

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1522 Disciplinary Docket No. 3
Petitioner	:	
	:	
v.	:	No. 119 DB 2009
	:	
ROBERT J. POWELL,	:	Attorney Registration No. 58363
Respondent	:	(Luzerne County)

ORDER

PER CURIAM:

AND NOW, this 23rd day of January, 2015, there having been filed with this Court by Robert J. Powell his verified Statement of Resignation dated January 7, 2015, stating that he desires to resign from the Bar of the Commonwealth of Pennsylvania in accordance with the provisions of Rule 215, Pa.R.D.E., it is

ORDERED that the resignation of Robert J. Powell is accepted; he is disbarred on consent from the Bar of the Commonwealth of Pennsylvania, retroactive to August 31, 2009; and he shall comply with the provisions of Rule 217, Pa.R.D.E. Respondent shall pay costs, if any, to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola
As Of 1/23/2015

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1522 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 119 DB 2009
v.	:	
	:	Attorney Registration No. 58363
ROBERT J. POWELL	:	
Respondent	:	(Luzerne County)

RESIGNATION BY RESPONDENT

Pursuant to Rule 215
of the Pennsylvania Rules of Disciplinary Enforcement

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL :	No. 1522 Disciplinary Docket No. 3
Petitioner :	
:	No. 119 DB 2009
:	
:	Board File Nos. C3-09-166, C3-09-524,
v. :	and C3-09-780
:	
:	Attorney Registration No. 58363
ROBERT J. POWELL :	
Respondent :	(Luzerne County)

RESIGNATION STATEMENT UNDER RULE 215, PA. R.D.E.

I, Robert J. Powell, hereby resign from the practice of law in the Commonwealth of Pennsylvania in conformity with Rule 215 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter Pa.R.D.E.), and further state as follows:

1. I was admitted to the bar of the Commonwealth of Pennsylvania on June 27, 1990. I was temporarily suspended by Order of the Supreme Court of Pennsylvania on August 31, 2009.
2. I desire to resign from the Bar of the Commonwealth of Pennsylvania.
3. This resignation is freely and voluntarily rendered.
4. I am not being subjected to coercion or duress.
5. I am fully aware of the implications of submitting this resignation, including the fact it is irrevocable, and that I can only apply for reinstatement to the practice of law pursuant to the provisions of Pa.R.D.E. 218(b).

6. I am currently being represented by Barbara S. Rosenberg, Esquire, 1060 First Avenue, King of Prussia, PA 19406, and have consulted with her in connection with the decision to resign.

7. I am aware of pending investigations by the Office of Disciplinary Counsel into three separate matters, more fully set forth below. One of these three matters is a Federal Criminal prosecution. (Office of Disciplinary Counsel File No. C3-09-524).

8. The Federal Criminal prosecution is docketed to No. 3:CR-09-189 in the United States District Court for the Middle District of Pennsylvania.

9. On November 4, 2011, I was sentenced, pursuant to a negotiated Plea Agreement, to an aggregate sentence of 18 months incarceration with one year of supervised release, and a \$60,000 fine plus costs, in connection with charges of Misprision of a Felony (18 USC §4) and Accessory After the Fact to Conspiracy to Commit Income Tax Evasion (18 USC §3). (See the Judgment in a Criminal Case attached as "Exhibit A.")

10. I acknowledge I committed the criminal acts which were the subject of my guilty plea, as set forth, in part, by Assistant United States Attorney Gordon Zubrod to the Court at the time of my guilty plea (see Transcript Excerpts attached hereto as "Exhibit B"), which I acknowledged then, and acknowledge now, as a true and correct statement of the facts.

11. With respect to the second pending investigation (Office of Disciplinary Counsel File No. C3-09-166), the Stipulations as to the relevant facts, as well as to

violations of the Rules of Professional Conduct, are set forth in "Stipulation A," are incorporated herein, and I acknowledge them to be true and correct.

12. With respect to the third pending investigation (Office of Disciplinary Counsel File No. C3-09-780), the Stipulations as to the relevant facts, as well as to violations of the Rules of Professional Conduct, all set forth in "Stipulation B," are incorporated herein, and I acknowledge them to be true and correct.

13. I am submitting this resignation because I know and acknowledge my conduct is in violation of multiple Rules of Professional Conduct (hereinafter "RPC"), including the following:

- a. RPC 1.15(e) Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, . . . , that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

- b. RPC 8.4(b) It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.
- c. RPC 8.4(c) It is professional misconduct for a lawyer to engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.
- d. RPC 8.4(d) It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

14. I also know and acknowledge that my criminal conviction, in and of itself, constitutes an independent basis for discipline pursuant to Pa.R.D.E. 203(b)(1).

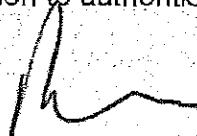
15. I am submitting this resignation because I know that if charges were predicated upon the misconduct under investigation as set forth above I could not successfully defend against them.

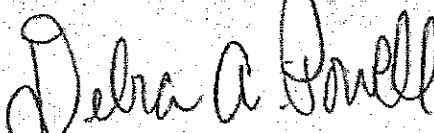
16. As a result of the filing of a Joint Petition to Temporarily Suspend an Attorney (pursuant to Pa.R.D.E. 214), I have been suspended from the practice of law, pursuant to your Honorable Court's Order of August 31, 2009. I respectfully request your Honorable Court make my disbarment retroactive to that date. I understand that the decision whether to grant my request is within the Court's discretion.

It is understood that the statements made herein are subject to the penalties of 18
Pa. C.S.A. §4904 (relating to unsworn falsification to authorities).

