

# INTERBRANCH COMMISSION ON JUVENILE JUSTICE

*Report*



MAY 2010



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The Honorable Dominic Pileggi  
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The Interbranch Commission on Juvenile Justice was created last August with a mandate to investigate the juvenile justice scandal in Luzerne County and to develop appropriate recommendations for reform. Since then we have held eleven days of hearings and received testimony from sixty-eight witnesses, some more than once.

In the attached report we have developed a comprehensive account of what occurred in the courtrooms of Luzerne County. It is our hope that based on our understanding of how the juvenile justice system was undermined in one county we have developed recommendations that will avoid it from happening in any other county.

While the tragic events in Luzerne County have drawn criticism nationwide, and rightly so, it is also true that Pennsylvania is an acknowledged national leader in the field of juvenile justice. The outstanding commitment of our juvenile court judges, prosecutors, defense attorneys, probation officers, victim advocates and service providers should not be overshadowed by the actions of those who have damaged that reputation.

In making the recommendations in this report we are confident that if they are adopted Pennsylvania's juvenile justice system will be further strengthened to the end that our communities will be protected, those determined to be delinquent will be held accountable, crime victims will be restored, and the rule of law will be protected and preserved.

Sincerely,  
  
John M. Cleland  
Chair

# Acknowledgements

The members of the Interbranch Commission on Juvenile Justice take special notice and express great appreciation for the dedicated work of the staff of the Administrative Office of Pennsylvania Courts who have been assigned to this project. They have demonstrated a genuine commitment to the rule of law, to the fairness of its application, and to the well being of our communities.

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# Report to the General Assembly, Governor Edward G. Rendell and the Supreme Court of Pennsylvania

## I. INTRODUCTION

The Interbranch Commission on Juvenile Justice was established by Act 32 of the Pennsylvania General Assembly in the summer of 2009 after unanimous votes by the House and Senate. The act was signed into law on August 7, 2009, by Governor Rendell.

The commission was created in response to a highly publicized judicial corruption scandal in Luzerne County involving millions of dollars in alleged payoffs to two judges and rights violations of thousands of juvenile defendants in the county's juvenile court. The scandal shocked citizens of the county and the state and made headlines around the world. So extraordinary were the circumstances that the executive, legislative and judicial branches of Pennsylvania government agreed to undertake a noncriminal investigation to determine the root causes of the breakdown of Luzerne County's juvenile justice system and to propose remedies.

As stated by Act 32, the Interbranch Commission on Juvenile Justice was to determine how the Luzerne County juvenile justice system failed, to restore public confidence in the administration of justice and to prevent similar events from occurring in Luzerne County or elsewhere in the Commonwealth.

The commission was to have 11 members. Three were to be appointed by the governor, four by the chief justice of Pennsylvania, one by the president pro tempore of the Senate, one by the minority leader of the Senate, one by the speaker of the House and one by the minority leader of the House.

An exacting timetable was established for the commission's work. Act 32 set a deadline of May 31, 2010, for the commission to file a final report with recommendations to the governor, the chief justice and the House and Senate.

The members of the Interbranch Commission on Juvenile Justice met for the first time for an organizational session in Pittsburgh on August 26-27.

In the months afterward, the commissioners held 11 days of public hearings and heard testimony from more than 60 individuals at every level and in every role across the spectrum of the juvenile justice system. Many more individuals, who did not testify at public hearings, provided written or verbal information to the commission. The record of the commission's hearings is available on the Web site of Pennsylvania's Unified Judicial System at: <http://www.pacourts.us/Links/Public/InterbranchCommissionJuvenileJustice.htm>

Witnesses who appeared before the commission included the president judge of Luzerne County, the former district attorney, the incumbent district attorney, the county public defender, assistant district attorneys who appeared in juvenile court, assistant public defenders, juvenile probation officials, former juvenile defendants, parents of juvenile defendants, school officials, county commissioners, officials of the Judicial Conduct Board and others.

With few exceptions, those asked to testify did so willingly and without the necessity of a subpoena.

Two individuals who declined to appear were former judges Mark A. Ciavarella, Jr., and Michael T. Conahan. These men have been charged with federal crimes relating to the alleged receipt of \$2.8 million in illegal payments from the owners of two juvenile detention facilities. Conahan and Ciavarella were and are at the center of the "kids for cash" scandal in Luzerne County that, beginning with the filing of federal charges against them on January 26, 2009, released a flood of negative publicity on the former judges themselves and on the juvenile justice system of Luzerne County. Independent of the federal criminal charges, Ciavarella, who was the county's juvenile court judge, has been found by the Pennsylvania Supreme Court to have improperly denied more than 1,800 juvenile defendants the constitutional right to counsel. Those

rights violations were so extensive and egregious that the Supreme Court, on October 29, 2009, issued an unprecedented order vacating the adjudications of all juvenile cases Ciavarella handled from 2003 to 2008 and expunging the records of the cases.

It is plain from events over the past 18 months that corruption in the Luzerne County courthouse has been deeply ingrained for many years. A graphic illustration of the relaxed attitude toward corruption on the part of the judiciary is the fact that Conahan, a former president judge, has been described in court testimony unrelated to the federal criminal case as having been a close friend of the alleged organized crime leader of Northeastern Pennsylvania, William "Big Billy" D'Elia.

Conahan and Ciavarella are not the only Luzerne County judges charged with federal crimes. A third judge - Michael T. Toole - was charged in December 2009 with federal tax and fraud offenses. Toole pleaded guilty on December 29, 2009, and agreed to cooperate with federal authorities. The former court administrator, William T. Sharkey, Sr., Conahan's cousin, pleaded guilty on February 17, 2009, to federal charges of embezzling more than \$70,000 in seized gambling proceeds. The former chief juvenile probation officer, Sandra Brulo, pleaded guilty on March 26, 2009, to obstruction of justice in connection with altering the record of a juvenile defendant. Former County Prothonotary Jill Moran resigned from office in February 2009 and signed a consent agreement pledging to cooperate with federal investigators under penalty of a possible fine or imprisonment if she fails to fully comply. Clerk of Courts Robert Francis Reilly was charged in April 2010 with soliciting and receiving \$1,500 in bribes and gratuities from a courthouse handyman.

Federal authorities have widened their public corruption probe beyond the county courthouse to bring charges against school board members, a school superintendent, housing authority members, a former redevelopment authority director, a county commissioner, the former director of county human resources and others. And the probe continues.

With this collage of corruption as a backdrop, the Interbranch Commission on Juvenile Justice narrowed its attention to the serious and chronic malfunctions within Luzerne County's juvenile court.

The immediate and most obvious blame for failures in the juvenile justice system can be laid at the door of Mark Ciavarella who presided for years as juvenile judge, even during a period when he served as president judge of Luzerne County's Common Pleas Court. Ciavarella was a "zero-tolerance" judge who took a hard line on juvenile crime - particularly when crime occurred in schools. Ciavarella routinely decided cases of youths who were unrepresented by counsel - and did so in a manner that violated court rules. Far more often than most juvenile judges, he sent youths away from home when they got into trouble. Juvenile court was Ciavarella's domain. He ruled there supreme. By some accounts, he could show sympathy, compassion and concern for youthful defendants who appeared before him. More often, the record shows, his manner was harsh, autocratic and arbitrary. He judged by a formula rather than by individual evaluation. *If you do X, your punishment will be Y. I will send you away. I am telling you ahead of time.* That was his method - the antithesis of the process of individual evaluation that a judge should apply before deciding a case.

But the failures of the juvenile justice system do not stop with Ciavarella. The Interbranch Commission on Juvenile Justice found a far more complex and nuanced picture in which many individuals may be seen to have shared the responsibility. Silence, inaction, inexperience, ignorance, fear of retaliation. Greed, ambition, carelessness. All these factors played a part in the failure of the system. Prosecutors, defenders and probation officials witnessed and participated in proceedings in Ciavarella's courtroom. For some, hesitation to act stemmed from a quandary: They were not sure where to turn to report concerns. For some there was coinciding skepticism: What good would it do?

The agency responsible for investigating and prosecuting judicial misconduct in Pennsylvania is the state Judicial Conduct Board, a constitutionally established panel of 12 members, half of whom are appointed by the Supreme Court and half of whom are appointed by the governor.

As part of its investigation the commission made extensive efforts to learn whether the Judicial Conduct Board had received complaints about Ciavarella and Conahan and, if so, what the board had done to investigate those complaints. No public disciplinary charges were ever filed against Ciavarella or Conahan by the board in connection with any complaint.

In its hearings, the commission heard from witnesses who were reluctant to submit complaints to the Judicial Conduct Board. Some witnesses did not know of the board's existence. Others expressed doubt that the board would take corrective

action if a complaint was filed. All of this was of concern to the commission. The conduct board's handling of a 2006 complaint against Conahan raised major concerns for the commission which will be addressed later in this report.

While the scope of the commission's work focused on Luzerne County, it should be stated that the corruption and system failures in that county do not appear to be representative of the Commonwealth as a whole. For a county court system to be shot through with corrupt judges and underlings is an aberration. Unfortunately, the Luzerne County scandal has caused a taint to seep out and touch many others. These are individuals and institutions that have done nothing wrong, but who are affected because they are Pennsylvania judges, court employees, or individuals involved in county juvenile justice systems throughout Pennsylvania. In no way, for example, does the Luzerne County scandal reflect the performance of juvenile courts throughout the rest of the Commonwealth. In fact, Pennsylvania's juvenile court system, in its national profile, is considered a leader and a model of high standards and best practices. Regrettably, the scandal in Luzerne County may have done harm to the reputation of that system, as it may have done harm to the Commonwealth's judiciary generally. There are seven Supreme Court justices, 15 judges of the Superior Court, nine judges of the Commonwealth Court, more than 400 judges of the Common Pleas Courts, more than 500 magisterial district judges, and approximately 200 senior judges in Pennsylvania. Few among them have been cited for ethical breaches. Fewer still have been charged with crimes.

The Interbranch Commission on Juvenile Justice also recognizes the pain and embarrassment the judicial corruption scandal has inflicted on the community and on the citizens of Luzerne County. The wave of negative publicity that has continued for more than a year, the repeated "kids for cash" refrain, and the continuing disclosures of new corruption cases has become a drumbeat, almost a daily cavalcade painful to endure.

The news media, however, has played an important role. Other institutions and individuals may have failed in their roles, but the newspapers and other media of Luzerne County have impressively fulfilled theirs. While the media has thrived on the story it also has done an exemplary job of shining the light in dark corners and keeping readers, listeners and viewers informed of unfolding events. This has been especially true of Wilkes-Barre's two competing newspapers, the **Times Leader** and the **Citizens' Voice**, which have rooted out and reported many important stories, and of a third newspaper, not traditionally known for investigative reporting, the **Legal Intelligencer**, of Philadelphia.

To restore public confidence in the administration of justice in the face of corruption that citizens of Luzerne County have witnessed seems a formidable challenge. Yet a number of those who appeared before the commission spoke of the opportunity presented in this gloomy atmosphere, the possibility that the appalling scope of the corruption might generate a catalyst for positive change. Indeed, much change already has occurred within the court system of Luzerne County. A great deal more change is needed to ensure that there will be no repetition of the past and the misdeeds of villains who now face justice are erased. The commission in this report will outline what it sees as the needs and make recommendations as to how to address them.

This report is presented in five sections. Following this Introduction is Section II, titled **What Went Wrong**, a narrative that describes the many elements of the judicial scandal and the breakdown of the juvenile justice system in Luzerne County. Section III, **The Proceedings of the Interbranch Commission on Juvenile Justice**, provides a summary of the commission's investigation followed by segments, organized in categories that contain detailed findings and testimony. Section IV, **Recommendations**, provides all of the commission's recommendations. Section V is the report's **Conclusion**.

## II. WHAT WENT WRONG

### A Petition to the Supreme Court

On April 29, 2008, the Juvenile Law Center of Philadelphia, a public interest law firm, filed a petition with the Pennsylvania Supreme Court asking the court to exercise its King's Bench Power or Power of Extraordinary Jurisdiction "to end the practice of the Luzerne County Common Pleas Court of conducting delinquency hearings without counsel for children - or without lawful waivers of counsel."

The Supreme Court administers the entire Pennsylvania court system. With its King's Bench Power and Power of Extraordinary Jurisdiction, the court can take up any case or problem within the court system which it deems to be of immediate public importance.

The petition of the Juvenile Law Center contended that a matter of urgent importance was at hand in Luzerne County in the violation of constitutional rights of youths who appeared on delinquency matters before Judge Mark A. Ciavarella, Jr.

Under Pennsylvania's Rules of Juvenile Court Procedure, judges presiding in juvenile courts throughout the Commonwealth are required to inform juvenile defendants of the right to a lawyer prior to any proceeding. Juveniles are not permitted to waive the right to counsel unless judges conduct on-the-record discussions or "colloquies" to ensure that youths understand the right they are giving up and also understand the charges against them. The specific rule setting these requirements, Rule of Juvenile Court Procedure 152, was adopted by the Supreme Court on April 1, 2005, and took effect on October 1 of that year.

