



Report and  
Recommendations of the  
Pennsylvania Bar Association  
Task Force on the  
Interbranch Commission on  
Juvenile Justice Report

April, 2011



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# I.

## MESSAGE FROM TASK FORCE CO-CHAIRS

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The tragic failure of the juvenile court system in Luzerne County provided a wake up call to all judges and lawyers about the extensive damage that can occur when we are not vigilant about our conduct and the conduct of others within the legal community. As officers of the court, we owe a special responsibility to protect members of the public, especially our children, from those who abuse their authority and contaminate the system of justice.

In establishing a task force to review the recommendations of the Interbranch Commission on Juvenile Justice, the Pennsylvania Bar Association sought to highlight the importance of this responsibility, and of respect for the rule of law, among the members of the Pennsylvania legal community. Over the past six months, our Task Force has devoted many hours reviewing the Commission's extensive report about the cause of the system's failure in Luzerne County, and assessing the various efforts undertaken by the Luzerne courts, the Supreme Court, stakeholders in the juvenile justice system and the legislature to address the flaws and improve the delivery of justice for juveniles on a statewide basis. The Task Force has also researched and discussed the report's recommendations for repairing the damage and preventing a similar travesty from occurring again. We were very impressed with the depth of thought that went into the various recommendations issued by the Interbranch Commission, and we commend the members on their remarkable work product and their commitment to justice.

In the attached report, our Task Force sets forth its recommendations for actions the PBA can take to support the Commission's recommendations and strengthen the juvenile justice system in Pennsylvania. This report represents a consensus of the varied views of the Task Force members. Through our report, we add our voices to those of the Commission and many juvenile advocates, in support of material improvements in the way juvenile cases are handled, and a more transparent and effective disciplinary process for judges and attorneys.

As a statewide organization with nearly 29,000 members, the PBA has the unique advantage of having a broad reach throughout the state, directly and through county bar associations. Often, bar associations are the places of first resort for the public looking for help with a legal issue, seeking to understand their rights with respect to a judicial process, or wishing to voice a complaint about perceived injustice. We hope to use our statewide communication channels to garner support for the reforms recommended by the Interbranch Commission, and to make our system of juvenile justice a model once again for fairness and integrity.

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This report reviews the many positive steps that have been taken to improve the quality and fairness of the juvenile justice system over the past two years, but of course there is always more work to be done. We hope that the PBA and its members will continue to be at the forefront of efforts to ensure that the juvenile courts throughout the Commonwealth are a model of fair, impartial and restorative justice.

Sincerely,

Thomas G. Wilkinson, Jr.  
PBA Vice President

Andrea Marceca Strong  
Chair, Children's Rights Committee

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## II. PENNSYLVANIA BAR ASSOCIATION OFFICERS

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Gretchen A. Mundorff, President  
Matthew J. Creme, Jr., President-Elect  
Thomas G. Wilkinson, Jr., Vice President  
Clifford E. Haines, Immediate Past President  
Dana Baiocco, Chair, House of Delegates  
Penina K. Lieber, Secretary  
Francis X. O'Connor, Treasurer  
Lisa M. B. Woodburn, Chair, Young Lawyers Division  
Hope Guy, Chair-Elect, YLD  
Timothy S. Burns, Immediate Past Chair, YLD

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## III. PENNSYLVANIA BAR ASSOCIATION TASK FORCE ON THE INTERBRANCH COMMISSION ON JUVENILE JUSTICE REPORT

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Co-Chairs

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Andrea Marceca Strong

Thomas G. Wilkinson, Jr.

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Members

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Eleanor L. Bush

Frank P. Cervone

Hon. Stephanie Domitrovich

David R. Fine

Sharon Giamporcaro

Maria Gibbons

Shira J. Goodman

Hon. Robert A. Graci

Barbara Griffin

Scott Hollander

Lucy Johnston-Walsh

Robert G. Kochems

Guerline L. Laureore

Carol McCarthy

Lisette (Mimi) McCormick

Jennifer Staley McCrady

Grace R. Schuyler

Elisabeth (Dolly) Shuster

Janis L. Wilson

Harry Owens – PBI Liaison

Susan Etter – PBA Liaison

Biographies of Task Force members are available in Section XII of this Report.

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## IV. ACKNOWLEDGEMENTS

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The members of the PBA Task Force on the Interbranch Commission Report on Juvenile Justice wish to thank the PBA officers, particularly President Gretchen A. Mundorff, for their foresight in recognizing a role for the PBA to play in addressing the Luzerne County juvenile court system failure, and for the support of the Board of Governors in approaching this important project.

We are also deeply grateful to Susan Etter, PBA Education and Special Projects Coordinator, for her invaluable assistance in coordinating the meetings of the full task force and its four subcommittees, and for disseminating the many documents produced and reviewed by task force members. Susan also assembled the contents of the new page on the PBA website that will feature numerous helpful background resources for members and particularly for the benefit to those who practice in the juvenile justice area.

We acknowledge our subcommittee chairs, Eleanor Bush, Barbara Griffin, Hon. Robert Graci and Shira J. Goodman, for their inspired leadership and devotion to the task of coordinating the efforts of each of the subcommittees. We also thank Lisette (“Mimi”) McCormick, a member of the Law Reform Subcommittee, for her very capable assistance in editing and formatting the final report.

We express our sincere gratitude to the members of the Interbranch Commission on Juvenile Justice (ICJJ) for their tireless efforts to investigate the causes of the juvenile court system failure in Luzerne County and their thoughtful examination of various short and longer term improvements to the juvenile justice system and the state disciplinary machinery, and for their commitment to fundamental fairness for all, especially the Commonwealth’s most precious asset, our children.

Many others provided helpful cooperation in ensuring that the background information in the report was adequately vetted for accuracy. We particularly appreciate the assistance of President Judge Thomas F. Burke, Jr. and supervising juvenile court Judge David Lupas of the Luzerne County Court of Common Pleas, Luzerne County District Attorney Jacqueline Musto Carroll, Keith Snyder, Deputy Director, Juvenile Court Judges’ Commission, and Robert Listenbee, Chief of the Juvenile Unit for the Defender Association of Philadelphia. We also appreciate the cooperation extended by, among others, the Judicial Conduct Board under the leadership of its immediate past Chair, Judge Christine Donohue, and its Chief Counsel, Joseph A. Massa, Jr., during the Task Force’s information gathering process.

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# V.

## HISTORY

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On January 26, 2009, a federal criminal information was lodged against Luzerne County President Judge Mark A. Ciavarella, Jr. and Senior Judge Michael T. Conahan in one of the most egregious cases of judicial corruption in Pennsylvania history. Among other charges, the two judges were accused of sentencing hundreds of juvenile defendants to two privately-owned residential detention facilities, Pennsylvania Child Care and Western Pennsylvania Child Care, in exchange for more than \$2.8 million in kickbacks from the operators of the juvenile detention centers.<sup>1</sup>

For many, the most culpable of the scheme's perpetrators is Ciavarella, known as a "zero-tolerance" judge, who routinely meted out harsh punishments to children who were not represented by counsel and had no history of criminal violations. Indeed, he sentenced juveniles to out-of-home placements more often than any other judge in the Commonwealth, and without adequate grounds or justification. As the Interbranch Commission for Juvenile Justice observed, "he judged by a formula rather than by individual evaluation.... - the antithesis of the process of individual evaluation that a judge should apply before deciding a case."<sup>2</sup> He also used placement facilities as virtual debtors' prisons, sentencing children as young as 11 to placement for failing to pay fines and restitution.

In the view of the ICJJ, however, Ciavarella's co-defendant, Conahan, and many other individuals in the system, were far from bystanders to the abuse and corruption in Luzerne County. Using his power as President Judge, Conahan placed friends and relatives on the court payroll, personally assigned cases in which he had a personal interest to Ciavarella, and removed funding from the county-owned juvenile placement facility, resulting in its closure. That county owned facility was replaced with a privately-owned facility in which he and Ciavarella had a financial interest.<sup>3</sup> Prosecutors, defenders and probation officials "witnessed and participated in the proceedings in Ciavarella's courtroom" and remained silent about it.<sup>4</sup> Indeed, the ICJJ heard repeated testimony from witnesses who described "a climate of fear and intimidation, reprisal and retribution in the Luzerne County Courthouse during the time when Michael Conahan and Mark Ciavarella were the presiding judges."<sup>5</sup> During this timeframe, the two judges received substantial payments from the owner and builder of the juvenile detention facilities in Luzerne and Butler

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1. Interbranch Commission for Juvenile Report (ICJJ Report) (ICJJ: Philadelphia, May 2010), 5, 9.  
2. *Id.* 8.  
3. *Id.* 9, 13.  
4. *Id.* 6.  
5. *Id.* 23.

Counties, where a large number of juveniles were placed in detention. The judges characterized the payments as “finders’ fees” denying that there was any scheme to ensure occupancy at the detention center remained high. Many of the juvenile defendants had appeared before Ciavarella without attorneys.<sup>6</sup>

On September 28, 2006, an unsigned eight-page letter of complaint was received by the Judicial Conduct Board listing 33 accusations of alleged “glaring violations of ethics which are occurring in the Luzerne County Courthouse.”<sup>7</sup> This anonymous complaint, addressed to the Board’s chief counsel, did not trigger an investigation. Rather, the judges’ scheme ultimately was exposed through the efforts of the Juvenile Law Center (JLC) which first alerted the Pennsylvania Supreme Court to the Luzerne County juvenile court abuses in April 2008. At that time, the Center petitioned the Court to review Ciavarella’s practice of conducting delinquency hearings without counsel for children or without legal waivers of counsel, and also asked the Court to order the expungement of the records of the unrepresented juveniles.<sup>8</sup> After consideration, the Court denied the petition on January 8, 2009, but shortly thereafter, removed both judges from active judicial service, relieving Ciavarella of all judicial and administrative responsibilities.

The JLC returned to the Supreme Court with a petition to review the Luzerne County juvenile court system, and appoint a special master to review the juvenile cases to determine whether they should be reversed and the records expunged. On February 11, 2009, the Court granted JLC’s petition and assumed full jurisdiction over the matter under its King’s Bench power.<sup>9</sup> It then appointed Senior Judge Arthur E. Grim of Berks County as Special Master to review all of Ciavarella’s cases where unrepresented juveniles had been committed to the two juvenile detention facilities.<sup>10</sup> On October 29, 2009, the Court accepted Judge Grim’s recommendations, and ordered that the charges against all juveniles appearing before Ciavarella between January 1, 2003, and May 31, 2008, be vacated and their records be expunged.<sup>11</sup>

Appalled by the scope of the apparent misconduct in the Luzerne County court, the three branches of Pennsylvania government agreed in August 2009 to form the Interbranch Commission on Juvenile Justice (“ICJJ”). Chaired by Senior Superior Court Judge John M. Cleland, the Commission’s mandate was to conduct an investigation of the corruption and system failure, and develop appropriate recommendations for reform. Over the course of

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6. *Id.* 9.

7. *Id.* 27.

8. *Id.* 8.

9. *Id.* 10.

10. Judge Grim’s investigation identified 1,866 cases in which juveniles appeared without counsel before Ciavarella between 2003 and 2008. He found that a very substantial number of juveniles who appeared without counsel did not knowingly and intelligently waive their right to counsel, and that “there was routine deprivation of children’s constitutional rights to appear before an impartial tribunal and to have an opportunity to be heard.” *Id.*

11. *Id.* 12.



the next nine months, the 11-member Commission investigated and analyzed the practices, procedures, and rules regarding the judges, attorneys, and public officials involved with the county's juvenile justice system. The Commission also heard from a total of 60 witnesses during the eleven days of public hearings it held in Luzerne County. Many more individuals did not testify in person but provided written or oral comments to the Commission.<sup>12</sup> On May 27, 2010, the Commission issued its Report. A copy of the full report, executive summary, listing of members, and resources can be found at <http://www.pacourts.us/Links/Public/InterbranchCommissionJuvenileJustice.htm>.

The ICJJ Report made recommendations spanning 20 different policy areas applicable to the juvenile justice system. Many of the recommendations addressed the need for ethics education and discipline for juvenile judges, prosecutors, defenders, and probation officers, while others focused on reforms in specific areas of juvenile defense practice, such as a presumption of indigency, prohibition of waiver of counsel except in certain circumstances, and changes in juvenile placement decisions and appellate rights.<sup>13</sup>

Both Ciavarella and Conahan initially pled guilty in February 2009 to honest services fraud and tax evasion. Their plea agreements were rejected, however, by the presiding federal judge, who ruled that they had failed to accept responsibility for their actions. Subsequently, Conahan pled guilty to one racketeering charge, and Ciavarella chose to go to trial. On February 18, 2011, a jury found Ciavarella guilty of various corruption counts, including racketeering, racketeering conspiracy, money laundering and money laundering conspiracy and four counts of honest services mail fraud. He also admitted guilt on five other charges, consisting of four counts of filing fraudulent tax returns and one count of conspiring to defraud the United States.<sup>14</sup> Both former judges are awaiting sentencing.

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12. *Id.* 5.

13. *Id.* 41-59.

14. The jury rejected extortion, bribery and other money laundering charges relating to separate payments made to him and Conahan, as well as honest services wire fraud. On March 4, 2011, Ciavarella appealed his conviction on seven of twelve corruption counts and requested an acquittal or new trial.

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## **VI. APPOINTMENT OF THE PBA TASK FORCE ON THE INTERBRANCH COMMISSION ON JUVENILE JUSTICE REPORT**

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Convened by PBA President Gretchen A. Mundorff in October 2010, the PBA Task Force on the Interbranch Commission on Juvenile Justice Report was charged with identifying recommendations from the ICJJ that could be best addressed by the PBA. The task force focused on those recommendations to which the PBA could respond most quickly and effectively. Because various juvenile court rule amendments and proposed legislation bearing on the work of the task force were proposed after the task force was convened, the group also reviewed and developed further recommendations for consideration and action by the PBA.

The task force held its first meeting by conference call on October 26, 2010. During that meeting, four subcommittees were established to review the sections of the ICJJ Report that are most relevant to the interests and capacities of the PBA. Those areas include General Law Reform, Discipline and Ethics, Continuing Legal Education, and Public Education and Outreach.

Each subcommittee met numerous times from December 2010 through March 2011, in addition to the full task force conference call meetings. Most subcommittee meetings lasted at least one hour and required hours of work in preparation and follow-up to each call. Task force members thoroughly reviewed the ICJJ report recommendations, identifying and consulting related reports and studies, researching best practices, pending legislation, and proposed rules changes, and consulting with professionals and colleagues working in these subject areas. Each chair was responsible for organizing and guiding the work of the subcommittee, compiling and synthesizing the information and recommendations from their subcommittee members, and finally, drafting a report for consideration and review by the full task force.

The Law Reform Subcommittee was responsible for producing recommendations related to juvenile defense lawyers, judicial dispositional reasoning, elimination of shackling, placement decisions, and appellate rights and review. The subcommittee also considered recommendations related to the need for a state-level juvenile ombudsman, waiver of counsel issues and related legislation. Attorney Eleanor L. Bush served as the subcommittee chair.

The Discipline and Ethics Subcommittee focused on producing recommendations regarding continuing legal education ethics requirements and ethics components in judicial education. The subcommittee also assessed and recommended enhancements to the websites of the PBA, the Disciplinary Board and the Judicial Conduct Board to improve the accessibility of information and resources for lawyers and the general public. Attorney Shira J. Goodman served as the subcommittee chair.

The Continuing Legal Education Program Development Subcommittee was charged with developing recommendations for the creation of programs and materials on ethical obligations to report judicial and attorney misconduct; on continuing legal education in conjunction with the District Attorneys Association and Juvenile Defenders' Association; and on legal educational programming on the juvenile justice system in general. As a result of their work, a CLE program is scheduled for June 16, 2011 at the PBI in Mechanicsburg that will be simulcast to various sites throughout Pennsylvania. The Hon. Robert A. Graci served as the subcommittee chair.

Finally, the Public Education and Outreach Subcommittee was responsible for working on recommendations related to communications with the general public about issues identified in the report, enhancing information available to the public concerning progress in Luzerne County in addressing the crisis in its juvenile justice system, publicizing the PBA Task Force's report and recommendations, and education about resources that are available for juvenile offenders, parents, educators and others. Attorney Barbara Griffin served as the subcommittee chair.

The Task Force recommendations are drawn from the work of the four subcommittees. All of the subcommittee recommendations were accepted either unanimously or by at least a strong majority of Task Force members, who represent a fair cross-section of substantive practice areas.

