

IN THE SUPREME COURT
FOR THE COMMONWEALTH OF PENNSYLVANIA
MIDDLE DISTRICT

No. 81 M.M. 2008

IN RE J.V.R.; H.T., A MINOR THROUGH HER MOTHER, L.T.; ON BEHALF OF
THEMSELVES AND SIMILARLY SITUATED YOUTH

**Motion of J.V.R., H.T. *et al.* to Clarify and Modify
the Court's May 4, 2009 Notice**

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA:

This Court, in its Order on March 26, 2009 (“March 26 Order”) and its Notice on May 4, 2009 (“May 4 Notice”) in the above-captioned case, has sought to rectify the harm done to a class of juveniles who appeared without counsel and without a valid waiver of the right to counsel in tainted juvenile proceedings in Luzerne County, Pennsylvania, by providing a process for vacating the youth’s adjudications and expunging their records. In the May 4 Notice, the Court has further sought to protect the rights of those youth who desire a copy of their juvenile records prior to expungement, particularly in light of pending civil litigation. Unfortunately, the procedures specified in the May 4 Notice provide significant barriers that may prevent youth from accessing the remedies to which they may be entitled.

Movants therefore seek clarification and modification of the May 4 Notice to ensure that all youth have meaningful access to those remedies. Specifically, Movants seek (1) clarification that all eligible youth who request copies of their records are not thereby prohibited from also having their adjudications vacated and their records expunged; (2) modification of the notice provisions to provide for individual notice to each youth that they are eligible for vacatur and expungement and elimination of the requirement that eligible youth specify which records they seek copies of and the reasons therefor; and (3) modification of the May 4 Notice to provide for the time-limited preservation of all eligible youths’ records to protect their interests in pending federal litigation. *See Exhibit A, Proposed Revised Notice.*

1. Movants Seek Clarification of Language Suggesting that Youth Who Request a Copy of their Juvenile Records are Not Eligible for Expungement or Vacatur

Movants seek clarification of this Court's May 4 Notice which implicitly suggests that persons who request copies of their juvenile records in accordance with the procedures specified in the Notice will not have their adjudications/consent decrees vacated or their records expunged. The Notice states:

Thereafter, the Special Master shall enter orders of vacatur of consent decrees and adjudications and expungement of all records in those juvenile cases that satisfy the aforementioned criteria, *with the exception of cases where a juvenile, parent, guardian, or legal representative timely requests copies of the relevant juvenile records* by Monday, June 1, 2009.

In Re: Notice of Pending Expungement of Juvenile Records and Vacatur of Luzerne County Consent Decrees and Adjudications from 2003-2008, No. 81 MM 2008, at ¶ 3 (Pa. May 4, 2009) [hereinafter "May 4 Notice"] (emphasis added). As written, the May 4 Notice could be read to prohibit the Special Master from entering orders of vacatur and expungement for those persons who request a copy of their records.

However, this language is at odds with prior statements by this Court which suggest strongly that the Court intended to allow youth to preserve a copy of their records *prior to, not instead of*, expungement of that record. The Court has recognized that some juveniles may wish to "*delay* expungement until they can collect records and information for use in pending civil lawsuits." Order, No. 81 MM 2008, (Pa. Mar. 26, 2009) [hereinafter "March 26 Order"]; May 4 Notice (emphasis added). The Court stated that its directive to the Special Master to enter orders of vacatur and expungement promptly does not affect the Special Master's discretion to "*delay the effect of the expungement aspect* of such orders" for juveniles who wish to obtain copies of their record. March 26 Order (emphasis added). Furthermore, a news release from the Administrative Office of

the Pennsylvania Courts announcing the Supreme Court's May 4 Notice stated that the Court "issued instructions for qualified individuals to obtain copies of Luzerne County Juvenile Court records *prior to* the court-approved expungement of those records." News Release, Administrative Office of Pennsylvania Courts, Supreme Court Begins Expungement Process for Juvenile Adjudications in Luzerne County (May 5, 2009) (emphasis added) [Attached as Exhibit B]. And the May 4 Notice itself explains that its purpose is to provide procedures to move forward with expungements "while also providing an opportunity to those juveniles, their parents, guardians, or legal representatives who may wish to secure copies of the records *prior to expungement.*" May 4 Notice (emphasis added). In these statements, the Court has made clear its general intention to allow youth to preserve their records *prior to*, not *instead of*, expungement.