The Juvenile Law Center contended in its petition to the Supreme Court that Rule 152, which had been in effect for 2 1/2 years, was not being followed by Ciavarella. Instead, the center asserted, Ciavarella routinely failed to properly advise juvenile defendants of the right to counsel with the result that large numbers of youths in his court were unrepresented.

While petitioning on behalf of a few clients, the Juvenile Law Center asked the Supreme Court to issue a broad order expunging the records of all unrepresented juveniles who had been ruled delinquent by Ciavarella after Rule 152 took effect on October 1, 2005.

The state Attorney General's Office and the state Department of Public Welfare filed amicus briefs urging the Supreme Court to undertake a review based on statistics of the Pennsylvania Juvenile Court Judges' Commission showing that approximately 50 percent of all juvenile defendants in Luzerne County were unrepresented by counsel.

The District Attorney of Luzerne County opposed the Juvenile Law Center's petition arguing that a factual record documenting a broad pattern of abuse had not been established and the law center should not be permitted to by-pass the lower courts where such a record could be developed.

The Administrative Office of Pennsylvania Courts (AOPC), responding on behalf of Ciavarella, contended that issues raised by the Juvenile Law Center were moot because corrective measures had been taken. Shortly after the law center filed its petition, Ciavarella, then the president judge of Luzerne County had removed himself from juvenile court in May, 2008. The AOPC argued that the new judge assigned to juvenile court was abiding by the rule requiring a colloquy with juvenile defendants who waived counsel. In addition, new written notices were being provided to juveniles advising them and their parents of the right to counsel.

The Supreme Court on January 8, 2009, denied the petition of the Juvenile Law Center and declined to exercise its King's Bench Power.

Chief Justice Ronald D. Castille provided the Interbranch Commission on Juvenile Justice with a 14-page memorandum detailing the history of the litigation involving the Juvenile Law Center's petition. He noted that the memo did not reveal any internal deliberations of the Supreme Court "or other bodies, persons or institutions assisting the Supreme Court in its actions in this matter."

Chief Justice Castille said in the memo that the Supreme Court, in reviewing the pleadings related to the Juvenile Law Center's petition, took into account all information it had received, including the fact that Ciavarella was no longer hearing juvenile cases and that juveniles and their parents were being advised of the right to counsel. "Nothing in the pleadings suggested criminal conduct related to juvenile proceedings by former judges Ciavarella or Conahan, nor was there any information, or allegation, respecting the PA Child Care facilities or the judges' connection thereto."

Criminal charges had not been filed on January 8, 2009, when the Supreme Court declined to undertake a review of Luzerne County juvenile court.

But they soon would be.

## The Filing of Criminal Charges

On January 26, 2009, just 18 days after the Supreme Court issued its ruling, Martin C. Carlson, then the United States Attorney for the Middle District of Pennsylvania, filed a 22-page document in the U.S. District Court in Scranton, bearing the heading: "Information."

In a legal context, the otherwise nondescript term "Information" had precise meaning. It meant that criminal charges were being filed in a case where a grand jury indictment had been waived. The defendant or defendants had agreed to plead guilty.

In this case, the defendants were Mark A. Ciavarella, Jr., and Michael T. Conahan. The Luzerne County Common Pleas Court judges were charged with federal tax violations and defrauding the public of the right to honest service by elected public officials. The judges were accused of taking \$2.6 million in payoffs from the owner and builder of two juvenile detention facilities, PA Child Care in Pittston Township, Luzerne County, and Western PA Child Care in Butler County, Pa., during a period when Ciavarella, as the juvenile court judge of Luzerne County, had been placing large numbers of juveniles in detention at those facilities. Many of the juvenile defendants had appeared before Ciavarella without attorneys.

As outlined in the charges, Conahan and Ciavarella had received illegal income after entering into "agreements guaranteeing placement of juvenile offenders" in PA Child Care. This appears to have been the genesis of the "kids for cash" phrase that immediately attached to the case.

The individuals who allegedly made the payoffs - listed in the Information as "Participant 1" and "Participant 2" - later were identified as Robert J. Powell, a Luzerne County attorney and one of the original partners in PA Child Care and Western PA Child Care, and Robert K. Mericle, the contractor who built the two juvenile centers. Both men have pleaded guilty to federal charges and are cooperating with federal authorities.

The criminal Information charged that Conahan and Ciavarella had taken a series of actions to promote PA Child Care.

As president judge, Conahan had removed funding from the Luzerne County budget for the existing Luzerne County juvenile detention facility, resulting in its closure. That was a county-owned facility. In its place, Conahan had advocated in favor of the privately owned PA Child Care in 2003 and, later, Western PA Child Care. With Conahan's support, the facilities then received county contracts to house juvenile offenders who were placed in detention by Ciavarella. A county contract worth approximately \$58 million was awarded to PA Child Care in 2004.

The closing of the county-owned juvenile facility and the lease of PA Child Care were well publicized and highly controversial events in Luzerne County. But the criminal charges introduced for the first time accusations that Conahan and Ciavarella had received payoffs related to those events. The allegation that the county's current and immediate past president judges had been selling the freedom of children for personal profit created a media sensation.

Accompanying the criminal charges were plea agreements. Conahan and Ciavarella each agreed to plead guilty to one count of "honest service" fraud - depriving the public of the honest service expected of public officials - and one count of conspiracy to commit federal tax fraud. Under the agreements, the judges anticipated sentences of 87 months in prison. The U.S. Attorney signed the agreements. A final decision would be up to the sentencing judge. Conahan and Ciavarella also faced the potential of \$500,000 fines and restitution orders.

The filing of criminal charges triggered a series of actions by the Pennsylvania Supreme Court.

On January 28, 2009, the court removed both judges from active judicial service, relieving Ciavarella of all judicial and administrative responsibilities, and revoking the senior judge certification of Conahan, who had retired from the bench in 2007 and become a senior judge. Conahan's per diem pay as a senior judge was terminated. Ciavarella, a full-time elected judge, was temporarily permitted to continue receiving pay and benefits.

On January 30, the Juvenile Law Center returned to the Supreme Court and, in light of the federal criminal charges, again asked the court to undertake a review of Luzerne County's juvenile court. The law center argued that, in addition to widespread rights violations in the denial of counsel, there appeared to have been a "wholesale subversion of the Luzerne County juvenile justice system over a period of many years." The petition requested the appointment of a special master to review juvenile cases to determine whether adjudications should be reversed and the records expunged.

On February 2, the Supreme Court vacated its previous order denying the Juvenile Law Center's King's Bench petition.

Chief Justice Castille, in his memorandum to the Interbranch Commission on Juvenile Justice, wrote:

"In its Motion for Reconsideration, the JLC sought to enlarge the class of juveniles to include all juveniles who

were adjudicated delinquent by Ciavarella during the entire time that he received illegal payments, i.e., from 2003 through May 23, 2008, the date that Ciavarella ceased to preside over delinquency proceedings in Luzerne County. On February 5, 2009, Luzerne County District Attorney Jacqueline Musto Carroll filed a reply, concurring in the JLC's reconsideration request for the appointment of a special master to review the juvenile cases."

On February 11, 2009, the Supreme Court granted the Juvenile Law Center's petition, exercised its King's Bench Power and assumed full jurisdiction to address the handling of juvenile delinquency proceedings in Luzerne County. The court appointed Senior Judge Arthur E. Grim, of Berks County, as special master to review all cases in which Ciavarella had committed juveniles to PA Child Care and Western PA Child Care and cases in which juveniles had been denied the constitutional right to counsel in Ciavarella's court. Grim was given 120 days to file an interim report. The Supreme Court order said: "The goal of this Court is to determine whether the alleged travesty of juvenile justice in Luzerne County occurred, and if it did, to identify the affected juveniles and rectify the situation as fairly and swiftly as possible."

On February 12, Ciavarella and Conahan pleaded guilty in U.S. District Court. The following day, the Supreme Court terminated the salary and benefits of Ciavarella.

### **The Special Master**

Arthur Grim, the former president judge of Berks County and the chairman of the Pennsylvania Juvenile Court Judges' Commission, began his review of juvenile cases handled by Ciavarella immediately.

One month after his appointment, on March 12, Judge Grim filed his first interim report with recommendations to the Supreme Court.

Noting that Pennsylvania Rule of Juvenile Court Procedure 152 provides that juveniles may not waive the right to counsel unless "the waiver is knowingly, intelligently, and voluntarily made" and the judge "conducts a colloquy with the juvenile on the record," Judge Grim wrote:

"My preliminary investigation, including in-chambers discussions on February 17, 2009 with the Chief Public Defender, the First Assistant District Attorney, and the Chief Deputy Juvenile Probation Officer [all of Luzerne County], points to the conclusion that a very substantial number of juveniles who appeared without counsel before Judge Ciavarella for delinquency or related proceedings did not knowingly and intelligently waive their right to counsel. My investigation has also uncovered evidence that there was

routine deprivation of children's constitutional rights to appear before an impartial tribunal and to have an opportunity to be heard."

Judge Grim recommended that cases adjudicated by Ciavarella without counsel be vacated and the records expunged if the offenses involved minor crimes such as summary offenses or misdemeanors of the third degree. That was his immediate recommendation. He would evaluate cases involving more serious offenses in the next phase of his review.

His report explained the basis for his recommendation: "Had the juveniles in these [minor] cases been represented by competent counsel, had they appeared before an impartial tribunal, and had their other constitutional rights been protected, the vast majority of these cases would have resulted in consent decrees, or some lesser sanction. Had these cases resulted in consent decrees or lesser sanctions, all of these juveniles would be entitled to have their juvenile delinquency case records expunged by now pursuant to 18 Pa. C.S. Section 9123. An additional factor weighing in favor of vacating the adjudications and consent decrees and expunging the records in the categories specified below is that this prompt action in these non-serious cases will be at least one step toward righting the wrongs which were visited upon these juveniles and will help restore confidence in the justice system. Furthermore, it is not in the interest of the community to re-litigate these non-serious cases, nor do I believe that the victims would be well-served by new proceedings."

Two weeks after receiving that report, the Supreme Court issued an order on March 26, 2009, authorizing Judge Grim to move forward "as expeditiously as possible" to vacate the adjudications and expunge the records of the cases in the categories he had identified. Approximately 360 juveniles were identified as eligible or potentially eligible to have their cases vacated and the records expunged under the court's order. To accommodate the interests of individuals involved in civil litigation who claimed to have been adversely affected by actions of Ciavarella or Conahan, the Supreme Court later ordered that juvenile records subject to expungement be kept under seal pending the outcome of litigation.

After further investigation and review of juvenile records, Judge Grim filed a later report to the Supreme Court on August 7, 2009, in which he made a sweeping recommendation.

He had identified 1,866 cases in which juveniles appeared before Ciavarella without counsel between 2003 and 2008.

"Based upon my review of the transcripts," the August 7 report stated, "...I conclude that there is clear and convincing evidence that no juvenile who appeared before Judge Ciavarella without counsel between 2003 and May 2008 knowingly and intelligently waived his/her right to counsel."

"I also conclude," the report continued, "Judge Ciavarella knew he was violating the law and court rules by failing to conduct any, or legally adequate, waiver of counsel colloquies for the juveniles appearing before him. I base this conclusion upon (a) the transcripts I have reviewed, (b) the sheer number of juveniles, enumerated above, who appeared before Judge Ciavarella without counsel between 2003 and May 2008, and (c) the fact that Judge Ciavarella was reversed by the Pennsylvania Superior Court in the delinquency case *In re A.M.*, 766 A. 2d 1263 (Pa. Super. 2001), for failing to provide counsel for the juvenile and/or failing to conduct an appropriate waiver of counsel colloquy."

In that 2001 Superior Court case, Ciavarella had placed a 13-year-old youth in detention without informing him of his right to counsel. The youth had admitted to a charge of indecent assault. His mother requested a continuance so an attorney could be present at a hearing. Ciavarella ignored the request, adjudicated the juvenile and placed him in detention. The Superior Court vacated Ciavarella's adjudication. The court cited Pennsylvania statutory and case law requiring that juvenile defendants must be afforded the right to counsel at critical proceedings such as disposition hearings.

After that corrective ruling, Ciavarella was quoted in the Wilkes-Barre **Times Leader** as saying he had learned a lesson. "I'll never do it again," Ciavarella said, according to the newspaper. "They [juveniles] obviously have a right to a lawyer, and even if they come in and tell me that [they] don't want a lawyer, they're going to have one."

Judge Grim found, however, that for years afterward juveniles stood before Ciavarella unrepresented, and Ciavarella decided their cases without mention of the right to counsel. There was no discussion or colloquy to ensure that the youths understood the right they were giving up in waiving the right to counsel. In 54 percent of juvenile cases Ciavarella adjudicated between 2003 and 2008, youths were unrepresented.

Having reached those conclusions in his report, Judge Grim recommended to the Supreme Court that all adjudications of delinquency and consent decrees entered by Ciavarella between January 1, 2003, and May 31, 2008, be vacated. He recommended that the cases be dismissed and the records

be expunged. In cases involving juveniles who had not been discharged from detention, placement or probation or in which fines, restitution or fees had not been paid, Judge Grim recommended that he be authorized to promptly review each case to determine "an appropriate resolution" such as dismissal or a new hearing.