1/7/15
Date

1/7/15
Date


Robert J. Powell, Respondent


Witness

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL :	No. 1522 Disciplinary Docket No. 3
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:	Board File Nos. C3-09-166, C3-09-524,
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:	
:	Attorney Registration No. 58363
ROBERT J. POWELL :	
Respondent :	(Luzerne County)

STIPULATION A

OFFICE OF DISCIPLINARY COUNSEL FILE NO. C3-09-166
(JEFFREY B. McCARRON, ESQUIRE - COMPLAINANT)

1. I, along with several associates of his former firm, the Powell Law Group, represented the Plaintiff in a civil action captioned Slusser, et al v. Laputka, et al (6741-C 2000, Luzerne County), a legal malpractice suit which was assigned to then Luzerne County Judge Mark A. Civarella.

2. During the course of pre-trial discussions on or about January 23, 2008, Complainant (Defendant's counsel), questioned Judge Civarella as to the existence of a relationship between me and Judge Civarella.

3. Judge Civarella denied that any relationship existed between me and himself, other than limited social contact.

4. Judge Civarella's denial that any relationship other than a social association existed between himself and me was false, and that business relationships also existed.

5. I was present at the time this dialogue took place, and I did not at any time in the course of this litigation disclose the nature of the relationship which did, in fact, exist, between me and Judge Civarella.

6. Following a jury verdict on February 4, 2008, in favor of my client, a series of motions, supplemental motions, and briefs were filed by the parties. In substantial part the Defendant's filings were directed at the relationship between myself and Judge Civarella.

7. I remained attorney of record, and I did not disclose my relationship to Judge Civarella, which relationship I acknowledge and admit was extensive and should have been disclosed.

8. The relationship between me and Judge Civarella subsequently became a matter of public record.


9. The Superior Court vacated the Judgment and all Orders, and remanded the case. (Slusser, et al v. Laputka, et al, 9 A.3d 1200 (Pa. Super. 2010)). The opinion focuses on the failure of Judge Civarella to reveal the relationship as grounds for the order; while my silence in the face of Judge Civarella's statements is mentioned, there is no finding that I had a duty to interrupt or contradict the court's statements.

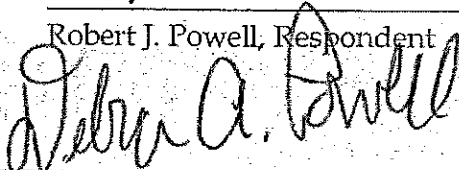
10. As a result of this conduct, I stipulate and admit that I have violated the following Rule of Professional Conduct:

- a. RPC 8.4(c). It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
- b. RPC 8.4(d). It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

1/7/15
Date

1/7/15
Date


Robert J. Powell, Respondent


Witness

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL :	No. 1522 Disciplinary Docket No. 3
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:	Attorney Registration No. 58363
ROBERT J. POWELL :	
Respondent :	(Luzerne County)

STIPULATION B
OFFICE OF DISCIPLINARY COUNSEL FILE NO. C3-09-780
(ROBERT L. GROVER, ESQUIRE - COMPLAINANT)

1. In or about June 2004, Complainant, and his partner Adam Trop, referred a wrongful death case (*Estate of James T. Witt v. Clayton W. Fegley, et al*; 5074-C-2004; Luzerne County) to the Powell Law Group, my former law firm.

2. In or about June 2004, a Contingent Fee Agreement, was prepared on my letterhead by my office staff. This Agreement was forwarded to Complainant's partner Adam Trop, by my associate Attorney Stephen Seach. On information received, Attorney Trop had it executed by the Plaintiff, and returned to my office, under cover of a letter dated June 21, 2004.

3. This Agreement provided that the Complainant's firm was entitled to 33-1/3% of the attorney's fees recovered by my firm.

4. In late 2008, this matter was settled by Mr. Seach, for the sum of \$450,000.

5. The Settlement Statement compiled in this matter reflects the settlement of \$450,000, and attorney fees of 40%, in an amount of \$180,000. Based on the aforementioned Fee Agreement, Complainant was entitled to 33-1/3% of this amount, or \$60,000.

6. Pursuant to my instructions, my staff forwarded a check to Complainant dated January 21, 2009, in an amount of \$30,000, rather than the \$60,000 to which Complainant's firm was entitled.

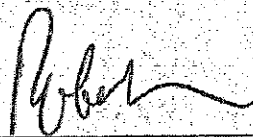
7. Despite a series of communications between Complainant and, primarily, Attorney Seach of my office, I directed, as the principal attorney in my firm, that the remaining \$30,000, to which Complainant is entitled, not be paid. As of December 22, 2015, the funds have been paid to Mr. Grover.

8. As a result of this conduct, I stipulate and admit that I have violated the following Rules of Professional Conduct:

- a. RPC 1.15(e) Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, . . . , that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property;....

1/7/15

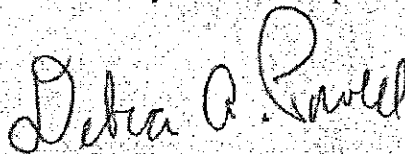
Date



Robert J. Powell, Respondent

1/7/15

Date



Witness

AO 245B (Rev. 09/08) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

RECEIVED
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UNITED STATES OF AMERICA

v.

ROBERT J. POWELL

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:CR09-189

USM Number: 15110-067

Joseph R. D'Andrea

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One (1) and Two (2) of an Amended Information☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC 4	Misprision of a Felony	5/5/2008	1
18 USC 3	Accessory After the Fact to Conspiracy to Commit Income	4/15/2007	2
18 USC 3	Tax Evasion		

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/4/2011
Date of Imposition of Judgment

Signature of Judge

Edwin M. Kosik
Name of JudgeU.S. District Judge
Title of Judge

Date

11/4/11

FILED
SCRANTON
JAN 11 2012PER _____
DEPUTY CLERK

EXHIBIT

A

DEFENDANT: ROBERT J. POWELL
CASE NUMBER: 3:CR09-189

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

eighteen (18) months on each of Counts 1 and 2, to be served concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends that the Bureau of Prisons designate FCI-Miami, FL as the place for service of this sentence.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 11/30/2011

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

☐ the defendant is to contact the United States Marshal's Office no later than three days prior to the above date to be notified of the place of confinement.

