was not hearing the  
22 dependency cases, but now he's hearing both?

23 A Yes.

24 Q Okay. You indicated -- one of the questions we  
25 have is waiver of counsel. And it's my understanding that

1 Judge Lupas goes through a full colloquy in regard to that?

2 A Yeah. I think that -- can you attest to that?

3 MR. LISTENBEE: Yes.

4 JUDGE MUROSKI: One of your members will tell you.

5 In fact, I met, what, about two weeks ago and met him

6 sitting in the back of Judge Lupas's courtroom.

7 BY JUDGE WOODRUFF:

8 Q Other than, I guess, Mr. Listenbee being in the  
9 courtroom, is that confirmed? Have you talked with that --  
10 Judge Lupas in regard to waiver of counsel in his courtroom  
11 at all?

12 A Absolutely. When I started -- here's what  
13 happened. Here's a guy who had only been on the bench for a  
14 very short period of time. He was a former DA. However, he  
15 himself, from what I can gather, was never in Juvenile  
16 Court.

17 So it was getting to a situation where Ciavarella  
18 was under a lot of pressure. He had to get out. So when he  
19 got out he simply appointed Dave Lupas. Dave Lupas came to  
20 me and said, what do I do now? And we sat down. I said,  
21 hey, look. We'll get through this thing.

22 Went through the changes, went through how to  
23 conduct a colloquy. And I'll tell you what, I think he's  
24 doing a damn good job.

25 Q You also indicated now you have -- all the judges

1 are together in banc for meetings every two weeks?

2 A Yes. Let me tell you how that all started. We,  
3 right at the very beginning, talked in terms of complete  
4 transparency. We did something that I'm told -- and I  
5 checked it out with the AOPC before we did it.

6 We had the meeting to elect the President Judge in  
7 public. It was an open courtroom. Anybody who wanted to be  
8 there could be there. I was told the only rule that we had  
9 to comply with would be a rule for a secret vote, a secret  
10 ballot. The rules didn't say anything about anybody being  
11 there.

12 So we had this courtroom. And it was jammed,  
13 believe me, media. And the vote was cast. And two of our  
14 judges sat and they counted the ballots and announced the  
15 vote. And since then that worked so well that we figured,  
16 well, we better start doing this thing on a very, very  
17 frequent basis. And that's when we started.

18 And as I said, every week we met for hours. And  
19 then we issued press releases, complete press release about  
20 what we did, what we covered, what we agreed upon. It would  
21 come out with my name announcing the results of the vote of  
22 the court en banc. And it was not a press release for me.  
23 It was from me on behalf of the whole court en banc.

24 Q One final question. Are any -- do you have any  
25 meetings, or are there any meetings scheduled now for public

1 defenders, probation officers to address any of their  
2 concerns?

3 A Well, let me tell you something. A week ago  
4 Monday, and it goes to something -- Judge Uhler asked some  
5 questions about how people got their job and things like  
6 that.

7 We had interviewed four individuals for the  
8 position of Chief Probation Officer of both divisions of  
9 juvenile and adult. And the four individuals told us, the  
10 court en banc, told us that there was a lot of disrespect  
11 going on, that people thought they were special people in  
12 our probation office, and they felt that they could approach  
13 some of the judges, and perhaps they were not bound by the  
14 same rules as everyone else.

15 So we heard this, and I heard it from other sources  
16 too. So I had -- I think it was 169 or 172, something like  
17 that, of our employees meet in the Emergency Management  
18 Division. It's a big building near the courthouse. And I  
19 simply went in and told them what I had heard, that some of  
20 the people think that you don't have to abide by the rules,  
21 and you're special people, that you can go to a special  
22 judge X, and I used that name, to get things changed for  
23 you.

24 Let me tell you, if you think that you only have to  
25 put up with me for three more months, then you're wrong.

1 And I had all the judges there with me. These gentleman  
2 will now tell you that it's different. They will tell you  
3 now, don't try to go to them. Don't try to assert any kind  
4 of influence you think you have, because it's different.

5 I'm not in charge of your morale. That's not up  
6 for me to decide how you people feel about your jobs. The  
7 only thing I can tell you is that people in the community  
8 want your jobs. I'll have no difficulty filling your jobs.  
9 And if you don't want to work for us and follow these rules,  
10 go. All right.

11 There was an attempt made to answer -- ask  
12 questions. I said, I'm not taking any questions. If you  
13 have a question, go up your chain of command. Go to your  
14 supervisor. Your supervisor will go to your deputy. If the  
15 deputy thinks it's important, he'll take it to the chief.  
16 And if the chief thinks it's important, he'll bring it to  
17 me, and I'll take it to the court en banc. So it was  
18 something that had to be done, and we did it.

19 JUDGE WOODRUFF: Thank you.

20 CHAIRMAN CLELAND: Any questions?

21 BY MR. HOROHO:

22 Q Judge, let me take you back to January of '96.  
23 That's when Judge --

24 CHAIRMAN CLELAND: Would you turn your mic on?

25 BY MR. HOROHO:

1 Q Yeah, it's on. Is this better? January of '96,  
2 that's when Judge Ciavarella took over at the Juvenile  
3 Delinquency? You went then to Orphans' Court?

4 A No. I stayed where I was. That was a  
5 responsibility that was removed from me. I stayed where I  
6 was. I was across the street in the building that I  
7 referenced that we had built.

8 Q Now, what was the makeup of the other members of  
9 the bench as far as the division of duties and  
10 responsibilities? In other words, was there a Civil  
11 Division, a Family Division?

12 A Yeah.

13 Q How did that work?

14 A Well, there's, of course, a Criminal Division.  
15 There was a Civil Division. And everything else that nobody  
16 wanted to do I did.

17 Q Okay. Now, how -- if you had local rules or  
18 changes to the local rules in any of those divisions, how  
19 was that disseminated to the local bar?

20 A Good question. The local bar had become very  
21 familiar with my responsibilities. They knew they could get  
22 in without having to go through a whole regimen of petitions  
23 and so on like that. I was able to see lawyers during  
24 motions hours. And other counties would change judges and  
25 would go take motions hours. You know that, of course.

1           However, as the other judges handling criminal and  
2 civil rotated, I had motions hours all the time. I would do  
3 it three days a week. I would have motions three days a  
4 week. And that's all the matters that I was handling at the  
5 time. And I went through that long laundry list that I went  
6 through with you, and I was able to resolve a lot of things  
7 with lawyers who came in with a motion or request. And I'd  
8 sit with them and get things done.

9           Q     Did lawyers have that same comfort level you think  
10 with Judges Conahan and Judges Ciavarella?

11          A     No.

12          Q     Why not?

13          A     Probably because they didn't know whether or not  
14 they'd be fairly treated.

15          Q     Okay.

16          A     I mean, this is for the lawyers to say.

17          Q     Well, I kind of want to get your sense if you --  
18 you mentioned that there were no concerns raised by the  
19 private lawyers, public defenders, District Attorneys during  
20 this period of time. And I'll use the period of time from  
21 '96 to, I think, when I guess in '-- almost '08 when there  
22 was the -- Judge Ciavarella transferred Delinquency Court to  
23 Judge Lupas.

24                 Your testimony is you -- there were no concerns or  
25 complaints raised to you from any of those?

1           A     I had none.  Because you have to remember, I was in  
2 a different realm.

3           Q     Did any -- when you were having lunch with your  
4 fellow lawyers or in a social setting?

5           A     I never go to lunch.

6           Q     Okay.  In a social setting?

7           A     I don't want to take it to that level, but I did  
8 not have that kind of interaction with the other judges or  
9 lawyers until I moved back to the main courthouse.  
10 Remember, I was away for 17 years.  When I got back to the  
11 main courthouse at that point in time then I began to  
12 develop a relationship with some of the judges who had been  
13 put on while I was away from the main courthouse.

14          Q     How many other judges were on the bench besides  
15 yourself, Judges Conahan, Ciavarella from '96 through '08?  
16 Do you have a recollection how many others?

17          A     Sure.  Let me start off.  There's Judge Augello,  
18 Judge Mundy, Judge Burke, Judge Olszewski, Judge Musto.  
19 During that period of time Stevens was there, who is now --  
20 Judge Stevens is now on the Superior Court.  And probably  
21 one I forgot.

22          Q     Now, are you aware of any complaints that private  
23 lawyers, public defenders, District Attorneys made through  
24 any of other judges that you mentioned during this period  
25 of time about what was happening in Judge Ciavarella or

1 Judge -- mostly Judge Ciavarella's courtroom? Any  
2 complaints whatever?

3 A They didn't discuss them with me if they got them.

4 Q Is there -- the local bar association, were there  
5 any complaints that you filed with your local bar  
6 association, the Luzerne County Bar Association, about any  
7 inappropriate -- what you were understood to be potentially  
8 inappropriate conduct or what was happening in Judge  
9 Ciavarella's courtroom?

