

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

|  |          |                               |
|--|----------|-------------------------------|
| <b>In re: Expungement of Juvenile Records</b>  | <b>:</b> |                               |
| <b>and vacatur of Luzerne County</b>           | <b>:</b> | <b>No. 81 MM 2008</b>         |
| <b>Juvenile Court Consent Decrees or</b>       | <b>:</b> |                               |
| <b>Adjudications from 2003-2008;</b>           | <b>:</b> |                               |
| <b>related to In re: J.V.R.; H.T., a Minor</b> | <b>:</b> | <b>(Arthur E. Grim, S.J.,</b> |
| <b>through her Mother, L.T., on behalf</b>     | <b>:</b> | <b>Special Master)</b>        |
| <b>of themselves and similarly situated</b>    | <b>:</b> |                               |
| <b>youth</b>                                   | <b>:</b> |                               |

**FINAL REPORT OF THE SPECIAL MASTER**

TO: THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA:

The undersigned Special Master respectfully submits this Final Report.

**CHRONOLOGY OF MY INVOLVEMENT**

On February 11, 2009, your Honorable Court issued an Order in the above-captioned matter (i) granting the juvenile-Petitioners' Application to exercise King's Bench Power, (ii) assuming plenary jurisdiction of this case, and (iii) appointing me as Special Master. The February 11, 2009 Order authorized me to

review all Luzerne County juvenile court adjudications and dispositions that have been affected by the recently-revealed criminal allegations [against former Judges Mark A. Ciavarella, Jr. and Michael T. Conahan], specifically including: (1) cases in which Judge Ciavarella committed juveniles to PA Child Care, LLC and Western PA Child Care, LLC; and (2) cases in which it is alleged that juveniles appearing before Judge Ciavarella were denied their constitutional right to counsel. The Special Master shall then make recommendations to this Court concerning appropriate remedial actions.

Pursuant to the authority and directives set forth in your Honorable Court's February 11, 2009 Order, I held in-chambers discussions on February 17, 2009 in Wilkes-Barre with Chief Public Defender Basil G. Russin, First Assistant District Attorney Jeffrey J. Tokach , and Luzerne County Juvenile Probation Division head John Johnson. The purpose of these discussions was to introduce myself to some of the people with whom I would be dealing in my role as Special Master, and to obtain generalized background information about the Luzerne County Juvenile Court and the individuals involved with it.

On February 26, 2009, I convened a meeting in Wilkes-Barre with the stated purpose of entertaining discussion from counsel regarding an interim recommendation I was considering, namely that in certain categories of cases, the proceedings be declared void *ab initio*, and/or vacated, and/or expunged. This meeting was conducted on the record, and was attended by the President Judge of Luzerne County, counsel for the Petitioners in the above-captioned action (from the Juvenile Law Center), the District Attorney, the Chief Public Defender, the Chief of Probation Services in Luzerne County, the head of the Luzerne County Juvenile Probation Division, the Acting Court Administrator, the President of the Luzerne County Bar Association, and counsel representing each of the amicus parties in this matter (the Pennsylvania Attorney General, the Pennsylvania Department of Public Welfare, and the Defender's Association of Philadelphia).

On March 12, 2009, I submitted to your Honorable Court my First Interim Report and Recommendations, in which I recommended that the delinquency proceedings be vacated and the records thereof expunged for juveniles charged with certain minor offenses who appeared without counsel at hearings before Judge Ciavarella between 2003 and 2008. Your Honorable Court

adopted and approved my First Interim Report and Recommendations, with two qualifications, in your Order of March 26, 2009.

On May 28, 2009, I issued an Order directing counsel to brief the issues of (1) whether Pennsylvania law required all adjudications of delinquency and all consent decrees entered by Judge Ciavarella between 2003 and 2008 to be vacated, regardless of whether the juvenile was represented by counsel; and (2) whether the Double Jeopardy Clauses of the United States or Pennsylvania Constitutions bar new hearings or new trials for all juveniles whose adjudications or consent decrees were vacated. Counsel for the Petitioners and the Luzerne County District Attorney each submitted a brief, and oral argument was heard on July 17, 2009.