RETURN

I have executed this judgment as follows:

Defendant delivered on 12-27-11 to FPC
at Pensacola, FL, with a certified copy of this judgment.

By

Scott A. Middlebrooks, Warden
UNITED STATES MARSHAL
K. W. Co.
DEPUTY UNITED STATES MARSHAL

AO 245B (Rev. 09/08) Judgment in a Criminal Case
Sheet 2A — Imprisonment

Judgment—Page 3 of 7

DEFENDANT: ROBERT J. POWELL
CASE NUMBER: 3:CR09-189

ADDITIONAL IMPRISONMENT TERMS

During the term of imprisonment, the fine is payable every three months in an amount, after a telephone allowance, equal to 50 percent of the funds deposited into the defendant's inmate trust fund account.

AO 245B (Rev. 09/08) Judgment in a Criminal Case
Sheet 3 — Supervised Release

DEFENDANT: ROBERT J. POWELL
CASE NUMBER: 3:CR09-189

Judgment—Page 4 of 7

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:
one (1) year on each count, to be served concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) the defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

DEFENDANT: ROBERT J. POWELL
CASE NUMBER: 3:CR09-189

ADDITIONAL SUPERVISED RELEASE TERMS

In the event the fine is not paid in full prior to the commencement of supervised release, the defendant shall, as a condition of supervised release, satisfy the amount due in monthly installments of no less than \$5,000 to commence thirty (30) days after release from confinement.

- 1) The defendant shall cooperate in the collection of a DNA sample as directed by the probation officer, unless a sample was collected during imprisonment;
- 2) The defendant shall not incur new credit card charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment schedule for payment of restitution or special assessment;
- 3) The defendant shall provide the probation officer with access to any requested financial information; and
- 4) The defendant shall apply all monies received from income tax refunds, lottery winnings, judgments, and/or other anticipated or unexpected financial gains to the outstanding court-ordered financial obligation.

The court finds that the defendant poses a low risk of future substance abuse, and therefore suspends the mandatory drug testing requirement.

The sentence imposed satisfies the purposes set forth in 18 USC Section 3553(a).

You can appeal your conviction if you believe that your guilty plea was somehow unlawful or involuntary, or if there is some other fundamental defect in the proceedings that was not waived by your guilty plea. You also have a statutory right to appeal your sentence under certain circumstances, particularly if you think the sentence is contrary to law. However, a defendant may waive those rights as part of a plea agreement, and you have entered into a plea agreement which waives some or all of your rights to appeal the sentence itself. Such waivers are generally enforceable, but if you believe the waiver is unenforceable, you can present that theory to the appellate court. With few exceptions, any notice of appeal must be filed within 14 days after sentence is imposed on you.

If you are unable to pay the cost of an appeal, you may apply for leave to appeal in forma pauperis. If you so request, the Clerk of the Court will prepare and file a notice of appeal on your behalf.

DEFENDANT: ROBERT J. POWELL
CASE NUMBER: 3:CR09-189

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$ 60,000.00	\$

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☒ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (Rev. 09/08) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

Judgment — Page 7 of 7

DEFENDANT: ROBERT J. POWELL
CASE NUMBER: 3:CR09-189

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☐ Lump sum payment of \$ _____ due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

The court finds that the defendant has the ability to pay a fine. It is ordered that the defendant shall pay to the Clerk, U.S. District Court, the sum of \$60,200 consisting of a fine of \$30,000 and special assessment of \$100 on each of Counts 1 and 2. The special assessments are due immediately. Payment of interest is waived.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

VS

ROBERT POWELL

NO. 09-CR-189

TRANSCRIPT OF PROCEEDINGS
OF ARRAIGNMENT AND GUILTY PLEA

BEFORE: HONORABLE EDWIN M. KOSIK
United States District Judge

DATE: Wednesday, July 1, 2009

PLACE: United States District Court
Middle District of Pennsylvania
235 North Washington Avenue
Scranton, Pa 18503

A P P E A R A N C E S:

For The Government: GORDON ZUBROD, ESQ.
Assistant United States Attorney

For Defendant: MARK SHEPPARD, ESQ.
JOSEPH D'ANDREA, ESQ.

LAURA BOYANOWSKI, RPR
OFFICIAL COURT REPORTER

EXHIBIT

B

1 THE COURT: Remain seated, please.

2 MR. ZUBROD: Good morning, Your Honor. May it please
3 the Court, we're here in the case of the United States of
4 America versus Robert Powell, Criminal Number 09-189. Pursuant
5 to a negotiated plea, Mr. Powell will be entering a plea of
6 guilty to a two-count information. The first count alleges a
7 violation of Title 18 United States Code Section 4, Misprision
8 of a Felony, that is wire fraud. Additionally, he will be
9 pleading guilty to a violation of Title 18 United States Code
10 Section 3, Accessory After the Fact, that is Conspiracy to File
11 False Tax Returns.

12 THE COURT: Thank you.

13 MR. SHEPPARD: Mark Sheppard on behalf of Mr. Powell.
14 With me is my co-counsel, Joe D'Andrea. The defendant is
15 present. I apologize, Your Honor, for the way that I am
16 speaking. I am still suffering from that Bell's Palsy and
17 didn't want you to think I hit the sauce a little early this
18 morning.