10 A Well, I don't know if our local bar association  
11 would have any -- any authority to do anything about it.

12 Q Okay. Did you look into that?

13 A No, I never looked into it because when I became --  
14 when I got to a point where I thought this is a bad thing, I  
15 wasn't going to go to any associations. I was going to go  
16 to the entity that I thought would do something about it.  
17 And I was assured they were already investigating these two  
18 guys.

19 Q And that entity was?

20 A The FBI.

21 Q Okay. And you didn't -- you didn't feel -- other  
22 than the FBI you didn't -- none of you -- you or the other  
23 fellow judges really didn't feel that the Judicial Conduct  
24 Board would be helpful to you?

25 A Well, they might have been helpful in taking the

1 complaint and probably referring it to the FBI. I just cut  
2 out the middle man.

3 Q How about the JCJC? Did you feel like that might  
4 have been a body that could have been helpful to you?

5 A They have no authority, sir. They had no  
6 authority. I needed somebody with teeth.

7 Q Did you ever lodge any complaints to them? How  
8 about -- about the best practices or what was happening,  
9 maybe there should be a change going on there?

10 A No.

11 Q How about the AOPC?

12 A No. I would call the AOPC occasionally and ask  
13 about authority, about who has the authority to do what.  
14 Most of them were inquiries. Can he do this? Can they do  
15 that? That kind of thing.

16 Q Did you have any sense -- this is the last  
17 question. Any sense why -- if the lawyers were not raising  
18 complaints, why they didn't?

19 A Well, you're getting into an area I don't think I  
20 want to go, okay. This is giving my opinion on something I  
21 don't think I should. You may want to -- in your future  
22 meetings you may want to bring some lawyers in.

23 MR. HOROHO: That's all the questions I have.

24 CHAIRMAN CLELAND: Mr. Legg.

25 BY MR. LEGG:

1           Q     Thank you, Chairman. Judge Muroski, could you  
2 articulate for me exactly what it was in 2006 that you had  
3 that you felt was criminal and wanted to refer to the FBI?  
4 Because that's a pretty extraordinary step to report another  
5 colleague to any type of criminal investigative agency.

6           A     Okay. By that time I had been back -- remember, I  
7 came back into the building in September of 2005 and  
8 immediately got into an area which I hadn't been in for a  
9 long time trying jury trials.

10                     So my attention, until I got back on that bicycle  
11 seat, was trying to just do my job. So after I felt more  
12 comfortable I then started hearing the stories, some of the  
13 stories I've just been asked about, and putting things  
14 together myself and what had happened to me and hearing  
15 about -- talking to some people off the record who were in  
16 the probation office, and the juvenile probation office gave  
17 me information.

18                     And, again, I thought it was futile to go to any  
19 other organization except one that could do something really  
20 about this, an organization that had subpoena power, who  
21 could run a discreet investigation without anyone really  
22 knowing that there's an investigation.

23                     And they had been conducting a discreet  
24 investigation, from what I gathered, for several years even  
25 before I went there on other matters that they were looking

1 at.

2 Q So you had a collection of rumors as well as what  
3 had happened to you in your reassignment?

4 A Right.

5 Q When you talked with the FBI I take it you talked  
6 to them more than once?

7 A Yes.

8 Q Is that in '06, 2006?

9 A Yes.

10 Q Did they tell you not to report your suspicions to  
11 the Judicial Conduct Board?

12 A They didn't tell me that. However, they talked in  
13 terms of this is a very confidential situation. They didn't  
14 tell me what -- not to go anywhere. They just told me that  
15 they wanted to work with me in a clandestine fashion.

16 Q Did you have conversations with the FBI after 2006?  
17 Was this a follow-up type of situation?

18 A I hadn't heard from them for a while. And then as  
19 this matter heated and the rumors really swirled throughout,  
20 I'd say maybe a year and a half, I began to have more  
21 contact with them.

22 Q During that period of time, that hiatus when you  
23 didn't have any contact from the FBI, were you still aware  
24 or were you -- was it still your belief that this was  
25 business as usual in Ciavarella's courtroom?

1           A     We didn't know what the business as usual was.  
2     See, that's what you're missing. I knew there was something  
3     maybe not right with what Ciavarella was doing down there.  
4     However, the public perception of what he was doing was a  
5     good public perception. You have to understand that.  
6     People admired what he was -- even to this -- I'll tell you  
7     there are some people that will tell you he did a great job.

8                     So absent the -- the labyrinth that has been  
9     discovered by IRS, FBI, whoever did all that, the only thing  
10    we knew was some of this stuff that was going down in the  
11    courtroom. We didn't know anything about money. We didn't  
12    know anything about finder's fees. We didn't know anything  
13    about Mericle. We just didn't know.

14           Q     Did the rumors stop after '06, or was it still  
15    churning in the courthouse?

16           A     It was churning, yes.

17           Q     And you indicated that you were aware that one  
18    other judge had made a complaint to the Judicial Conduct  
19    Board?

20           A     Yeah.

21           Q     When did you become aware of that?

22           A     In conversations with that judge.

23           Q     Is this around the same time that you had gone to  
24    the FBI?

25           A     Yes, it was.

1 Q So in '06?

2 A '06. Could have been even the end of '05 going  
3 into '06.

4 Q Were those conversations such that you were  
5 discussing whether or not you should report what you  
6 believed to the Judicial Conduct Board, or how did it come  
7 up that this report had been made?

8 A Talking generally in the discussion about what was  
9 going on and what could be done, and I learned that the  
10 report had been -- something had been disclosed to the  
11 Conduct Board. And then I heard from the other sources as I  
12 told you about that there was an ongoing investigation.

13 So my view was I'm not wasting my time. Not that I  
14 didn't think they'd do something. I just didn't think it  
15 would be my most effective means of trying to get some  
16 results. My view was the FBI was the place to go.

17 Q In those discussions with the other judge, was the  
18 complaint that was made to the Judicial Conduct Board  
19 duplicate -- duplicative of what you were going to the FBI,  
20 or was it different?

21 A The only other complaint dealt with case  
22 assignments, not the stuff that I was concerned about.

23 MR. LEGG: Thank you, sir.

24 CHAIRMAN CLELAND: Mr. Gibbons.

25 BY JUDGE GIBBONS:

1 Q Yes, just one. I note along the time line you had  
2 mentioned, Judge, that you sought election as President  
3 Judge. And there are two elections for that. Which one was  
4 it, when it went from Judge Augello to Conahan or --

5 A At that time there was not even a -- not even a  
6 thought that there was a problem, you know. I had -- at  
7 that point in time Conahan struck me as being a worker. He  
8 seemed to be doing his job. I had not heard anything.

9 Q And that was in the early part of 2002 when he took  
10 over from Judge Augello?

11 A Yes, from Judge Augello, yes.

12 Q So the one that you were seeking was when it  
13 transitioned from Conahan to Ciavarella?

14 A Exactly.

15 Q And that was sometime in the beginning of '07?

16 A 2007, yes.

17 Q And this other judge that had submitted a complaint  
18 to the Judicial Conduct Board, in your conversations with  
19 that judge did you encourage that judge to go to the FBI?

20 A Of course. Well, the judge already told me that  
21 there had been contact with the FBI.

22 Q Okay.

23 A Again, you got to remember what I just said. That  
24 judge's concern was about assignments.

25 Q I understand.

1           A     Okay.  And how assignments were pulled and given to  
2     somebody else.  And my concern was the things I talked about  
3     today.

4                     JUDGE GIBBONS:  Thank you.

5                     CHAIRMAN CLELAND:  Mr. Mosee.

6     BY MR. MOSEE:

7           Q     Where did Dr. Vita conduct his evaluations?  And I  
8     ask that because it's my understanding that often juveniles  
9     were sent to detention solely to receive an evaluation.

10          A     I really can't answer that question.  If they're in  
11     detention, it would have to be in detention.  And my -- my  
12     -- and I -- now I'm supposing.  Now I'm guessing.  But if he  
13     was justifying an evaluation, it will have to be with a  
14     juvenile he had a concern about, and that supposedly the  
15     court had a concern about.  So that individual, that  
16     juvenile, would have to be in detention.  That's the way I  
17     read it.

18          Q     And to that extent, the numbers that you testified  
19     about in terms of what he was paid would have been the  
20     payment just for the evaluation?

21          A     Yes, sir.

22          Q     Not detention?

23          A     Yes, sir.

24          Q     Do you know what happens when juveniles are  
25     evaluated at the Childrens Services Center and Northeast

1 Counseling?

2 A They'll come to the detention center. However --  
3 however, to be right up with you, Judge Lupas has a lot of  
4 them out, and they're not detained. And he waits for the  
5 evaluations to be conducted and gets the reports. Before he  
6 does institutionalize or make a disposition he waits, which  
7 is probably the proper thing to do.