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# VII. EXECUTIVE SUMMARY

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## A. LAW REFORM SUBCOMMITTEE

1. **Recommendations regarding Juvenile Defense Lawyers.** The Subcommittee recommends that the PBA support the creation of a state funding stream to support indigent juvenile defense; the creation of a Center for Juvenile Defense Excellence to serve as a resource center to support trial-level work of public defenders and other local juvenile defense attorneys; and legislation and procedural rule changes that would deem all juveniles indigent for purposes of appointing counsel.
2. **Recommendations regarding Youth’s Ability/Opportunity to Waive Counsel.** The Subcommittee recommends that the PBA support a prohibition on waiver of representation by counsel in delinquency matters, whether achieved by amendment of the Rules of Juvenile Court Procedure, amendment of the Juvenile Act, or both.
3. **Recommendations regarding Stating Dispositional Reasoning on the Record.** The Subcommittee recommends the following:
  - a. The PBA should support the introduction of legislation to amend the Juvenile Act, 42 Pa.C.S. § 6352, and Rule 515 of the Rules of Juvenile Court Procedure, regarding disposition of a delinquent child, to require the trial court to do the following:
    - 1) State on the record how the disposition order furthers the goals of the Juvenile Act and the principles of balanced and restorative justice,
    - 2) For any disposition that removes a child from home, state on the record why the removal and selected placement represent the least restrictive alternative for the child.
  - b. The PBA should support amendment of either Rule 512, regarding dispositional hearings, or Rule 515 of the Rules of Juvenile Court Procedure, to require the court to consider the following factors prior to stating the reasons for its disposition:
    - 1) Protection of the community,
    - 2) Treatment needs of the juvenile,
    - 3) Educational and health care needs of the juvenile,
    - 4) Supervision needs for the juvenile,
    - 5) Development of competencies to enable the juvenile to become a responsible and productive member of the community,

- 6) Accountability for the offense(s) committed,
  - 7) Victim impact, and
  - 8) Other factors deemed appropriate by the court.
4. **Recommendations regarding Juvenile Detention Alternatives Initiative (JDAI).** The Subcommittee recommends that the PBA support the ICJJ recommendation to encourage further development of alternatives to secure detention and the requirement that courts rely on evidence-based assessment instruments, such as those developed by JDAI, to guide detention decision-making. Because Pennsylvania’s work with JDAI is at an early stage, the subcommittee does not recommend any specific changes to court rules or Juvenile Court Judges’ Commission (JCJC) Standards at this time.
  5. **Recommendations regarding Youth Level of Services Initiative.** The Subcommittee recommends that the PBA support amending the Rules of Juvenile Court Procedure for delinquency matters to require that courts consider the results of an evidence-based assessment instrument, such as the YLS/CMI, prior to making a dispositional order, and to require that the results of the assessment, whether the YLS/CMI or other similar instrument, be available to all parties for review.
  6. **Recommendations regarding Juvenile Appellate Rights.** The Subcommittee recommends the following:
    - a. The PBA should recommend that the Supreme Court’s Appellate Court Rules Committee and Juvenile Court Rules Committee explore the feasibility and potential benefit to youth of expanding the current Children’s Fast Track procedures to include delinquency matters, including establishing meaningful timelines for issuance of trial and appellate court decisions, establishing further expedited timelines for attorneys’ appellate work, and consideration of the effectiveness of the current procedures for post-dispositional motions in Rule 520 of the Rules of Juvenile Court Procedure.
    - b. The PBA should support inclusion of appellate training, support and representation within the scope of the Center for Juvenile Excellence, and should support sufficient funding for the Center to carry out those functions, in addition to its support of trial-level defense work.
  7. **Recommendations regarding Office of Children’s Ombudsman.** The Subcommittee recommends that the PBA support the creation of an Office of Children’s Ombudsman to investigate and resolve complaints concerning the manner in which government agencies are serving children in Pennsylvania’s juvenile justice and child welfare systems. The office should have structural independence and fiscal autonomy, as well as access to state and county agency records and files on children; investigative powers to conduct its inquiries; and subpoena power or other authority to acquire records, information and testimony.
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8. **Recommendation regarding Open Courts for Juvenile Proceedings.** Recognizing that there are sound policy reasons for the closure of juvenile court proceedings under certain circumstances, the Subcommittee recommends the following:
  - a. The PBA should support court rules and/or legislation that codifies the framework set by current case law for public access to juvenile court, to-wit, that proceedings are presumptively open, subject to the court exercising its discretion to close them when the party seeking closure demonstrates that closure serves a compelling interest and that no less restrictive means to protect that interest exist, thereby reconciling the case law, the Juvenile Act statutory provisions, and the Pennsylvania Constitution.
  - b. The PBA should support court rules and/or legislation that provide additional safeguards against publication or disclosure of confidential information about children and families involved in the proceedings.

## **B. CONTINUING LEGAL EDUCATION SUBCOMMITTEE**

1. **Recommendations regarding Training for Juvenile Court Prosecutors.** The Subcommittee recommends that training be provided for juvenile court prosecutors through course offerings by the PBA's educational arm, the PBI, and the PBA's sections and committees, including the Criminal Justice Section and the Children's Rights Committee.
  2. **Recommendations regarding Training for Juvenile Court Defense Attorneys.** The Subcommittee recommends that training be provided for juvenile court defense attorneys through course offerings by the PBI and the PBA's sections and committees, including the Criminal Justice Section and the Children's Rights Committee. Additionally, the subcommittee recommends that attorneys handling the defense of juvenile delinquency cases receive this training both before undertaking such representation and subsequently, to periodically refresh their training.
  3. **Recommendations regarding Training for Juvenile Court Judges.** The Subcommittee recommends that training be provided for juvenile court judges through course offerings by the PBI. The subcommittee also urges the PBA to support the offering of training for juvenile court judges on a regional basis; and a mandate that all judges be required to participate in the same number of annual CLE hours as is required for active attorneys.
  4. **Recommendations regarding Training for Juvenile Probation Officers.** The Legal Education Subcommittee recommends that training be provided for juvenile probation
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officers through course offerings by the PBI with support from the PBA's sections and committees, including the Criminal Justice Section and the Children's Rights Committee.

5. **Recommendations regarding Continuing Legal Education Requirements.** The Legal Education Subcommittee urges the PBA to support the increase in required ethics training recommended by the ICJJ, and to make its resources available to provide such training through the PBI, and the appropriate PBA sections and committees. The subcommittee also recommends that the Disciplinary Board of the Supreme Court of Pennsylvania, along with Judicial Conduct Board and the Court of Judicial Discipline, provide continuing education and community outreach to explain their respective processes, complaint and case-handling procedures and the codes that they administer and enforce.

### **C. DISCIPLINE AND ETHICS SUBCOMMITTEE**

1. **Recommendations regarding Protection for Lawyers and Others Who File Complaints with the Judicial Conduct Board.** The Subcommittee recommends that the PBA support the following actions to encourage attorneys to report judicial misconduct:
    - a. The Judicial Conduct Board should make clear that (a) retaliation by a judge against an individual filing a complaint against that judge for misconduct is prohibited and will be grounds for further charges of misconduct; and (b) a judge may be disciplined for retaliation even if the initial complaint of misconduct is found to be without merit.
    - b. The Judicial Conduct Board should inform judges that recusal from cases involving complainants may be appropriate and should be considered, even if not requested by the complainant.
    - c. The rules governing recusal should be amended to include a prohibition against retaliation against a party or lawyer who files a recusal motion, regardless of the reason for the motion.
    - d. The Supreme Court should amend Professional Conduct Rule 8.3 to include in the rule itself the language from the commentary that explains the difference between mandatory and discretionary reporting with respect to professional misconduct.
    - e. The word "substantial" should be removed from Rule of Professional Conduct 8.3 so as to obligate lawyers to report any misconduct upon obtaining actual knowledge of it.
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**2. Recommendations regarding the Judicial Discipline Process.**

- a. The Subcommittee recommends that the Judicial Conduct Board’s website and written materials include the Board’s operating procedures to enable those who are considering filing a complaint against a judge to understand the Board’s investigation procedure, and the range of possible actions, up to and including filing formal charges with the Court of Judicial Discipline.
- b. The Subcommittee recommends that if a complaint is filed by an attorney, the investigation should be expedited to stabilize the relationships between the parties.

**3. Recommendations regarding JCB’s Policies on Deferral and Referral of Allegations of Criminal Conduct.** The Subcommittee recommends that the PBA support the following actions regarding Judicial Conduct Board’s deferral and referral procedures:

- a. The Board should clarify its deferral and referral provisions and set forth clear procedures to govern such decisions, including procedures that enable cooperation with outside law enforcement agencies and investigations, without compromising ongoing criminal investigations, while protecting the people who appear before the accused judges.
  - b. There should be clear and mandatory notification procedures under which the Board is required to inform the appropriate law enforcement agency of creditable allegations and whether it will investigate or defer investigating. In addition, through its rule-making authority, the Board and/or the Supreme Court should require that a judge who receives a target letter from a law enforcement agency notify the Board of the pending investigation. (This is a feature of pending Senate Bill 59.)
  - c. The Board should retain the authority to investigate allegations of criminal conduct that address the judicial function and how a judge is treating litigants. The delays caused by waiting for an outside investigation to conclude in the Luzerne County case resulted in many more children being inappropriately sent away.
  - d. Internal Operating Procedure (“IOP”) 4.13, relating to Emergency Removal When Administration of Justice is Significantly Impaired, should be referenced in the referral/deferral provisions, and the Board should reserve the right and authority to seek such removal, even if it has referred charges to law enforcement agencies and deferred its own investigation pending the resolution of the outside criminal investigation.
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4. **Recommendations regarding Funding of the Judicial Conduct Board.** The Subcommittee recommends that the PBA support adequate funding of the Judicial Conduct Board to ensure that all complaints are properly investigated. In addition, the Board should clearly articulate its funding needs in its budget presentation to the Supreme Court, and the Court should make clear the special nature of the Board's work in its budget request to the legislature.
5. **Recommendations regarding the Attorney Discipline System.** To reduce the reluctance of attorneys to report fellow attorneys to the Disciplinary Board due to fear of retaliation, the Subcommittee recommends the following:
  - a. The Disciplinary Board, the Pennsylvania Bar Association and the Supreme Court should make efforts to make clear that (a) retaliation by a lawyer against an individual filing a complaint against that lawyer for misconduct is prohibited and will be grounds for further charges of misconduct; and (b) a lawyer may be disciplined for retaliation even if the initial complaint of misconduct is found to be without merit.
  - b. The Supreme Court should consider providing more guidance to attorneys in Pennsylvania Rule of Professional Conduct ("Pa. R.C.P.") 8.3(a) which states that a lawyer having knowledge that another lawyer has committed a violation of the Pa.R.P.C. that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority. The comment to the rule contemplates "a measure of judgment" by the informing attorney but does not guide attorneys in the exercise of that judgment.
6. **Recommendations regarding Ongoing Ethical Education for Judges and Lawyers.** The Subcommittee recommends that the Supreme Court consider mandating continuing legal education regarding the operation of Pa.R.P.C. 8.3 as it relates to the obligation to report both judicial and attorney misconduct, as well as continuing ethical education and training for judges. Representatives of the Disciplinary Board should participate in continuing legal education programs on this subject.

#### **D. PUBLIC EDUCATION AND OUTREACH SUBCOMMITTEE**

1. **Recommendations regarding Judicial Conduct Board Educational Materials.** The Subcommittee recommends that the PBA work with the Judicial Conduct Board to help develop and make more widely available to the general public user-friendly educational materials concerning the functions of the Board and how to report judicial misconduct. The Subcommittee also recommends that the PBA support adequate funding of such efforts.
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2. **Recommendations regarding Public Educational Programming on Attorney Misconduct.** The Subcommittee recommends that the PBA work with the Disciplinary Board and Office of Disciplinary Counsel in developing appropriate educational materials regarding what constitutes attorney misconduct and how to file a complaint.
3. **Recommendations regarding Reporting of Misconduct Related to Juveniles.** The Subcommittee recommends that the PBA work with county bar associations, lawyer referral services, the Pennsylvania Legal Aid Network, and legal aid providers to make them aware of entities responsible for protecting the rights of juveniles and their families, and for receiving reports of misconduct.
4. **Recommendations regarding Public Education Programs.** The Subcommittee recommends that the PBA extend its educational and informational programs to reach juveniles, parents, public defenders, appointed counsel, and probation officers statewide in the local courts, schools, detention facilities, family counseling offices and physician's offices.
5. **Recommendations regarding Education About the Implementation of ICJJ Recommendations.** The PBA should engage media statewide to relay information about the PBA's implementation of ICJJ recommendations, and that the PBA dedicate an issue of the *Pennsylvania Lawyer* to its response to the ICJJ report.

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# VII. RELEVANT RECOMMENDATIONS FROM THE ICJJ REPORT

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The following ICJJ recommendations have been summarized for purposes of reference in this report. The full Report and recommendations of the Interbranch Commission on Juvenile Justice are available on the website of Pennsylvania's Unified Judicial System at: [www.pacourts.us/Links/Public/InterbranchCommissionJuvenileJustice.htm](http://www.pacourts.us/Links/Public/InterbranchCommissionJuvenileJustice.htm).

## 1. Judicial Ethics

ICJJ recommends that the Supreme Court re-examine the Code of Judicial Conduct (“CJC”) to ensure ethical provisions and reporting requirements are adequate.

## 2. Judicial Discipline

ICJJ recommends that judges and lawyers be made aware of their ethical responsibility to report lawyer and judicial misconduct, and develop educational materials so the general public is aware of how to report judicial misconduct.

ICJJ recommends that the Pennsylvania constitutional provisions regarding judicial discipline be reviewed to ensure that the Judicial Conduct Board is accountable.

## 3. Attorney Discipline

ICJJ recommends creating educational programming to ensure the bar and the general public understand what constitutes attorney misconduct.

## 4. Continuing Education

ICJJ recommends that the Pennsylvania District Attorney’s Association and the Juvenile Defenders Association of Pennsylvania develop and present CLE courses for prosecutors and defense counsel.

## 5. Juvenile Defense Lawyers

ICJJ recommends that all juveniles be deemed indigent for purposes of appointing counsel and require that stand-by counsel be available if a juvenile waives the right to counsel.

ICJJ recommends the creation of a Center for Juvenile Defense Excellence.

## **6. Stating Dispositional Reasoning on the Record**

ICJJ recommends that the Juvenile Act and Rules of Court be amended to require the court to state on the record how a juvenile disposition furthers the goals of the Juvenile Act.

## **7. Reduce or Eliminate the Practice of Shackling**

ICJJ recommends that the Juvenile Justice Delinquency Prevention Committee of the Pennsylvania Commission on Crime and Delinquency should study and recommend ways to reduce or eliminate shackling in juvenile courtrooms.

## **8. Appellate Rights**

ICJJ recommends development of a form to advise juveniles of their right to appeal and seek other post dispositional relief.

## **9. Nunc Pro Tunc Relief**

ICJJ recommends enhanced allowance of nunc pro tunc relief.

## **10. Juvenile Placement Decisions**

ICJJ recommends implementation of the Juvenile Detention Alternatives Initiative (“JDAI”) model as a detention assessment instrument and endorses the modification of the Juvenile Court Judges’ Commission Standards Governing the Use of Secure Detention.

## **11. Youth Level of Services Initiative**

ICJJ recommends expansion, as a pilot program, the Youth Level of Service/Case Management Inventory (“YLS/CMI”) risk/needs instrument and the employment of valid research and other evidence-based assessment instruments.

## **12. Court Hiring Practices**

ICJJ recommends that the Court Administrator of Pennsylvania undertake a national review to determine best practices for court hiring policies and present the findings of that study to the Supreme Court for review.

## **13. Department of Education**

ICJJ recommends discontinuance of zero-tolerance policies, and development of educational programs on how the juvenile justice system operates.

# IX.

## PROGRESS IN LUZERNE COUNTY

*In Luzerne County we have been through the worst period in our collective lives. Luzerne County is at a much different place than it was two years ago. Through the efforts of many caring and committed individuals within our juvenile justice system as well as on the Juvenile Justice Task Force, we have come a long way in implementing change toward the goal of making the Luzerne County Juvenile Justice System the best that it can be and, hopefully, making it a model for others to follow throughout the Commonwealth. We learned a hard lesson and no one is ever going to have to remind us of it again. People within this system who were also victimized by the actions of the former juvenile court judge, are the same people who have worked so hard to put this system back together again.*

Jacqueline Musto Carroll, Luzerne County District Attorney<sup>15</sup>

Within months of the corruption scandal, the Luzerne County Court instituted changes to address shortcomings that allowed abuses to occur within its juvenile justice system. The progress that has taken place over the past 24 months is noted below.