The report cited transcripts of juvenile proceedings from Ciavarella's court. In the proceedings, Judge Grim wrote, there often was "not a single word" concerning the juvenile's right to counsel.

One transcript of a 2006 proceeding before Ciavarella reads as follows:

The Court [Ciavarella]: "K, it says here that you have been charged with violation of the Controlled Substance, Drug[,] Device and Cosmetic Act. How do you wish to plead?"

The Juvenile: "Guilty."

The Court: "Based upon her admission, I will adjudicate her delinquent. Where did this occur?"

The Juvenile: "School."

The Court: "What grade are you in?"

The Juvenile: "Eighth."

The Court: "Were you at the school when I was there?"

The Juvenile: "Yeah."

The Court: "What did I say about drugs in school?"

The Juvenile: "That you're going to get - well, you're going to get arrested in school."

The Court: "What else did I tell you?"

The Juvenile: "That you will get arrested and get charged."

The Court: "What did I say I will do?"

The Juvenile: "Send us away."

The Court: "Did you think I was kidding?"

The Juvenile: "No."

The Court: "Very good. She will be remanded. Send her to FACT. Let her stay there until she learns her lesson. I mean what I say. Thank you."

Another transcript from 2008:

The Court: "T[.] [juvenile's Mother], R[.] [juvenile], you had an opportunity to review the waiver of counsel document?"

Juvenile's Mother: "Yes, sir."

The Juvenile: "Yes, sir."

The Court: "Is there anything in it that you did not understand?"

Juvenile's Mother: "No, sir."

The Juvenile: "No, sir."

The Court: "Is that your signature on the documents?"

Juvenile's Mother: "Yes, sir."

The Juvenile: "Yes, sir."

The Court: "R[.], you've been charged with disorderly conduct. How do you wish to plead?"

The Juvenile: "Guilty."

The Court: "Based upon his admission I will adjudicate him delinquent. What were you thinking about?"

The Juvenile: "I don't know."

The Court: "Were you at Crestwood [High School] when I was there?"

The Juvenile: "Yeah."

The Court: "Did you hear what I had to say?"

The Juvenile: "Yeah."

The Court: "Did you think I was kidding?"

The Juvenile: "No."

The Court: "Why would you do this? Why would you make me send you away?"

The Juvenile: "I don't know."

The Court: "I will remand him to Camp Adams. He will be in the ACT Program. He will stay at Camp Adams until he learns how to make better decisions. While he's at Camp Adams I want a drug and alcohol eval completed. And if required when he's done I want intensive outpatient relative to any problems they might find."

Juvenile's Mother: "Excuse me, sir. I do have a letter. He is seeking counseling."

The Court: "Give it to Mr. Piazza, please. How will you test for drugs today?"

The Juvenile: "I will pass."

The Court: "Good. He will be remanded."

Judge Grim's recommendation for universal expungement of juvenile cases was based on a sampling of 100 such transcripts.

### The Supreme Court Response

In response to Judge Grim's recommendation, the Supreme Court on October 29, 2009, issued an extraordinary nine-page order. The court adopted the recommendation and directed that adjudications and consent decrees involving all juveniles who had appeared before Ciavarella between January 1, 2003 and May 31, 2008, be vacated and the records expunged. Virtually every juvenile case Ciavarella had handled had been tainted, the court concluded, due to payoffs he had admitted receiving and his disregard for the rights of juveniles who appeared before him in court. Although estimates of the total number of cases handled by Ciavarella have varied widely, the final number of dismissals and expungements under the Supreme Court's order is expected to involve approximately 4,000 cases.

In its order, the Supreme Court said:

"Judge Grim's independent review of the transcripts of individual cases disclosed Ciavarella's systematic failure to determine whether a juvenile's waiver of the right to counsel was knowingly, intelligently and voluntarily tendered; the failure to conduct the requisite waiver colloquy on the record; the failure to advise the juvenile of the elements of the offenses charged; and the failure to determine whether an admission was tendered, and then to apprise the juvenile of the consequences of an admission of guilt. In addition, this Court's review of those same transcripts reveals a systematic failure to explain to the juveniles the consequences of foregoing trial, and the failure to ensure that the juveniles were informed of the factual bases for what amounted to peremptory guilty pleas. The transcripts reveal a disturbing lack of fundamental process, inimical to any system of justice, and made even more grievous since these matters involved juveniles... Ciavarella's complete disregard for the constitutional rights of the juveniles who appeared before him without counsel, and the dereliction of his responsibilities to ensure that the proceedings were conducted in compliance with due process and rules of procedure promulgated by this Court, fully support Judge Grim's analysis."

The court found that even cases in which juveniles were represented by lawyers and cases in which youths were not placed in PA Child Care or Western PA Child Care were tainted. It held:

"Judge Grim refers to the 'pall' that was cast over all juvenile matters presided over by Ciavarella, given his financial interest, and his conduct in cases where juveniles proceeded without counsel. We fully agree that, given the nature and extent of the taint, this Court simply cannot have confidence that any juvenile matter adjudicated by Ciavarella during this period was tried in a fair and impartial manner."

### Who Were These Men?

Mark Ciavarella and Michael Conahan are natives of a region in Pennsylvania with a stormy and violent history dating to colonial days, a rugged, isolated locale which even today seems to exist unto itself. Luzerne County is a place of exceptional natural beauty with mountains, lush valleys and the magnificent North Branch of the Susquehanna River flowing through it. The principal city of Wilkes-Barre was described by a justice of the Pennsylvania Supreme Court in the year 1900 as "the most picturesquely beautiful city in the Commonwealth." But that was in the golden era when the coal mines and railroads and factories were churning out wealth for their owners, before time and events tarnished that lovely image. The history of the Wyoming Valley is written in tales of greed, violence, fortunes won and lost, conflict and corruption.

In colonial days, settlers from Connecticut and Pennsylvania and Native Americans waged war for control of the fertile river valley. In the 19th and 20th Centuries, king coal produced many fortunes. Tens of thousands of exploited immigrant workers labored in the mines to bring up the hard anthracite coal - "black diamonds" - that made mine owners rich. But market changes sent the coal industry into deep decline as the 20th Century advanced. Oil and gas replaced coal as a heating fuel. The coal companies began to scrounge and cut corners for profits. When the Knox Coal Company illegally excavated beneath the Susquehanna River in 1959, the Susquehanna broke through the roof of Knox's River Slope Mine. A thundering torrent roared into mine shafts and passageways, sweeping 12 miners to their deaths. A massive whirlpool sucked water through miles of interconnected mines beneath the Wyoming Valley. To plug the hole, workers rolled 60 coal hopper cars into the whirlpool. Then 400 one-ton coal cars. Then 25,000 cubic yards of dirt, rock and boulders. When the hole was sealed, billions of tons of anthracite coal had been lost forever. The coal was inaccessible in the flooded mines. The Knox Mine disaster was a death knell for an industry that had been in decline for half a century.

With coal no longer king, Luzerne County and its people endured long years of economic depression. Added hardships came with disastrous floods in 1936 and 1972. In politics, a culture of mutual back-scratching dominated relationships between politicians, public officials and businessmen. A powerful organized crime group held sway in the region. Today, the county, with a population of 312,000, reflects all that history. It is a cauldron of mixed elements - a patchwork of 76 municipalities, urban and rural, in which the multi-ethnic population has intermingled and intermarried for more than a century. Mark Ciavarella and Michael Conahan are products of that culture. They were born into it, Ciavarella in Wilkes-Barre in 1950 and Conahan in Hazleton in 1952, and they grew up in it.

Conahan was a magisterial district judge for 15 years before winning election to the Court of Common Pleas in 1993. Ciavarella was elected to the Common Pleas Court in 1995. The two men were close friends. They were partners in business ventures and next door neighbors for a time. With their wives, they shared a luxury condominium in Florida.

Ciavarella has received far more public attention in the "kids for cash" scandal than Conahan. That is because Ciavarella presided in juvenile court where he relished his role as a "zero-tolerance" judge. He never shied away from the media.

Even after charges were filed against him, Ciavarella continued to speak with the media, raising his profile even higher by disputing various allegations and interpretations of charges. In an extraordinary appearance, he testified in an unrelated civil matter and talked about payoffs he had received - referring to them as "finder's fees."

By contrast, Conahan remained silent and out-of-sight after the charges were filed, allowing the public to see him only as a stone-faced, one-dimensional figure. But Conahan was far from a bystander in the breakdown of the juvenile justice system in Luzerne County. By all accounts, he was deeply involved in activities that led to those failures. As president judge from 2002 through 2006, Conahan wielded tremendous power. He was described by some as "the boss," and he acted like one. He ran the courthouse like a personal sovereignty, placing friends and relatives on the payroll, sealing records at will and personally assigning cases. Conahan was known for a gentlemanly demeanor, but he was a power-broker, and he was feared.

For years, it was Conahan's habit - attested to in court records - to share meals with William "Big Billy" D'Elia, the reputed organized crime leader of Northeastern Pennsylvania. The two men often ate breakfast together at

Perkins Restaurant on Route 309 in Wilkes-Barre. They met early, around 6:30 a.m., and sat in a booth in a back corner of the restaurant's front section where no other patrons were seated. At times, business papers and envelopes were spread on the table before them. They sometimes discussed court cases.

The contacts between the president judge and the alleged mob boss were not limited solely to breakfast meetings. D'Elia sometimes dropped off envelopes at the Luzerne County Courthouse which were hand-delivered to Conahan by a courthouse security guard.

Details of the relationship between the judge and the reputed mob boss flow from an improbable source - a defamation case.

### **The Platt Report**

Unrelated to the federal criminal charges against Conahan and Ciavarella, the Pennsylvania Supreme Court in 2009 ordered a review of a case in which Ciavarella in 2006 awarded a \$3.5 million verdict to a man who had sued a Wilkes-Barre newspaper for defamation.

The newspaper, the **Citizens' Voice** and its owner, the **Scranton Times, L.P.**, contended that the newspaper was denied a fair trial. In light of corruption charges against Ciavarella and the emergence of a witness who claimed there had been a prearranged outcome in the trial, the newspaper asked the Supreme Court to exercise its King's Bench Power to order a review of the defamation case.

The Supreme Court granted the petition on April 7, 2009, and assigned President Judge William H. Platt of Lehigh County to hold an evidentiary hearing to determine if a new trial was warranted.

The plaintiff in the defamation case was a Luzerne County businessman named Thomas Joseph, a friend and nominal business associate of William D'Elia. Joseph filed suit after articles appeared in the **Citizens' Voice** in 2001 reporting that federal investigators had served search warrants on Joseph's home and his company, Acumark Inc., and seized records in connection with a federal racketeering investigation of D'Elia and associates. The articles, quoting unnamed sources, said the investigation might be focused on money-laundering, drug dealing and illegal gun sales. Joseph was a friend of D'Elia's who claimed to have had only minor - and legitimate - business dealings with him. He contended in his lawsuit that the newspaper articles were defamatory.

The procedural background showed that Ciavarella was not assigned to the Joseph case by objective means, such as a rotation or wheel method used in many courts. Rather, he

received the assignment at the direction of then-President Judge Conahan.

Ciavarella heard the case without a jury. After an eight-day trial in 2006, he issued a \$3.5 million verdict in favor of Joseph and Acumark. The verdict was upheld by the Pennsylvania Superior Court. The newspaper company appealed to the Pennsylvania Supreme Court. While the appeal was pending, a witness emerged with a striking story.

Robert Kulick, a former restaurant owner in Luzerne County, knew both Conahan and D'Elia. Kulick sometimes shared breakfast with the judge and the reputed mob leader at Perkins Restaurant. Kulick claimed that D'Elia had told him before the defamation case went to trial that the outcome would be "positive" for Joseph and Acumark.

In light of Kulick's allegation, and against the backdrop of the criminal charges against Conahan and Ciavarella, the Supreme Court assigned Judge Platt to conduct an evidentiary hearing. Kulick at the time was awaiting sentencing on federal weapons possession charges. He was cooperating with authorities in the ongoing Luzerne County corruption probe. His eventual testimony in connection with the defamation case was part of that cooperation.

Judge Platt conducted the evidentiary hearing on July 1 and 2, 2009.

In a proceeding filled with revelations, one witness stood out above all others. His name was Mark Ciavarella. The former judge took the witness stand on July 2 in Courtroom 1B of the Lehigh County Courthouse in Allentown.

At the time, Ciavarella's guilty plea in federal court was still in effect. On the witness stand, the former judge freely described arrangements by which he had received hundreds of thousands of dollars in payments from the contractor who built PA Child Care and Western PA Child Care and from one of the partners who owned the facilities.

Ciavarella testified that it was his idea, not Conahan's, to establish a new juvenile detention facility for Luzerne County.

"During my first two or three years as the juvenile court judge, I came to recognize, realize and understand that the facility where we were housing juveniles was an absolute dump and absolute disgrace," Ciavarella testified.

"I went to the county commissioners and I asked them to build a new detention center. They told me they would, but they didn't want to build it and announce that until after the election. This was in 1998 or '99.

"The election came. The election went. They didn't take any action...I went to Judge Conahan and I said, if you know anybody that has the wherewithal to build a facility, tell them to build one because this place is a dump and it shouldn't be open. That's how it came about."