8 MR. MOSEE: Thank you.

9 CHAIRMAN CLELAND: Judge Uhler.

10 BY JUDGE UHLER:

11 Q Just one final question. You referenced in  
12 response to an earlier question that a probation officer or  
13 probation officers came to you with concerns. What were  
14 those concerns that were brought to your attention by the  
15 probation officer?

16 A Well, concerns -- concerns concerning -- the  
17 concerns were mostly the way the court was conducted. I  
18 never really got the feeling that anyone was particularly  
19 concerned about waiver of counsel.

20 The probation office, even to this point in time  
21 will tell you, and I'm sure you're going to interview some  
22 of these people, they will tell you that, hey, we did all  
23 the paperwork that we are supposed to do, all right. We had  
24 people, we had parents, we had guardians sign off waiver  
25 forms, and we didn't think we had to do anything beyond

1 that. I think their concerns were the fact not so much as  
2 lack of counsel, but the type of disposition that occurred  
3 in the case.

4 Q That they weren't following -- the judges weren't  
5 following their recommendations, et cetera? Is that what  
6 you're referencing?

7 A That kind of thing, yes.

8 Q Were there any complaints regarding the rapid  
9 nature of the proceedings, the -- the not adherence to  
10 securing an appropriate waiver of one's rights to proceed on  
11 to admonition? None of those were addressed, I gather?

12 A They were not addressed. However, however, as I  
13 said in -- I reference it also in one of the articles I read  
14 from the newspapers. That information was out in the  
15 public. That was no secret thing behind closed doors. Most  
16 people knew how quickly those hearings took place, and no  
17 one was particularly concerned. The guy won retention after  
18 a series of articles ran.

19 Q And I gather that no one, included those within the  
20 legal community, the attorneys, the defense attorneys, the  
21 DAs and the colleagues?

22 A There was -- I can't remember if any of them were  
23 interviewed as part of the series of articles. I really  
24 don't remember. However, there wasn't that kind of an  
25 outcry from the people. I'll be right up front with you.

1 There wasn't a kind of outcry from those people that you  
2 would expect to see.

3 Q Media attendance in juvenile hearings, I gather, is  
4 non-existent or was non-existent during this time period?

5 A You're right, yes.

6 JUDGE UHLER: Thank you.

7 CHAIRMAN CLELAND: Mr. Listenbee.

8 BY MR. LISTENBEE:

9 Q Yes, Your Honor. As you look at the challenge  
10 going forward and as we look at the state we're trying to  
11 address the issue of how to prevent this from happening in  
12 any other county.

13 You've said that you went to the FBI because they  
14 had teeth. Which constitution should we be focusing on to  
15 give teeth to at the state level so that someone in the  
16 situation that you're in could go to a state institution  
17 rather than going to the FBI? Is that possible under our  
18 state structure that we have? Do we need another kind of  
19 institution, another kind of structure?

20 A You have to look at what you have now. The Ethics  
21 Commission can't do anything. They'll send you a nice two  
22 paragraph form saying that perhaps this conduct is -- and  
23 they've -- they've taken themselves to a point right now  
24 where they don't address a lot of issues, okay, the Ethics  
25 Commission. What will they do? I don't think that you can

1 empower them to do anything.

2 I think that the only entity that you can really  
3 empower would be the Conduct Board.

4 Q What kind of powers would you give the Conduct  
5 Board to give it teeth?

6 A Probably the most -- the Conduct Board, as we know,  
7 all operates in a -- in a forum of whether or not there's  
8 going to be an investigation. You get these forms and so on  
9 like that, whether or not you have -- there's going to be a  
10 full investigation or whether or not there's going to be a  
11 letter sent to you, that kind of thing. Okay. I think that  
12 the Conduct Board in certain kinds of cases, depending on  
13 the severity, should have public hearings, public hearing by  
14 the Conduct Board before going to trial with the Court of  
15 the Disciplinary -- Discipline.

16 Q Would the public hearings be sufficient, subpoena  
17 powers, investigators, and other kinds of tools? What do  
18 they need in order to have teeth?

19 A Well, they're probably going to need more than they  
20 have now. I -- I can't address the inner workings of the  
21 Conduct Board. I'm really not that familiar with how they  
22 do things. Fortunately I haven't been exposed to them. So  
23 I -- I don't know what they can do and what they should do,  
24 all right.

25 However, I don't think that they were the body for

1 me to go based on what I knew about them. Because I knew  
2 that in the past if they sensed criminality in something,  
3 they would send it to either the AG's office for the state,  
4 if it involved a state matter, or they would send it to the  
5 feds.

6 So, again, I just cut out the middle guy because I  
7 knew there was an ongoing investigation about these two  
8 people. And I went to the people who were investigating  
9 them already. I would -- I felt that any waves that I would  
10 make would give somebody the opportunity to start covering  
11 up, and that's probably the best word I can find, if they  
12 thought that they were being looked at by anyone.

13 Q But, again, Your Honor, looking forward, if we  
14 can't build stronger institutions, then we're going to place  
15 judges in the very difficult and precarious situation of  
16 sitting in trials, criminal trials, while at the same time  
17 collaborating or cooperating with law enforcement agencies  
18 which raise separate problems on their own?

19 A Absolutely. I'm quite aware of the roofer's case.  
20 I know all about that. And I did not wear any wires, okay.  
21 I did not intend to wear any wires. And I told them what I  
22 knew.

23 Q Your Honor, on another issue, what should be the  
24 role of prosecutors in juvenile courtrooms in Luzerne  
25 County? What role should they play given the history of the

1 County?

2 A I -- let me take you back to something I was asked  
3 many, many years ago when I became a judge. I was asked,  
4 you know, which job did you prefer? What's different about  
5 your jobs being DA or being a judge? And I would say that  
6 being a DA was probably the most difficult job because you  
7 had to be fair, and you had to win. Now, I only have to be  
8 fair.

9 So sure, there should be some vigilance on the part  
10 of the DA, but how far does a DA go in analyzing what his  
11 obligation is? That has to be looked at.

12 Q Well, how would you suggest that we go about  
13 helping the DA do that in Luzerne County and other counties  
14 across the state?

15 A Delineate as best you can, or define I guess is a  
16 better word for it, what you expect from a DA. What do you  
17 expect a DA to do? Remember the analogy I just gave you  
18 about being fair and winning. Where -- how do you stop that  
19 line? Where is that line?

20 Q Where should we delineate it?

21 A Let me just --

22 Q Excuse me, Your Honor.

23 A All right. Let's take a criminal case, okay.  
24 Criminal case is going on without the presence of a judge  
25 and somebody's doing discovery. And they're swapping stuff

1 back and forth for a discovery conference, okay. And the DA  
2 is giving them what he has, and he's getting from the  
3 defense counsel alibi material or whatever it is, okay.

4 The DA looks at what's being presented to him and  
5 he says, boy, this guy's going too far. He shouldn't be  
6 giving me this stuff. What's the obligation of the DA, to  
7 take it or say you're going too far? See?

8 CHAIRMAN CLELAND: Unless we have intense series of  
9 questions, this could go on. And I know we're going to be  
10 in Luzerne County and have plenty of time.

11 JUDGE MUROSKI: I just have to be home for December  
12 31st, okay.

13 CHAIRMAN CLELAND: Unless there are any other  
14 significant questions.

15 CHAIRMAN CLELAND: I'm here. I'm good. Keep  
16 going.

17 CHAIRMAN CLELAND: All right. You got the  
18 invitation, anyone wants to keep going.

19 BY MR. MOSEE:

20 Q Just one question. It's my understanding that  
21 Judge Ciavarella would leave the bench around 10:30 every  
22 day. Were the other judges aware of that, or was that par  
23 for the course in Luzerne County, or was it at the time?

24 A It's not par for the course. 10:30, I hadn't heard  
25 that one. I know he left early, early afternoon. 10:30 I

1 didn't hear.

2 He did other things now. You got to remember this.  
3 You have to give him his due. He just didn't do this. He  
4 handled jury trials down there too. He handles civil jury  
5 trials. I don't know if anybody knew that.

6 Q And that would happen in the afternoons?

7 A Yeah. I don't know. You're asking me to speculate  
8 now. I do know that his schedule did not consist only of  
9 Juvenile Court, all right. I know he handled jury trials in  
10 that building.

11 Q Criminal jury trials or civil jury trials?

12 A Civil jury trials.

13 MR. MOSEE: Thank you.

14 CHAIRMAN CLELAND: Judge, thank you for appearing  
15 here today. When we spoke about your appearance here you  
16 said you would answer any question put to you. I think  
17 you've certainly demonstrated that this morning. I  
18 appreciate your attendance. We'll be up in Luzerne County  
19 as you know.

20 JUDGE MUROSKI: If you want to, if you need me  
21 again, I'll be available. And I appreciate -- I tell you  
22 what, I appreciate your questions. You demonstrated an  
23 interest in some areas that I hadn't thought about. And I  
24 congratulate you for it, and I wish you well.