### **1. Court Administration and Procedure**

Under the leadership of Chief Justice Ronald D. Castille, the Supreme Court has assumed a “hands-on role” in monitoring the Luzerne County court by requiring bi-monthly progress reports from the court. It has also taken public actions to ensure not only that similar abuses will never happen again in this Commonwealth, but have set in place the underpinnings to provide the highest standards of justice in juvenile court.

### **2. General Reforms Instituted by the Luzerne County Court**

On its own initiative, the Luzerne County court took numerous critical actions to address the problems brought to light in the investigation of its court system, including the following:

- implemented a computer program that randomly assigns civil trials to judges,
- adopted a local rule governing the appointment of arbitrators in UM/UIM (insurance) cases, eliminating the opportunity for an attorney to seek to improperly influence the arbitrator who is assigned to his or her case,
- contracted with an outside mediation agency to help clear a backlog of civil

15. From her written testimony provided October 14, 2010 to the Children and Youth Committee, House of Representatives, Commonwealth of Pennsylvania, Shavertown, PA.

cases, settled a lawsuit challenging reductions in staff ordered by county commissioners, and also vacated a controversial pay scale for court-appointed attorneys serving as conflict counsel, and

- perhaps most importantly, reined in the virtually unlimited and unchecked power of the President Judge. In addition to controlling the assignment of fellow judges, the President Judge was responsible for all court hirings, and controlled the budget. In the past, major decisions – such as shutting down the county’s juvenile detention center – were made without consulting other judges. Now, such decisions are first discussed with other judges during en banc meetings, held every few weeks.

While the ten-seat county bench remains in flux,<sup>16</sup> the new President Judge, Thomas Burke, has indicated that the panel of judges now on the Luzerne County Court of Common Pleas has shown itself to be deeply committed to reforming the abuses of the past and performing their duties with the utmost integrity. With the assistance of the senior judges, the new judges have reduced the backlog of civil cases from approximately 400 to 300.

### **3. Specific Juvenile Court Reforms**

Supervising Judge David W. Lupas has initiated numerous changes since his assignment to Juvenile Delinquency Court, including the following:

- increasing court time allocated to Juvenile Court, sufficient to meet the needs of the caseload,
- increasing Juvenile Court sessions to at least twice per week and at other times, as necessary, to handle matters such as detention hearings and the like,
- scheduling unresolved contested adjudication matters for future specific dates and times, to afford all parties sufficient court time to present the case,
- consulting with the Juvenile Court Judges’ Commission (“JCJC”), which has reviewed some of the practices in Luzerne County and offered recommendations,

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16. Three of the current sitting judges — Joseph Van Jura, Lewis Wetzel and Joseph Cosgrove -- are temporary appointments whose seats will be up for election in 2011. The seats that are held by Judges Augello, Mundy and Lokuta also will be on the ballot. There are 16 judicial candidates vying for six open seats on the bench in the May 17, 2011 primary election, with the winners taking their seats in January 2012. The newly elected judges will join President Judge Burke who is presently serving his 13th year on the bench, along with Judges William Amesbury and Tina Polachek Gartley, each of whom are in their second year on the bench; and Judge David Lupas, who is in his fourth year on the bench. The combined experience level of all nine judges will be just 21 years, compared to 126 years of combined experience of the nine judges who served the county in 2008 — the last year the county had a full complement of judges. “It’s an obvious concern,” Burke said. “Experience counts heavily. Judges become more effective and more productive the longer they have served.” He said he is confident the situation is manageable, however, thanks to the assistance of the retired county judges — Muroski, Augello, Mundy and Patrick Toole — who continue to serve as senior judges. “We have the benefit of several senior judges in the wings who, along with handling specific assignments, have demonstrated themselves to be outstanding mentors to the new judges.”

- attending the yearly Pennsylvania Conference on Juvenile Justice to obtain training and input from colleagues throughout the state,
- ensuring that the Luzerne County Sheriff's Department provides courtroom security during all Juvenile Court proceedings, and
- creation of a Juvenile Delinquency Roundtable wherein various stakeholders involved with the juvenile justice system in Luzerne County meet on a regular basis to address any issues of concern and to conduct dialogue to improve the system. In addition to Judge Lupas, this group is comprised of members of the District Attorney's Office, the Public Defender's Office, the Juvenile Probation Department, and other participants, when necessary. It has fostered a working relationship and spirit of cooperation among the entities involved and has increased efficiency in the system.

#### **4. Improvements to the Juvenile Intake Process**

The Luzerne County court has instituted an improved juvenile intake process that has improved communication among defense counsel, district attorneys, and the probation office when a recommendation is made to the court. Features of the new intake process include the following:

- A new and updated written allegation form, modeled after the AOPC form, has been adopted and implemented, and complies with the Rules of Juvenile Court Procedure.
- When the juvenile probation division receives an allegation complaint form from the District Attorney's Office, the allegation is processed by juvenile clerical staff and disseminated to an Intake Probation Officer for scheduling of an informal intake hearing. Upon conclusion of the intake, the juvenile and his or her attorney are informed of the intake officer's recommendation and directed in the appropriate manner through the system. At this time, the Assistant District Attorney is informed of the officer's recommendation. Juvenile Intake Officers continue to provide the District Attorney's Office with notice in a timely manner of the decision resulting from the intake conferences, in compliance with the Rules of Juvenile Court Procedure.
- A process has been implemented whereby in consultation with the District Attorney's Office, the Deputy Chief of Juvenile Probation, signs and files all petitions with the Clerk of Courts.
- The petition utilized in Luzerne County has been revised, updated, and implemented to ensure inclusion of the elements required by the Rules of Juvenile Court Procedure.

- Petitions are filed with the Clerk of Courts well in advance of Juvenile Court hearings and are disseminated and served as required by the Pennsylvania Rules of Juvenile Court Procedure.
- The goal of the division's intake staff is to formulate an outcome that curtails a youth's behavior, establishes positive factors for the youth's family focused on victim awareness, and protects the community in which the youth resides.
- The placements youth may receive range from informal probation to out-of-home placement.
- All parties involved in this process are aware of the Probation Office's recommendation to the court prior to the hearing, and in most cases, a general agreement has been made among the parties involved.

## **5. Waiver of Counsel**

Unlike the past practice in which juveniles regularly appeared in court without an attorney, Judge Lupas now requires all juveniles who appear before him to be represented by counsel. This has occurred primarily due to the following reforms:

- Procedures have been put in place to ensure that juveniles obtain representation and consult with members of the Public Defender's Office in advance of hearing dates.
- The Luzerne County Public Defender's Office has created a Juvenile Unit and is adding attorneys and other staff to ensure that they have adequate resources to handle the caseload.
- Systems have been enhanced for the appointment of appropriate court-appointed conflict counsel to represent juveniles when the Public Defender's Office has a conflict with its representation. This takes place very early in the process and well in advance of intake conferences.

## **6. Excessive Placement of Juveniles**

Since Judge Lupas began his tenure as the Juvenile Delinquency Court Judge in May 2008, the court has focused on striving to meet the highest standards of "balanced and restorative justice." Specifically, emphasis has been placed on reducing the number of cases filed and finding alternatives to incarceration. The results are reflected in the following data:

- In 2005, the number of new cases filed in Luzerne County Juvenile Delinquency Court was 561. In 2010, that number was reduced to 312.



- In 2005, the number of juveniles committed to a juvenile facility was 216. In 2010, that number was 34.

One of the many items currently being addressed by the Juvenile Delinquency Roundtable involves those instances when it is necessary to utilize a secure detention facility. The facility in Luzerne County that was utilized in the past is no longer being used for those purposes, thereby requiring the court to place juveniles in facilities some distance from Luzerne County. This practice is resulting in increased cost to the County. Members of the Roundtable have brought this to the attention of County Commissioners and other county officials. To address this problem, facilities are now being utilized which are closer in proximity to Luzerne County, including detention facilities in Northampton County, and efforts are underway to make use of video conferencing, to allow interaction between the juveniles and their counsel.

## **7. Cooperation Between the Courts and Schools**

In response to the report of problems involving schools and school-related matters, and the courts, Judge Lupas has established a cooperative effort among stakeholders in the juvenile justice system, who are also members of the Roundtable, to educate local school superintendents, school principals, and lower level school officials about the respective roles played by the stakeholders within the court system, with a strong emphasis on the concept of balanced and restorative justice and the overall goals of the juvenile justice system.

## **8. Juvenile Probation**

The following changes have been made in the juvenile probation system:

- The court has established an additional supervisory position within the Juvenile Probation Department that provides greater oversight within the department.
- With recent changes in the duties and responsibilities of juvenile probation officers and the recent closing of a probation satellite office, the issue of reporting of juvenile probation officers is being reviewed and studied by the Probation Department.
- Each individual probation officer has a personal desktop computer for use, and laptop computers are being provided to on-call officers and supervisors.
- County-owned Probation Department vehicles are available for use for field work by probation officers.
- The Juvenile and the Adult Probation Departments recently updated policies and practices regarding on-call duties to ensure that these duties are appropriately addressed and staffed.

## 9. The Public Defender's Office

The Public Defender's Office has made the following reforms:

- initiated a series of training sessions in 2009, and continues to ensure training for all staff involved in juvenile cases in the juvenile defenders unit.<sup>17</sup>
- established a new unit, staffed by three attorneys, a social worker, a secretary and an investigator, dedicated solely to representing juveniles. Previously, all juvenile cases were handled by a single attorney.
- developed public information and education materials, including a three-panel brochure about the office, as well as a 20-page booklet to be distributed to juveniles and their parents/guardian during the initial contact with the Public Defender's office. The booklet explains the court procedures and what to expect in simple language, and also provides information about the juvenile's rights and responsibilities throughout the process.

## 10. The District Attorney's Office

The Luzerne County District Attorney's Office has implemented the following modifications:

- Pursuant to Rules 231 and 330 of the Pennsylvania Rules of Juvenile Court Procedure, the District Attorney has elected to require initial receipt and approval or disapproval by the District Attorney's Office of all written allegations brought by police in Luzerne County. New Luzerne County Juvenile Written Allegation procedures have been instituted.
- Two experienced Assistant District Attorneys have been assigned to handle all juvenile matters at all times and will receive periodic training, including a written training manual.
- The Juvenile Court Assistant District Attorneys regularly participate in the Juvenile Prosecutor's Network and have provided input to the PDAA in formulating the Pennsylvania Juvenile Prosecutor Standards.
- The District Attorney, First Assistant and the two Juvenile Court Assistant District Attorneys regularly participate in the Court's Roundtable Discussions held by Juvenile Court Judge David W. Lupas.

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17. A five-part series titled, "New Approaches and New Ideas for More Effective Representation of Children in Juvenile Court" was sponsored by the Juvenile Defender Association of PA and the Wilkes Law School Initiative. These sessions occurred on December 11, 2009; January 29, 2010; April 16, 2010; and June 11, 2010. The primary presenters were Robert Listenbee, Esq., Board President, JDAP Chief, Juvenile Unit, Defender Association of Philadelphia; and Phyllis H. Subin, Esq., National Training Consultant, Project Director, *PA Indigent Defense Representation Reform Project*.

In addition, a two-part series titled, "Developing Outstanding Due Process Juvenile Defender Advocates" was sponsored by the Juvenile Defender Association of PA and the Luzerne County Public Defender Office. These sessions occurred on October 28-29, 2010 and December 2-3, 2010. Primary presenters were Elton Anglada, Esq., Assistant Chief, Juvenile Unit, Defender Association of Philadelphia, Board Member, JDAP; and Phyllis H. Subin, Esq., National Training Consultant, Project Director, *PA Indigent Defense Representation Reform Project*.

- Both Juvenile Court Assistant District Attorneys participated in the Juvenile Prosecutor's Network's production of a community outreach video, "2Smart4Trbl" for middle school students. Since November 2010, the District Attorney and First Assistant have presented the program at 26 schools and to nearly 8,000 children. More schools are scheduled for the spring of 2011.
- The District Attorney's Office has instituted procedures for juvenile discovery.
- The Juvenile Court Assistant District Attorneys will continue to attend all available seminars addressing juvenile court matters, and will continue to keep current on changes in the law.
- The District Attorney's Office Victim/Witness Unit participated in several Luzerne County Juvenile Justice Victim Response Task Force meetings, along with state experts and the Victims' Resource Center. The meetings focused on identifying objectives and anticipating impacts regarding how to notify original victims of crimes committed by juveniles who appeared before former Judge Ciavarella, and their families, and receive their input in those cases being vacated/expunged.
- The District Attorney's Office Victim/Witness Unit provided notification letters to numerous victims of crimes committed by those juveniles whose cases are being vacated/expunged, in an effort to give them the opportunity to share their thoughts, stories and feedback to the Director of the Office of Victim Advocate, Carol Lavery.
- Along with state experts, the District Attorney's Office Victim/Witness Unit drafted a letter to be sent to the original victims, notifying them of Judge Grimm's decision to vacate those cases heard during 2003-2008 by former Judge Ciavarella. The letter also provided information regarding services available to those victims, including the contact name and address for Victim Impact Statements to be sent to the federal judge handling former Judge Ciavarella's trial.
- The District Attorney's Office Victim/Witness Unit continues to work in tandem with the Juvenile Probation and Victim's Resource Center, providing information, supportive counseling and referrals as requested by the victims in those cases being vacated/expunged.

### **11. Luzerne County District Attorney's Youth Aid Panel Program**

The District Attorney's Office is exploring new programs to help enhance the response to and handling of crimes committed by juvenile offenders. One such program is the creation of Youth Aid Panels, a diversionary program for first-time juvenile offenders who are accused of committing minor crimes. The children will appear before the panels and enter into an agreement to complete certain conditions in order for the charges to be dismissed, such as, writing an essay, a letter of apology, or volunteering at a soup kitchen. Through this program, children will learn that there are consequences to their actions and at the same time, will have the opportunity to avoid going through the juvenile system and to have any record wiped clean.<sup>18</sup>

### **12. Luzerne County Child Advocacy Center**

On August 12, 2010, the Luzerne County District Attorney's Office opened the newly created Luzerne County Child Advocacy Center ("CAC") where children's allegations of physical and sexual abuse, committed by both juvenile and adult offenders, are jointly investigated by law enforcement and the Office of Children and Youth Services in a safe, comfortable, child-friendly setting. With the joint collaboration of this investigative team, the CAC will provide children with two critical services: forensic interviews and sexual assault medical exams.

### **13. State Level Changes**

The Supreme Court has promulgated a Code of Conduct for all court employees that, among other key provisions, emphasizes an employee's protection from retaliation for complaints lodged under the whistleblower statute, with respect to alleged wrongdoing by any court officials, including a President Judge.<sup>19</sup>

In addition, the Legislature, the Governor and the Supreme Court have created the \$500,000 Special Juvenile Victim Compensation Fund, to compensate juveniles appearing before former Judge Ciavarella from 2003 to 2008. Special Master Judge Arthur Grim was appointed to oversee disbursements of the fund that will be available until June 2011. Luzerne County District Attorney Jacqueline Carroll Musto and Judge Grim are working to provide information on how victims can claim money they are entitled to through this fund.

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18. On October 1, 2010, a new position of Youth Aid Coordinator was created within the District Attorney's Office with funding provided from the Child Welfare Budget through Act 148. On February 4, 2011, District Attorney Jacqueline Musto Carroll launched the Luzerne County District Attorney's Youth Aid Panel Program at press conference. Interviews for panel members are being conducted and the District Attorney's goal is to have the first panels start hearing cases by May 2011. The Luzerne County District Attorney's Youth Aid Panel Program will be administered by a Panel Coordinator who will be contracted through Children and Youth Services to administer the Youth Aid Panel Program.

19. The Code of Conduct became effective October 10, 2010. The code specifically references Pennsylvania's whistleblower statute which protects employees from retaliation for reporting wrongdoing. In a news release announcing the adoption of the Code, Chief Justice Castille noted that employees should be aware that they can report wrongdoing, even by a president judge as happened in Luzerne County, without retaliation.

### A. LAW REFORM SUBCOMMITTEE

**Background:** The Law Reform Subcommittee conducted research and discussed specific ICJJ recommendations regarding the treatment of juveniles within the justice system. The topics included the following: establishment of a dedicated funding stream for indigent juvenile defense; creation of a Center for Juvenile Defense Excellence, waiver of juvenile defense counsel; requirement for courts to state dispositional reasoning on the record; use of model juvenile detention assessment instruments; a range of juvenile appellate rights reforms; establishment of an Office of Children’s Ombudsman; and the issue of making juvenile courts presumptively open. In a couple of instances, the Subcommittee considered but reached a different conclusion from an ICJJ recommendation but set forth its research and the factors it weighed in reaching its alternative conclusions.