19 THE COURT: No problem because we won't expect you to
20 say too much.

21 MR. SHEPPARD: I am hoping to say as little as
22 possible.

23 THE COURT: You are Robert Powell?

24 THE DEFENDANT: Yes.

25 THE COURT: We don't know each other. Will you

1 agree?

2 THE DEFENDANT: I agree with that, Your Honor.

3 THE COURT: This proceeding may take about 20
4 minutes. In it I must ask you a number of questions. Your
5 responses must be under oath if you'd be kind enough to raise
6 your right hand. Remain seated. This young lady will
7 administer the oath.

8 (The defendant was placed under oath at this time.)

9 BY THE COURT:

10 Q. State for the record your age and the extent of your
11 education.

12 A. I'm 49 years old, Your Honor. I have a Bachelor of
13 Science Degree in Business Management and a Juris Law Degree.

14 Q. Of course. And you practice law?

15 A. I do, Your Honor.

16 Q. Very good. The purpose of these questions even though
17 you're knowledgeable with the law is for the Court to determine
18 independently in each case regardless of the individual's
19 status in life whether or not the plea they are going to enter
20 is voluntary and knowing of one's rights before such a plea is
21 entered. Do you understand that?

22 A. I do, Your Honor.

23 Q. So we're not trying to insult your intelligence. We are
24 doing what we are obliged to do in every case.

25 A. I understand, Your Honor.

1 Q. Are you presently under the care of a physician or a
2 physician psychiatrist?

3 A. I am not, Your Honor.

4 Q. Taking any kind of medication that would affect your
5 ability to understand the -- why we're here?

6 A. No medications whatsoever, Your Honor.

7 Q. Counsel for the government in introducing the case told us
8 there's a plea agreement; is that correct?

9 A. Yes, Your Honor.

10 Q. You authorized your lawyers to negotiate that agreement in
11 your behalf?

12 A. I did, Your Honor.

13 Q. As a matter of fact, you and your lawyer have signed the
14 agreement; isn't that correct?

15 A. That's correct, Your Honor.

16 Q. Please listen. I will ask Mr. Zubrod to give us the
17 highlights.

18 MR. ZUBROD: In broad brush, Your Honor, the plea
19 agreement calls for Mr. Powell to enter a plea of guilty to the
20 two-count indictment that I have previously mentioned to the
21 Court.

22 Additionally, he further agrees to cooperate in the
23 ongoing prosecution of others, to pay restitution as determined
24 by the district court and to forfeit the following assets: The
25 first is a 2002 Ocean Yacht 56 Super Sport named Reel Justice,

1 which is presently registered in Tiverton, Rhode Island. He
2 also agrees to forfeit his interest in a 1981 Saber Liner 5 Jet
3 and its two Garrett engines identified by serial number. In
4 exchange, the United States has agreed to bring no other
5 criminal charges against the defendant directly arising out of
6 the operative facts of the investigation into Pennsylvania
7 Child Care and Western Pennsylvania Child Care and will further
8 recommend that Mr. Powell receive a three-level departure for
9 acceptance of responsibility.

10 Should Mr. Powell provide substantial assistance in
11 the prosecution of all other related parties, the United States
12 will seek a downward departure from the applicable sentencing
13 guideline range.

14 THE COURT: Okay. Now, you alluded to the fact that
15 under the terms of that agreement the defendant is cooperating
16 with the government?

17 MR. ZUBROD: He is, Your Honor.

18 THE COURT: And is that cooperation in the context of
19 providing substantial assistance?

20 MR. ZUBROD: Yes, sir.

21 THE COURT: Okay. Mr. Powell, counsel for the
22 government has been brief in alluding to the terms of that plea
23 agreement, some of which are very important. And does that
24 comport with your understanding of those terms?

25 THE DEFENDANT: It does, Your Honor.

1 THE COURT: Do you or counsel feel that some comment
2 should be made concerning any of the terms that have been
3 outlined or may not have been alluded to?

4 MR. SHEPPARD: No, Your Honor. We believe they are
5 accurate. Thank you.

6 BY THE COURT:

7 Q. Okay. I am obliged to tell a defendant at this stage that
8 in federal court the judge has no idea at this point what an
9 appropriate sentence would be in your case. There's no
10 provision in the plea agreement indicating that the parties
11 have arrived at some sentence that they're going to suggest to
12 the Court.

13 Because we have sentencing guidelines in federal court, we
14 won't have an idea as to an appropriate sentence until such
15 time as the probation department conducts an investigation and
16 we know something about this offense, we know something about
17 your background as an individual. And other factors are taken
18 into account under those guidelines, and a range of sentence is
19 then determined.

20 And the guidelines then offer that range of sentence for
21 the Court to consider and not to be compelled to adopt it but
22 to give consideration to it as providing a reasonable and a
23 fair sentence. Is that understood?

24 A. That's understood, Your Honor.

25 Q. Now, because of an important provision in that plea

1 agreement that you're going to cooperate with the government
2 and provide substantial assistance, in the event a defendant
3 provides substantial assistance according to that agreement,
4 the government may at the appropriate time move for a downward
5 departure in the sentence that is to be imposed. And if such a
6 motion for downward departure is made -- and only the
7 government can make that motion except in one or two instances,
8 none of which are applicable here -- then that basically takes
9 the guidelines off the table and the Court has greater
10 discretion and is not limited in any way by the guidelines that
11 are being offered.

12 And ordinarily if the government recommends a certain
13 level of departure, we accept that departure and sometimes we
14 even exceed it if we think it's appropriate in any given case.
15 Is that understood?