25 I really, really do. Because what has to happen,

1 this situation has got to come to a completion. What I'm  
2 doing now, I'm doing some housecleaning there, okay. I got  
3 the mop and broom and so on like that trying to clean the  
4 stuff up.

5           However, there has to be parameters. There have to  
6 be rules. There has to be things established that this  
7 doesn't happen again. Because what happens now, it's all  
8 based upon who's running the show. And it -- people change.  
9 Your President Judge is going to change.

10           That's why, again, I guess the big thing I'm  
11 pushing today is that there has to be something done with  
12 the Code of Judicial Responsibility and establishing the  
13 parameters of power of the President Judge and what -- and  
14 what part the rest of the members of the court vote in,  
15 participate in.

16           That has to be done, because this is the best  
17 example you can give. This is a perfect storm of a Court  
18 gone rogue, perfect storm. No meetings, no information,  
19 doing what they want to do in response to the Commissioner's  
20 question, and the County Commissioners don't do anything.  
21 Perfect storm. Thank you.

22           CHAIRMAN CLELAND: Thank you, Judge. We'll be in  
23 recess until 1:30.

24           (Lunch break.)

25           CHAIRMAN CLELAND: Good afternoon. And we will

1 resume the afternoon session of the Interbranch Commission  
2 on Juvenile Justice with our afternoon witness.

3 Carl D. Buchholz is an attorney with the  
4 Philadelphia based law firm of Rawle & Henderson, the oldest  
5 law firm in the United States, and where he is head of the  
6 Appellate and Maritime Departments.

7 In 2006 he was appointed as a member of the  
8 Disciplinary Board of the Supreme Court of Pennsylvania, and  
9 last month was named as the Vice Chair of that Board. He  
10 has also previously served as a member and chair of the  
11 Supreme Court's Client Security Fund Committee.

12 Mr. Buchholz, welcome. And would you please stand  
13 to take the oath?

14

15 CARL D. BUCHHOLZ, ESQUIRE, called as a witness,  
16 being duly sworn, testified as follows:

17

18 CHAIRMAN CLELAND: Unlike previous witnesses, I  
19 understand that you do not have an opening statement, and  
20 that the -- we'll just open with questioning by Mr. Horoho;  
21 is that correct?

22 BY MR. HOROHO:

23 Q Yes. Welcome.

24 A Thank you.

25 Q Mr. Legg and I are going to be splitting the duties

1 of questioning you. Not because we anticipate you're going  
2 to be a tough witness, only because we put the questions  
3 together, and we're going to go back and forth and ask you a  
4 series of questions.

5           Could you first identify for the record your duties  
6 and responsibilities as Vice Chair of the Disciplinary  
7 Board?

8           A     My basic duties as Vice Chair are to assist  
9 Chairman Bill Pietragallo in running the Board meetings and  
10 the administrative tasks. And I should say Mr. Pietragallo  
11 apologizes for not being here today. He realizes the  
12 importance of this Commission's work and sends his regrets.

13          Q     We talked a little bit about the origin and the  
14 structure of the Disciplinary Board. When was the  
15 Disciplinary Board established?

16          A     It was established by the -- the Supreme Court.  
17 I'm not sure of the exact date. The Constitution of the  
18 Commonwealth rests in the Supreme Court's exclusive  
19 jurisdiction over lawyer discipline and lawyer licensing.

20                 And pursuant to that over the years the Supreme  
21 Court had set up the current Disciplinary Board and Office  
22 of Disciplinary Counsel that's in existence today. And when  
23 that first came into existence, I don't know.

24          Q     Do you know prior to that how attorney discipline  
25 was handled on a local basis or statewide basis?

1           A     I assume from under the constitution it's always  
2     been within the province of the Supreme Court.  And what the  
3     procedures were prior to my time on the Board, I don't know.

4           Q     Now, is there a substantive law that's enforced by  
5     the disciplinary system?

6           A     Yes.  As of 1988 the Rules of Professional Conduct  
7     that were adopted by the Pennsylvania Supreme Court are the  
8     rules under which lawyers' conduct is governed.  And the  
9     Supreme Court also has promulgated Rules of Disciplinary  
10    Enforcement, which set up the Disciplinary Board as well as  
11    Disciplinary Council and the members that serve on each.

12                   And that's a separate set of Rules for Disciplinary  
13    Enforcement that are separate from the Rules of Professional  
14    Conduct that the lawyers are required to follow.

15          Q     I assume they've been amended from time to time and  
16    continue to be so?

17          A     Yes.

18          Q     And the purpose of the disciplinary system, can you  
19    talk a little bit about that?

20          A     Again, it falls back into the Constitution's  
21    authority to the Supreme Court, that the Supreme Court is  
22    responsible for licensing and discipline and carrying out  
23    that function.  The Supreme Court set up the current  
24    Disciplinary Board and Office of Disciplinary Council to  
25    enforce the Rules of Professional Responsibility.

1 Q And it's an independent agency?

2 A Yes. When you say -- as an overview there is the  
3 Disciplinary Board that serves mostly adjudicatory capacity  
4 and an administrative capacity. And that consists of 14  
5 members pursuant to the Rules promulgated by the Supreme  
6 Court, 12 of which are lawyers, two of which are lay people.

7 They oversee the work of the ODC, which is Office  
8 of Disciplinary Counsel. The Office of Disciplinary Counsel  
9 is actually the arm that the Supreme Court had set up to  
10 investigate and prosecute complaints of attorney misconduct  
11 or violations of the Rules of Professional Ethics.

12 The Disciplinary Board, which I sit on, will hear  
13 cases that have been brought by the Office of Disciplinary  
14 Counsel, and we adjudicate those and make recommendations to  
15 the Supreme Court. But it all eventually falls back -- the  
16 ultimate responsibility is with the Supreme Court.

17 Q And we have an organizational chart that we're  
18 going to take you through. How is it funded? How is the  
19 Disciplinary Board funded?

20 A It's funded by lawyer's fees, the annual fee that  
21 lawyers are charged. Some of -- a portion of that goes to  
22 fund the Disciplinary Board and Office of Disciplinary  
23 Counsel. Some of it goes to fund the Time Security Fund,  
24 which reimburses clients whose lawyers have absconded with  
25 their funds.

1 Q Does it receive any other revenues from any other  
2 grants or other sources other than that?

3 A Not that I'm aware of.

4 Q Is its budget independent of the Supreme Court  
5 budget?

6 A Yes.

7 Q Are you aware of any other bodies, agency or  
8 groups, with the authority to investigate the conduct of  
9 lawyers and dispense attorney discipline in Pennsylvania?

10 A No. And just -- and it may -- it may be an issue  
11 that's in some of your minds. We do not investigate or have  
12 any authority over sitting judges. And judges are not  
13 active attorneys and don't fall within our jurisdiction.

14 If a judge were to resign and pay his fee, he could  
15 be reactivated, at which time then he would fall within the  
16 jurisdiction of the discipline -- Office of Disciplinary  
17 Counsel to see if there are any issues regarding he or she  
18 practicing law.

19 But the lawyers come within the auspices of Office  
20 of Disciplinary Counsel and the Disciplinary Board.

21 BY MR. LEGG:

22 Q Mr. Buchholz, you mentioned that the Board was  
23 comprised of a number of lawyers and two lay persons.

24 A Yes.

25 Q How are they elected or appointed?

1           A     They're appointed by the Justices of the Supreme  
2 Court.

3           Q     And are those paid positions?

4           A     No.

5           Q     Voluntary?

6           A     Yes.

7           Q     And what about the term? How long would a Board  
8 member serve?

9           A     You -- each term is three years, and you can have  
10 -- be appointed for a second term.

11          Q     So up to six years?

12          A     Yes.

13          Q     If there's a hiatus, are you allowed to return then  
14 again? Or once you've done six years you can no longer  
15 serve on the Board?

16          A     I don't know the answer to that.

17          Q     I believe you have, and we'll mark this as part of  
18 the record, the organizational chart which is the flow chart  
19 for the Disciplinary Board. Do you see that in front of  
20 you?

21          A     Yes.

22          Q     At the top of that chart is the Supreme Court of  
23 Pennsylvania?

24          A     Yes.

25          Q     Is it fair to say that anything that the

1 Disciplinary Board does is subject to review by the Supreme  
2 Court?

3 A They have final say of everything. We can -- we --  
4 if you want me to just give you a little background on how a  
5 case may progress?

6 Q Sure.

7 A A complaint would be filed with the Office of  
8 Disciplinary Counsel by a lawyer, a judge, a lay person.  
9 They would investigate. They would issue -- if they felt  
10 there was a preliminary basis, they would issue a letter to  
11 that lawyer saying we are investigating. If they found  
12 there was merit to it, they would bring a petition for  
13 discipline.