Since the drafting of the recommendations on juvenile defense reform, State Senator Lisa Baker of Luzerne County introduced new legislation intended to address several of the recommendations of the Interbranch Commission. Specifically, the legislation would amend Title 42 by prohibiting waiver of counsel by a child (S.B. 815); by prohibiting the use of restraints on juveniles during court proceedings, with certain very limited exceptions (S.B. 817); and by requiring judges to state the reasons for their dispositions on the record in open court, along with the goals, terms and conditions of the disposition, as well as the specific facility to which the child will be committed and the reasons why commitment to that facility was determined to be the least restrictive placement (S.B. 818).

The ICJJ report did not address the related systemic problems of adequate court time and attorney preparation time as factors bearing on the problems that were brought to light by the situation in Luzerne County juvenile court. The Task Force is of the view that the new or amended rules, statutes or other procedural changes developed to address and improve the juvenile court system must provide adequate time for attorneys to investigate, prepare and vigorously present their cases to tribunals that set aside adequate time for juvenile court proceedings. If the juvenile system is to mirror the adult system in value, then the court time allotted must be commensurate to reflect this value.

## **Recommendations regarding Juvenile Defense Lawyers**

**ICJJ Recommendation:** The ICJJ made a set of recommendations related to juvenile defense lawyers and ensuring competent representation.<sup>20</sup>

**Subcommittee Recommendations:** The Subcommittee discussed most of these recommendations,<sup>21</sup> sees an important role for the PBA in supporting and advancing the recommendations, and makes the following specific recommendations:

1. The PBA should support creation of a state funding stream to support indigent juvenile defense. The PBA's efforts should include support for introduction of funding legislation in the General Assembly, as well as advocacy with the Governor's office.
2. The PBA should support creation of a Center for Juvenile Defense Excellence, to serve as a resource center to support trial-level work of public defenders and other juvenile defense attorneys in counties. The PBA's efforts should include support for legislation to create and fund the center, as well as advocacy with the Governor's office, and the Pennsylvania Supreme Court and Administrative Office of Pennsylvania Courts.

## **Recommendations regarding Youth's Ability/Opportunity to Waive Counsel**

**ICJJ Recommendations:** The ICJJ recommended an overhaul of Rule 152 of the Rules of Juvenile Court Procedure to require more safeguards in the waiver process. Specifically, the ICJJ recommended that the revised rule:

- require that youth consult with an attorney prior to any waiver (at hearings including detention, pretrial, transfer, adjudication, disposition, disposition/commitment review, probation review),
- require appointment of standby counsel if youth waives counsel, and
- replace guidance currently in the comments regarding colloquy with specific provisions in the Rule itself regarding colloquy.

**Subcommittee Recommendation:** From the start of its discussions, the Subcommittee favored more significant limits on youth's opportunity to waive counsel. Several members favored defining some very limited set of circumstances or hearings in which youth should have the opportunity to waive counsel because the legal ramifications of the waiver might be less severe. After attempting and failing to define such a set of circumstances, the full

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20. ICJJ Report at 48-51.

21. The subcommittee addressed only the ICJJ recommendations that fell within its scope of responsibility.

subcommittee concluded that this approach was unworkable, and decided to recommend an absolute prohibition on waiver of counsel.<sup>22</sup> Specifically, the subcommittee recommends the following:

1. The PBA should support a prohibition on waiver of representation by counsel in delinquency matters, whether achieved by amendment of the Rules of Juvenile Court Procedure, amendment of the Juvenile Act, or both.

### **Recommendations regarding Stating Dispositional Reasoning on the Record**

**ICJJ Recommendation:** The ICJJ recommended that the Juvenile Act and Rules of Juvenile Court Procedure be amended to require the court to state on the record how a juvenile disposition furthers the goals of the Juvenile Act.<sup>23</sup>

**Subcommittee Recommendations:** Noting that pursuant to Pa.R.Crim.P. 704(C)(2), judges have long been required to state on the record the reasons for the sentence imposed, the subcommittee recommends the following:

1. The PBA should support the introduction of legislation to amend the Juvenile Act, 42 Pa. C.S. § 6352, regarding disposition of delinquent child, to require the following:
  - a. that the court state on the record how the disposition order furthers the goals of the Juvenile Act and the principles of balanced and restorative justice, and
  - b. that, for any disposition that removes a child from home, the court state on the record why the removal and selected placement represent the least restrictive alternative for the child.
2. The PBA should support amendment of Rule 515 of the Rules of Juvenile Court Procedure, regarding dispositional orders, to require the following:
  - a. that the court state on the record how the disposition order furthers the goals of the Juvenile Act and the principles of balanced and restorative justice, and
  - b. that, for any disposition that removes a child from home, the court state on the record why the removal and selected placement represent the least restrictive alternative for the child.

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22. Other factors considered by the subcommittee in support of its decision to recommend the prohibition of waiver of counsel included the following: this position is consistent with the ABA Juvenile Justice Standards which do not permit waiver of counsel for youth alleged to be delinquent; other states, including Texas, Iowa, and Illinois, prohibit waiver of counsel; two Pennsylvania counties, Mercer County and Berks County, have functioned well without waivers ever occurring in their juvenile courtrooms; and in the experience of subcommittee members, waivers can cause youth to succumb to parental or other adult pressure to expedite matters by agreeing to probation, without having adequate understanding of the collateral consequences of a delinquency adjudication or the consequences of violating probation.

23. ICJJ Report at 53-54.

3. The PBA should support amendment of either Rule 512, regarding dispositional hearings, or Rule 515 of the Rules of Juvenile Court Procedure, to require the court to consider the following factors prior to stating the reasons for its disposition:
  - a. protection of the community,
  - b. treatment needs of the juvenile,
  - c. educational and health care needs of the juvenile,
  - d. supervision needs for the juvenile,
  - e. development of competencies to enable the juvenile to become a responsible and productive member of the community,
  - f. accountability for the offense(s) committed,
  - g. victim impact,
  - h. other factors deemed appropriate by the court.

#### **Recommendations regarding Juvenile Detention Alternatives Initiative (“JDAI”)**

**ICJJ Recommendation:** The ICJJ recommended adoption of a JDAI model detention assessment instrument and called for the Juvenile Court Judges’ Commission (“JCJC”) to modify its Standards Governing the Use of Secure Detention accordingly.<sup>24</sup>

**Subcommittee Recommendation:** The Subcommittee agrees with the ICJJ that further development of alternatives to secure detention should be encouraged and that courts should rely on evidence-based assessment instruments, such as those developed by JDAI, to guide detention decision-making. Because Pennsylvania’s work with JDAI is at an early stage, the subcommittee does not recommend any specific changes to court rules or JCJC Standards at this time. The Subcommittee recommends that the PBA express general support for this ICJJ recommendation.

#### **Recommendations regarding Youth Level of Services Initiative**

**ICJJ Recommendations:** The ICJJ recommended expansion of the current pilot program encouraging probation offices to use the Youth Level of Service/Case Management Inventory (“YLS/CMI”) in assessing risk and proposing dispositional plans for youth who have been adjudicated delinquent. The ICJJ also encouraged use of other valid research and evidence-based assessment instruments.<sup>25</sup>

**Subcommittee Recommendations:** The Subcommittee agrees with the ICJJ’s recommendation to encourage expansion of the YLS/CMI pilot, but would extend this recommendation to require the courts to use the results of the YLS/CMI in dispositional decision-making. The Subcommittee notes that the intent of such a requirement is not to

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24. Id. at 54.

25. Id. at 54-55.



remove a judge's discretion, but to help to standardize procedures and encourage consistent decision-making. Specifically, the subcommittee recommends the following:

1. The PBA should support the amendment of the Rules of Juvenile Court Procedure for delinquency matters to require the following:
  - a. that courts consider the results of an evidence-based assessment instrument, such as the YLS/CMI, prior to making a dispositional order, and
  - b. that the results of the assessment, whether the YLS/CMI or other similar instrument, be available to all parties for review, including defense lawyers and district attorneys, among others.

### **Recommendations regarding Appellate Rights**

**ICJJ Recommendation:** The ICJJ recommended development of a mechanism to expedite the appellate process for delinquency matters and recommended creation of a statewide juvenile appellate office that would have the capacity to represent individual children in appeals and would provide training to defense attorneys on issues related to appellate practice.<sup>26</sup>

**Subcommittee Recommendations:** The Subcommittee recommends the following:

1. The PBA should recommend that the Supreme Court's Appellate Court Procedural Rules Committee and Juvenile Court Procedural Rules Committee explore the feasibility and potential benefit to youth of expanding the current Children's Fast Track procedures to include delinquency matters. The PBA should recommend that any such exploration should include the feasibility of establishing meaningful timelines for issuance of trial and appellate court decisions, as well as the possibility of establishing further expedited timelines for attorneys' appellate work. Additionally, such expansion should include consideration of the effectiveness of the current procedures for post-dispositional motions in Rule 520 of the Rules of Juvenile Court Procedure.
2. The PBA should support inclusion of appellate training, support and representation within the scope of the Center for Juvenile Excellence and should support sufficient funding for the Center to carry out those functions in addition to its support of trial-level defense work.<sup>27</sup>

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26. *Id.* at 55.

27. Regarding resources to support appellate representation, the subcommittee backs the creation of a Center for Juvenile Excellence to support trial-level work of public defenders and other juvenile defense attorneys in local judicial districts. Rather than support creation of a separate entity focused on appellate work, subcommittee members felt that it would be efficient and sensible for the Center for Juvenile Excellence to include appellate work within its scope. The scope of this work could include providing consultation and support to trial-level defense counsel handling their own appeals, providing training for juvenile defense attorneys on issues related to appellate practice, and representing individual youth in appeals when appropriate.

## Recommendations regarding Office of the Children’s Ombudsman

**ICJJ Recommendation:** Acknowledging throughout its report that the public had little recourse when the courts and oversight organizations failed in their responsibilities, the ICJJ nevertheless declined to “create an office of Ombudsman to serve as a watchdog/public advocate investigating grievances regarding governmental abuse of power in the juvenile justice system.”<sup>28</sup> The ICJJ expressed its preference that, before a Children’s Ombudsman is created in Pennsylvania, other systemic changes should be given the opportunity to remedy the deficiencies revealed through the Luzerne County crisis.

### Subcommittee Recommendation:

Citing the critical absence of a meaningful venue for the public to lodge complaints and seek redress of grievances in the child-serving systems, the subcommittee took an approach contrary to the ICJJ as follows:

1. The PBA should support the introduction and/or passage of legislation and appropriation of funds to create an Office of Children’s Ombudsman<sup>29</sup> with the following characteristics:
  - a. authority to investigate and resolve complaints from citizens and professionals concerning the manner in which government agencies are serving children in the juvenile justice and child welfare systems in this Commonwealth;
  - b. subpoena power or other authority to acquire records, information and testimony, and access to state and county agency records and files on children;
  - c. structural independence and fiscal autonomy;
  - d. responsibility to establish procedures for notification, investigation, receiving of complaints and information, and reporting of findings and recommendations to the appropriate authorities;<sup>30</sup> and
  - e. responsibility to make recommendations for resolution of systemic problems and to issue public reports.

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28. ICJJ Report at 41.

29. Across the nation, states have established public ombudsman offices to serve as the watchdog and public advocate when other mechanisms for accountability seem to fail. The American Bar Association is a staunch supporter of Children’s Ombudsman Programs. The ABA created and adopted Standards for the Establishment and Operation of Ombuds Offices in February 2004, and since that time has been actively working with Children’s Ombudsman programs around the country as well as providing technical assistance to foreign countries and governments working to enhance child welfare services. As recommended in 2002 by a bipartisan study group of the Pennsylvania General Assembly, the creation of a children’s ombudsman office “will give the Commonwealth’s children and youth services delivery system a dimension of accountability it does not now have: an avenue of recourse for dissatisfied clients that is independent of the system itself.” Report of the Advisory Committee on Services to Children and Youth, Joint State Government Commission (2002), 66. According to the National Conference of State Legislatures, “[a]pproximately 29 states currently have either ombudsman or offices of the child advocate with duties and purposes related to the welfare of children [and] there are a number of states in the process of creating ombudsman offices.” See <http://www.ncsl.org/default.aspx?tabid=16391>. Ombudsman programs in other states have been both low in cost and effective in their work. The programs in Michigan and Indiana provide structural examples for Pennsylvania. For Michigan program information, see, OCO 2009 Annual Report (<http://www.michigan.gov/oco/0,1607,7-133-3195---,00.html>; <http://www.michigan.gov/oco>); and for Indiana program information, see <http://www.in.gov/dcs/3174.htm>

30. The ombudsman may not overrule an action by an administrative agency or court.

## **Recommendation regarding Open Juvenile Courts**

**ICJJ Recommendation:** The ICJJ considered, but did not propose, reforms that would make juvenile court proceedings presumptively open, concluding that that “the Juvenile Act as currently written provides the correct balance of public access and child protection.”<sup>31</sup>

**Subcommittee Recommendation:** After much research, discussion and debate (summarized below), the Subcommittee and Task Force recommend the following:

1. The current case law sets the framework for discussing/managing public access to juvenile court – proceedings are open, subject to the court exercising discretion to close them when the party seeking closure demonstrates that closure serves a compelling interest and that no less restrictive means to protect that interest exist. The PBA should support court rules and/or legislation that codifies this framework, thereby reconciling the case law, the Juvenile Act statutory provisions, and the Pennsylvania Constitution.
2. The PBA should support court rules or legislation that provide additional safeguards against publication or disclosure of confidential information about children and families involved in proceedings. For example, in exercising their power to control access to their proceedings, juvenile courts should have the authority to condition access to the proceedings on agreement not to publish identities and confidential information.

### *Special Summary of Research and Discussions by Law Reform Subcommittee on Open Courts*

#### A. Juvenile Act Provisions:

Section 6336 of the Juvenile Act governs the conduct of dependency and delinquency proceedings under the Act. The section first establishes a general rule that proceedings are closed to “the general public.”<sup>32</sup> The section then provides that the public shall have access to delinquency proceedings involving children 14 years of age or older who have been charged with a felony and children 12 years of age or older charged with designated serious offenses, such as murder, robbery or certain sexual offenses.<sup>33</sup> The section further provides that presumptively open delinquency proceedings “shall be closed upon and to the extent of any agreement between the child and the attorney for the Commonwealth.”<sup>34</sup> Finally, the section provides the court with discretion to “maintain the confidentiality of mental health, medical or juvenile institutional documents or juvenile probation reports” in disposition proceedings that are held in a delinquency matter that was open to the public under section 6336(e).<sup>35</sup>

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31. ICJJ Report at 41.

32. 42 Pa. C.S. §6336(d)

33. *Id.* at §6336(e)

34. *Id.*

35. *Id.* at §6336(f)

In addition to the provisions of section 6336, the Juvenile Act defines certain circumstances in which court records and files are also available for public review.<sup>36</sup>

#### B. Case Law:

In *In the Interest of M.B.*,<sup>37</sup> the Pennsylvania Superior Court held that “there is a rebuttable constitutional presumption that juvenile dependency proceedings are open to the public . . . .”<sup>38</sup> This matter arose from the much-publicized murder of an eight-year-old child in Westmoreland County. Following the murder, the victim’s two siblings were removed from their parents’ custody and placed in foster care. The *Pittsburgh Post-Gazette* sought access to the dependency proceedings. The trial court denied the newspaper’s motion, and the newspaper appealed.

The court first discussed Pennsylvania’s constitutional right of public access to judicial proceedings, based on Article I, section 11 of the Pennsylvania Constitution. Recognizing that juvenile proceedings have traditionally been closed, the court nevertheless held that the constitutional presumption of openness applied to juvenile dependency matters.<sup>39</sup>

The court then explained that the right of public access is not absolute. Rather, “the courts possess an inherent power to control access to their proceedings and may deny access when appropriate.” The court further stated that once an interested party, such as the press, seeks access to proceedings, the party seeking to keep the proceedings closed may rebut the presumption of openness by demonstrating that closure serves a compelling government interest and that no less restrictive means to serve that interest are available.

The court interpreted section 6336 of the Juvenile Act to reflect the General Assembly’s recognition that children’s privacy interests can constitute a compelling government interest justifying closure of proceedings. The court then agreed with the trial court’s finding that the parties seeking closure in this case established that no less restrictive means than total closure would adequately protect the children’s privacy rights. In a footnote, the court contrasted dependency proceedings with delinquency proceedings, stating that the public’s interest in access to the proceedings is “less keen” in dependency proceedings than in delinquency proceedings.

Although *In the Interest of M.B.* did not arise from a request for access to a closed delinquency proceeding, such a request would involve the same provision of the Juvenile Act addressed in *M.B.* (section 6336(d)) and would likely be subject to the same constitutional analysis explicated in *M.B.* In essence, *M.B.* shifts the debate over whether

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36. *Id.* at §6307.

37. 819 A.2d 59 (Pa. Super. 2003)

38. *Id.* at 60.