16 A. That's understood, Your Honor.

17 Q. Okay. Now, we're dealing with a serious crime, a felony.
18 You understand that if we accept your plea of guilty and you're
19 adjudged guilty, you stand to lose certain rights?

20 A. I do, Your Honor.

21 Q. You lose the right to vote -- possibly lose the right to
22 vote, to hold public office. In all events, you lose the right
23 to possess a weapon for any purpose whatsoever. Is that
24 understood?

25 A. That's understood, Your Honor.

1 Q. Okay. I believe the most important consideration at a
2 time such as this is for the Court to determine if the
3 defendant understands that he has a right to a trial before a
4 Court and jury. You discussed that with your lawyers?

5 A. I have, Your Honor.

6 Q. Because if you elected to stand trial, you'd have the
7 benefit of a presumption of innocence that means a number of
8 things. First, in the trial of the case, there'd be no
9 obligation on your part to utter one in word in explanation or
10 defense of your conduct, nor would you be required to call
11 witnesses to do so.

12 It's not that a defendant cannot testify or call
13 witnesses. As a matter of fact, if you can't afford the
14 witnesses in any given case, the government would be obliged to
15 pay for those witnesses to come in to testify in your behalf.
16 It's just that in the criminal case in our system the defendant
17 has no obligation to do anything whatsoever because he's
18 presumed to be innocent and the government has a duty to
19 establish each and every element of the case with which that
20 person is charged by a standard we refer to beyond a reasonable
21 doubt.

22 And those elements will be alluded to by counsel for the
23 government at an appropriate time here this morning. I want
24 you to know what I'm telling you about a jury trial would also
25 be told to a jury probably in greater detail and the jury would

1 be told if the government fails in any particular to establish
2 the elements or any element of any of the crimes, the jury
3 would have a duty to return a verdict of not guilty. We would
4 define for them what reasonable doubt is under the law and
5 emphasize that it applies to each and every element of the
6 crime, okay?

7 A. Yes, Your Honor.

8 Q. Okay.

9 THE COURT: I will ask counsel for the government now
10 to tell us what the evidence would be if the case did go to
11 trial.

12 MR. ZUBROD: May I approach, Your Honor?

13 THE COURT: Anything you want to do.

14 MR. ZUBROD: May it please the Court, the factual
15 predicate of this case is as follows: As I --

16 THE COURT: By the way, I can hear you better if you
17 sit at the table.

18 MR. ZUBROD: The factual predicate of this case is as
19 follows: Your Honor, as the Court is well aware having
20 participated in the guilty plea in that matter, Michael Conahan
21 and Mark Ciavarella were judges for the Court of Common Pleas
22 for Luzerne County. Between approximately January 2002 and
23 January of 2007, Judge Conahan -- Michael Conahan served as
24 president judge for Luzerne County between 1996 and 2008.
25 Judge Ciavarella served as judge of the juvenile court for

1 Luzerne County. In approximately January of 2007, Judge
2 Ciavarella became president judge for Luzerne County. As
3 judges for the Court of Common Pleas, the defendants owed a
4 fiduciary duty to the citizens of the Commonwealth of
5 Pennsylvania and to the judiciary of the Commonwealth of
6 Pennsylvania and were required to file an annual statement of
7 financial interest with the Administrative Office of the
8 Pennsylvania Courts reporting the source of any income, direct
9 or indirect.

10 The Administrative Office of the Pennsylvania Courts
11 maintains offices in Cumberland County, the Middle District of
12 Pennsylvania and Philadelphia County in the Eastern District of
13 Pennsylvania. As judges of the courts of common pleas, Judges
14 Conahan and Ciavarella owed a fiduciary duty to the citizens of
15 the Commonwealth of Pennsylvania, and one source of that duty
16 owed by the judges was imposed by Pennsylvania Constitutional
17 Law Article 5 of the Pennsylvania Constitution.

18 There were other sources of law including the
19 Pennsylvania Code of Judicial Conduct and Administrative Orders
20 of the Pennsylvania Supreme Court regarding matters related to
21 judges of the Courts of Common Pleas. As judges, this duty
22 included but was not limited to the duty to refrain from
23 conduct that constitutes a conflict of interest, to recuse
24 themselves from matters in which they have a conflict of
25 interest and to file a truthful and complete annual statement

1 of financial interest with the Administrative Office of
2 Pennsylvania Courts reporting sources of all income, direct or
3 indirect. That duty also included the duty arising from their
4 position as judges to disclose material information relevant to
5 their ability to engage in impartial discretionary decision
6 making. Regarding the misprision of a felony, from in or about
7 June of 2000 to on or about April 30th, 2007 Judges Conahan and
8 Ciavarella had an understanding among themselves that they
9 would engage in a material scheme to defraud the citizens of
10 the Pennsylvania and to defraud those citizens of their right
11 of the honest services of the judges as Courts of Common Pleas
12 for Luzerne County, perform free of deceit, from
13 self-enrichment, from concealment and from conflict of
14 interest.

15 Between approximately January of 2003 and January
16 1st, 2007, Judges Conahan and Ciavarella accepted a total of
17 more than 2.8 million from Robert Powell, who is an attorney,
18 and from an -- he was the owner of P. A. Child Care and Western
19 P. A. Child Care, and an individual that we referred to as
20 Participant No. 2 both in the charges against Judges Conahan
21 and Ciavarella and in this case. He was a builder of
22 Pennsylvania Child Care and Western Pennsylvania Child Care.

23 Mr. Powell paid the judges approximately \$772,500
24 often disguising the payments as rental fees relating to
25 docking his boat at the judge's condominium in Jupiter,

1 Florida. That was false. These payments included the
2 following payments: January 13, Mr. Powell issued a check in
3 the amount of \$18,000 to the Pinnacle Group of Jupiter, L. L.
4 C. On January 13th, 2004, he issued a second check in the
5 amount of \$52,000 to Pinnacle. On or about February 15th,
6 2004, Mr. Powell through Vision Holdings, Inc., issued a check
7 in the amount of \$78,000 and identified it on the check as,
8 quote, reserving lease, unquote, to Pinnacle Group.