14 That then would proceed to a hearing by three  
15 members of a Hearing Committee. There's about 175 lawyers  
16 around the state who are appointed by the Disciplinary Board  
17 to be Hearing Committee members. That Committee would hear  
18 the case.

19 It would be prosecuted by ODC, defended by the  
20 lawyer. That Hearing Committee, three person Hearing  
21 Committee, would make a recommendation and a report. That  
22 would come to the Disciplinary Board. Disciplinary Board  
23 would look over the findings and the facts of the case,  
24 recommendations, and then make a recommendation to the  
25 Supreme Court.

1           The Supreme Court can accept or reject it. If we  
2 recommend suspension, they could recommend -- they could  
3 propose disbarment. But they have the final, ultimate say  
4 of all of the discipline.

5           Q     So the Hearing Committees themselves would be  
6 essentially the trial court --

7           A     Yes.

8           Q     -- in some regard? And the Hearing Board would be  
9 the first appellate court?

10          A     Yes.

11          Q     And then ultimately the Supreme Court would review  
12 all of the findings?

13          A     They have complete total de novo review.

14          Q     And the Hearing Committees, again, they're made up  
15 of the members -- Hearing Committee members?

16          A     There's about 175 lawyers who, again, serve as  
17 volunteers who are appointed. I think they're also for a  
18 three year term that serve on a volunteer basis to hear  
19 cases brought by ODC.

20          Q     And are they divided within their ranks in any  
21 particular way?

22          A     They are. There's inexperienced, experienced, and  
23 senior depending on how many hearings they may have sat on  
24 during their term. And they try to set up the Board so  
25 there's an inexperienced member, an experienced member, and

1 a senior member.

2 Q So the Hearing Committees have three members, and  
3 they try to make sure there's a -- one of each of the types  
4 of members?

5 A Yes.

6 Q What about the administrative office of the Board?  
7 Is that separate from Office of Disciplinary Counsel? Is  
8 there an administrative staff versus the ODC?

9 A Yes. There's an administrative staff that --  
10 that's separate. But the Disciplinary Board has  
11 administrative oversight of the budget of ODC, of the  
12 personnel, of the number of staff attorneys they may need at  
13 a particular time. But because of our adjudicatory function  
14 we don't get involved with their decisions as to their  
15 investigations or what cases to prosecute or what charges to  
16 bring.

17 Q The Commonwealth's a very large state. Is it --  
18 does the ODC have it divided in any particular manner in  
19 which complaints are received?

20 A The Office of Disciplinary Counsel is divided into  
21 four sections throughout the state. So there's four  
22 separate divisions, each with its own staff of attorneys.  
23 And I believe -- I think there's 26 staff attorneys plus  
24 chief counsel and deputy counsel that serve in those --  
25 throughout the Commonwealth, including those four districts.

1 Q Now, does the ODC at the top of those staff  
2 attorneys, do they also have investigators?

3 A Yes.

4 Q Do you by any chance know how many investigators  
5 they have?

6 A I do not.

7 Q And Luzerne County, what particular district would  
8 that be in?

9 A I don't know.

10 Q But there are four different divisions?

11 A There are four districts. The Disciplinary Board  
12 wouldn't get particularly involved with how ODC manages its  
13 divisions.

14 Q Can you just briefly describe how it would be that  
15 a citizen or someone else would file a complaint with the  
16 Disciplinary Board?

17 A Complaint can be called in. It can be sent in by  
18 mail. They have a very excellent website that's been put up  
19 in the last two years or three years which you can file a  
20 complaint on. There's instructions on how to proceed with  
21 filing a complaint.

22 And, again, a citizen can file a complaint. A  
23 judge can file a complaint. Opposing counsel in a case  
24 where they suspect misconduct can file a complaint.

25 Q What's the most common way a complaint is filed?

1           A     I -- I -- I wouldn't know because, again, we don't  
2     -- that -- complaints being filed and complaints being made  
3     are not -- they're confidential, and the Disciplinary Board  
4     would not be privy to that information.

5           Q     Are you privy to what happened when the complaint  
6     is filed? What would be the next step in the process?

7           A     The next step, it would be investigated by ODC. If  
8     they found that there might be some merit or basis to it,  
9     they would issue a ED-27 letter to the attorney saying we've  
10    got the complaint. Can you give us some information, some  
11    details as to what it was about or give us some documents?  
12    They claim you kept some money, something like that.

13                    At that point in time it would then -- either  
14    charges would not be brought or charges would be pursued.  
15    They file a petition for discipline. And once a petition  
16    for discipline is filed, at that point in time it becomes  
17    public.

18                    Up until that time it's not public. Disciplinary  
19    Board members wouldn't have privy to what investigations  
20    were going on. We wouldn't have privy to what complaints  
21    had been filed. It's confidential according to the Rules of  
22    Disciplinary Enforcement promulgated by the Supreme Court.

23           Q     Does the ODC or the Office of Disciplinary Counsel  
24    have the authority or the ability to initiate investigations  
25    on their own accord?

1           A     They do.

2           Q     For instance, hearing things based upon news  
3 reports or things of that nature?

4           A     Yes.

5           Q     Does that followed the same protocol, they learn of  
6 something in a paper ,they just open the investigation and  
7 begin working on the case?

8           A     It's my understanding that that has been done, and  
9 that is done.

10          Q     I think you mentioned that judges are not subject  
11 to the Disciplinary Board?

12          A     Correct.

13          Q     That would also include, I take it, magistrate  
14 judges?

15          A     Yes.

16          Q     Any type of administrative law judges, things of  
17 that nature?

18          A     The only -- our only jurisdiction is lawyers  
19 licensed, the license of a lawyer to practice law in  
20 Pennsylvania.

21 BY MR. HOROHO:

22          Q     A couple questions about comparison of Pennsylvania  
23 with other states or jurisdictions, Mr. Buchholz. Do you  
24 know how other states address regulation of practice of law  
25 or the conduct of lawyers? Is it similar to how

1 Pennsylvania does it?

2 A I would not purport to be knowledgeable in how  
3 other states conduct their discipline.

4 Q Is there a rating system, or periodically would  
5 Pennsylvania's way of discipline, the way they discipline  
6 lawyers, is it -- is there an organization that would  
7 compare the way Pennsylvania does it compared to other  
8 states?

9 A There is a national organization that compares  
10 disciplinary systems in the various states. And I believe  
11 it was in 2004, it might have been -- I think it was 2004,  
12 2000 -- 2002 Pennsylvania was -- I'm trying to think. I  
13 don't think I was on the Board then. Was found to be the  
14 worst in the United States, to have the worst disciplinary  
15 system by the National Board.

16 Mr. Paul Killian was brought in to be chief counsel  
17 of ODC at that time, and two years later it was voted one of  
18 the best systems. And that -- that was due in large part to  
19 Paul's -- Paul's efforts, the efforts of Joe Farrell, who's  
20 the administrative head, and updating website systems and  
21 newsletters. So it's now considered one of the best in the  
22 United States by this oversight group.

23 Q And I think maybe you answered it, I'm not sure,  
24 but do you have a recollection, if you know, what changes  
25 were made by Mr. Killian and other members of the

1 Pennsylvania Disciplinary Board that caused the -- such an  
2 improvement?

3 A Again, one of the things we would be privy to as  
4 Board members is the administrative role, that Paul became  
5 active in overseeing the four divisions, making sure the  
6 cases were assigned out promptly, make sure the decisions of  
7 the Hearing Committee members were back promptly, the  
8 website, the newsletter are just some of the things that I'm  
9 personally aware of.

10 Q And where -- one of the purposes of our work or the  
11 Commission's work is to strengthen groups that we think  
12 might be oversight groups or oversight bodies. And we may  
13 ask you to come back towards the end of our work and ask you  
14 what suggestions you may have to the -- our current  
15 disciplinary system to strengthen as an oversight board.

16 And I guess one of the questions that you probably  
17 would not be aware of today, but maybe you might investigate  
18 for us, is what reforms are other states doing that do you  
19 think might be helpful to the Pennsylvania disciplinary  
20 system to strengthen it?

21 A I would be happy to give that thought and discuss  
22 it, particularly in light of what your mission is, to see if  
23 there's anything that the Board members or ODC thinks could  
24 make a recommendation.

25 Just -- one other thing, just so every -- you get

1 some idea of the role of ODC. In 2008 there were 4,700 some  
2 complaints filed against lawyers that had to be  
3 investigated. 308 of those actually resulted in discipline  
4 action being taken against lawyers ranging from disbarment  
5 to informal admonitions.

6 So there are a large number of complaints received.  
7 It's a large amount of work for ODC to do, but they do an  
8 excellent job from my experience on the Board.

9 Q Again, you may have answered some of this, but I'd  
10 like to focus on the type of discipline and the grounds for  
11 discipline in both the informal process and the formal  
12 process.