Ciavarella said Conahan lined up Robert Powell and a partner, Gregory Zappala, who has not been charged, to undertake the project.

Ciavarella testified that payments he and Conahan received from Powell took the form of rent on a condominium in Florida. The rate was \$10,000 a month for six years - prepaid. Ciavarella said that Powell never paid the full amount that was due: He only paid \$520,000.

Ciavarella testified that Robert Mericle wanted the construction contract for PA Child Care, and enlisted Ciavarella's help to get it.

"Sometime after the contract was set, Rob Mericle came into my chambers and indicated that he was going to pay me a finder's fee."

Question: "When was that?"

Ciavarella: "My recollection was sometime, I believe, in April of 2002."

Question: "How much?"

Answer: "He told me he would pay me ten percent of whatever the contract price was."

Question: "When did you decide to cut Michael Conahan in on that?"

Answer: "That day."

Question: "How did you go about doing that?"

Answer: "Walked over to his chambers and told him what had transpired in my chambers. He said to me that that is one hell of a friend you have. That was the end of it."

Asked why he offered Conahan half the money, Ciavarella replied: "He was the one that made it all possible. He put the people in the room that came up with the financing to build the facility."

Ciavarella testified that his share of the "finder's fee" was \$440,000. Through a series of transactions, he said, the money was paid from Mericle's company to an individual named Robert Matta, then to a firm owned by Conahan called Beverage Marketing, and finally to him.

"I did not consider what I did to be illegal," Ciavarella testified. "I did not consider the money that I was receiving to be illegal mob money. I was told it was legal money. I was told it was something that I was entitled to. And for that reason, I did not have a problem with where that money went or how it came to me."

Even so, he acknowledged that he did not pay taxes on the money. He said he thought Conahan would pay the taxes.

One month after the evidentiary hearing, President Judge Platt filed his Report and Recommendation with the Supreme Court on August 3, 2009. Drawing from witness testimony and exhibits he made findings of fact which included the following:

- From 2004 to 2006, then-President Judge Conahan and William D'Elia held breakfast meetings at least twice a month at Perkins Restaurant on Route 309, meeting at about 6:30 a.m. and sitting in a booth in a rear corner of the restaurant's front section where other patrons normally were not seated.
- Robert Kulick sometimes joined Conahan and D'Elia at these sessions.
- Kulick and D'Elia discussed the **Citizens' Voice** defamation case many times, and D'Elia laughed saying "that Joseph would win the case." D'Elia told Kulick that, based on information he received from Conahan, there would be a "positive outcome" for Joseph.
- From 2003 to 2005, Patricia E. Benzi, a security guard at the Luzerne County Courthouse, delivered between 10 and 20 plain envelopes from D'Elia to Conahan. Benzi picked up the envelopes from D'Elia in the employee parking lot of the courthouse and carried them to Conahan at his judicial chambers.
- Ciavarella claimed to be unaware of any judicial irregularity in the Joseph case. However, in view of his guilty plea in federal court, Ciavarella admitted on the witness stand to being a corrupt judge at the time he presided over the Joseph case.
- The assignment of the Joseph case was out of the ordinary. It was made by William T. Sharkey, Sr., the court administrator [Conahan's cousin], at the direction of Conahan. Ciavarella was not assigned to handle non-jury trials at the time.
- Attorney Robert Powell appeared in court before Ciavarella during the period that he was making payments to Ciavarella. Ciavarella did not disclose his private financial arrangements with Powell to other lawyers. He admitted he should have made that disclosure, and that he should have recused himself from Powell's cases. But no attorney, Ciavarella said, asked the right question to prompt him to do so.

- Ciavarella did not think it was smart for Conahan to eat breakfast with D'Elia on a regular basis, given D'Elia's alleged organized crime involvement. Conahan responded that he and D'Elia were friends; they had been eating together for 30 years. He saw no reason to stop.

Judge Platt recommended to the Supreme Court that a new trial in the Joseph case was warranted. He concluded that many aspects of the case presented appearances of impropriety.

The irregular assignment of the case to Ciavarella was one example. Of that assignment, the Platt report said:

"[Deputy Administrator for Civil Trials Ann Burns] was so concerned about the way the trial assignment was made that she included a notation of how the assignment was made in the Court Administrator Office's database. Making this notation was something that she normally did not do. She made the notation in this particular case, because she wanted to protect herself. She did not explain why or from whom she needed protection. A reasonable inference is that Burns had some unspecified concerns about the practices or the persons involved to cause her to take the unusual step of recording who made the trial assignment in the Joseph case."

The Platt report continues:

"The Joseph case involved a tangled web of interconnected relationships that created the appearance of impropriety in the way Ciavarella and Conahan conducted themselves throughout the case. These relationships involved Ciavarella, Conahan, D'Elia, Kulick, and Joseph. They may not directly link all parties, and they may not have been readily apparent. They were real, however, and help explain the actions of Ciavarella and Conahan.

"A central figure in this proceeding is D'Elia. The Joseph case was predicated on ten newspaper articles that discussed or mentioned Joseph and D'Elia, and others, in connection with a federal criminal investigation. The articles reported that D'Elia was a reported member of an organized crime family in northeastern Pennsylvania. The hearing evidence established that D'Elia had relationships with Ciavarella, Conahan, Kulick, and Joseph that varied in nature and degree. The other individuals had relationships with one another, but the common denominator involves the relationship each had with D'Elia."

Judge Platt found that Conahan's longstanding friendship with D'Elia created on its face the appearance of impropriety.

The judge noted that Ciavarella denied in his testimony that he had discussed the Joseph case with Conahan, but Platt found this doubtful.

"The court finds it difficult to reconcile this denial given their close friendship, their judicial relationship, and their shared involvement in the criminal scheme that resulted in the federal criminal prosecutions. Ciavarella knew that Conahan and D'Elia had a long, close personal relationship and knew from reading the newspaper articles that formed the basis for the Joseph case that D'Elia played a prominent [role] in the content of those articles. Based upon these facts and considering that Ciavarella's initial response after speaking with the contractor who offered to make illegal payments was to discuss it with Conahan, the court finds it unlikely that Ciavarella never spoke with Conahan about the Joseph case."

As to Ciavarella, Judge Platt concluded: "Ciavarella's admissions that he was a corrupt judge while presiding over the Joseph case, that he did not report outside income on the annual financial disclosure form for judges, that he lied when completing the form, and that he failed to properly report income on his tax returns are sufficient basis to conclude that he violated his fiduciary duty to the citizens of the Commonwealth of Pennsylvania, that he violated his duty to refrain from conduct that constituted a conflict of interest, and that he failed in his obligation to recuse himself in cases in which he had a conflict of interest. These conclusions alone are sufficient to create the appearance of impropriety to serve as judge for any matter in the Joseph case. Tellingly, former Judge Ciavarella, a witness called by [Joseph], was, because of his demeanor and lack of remorse, one of [the newspaper's] best witnesses. His testimony was one of the factors that persuaded me there was and is an appearance of impropriety and a need for a new trial in this case."

Judge Platt recommended that all substantive orders of Conahan and Ciavarella in the Joseph case be vacated and the case be returned to Luzerne County for a new non-jury trial.

On November 4, 2009, the Supreme Court adopted those recommendations and ordered a new trial "to remedy the pervasive appearance of impropriety in this case, and to give justice, and the appearance of justice, an opportunity to prevail."

In a seven-page order, the Supreme Court said:

"Conahan and Ciavarella were confederates in what appears to have been (by Ciavarella's own admissions here) a long-term criminal conspiracy. The judicial officers also positioned themselves and others (such as Sharkey) within

the Luzerne County court system so that they could control the assignment and trial of individual cases, if they were inclined to do so. And there was direct evidence that the assignment of this case to Ciavarella was controlled by Conahan and was not in the ordinary course of business."

The court added a comment about the underlying issue involved in the lawsuit itself - the dispute for which Ciavarella awarded a \$3.5 million defamation verdict against a newspaper:

"The inherently troubling nature of Conahan's and Ciavarella's compromised positions as jurists is enhanced, in this case, given that the subject matter of this defamation lawsuit concerned newspaper articles reporting on the undisputed fact of a federal criminal investigation into D'Elia's and Joseph's alleged ties to organized crime activities, an investigation which included search warrants for Joseph's home and businesses."

### **Plea Rejection**

Following the filing of criminal charges in January, the "kids for cash" saga produced one stunning revelation upon another for six months.

Then, on July 30, 2009, the plea agreement by which Mark Ciavarella and Michael Conahan expected to be permitted to serve 87 months in prison came undone. In an unexpected ruling, the federal judge presiding over their criminal case, Senior U.S. District Judge Edwin M. Kosik, rejected the guilty pleas of the two former judges, saying they had not met the terms of their plea agreements or shown "affirmative acceptance of responsibility" for their conduct.

After pleading guilty, Conahan and Ciavarella had undermined the delicate terms of their plea agreements by disputing and taking issue with the crimes they had admitted to. They had done this in distinctly different ways, Ciavarella publicly, Conahan privately.

Judge Kosik explained the distinction in his memorandum and order rejecting the plea agreements.

"Although each defendant enters a plea of guilty to a binding plea agreement," Judge Kosik wrote, "the probation officers are charged with providing a report that affords the Court with a complete history of the defendants, and their roles in aiding and abetting each other in the offenses. Each defendant is afforded the right to object or dispute the pre-sentence report, including the calculation of the sentence to be imposed and other relevant factual items.

"Defendant Conahan filed several sets of objections, some

of which were resolved by the probation officer. The most recent revised objections, which remain unresolved, total some twelve which address more than one paragraph of the pre-sentence report. Without elaboration for our purpose here, some consist of denials concerning offense matters including the receipts of money. The report represents that Defendant Conahan refused to discuss the motivation behind his conduct, attempted to obstruct and impede justice, and failed to clearly demonstrate affirmative acceptance of responsibility with his denials and contradiction of evidence, which is essential to the tenor of the Government's case.

"Defendant Ciavarella is less obstructive to the sentencing report, but instead has resorted to public statements of remorse, more for his personal circumstances, yet he continues to deny what he terms 'quid pro quo' his receipt of money as a finder's fee, notwithstanding the Government's abundance of evidence of his routine deprivation of children's constitutional rights by commitments to private juvenile facilities he helped to create in return for a 'finder's fee' in direct conflict of interest with his judicial roles. Such denials are self serving and abundantly contradicted by the evidence the Government proffers as offense conduct."

Judge Kosik noted that the former judges had the right to withdraw their guilty pleas. If they did not, he wrote, the court "may dispose of the cases less favorably toward the defendants than the plea agreements contemplated."

If that caution was not adequately clear, Kosik quoted the oath that Conahan and Ciavarella had taken when they became judges - "I do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity."

Kosik added this comment in his memorandum: "We paraphrase what has been written about judges, that, above all things, integrity is their lot and proper virtue, the landmark, and he that removes it, corrupts the fountain. In this case, the fountain from which the public drinks is confidence in the judicial system - a fountain which may be corrupted for a time well after this case."

Ciavarella and Conahan withdrew their guilty pleas.

### **Indictment**

On September 9, 2009, a federal grand jury returned a 48-count indictment charging both men with using the Luzerne County Court of Common Pleas as a criminal enterprise to enrich themselves, secretly deriving more than \$2.8 million - a sum increased from \$2.6 million in the

earlier charges - in illegal income between June 2000 and January 2007.

Beyond honest services fraud and tax violations to which Conahan and Ciavarella originally had agreed to plead guilty, the indictment charged both men with violating the federal racketeering statute, conspiracy, extortion, bribery, money laundering - the latter involving the transfer of funds to disguise alleged payoffs - and conspiracy to defraud the United States by impeding the Internal Revenue Service in the collection of income taxes.

The indictment charged:

"The actions from which they derived improper income included, but were not limited to: entering into agreements guaranteeing placement of juvenile offenders with PA Child Care, LLC and Western PA Child Care, LLC; taking official action to remove funding from the Luzerne County Court budget for the Luzerne County juvenile detention facility, effectively closing the county-run youth detention center; facilitating the construction of juvenile detention facilities and an expansion to one of those facilities by PA Child Care and Western PA Child Care; directing that juvenile offenders be lodged at juvenile detention facilities operated by PA Child Care and Western PA Child Care...assisting PA Child Care and Western PA Child Care to secure agreements with Luzerne County worth tens of millions of dollars for the placement of juvenile offenders, including an agreement in late 2004 worth approximately \$58,000,000."

The indictment described the relationship and dealings between Ciavarella, Conahan, Robert J. Powell and Robert Mericle in this way:

"In approximately June of 2000, the defendant Mark A. Ciavarella, Jr., whose duties then included presiding over juvenile proceedings as a judge of the Court of Common Pleas for Luzerne County, had discussions with an attorney who had a law practice in Luzerne County, [Powell] who was interested in constructing a juvenile detention facility in Luzerne County. [Ciavarella] introduced [Powell] to a contractor [Mericle] who was a friend of [Ciavarella] for the purpose of locating land for the juvenile facility and for constructing the facility.