39. *Id.* at 62.

juvenile proceedings should be presumptively open or presumptively closed to a debate over how parties may rebut the general presumption of openness and/or how the trial court should exercise its discretion to deny access to presumptively open proceedings.

C. Benefits of open proceedings:

Subcommittee members identified several important benefits to presumptively open juvenile court proceedings. First, opening the court promotes better performance of the system as a whole and can help prevent abuses of the system – whether as egregious as what happened in Luzerne County or on a smaller level. Closed proceedings allow for an environment where bad practices can occur and can continue, because they are not seen. Several committee members reported personally experiencing the positive impact of opening court proceedings. These included better judicial decision-making, improved representation of parties by their counsel, and increased civility in the courtroom.

Second, open juvenile court proceedings can result in greater public awareness of the important work done by juvenile courts and juvenile court judges, greater confidence that the work is done well and the results are fair and just, and possibly, greater public support for ensuring adequate resources to support juvenile courts.

Third, open juvenile court proceedings can promote more accurate reporting by the news media. Subcommittee members pointed out that closing court proceedings to the media does not prevent the media from reporting on a case. However, it does prevent the media from gaining direct, first-hand knowledge of the proceedings. Thus, when the media reports on cases of interest, the information reporters gain second-hand may be inaccurate or biased, and what gets reported may be more harmful to participants than if the media had been afforded access to the proceedings.

Finally, all subcommittee members agree that children involved in juvenile court proceedings should generally be protected from having their identities disclosed in the media. This protection should apply to all children involved in juvenile court proceedings, whether as subjects of proceedings, as witnesses, or as victims.

Other states, including Michigan, Texas, Florida, Tennessee, and New York already routinely open their juvenile court proceedings.<sup>40</sup> Moreover, the National Council of Juvenile and Family Court Judges adopted a resolution in 2005 supporting presumptively open juvenile proceedings with discretion remaining with the judge to close them in any individual case.<sup>41</sup>

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40. See M.C.R. Rule 3.925, Tex. Fam. Code Ann. § 54.08(a), Fla. Stat. Ann. § 985.035(1), Tenn. R. Juv. P. 27, N.Y.R. Unif. Trial Ct. § 205.4(a), and N.Y. Standards & Admin. Policies § 131.4.

41. Resolution No. 9, adopted July 20, 2005 at the 68th Annual Conference of the National Council of Juvenile and Family Court Judges, held in Pittsburgh, PA.

D. Concerns about open proceedings:

Some subcommittee and Task Force members expressed reservations about opening juvenile courts beyond those circumstances mentioned in section 6336. These concerns center on protection for youth's privacy interests and the belief that the Juvenile Act, as written, provides the correct balance of public access and child protection.

First, several members were concerned that youth who have successfully completed their involvement with the juvenile justice system should be permitted to move forward with their lives and be shielded from public scrutiny and potential ridicule for decisions they made in their youth.

Second, members were concerned that instituting safeguards to protect confidential information during an open proceeding will not adequately protect youth from inadvertent revelations that could occur in a number of ways.

Third, members were concerned that open court proceedings could cause minors and their parents/guardians to be reluctant to testify as prosecution witnesses, thereby making it more difficult for the Commonwealth to present its case.

Fourth, members expressed concern that the privacy interests of youths who participate as witnesses would be compromised, since they are seldom represented by counsel and, therefore, have no one to make motions for closure on their behalf.

Fifth, members were concerned that requiring individual motions to close proceedings will unduly burden and seriously undermine the courts' ability to conduct matters expeditiously.

Sixth, members were concerned that certain reporters, either through inadvertence or otherwise, might fail to comply with orders prohibiting disclosure of youth's names and identity.

Finally, members noted that in a more open court system, some defense lawyers might fail to move to close the proceedings under appropriate circumstances.

On balance, the Subcommittee and Task Force members favor making juvenile court proceedings presumptively open with appropriate safeguards in place for those situations and circumstances warranting the court's exercise of discretion for closure.

## **B. CONTINUING LEGAL EDUCATION SUBCOMMITTEE**

**Background:** The ICJJ Report made recommendations in support of continuing education for participants in five identified components of the juvenile justice system: 1) training for juvenile court prosecutors; 2) training for juvenile court defense counsel; 3) training for juvenile court judges; 4) training for juvenile probation officers; and 5) training for juvenile masters.

The subcommittee reviewed and discussed the range of educational programs that are available in juvenile law for judges and lawyers. The subcommittee learned that there are many such programs offered each year through a variety of sources, such as the Pennsylvania Bar Institute (PBI), the Pennsylvania District Attorneys Institute (PDAI), the PBA Children’s Rights Committee, the Support Center for Child Advocates in Philadelphia, the Juvenile Law Center in Philadelphia and KidsVoice in Pittsburgh. The focus of most of the programs reviewed was juvenile delinquency and dependency, but also included ethical components addressing, among other topics, the requirement of reporting lawyer and judicial misconduct pursuant to the Code of Judicial Conduct and the Rules of Professional Conduct. Also included were discussions of the role and function of the Judicial Conduct Board and its reporting procedures, immunity, confidentiality, and how a complaint is processed.

From this sampling, the subcommittee concluded that a substantial amount of training is and has been offered to judges and lawyers, including masters, involved in the juvenile justice system. For other key participants in the process, however, there is no current requirement that they be schooled in the area of juvenile justice.

### **Recommendations regarding Training for Juvenile Court Prosecutors**

**ICJJ Recommendation:** The ICJJ Report noted the recent adoption of “Standards for Pennsylvania Prosecutors in Juvenile Court” and the recognition in those standards that “the effective representation of the Commonwealth’s interests requires that the juvenile court prosecutor be well versed in the relevant statutory and procedural mandates, the Juvenile Act and the Rules of Juvenile Procedure.” The ICJJ recommended that juvenile court prosecutors need to be trained in the statutes and rules before handling juvenile matters and that “the PDAA take any reasonable steps necessary to train juvenile prosecutors to effectuate the implementation of these standards throughout Pennsylvania.”<sup>42</sup>

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42. ICJJ Report at 48. The PDAI is already carrying out this recommendation and we commend the Pennsylvania District Attorneys Association for its efforts on this front.

**Subcommittee Recommendation:** The subcommittee urges the PBA to support the ICJJ recommendation and to promote this effort through course offerings by the PBA's educational arm, the PBI, and the PBA's sections and committees, including the Criminal Justice Section and the Children's Rights Committee.

### **Recommendations regarding Training for Juvenile Court Defense Attorneys**

**ICJJ Recommendation:** The ICJJ Report also noted the recent adoption of "Performance Guidelines for Quality and Effective Juvenile Delinquency Representation" which recognizes and incorporates the Rules of Professional Conduct, the Rules of Juvenile Court Procedure and the Juvenile Act, and reflects national standards established by the American Bar Association, the National Legal Aid and Defender Association and its Council of Chief Defenders and the National Juvenile Defender Center.<sup>43</sup> The ICJJ recommended that all juvenile defense attorneys should be trained in these guidelines before handling juvenile cases.<sup>44</sup>

**Subcommittee Recommendation:** The subcommittee urges the PBA to support the ICJJ recommendation and to promote this effort through course offerings by the PBI, and the PBA's sections and committees, including the Criminal Justice Section and the Children's Rights Committee. The subcommittee recommends, additionally, that those who are handling the defense of juvenile delinquency cases not only receive this training before undertaking such representation, but be required to periodically refresh their training in order to ensure that they are remaining current in this field.<sup>45</sup>

### **Recommendations regarding Training for Juvenile Court Judges**

**ICJJ Recommendation:** The ICJJ recommended that judges assigned to Juvenile Court be required by the Supreme Court of Pennsylvania to attend 12 hours of continuing education within 90 days of such assignment, and that periodic updates in mandatory continuing education be considered by the Supreme Court for all judges.

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43. The Juvenile Defenders Association of Pennsylvania ("JDAP") and the Defenders Association of Philadelphia created a state specific notebook that supplements the National Juvenile Defender Center's Juvenile Defender Delinquency Notebook. JDAP has offered CLE on this training and practice manual for juvenile defenders. The subcommittee commends JDAP and the Defenders Association for their efforts in this regard and recommends that this training be continued.

44. ICJJ Report at 51.

45. The Legal Representation Workgroup ("Workgroup") of the Pennsylvania State Roundtable ("Roundtable"), with the active participation of members of the PBA Children's Rights Committee, has recently recommended that before attorneys are appointed as guardians ad litem for juveniles in dependency matters, they be required to undergo pre-service training, and that all appointed guardians ad litem be required to undergo core training and periodic retraining in order to continue to serve in the capacity of a guardian ad litem. All appropriately trained attorneys would be certified for appointment after attesting to completion of the prescribed courses of training. The PBA should support the efforts and recommendations of the Workgroup and Roundtable and to consider similar training and certification requirements for those defending juvenile delinquency cases.



**Subcommittee Recommendations:** The subcommittee recommends the following:

1. The subcommittee agrees with both of the ICJJ recommendations and urges the PBA to support them, and to promote this effort through course offerings by the PBI. The subcommittee also urges the PBA to support the ICJJ recommendation that courses be offered on a regional basis in order for judges to have the opportunity to discuss and analyze legal issues that may be uniquely regional, and to become familiar with placement and community-based resource options that may have a common regional connection. Such regional course offerings would also decrease the cost of travel to courses and the amount of time away from the courthouse, and could be of benefit to the other participants in the juvenile justice process for many of the same reasons.<sup>46</sup>
2. The subcommittee urges the PBA to support its recommendation that the Supreme Court go beyond considering periodic updates in mandatory continuing education for all judges as recommended by the Commission and, pursuant to its constitutional authority over the judges of the unified judicial system, mandate that all judges be required to participate in the same number of annual CLE hours as is required for active attorneys.<sup>47</sup>

### **Recommendations regarding Training for Juvenile Probation Officers**

**ICJJ Recommendation:** The ICJJ recommended that ethics training be made available for juvenile probation officers.

**Subcommittee Recommendation:** Noting the integral role that juvenile probation officers play in the juvenile court process and the restorative justice component of that process, the subcommittee recommends that the PBA support the ICJJ's recommendation for training of these officers, and make its resources available to provide such training through the PBI, and the PBA's sections and committees, including the Criminal Justice Section and the Children's Rights Committee. The process of probation is bound up in the law, and those schooled in the law should be involved in the training of those with these substantial responsibilities to and under the law.

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46. There is of course a cost associated with providing continuing education. That is true for lawyers or judges. Since its inception, lawyers have paid for mandatory CLE. Some lawyers work for firms or governmental bodies which either provide in-house CLE or pay for their lawyers to attend CLE. Many have to pay their own way. Course offerors typically provide discounts for junior members of the bar and others provide reduced rates or scholarships for prosecutors and public defenders, recognizing that they are providing a very valuable public service for which the remuneration is often much less than that available in the public sector.

47. Given the public salaries of judges which exceed the salaries of most line prosecutors and public defenders and many practitioners in the private sector, the cost of CLE for judges should not be a deterrent to adopting such a requirement. CLE courses are regularly offered at the semi-annual conferences of the State Conference of Trial Judges and could be offered at a reasonable rate for judicial participants. Participation in those conferences should be encouraged, if not obligatory. Other providers, such as PBI, discount program costs for judges and judges who serve as presenters may attend CLE programs for free.

## **Recommendations regarding Continuing Legal Education Requirements**

**ICJJ Recommendation:** Related to continuing legal education generally, the ICJJ recommended that the Pennsylvania Continuing Legal Education Board's Regulations be amended to require that the one annual hour in ethics training be increased to two, and that in every five year period, each lawyer be required to attend at least one hour of training in the ethical obligation to report misconduct by judges and other lawyers.

**Subcommittee Recommendation:** The subcommittee urges the PBA to support this change in the CLE requirements, and to make its resources available to provide such training through the PBI, and the appropriate PBA sections and committees. The subcommittee also recommends that the members and staff of the Disciplinary Board of the Supreme Court of Pennsylvania, along with the members and staff of the Judicial Conduct Board and the members of the Court of Judicial Discipline, provide continuing education and community outreach to publicize the areas of the ethical systems in which lawyers and judges operate. Such education would focus upon their respective processes, complaint and case-handling procedures, and the codes that they administer and enforce.

The final task of the subcommittee was to plan a day-long CLE program, focusing on the implementation of recommendations made in the ICJJ Report. To that end, the Task Force has planned a program to be offered at the PBI headquarters in Mechanicsburg and simulcast to a numerous locations throughout the Commonwealth on June 16, 2011. Because of the Luzerne County scandal and its repercussions throughout the legal landscape, the PBI is offering this course free of charge to all attendees, judges and lawyers alike. Among the topics to be addressed are: 1) the Code of Judicial Conduct, the Rules of Professional Conduct and the requirement for judges and lawyers to report misconduct by judges and lawyers; 2) the Judicial Conduct Board and its processes, including how to file a complaint with the Board and its Internal Operating Procedures; 3) proceedings before the Court of Judicial Discipline; 4) the Juvenile Act; and 5) the Rules of Juvenile Court Procedure.

## **C. DISCIPLINE AND ETHICS SUBCOMMITTEE**

**Background:** The Discipline and Ethics Subcommittee focused its work on how to improve the judicial discipline process and the attorney discipline process. The subcommittee chose to address two primary areas of concern with regard to the judicial discipline process: protection for those who file complaints with the JCB and recommendations for improving the policies and procedures governing JCB investigations. With regard to the attorney discipline process, the subcommittee focused on protection for lawyers who file complaints with the Discipline Board. A strong judicial discipline system

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and a strong attorney discipline system are necessary to increase public confidence in our judicial system. The subcommittee believes that implementation of the following recommendations will improve Pennsylvania's judicial discipline and attorney discipline systems.

### **Recommendation regarding Protection for Lawyers and Others Who File Complaints with the Judicial Conduct Board**

**Subcommittee Recommendations:** The subcommittee focused on how to encourage lawyers to promptly report judicial misconduct to the JCB in light of widespread concern about possible retaliation. Many lawyers are concerned that filing a complaint may result in some form of retaliation against the lawyer or his/her current or future clients by the judge. These concerns are exacerbated by the fact that recusal in Pennsylvania is left entirely to the individual judge; and in small counties with only one or two judges, recusal may not be viewed as a viable option.

Noting the concerns of lawyers about possible judicial retaliation for filing a complaint against him/her, and the lawyers' responsibility under the Rules of Professional Conduct to report judicial misconduct,<sup>48</sup> the subcommittee recommends that the PBA support the following actions to encourage attorneys to report judicial misconduct:

1. The Judicial Conduct Board should make clear in its rules, internal operating procedures, website, complaint forms and the materials sent to a judge accused of misconduct that retaliation against anyone filing a complaint is prohibited and will be grounds for further charges of misconduct. Such further charges should be added to the initial complaint and investigated on an expedited basis. In addition, it should be made clear in the JCB policies and procedures, and the Code of Judicial Conduct, that a judge may be disciplined for any such retaliation even if the initial complaint of misconduct (which triggered the retaliation) is found to be without merit. The Pennsylvania Bar Association should include this information on its website and as part of continuing legal education courses about the judicial discipline system and a lawyer's obligation to report judicial misconduct.
2. The Judicial Conduct Board should inform judges against whom complaints have been filed that recusal from cases involving complainants may be appropriate and should be considered, even if not requested by the complainant. The Pennsylvania Supreme Court and its committee studying recusal should consider amending the Code of Judicial Conduct provisions governing recusal to at least advise judges that recusal should be considered in cases involving parties and/or attorneys who have filed complaints against a

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48. Lawyers must understand and uphold their professional obligations to report misconduct. Under Rule 8.3(b) of the Rules of Professional Conduct: "A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority."

judge with the Judicial Conduct Board. The subcommittee is aware that lawyers and parties should not be permitted to “judge shop” by filing complaints with the Judicial Conduct Board, but we believe that encouraging judges to consider recusal in cases that involve complainants in judicial discipline proceedings may provide additional protection for complainants.