Accordingly, movants seek clarification that youth do not forfeit their eligibility to have their adjudication or consent decree vacated and their record expunged if they request a personal copy their juvenile records; instead, the Court should make clear that these records will be promptly expunged after the Court sends a copy of the records to the requesting juvenile, parent, guardian or legal representative. Moreover, a youth's request for a copy of the juvenile record should in no way delay the process of vacating the youth's adjudication or consent decree, as an adjudication may be vacated whether or not the record is expunged.

2. To Give Full Effect to the Court's Previous Orders, Movants Seek Modification of Certain Notice Provisions

- a. *Every youth covered by the March 26 Order should be sent a letter informing them that they are eligible for expungement and informing them of the procedure for requesting a copy of their record prior to expungement.*

In our view, the Court's proposed method of notifying youth who desire a copy of their juvenile records prior to expungement is extremely inadequate. Our legal system "rests upon the bedrock foundation that due process of law requires . . . meaningful notice." *McAndrew v. State Civil Serv. Comm'n*, 563 Pa. 168, 169 (2000). Here, lack of meaningful notice creates a significant risk that youth who desire copies of their juvenile records will be denied the opportunity to request such copies before the records are permanently expunged.

The method of publication proposed by the Court – publication in local newspapers – creates a significant possibility that youth would not find out about their opportunity to request their record within the allotted time frame, especially if the youth has moved out of the County or does not read his or her local papers.

Even if a youth, parent, guardian or legal representative views the notice, they may be unable to determine whether the youth is eligible for expungement and therefore is entitled to request a copy of his/her record prior to expungement. Youth are only eligible to have their adjudications vacated and records expunged when the offenses alleged in their delinquency petition fall within certain categories enumerated by the Court in the March 26 Order.¹ Anecdotally, Juvenile Law Center has already been

¹ The notice to be published in the newspaper states that juveniles are eligible for vacatur and expungement only:

- (d) where all of the offenses alleged in the Petition(s) fall within one or more of the following categories:
 - (i) offenses graded as misdemeanors of the third degree;
 - (ii) offenses graded as summary offenses;
 - (iii) theft offenses graded as misdemeanors of the second degree or third degree pursuant to 18 Pa.C.S. § 3903(b);
 - (iv) offenses under the Controlled Substance, Drug, Device and Cosmetic Act ("CSDDCA"), 35 Pa.C.S. § 780-113(a)(31);
 - (v) offenses under the CSDDCA, 35 Pa.C.S. § 780-113(a)(32); and
 - (vi) offenses under the CSDDCA, 35 Pa.C.S. § 780-113(a)(16).

May 4 Notice, at ¶ 1(d).

contacted by potential beneficiaries of this Notice who have expressed their confusion as to whether they fit within the Order's parameters. Additionally, without a copy of the juvenile record, many youth, parents, guardians, as well as their legal representatives, are unlikely to know what specific charges were alleged, and therefore they would be unable to determine whether the youth are eligible to request a copy of their records prior to expungement. Even where youth have copies of their delinquency petitions or other records of the charges alleged, the youth and/or their parents or guardians would likely need legal assistance in order to determine whether these alleged offenses fall within the precise legal definitions of offenses listed in paragraph 1(d) of the Court's May 4 Notice.²

Accordingly, movants seek modification of the Court's May 4 Notice to require the Special Master to send a letter to every youth covered by the March 26 Order informing the youth, and, if the youth is a minor, the youth's parents or guardians, that the youth's adjudications will be vacated and their records will be expunged by the Court. This letter should also inform the youth of the procedures for requesting a copy of the record. The letter should be sent to the last-known address listed in the Luzerne County Juvenile Court Clerk's Office ["Clerk's Office"] or the Luzerne County Juvenile Probation Office ["Juvenile Probation Office"].³ This individual notice should be in addition to the proposed notice by publication.