"[Powell] and another person, doing business as PA Child Care, acquired land in Luzerne County and entered into an agreement with [Mericle] to construct a juvenile detention center to be operated by PA Child Care.

"On or about January 29, 2002, defendant Michael T. Conahan, acting in his capacity as President Judge of Luzerne County, signed a 'Placement Guarantee Agreement'

between PA Child Care and the Court of Common Pleas for Luzerne County to house juvenile offenders at the PA Child Care facility. The 'Placement Guarantee Agreement' provided that the Court of Common Pleas for Luzerne County would pay PA Child Care the annual 'Rental Installment' sum of \$1,314,000 and stipulated that '[t]he obligation of the Court to make payment of the Rental Installments shall be absolute and unconditional.'

"In or about December, 2002, [Conahan], acting in his capacity as President Judge of Luzerne County took official action to remove funding from the Luzerne County Court budget for the Luzerne County juvenile detention facility. The practical effect of this action was to close the Luzerne County youth detention center.

"In or before January of 2003, [Conahan] and [Ciavarella] arranged to receive a payment in the amount of \$997,600 in connection with the roles they played as judges in accomplishing the construction of the PA Child Care juvenile detention facility.

"In order to conceal the \$997,600 payment to defendants Conahan and Ciavarella, Jr., [Powell] and [Mericle] signed a written 'Registration and Commission Agreement' prepared by [Mericle] and backdated to February 19, 2002, which purported to be an agreement for [Mericle] to pay a broker's fee of \$997,600 to [Powell]. In fact, however, a large portion of the money was paid to defendants Michael T. Conahan and Mark A. Ciavarella, Jr."

The indictment further charged that:

- When Western PA Child Care opened in Butler County, Pa., in 2005, Powell made a \$1 million payment to Conahan and Ciavarella, which also was arranged as a "broker's fee."
- A \$150,000 payment was made to the judges when an addition was built at PA Child Care in Luzerne County in 2006.
- After the juvenile centers were built, Conahan and Ciavarella continued to demand money from Powell. The judges allegedly received hundreds of thousands of dollars in additional payments "for their past and anticipated future official actions."

With regard to the placement of juveniles, the indictment said:

- Conahan entered into agreements guaranteeing the placement of juvenile offenders in PA Child Care and Western PA Child Care, and Ciavarella took necessary steps to ensure that the guarantees were met.
- Accused juvenile offenders were ordered detained by Ciavarella even when juvenile probation officers did not recommend detention and even when detention was unreasonable and unwarranted.

- Ciavarella and others "operating at his behest" exerted pressure on staff of the Court of Common Pleas to recommend detention of juvenile offenders. On some occasions, probation officers were pressured to change recommendations of release to recommendations of detention.
- Ciavarella adopted procedures in juvenile court which resulted in juveniles appearing without counsel and without creation of a normal court record. These procedures, in addition to violating the juveniles' rights, created the potential for increased numbers of juveniles to be sent to the detention facilities of PA Child Care and Western PA Child Care.

On June 9, 2009, the U.S. Attorney for the Middle District of Pennsylvania charged Robert J. Powell with failing to report a felony to federal authorities and with being an accessory after the fact to a tax conspiracy. Powell agreed to plead guilty, to forfeit his interest in a 56-foot yacht, the "Reel Justice," to forfeit a 1981 Sabreliner 65 corporate jet, and to cooperate with federal authorities. It was disclosed that he had worn a wire to record conversations with Ciavarella and Conahan which helped build the case against the judges. Powell is continuing to cooperate in an expanded federal probe that now includes a focus on case fixing.

Powell has sold his interest in the juvenile facilities to his former partner, Gregory Zappala, son of retired Pennsylvania Chief Justice Stephen A. Zappala. Gregory Zappala has not been accused of wrongdoing. Powell entered his guilty plea on July 1. He has not been sentenced.

On August 12, 2009, Robert Mericle was charged with concealing from federal investigators his knowledge that Conahan and Ciavarella were engaged in a conspiracy to defraud the government of federal taxes on income related to payoffs. Mericle signed a plea agreement and is cooperating in the continuing investigation. As part of his plea agreement, Mericle contributed \$2,150,000 to fund "programs for the health, safety and general welfare of the children of Luzerne County." The money is to be dispersed under supervision of the federal court.

In yet another surprise development, Conahan on April 29, 2010, agreed to plead guilty to a charge of racketeering. He entered into a plea agreement, but his sentence was left to be determined by a judge at a future time. Nor were other details made public - particularly whether Conahan was cooperating with the government's corruption investigation.

In agreeing to once again plead guilty, Conahan did a solo act. Ciavarella did not join him at the courthouse.

Ciavarella's lawyer announced to the media that his client would go to trial.

These are the men - Ciavarella and Conahan - who are directly responsible for the failure of the juvenile justice system in Luzerne County.

The record of their conduct was being drawn together in criminal charges, the work of the Special Master and Judge Platt's evidentiary review of the defamation case involving Thomas Joseph and the **Citizens' Voice** as the Interbranch Commission on Juvenile Justice was forming during the late summer and early fall of 2009.

It is against this background that the Interbranch Commission on Juvenile Justice began holding public hearings and receiving evidence on October 14, 2009.

Given the magnitude of the charges against them, the commission had no realistic expectation that Conahan or Ciavarella would cooperate with its investigation. Both men declined, through their attorneys, to testify before the commission.

The mandate of the commission is to probe not only the activities of Conahan and Ciavarella but to look beyond them at the conduct of others in the juvenile justice system and to make recommendations, in view of their actions or failures, that will ensure an honest and properly functioning court system in the future. These other individuals have not been charged with crimes or misconduct. But by omission, inaction, silence, inadvertence, ignorance, even unawareness, many contributed to the failures that caused potentially thousands of juveniles to be denied basic constitutional rights in delinquency proceedings.

### III. PROCEEDINGS OF THE INTERBRANCH COMMISSION

The task of the Interbranch Commission on Juvenile Justice was to investigate the failure of the juvenile justice system in Luzerne County, to restore public confidence in the administration of justice and to prevent a recurrence of such a failure in Luzerne County or elsewhere in the Commonwealth.

The commission held 11 days of public hearings in Harrisburg and Wilkes-Barre between October 2009 and April 2010 and took testimony from more than 60 witnesses. The witnesses included individuals involved in the juvenile justice system, and those impacted by it, at every level. Many lived and worked in Luzerne County. The commission heard from the county president judge, local prosecutors, public defenders, probation department officials, juveniles, parents, county commissioners and others with first-hand perspectives on the breakdown in the county's juvenile court. Other witnesses presented statewide or national perspectives on juvenile justice issues and best practices in juvenile courts. The commission's schedule did not allow time for all who wished to testify to be heard. Many individuals who did not testify at public hearings instead provided written or verbal information to aid the commission in its work.

Transcripts of all the commission's hearings and other information, including standards for prosecutors and defense lawyers in juvenile cases, and the victim advocate's report, are available on the Web site of Pennsylvania's Unified Judicial System at: <http://www.pacourts.us/Links/Public/InterbranchCommissionJuvenileJustice.htm>

#### The Victims

Many people have been harmed by the corruption wrought by former judges Ciavarella and Conahan. The impact of the "kids for cash" scandal radiates far beyond the juveniles directly touched by Ciavarella's improper courtroom practices.

When **Judge Arthur E. Grim**, the special master, testified before the Interbranch Commission on Juvenile Justice he spoke of a wide range of victims affected by the scandal.

"It would be presumptuous of me to describe the full impact that these acts had on the victims," Judge Grim said. "And when I talk about the victims my definition of victim is a lot broader than simply the young people that appeared in this [Ciavarella's] court.

"Yes, they were victims of a system run amuck. Their families were victims. The original people who may very well have been the object of their delinquent acts or

their acts which were against the law, clearly they are victims.

"Employees of Pennsylvania Child Care have approached me and have said that in their own neighborhoods they are treated as somewhat like pariah because the people in their neighborhoods believe that they must have known about it or they must have been on the take themselves.

"And the community at large in my opinion has been victimized by this. The impact on citizens, again, that I've heard from by mail and even by e-mail have indicated to me that they have felt victimized by it.

"So, again, the situation is a lot broader than just simply talking about the children and the families. We need to broaden the scope of what is meant by victimization. Now, what is there to do about it?"

The commission heard from young people who, as juvenile defendants, appeared before Mark Ciavarella and were traumatized by the experience. Parents of juvenile defendants told of the impact of having their children sent arbitrarily and unexpectedly into detention. By contrast, the commission heard accounts of victims of juvenile crimes, and the bitterness and frustration those individuals felt at records being expunged and adjudications being vacated for youths who had committed crimes against them.

Beyond individual victims, the commission heard testimony of a more abstract class of victim - the collective citizens of Luzerne County who have felt the demoralizing impact of the judicial scandal on their community.

**Jacqueline Musto Carroll**, the Luzerne County district attorney, spoke of the embarrassment the scandal has created for the people who live in the county.

"Do you think I like going across the state and having people say Luzerne County and laughing at us and thinking that we're all rotten people and that we just stood by while this happened?" Carroll asked. "That's so unfair, because we're not. And we're good people. And we come from coal miners, and we come from war veterans. It's upsetting. It really is."

#### The Victim Advocate

**Carol L. Lavery**, Victim Advocate of the Commonwealth of Pennsylvania, told the commission: "Victims include all of the people living in Luzerne County, who have learned to dread the daily news reports of investigations, arrests, indictments, and graft. Residents who are characterized as

accepting if not embracing that greed. Communities that are described as backward, with the ever present buzz word 'culture' defined to mean corrupt, pitiless, and powerless."

Lavery characterized the broad-based community harm caused by Ciavarella as so encompassing as to amount to an "incident of mass violence."

The central focus of Lavery's testimony to the commission, however, related to "original victims" of juvenile crimes. Many of these individuals, Lavery said, were distressed that the cases of perpetrators of crimes against them were being dismissed and the records expunged.

In the publicity arising from the "kids for cash" scandal, the victims of juvenile crimes have been largely overlooked. Lavery, who served as a spokesperson for this group, stressed that this oversight - perhaps a sense of getting lost in the shuffle - has been a source of bitterness and frustration for many crime victims. Lavery's testimony underscored a key point: The fact that injustices were done to juvenile defendants by a rogue judge does not negate the reality that in many instances those same young people committed delinquent acts, and often admitted doing so.

### **Victims of Juvenile Crimes**

Lavery cited several illustrations of "original victims" who felt, despite the judicial corruption scandal, that the juvenile justice system had worked effectively in their cases and now the system had derailed by wiping out appropriate adjudications.

One case involved an assault by one school student on another. The assailant was adjudicated by Ciavarella, placed on probation and ordered to stay away from the victim. The victim's parents thought the system had worked, and a record of the attacker's violent nature had been made. But when the case was vacated and the record expunged, the stay-away order was no longer in effect. There was no record to look back to in the event of a future attack by the violence-prone student. The parents were concerned for their child's safety.

Another case involved a woman who had been violently assaulted by a group of juveniles. The woman's son wanted to retaliate. The mother persuaded her son that the way to respond was through the courts. The attackers were ruled delinquent and placed in out-of-home facilities. A record of their offenses was created. The mother believed the system had worked. But when the adjudications were vacated and the records expunged, Lavery said, the mother did not know what to tell her son. She lost confidence in the justice system.

"To each of these parents, their efforts to do the right thing

in seeking justice in the juvenile justice system now seems to have been in vain," Lavery testified. "...they find the fact that the cases are being vacated and expunged as incomprehensible.

"One mother spoke about her child who was severely beaten during an attack at school by a group of juveniles who had notified other students ahead of time to come and watch the assault. The mother felt the juveniles did not receive a harsh enough sentence.

"For their cases to be expunged she [the mother] said, what does that say to my child and every other child that is assaulted or bullied? I hope someone takes into consideration the hurt, the fear, the pain my child had to endure at the hands of these juveniles that are very, very troubled juveniles."

Lavery said that crime victims who are owed restitution believe it particularly unfair that they will not be compensated for losses resulting from juvenile crimes. "Many of the victims who I -- who I heard from talked about not having received their restitution, and many, many of them were very angry about that," Lavery testified. "Many victims talked also about their frustration over the loss of not only restitution, but personal and irreplaceable items of sentimental value.

"They talked of burglaries of family heirlooms, the grandparents' jewelry, of coin collections that were never recovered. They spoke of personal items saved to pass along to their own children, war medals and work and retirement mementos destroyed in burglaries and in arsons. And for some victims the lack of any recognition or remorse or apology from the juvenile has increased the harm once these cases have been vacated and expunged.

"They see the system as failing to help the juvenile understand or take responsibility for the harm since that apology was never forthcoming."

### **Juveniles and Parents**

The commission also heard testimony from "juvenile victims" - young people who appeared in court before Ciavarella - and from their parents.

A 19-year-old youth identified as D.G. and his mother, M.G., a teacher, told of an incident in which D.G. was charged with throwing rocks on a highway when he was 12-years old. The mother contended that an older boy had thrown the rocks, and her son was innocent. Even so, she testified, a lawyer hired by the family advised her son to admit the charge, and the boy agreed to do so.