13 Could you kind of talk about that as it relates to  
14 both the informal process with potential grounds of  
15 discipline or what would be the types of discipline; and  
16 then of course, if there's a formal process, formal  
17 complaint being filed, what the result -- what potential  
18 resulting discipline there could be?

19 A It's a little hard to give you a definitive answer  
20 on that because even in a very serious offense that's  
21 considered very serious there may be mitigating -- they call  
22 them wrong factors, mitigating factors, which the ultimate  
23 most drastic sanction is disbarment.

24 The next one would be suspension for a period of  
25 time, then public censure, then private reprimand, and then

1 informal admonition. But it would really be a very fact  
2 sensitive -- I can't say stealing money or embezzling money  
3 would result in disbarment as opposed to informal admonition  
4 if the money was given back and there were circumstances  
5 that warranted imposition of not disbarment, but of a lessor  
6 sentence.

7 Q I want to talk a little bit about the  
8 confidentiality aspect. If there is a disbarment or  
9 suspension, is there a process where a lawyer can get  
10 readmitted or re -- become a lawyer once again?

11 A Yes. Any -- any suspension over a year and a day  
12 required -- or disbarment, which is five years, requires the  
13 lawyer to reapply and show his or her fitness to practice  
14 law again.

15 And it -- the burden is on the attorney, or the  
16 ex-attorney, to establish that they're fit to come back  
17 after that point. But it would be -- if it was a suspension  
18 for a year and a day or a disbarment would put the  
19 ex-attorney in a situation of having to refile and resubmit  
20 his or her application to practice law.

21 BY MR. LEGG:

22 Q With respect to confidentiality, you indicated that  
23 the workings of the ODC are confidential until such time  
24 that a public complaint or a formal complaint is filed?

25 A Right.

1           Q     Or I guess an answer to that complaint has been  
2 filed or should have been filed; is that fair to say?

3           A     It's 20 days -- after formal petition for  
4 discipline is filed, if an answer is filed within 20 days it  
5 becomes public at that point.  If an answer isn't filed  
6 within 20 days, it becomes public at that point.

7           Q     And up to that point it has remained confidential?

8           A     Yes.

9           Q     And would remain confidential if no formal  
10 complaint had been filed?

11          A     Correct.

12          Q     And you mentioned some of the informal means that  
13 the ODC uses for discipline.  Informal admonition was one of  
14 the examples.  Can you just briefly describe what that is?

15          A     That would be the lawyer being called in by Chief  
16 Counsel, Mr. Killian, or the chief deputy and saying there  
17 were issues with the way you handled a particular matter, or  
18 there were concerns that we -- we have concerns about that  
19 we didn't think it warranted formal discipline.  You're on  
20 notice that there were some questions about your conduct.

21                   And where that really becomes significant is that  
22 gets put on your record.  And it may not be public, but then  
23 if a subsequent problem comes up a year or so later, it will  
24 be in the Board's materials that you had an informal  
25 admonition two years ago, which significantly affects what

1 the next penalty would be.

2 Q That's a decision that's made by the ODC, not the  
3 Board itself; is that a fair statement?

4 A Which?

5 Q The informal admonition? In other words --

6 A Informal admonition is decided by ODC. They don't  
7 want to bring it to a formal proceeding.

8 Q So the Disciplinary Board would never see that  
9 particular complaint; is that a fair statement?

10 A Yeah, right.

11 Q Are there other informal resolutions that wouldn't  
12 make it passed the confidentiality stage besides that  
13 particular admonition?

14 A There is a procedure called joint petition. If  
15 after formal charges are brought and it's public, it --  
16 there is a process that it can be resealed if the lawyer  
17 agrees to a joint discipline on consent with ODC. That has  
18 to be reviewed by three Disciplinary Board members to  
19 approve it. And then it still has to get sent to the  
20 Supreme Court for -- because they have the final say whether  
21 they agree to the joint.

22 But it was somewhat to streamline the system to get  
23 lawyers off the street and get appropriate punishment  
24 without having to go through the whole hearing process.

25 Q And is that a relatively new mechanism?

1           A     Yes. I think it's been about two years or three  
2 years that that's been in process. And that's cut down on a  
3 number of hearings -- the number of Hearing Committees that  
4 have had -- number of hearings that they've had to hold.  
5 And I think in 2008 there were 40 joint petitions in support  
6 of discipline on consent. 33 were approved by the Supreme  
7 Court. Three were denied. And four are waiting to be  
8 resolved.

9           Q     The confidentiality provisions, the Disciplinary  
10 Board actually has rules that govern that, correct?

11          A     The Supreme Court's Rules of Disciplinary  
12 Enforcement govern that.

13          Q     And those rules include allowing the ODC to  
14 actually release information to law enforcement entities?  
15 In other words, if they have some allegation of criminal  
16 conduct, they are allowed under the Rules to refer that  
17 information to the appropriate law enforcement agency?

18          A     Yes. Criminal conduct or reciprocity, if there's  
19 an issue from another state, are both -- are both public.

20          Q     Is there a way for confidentiality to be waived?

21          A     The attorney can waive confidentiality, yes. And  
22 -- in a rare case if an attorney's going to be disciplined  
23 on joint petition and he or she knows that some people were  
24 aware of it and it's not a significant issue and they want  
25 to clear the air, it's -- they're entitled to waive

1 confidentiality.

2 Q Is it the attorney's confidentiality to assert, or  
3 can the ODC indicate that they don't wish to accept the  
4 waiver?

5 A I think it's the attorney's right to assert or  
6 waive it.

7 Q How does the public -- when you say it becomes  
8 public knowledge or public information, does the ODC or the  
9 Disciplinary Board do anything with the complaints once  
10 they're filed? Are they made public in any way?

11 A It would be on -- it would be immediately on the  
12 website, which is available to anybody who has a computer.  
13 It would become available that way. I'm not sure of where  
14 else it's publicized by ODC.

15 It's certainly publicized in records that the  
16 Disciplinary Board receives from ODC. But other than the  
17 website, I -- I know it's there and becomes available  
18 immediately. I don't know where else it becomes public.

19 Q After a formal complaint is filed and it goes to  
20 the hearing process, if there is an ethical violation found,  
21 what are the disciplines that an attorney could face after  
22 it's become public?

23 A One -- the least severe at that point in time would  
24 be a private reprimand, which is by three Board members.  
25 That is one of those situations where it becomes resealed at

1 that point in time if it's going to be a private reprimand.

2 The others then would be public censured by the  
3 Supreme Court's justices in open court, which obviously is  
4 public; suspensions, which are public; or the most drastic,  
5 which is disbarment, which is also public.

6 And just to complete the question. If a lawyer is  
7 -- is aware he or she's going to be disbarred, then it leads  
8 to the joint petition to avoid the whole process, the  
9 disbarment would still be public. The facts of the  
10 disbarment will not be public, but the disbarment will be on  
11 the website that this lawyer was disbarred.

12 Q Does the Disciplinary Board or the ODC use any type  
13 of probationary supervision for attorneys?

14 A Probation is used in -- out of the 308 disciplines  
15 in 2008, 15 involved probation. And often the Disciplinary  
16 Board will recommend in connection with a -- maybe a 90 day  
17 suspension, which doesn't require the attorney to give us  
18 his or her license to get reinstated, we may require  
19 monitoring by -- by a practice manager. We may require  
20 submission to Lawyers Concerned For Lawyers type of stuff.

21 And we've had examples that we've actually  
22 required the lawyer to -- to report -- have regular  
23 psychiatric or medical care and send them on to maintain his  
24 or her right to practice if there's issues regarding their  
25 mental competency or something of that nature.

1           Q     A follow up on the confidentiality. The private  
2     reprimand, if a -- if the Board decides a private reprimand  
3     is the appropriate punishment and the Supreme Court agrees,  
4     does everything then become confidential again?

5           A     Yes.

6           Q     So the web page, everything on the web page would  
7     be removed at that point and the file would be closed?

8           A     That's my understanding. It's my understanding  
9     when we do a private reprimand at that point in time it  
10    would become private. But it's possible the fact that there  
11    was discipline initiated may still be on there. I don't  
12    know.

13    BY MR. HOROHO:

14           Q     I'm going to turn our attention to the ethical  
15    conduct or responsibilities of the lawyers who -- in -- who  
16    appeared in Luzerne County courtrooms during Juvenile Court  
17    delinquency matters. And I'm assuming that Juvenile Court  
18    proceedings are no different than other tribunals to lawyers  
19    whether they were prosecuting the case, defending the case,  
20    being there as a child advocate are all bound by the Rules  
21    of Professional Conduct?

22           A     That would be my understanding.

23           Q     Now, do you know if there's any special rules as it  
24    relates to Juvenile Court proceedings, ethical rules?

25           A     I'm not aware of any particular rules relating

1 solely to juvenile proceedings. Again, ODC may be aware of  
2 some because they prosecute these cases. But as a Board  
3 member I have not seen any -- any charges brought under any  
4 juvenile -- special juvenile ethical rules.