There was no need to officially submit a Second Interim Report and Recommendations to your Honorable Court as the issues which were to be the subject of my Second Interim Report and Recommendations were resolved by my Order of August 7, 2009. That Order provided that for cases in which expungement was ordered, certain core records, rather than being physically or electronically destroyed, would be preserved under seal until the conclusion of the Federal civil litigation in *B.W., et al. v. Powell et al.*, M.D. Pa. Docket No. 3:09-cv-0286, and cases consolidated therewith.

Also on August 7, 2009, I submitted my Third Interim Report and Recommendations. In it, I recommended (1) that all adjudications of delinquency and all consent decrees entered by Judge Ciavarella between January 1, 2003 and May 31, 2008 be vacated, and (2) with the exception of certain cases in which the juveniles had not received final discharge from the Juvenile Court and the Juvenile Probation Office, that the petition and/or complaint in all cases be dismissed with prejudice and all records of the cases be expunged.

The District Attorney filed objections to my Third Interim Report and Recommendations. On October 29, 2009, your Honorable Court issued an Order denying the District Attorney's objections and adopting, with one exception, the recommendations set forth in my Third Interim Report and Recommendations. Specifically, your Honorable Court (1) directed that all adjudications of delinquency and all consent decrees entered by Judge Ciavarella between January 1, 2003 and May 31, 2008 be vacated, and (2) ordered that, in those vacated cases in which the juvenile (a) proceeded before Judge Ciavarella without counsel, or (b) was committed by Judge Ciavarella to PA Child Care or Western PA Child Care, or (c) had already received final discharge from the Juvenile Court and the Juvenile Probation Office, the petition and/or complaint should be dismissed with prejudice and all records of the case be expunged. Your October 29<sup>th</sup> Order further directed that for the remaining cases in which the juvenile had not received final discharge from the Juvenile Court and the Juvenile Probation Office, the District Attorney should submit to me a list of cases, under seal, in which she requested permission to proceed with further delinquency proceedings.

At the request of counsel in this case, I held an in-chambers conference in Reading on November 23, 2009. The conference was attended by counsel for the Petitioners (from the Juvenile Law Center), the District Attorney, the First Assistant District Attorney, and the head of the Luzerne County Juvenile Probation Division. Counsel and I discussed (1) how to proceed with the cases in which the District Attorney sought permission to re-prosecute, and (2) procedures for preparing and issuing orders of expungement in the thousands of cases covered by your Honorable Court's October 29, 2009 Order.

I set January 25, 2010 as the date for pre-trial motions and conferences in those cases in which the District Attorney had requested permission to proceed with further delinquency proceedings. On that day, in open court in Wilkes-Barre, the District Attorney withdrew her request for permission to proceed in all of the remaining cases. Therefore, pursuant to your Honorable Court's October 29, 2009 Order, all of the cases in which Judge Ciavarella had entered adjudications of delinquency or consent decrees between January 1, 2003 and May 31, 2008 were to be dismissed with prejudice and expunged.

Between March 26, 2009 (when your Honorable Court approved the First Interim Report and Recommendations) and late July 2009, the Luzerne County Juvenile Probation Office reviewed all of the cases over which Judge Ciavarella had presided between 2003 and 2008 (which numbered in the thousands) and prepared a spread sheet, for each year, listing the cases which it believed were eligible for expungement pursuant to your March 26, 2009 Order. The Juvenile Probation Office then began preparing orders for expungement in the eligible cases. After entry of your Honorable Court's October 29, 2009 Order, the Juvenile Probation Office began preparing orders for expungement in the cases eligible for expungement pursuant to that Order.

Since Spring of 2009, the Juvenile Probation Office has been hampered by several factors in its efforts to prepare and process expungement orders. These factors include the following: (1) a lack of personnel to review juvenile records and dockets in order to prepare expungement orders which comply with the detailed requirements of Pa. Rule of Juvenile Court Procedure 170; (2) the necessity of having several employees devote substantial time in the spring and summer of 2009 to copying well over 100 juvenile probation files in response to requests by juveniles who are plaintiffs in the Federal civil litigation; (3) the necessity of having several employees devote

substantial time in the fall of 2009 and winter of 2009-10 copying and producing documents from the files of thousands of juveniles in order to comply with a discovery subpoena and a Court-ordered discovery schedule in the Federal civil litigation; and (4) a temporary halt in the completion of expungement orders caused by PA Child Care's and Western PA Child Care's preliminary injunction motion filed in the Federal civil litigation, which motion seeks to enjoin me from issuing expungement orders which cover records in their possession.