In court, the mother testified, Ciavarella leafed through a folder on D.G.'s case and spotted the fact that D.G. had received a commendation from former Governor Tom Ridge for attaining a top award as a Cub Scout. "And his words were something like, well, Mr. Big Shot Boy Scout. So you have a commendation from Governor Ridge. Well, Governor Ridge is now head of Homeland Security. Perhaps I should call him and tell him we have a terrorist loose on the streets of Luzerne County. And he ordered that my son be taken away. So they shackled my son and handcuffed him and took him off to the side."

D.G. was sent to Camp Adams for 35 days. After he had been there a few days, his mother said she received a call from her son's pediatrician's office. The residential facility had called the pediatrician's office to say D.G. was having difficulty breathing. Did he have any allergies?

"I couldn't find out what was wrong with him, and I was -- I was really uptight," the mother testified. "...I called Sandra Brulo [chief juvenile probation officer]. And I told her what the story was, and I asked if I could speak to my son, and she told me absolutely not."

"And I said to her, he's having a breathing problem. He has allergies. I need to speak with him. Nope, can't talk to your son. At which point I said to her, he has rights. He has to be allowed to talk to me. And she said to me, he has no rights. He gave them up when he decided to be a criminal."

**Barry H. Dyller**, a lawyer who accompanied D.G. and M.G. during their testimony, made an observation about the prior lawyer who advised D.G. to plead guilty even though he claimed to be innocent. Having practiced before Ciavarella, Dyller said, "I can say that that was not crazy advice. Because the alternative... would more likely have meant that he would have been placed for a much longer period of time. So while people say, well, you pled guilty, in that courtroom there weren't a lot of alternatives."

Another witness before the commission was A.A. who was arrested for gesturing at a police officer with her middle finger after the officer had intervened in a custody dispute involving her parents and her sister.

Prior to the incident, A.A. testified, she had never been arrested. At 16, she said, "I never even had detention in school. I was on the Honor Roll. I was a Girl Scout. I was a member of the YMCA. I was in Bible school. I was in every club, ecology, newspaper, year book, dance, from middle school to high school."

At the Juvenile Probation Department, she said, "They told me I was going to have to go to court, and that I really didn't need a lawyer because it wasn't really a big deal."

The hearing before Ciavarella went quickly. A.A. testified that Ciavarella flipped through a stack of papers and told her she had no respect for authority. She said he gave her no chance to speak - even to admit to the charges. "And he just told me to go sit down, and...they put the shackles on me."

A.A. said she was sent to PA Child Care where she remained for two months. While there, a court-ordered psychological evaluation was done by Dr. Frank Vita, the brother-in-law of Conahan.

From PA Child Care, she was sent to Adelphoi Village, a residential facility near Pittsburgh, where she remained for six months.

A.A. said her father consulted a lawyer to see if her case could be appealed. "They said it would take too long, and it would cost some crazy amount of money to do it. And it -- my time would run out before I -- before I would get anything done with the appeals."

While in placement, A.A. said she had to keep up with school work largely through self-study because the educational provisions in the facilities were inadequate for her grade level.

After her release, she was taken before Ciavarella. A.A. testified that the judge told her she had "made progress" and he warned her he didn't want to see her back in court.

She said she returned to school, made it back onto the Honor Roll and rejoined her prior extracurricular school activities. She is currently attending Bloomsburg University. She plans to go to law school. She said she wants to do work as a lawyer to help protect the rights of children.

Thirteen-year-old M., whose parents were involved in a bitter divorce and custody battle, was charged in December 2004 with simple assault and harassment for pushing his mother's boyfriend and throwing a piece of steak at him.

When M. went before Ciavarella for trial, a lawyer representing the youth and his father contended that the incident stemmed from family tensions in a custody dispute. Ciavarella was unmoved. After a short proceeding at which M.'s mother and her boyfriend testified, Ciavarella ruled M. delinquent and ordered him placed at PA Child Care. The youth was handcuffed, shackled and taken into custody. He remained in placement for 48 days.

M.'s father, identified as Mr. K. before the commission, testified that M. had never previously been in trouble. The father said neither he nor his lawyer expected the youth to be "locked up." The father said he thought M. might be

placed on probation for a short time. After the adjudication, Mr. K. made extensive efforts to gain his son's freedom. "I contacted County Commissioners, state representatives, Governor's Office, Congressmen, help line, juvenile justice organizations, Children and Youth, just to name a few," Mr. K. testified - all to no effect. Worse, he said, Sandra Brulo, chief county probation officer, recommended that M. be kept in placement much longer: for one year at a Colorado Boy's Ranch followed by placement at Glen Mills School in Pennsylvania until he was 18 or 21 years old.

At that point, Mr. K. said, he went to the media. "[The Wilkes-Barre] **Times Leader** published a story describing our situation. Five days after the article appeared . . . M. and I again appeared in court. . . Judge Ciavarella ordered that M. be released from PA Child Care and placed on probation for approximately six months."

Mr. K. testified that he ran up heavy expenses to win his son's release, including \$590 in fees for required post-release counseling. He said his son suffered depression while in placement and afterward.

"At the present time, M. has no faith or trust in police or the judicial system," Mr. K. testified. "I've tried unsuccessfully to explain to him that he was a victim of judicial injustice, and that the judicial system can work. . . I've not been very successful."

Ms. J. was in the 11th grade at a suburban high school in Luzerne County when she was arrested in 2006 for possession of drug paraphernalia - a lighter and a pipe which, she said, belonged to a friend.

"I had always been a good student," Ms. J. testified to the commission. "I had never been in trouble at school, let alone in trouble with the law."

She appeared without a lawyer before Ciavarella in January 2007. She said no one asked her if she understood that she had a right to a lawyer.

"The court officer read the charges and asked me how I intended to plead," Ms. J. testified. "I thought my only option was to plead guilty, so that is exactly what I did. No one asked me whether I understood my right to contest the charges, whether I understood the consequences of my admission, or whether I had discussed my admission with my parents or lawyer.

"Ciavarella declared that I would be sent away, but he didn't say where or for how long. I was immediately handcuffed and escorted out of the courtroom to a small waiting room by a sheriff. I did not even have a chance to say goodbye to my father."

Ms. J. was sent to the residential facility Camp Adams where she remained for three months. She said she tried to keep up with schoolwork, but found it difficult because the quality of teaching at the facility was poor.

After her release, Ms. J. was placed on probation for three months. She returned to high school and caught up on her studies. But she said she lost friends and was frequently humiliated by being summoned from class to be searched for drugs. She now is a college student with plans to go to law school.

Ms. J. said her encounter with Mark Ciavarella and his singular style of juvenile justice has left her with "a deep mistrust of the American legal system."

"Zero-tolerance is what allowed this to happen," she testified. "If a judge applies the same sentence to every case brought before him, then what is the point of a trial or a judge at all?"

### **Fear and Intimidation**

During its public hearings, the Interbranch Commission on Juvenile Justice heard repeated testimony in which witnesses described a climate of fear and intimidation, reprisal and retribution in the Luzerne County Courthouse during time when Michael Conahan and Mark Ciavarella were the president judges. It is clear that this atmosphere fostered the breakdown of the juvenile justice system. Both men were autocratic. They did not rule by consensus. They did not take kindly to opposition.

Conahan was president judge for five years from January 2002 through the end of 2006. He retired in 2007 at age 54 to become a senior judge. Ciavarella became president judge in January 2007 and held the position until January 2009 when he was relieved of his duties after federal charges were filed against him.

The successor to Ciavarella was **Chester B. Muroski** who took on the role of president judge in Luzerne County on January 30, 2009, at a time when the courthouse seemed almost in meltdown. It was the height of the scandal created by the corruption charges against Ciavarella and Conahan. Judge Muroski has been widely praised for his work in bringing order to the chaotic situation he inherited and instituting reforms.

Judge Muroski is a former Luzerne County district attorney and was, when he became president judge, the most senior member of the Common Pleas Court in the county. In the past he had personally opposed the Conahan-Ciavarella power structure, and he had paid a price for it.

A judge since 1982, he had presided over the Juvenile Court, the Orphans Court and the Family Court in Luzerne County for many years. Within the juvenile court, there are two divisions, the delinquency division, where criminal offenses committed by minors are adjudicated, and the dependency division, where cases of abused and neglected children are supervised.

Judge Muroski testified that he handled both delinquency and dependency divisions in juvenile court until 1996 when Ciavarella joined the bench. At that point, the delinquency division was transferred to Ciavarella.

Judge Muroski said Ciavarella took a hard line on juvenile crime which was well-received in the community, particularly by school administrators, teachers and police.

"At the beginning of every school year [Ciavarella] spoke at assemblies held in most school districts within Luzerne County, and in effect, he promised institutional placement for school-related infractions. He was true to his word and became even more popular when he followed through with placements, sometimes for minimal offenses."

Judge Muroski read a May 2007 transcript of a case in which a 10th grade high school student had been charged with harassing a school official.

The Court: "How do you plead?"

The Juvenile: "Guilty."

The Court: "Based upon her admission, I'll adjudicate her delinquent. What makes you think you have a right to do this kind of crap?"

The Juvenile: "I don't know, sir."

Ciavarella asked if the student recalled him visiting her school: "You heard me speak?"

The Juvenile: "Yes."

The Court: "Told you what type of conduct I expected from children in that school relative to the juvenile justice system?"

The Juvenile: "Yes."

The Court: "Is this acceptable?"

The Juvenile: "No, sir."

The Court: "What did I say would happen if you acted in an unacceptable way toward teachers and/or administrators?"

The Juvenile: "I don't recall, sir."

The Court: "You don't recall? You don't remember me saying if you did anything to these teachers that I would send you away? You don't remember those words?"

The Juvenile: "No, sir."

The Court: "Were you sleeping?"

The Juvenile: "No, sir."

The Court: "You can't remember that?"

The Juvenile: "No, sir."

The Court: "It's going to come back to you because I didn't go to that school, I didn't walk around in that school, and I didn't speak to that student body just to scare you, just to blow smoke, just to make you think I would do that when I wouldn't. I'm a man of my word. You're gone. Send her up to FACT. Let her stay there until she figures it out. Thank you."

Juvenile's Mother: "No. That's not fair. That's not what the officer said. That's not what he said."

Under Ciavarella's zero-tolerance policy, Luzerne County's juvenile placement costs rose to unprecedented heights - notably after PA Child Care opened in 2003. In 2007, one of every four juveniles ruled delinquent in Luzerne County - 25.8 percent - were being sent to out-of-home placements. That was more than double the statewide average.

The soaring costs of those placements had a direct and negative effect on the dependency division of juvenile court where Muroski continued to oversee cases of abused and neglected children. Children in dependency cases often are removed from their families by court order and placed in temporary out-of-home settings such as foster homes. The primary goal in most dependency cases is to reunite children with their families after providing services to parents to alleviate or correct problems that caused abuse or neglect.

"Unfortunately," Judge Muroski testified, "once the juvenile center [PA Child Care] opened, slowly but surely the social services to these [dependent] children and their families became difficult to obtain. There were waiting lists for parenting classes, family assessments, drug and alcohol evaluations and treatment, as well as other specialized services.

"Parents had to wait sometimes months to be given these services. This resulted in a child being in placement longer

than necessary when the child hadn't done anything wrong while the parents waited to complete services and the County had to pay to keep the children in placement.

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

Judge Muroski testified that after making unsuccessful attempts to obtain funds for the dependency division he wrote a letter to the Luzerne County Commissioners on June 15, 2005, threatening to use his contempt powers to ensure that services were made available to dependent children and their families. That provoked a quick response but not the one he was looking for:

"A few days later [President Judge] Conahan issued an order transferring me effective the first week in September, 2005, to Criminal Court... There was very little doubt in my mind that Conahan expected me to retire because I had not handled a criminal jury trial since 1981 when I was the District Attorney."

Luzerne County Commissioner **Maryanne Petrilla** described a run-in with Conahan, then a senior judge, around the New Year's holiday of 2008. Petrilla, a former county controller, had been elected a commissioner and was planning to institute a program of reforms in county government.

As she prepared to take office, Petrilla made it known that she intended to fire a high-level county employee, the chief clerk-county manager.

"And I - I recall New Year's weekend of 2008 when I was inundated with probably anywhere from 40 to 60 phone calls from friends...and they had received calls from Judge Conahan and told me that, you know, Judge Conahan had really wanted me to reconsider my replacing the chief clerk, county manager. And I - I told everyone that I just felt that that was something that I could not do."

Petrilla testified that Conahan eventually telephoned her directly.

"And the conversation was not what I would call a friendly phone call. He said that I could not replace [the chief clerk-county manager]... And his final words to me were, Maryanne, if you do this, you will be finished. And I said, well, with all due respect, Judge, I - you know, I'm not going to tell you how to run your courts, and I would really ask that you respect this decision because I think it's the best decision going forward for our administration."

After taking office, Petrilla proceeded to dismiss the employee. She said the same individual then was rehired by the court, specifically by county court administrator's office to be "specialty court administrator." The Luzerne County court administrator at the time was Conahan's cousin, William Sharkey.

Petrilla testified that the Luzerne County courts under Conahan and Ciavarella spent money, let contracts and hired personnel without regard to county rules or policies. In the process, she said, the courts ran up huge deficits for the county.