9 On February 15th, 2004, the same date, through Vision
10 Holdings, Mr. Powell issued a check in the amount of \$75,000
11 and identified on the face of the check the purpose of the
12 check was, quote, rental Feb, March, April to Pinnacle Group.
13 On or about February 15th, the same date, 2004, Mr. Powell
14 issued another check in the amount of \$47,000 and identified it
15 on the face of the check as, quote, slip rental fees to
16 Pinnacle Group. On April 30th, 2004, Mr. Powell through Vision
17 Holdings issued a check in the amount of \$75,000 and identified
18 on the face of the check as lease expenses April, May and June
19 to Pinnacle Group.

20 On April 30th, Mr. Powell through Vision Holdings
21 issued a check in the amount of \$25,000 and identified on the
22 face of the check as dock expenses related to April, May and
23 June to Pinnacle Group. On or about July 12th, 2004, Mr.
24 Powell through Vision Holdings wire transferred \$120,000 to
25 Pinnacle Group of Jupiter. On September 23rd, 2004, Mr. Powell

1 through Vision Holdings wired transferred a hundred thousand
2 dollars to Pinnacle Group of Jupiter. On or about August 16th,
3 2006, Mr. Powell caused a series of checks in the amount of
4 \$42,000 to be cashed and gave the cash proceeds to the judges.
5 On October 13th, 2006 Mr. Powell caused a series of checks in
6 the amount of \$30,000 to be cashed and gave the proceeds to the
7 judges.

8 On November 1st, 2006, Mr. Powell caused a series of
9 checks in the amount of \$20,000 to be cashed and gave the
10 proceeds to the judges. On or about November 20th, 2006, Mr.
11 Powell caused a series of checks for \$50,000 to be cashed and
12 given to the judges. On or about December 18th, 2006, Mr.
13 Powell caused a series of checks in the amount of \$31,500 to be
14 cashed, and again he gave the proceeds to the judges.

15 THE COURT: With respect to a number of the payments,
16 you keep saying that he gave them a check which was cashed and
17 given to the recipients. Would you clarify what you mean by
18 that?

19 MR. ZUBROD: This was a -- he cashed -- he caused to
20 be issued a series of checks to individuals, either to himself
21 or his law firm. He had those checks endorsed, and he had the
22 checks cashed -- reduced to cash. These checks were usually in
23 amounts under \$10,000. When he pooled all of the funds, he
24 would put the funds into a Fed Ex box and give it to an
25 employee and have that employee deliver the checks -- or I'm

1 sorry -- deliver the cash directly to Judge Conahan.

2 THE COURT: So the checks were not made out to the
3 recipients? They received cash?

4 MR. ZUBROD: There was a series of checks made out to
5 the Jupiter -- Pinnacle Group of Jupiter, but this cash --
6 these were checks made out to -- either out to cash or to Mr.
7 Powell or to his employees.

8 THE COURT: All right. Continue, please.

9 MR. ZUBROD: Finally, on or about December 1st, 2006,
10 Mr. Powell paid Judge Conahan \$9,000 in cash from a check that
11 had been cashed and was a referral fee for a case that had been
12 settled. During the time period, the judges agreed to accept
13 and accepted more than \$2.8 million from Mr. Powell and from
14 Participant No. 2 related to the construction and operation of
15 the juvenile detention facilities owned by P. A. Child Care and
16 Western P. A. Child Care. The judges were acting as judges of
17 the Court of Common Pleas for Luzerne County, and they had
18 discretionary decision making authority in multiple matters
19 relating to P. A. Child Care and Western P. A. Child Care
20 without recusing themselves or disclosing to the parties the
21 material conflict of interest and the material financial
22 relationship with Mr. Powell who was owner of P. A. Child Care
23 and Western P. A. Child Care and with Participant No. 2, who
24 was involved in the construction of the juvenile detention
25 facilities owned and operated by P. A. Child Care and Western

1 P. A. Child care.

2 Moreover, aware of this activity by the judges,
3 Robert Powell took no steps to notify authorities of the
4 criminal activity until after the commencement of the federal
5 investigation.

6 Ultimately, Mr. Powell commenced cooperating with
7 federal investigators, met with the judges and recorded
8 incriminating conversations with them. These recorded
9 conversations were instrumental in developing the case against
10 the judges.

11 Regarding the accessory after the fact, count two of
12 the information alleges that Mr. Powell by allowing Participant
13 No. 2's finder's fee payments to Conahan and Ciavarella to be
14 passed through Mr. Powell's business accounts by paying cash to
15 the judges and by disguising payments by check to the judges as
16 rental and leasing fees, he acted as an accessory after the
17 fact to the judges' conspiracy between themselves to file false
18 tax returns.

19 In other words, aware that the payments were being
20 disguised as legitimate transactions, Robert Powell as an
21 attorney was implicitly aware that the judges would have
22 intended to falsely characterize of the nature of their income
23 on their tax returns and not to disclose the cash payments from
24 Mr. Powell on their statement of income.

25 For example, to conceal the payments to the judges,

1 the judges directed that false entries be made in the books and
2 records of the Pinnacle Group of Jupiter, L. L. C. They also
3 signed documents along with Mr. Powell and Participant No. 2
4 indicating that the payments were going to Mr. Powell from
5 Participant No. 2. The false paper trail was created by the
6 judges not only as part of their honest services fraud scheme
7 but also to defraud the Internal Revenue Service by falsely
8 characterizing some of the income as rental income and by
9 characterizing otherwise in order to receive their favorable --
10 favorable tax treatment.