I expect the first concern set forth above regarding the Juvenile Probation Office to be resolved through the provision of discretionary funds from the Department of Public Welfare through PCCD to the Luzerne County Juvenile Probation Office. This money will permit them to hire the necessary additional personnel to process these expungement orders in a more timely fashion.

The factors set forth in paragraphs two and three are no longer relevant as they have been fully complied with.

The Federal civil litigation, while it remains partially unresolved, will not preclude the ongoing preparation of expungement orders and the subsequent signing of same once the preliminary injunction motion is resolved.

#### RECOMMENDATIONS

It is important to acknowledge that many of the recommendations which follow are not necessarily within the purview of this Honorable Court, but may more properly constitute areas in which legislative and/or executive action is required. It is also important to note that these recommendations are not this writer's alone, but rather are the result of a collaborative effort

undertaken by numerous juvenile justice professionals from the judicial, prosecutorial, defense, victim, service provider, and advocacy organizations.

I felt it relevant to my findings, nonetheless, to suggest ways in which the effects of this entire tragic affair might have been ameliorated, if not avoided entirely.

Let it be said at the outset that although what happened in Luzerne County was in many ways an aberration, it also needs to serve as a clarion call to those of us who believe, with good reason, that the juvenile justice system in Pennsylvania is among the best in the United States. Clearly there are serious issues that need to be addressed.

As Robert G. Schwartz, Executive Director of the Juvenile Law Center, noted in his testimony to the Interbranch Commission on Juvenile Justice: "The behavior of the Judges and juvenile court professionals in Luzerne County eroded confidence in the rule of law, sabotaged the goals of Pennsylvania's juvenile justice system, and harmed the very children the system was supposed to help...". The scandal also re-victimized those innocent citizens of Luzerne County who, in many cases, suffered substantial harm at the hands of these children.

There are good reasons why the Pennsylvania juvenile justice system is held in high regard. In attempting to ensure that there is never another tragedy like Luzerne County, we need to make sure that we do not undermine the foundational principles of our juvenile justice system. We are a judge-centered process. Once a child has been found to have committed an act, our system gives broad powers to our jurists to fashion a disposition that holds the child accountable, protects the community, and develops the competencies of the child, while at the same time considering the public interest as well as the essential role the needs of the victim play in the process. At its best, such a system encourages local innovation and provides for treatment, supervision and

rehabilitation that is second to none. If our system is to work properly, judges need to be attentive to the law and treat a juvenile court assignment as the most meaningful and rewarding work they do.

In suggesting meaningful system reform, I will rely in part on the recommendations of the Juvenile Court Judges' Commission, as set forth by James E. Anderson, its executive director, in his testimony before the Interbranch Commission on Juvenile Justice.

First and foremost, system accountability and openness is critical! In making disposition, the court should be required to state reasons for its disposition as well as the goals, terms and conditions of that disposition, while giving careful consideration to the precepts of balanced and restorative justice.

There is broad acceptance of the idea that there is benefit to generally opening all juvenile court proceedings to the public provided that important safeguards are established by statute. There is some difference of opinion as to the form those safeguards should take. In the final analysis, whatever form they may take, citizens and press alike will need to remain vigilant to ensure the proper functioning of our juvenile courts. We need to realize full well that the goal of vigilance may be elusive. Ultimately, it may be best for the Supreme Court to direct each county juvenile court to establish an ombudsperson, as was suggested by the Juvenile Law Center. Certainly comprehensive oversight is essential. I also believe that legislative action should be considered to appoint a statewide juvenile victim advocate.

There is likewise strong consensus that Juvenile Defense Services need to be strengthened. Clearly the delivery of defense services to indigent accused and adjudicated youth in Pennsylvania's juvenile justice system varies widely throughout the Commonwealth. The



recommendation of the Juvenile Court Judges' Commission is that Pa.R.J.C.P.151 be modified to provide that courts should presume the indigence of juveniles for the purpose of appointment of counsel. In addition, I believe it is imperative that Pennsylvania have a dedicated funding stream for indigent juvenile defense.