She cited as an example the contract of Dr. Frank Vita, Conahan's brother-in-law. Vita held a non-competitive court contract to conduct psychological evaluations on youths charged with criminal offenses. Ciavarella referred juvenile defendants to Vita for the evaluations. The youths often were placed in detention while the evaluations were conducted.

Petrilla said a county policy that required advertising for an "RFP" or a request for proposals was not followed on Vita's contract.

"They just issued the contract, and there was no RFP put out... And it's just indicative of the philosophy that they had that they did not have to abide by the other county policies that other departments had to abide by... they just did their own things and sent the bills to the county to be paid."

In 2008, the county faced a financial crisis. The county commissioners decided to impose a major spending cut across all departments of government, including the courts.

"[President] Judge Ciavarella came to the budget hearings, and it was what I would call a pretty tumultuous encounter with Judge Ciavarella," Petrilla testified. "He said that he needs the money to run his courts. I can't tell him how to run his courts. And he will do his budget, and we will fund his budget."

"And I said, well, quite frankly, Judge, we can't. We don't have the resources to fund your budget. And he said, well, then I'll sue you. And I said, well, Judge, if that's what you have to do, that's what you have to do. And that's what he did."

Even **Richard J. Gold**, deputy secretary of the Pennsylvania Department of Public Welfare, found himself reprimanded for questioning Judge Mark Ciavarella's inordinately high juvenile placement rates - and the high costs that went with them.

Gold heads the Welfare Department's Office of Children, Youth and Families which administers the child welfare system throughout Pennsylvania. The office also provides approximately 80 percent of funding for the child welfare system, using state and federal revenues.

Among its functions, the Office of Children, Youth and Families licenses and inspects juvenile detention facilities, and arranges audits to ensure their costs of those facilities are reasonable.

In testimony before the Interbranch Commission on Juvenile Justice, Gold outlined a struggle that went on for years between his office and Luzerne County over juvenile detention matters.

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

"At that time [Office of Children, Youth and Families] had fully licensed the facility as we determined that it met all state requirements for the operation of a safe and secure facility."

Gold said his office conducted a review of the 22-bed River Street Center and found it "safe and satisfactory to house juveniles." As a result, the department announced it would renew the facility's license. Gold said that Ciavarella sharply criticized the license renewal decision. Then Conahan overrode the state's decision.

"In December, 2002, Judge Ciavarella's criticism was followed by Judge Conahan's official action to remove all funding from the county budget for the River Street Center and his stated intention of closing the facility," Gold testified. "Thereafter, the court returned the River Street Center's license to the Department closing the facility." The state accepted the license. When the new 48-bed PA Child Care facility opened in February 2003, the Welfare Department granted it a license.

Gold testified that the department expected PA Child Care to be a temporary facility, used for two to four years while Luzerne County built a new detention center on county-owned land.

Within a year, however, it became clear that county officials were thinking of issuing a long term lease to PA Child Care. It also became clear through a Welfare Department audit that PA Child Care was making unusually large profits -

28 percent, equal to \$1.2 million - in its first 10 months of operation.

Gold said those discoveries raised such concern that the department listed PA Child Care as an immediate priority for further audit, and the department asked the Luzerne County commissioners to delay a vote on the long term lease until the audit was completed. The request for delay was disregarded.

"The county proceeded with a vote prior to the audit conclusion, and in November, 2004, the county approved a 20 year lease with Pennsylvania Child Care," Gold testified. The aggregate cost of the lease was \$58 million.

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

"As part of the lawsuit Pennsylvania Child Care sought an emergency injunction barring the release by the Department of any of the alleged trade secrets and also sought to seal the lawsuit.

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

Gold testified that Conahan's order was reversed by the Pennsylvania Superior Court in November 2005. That allowed the audit of PA Child Care to proceed.

The final audit was not released until January 2008. It showed that Luzerne County payments to PA Child Care exceeded reimbursable costs by approximately \$2 million per year.

The audit found the costs to be so excessive, Gold testified, "that the county could have built three juvenile detention centers for the cost of what it paid to lease Pennsylvania Child Care facility." [Luzerne County eventually renegotiated its contract with PA Child Care.]

Gold said a separate audit of Western PA Child Care also found patterns of unreasonable and unallowable costs.

A third audit of payments to Dr. Frank Vita for court-

ordered psychological evaluations of juvenile defendants, "found questionable costs in the amount of \$836,636."

Gold testified that an indication that something was "out of sync" in Luzerne County was the fact that the juvenile detention numbers were exceptionally high - far above statewide averages.

In a visit to Luzerne County in the summer of 2007 where he met with county officials, Gold commented on the high numbers, telling those in the group, "there's something wrong here in your numbers."

Ciavarella was at that meeting. Gold said the judge "wasn't pleased at all with being questioned as to the practices of the jurisdiction."

After the meeting, Gold testified, "a complaint was made about me" and he received "a formal reprimand for questioning how out of sync this county was to all the other counties of Pennsylvania."

**Stephen Urban** is a Luzerne County commissioner who was in office when the River Street Center closed and PA Child Care opened.

In testimony before the commission, Urban said he opposed closing the county-owned center and also opposed the immense costs of leasing PA Child Care. He said repairs and improvements were needed at the River Street Center, but the work could have been done for \$2 million to \$4 million.

The \$58 million lease for PA Child Care was approved by former Luzerne County Commissioners Todd Vonderheid and Greg Skrepenak on October 20, 2004. Urban was the only No vote on the three-member commission. [Skrepenak resigned his position as a commissioner in December 2009 shortly before the U.S. Attorney's Office charged him with accepting \$5,000 to assist a developer gain tax incentive financing for a project. Skrepenak pleaded guilty on January 26, 2010, and is cooperating with investigators in the Luzerne County corruption probe.]

Although the county commissioners were generally compliant in granting the financial requests of Conahan and Ciavarella, Urban testified that the courts assumed and co-opted powers that properly belonged to the county commissioners.

As an example, Urban cited the fact that employees of the River Street detention facility were court employees, under the control of the president judge, when, in his view, they should have been county employees. The River Street

Center was a county facility, not a court facility, Urban said, and its employees thus should have been answerable to the county commissioners.

Urban also questioned the authority of the Luzerne County courts to turn in the license of the county detention center to the state.

"I believe since the Commissioners under the County Code have the authority to operate the detention center we should have been the one that turned in the license and not the -- not the courts," he testified. "Also I think that the Office of Children and Youth and Families, which is a state run agency, should not have accepted that license from the courts, that they should have referred that license back to the County Commissioners. And only after a formal vote of the County Commissioners to close the detention center should that detention center have been closed.

"And that is not the way things ran in the county. The judge said, we're not sending anybody there. The other two Commissioners then voted for a budget that defunded positions of the childcare workers...And then they closed the facility, and the county was then forced to use the detention center that Mr. Powell and Zappala had built at the cost of about \$100 per day -- extra per day per bed that was costing us in our own facility."

### **The Role of the Judicial Conduct Board**

On September 28, 2006, an unsigned eight-page letter of complaint arrived at the office of the Pennsylvania Judicial Conduct Board in Harrisburg listing 33 accusations of purported "glaring violations of ethics which are occurring in the Luzerne County Courthouse."

The subject of the complaint was President Judge Michael T. Conahan. Mark A. Ciavarella, Conahan's friend and colleague, was named at several points in the complaint as well.

The anonymous complaint was addressed to **Joseph A. Massa, Jr.**, chief counsel of the Judicial Conduct Board. The document was organized in three sections, bearing these headings:

- "Judge Conahan has used his judicial authority and power of appointment to benefit his family and friends and to contain and destroy his detractors."
- "Judge Conahan also falsely creates new titles for Courthouse employees in order to appear to comply with Supreme Court Directives, even though the Employee's functions remain the same. He also engages in political activities."

- "He routinely hears matters presented by Attorneys with whom he has close personal and longstanding business and friendships and refuses to recuse himself. In fact, it is his practice to direct William Sharkey [then the Luzerne County court administrator, and Conahan's cousin] to switch cases, which are assigned to other Judges when the litigants or the Attorneys are his friends."

Under each heading were multiple examples providing names, dates, docket numbers and other details that appeared to document and support the statements in the headings. Among the specifics:

Lawyers - identified by name - who worked as law clerks for Conahan and Ciavarella were described as practicing before the two judges, in violation of Supreme Court rules.

Conahan was described as ruling on appeals from decisions made by his sister, a court master, without disclosing the relationship to parties in litigation. The sister was identified by name.

Conahan's closest friends were described as Ciavarella and lawyer Robert Powell. The complaint said Conahan regularly presided in civil cases in which Powell and associates were counsel for plaintiffs, but Conahan did not disclose his relationship with Powell to other parties in litigation. Five cases were identified by caption and docket number.

The complaint said that Conahan often ordered Powell's cases assigned to Ciavarella. Seven civil cases were listed by caption and docket number.

The complaint described a case in which Conahan allegedly awarded a verdict of more than \$800,000 to a lawyer friend - identified by name - in a nonjury civil trial. The caption and docket number of the case were provided.

The complaint said that Conahan had been "watched" while attending an early morning meeting with alleged crime boss William D'Elia in the company of the same lawyer who had received the large civil trial award.

The letter of complaint appeared to be the work of a courthouse insider - a whistleblower - who was laying out a roadmap for an investigator to follow in pursuit of a malefactor in public office. In signing off, the letter writer said, "I have submitted this information to you without identifying myself because I fear retaliation should my identity be revealed."

For an agency such as the Judicial Conduct Board, whose job is to investigate and prosecute judicial misconduct, it

might seem that such a detail-laden complaint would immediately have triggered an investigation.

It did not.

The conduct board conducted no investigation into any of the allegations. No misconduct charges were filed against Conahan or Ciavarella based on allegations in the complaint. No disciplinary action was taken against either judge. In fact, no public disciplinary action was ever taken in any matter against Conahan or Ciavarella.

Why the board did not launch an investigation into a complaint containing such serious allegations involving two Luzerne County judges is a matter that caused concern and raised many questions for the Interbranch Commission on Juvenile Justice.

The Judicial Conduct Board operates under constitutionally mandated confidentiality rules which the board applies extensively to its operations. Complaints and investigations are confidential except when the board files formal misconduct charges against a judge.

Attempts by the commission to obtain information from the conduct board about the handling of the 2006 complaint against Conahan and to get answers to other questions led to litigation before the Pennsylvania Supreme Court. The litigation was followed by lengthy negotiations between the commission and the board. In the end, the conduct board agreed to provide information concerning its handling of the Conahan complaint. The board also provided nonpublic information under seal concerning other complaints filed against Conahan and Ciavarella throughout their judicial careers.

Regarding the 2006 complaint against Conahan, information provided by the Judicial Conduct Board disclosed that members of the board did not learn anything about the Conahan complaint until 7 1/2 months after it arrived on the chief counsel's desk on September 28, 2006.

At that point, the chief counsel, Joseph Massa, informed the board about the complaint in a detailed memorandum on May 14, 2007. Massa did not provide board members with a copy of the complaint. His memorandum described the complaint, discussed the allegations and provided an analysis. Massa testified to the commission that this was his standard practice; he did not provide the conduct board with original complaints, but rather summarized them in memo form for the board's review. Regarding the Conahan complaint, Massa recommended a full investigation. He included his May 14, 2007, memorandum in a packet of materials that was distributed to Judicial Conduct Board members in preparation for a June 4, 2007, meeting.

When the meeting was held, the chairman of the board, **Patrick Judge, Sr.**, did not participate in discussion of the Conahan complaint. Patrick Judge is a Luzerne County businessman. He told the commission he disqualified himself because he had business relationships with Conahan.

The Judicial Conduct Board issued a statement to the commission on April 5, 2010, describing Massa's memo to the board, what occurred at the June 4 meeting and events that followed.

"The focus of the [Massa] memorandum was on allegations of nepotism, political activities, conflict of interest and of association with individuals believed to be known criminals," the conduct board's statement said. "Other allegations in the complaint such as case fixing and Judge Conahan's relationship with Judge Ciavarella were not set forth in Chief Counsel's memorandum recommending a [full investigation]. At the meeting an oral request was made by Chief Counsel to table the matter until the October 27 meeting because of the pendency of the Lokuta trial at which former Judge Conahan was expected to be a witness."

(This was a reference to Luzerne County Judge Ann H. Lokuta who was tried on misconduct charges before the Court of Judicial Discipline in late 2007 and early 2008. She was later removed from the bench. Conahan appeared as a witness against Lokuta at her disciplinary trial. The anonymous complaint against Conahan became public during those disciplinary proceedings. The complaint has been attributed to Lokuta, who was openly hostile to Conahan, or to someone acting at her behest. An exception to the Judicial Conduct Board's confidentiality rule is that a judge who is the subject of a misconduct complaint can waive confidentiality. Conahan, in fact, did waive confidentiality with regard to the anonymous complaint against him. But then, according to Massa, he changed his mind and sought to reinstate his right to confidentiality after criminal charges were filed against him in 2009. By that time, it was too late. The complaint was circulating in the media.)