3. The rules governing recusal should be amended to include a prohibition against retaliation against a party or lawyer who files a recusal motion, regardless of the reason for the motion. The language would make it clear that such retaliation would constitute judicial misconduct and further, that allegations of retaliation for filing a motion for recusal will be investigated by the JCB on an expedited basis. The subcommittee is aware that judges generally report that they do not take recusal motions personally, but many lawyers are reluctant to file such motions because of perceived or anticipated retaliation by a judge who denies the motion and continues to preside over the case. The recommended rule change would acknowledge the concern of lawyers and also would make clear that such retaliation is prohibited and will be taken seriously.
  4. The Supreme Court should consider amending Rule of Professional Conduct 8.3 to include in the text of the rule itself the language from the comment that explains the difference between mandatory and discretionary reporting: “While a lawyer may report professional misconduct at any time, the lawyer must report misconduct upon acquiring actual knowledge of misconduct. The discretionary reporting of misconduct should not be undertaken for purposes of tactical advantage over another lawyer, to punish or inconvenience another for a personal or professional slight, or to harass another lawyer.” This language would be helpful to lawyers considering whether or not to report suspected misconduct and to understand when they are obligated to report.
  5. The word “substantial” should be removed from Professional Conduct Rule 8.3, so that the rule would read: “A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a question as to the judge’s fitness for office shall inform the appropriate authority.” This would obligate lawyers to report any misconduct upon obtaining actual knowledge of the misconduct. It would impress upon attorneys the importance of the duty imposed by Rule 8.3 and would not allow an attorney to evade that duty by claiming not to know when misconduct becomes “substantial.” Comment (3) to 8.3 relates “substantial” to “the seriousness of the possible offense not the weight of the evidence”. This makes all offenses potentially serious, especially if done as part of a pattern and even if that pattern is for the right but misguided reasons. Eliminating the word “substantial” strengthens the reporting
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obligation. The burden of determining whether the conduct is worthy of discipline and at what level becomes an issue for the Judicial Conduct Board and Court of Judicial Discipline.

### **Recommendations regarding JCB Operations**

**Subcommittee Recommendations:** In light of its concern that many of the Judicial Conduct Board operating procedures are not well known or understood by the public, the subcommittee recommends that the Board’s website and written materials include these procedures, specifically, Internal Operating Procedures (“IOP’s”) 4.08-4.11, to enable lawyers and others who file complaints to understand the procedures that will be followed as complaints are pursued, as well as the range of discipline that may be taken against a judge, up to and including formal charges being filed and prosecuted before the Court of Judicial Discipline.<sup>49</sup>

The Subcommittee recommends that the JCB make information about its process and procedures available directly on its website as part of the website content. This should include information about how a complaint is processed, how the JCB decides whether to conduct a full investigation, and possible outcomes of a complaint, up to and including the filing of formal charges against a judge with the Court of Judicial Discipline. Some of this information is available in the Internal Operating Procedures (particularly IOP’s 4.08-4.11), which are available on the website. In addition, some is available in the JCB’s current annual report, which also is available on the website. However, the Subcommittee recommends that this information be located directly on the site as part of its permanent content. This is basic information about the judicial discipline system that should be readily available to any visitor to the website, without finding and downloading specific publications of the JCB. In addition, all operating procedures and rules governing the JCB should be readily available on the website. The more information available to lawyers and the public, the better the public understanding of the process will be. This in turn will lead to more informed use of the process.

The Subcommittee is aware that the JCB is working to ensure that its Internal Operating Procedures and Rules of Procedure are consistent. We commend this effort and hope that this examination will continue and that any differences will be clarified so that lawyers, judges and the public will have comprehensive information about the operation of the JCB and how cases are processed. Clear procedures that are published and readily available will afford greater transparency to the process and increase public confidence in the process.

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49. The Task Force commends the JCB for retaining, with the Supreme Court’s support, the American Bar Association Standing Committee on Professional Discipline to review JCB policies and procedures and to make appropriate recommendations. Standing Committee representatives conducted extensive interviews and due diligence and anticipate issuing a report before the end of May 2011. The JCB staff and leadership have also taken steps to include more content in its annual reports and expressed support for more proactive public education efforts.

## **Recommendations regarding the JCB's Policies on Deferral and Referral of Allegations of Criminal Conduct**

**Subcommittee Recommendations:** In light of its concerns that the provisions of the JCB's IOP 4.07, governing referral of complaints to external law enforcement agencies are not sufficient to address the very problems that arose with the complaints related to Luzerne County (where the judges' alleged criminal activity related to the treatment of litigants in the courtroom<sup>50</sup>), the subcommittee recommends that the PBA support the following actions regarding JCB procedures:

1. The JCB should clarify its deferral and referral provisions and set forth clear procedures to govern such decisions. The JCB should develop procedures that enable cooperation with outside law enforcement agencies and investigations without compromising ongoing criminal investigations and while protecting those who appear before the accused judges.
2. There should be clear and mandatory notification procedures under which the JCB will inform the appropriate law enforcement agency of the allegations and whether the JCB will investigate or defer investigating. In addition, the JCB and/or the Supreme Court, through its rule-making authority, should require that a judge who receives a target letter from a law enforcement agency must promptly notify the JCB of the pending investigation. (These provisions are featured in pending Senate Bill 59.)
3. The JCB should retain the authority to investigate allegations of criminal conduct that address the judicial function and how a judge is treating litigants. The delays caused by waiting for an outside investigation to conclude in the Luzerne case resulted in many more children being inappropriately sent away.
4. IOP 4.13, relating to Emergency Removal when Administration of Justice is Significantly Impaired, should be referenced in the referral/deferral provisions, and the JCB should reserve the right and authority to seek such removal, even if it has referred charges to law enforcement agencies and deferred its own investigation pending the resolution of the outside criminal investigation. Use of this procedure would have made a tremendous difference in the Luzerne case, and we recommend that the JCB implement such a procedure as part of the deferral/referral provisions.

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50. Current IOP 4.07 permits but does not require the JCB to refer a complaint that alleges criminal activity to an outside law enforcement agency. Although IOP 4.07 allows the JCB to determine whether it will investigate any allegations that may be severable from the alleged criminal conduct, it does not explain how this determination will be made. Moreover, there is no provision for the circumstances that arose in Luzerne County — when the criminal conduct went to the very heart of the judicial function and directly affected litigants in the courtroom.

### **Recommendations regarding Complaints Filed by Attorneys with the JCB**

**Subcommittee Recommendation:** Noting that only five percent or less of the complaints filed with the JCB are submitted by attorneys,<sup>51</sup> if a complaint is filed by an attorney or one whose office regularly appears before the accused judge, for example, a public defender, district attorney or court-appointed lawyer, the investigation should be expedited to stabilize the relationships between the parties.

### **Recommendations regarding Funding of the Judicial Conduct Board**

**Subcommittee Recommendations:** In order to endure that all complaints are properly investigated and the JCB adequately performs its educational function, the subcommittee recommends the following:

1. The PBA should support adequate funding and staffing of the JCB.
2. The JCB should have access to sufficient IT and other resources to maintain an updated and robust website, as well as publicly available brochures reviewing its procedures and frequently asked questions, and the ability to participate in and present at CLE and other educational programs on a regular basis.<sup>52</sup>
3. The Supreme Court should make clear the special nature of the JCB's work in its budget request to the legislature.
4. The legislature should ensure that the Judiciary Budget is sufficient to provide the necessary resources to the JCB.

### **Recommendations Regarding the Attorney Discipline System**

**Subcommittee Recommendations:** Citing similar concerns about the reluctance of attorneys to report fellow attorneys to the Disciplinary Board due to fear of retaliation, the subcommittee recommends the following:

1. The Disciplinary Board should make clear in its website and materials sent to attorneys accused of misconduct that retaliation against a lawyer, client, or other complainant is prohibited and will be grounds for further charges of misconduct. Such further charges should be added to the initial complaint and investigated on an expedited basis. In addition, it should be clear that a lawyer may be disciplined for retaliation, even if the initial complaint of misconduct (which triggered the retaliation) is found to be without merit. The PBA should include this information on its website and incorporate it in continuing legal education courses about the attorney discipline system and a lawyer's obligation to report the misconduct of other lawyers. The Supreme Court should also consider making this clear in the Rules of Professional Conduct.

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51. In 2010, the JCB received nearly 700 complaints against judges, the vast majority from dissatisfied litigants, including those addressing judicial "demeanor"-related concerns. Less than two percent of the complaints concerning judges were submitted by other judges.

52. As an example, a number of years ago Pennsylvanians for Modern Courts prepared, in cooperation with the JCB, a booklet entitled "The Discipline Process in Pennsylvania: A Citizen's Guide." That publication is now out of date, but the JCB lacks the financial resources to publish and distribute an updated version on its own.

2. The Supreme Court should consider providing more guidance to attorneys in Rule of Professional Rule 8.3 and its accompanying comment. As the Disciplinary Board’s website explains in the frequently asked questions section: PA.R.P.C. 8.3(a) states that a lawyer having knowledge that another lawyer has committed a violation of the Pa.R.P.C. that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority. The comment to PA.R.P.C. 8.3 states: “This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provision of this Rule. The term ‘substantial’ refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances.”

The rule contemplates “a measure of judgment” but does not guide attorneys in the exercise of that judgment. The subcommittee believes that such guidance is necessary, both in the rule itself, from the Disciplinary Board, and through ongoing education.

### **Recommendations Regarding Ongoing Ethical Education for Judges and Lawyers**

**Subcommittee Recommendations:** In light of the gap in the education and training of lawyers and judges, particularly with regard to the ethical obligations of judges and lawyers, the obligation to report misconduct of judges and lawyers, and the disciplinary processes, the subcommittee recommends the following:

1. The Supreme Court should consider mandating continuing legal education regarding the operation of Rule 8.3, as it relates to the obligation to report both judicial and attorney misconduct. This could be imposed as an additional ethical requirement to be filled periodically (for example, every two years) by lawyers during the completion of their continuing legal education requirements.
2. The Supreme Court should consider mandating continuing ethical education and training for judges. The opportunity for judicial colleagues to discuss ethical challenges is likely to prevent ethical breaches and keep judges vigilant about their own and their colleagues’ adherence to the highest ethical standards.
3. Representatives of the Disciplinary Board should participate in continuing legal education programs to better educate lawyers about the judicial discipline system and the lawyer’s role in that system.



## **D. PUBLIC EDUCATION AND OUTREACH SUBCOMMITTEE**

**Background:** One of the main reasons the ICJJ was appointed was to restore public confidence in the administration of justice and prevent events similar to the failure of the Luzerne County juvenile justice system from occurring again. The Public Education and Outreach Subcommittee examined ways in which the PBA can help fulfill this goal by informing the public of its rights with respect to the juvenile justice system and of the efforts of the PBA to implement and address the ICJJ recommendations.

Often, bar associations are the places of first resort for members of the public looking for help with a legal issue, seeking to understand their rights with respect to a judicial process, or wishing to voice a complaint. Thus, the subcommittee sees a valuable role for the PBA, with its 29,000 members, in communicating to the public. The PBA's statewide reach can be particularly helpful in disseminating information about the work being done to address the crisis that occurred in Luzerne County, which is covered by the media markets in Harrisburg and the northeastern part of the state, but may not be reaching other parts of the state.

Other avenues for public communication identified by the subcommittee are legal aid organizations that are often on the front lines in dealing with inquiries from the public. The PBA's Pro Bono Office has frequent contact with the public and also regularly coordinates with pro bono programs and legal aid agencies statewide.

The subcommittee recognizes that public outreach efforts are already being undertaken by juvenile courts, the Juvenile Law Center, the JCB, the Luzerne County Public Defender's Office, and others. The subcommittee sees a role for the PBA in helping in these efforts by disseminating information through PBA channels, such as its website, publications and CLE programs. Furthermore, the subcommittee recognizes that the JCB must have adequate funds to broaden its public outreach efforts.

### **Recommendations regarding Judicial Conduct Board Educational Materials**

**ICJJ Recommendation:** The ICJJ recommended that the JCB develop educational materials to inform the general public of how to report judicial misconduct.

**Subcommittee Recommendation:** The subcommittee supports the ICJJ recommendation. The PBA should work with the JCB to help develop and make more widely available to the general public, user-friendly educational materials concerning the functions of the JCB and how to report judicial misconduct. The subcommittee also recommends that the PBA support adequate funding of the JCB public education and outreach efforts.

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## **Recommendations regarding Public Educational Programming on Attorney Misconduct**

**ICJJ Recommendation:** The ICJJ recommended creating educational programming to ensure that the bar and the general public understand what constitutes attorney misconduct.

**Subcommittee recommendation:** The subcommittee supports the ICJJ recommendation. The PBA should work with the Disciplinary Board and Office of Disciplinary Counsel in developing appropriate educational materials regarding what constitutes attorney misconduct and how to file a complaint. This can be done in conjunction with the development of CLE materials on the requirement of lawyers' ethical obligation to report such misconduct.

## **Recommendations regarding Reporting of Misconduct Related to Juveniles**

**Subcommittee Recommendation:** The subcommittee recommends that the PBA work with county bar associations, lawyer referral services, the Pennsylvania Legal Aid Network, and legal aid providers to make them aware of entities responsible for receiving reports of misconduct and protecting the rights of juveniles and their families. These efforts could include asking these entities to post information on their websites, including links to the JCB and other relevant entities, and encouraging attendance at CLE programs.

## **Recommendations regarding Public Education Programs**

**Subcommittee Recommendation:** The subcommittee recommends that the PBA extend its educational programs and informational programs to reach juveniles, parents, public defenders, appointed counsel, and probation officers statewide in local courts, schools, detention facilities, family counseling offices and physician's offices.<sup>53</sup>

## **Recommendations regarding Education about PBA's Implementation of ICJJ Recommendations**

### **Subcommittee Recommendations:**

1. The PBA should engage media statewide to relay information about the PBA's implementation of ICJJ recommendations.
2. The PBA should summarize this report in an upcoming issue of the Pennsylvania Lawyer and supply a link to the entire report on the PBA website. Content could include excerpts from the Task Force report, summaries of new legislation, the functions of the JCB, a commentary, a report on the June 2011 CLE program, and a "for the public" page that sets forth in layman's terms, information about children's rights within the juvenile justice system.

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53. One example of such outreach efforts was a program sponsored by the PBA's Children's Rights Committee, and presented on April 15, 2011, with an audience consisting of professionals in the field, such as guardians ad litem, solicitors for the Office of Children and Youth, mental health professionals for children, caseworkers, attorneys for parents, judges and court administrators.

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# XI. CONCLUSION

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As Martin Luther King, Jr. observed, “Injustice anywhere is a threat to justice everywhere.”<sup>54</sup> The tragedy of juvenile injustice in Luzerne County has had far reaching impacts. The Task Force lacked the authority to investigate or mitigate the criminal wrongdoing that tainted the juvenile court process in that county, but rather was charged with assessing to what extent the organized bar could assist in implementing the ICJJ recommendations on an ongoing basis, and further their progress through the Supreme Court, as well as its disciplinary arms and rules committees, and the state legislature.

After the Task Force was formed, a series of proposed juvenile court rule changes and related legislation were promulgated, and the Task Force has examined and addressed each of those proposals in the text of its report. Many of these initiatives flow directly from the ICJJ recommendations, demonstrating that the Commission’s work has prompted far-reaching attention from the legislature, procedural rules committees and the Supreme Court. While we recognize the serious budgetary constraints currently facing our justice system, we are hopeful that PBA leadership and members nevertheless will continue to advocate for the critical improvements recommended by the ICJJ within the juvenile justice system in Pennsylvania.

A thorough review of this report will demonstrate that the organized bar, the current members of the judiciary in Luzerne County and the key stakeholders in the juvenile justice system in Pennsylvania have “stepped up” to the challenge of improving the system in both major and minor respects. We also have made strides in educating lawyers and the general public concerning best practices in juvenile court proceedings and the many resources available to judges, practitioners in the field and the general public. Indeed, it is clear that the Luzerne crisis has served as an important catalyst for change, including bolstering procedural improvements and safeguards that have been languishing for years because they lacked the necessary impetus to be enacted into law. These important safeguards include the elimination of unnecessary shackling of juveniles charged with crime and the presumption that juveniles will be afforded the critical right to counsel in order to safeguard their rights.

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54. Letter from Birmingham Jail, April 16, 1963.

Recent events also have brought a renewed focus on the operations of the Judicial Conduct Board and the important professional obligation of all lawyers to promptly report both lawyer and judicial misconduct that undermines the integrity of the justice system. Adopting mandatory judicial continuing legal education, including ethics education, on a statewide basis, would go a long way toward ensuring that judges and lawyers take this responsibility seriously.

The lawyers in this great association and the lawyers in our county bars must be vigilant to ensure that the juvenile justice system in the Commonwealth of Pennsylvania renders fair and just outcomes on a daily basis. The Task Force is confident that pursuit of the recommendations in this report will help to advance that laudable goal. We also encourage all association members who are able to attend the continuing legal education program the Task Force will sponsor with PBI's support on June 16, 2011.