5 Q Okay. And I was reviewing the Rules just to see if  
6 -- what might -- what of those rules might be applicable to  
7 a situation we're studying in Luzerne County.

8 The preamble to the Rules does indicate a number of  
9 notes under what is called a lawyer's responsibility. The  
10 preamble in the notes, how -- are they treated differently  
11 as enforceable rules versus the -- the specific rules in the  
12 Rules of Professional Conduct? Are they just instructive or  
13 aspirational, or do you actually try to enforce those?

14 A I would think they're more instructional as to  
15 whether a violation of a particular rule has occurred. And  
16 they would be something, if someone is charged and the issue  
17 comes up, for the Disciplinary Board to review. But whether  
18 the finding of the Hearing Committee is supported by the  
19 evidence, that we would look at what the comments were and  
20 what the intent was with regard to that particular rule of  
21 conduct.

22 Q Can you turn to Rule 8.3, which is reporting  
23 professional conduct? And could you explain Rule 8.3 as it  
24 relates to what a lawyer's duty is to report both the  
25 potential unethical conduct of a lawyer and a judge?

1           A     Well, it's my understanding, and I have a -- I have  
2     8.3, that a lawyer who knows that a judge has committed a  
3     violation of ethical rules of judicial conduct that raises a  
4     substantial question as to the fitness for office shall  
5     inform the appropriate authority. That onus is on the  
6     lawyer.

7                     But as you may have already discussed, there's --  
8     there's a number of caveats in that requirement. It  
9     requires the lawyer to have actual knowledge of a violation  
10    that raises a substantial question as to the judge's fitness  
11    for office.

12                    Just hypothetically, and again, I have to be  
13    careful because we may well be -- the Board may well be  
14    deciding a particular case arising out of this incident. If  
15    the lawyer, he or she, has actual knowledge of misconduct by  
16    the judge, he or she has a obligation under the Rules of  
17    Professional -- Rules of Professional Conduct to report  
18    that. And it's a violation if they don't do it.

19                    Now, there's a lot of elements that would have --  
20    that have to be proven to establish a violation of that rule  
21    some say.

22            Q     And the -- it says in B, 8.3, shall inform the  
23    appropriate authority, and the appropriate authority in that  
24    instance would be the Judicial Conduct Board?

25            A     I -- I -- I -- the Rules of Professional Conduct, I

1 guess he or she could report it to either the Judicial  
2 Conduct Board or ODC and fulfill his or her obligation under  
3 the Rules of Professional Conduct and let ODC report it to  
4 Judicial Board. But certainly it would be one of those two  
5 Boards. But I would think you could meet that obligation if  
6 you reported it to ODC as opposed to the Judicial Conduct  
7 Board.

8 Q The Rule 3.8, the special responsibilities of a  
9 prosecutor, if you could focus on that rule just for a  
10 moment. This rule provides that a prosecutor in a criminal  
11 case shall refrain from prosecuting a charge that the  
12 prosecutor knows is not supportable by probable cause.

13 Also, he is -- he or she is directed to make  
14 reasonable efforts to assure that the accused has been  
15 advised of the right to, and procedure for, obtaining  
16 counsel and has been -- is available and has been given a  
17 reasonable opportunity to obtain counsel; and also is to not  
18 seek to obtain from an unrepresented accused a waiver of  
19 important pretrial rights.

20 Do you know if there's similar types of rules  
21 regarding special responsibilities of the prosecutor,  
22 District Attorney that are part of the Rules of Professional  
23 Conduct relating to juvenile court matters?

24 A I -- I'm not aware that there's any restriction of  
25 this requirement to -- I think this applies to all judicial

1 proceedings.

2 Q Because arguably, I guess, juvenile court matters  
3 is a quasi-criminal matter, would you read this rule to be  
4 applicable to prosecutors or ADAs who prosecute juvenile  
5 court matters as they need to be -- take special adherence  
6 to?

7 A I have yet to be presented with that issue. My  
8 personal reaction would be it would be applicable. But,  
9 again, I would have to keep an open mind if that issue came  
10 up from a case that ODC was prosecuting.

11 Q Yeah, I just see the explanatory comment says a  
12 prosecutor has the responsibility to administer justice and  
13 not simply as an advocate. And this responsibility carries  
14 with it the specific obligations to see that the Defendant  
15 is accorded procedural justice and that guilt is decided on  
16 the basis of sufficient evidence. It does go on to say how  
17 far the prosecutor is required to go in this direction is a  
18 matter of debate.

19 A Right.

20 Q Do you have any recollection whether or not there  
21 was any -- in a -- how this rule is interpreted in adult  
22 criminal cases as far as the rule of the prosecutor?

23 A I do not have any recollection of that issue coming  
24 before the Board in any case that I've been involved with.  
25 However, you can go on to the website and find prior

1 decisions from the Supreme Court and the Board regarding  
2 specific factual situations. And you might be able to find  
3 a case or cases similar as to how that's been interpreted.  
4 I've never had to do that.

5 And, in fact, you suggested that you might want me  
6 to report back at the conclusion of this. I'd be happy to  
7 see if I can find any prior decisions or cases from --

8 Q Yeah, I would. In fact, the time period for us, at  
9 least for me, would be between 199 -- well, 1996 through the  
10 end of 2008.

11 A With a computerized filing that should be  
12 relatively easy.

13 Q What I would like to know is any complaints, formal  
14 or otherwise, made to the Disciplinary Board during that  
15 period of time relating to prosecutors in juvenile court  
16 matters, and specifically prosecutors in Luzerne County  
17 versus those prosecutors or District Attorneys outside of  
18 Luzerne County.

19 A The information would be available on that would be  
20 if it proceeded to public -- to public disclosure. I -- I  
21 can't tell you as I sit here today whether there's any  
22 current complaints or investigations pending against any  
23 lawyers in Luzerne County or anywhere else involving either  
24 3.8 or the 8.3 violations.

25 My suggestion to Judge Cleland when I was speaking

1 to him the other day is because of that situation, if this  
2 Commission finds a basis that they feel it should be  
3 investigated by ODC, they should request ODC to conduct such  
4 an investigation.

5           There may be investigation going on, but you  
6 wouldn't know that. And if you -- if your hearings indicate  
7 that that should be investigated, a suggestion should be  
8 made to ODC to investigate.

9 BY MR. LEGG:

10           Q     Following up on that, Mr. Buchholz. It's your  
11 opinion that the confidentiality provisions would prevent  
12 ODC from disclosing any investigations unless formal  
13 complaints have been filed?

14           A     Yes. And, again, that's a rule from the Supreme  
15 Court. That's not a rule that ODC or Disciplinary Board  
16 promulgated.

17           Q     And you're not aware of any exceptions that are  
18 under the Rules that would allow the disclosure of that to  
19 this particular agency?

20           A     No.

21           Q     Or this entity, I suppose?

22           A     I assume the Supreme Court -- Supreme Court could  
23 waive it or grant a waiver. But other than that, it's in  
24 the Rules.

25           Q     Is it your understanding that attorneys are

1 presumed to know the substantive law and/or the procedural  
2 rules?

3 A I think they're required to know.

4 Q And the reason I ask that is in terms of a  
5 prosecutor has special duties, and one of those duties is,  
6 in fact, to avoid allowing the defendant to proceed without  
7 counsel without making a knowing waiver. We just went  
8 through that rule. And, in fact, we had a previous witness  
9 this morning who went through the juvenile rules of the  
10 Juvenile Act as well as the Rules of Juvenile Procedure  
11 which outline what has to be done to allow a juvenile to  
12 proceed without counsel.

13 Is it fair to say that if a prosecutor is in a  
14 courtroom and observes a judge routinely allowing juveniles  
15 to proceed without counsel, that there's potential  
16 violations there, not only of Rule 3.8, that being the  
17 prosecutor, but also 8.3, for not reporting to tribunal?

18 A Certainly a possible violation or violations.

19 Q How much responsibility does the prosecutor have in  
20 that particular situation where the judge is the one running  
21 the show to step in and say, Your Honor, you know, a proper  
22 colloquy hasn't been made? Do the Rules expect that to  
23 occur by a prosecutor?

24 A It's a fact sensitive case. And, again, because I  
25 may be put in a situation of having to adjudicate that issue

1 in a particular case, I really don't think I should make a  
2 comment on that.

3 BY MR. HOROHO:

4 Q Are you aware of any other rules that you think  
5 that -- and I'm kind of looking at Rule 3.3, the candor  
6 towards the tribunal in preserving the integrity of the  
7 adjudication process, a responsibility of the lawyer coming  
8 forward if they are -- if they -- if they're in a courtroom  
9 and determining that in their own mind that something that's  
10 happening either by a lawyer or by a judge is in violation  
11 of a specific rule? Would another rule apply to a lawyer in  
12 feeling comfortable to report that conduct?