The conduct board's statement regarding the Conahan complaint continued: "The Board approved the motion to table the discussion of the 2006 anonymous complaint until the October 2007 meeting. The complaint was not, however, placed on the agenda for the October 2007 meeting and was never placed on any agenda for a Board meeting since that time."

In testimony before the commission, Massa said he did not recall asking for the Conahan matter to be tabled, but he

took responsibility for the fact that no follow-up action was ever taken on the complaint after the conduct board's June 4, 2007, meeting. Asked if the complaint "had fallen through the cracks," Massa replied: "It had."

"I hold myself accountable," he testified. "It was on my list... There was nothing nefarious or in terms of a subterfuge at all... I am accountable."

Ten months after the conduct board tabled the complaint, Massa provided a copy of the document to the U.S. Attorney's Office. Massa said he did that - on April 3, 2008 - at the request of the federal prosecutor and without informing the members of his board.

In normal circumstances, the Judicial Conduct Board refers a complaint of criminal wrongdoing to a law enforcement agency such as a District Attorney's Office, the Attorney General's Office or a U.S. Attorney's Office.

Why Massa did not promptly refer the Conahan complaint, which appeared to contain allegations of case-fixing and other potential criminal conduct, to a law enforcement agency in keeping with that practice is unclear. At the point when the U.S. Attorney requested a copy of the complaint in April 2008, the investigation of Conahan and Ciavarella was in full progress.

**Edwin L. Klett**, a Judicial Conduct Board member, testified to the commission that neither he nor other board members saw the full, eight-page Conahan complaint until the summer of 2009.

The Judicial Conduct Board was created by a 1993 amendment to the Pennsylvania Constitution designed to ensure that Pennsylvania judges accused of unethical conduct are investigated and, if necessary, prosecuted, tried and appropriately punished if found guilty. In addition to the 12-member Judicial Conduct Board, whose role is to investigate and prosecute judicial misconduct, the same constitutional amendment established an eight-member Court of Judicial Discipline to conduct trials in judicial misconduct cases.

The constitution imposes strict confidentiality rules on many of the conduct board's functions. Complaints filed with the board are to be confidential. Statements, testimony, documents, records, other information and evidence acquired by the board during investigations are to be confidential. All proceedings of the conduct board are to be confidential.

At the same time, there are exceptions to the confidentiality rules. The subject of a Judicial Conduct Board complaint

can waive confidentiality. A complaint against a judge can become public knowledge and, at the direction of the judge being investigated, the board can then issue a statement confirming the investigation. In that statement, the board can clarify procedural aspects of the proceedings or provide the judge's response to the complaint. The Judicial Conduct Board also can share complaints against judges with other government agencies. If a complaint involves allegations of criminal conduct, for example, the conduct board can refer the complaint to a law enforcement agency.

The Judicial Conduct Board has a small staff. In addition to the chief counsel, there are two other attorneys, three investigators and three support staff. The board's jurisdiction extends to the entire Pennsylvania judiciary of more than 1,000 fulltime judges and approximately 200 senior judges.

The body of ethical rules that governs appellate and trial judges is known as the Code of Judicial Conduct. Under these rules, judges are expected to act at all times in a manner that fosters public confidence in the integrity and independence of the judiciary. Judges must avoid all forms of improper behavior and the appearance of improper behavior. They must carry out their duties impartially and diligently. They must refrain from inappropriate political activity. They must avoid conflicts of interest.

In a mission statement in its 2008 annual report, the Judicial Conduct Board says: "The Board and its staff investigate every allegation made against a Pennsylvania judge. This procedure is an essential safeguard to the integrity of, and public confidence in, the judicial process."

In 2008, the conduct board received 636 complaints against judges - the highest number of complaints since its inception in 1993. In the same year, the board disposed of 621 complaints - 579 of them, or 93 percent, by dismissal after a preliminary inquiry. The high dismissal rate was explained as the result of large numbers of complaints being filed by unhappy litigants, particularly criminal defendants, whose issues belonged in the appellate courts.

There were 24 cases in which judges were disciplined, though the discipline in 22 of those cases was nonpublic; it was issued in the form of private reprimands.

In 14 cases in 2008, the conduct board issued "Letters of Caution." These were private reprimands, warning letters of judicial misconduct. Judges who receive Letters of Caution are not required to sign or accept them.

The board issued eight "Letters of Counsel." These were slightly stronger private reprimands. Judges who received them were required to accept them.

Finally, in the most serious misconduct actions, the Judicial Conduct Board filed formal charges in two cases. These were the only cases that became public.

On January 8, 2010, the Judicial Conduct Board adopted new Internal Operating Procedures which establish written rules for handling anonymous complaints and for referring complaints to law enforcement agencies. Previously, there had been no written policies governing these practices.

In its statement to the commission, the Judicial Conduct Board said the rules were established because the handling of the 2006 Conahan complaint demonstrated that the board needed to exercise greater "oversight and supervision" of its internal operations. The board said it "recognized that action was necessary to assure that complaints like the 2006 anonymous complaint, alleging misconduct immediately and directly impacting the administration of justice, be acted upon swiftly."

Board member Edwin Klett testified to the commission that the Internal Operating Procedures were intended to reassert authority of the board over its staff. Too much discretion had been given to staff, Klett said, "And so these internal operating procedures are intended to reclaim all of that authority, including -- including whether or not a particular matter is referred to another agency."

"It's not only referral to an agency, the investigation, the preliminary inquiries, the management of staff, the development of pleadings, all of that has been left to the staff," Klett testified. "And that's why I'm trying to emphasize that the Board, as a committee of the whole, is pulling back all of that process."

Under the conduct board's Internal Operating Procedures, anonymous complaints must be logged and presented to the board for review and approval before a file is opened or a preliminary investigation is begun. If the source of the complaint is known, that information is to be recorded by the chief counsel for use in any inquiry and to advise the complainant of the ultimate disposition of the complaint.

The procedure governing referrals to law enforcement agencies requires that any complaint alleging criminal activity by a judge be brought to the board's attention within 30 days. The chief counsel must call a special meeting of the board by tele-conference unless a regular meeting is up-coming. The board is to review the complaint and decide by majority vote whether to refer it to a law enforcement agency. Under the same procedure, the board is to determine whether to actively investigate any part of the complaint that may allege ethical violations.

## The Role of the District Attorney

The district attorney of Luzerne County during the period when Michael Conahan and Mark Ciavarella controlled the courthouse was **David W. Lupas**. Lupas took office in 2000 and served as the county's prosecutor through 2007.

Now a judge of the Court of Common Pleas, Lupas presides in juvenile court, having replaced Ciavarella in that role in May 2008. Lupas has instituted reforms which include ensuring that juveniles and their parents are properly advised of the right to counsel. He also refuses to entertain adjudicatory recommendations from the Juvenile Probation Department prior to hearings, which was a regular practice of Ciavarella's.

District attorneys - in fact, all prosecutors - have a unique ethical obligation among lawyers. While private lawyers are bound by strict duties to their clients, prosecutors have a broader responsibility - one that extends to all citizens and to society as a whole.

As explained in the Code of Professional Responsibility, the ethical rules governing lawyer conduct in Pennsylvania: "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence."

The "special responsibilities of prosecutors" under the Code of Professional Responsibility include a requirement that prosecutors:

"Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for, obtaining counsel and has been given reasonable opportunity to obtain counsel."

In his testimony to the commission, President Judge Muroski, a former district attorney of Luzerne County, commented on the role of a judge as compared to that of a district attorney:

"Let me take you back to something I was asked many, many years ago when I became a judge," Muroski said. "I was asked, you know, which job did you prefer? What's different about your jobs being DA or being a judge? And I would say that being a DA was probably the most difficult job because you had to be fair, and you had to win. Now, I only have to be fair."

David Lupas, in his testimony to the commission, said juvenile court did not get a great deal of his attention when he was district attorney. Asked if there was an attitude

among prosecutors that juvenile court was a "kiddie court," or a less important court than adult courts, Lupas replied:

"I don't know if it was [a] lesser court. It may have -- there may have been some of those attitudes. Unfortunately, I see some of those -- I still see some of those attitudes today as a judge...there are limited resources...there, I guess, are times, because of lack of resources, that it maybe didn't get the priority maybe that it should have."

Lupas said he assigned specific assistant district attorneys on his staff of 20 to 25 prosecutors to juvenile court so that individuals could specialize to some degree in the rules and procedures there. Direct supervision of those assistants, and all assistants, was by Lupas personally and by his first assistant, Jacqueline Musto Carroll, who now is the Luzerne County district attorney.

"Those attorneys [assigned to juvenile court] would be consulted with on a periodic basis. How are things going? Any issues, any concerns, any problems in juvenile court? We would have periodic staff meetings with the entire staff of Assistant District Attorneys. Again, ask whether there are any issues or any problems or any concerns going on in juvenile court. And, you know, we really -- I didn't get any feedback that there were concerns or problems, just everything was going well."

Lupas said Ciavarella's zero-tolerance policy was well-known, reported in the newspapers, spoken of in the community and discussed among school officials.

"Again, it was known that there were a lot of placements. That was made known. But, you know, the other concerns that I know have been raised about waiver of counsel and things such as that were never brought to my attention by any of the assistants.

"Never had any of them come to me and say, we think the judge is engaged in criminal activity, or we think there's something going wrong here. None of that ever occurred."

Lupas said it was not until after the "kids for cash" scandal erupted that he became aware of a controversy involving Ciavarella failing to properly advise juvenile defendants of the right to counsel.

"It was always my understanding and belief that there was an assistant public defender assigned to juvenile delinquency court and present at all proceedings that I assumed would have been representing the vast majority of these juveniles. And I was quite surprised when it surfaced and came out that so many were waiving counsel."

His assistants did not bring it to his attention. His counterpart, the public defender, did not mention it. No private defense lawyer complained to him that the constitutional rights of juveniles were routinely being violated.

If he had received complaints from his assistants that constitutional rights were being violated, Lupas said, he would have taken action - but no one complained.

Lupas noted that Ciavarella used a written "colloquy" - which juvenile defendants filled out with the assistance of probation officers before court hearings - to waive the right to counsel.

Because of the written colloquy, he said, "I believe the ADAs probably assumed that the juveniles appearing were made aware of their right to counsel and were waiving it. Albeit the judge wasn't abiding by the rules by giving the on the record colloquy, but there was this written document that was being utilized.

"I can't speak for whether they felt that that sufficed or not. You'd have to ask those particular people who were in that courtroom at the time."

With regard to the special duties of a prosecutor spelled out in the Code of Professional Responsibility, Lupas said of his assistants: "They were instructed and advised and expected to always abide by those professional responsibilities."

"I -- again, and a lot of what I'm doing here unfortunately is speculating trying to put myself in the mind of those parties who were in that courtroom," Lupas said. "But I -- I think that was the atmosphere, that -- that it was a very strong-minded judge who ran things his way. And over time that atmosphere was created where he was -- he was going to run things his way."

Two assistant district attorneys who were assigned to juvenile court while Lupas headed the prosecutor's office testified before the commission. Both said it was Ciavarella's practice to have the Juvenile Probation Department present a written waiver form to youths who opted to appear in court without lawyers. The forms were signed prior to court hearings. It was not Ciavarella's practice to conduct colloquies in open court. The assistant prosecutors did not object because they assumed the written waiver, and the judge's method, was acceptable.

**Thomas J. Killino** began work in the District Attorney's Office in 2004 as a young lawyer seeking to gain trial experience. As a newcomer to the office, he was assigned to "shadow" more experienced prosecutors to learn the ropes

in various assignments. In 2005, he began covering an assignment in juvenile court, replacing another prosecutor who was reassigned to adult court.

Juvenile court was a busy venue. Sessions were held on Tuesdays for adjudications and Thursdays for review hearings. Typically, more than 20 hearings a day were scheduled. Cases moved at a fast pace. Killino told his superiors he thought more than one prosecutor was needed. He said he received some back-up support.

Asked if juvenile court was considered a high priority by the prosecutor's office, Killino replied:

"It certainly didn't appear to be No. 1 on the list of things going on to be very honest with you."

The District Attorney's Office kept no records of the kinds of dispositions that occurred in juvenile court. There was no filing system to enable a prosecutor to review a case in the future and look back at how well or poorly a juvenile had advanced from the point of disposition.

Killino confirmed what Lupas had said concerning waiver of counsel. "There was an accepted practice in place with the waivers. That was something that the court accepted and utilized." Killino didn't know who provided waiver forms to juvenile defendants. The procedure normally was completed in advance of court hearings. No one challenged it. It was accepted by prosecutors and defense lawyers alike. Killino observed other prosecutors accepting the procedure. He accepted it as well.

Killino said he did raise one concern with his superiors: Case lists distributed in the courtroom by the Juvenile Probation Department included handwritten notations recommending placement facilities for some of the juveniles on the list.

He said Ciavarella usually had a folder of information about each juvenile defendant and referred to it during the case disposition.

Asked if he was troubled by the fact that Ciavarella did not conduct guilty plea colloquies with youth defendants as is done in adult court, Killino replied:

"Well, again, I came into a very fast paced environment. I observed my colleagues handle that environment in the same way as I came to handle it. And, again, it was an established practice by the court. And the trust factor was there that if the court is satisfied in proceeding in that manner that was the manner it proceeded."