11 The cash payments were not mentioned on the tax
12 returns. The federal income tax returns relating to tax years
13 2003 through 2006 were filed with the Internal Revenue Service
14 and signed by Judges Conahan and Ciavarella which were
15 materially false to the extent that they mischaracterized the
16 income the judges had received from Robert Powell and from
17 Participant No. 2. For tax years 2003 and 2006, the tax lost
18 to the government for Judge Conahan's part in the scheme was in
19 excess of \$200,000, and for that same time frame, the tax year
20 -- the tax loss to the government for Judge Ciavarella's part
21 in the scheme was also in excess of \$200,000.

22 BY THE COURT:

23 Q. Mr. Powell, you heard counsel for the government tell us
24 the evidence that would be presented at the time of the trial
25 concerning your relationship with the two individuals who were

1 judges in Luzerne County and the activity that occurred in
2 financial transactions that occurred between you. Is what he
3 tells us correct?

4 A. Yes, it is, Your Honor.

5 THE COURT: You want to outline the elements, Mr.
6 Zubrod?

7 MR. ZUBROD: Yes, Your Honor.

8 THE COURT: If the case went to trial, what it is you
9 would have to prove.

10 MR. ZUBROD: As to count one, the United States would
11 have to prove that Mr. Powell in the Middle District of
12 Pennsylvania having knowledge of the actual commission of a
13 felony recognizable by the United States, and in this case it
14 was honest services wire fraud in violation of Title 18 United
15 States Code Section 1343 and Section 1346, having knowledge
16 that an offense had -- had been committed, he knowingly and
17 intentionally concealed that knowledge by cooperating in the
18 creation of false records designed to hide, disguise and
19 mischaracterize income received by Michael Conahan and Mark
20 Ciavarella and by transferring tens of thousands of dollars in
21 cash to Michael Conahan with the intent that the cash not be
22 traceable as income and did not as soon as possible make known
23 the fact of these criminal activities to some judge or other
24 person, civil or military authority under the United States,
25 which is a violation of 18 U.S.C. Section 4, Misprision of a

1 Felony Statute.

2 As to count two, the Accessory After the Fact, we
3 have to show that between January 2003 and on or about April
4 15th, 2007, again in the Middle District of Pennsylvania, Mr.
5 Powell knowing that an offense against the United States had
6 been and was being committed, that is in this case conspiracy
7 -- Conspiracy to File False Income Tax Returns in violation of
8 18 U.S.C. Section 371, knowing that, he knowingly and
9 intentionally received, relieved, comforted and assisted the
10 offenders Michael Conahan and Mark Ciavarella in order to
11 hinder and prevent the offender's apprehension of trial and
12 punishment in violation of 18 U.S.C. Section 3 and that
13 hindering, that aiding and abetting is the same acts which
14 occurred in count one which I previously stated to the Court.

15 THE COURT: Do you understand those elements?

16 THE DEFENDANT: I do, Your Honor.

17 THE COURT: Counsel, you --

18 MR. SHEPPARD: If I may, Your Honor, just with regard
19 to the prior question to Mr. Powell about the factual basis, I
20 just want to make one point clear for the record. Mr. Zubrod
21 in outlining the facts stated that Mr. Powell was aware of this
22 activity of the judges -- he used this activity after laying
23 out a litany of activities -- I don't believe it is accurate to
24 say that Mr. Powell was aware of all those activities that were
25 laid out by Mr. Zubrod. And in particular, Mr. Powell was

1 unaware that Judge Ciavarella or Judge Conahan were violating
2 any rights of any juveniles, and I don't believe the government
3 will dispute that. I just want to make sure that's clear on
4 this record.

5 THE COURT: I am not sure that's even implied in this
6 statement.

7 MR. SHEPPARD: To the extent it may have been, I just
8 want it to be clear.

9 MR. ZUBROD: We agree, Your Honor, there was no
10 knowledge on the part of Mr. Powell that juveniles were being
11 abused by these judges. What he was implicitly aware of,
12 however, was that there was a conspiracy to file false tax
13 returns and to avoid reporting income that they were receiving,
14 or at the very least mischaracterizing the nature and source of
15 that income.

16 THE COURT: Is it the government's position there was
17 an understanding on the part of this defendant and possibly the
18 other defendants that because these moneys were being paid in
19 consideration for the favorable treatment in establishing a
20 juvenile center that it wasn't just an outright gift, but there
21 would have to be some consideration for those payments? It
22 wasn't a finder's fee I presume.

23 MR. ZUBROD: That's correct, Your Honor. It was a
24 finder's fee as to Participant No. 2, and yet the judges still
25 wanted to disguise that --

1 THE COURT: That's the guy that's building the place?

2 MR. ZUBROD: Yes, sir. As to Mr. Powell, these were
3 not finder's fees. These were payments that they had commended
4 from him.

5 MR. SHEPPARD: That's correct, Your Honor, in order
6 to be able to build the facility, not necessarily to take any
7 subsequent actions. That's our point -- or correct to build
8 both facilities.

9 THE COURT: I am not sure I completely understand
10 what these payments were for and what they expected in return
11 for the payments.

12 MR. SHEPPARD: To support Mr. Powell's and his
13 partner's efforts to build P. A. Child Care and Western P. A.
14 Child Care and to use those facilities through their activities
15 in Luzerne County.

16 THE COURT: What did they expect from the judges?
17 What were the judges to do for these payments?

18 MR. SHEPPARD: Well, Your Honor, there was -- there
19 was no quid pro quo per se. That's why the crime was honest
20 services fraud.