Respectfully submitted,  
PBA Task Force on Interbranch Commission on Juvenile Justice Recommendations

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## **XII. TASK FORCE MEMBERS' BIOGRAPHIES**

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### **CO-CHAIRS**

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#### **ANDREA MARCECA STRONG**

Ms. Strong is a private general practice attorney who concentrates a significant portion of her practice in adoption law. In addition to her private practice, she previously served as a prosecutor for the York County Domestic Relations Section. She graduated from University of Baltimore School of Law in 1994. After representing victims of sexual assault and domestic violence in Maryland, she began her practice in York concentrating in general and family law until 2003 when she began to focus her practice on finding permanency for children through adoption and pursuing financial support for children. Ms. Strong is active in her community as well as the Pennsylvania Bar Association and York County Bar Association. She serves as chair of the Pennsylvania Bar Association Children's Rights Committee, co-chair for the PBA Task Force on Interbranch Commission Report on Juvenile Justice, chair of the judicial liaison committee of the York County Bar Association Family Law Section, Master in the Herbert B. Cohen chapter of the American Inns of Court, member of Pennsylvania Bar Association Women in the Profession and Exceptional Children Committees, member of the AOPC Legal Representation Workgroup, board member of the York County Legal Record, member of the ABA Family Law Section, and amicus judicii member of the National Association of Women Judges. She has formerly served as chair of the York County Bar Association Family Law Section, Bench/Bar Committee and Women and the Law Committee, and has served on various committees and sections in the York County and Pennsylvania Bar associations since beginning her practice in 1994. Her current civic activities include membership in York County Women's Giving Circle and Downtown York Rotary and board member of York County Crime Stoppers, 19th District Internship Program and York Suburban Education Foundation. She was a former member of the boards of Young Women's Club, York Little League, York County Republican Committee and York Arts. Ms. Strong also served on the Supreme Court Orphans' Court Rules subcommittee on Adoption to develop rules and forms now adopted to register foreign adoptions. Ms. Strong speaks to various groups regarding her practice and lectures and trains other attorneys in the areas of adoption, support and children's rights. She has been selected by attorneys across Pennsylvania as a rising star for three consecutive years and received the Pennsylvania Friends of Adoption award.

#### **THOMAS G. WILKINSON, JR.**

Mr. Wilkinson is a shareholder of Cozen O'Connor in its Philadelphia office, where he is a member of the Commercial Litigation Department. He concentrates his practice in business litigation, complex insurance coverage, and professional responsibility matters. Mr. Wilkinson is Vice President of the Pennsylvania Bar Association and the immediate past PBA Zone 1 Governor. He is a past chair of the Civil Litigation Section. He served as chair or co-chair of the Legal Ethics and Professional Responsibility Committee from 1993 to 2004. He is a member of the PBA House of

Delegates, and has been an active member of numerous PBA committees and task forces. Mr. Wilkinson is a past president of the Pennsylvania Bar Institute. He is also an active member of the Philadelphia Bar Association Professional Guidance and Professional Responsibility Committees. He also has served on its Board of Governors and is a past co-chair of the State Civil Litigation Section and Rules and Procedure Committee. He edits PBA ethics opinions for publication in the Pennsylvania Lawyer and Pennsylvania Bar News. He is a Lecturer in Law at Villanova Law School, where he teaches the course on professional responsibility, and has written and lectured extensively on various civil litigation and professional responsibility topics. Mr. Wilkinson served for six years as a Hearing Committee member for the Disciplinary Board of the Supreme Court of Pennsylvania. He has served in various leadership capacities with the Villanova University School of Law's Inn of Court. Mr. Wilkinson received his law degree from the Villanova University School of Law, where he was the managing editor of the Villanova Law Review, and thereafter served as a law clerk in the U.S. District Court for the Eastern District of Pennsylvania.

## **TASK FORCE MEMBERS**

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### **ELEANOR L. BUSH**

Eleanor L. Bush is an attorney who has practiced child welfare law for approximately 17 years. During that time Ms. Bush has represented individual children in juvenile court, supervised attorneys who represent abused and neglected children, consulted to Pennsylvania counties, trained hundreds of social workers and worked collaboratively on the state and local levels with government agencies, child advocates and providers of services. Ms. Bush currently serves as Senior Legal Services Training Specialist for Family Design Resources. Previous positions have included Staff Attorney at Juvenile Law Center in Philadelphia, Legal Director at KidsVoice in Pittsburgh, Assistant Counsel for the Pennsylvania Department of Education and consultant to the ABA Center on Children and the Law's Permanency Barriers Project. Ms. Bush holds her law degree from Yale Law School and a Master's Degree in Public and Private Management from the Yale School of Management.

### **FRANK P. CERVONE**

Frank Cervone is Executive Director of the Support Center for Child Advocates, the lawyer pro bono program for abused and neglected children in Philadelphia, Pa and serves as a member of the Supreme Court of Pennsylvania Juvenile Court Procedural Rules Committee. He is a founder and co-director of the National Children's Law Network, and he is chair of the Board of the Children's Trust Fund of Pennsylvania. Mr. Cervone lectures and trains both lay and professional audiences in child abuse and child advocacy, and he enjoys work with students and teachers of all ages. His publications include works on children's rights and the legal representation of children, collaboration of lawyers and professionals from other disciplines, and spirituality and social justice. Mr. Cervone is a graduate of the University of Pennsylvania and Villanova University School of Law, and he has a Masters Degree in Theology and Ministry from LaSalle University.

### **HON. STEPHANIE DOMITROVICH, PH.D.**

Judge Stephanie Domitrovich has served on the bench as an elected general jurisdiction state trial judge of the Sixth Judicial District of Pennsylvania (Erie County) since being elected in 1989. In May of 2006, she became the first graduate to earn a Ph.D., a degree of Doctor in Philosophy in Judicial Studies, from the National Judicial College (NJC) and the University of Nevada at Reno (UNR).

Judge Domitrovich currently serves as Chair of the National Conference of State Trial Judges (NCSTJ), which is within the Judicial Division of the ABA. She is Vice-Chair of the PBA's Children's Rights Committee and Chair of the PBA's Judicial Administration Committee. She was elected as Past President of the Pennsylvania Conference of State Trial Judges (PCSTJ). She is the Past Co-Chair of the PBA's Task Force to Ensure Gender Fairness. In 1996, the NJC selected her to participate for the United States Agency for International Development (USAID) sponsored program to educate judges in the former Soviet Republic nations of Kazakhstan and Kyrgyzstan in developing their judicial systems. Judge Domitrovich also teaches for the NJC, NCSTJ and Gannon University in Erie, Pa.

The Women's Law Association of Duquesne University School of Law presented her with the 2007 Woman of the Year Award. In 2009, she was awarded Edinboro University of Pa. President's Martin Luther King Award for her outstanding commitment to enhancing access to opportunity for all members of the community. In 2009, Judge Domitrovich was awarded the Carlow University Laureate award for demonstrating exceptional professional achievement and outstanding leadership reflecting the University's ideals and academic traditions. In 2009, Judge Domitrovich earned the distinction of being one of four PA state trial judges awarded Fellow status with ASTAR (Advanced Scientific & Technological Adjudication Resource).

### **DAVID R. FINE**

David R. Fine is a partner with K&L Gates LLP, resident in the firm's Harrisburg office. He focuses his practice on appellate work and commercial litigation. In 2008-2009, he served as chair of the PBA's Civil Litigation Section. Mr. Fine currently serves on the Pennsylvania Supreme Court's Appellate Courts Procedural Rules Committee, and he formerly served on the Third Circuit Lawyers' Advisory Committee and the U.S. District Court for the Middle District of Pennsylvania's Lawyers' Advisory Committee. Mr. Fine has written on a variety of subjects for the Washington Post, the San Francisco Chronicle, the Philadelphia Inquirer, the Harrisburg Patriot-News, the ABA Journal, the American Lawyer and the National Law Journal. Mr. Fine earned his Bachelor's degree from Cornell University, his Master's degree from Northwestern University and his juris doctor from the University of Toledo College of Law.

### **SHARON GIAMPORCARO**

Sharon Giamporcaro joined the Montgomery County District Attorney's Office in 1992. She currently serves as a Deputy District Attorney and the Chief of the Juvenile Division. She was appointed to the Board of Managers for the Montgomery County Youth Center in 2010, and is a member of the Montgomery Bar Association, Pennsylvania Bar Association, Pennsylvania District Attorney's Association, the Juvenile Prosecutors Network, the Montgomery County School Safety Committee and the Children's Roundtable. Ms. Giamporcaro has lectured for law enforcement

agencies and educational institutions throughout Montgomery County on the topics of Juvenile Justice and Criminal Law, as well as being a speaker for the Montgomery Bar Association in their continuing legal education programs. She currently co-chairs the Juvenile Rules Committee for the Montgomery Bar Association. Ms. Giamporcaro graduated from the University of Pennsylvania in 1981 with a Bachelor of Science degree in Nursing and received her Juris Doctor degree from Villanova University School of Law in 1986. She is admitted to the Pennsylvania Supreme Court and the United States District for the Eastern District of Pennsylvania.

### **MARIA ETZRODT GIBBONS**

Ms. Gibbons was appointed Solicitor to the Montgomery County Office of Children and Youth in January, 2006 where she handles Montgomery County's dependency matters in Juvenile Court. She is the founder of The Law Offices of Maria Etzrodt Gibbons, LLC, a Blue Bell law firm where she concentrates her practice in the area of family law. She is a member of the Family Law Sections of the Pennsylvania, American and Montgomery Bar Associations, as well as an associate member of the Doris Jonas Freed Family Law American Inn of Court, and a Member of the Pennsylvania Bar Association Judicial Administration Committee. She has served on the Executive Counsel, as Treasurer, of the Commission on Women in the Profession from 2004 to 2006, and is currently a member of the PBA WIP Public Interest Task Force. Ms. Gibbons is very active and serves in numerous capacities with the Pennsylvania and Montgomery Bar Associations. She has lectured and written regarding child advocacy, family law, dependency law, protection from abuse issues, pro bono practice, appellate procedure and identity theft matters for the Montgomery Bar Association, the Pennsylvania Bar Institute, the Pennsylvania Family Lawyer, the Montgomery County Paralegals Association and the American Bar Association Partner's Program. Ms. Gibbons has been frequently appointed by the Montgomery County Court of Common Pleas to serve as a child advocate, guardian ad litem, Master in Annulment, and Parent Coordinator. Ms. Gibbons received her Juris Doctor degree from the Dickinson School of Law and her undergraduate degree from Gettysburg College.

### **SHIRA J. GOODMAN**

Shira Goodman is the Deputy Director of Pennsylvanians for Modern Courts, a nonprofit nonpartisan organization working to reform Pennsylvania's courts. PMC works to reform the method of selecting Pennsylvania's appellate judges, enhance the juror experience and improve the administration of justice. Prior to joining PMC, Ms. Goodman worked for five years as an associate in the labor and employment group of Ballard Spahr Andrews & Ingersoll, LLP. Her practice included representing management in negotiations with unions and in union representation campaigns, in litigation before administrative agencies including the National Labor Relations Board, and in litigation involving contract, discrimination and harassment claims. Ms. Goodman clerked for two federal judges before beginning her practice: Judge Norma Shapiro of the Eastern District of Pennsylvania and Judge Morton Greenberg of the Court of Appeals for the Third Circuit. Ms. Goodman is a graduate of the University of Michigan and the Yale Law School, where she served as a Symposium Editor of the Yale Law Journal.



Ms. Goodman serves as a member of the editorial board of the Legal Intelligencer. Ms. Goodman also serves on the Executive Council of the Pennsylvania Bar Association's Commission on Women in the Profession, and currently co-chairs the Commission's Communications Committee. She also serves as vice-chair of the Pennsylvania Bar Association's Quality of Life Committee. She previously chaired the Language Access Task Force of the Philadelphia Bar Association and also served on the Executive Council of the Young Lawyers' Division of the Philadelphia Bar Association. She served on the Pennsylvania Bar Association's Project Constitution Task Force. In 2008, she was named one of Philadelphia's Top 101 Emerging Connectors by Leadership Philadelphia.

### **HON. ROBERT A. GRACI**

Judge Graci is a Member in the Harrisburg offices of Eckert Seamans Cherin & Mellott, LLC. He heads the firm's Appellate Practice Group. His practice focuses on appeals, white collar criminal defense, general litigation, regulatory and administrative law, and governmental relations. Judge Graci served on the Superior Court of Pennsylvania from 2002 to 2004. Prior to his appointment to the bench, he was the Assistant Executive Deputy Attorney General for Law and Appeals of the Criminal Law Division of the Pennsylvania Office of Attorney General. As a deputy attorney general for almost 18 years, Judge Graci argued several cases in all of the state and federal appellate courts in Pennsylvania, as well as the Supreme Court of the United States. He is active in the Pennsylvania Bar Association. Judge Graci previously served as Chair of the PBA Criminal Law Section and founding Co-chair of the PBA Post-Trial and Appellate Advocacy Committee. He currently serves on the founding Board of Governors of the Bar Association of the Third Federal Circuit. He has served on a number of judicial committees and was twice appointed by the Pennsylvania Supreme Court to its Criminal Procedural Rules Committee. He currently serves as member of the Supreme Court's Lawyers Fund for Client Security. He has lectured on criminal law and appellate topics for the Pennsylvania Bar Institute, Pennsylvania Conference of State Trial Judges, Pennsylvania District Attorneys Institute, Delaware State Bar Association and other forums. Judge Graci has authored several articles and CLE course materials and has been recognized for his accomplishments by the PBA and the several Attorneys General he served. In addition to the PBA, Judge Graci is a member of the American Bar Association, the Florida Bar Association, the Pennsylvania District Attorneys Association and the Bar Association of the Third Federal Circuit. He is admitted to practice law in Pennsylvania and Florida and before the U.S. Supreme Court, the U.S. Court of Appeals for the Third Circuit and the U.S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania. He earned his law degree, cum laude, from the University of Miami School of Law and his undergraduate degree from West Chester State College.

### **BARBARA GRIFFIN**

Barbara Griffin is the Pro Bono Coordinator for the Allegheny County Bar Foundation, where she creates, manages, and supports legal services programs that provide volunteer attorneys to low-income persons facing legal issues that threaten basic human needs. Although she began her legal career in private practice at both large and small law firms, Ms. Griffin has spent most of her career in public interest law. She served as an Assistant Attorney General for the State of Texas, where she

provided general counsel to the agency and wrote advisory opinions on a wide range of legal issues. She worked for the Texas House of Representatives writing reports and summaries of legislative developments on public policy issues for state legislators. Ms. Griffin also served as a law clerk to the Honorable Gene Strassburger in the Civil Division of the Allegheny County Court of Common Pleas. At all times during her legal career, Ms. Griffin has been a volunteer attorney, taking on pro bono cases and staffing community legal clinics. Ms. Griffin received her juris doctorate degree from the University of Texas School of Law in Austin, where she served as an Executive Editor of the Texas Law Review. She holds a bachelor of science degree in international relations from Georgetown University in Washington, D.C.

### **SCOTT HOLLANDER**

Scott Hollander is executive director of KidsVoice, a non-profit law firm for abused, neglected and at-risk children. Under his leadership, KidsVoice has grown from ten attorneys representing 5,000 children with a \$500,000 budget to a staff of more than sixty and a budget of \$4 million. With that growth, KidsVoice expanded beyond just legal advocacy to add more than 20 professionals with backgrounds in social work, child development, drug and alcohol treatment, mental health, case management and foster care. This more holistic multidisciplinary advocacy approach allows KidsVoice to better meet the needs of each child by assigning each client both an attorney and social service professional to work on the case. KidsVoice currently is working with the states of Connecticut, Louisiana, and Wyoming to replicate the KidsVoice model. Scott also teaches at the Duquesne University School of Law and previously served as the senior staff attorney and pro bono coordinator of the Rocky Mountain Children's Law Center in Denver and taught child advocacy and trial skills as an adjunct professor at the University of Denver College of Law.

### **LUCY JOHNSTON-WALSH**

Ms. Johnston-Walsh is a clinical professor and the director of the Children's Advocacy Clinic at Penn State University Dickinson School of Law. The Clinic receives court appointments to represent children in various civil matters, including dependency, high conflict custody actions, domestic violence cases and contested adoptions. The Clinic provides an experiential opportunity for law students to practice in the courtroom, and also to focus on policy reform and legislative developments. Prior to directing the Children's Advocacy Clinic, Ms. Johnston-Walsh served as a supervising attorney in the Family Law and Disability Law Clinics, and as a staff attorney at MidPenn Legal Services. Ms. Johnston-Walsh also served as a policy director for a statewide child advocacy organization. Ms. Johnston-Walsh now directs the activities of the inter-disciplinary Penn State Center on Children and the Law. Before attending law school, Ms. Johnston-Walsh worked as social worker in the public school system of Virginia. She received her Juris Doctor from The Dickinson School of Law and her Masters in Social Work from the University of Pennsylvania. She previously served as chair of the Pennsylvania Bar Association Children's Rights Committee and was the Child Advocate of the Year in 2007.