13 A If it rises to the level of 8.3, requirements of  
14 8.3, then there obviously would be a duty. But, again, you  
15 get into a very fact sensitive situation where it would be  
16 -- depend on what facts ODC was able to develop requiring  
17 his or her knowledge or observations of what was going on in  
18 that particular courtroom.

19 MR. HOROHO: Okay. And as I mentioned before, I  
20 think towards the end of our investigation and study we may  
21 ask you to again come back and maybe for some suggestions on  
22 how to make the Disciplinary Board a more effective  
23 oversight Board. That's all the questions I have, Mr.  
24 Chairman.

25 BY MR. LEGG:

1           Q     If I may have one more, Mr. Chairman. Mr.  
2 Buchholz, you indicated that there's no supervision over  
3 judges by the Disciplinary Board?

4           A     Correct, or ODC.

5           Q     Or ODC. What would happen in a scenario where a  
6 judge were -- or was disciplined by, let's say, the Court of  
7 Judicial Discipline and then sought to have their license to  
8 practice law reinstated? Is there something then in that  
9 particular situation where the Disciplinary board would  
10 intervene based upon conduct while a judge that their  
11 license to practice law would also have some type of  
12 repercussions?

13          A     Absolutely. I believe he or she would be entitled  
14 to get their license back upon paying a fee because there's  
15 been no adjudication as to their license to practice law at  
16 that point in time.

17                 But my -- there's two ways -- two things that could  
18 happen. One is emergency petition could be filed with the  
19 Supreme Court requesting a temporary suspension of that  
20 former judge's license, or ODC could just -- could conduct  
21 -- do a formal investigation at which time charges would be  
22 brought.

23                 But I suspect that it's a situation where the  
24 notoriety of the judicial misconduct that it would probably  
25 be a situation where ODC would -- would, with Disciplinary

1 Board's approval, seek a temporary -- emergency temporary  
2 suspension.

3 Q And that type of proceeding would be based not upon  
4 the Rules of Professional Conduct, but upon the fitness to  
5 practice law, I take it, or something of that nature?

6 A That would be the test, yeah.

7 MR. LEGG: That's all I have, Mr. Chairman. Thank  
8 you.

9 CHAIRMAN CLELAND: Questions.

10 BY MR. LISTENBEE:

11 Q I just have one question, Mr. Chairman. Mr.  
12 Buchholz, in Nevada there are rules governing the  
13 performance of public defenders, particularly juvenile  
14 public defenders.

15 Has the Disciplinary Board ever been in a position  
16 where you've supervised rules of performance in a particular  
17 aspect of the practice?

18 A Not that I'm aware of.

19 Q Are there any rules that govern the Disciplinary  
20 Board that prohibit the supervision of performance standards  
21 as opposed to -- to ethical standards?

22 A Under the Rules of Disciplinary Enforcement that  
23 the Supreme Court has promulgated and set up I don't think  
24 it's in the mandate to supervise performance of lawyers as  
25 opposed to overseeing ethical violations of their conduct if

1 they violate the Rules of Professional Conduct.

2 I don't -- I haven't really given it a thought, but  
3 I don't think the Rules of Professional Conduct govern a  
4 level of competency or a level of ability of a particular  
5 lawyer as opposed to violations of ethical rules.

6 Q If such standards did exist, where would be the  
7 best place to supervise them, or how should it be  
8 supervised?

9 A I can't envision a body supervising the quality of  
10 a particular lawyer, of his or her competency, unless it  
11 gets into a violation of one of the Rules of Professional  
12 Conduct. I don't know how you would do it. I don't know  
13 how you would quantify whether this particular person is a  
14 good lawyer or not as good as another lawyer. I just don't  
15 -- I don't know how that would work. I'm sure the judges  
16 have seen good lawyers and not so good lawyers, and some of  
17 not so good lawyers do very well in the courtroom.

18 BY JUDGE UHLER:

19 Q The canons of the Code of Ethics that the judges  
20 must abide by call for a jurist being a fair and impartial  
21 jurist, not setting forth or stating his -- his or her  
22 position relative to a particularized issue.

23 A judge has to be fair and impartial. If a defense  
24 attorney is aware that the judge has done otherwise, stated  
25 a position contrary to his or her client's interest, would

1 that not trigger an 8.3 violation?

2 A Theoretically, yes.

3 Q If he does not report that judge for that purpose.

4 And in addition, that attorney would not be that zealous  
5 advocate that we hope all should aspire to as an attorney?

6 A Theoretically, yes.

7 JUDGE UHLER: Okay.

8 CHAIRMAN CLELAND: Mr. Allen.

9 BY MR. ALLEN:

10 Q Thank you, Mr. Chairman. I have a couple questions  
11 about the accuser who accuses somebody of violating the Code  
12 of Conduct. Are they given any correspondence indicating  
13 the status of a case or aren't they allowed to have anything  
14 until after a petition of discipline is filed and it becomes  
15 public?

16 A It's my understanding from my discussions with ODC  
17 that a complainant is kept advised of the status of his or  
18 her complaint and where it is in the particular system.

19 Q Those hearings you talked about with the three  
20 attorneys, are those transcribed?

21 A Yes.

22 Q Are the transcripts ever made public or available  
23 to the public after, for example, a petition of discipline  
24 is filed?

25 A I don't know the answer to that. They're certainly

1 made available to the Disciplinary Board when we review a  
2 particular case. I don't know what part of that record,  
3 other than the result, becomes public. I don't know the  
4 answer to that, again, because that's something ODC would be  
5 involved with. It wouldn't be a Disciplinary Board matter  
6 per se.

7 Q Of the -- who does the chief disciplinary counsel  
8 report to? Does that person have a boss?

9 A He reports to the Disciplinary Board. Primarily at  
10 this point in time it would be Mr. Pietragallo, who's chair  
11 of the Board. And he also liaisons with the Chief Justice  
12 of the Supreme Court.

13 Q The reason I'm asking that is one of the things  
14 we're looking at is checks and balances. And I'm not saying  
15 there necessarily is a problem with checks and balances over  
16 at your agency. However, I think the questions should be  
17 asked and the answer to the question is the person who  
18 actually is investigating the complaints and adjudicating  
19 those, is prosecuting the complaints, is their boss is  
20 really the people that are making the decisions on the  
21 investigation and complaints, correct? So it's almost like  
22 the prosecutor reporting to their boss as, you know -- as  
23 the fact finder. And that's what I'm trying to get here.  
24 I'm not saying there's a problem.

25 A No. And you're absolutely right. And when we have

1 a Board meeting with disciplinary counsel present to discuss  
2 administrative issues such as budgets and the amount of  
3 annual fee for lawyers, chief counsel will be there. When  
4 we go to discuss cases that have been sent to us they are  
5 dismissed and aren't privy to any of our discussions, and we  
6 have de novo review.

7 I don't -- can't put a percentage of it, but often  
8 times we will differ with their recommendations and the  
9 result even the Hearing Committee may have come up with and  
10 impose either a stricter sentence or a lessor sentence.

11 So we -- there are -- is that issue that we oversee  
12 to some extent the administration of ODC. That's why we  
13 don't get involved at all in their decisions as to what  
14 complaints come in, their decision as to what cases to  
15 prosecute, why they decided to recommend this sentence as  
16 opposed to that sentence.

17 We don't discuss that with them. If we don't agree  
18 with them, we -- we report our findings to the Supreme  
19 Court.

20 Q So basically you're saying they are fairly  
21 autonomous into what cases to decide to prosecute and things  
22 like that?

23 A I would say totally autonomous in that regard. We  
24 are very aware of not wanting to get involved with those  
25 decisions on what complaints to initiate. Five Board

1 members can request ODC to initiate a complaint, but in my  
2 time on the Board I don't think that's ever been done just  
3 because we don't want to suggest to investigate something  
4 that we might be asked to adjudicate in a later date.

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

6 CHAIRMAN CLELAND: Mr. Buchholz, thank you, very  
7 much for your participation here today. And we may very  
8 well take you up on your offer to participate in the future  
9 as our hearings wear on and other issues become developed.  
10 So thank you, very much.

11 MR. BUCHHOLZ: Thank you, Judge. And I hope I was  
12 able to shed some light on the very serious work this  
13 Commission has been charged to do.

14 CHAIRMAN CLELAND: Thank you.

15 MR. BUCHHOLZ: Thank you.

16 CHAIRMAN CLELAND: If there's nothing further, we  
17 will stand adjourned until we reconvene again in  
18 Wilkes-Barre on November 9th and 10th. Thank you. We're  
19 adjourned.

20 (Whereupon, the hearing was adjourned at 2:20 p.m.)

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1           I hereby certify that the proceedings and evidence  
2 are contained fully and accurately in the notes taken by me  
3 on the hearing of the above cause, and that this is a  
4 correct transcript of the same.

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9           \_\_\_\_\_ Date

\_\_\_\_\_ Donna E. Gladwin, RPR

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