21 THE COURT: He has to have known they were committing
22 a felony.

23 MR. SHEPPARD: Correct, Your Honor.

24 THE COURT: What was the felony that he was aware of
25 that they were committing?

1 MR. SHEPPARD: Mr. Powell was aware that the judges
2 were not disclosing and were, in fact, disguising these
3 payments in terms of their obligations to report to the
4 Commonwealth and the citizens of Luzerne County. That he was
5 aware of, and that's what he's admitting to.

6 THE COURT: All right. You agree that was the
7 limitation of this witness -- or this defendant's knowledge?

8 MR. ZUBROD: The -- the plea that he is pleading
9 guilty to is the fact he was aware of -- that there was income
10 tax evasion taking place for filing false tax returns. He was
11 aware the income was not being reported or if reported it was
12 being mischaracterized. He remained silent on that fact.

13 THE COURT: Those payments were being made to them
14 because of their influence to have somebody receiving a
15 contract to conduct a juvenile facility or juvenile facilities
16 and that was the extent of his participation; is that right?

17 MR. ZUBROD: Yes, sir.

18 THE COURT: Okay. Although the government claims
19 that the other defendant's participation exceeded those
20 expectations; isn't that correct?

21 MR. ZUBROD: Yes, sir.

22 THE COURT: Okay. I can tell you that the most
23 important element in both of these offenses and what
24 distinguishes them from negligent or stupidity, even though
25 stupidity is often a crime but because stupidity itself is not

1 a crime, it only becomes a crime if one acts knowingly and
2 intentionally with respect to the allegations that have been
3 outlined by counsel for the government. Do you understand
4 that?

5 THE DEFENDANT: I do, Your Honor.

6 BY THE COURT:

7 Q. That is probably the most important element. And in
8 defining that element for the jury, we would tell them they
9 have to prove what was occurring in your mind. And sometimes
10 it's difficult for people to read an individual's mind, and the
11 only evidence they have from which they can conclude that you
12 acted knowingly and unlawfully is from your actions as well as
13 any words that were spoken that might be produced by the
14 government. Do you understand that?

15 A. I do, Your Honor.

16 Q. And if the jury believes that evidence, I'm satisfied they
17 can conclude that you're guilty of count one and count two of
18 this information. And we at the beginning noted the offense
19 but failed to recognize that we were talking about an
20 information. And I should make it very clear to you that in
21 the federal system the government cannot charge a person with a
22 felony without first going before a duly constituted grand
23 jury. Do you understand that?

24 A. I do, Your Honor.

25 Q. And a grand jury consists anywhere from 16 to 23 people

1 who do not determine guilt or innocence. They simply inquire
2 to the subject of a crime, as to whether there's probable cause
3 that an offense has been committed and whether there's probable
4 cause the person the government wishes to charge should be
5 charged with that offense. And if at least 12 of those jurors
6 decided that probable cause exists in each instance, that grand
7 jury can return an indictment.

8 An indictment is not evidence of guilt but simply a
9 vehicle by which a person is charged and required to come in to
10 court to respond to those charges. That was not done here
11 because I believe you waived the necessity of the government
12 going before a duly constituted grand jury and agreed that we
13 can proceed on the basis of the information which is in the
14 form of an indictment except it's called information and it's
15 signed by the United States Attorney instead of the foreman of
16 a grand jury. But you have discussed that with counsel and,
17 indeed, have executed a waiver I presume. Is that right?

18 MR. SHEPPARD: Yes, he has, Your Honor. It was part
19 of the plea agreement. He executed that.

20 THE COURT: That will be filed of record or is filed
21 of record?

22 MR. ZUBROD: I will confirm that it has been, Your
23 Honor.

24 THE COURT: Well, again, I say if the jury believed
25 that they would -- could find you guilty of those offenses.

1 Having said that, I ask you how do you plead?

2 THE DEFENDANT: I plead guilty, Your Honor.

3 THE COURT: When we are finished here, you are going
4 to spend time with the probation officer. And to the extent
5 your lawyers permit, you tell that probation officer what you
6 think the judge should know about you. He will conduct the
7 investigation we talked about earlier. And when it's
8 completed, there will be a presentence report.

9 You will get a copy as will your lawyers and
10 government's counsel. If you have anything that you object to
11 in that report, you must first take up your objections with the
12 probation officer who has the responsibility of trying to
13 resolve them if he can. If he cannot, you'll come into a
14 setting similar to this one and the judge will have to resolve
15 the objections.

16 Before any judgment of sentence is imposed, we'll be
17 very happy to hear from you as well as your lawyers and
18 government counsel. Do you understand that?

19 THE DEFENDANT: I do, Your Honor.

20 THE COURT: Because this is an initial appearance ---
21 is that correct, Mr. Zubrod?

22 MR. ZUBROD: It is, Your Honor.

23 THE COURT: Any objection to the defendant continuing
24 under the same terms and conditions that now exist?

25 MR. ZUBROD: We do not, Your Honor. It is our

1 request that we -- we take a view he poses a low risk of
2 nonappearance and he's not a danger to the community and that
3 he should be released on his personal recognizance without
4 pretrial services supervision.

5 THE COURT: It's so ordered subject to any conditions
6 the probation office feels is necessary.

7 MR. SHEPPARD: Thank you, Your Honor.

8 THE COURT: Okay. Thank you.

9 THE DEFENDANT: Thank you, Your Honor.

10 THE COURT: That concludes our proceeding.

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C E R T I F I C A T E

I, LAURA BOYANOWSKI, RPR, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

LAURA BOYANOWSKI, RPR
Official Court Reporter

REPORTED BY:

LAURA BOYANOWSKI, RPR
Official Court Reporter
United States District Court
Middle District of Pennsylvania
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