### **ROBERT G. KOCHEMS**

Robert G. Kochems is the elected District Attorney of Mercer County, since 2008. Prior to his election Mr. Kochems was an Assistant District Attorney for 18 years and an Assistant Public Defender for 12 years before that. He also maintained an active private law practice with an emphasis on family, elder and municipal law. He has been continuously listed in Who's Who in American Law since 1989.

District Attorney Kochems has been one of the prime developers in many programs aimed at supporting victims and improving the criminal justice system in Mercer County. These programs include the Sexual Assault Response Team/Sexual Assault Nurse Examiner; the Juvenile Court Appointed Special Monitor Program (CASM); the Law Enforcement Coordinator for the Sharon/Farrell Weed and Seed anti-crime/community development program; He obtained a grant to provide juveniles faster access and processing through the juvenile justice system by paying for an attorney specializing in juvenile cases in both his office and that of the Public Defender. Mr. Kochems is member and speaker for the national program "Fight Crime: Invest in Kids". District Attorney Kochems is a "cum laude" graduate of John Carroll University where he was President of Alpha Sigma Nu, the Jesuit National Honor Society, and St. Louis University School of Law where he was an editor of the Law Journal.

### **GUERLINE L. LAURORE**

Ms. Laurore earned a Bachelors degree in Psychology (1995) and a Masters Degree in Clinical Psychology and Psychopathology (1996) from University of Provence Center of Aix in France. She moved to the United States (1997) and worked in the Human Services field for seven years. She earned a Juris Doctorate Degree in 2004 from Widener University School of Law in Wilmington Delaware. Ms. Laurore is admitted to practice law in the following states: Pennsylvania, Michigan, New Jersey - State and Federal, United States District Courts for the Eastern District of Pennsylvania and the Eastern District of Michigan.

Ms. Laurore is a member of the American Bar Association, Pennsylvania Bar Association House of Delegates Zone 11, Pennsylvania Bar Association/ Young Lawyers Division Mock Trial District Coordinator District 3, Pennsylvania Bar Association Bar Leadership Institute Class of 2010-2011, Pennsylvania Bar Association Minority Bar Committee, Pennsylvania Bar Association Women Lawyers Committee, Potter County Bar Association Pro Bono Association, and Vice President-Coudersport PTSA. Ms. Laurore is fluent in English, French and Haitian Creole. Also spoken are Spanish and Portuguese.

### **CAROL S. MILLS MCCARTHY**

Carol McCarthy is a partner in the firm of McCarthy McDonald Schulberg & Joy. The firm practices exclusively in the area of matrimonial law. Ms. McCarthy is a past Chair of the Allegheny County Bar Association Family Law Section. She is also a member of the Pennsylvania Bar Association Family Law Section. Ms. McCarthy is a member and past president of the American Academy of Matrimonial Lawyers. She has lectured for the AAML, PBI, PBA, and the ACBA in the area of family law. Ms. McCarthy was admitted to practice in 1975.

### **LISETTE M. MCCORMICK**

Attorney McCormick is currently serving as the Executive Director of the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness where she directs the implementation of recommendations from the 2003 study on racial and gender bias by the Supreme Court of Pennsylvania. Since her graduation from Duquesne University Law School in 1981, she has focused her career on public interest law, beginning with a position as a staff attorney for Neighborhood Legal Services Association in Pittsburgh, PA, and later, as an associate defender for the Allegheny County Public Defender's Office. She also served as Assistant Counsel and Deputy Attorney General for the Toxic Waste Unit of the Pennsylvania Department of Environmental Protection. Attorney McCormick later spent nine years in private practice with the law firm of Tabakin, Carroll and Curtin in Pittsburgh, focusing on environmental counseling and plaintiff's employment litigation. She is a frequent lecturer on the findings of the Supreme Court study on racial and gender bias and is an active member of the Allegheny County Bar Association, where she serves as a member of its Board of Governors, Past Chair of the Women in the Law Division and Co-Chair of the Diversity Committee. She is also a member of the Board of Directors of the National Consortium for Racial and Ethnic Fairness in the Courts. She also teaches a Gender and the Law course as an Adjunct Professor at Duquesne University School of Law, and is active in community service, including volunteering as an attorney for victims of domestic violence in Protection from Abuse cases and serving on the Board of the Program for Female Offenders.

### **JENNIFER STALEY MCCRADY**

Jennifer Staley McCrady graduated from Duquesne University with a B.A. in Political Science and obtained her Juris Doctorate from Duquesne University. While a law student, she was a member and Co-Chair of the Public Interest Law Association and was awarded the Allegheny County Bar Association Pro Bono law student of the year in 2000 and the Kirkpatrick and Lockhart Public Interest Law fellowship in 2001. In September 2000, Mrs. McCrady joined KidsVoice and is currently a Team Supervisor and Program and Policy Coordinator.

Mrs. McCrady has spoken to community leaders and at various local and national conferences about issues relating to children especially those issues that face children as they leave the foster care system. She is co-author of Helping Clients Transition to Independent Living, Family Court Review. In addition to her membership in several children's issues organizations, including the National Association of Counsel for Children and the Pennsylvania Bar Association Children's Rights Committee, where she serves as Co-Chair of the Legislative Sub Committee, Mrs. McCrady serves as Chair of the ACBA Juvenile Law Committee. In 2008, Mrs. McCrady was named a Pennsylvania Super Lawyer Rising Star and most recently she was nominated to the inaugural class of the Allegheny County Bar Foundation Young Lawyers Fellows Class of 2009.

### **GRACE R. SCHUYLER**

Grace R. Schuyler is employed as Director of Government Affairs for Rite Aid in Camp Hill, PA. She is currently serving a third term as the Chairperson of the Law Related Education Committee of the PBA and is a Life Fellow in the PA Bar Foundation. Ms. Schuyler was appointed by the PA Supreme Court to serve as a Board member on the PA Lawyers Fund for Client Security. She was previously

employed as Senior Counsel for the PA Department of Health. In addition to litigating for the Department, she served as counsel for various public health programs and conducted state and federal training on public health and emergency preparedness issues. A member of the Editorial Board for the PA Public Health Law Bench Book, and a member of the Advisory Group for the Public Health Law Judicial Program, Ms. Schuyler remains involved in public health projects and serves on the Advisory Committee for Senate Resolution 194 to review PA's public health laws. Her previous employment also includes serving as corporate litigation counsel for several national insurance companies. Ms. Schuyler is a graduate of the Penn State – Dickinson School of Law.

### **ELISABETH S. SHUSTER**

Ms. Shuster is a sole practitioner who performs consultant work focusing on discrimination and personnel law. Prior to entering private practice, she was an attorney with the Commonwealth of Pennsylvania from 1974 through June 2005. Ms. Shuster is an active member in the Pennsylvania Bar Association and a member of the American Bar Association, including the Civil Litigation and Individual Rights and Responsibilities Sections. Ms. Shuster is a Master in the James S. Bowman American Inn of Court. She is a member of the Commonwealth Court Historical Society; and served on the Gender Bias Subcommittee, PA Supreme Court Committee on Racial and Gender Bias in the Judicial System (2001-2003, 2003 final report). Ms. Shuster graduated from the Villanova School of Law and received her B.A. from Temple University.

From August 1983 through June 2005, Ms. Shuster was Chief Counsel of the Pennsylvania Human Relations Commission which enforces Pennsylvania's anti-discrimination laws in the areas of employment, housing and commercial property, public accommodations and education. In that position she provided legal advice and training to Commissioners, the Executive Director and other staff, as well as providing seminars and training for other civil rights agencies, both nation-wide and local, supervised Commission attorneys in four offices, assisted in the development of policy, analyzed legislation and court decisions, was responsible for drafting regulations and proposing legislation, and represented the PHRC on the Governor's Interagency Committee on AIDS. Ms. Shuster was a Deputy Attorney General, Pennsylvania, Civil Litigation Division, from August 1978 through July 1983, where she represented Commonwealth agencies in federal and state court and administrative agency proceedings on both trial and appellate levels, including civil rights cases and matters of the constitutionality of statutes. From May 1977 to August 1978 she was an Assistant Attorney General with the Pennsylvania Department of Health, where her main duties involved advising on hospital cost containment and participating in certificate of need administrative proceedings. Ms. Shuster was an Assistant General Counsel for the Pennsylvania Human Relations Commission from October 1974 to May 1977. Ms. Shuster is the Chair of the PBA's Civil and Equal Rights Committee (CERC) Ms. Shuster is the Co-Chair of the PBA Women in the Profession Diversity Task Force, and is a member of the PBA the Statutory Law Committee.

### **JANIS L. WILSON**

Janis L. Wilson is a trial attorney based in Philadelphia. She is serving a second term as co-vice-chair of the Commission on Women in the Profession and is a former chair of the Civil Litigation Section. Ms. Wilson also serves on the Legal Ethics and Professional Responsibility Committee. Recently, she was re-appointed an investigator of judicial candidates for the Philadelphia Bar Association. Ms. Wilson frequently writes and lectures on issues concerning professional liability and trial practice. A frequent contributor to various legal publications, she is the former editor of the Civil Litigation Update. Ms. Wilson received a Bachelor of Arts degree in journalism from the University of Memphis. She was awarded a Juris Doctor degree from the Temple University School of Law. In addition, she holds a master's degree in constitutional and public law from the University of Memphis.

### **HARRY D. OWENS, JR.**

Mr. Owens has been a Program Attorney and an Associate Director with the Pennsylvania Bar Institute since December 1998. From 1976 to 1998, he served as an officer in the United States Army, retiring with the rank of Lieutenant Colonel. Throughout his twenty-two year military career, LTC Owens held numerous command and staff positions in Armor units in the United States, Germany, the United Kingdom and Southwest Asia. During his assignment as the Assistant Secretary of the General Staff at the United States Army Tank-Automotive Command, in Warren, Michigan, LTC Owens attended the University of Detroit School of Law and received his JD in 1986. He subsequently was admitted to practice in Pennsylvania. From 1987-89, LTC Owens served as the Assistant Professor of Military Science at Bucknell University and from 1994-98, as the Professor of Military Science at Dickinson College. He received his BS in Political Science and MA in History from the University of Scranton.

# A.

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## PBA BOARD OF GOVERNORS ACTION

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### February 24, 2011

- Unanimously approved the recommendation of the Children’s Rights Committee that the Pennsylvania Bar Association support legislation, policies, and court rules which make clear that the district attorney must present evidence to support written allegations of delinquency and has the burden of proof at transfer and adjudication hearings.
- Unanimously approved the recommendation of the Children’s Rights Committee that the Pennsylvania Bar Association encourage local bar associations, judges, and attorneys to lead and promote efforts and for the legislature to enact laws which promote that all youth are afforded the proper safeguards during delinquency proceedings including but not limited to the presumption of indigence and the appointment of counsel.

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# B. RESOURCES

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## [Interbranch Commission on Juvenile Justice](#)

<http://www.pacourts.us/Links/Public/InterbranchCommissionJuvenileJustice.htm>

- [ICJJ Final Report](#)  
[http://www.pacourts.us/NR/rdonlyres/6A64EA29-B7FD-4468-8CD1-075548469ED9/0/ICJJFinalReport\\_100604.pdf](http://www.pacourts.us/NR/rdonlyres/6A64EA29-B7FD-4468-8CD1-075548469ED9/0/ICJJFinalReport_100604.pdf)
- [ICJJ Summary of Recommendations](#)  
<http://www.pacourts.us/NR/rdonlyres/48438412-F380-4F1C-BEDB-EA0675D42751/0/ICJJSummaryofRecommendations.pdf>

## [Chief Justice Castille Provides an Update on Reforms Resulting From Luzerne County Juvenile Justice Scandal](#)

[http://www.aopc.org/NR/rdonlyres/960C3FE8-DD0D-4C50-B164-1323624E5235/0/030111\\_ChiefReportICJJ.pdf](http://www.aopc.org/NR/rdonlyres/960C3FE8-DD0D-4C50-B164-1323624E5235/0/030111_ChiefReportICJJ.pdf)

## [Judicial Conduct Board](#)

<http://judicialconductboardofpa.org>

- [ICB Internal Operating Procedures](#)  
<http://judicialconductboardofpa.org/the-board/how-the-board-operates/>

## [Disciplinary Board](#)

<http://padisciplinaryboard.org>

## [Juvenile Court Judges' Commission](#)

<http://www.jcjc.state.pa.us>

## [Pennsylvania District Attorney Association Standards for Pennsylvania Prosecutors in Juvenile Courts developed by the PDAA's Juvenile Prosecutors Network](#)

<http://www.pabar.org/weblinks/resources/PDDA%20Standards%20for%20PA%20Prosecutors%20in%20Juvenile%20Court.pdf>

## [Performance Guidelines for Quality and Effective Juvenile Delinquency Representation developed by the Juvenile Defenders Association of Pennsylvania](#)

<http://www.pabar.org/weblinks/resources/Performance%20Guidelines%20for%20Quality%20and%20Effective%20Juvenile%20Delinquency%20Representation.pdf>



[“Learning the Hard Lessons”](http://www.pabar.org/weblinks/resources/LearningTheHardLessons-PALawyerArticle.pdf) by John Cleland, The Pennsylvania Lawyer, Nov./Dec. 2010  
<http://www.pabar.org/weblinks/resources/LearningTheHardLessons-PALawyerArticle.pdf>

[“Confronting Judicial Misconduct”](http://www.pabar.org/weblinks/resources/JudicialMisconduct-Sarvey.pdf) by Don Sarvey, The Pennsylvania Lawyer, Nov./Dec. 2009  
<http://www.pabar.org/weblinks/resources/JudicialMisconduct-Sarvey.pdf>

## Juvenile Law Center

- [Pursuing Justice podcasts](http://www.jlc.org/podcast/), “Reform in the Wake of Luzerne: A Multi-Part Series.” In this podcast miniseries, Juvenile Law Center examines the structural issues in the juvenile justice system that allowed this scandal to occur and the reforms that still need to be put in place to protect youth and to prevent such scandals from happening again. <http://www.jlc.org/podcast/>
- Additional information on reforms that Juvenile Law Center has proposed for Pennsylvania’s juvenile justice system can be found on their [“State Legislation and Reform”](http://www.jlc.org/luzerne_reform/) page. [http://www.jlc.org/luzerne\\_reform/](http://www.jlc.org/luzerne_reform/)
- [Assessing the Quality of Child Advocacy in Dependency Proceedings in Pennsylvania](http://www.jlc.org/images/uploads/Assessing_Quality_of_Child_Advocacy.pdf) [http://www.jlc.org/images/uploads/Assessing\\_Quality\\_of\\_Child\\_Advocacy.pdf](http://www.jlc.org/images/uploads/Assessing_Quality_of_Child_Advocacy.pdf)

## Information Addressing the Topic of Children’s Ombudsman

- [Testimony of Frank P. Cervone, Esq.](http://www.pabar.org/weblinks/resources/OMBUDS-Cervone.DOC), Executive Director, Support Center for Child Advocates, November 1, 2007 on CHILDREN’S OMBUDSMAN and H.B. 1709 (Printer No. 2270)  
<http://www.pabar.org/weblinks/resources/OMBUDS-Cervone.DOC>
- [Testimony of Anne Marie Lancour](http://www.pabar.org/weblinks/resources/ABA%20Testimony%20before%20House%20CYC.pdf), American Bar Association, November 1, 2007, on Establishing the Commonwealth Children’s Ombudsman and the Commonwealth Children’s Ombudsman Office.  
<http://www.pabar.org/weblinks/resources/ABA%20Testimony%20before%20House%20CYC.pdf>
- [OJJDP Report on State Ombudsman Programs \(2005\)](http://www.pabar.org/weblinks/resources/OJJDP-Rpt-StateOmbudsman.pdf).  
<http://www.pabar.org/weblinks/resources/OJJDP-Rpt-StateOmbudsman.pdf>
- Chapter on [“Children’s Ombudsman and Complaint Resolution”](http://www.pabar.org/weblinks/resources/C&Y%20TF_Ombudsman.pdf) in Report of the Advisory Committee on Services to Children and Youth, Joint State Government Commission (2002).  
[http://www.pabar.org/weblinks/resources/C&Y%20TF\\_Ombudsman.pdf](http://www.pabar.org/weblinks/resources/C&Y%20TF_Ombudsman.pdf)
- [Rhode Island’s Children’s Ombudsman](http://mobile.boston.com/news/local/rhode_island/articles/2011/02/17/ri_gov_names_new_state_child_advocate/), Office of the Child Advocate  
[http://mobile.boston.com/news/local/rhode\\_island/articles/2011/02/17/ri\\_gov\\_names\\_new\\_state\\_child\\_advocate/](http://mobile.boston.com/news/local/rhode_island/articles/2011/02/17/ri_gov_names_new_state_child_advocate/)