The issue of waiver of counsel has previously been addressed by this Honorable Court, as well as through legislation. Some would suggest at this juncture that we need to preclude waiver under any circumstances. I support the Juvenile Court Judges' Commission's view that would require a juvenile to consult with an attorney prior to waiving counsel at any of the following proceedings:

1. Detention hearing
2. Hearing to consider transfer to criminal proceedings
3. Adjudicatory hearing
4. Dispositional hearing
5. Dispositional/Commitment review hearing
6. Probation modification/revocation hearing.

Furthermore there should be a requirement for the appointment of stand-by counsel if a juvenile waives counsel.

The cases in Luzerne County speak forcefully to the need for expedited appellate review in certain juvenile delinquency cases throughout the Commonwealth. I agree with the Juvenile Court Judges' Commission recommendation that the following be eligible for expedited review:

1. The transfer of a case to criminal proceedings
2. The denial of a request to transfer a case to criminal proceedings

3. The transfer of a case from criminal proceedings
4. The denial of a request to transfer a case from criminal proceedings
5. An order of disposition following an adjudication of delinquency that removes a child from his or her home.

The goal should be to issue a decision as soon as possible after the initiation of the review process, and some thought should be given to an opportunity for a stay of disposition in appropriate cases while the review proceeds.

The Juvenile Court Judges' Commission and, to a lesser extent, the Department of Public Welfare are tasked with the responsibility to collect, compile and publish such statistical and other data as may be needed to accomplish the reasonable and efficient administration of the juvenile court system. It goes without saying that the timely and accurate submission of data and the accurate analysis and dissemination of that data are essential to prevent any chance of the repetition of events that occurred in Luzerne County. This is extraordinarily difficult given current staffing and funding levels. Simply put, the resources made available to the Juvenile Court Judges' Commission need to be strengthened in order to increase the capacity to collect, analyze, and report critical information.

In analyzing the Luzerne county debacle, it is clear that the judicial process had run amok and in essence was governed by the wanton exercise of power, dominated by greed, and with little or no concern for the welfare of juveniles and with little or no adherence to the time-honored precepts of juvenile justice.

There is a lesson to be learned by the overwhelming majority of jurists who are honest and hardworking, who care deeply about the justice system, and who labor diligently to make the

correct decisions. Improved decision-making occurs through increased use of validated screening and assessment instruments that assign points for specific risk factors and then consider aggravating and mitigating circumstances. Such a system has been used in my home county of Berks since 2006 when, combined with the development of other community-based programs, it has led to an approximate 45% reduction in the average daily population of our juvenile detention center without compromising public safety. As juvenile justice professionals, we also have a responsibility to utilize programs which are research-based and outcome-measured – thereby ensuring the greatest opportunity to successfully address accountability, safety of community and competency development issues.

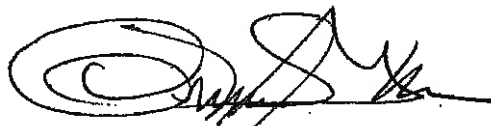
In my opinion, the average citizen of Luzerne County is now very much aware of the total lack of ethical standards in the courtroom of Judge Ciavarella. This has brought to the forefront the broader issue of the proper relationships among the courts, probation departments and the agencies that provide services to court-involved children. It is imperative that juvenile court judges advocate for needed services in their communities and that they be familiar with the quality of all programs and facilities that serve children and families in their jurisdiction. The polestar that must guide the courts is that the relationships and interactions among judges, probation officers, and representatives of agencies should not create even the APPEARANCE of impropriety.

I am proud to say that concerns regarding these ethics issues led the Juvenile Court Judges' Commission to establish an ethics work group, which has initiated a dialogue with the Judicial Ethics Committee. However, because of the importance of these issues and the broader implications for all judges, I believe it may be necessary for the Supreme Court to guide the development of a more comprehensive approach.

Training, continuing education, and professional development for all juvenile justice professionals is likewise essential. Had this level of training and education been in place in Luzerne County, the chances are greater that someone might have raised concerns earlier.

In closing I would like to thank this Honorable Court for the opportunity to serve as Special Master in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Arthur E. Grim', written over a horizontal line.

Arthur E. Grim, S.J.,  
Special Master

Date: February 25, 2010