² For example, determining whether a specific offense is classified as a second degree misdemeanor (and therefore not eligible for vacatur and expungement pursuant to the March 26, 2009 order) or a third degree misdemeanor (and therefore eligible for vacatur and expungement) requires an examination of Pennsylvania's statutory definitions of criminal offenses. Most youth and their parents will not have the knowledge of, or access to, these statutes to make this notice provision meaningful.

³ While this modification may require that the Court delay the deadlines specified in the May 4 Notice, requiring mailed notice should not cause an undue burden as the Special Master must already identify every youth who satisfy the criteria for vacatur and expungement specified in the March 26 Order in order to issue the orders of vacatur and expungement.

b. *The requirement that juveniles must state which records are requested and state their reasons for requesting their records should be eliminated.*

Youth are entitled to access to their juvenile records, *see* 42 Pa. Cons. Stat. § 6307 (2),⁴ and this entitlement is not contingent upon an explanation of their reasons for seeking access. This Court therefore should not create an additional barrier to access by requiring the youth to explain their reason for requesting their records prior to the permanent expungement of these records.

Additionally, without having a copy of their juvenile records, youth cannot be expected to know what types of documents are contained within their full records; therefore, youth will be unable to specify what records to request. The Court should instead send all records, reports and transcripts kept by the Court Clerk's Office and the Juvenile Probation Office to any juvenile or parent requesting a copy of the youth's records pursuant to the Court's May 4 Notice.

Accordingly, movants ask the Court to remove the language from the May 4 Notice requiring any request for records to "explain what records the juvenile needs, and state succinctly the reason he or she needs them."

c. *Orders of expungement and vacatur must be sent to every youth whose records get expunged.*

Movants ask the Court to clarify that, after the Special Master enters orders of vacatur of consent decrees and adjudications and orders expungement of records, the Special Master must send a copy of the final orders to each youth whose adjudication has

⁴ 42 Pa. Cons. Stat. § 6307 provides in pertinent part that "All files and records of the court in a proceeding under the chapter are open to inspection only by:

(2) The parties to the proceeding and their counsel and their representatives, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court."

been vacated and record has been expunged. Orders of vacatur and expungement are not fully meaningful unless youth are aware that the adjudications have been vacated and their records have been expunged.

3. To Protect Youth's Interests in Pending Federal Civil Litigation, Movants Seek Modification to Provide for Time-Limited Preservation of All Expunged Records.

Even if this Court grants the above-requested modifications and clarifications, there is a significant risk that youth who may be eligible for relief in the pending civil lawsuits,⁵ especially those unnamed, unidentified members of the class action lawsuits, will not receive the notice or will not be aware of the necessity of preserving a copy of their records in order to seek a civil remedy in federal court. Movants therefore seek modification of the May 4 Notice to provide time-limited preservation of *all* records expunged pursuant to the March 26 Order and the May 4 Notice. Movants request that these records be expunged in accordance with Pennsylvania Rules of Juvenile Court Procedure, Rule 172, and that a copy of the complete record, including, but not limited to the juvenile delinquency records, juvenile court records, probation records and reports, placement records and reports, and transcripts for all juvenile court hearings, be preserved, under seal for the sole purpose of the federal litigation. Moreover, as this court issues further orders with respect to the vacatur/expungement of the records of the remaining juveniles who were adjudicated or placed by Ciavarella during the time period 2003 through 2008, the time-limited preservation proposed herein should be applied to

⁵ The undersigned counsel, along with co-counsel Dan Segal and Rebecca Santoro of Hangley Aronchick Segal and Pudlin, have filed a federal class action, *H.T. et al. v. Ciavarella et al.*, No. 09-cv-357 (M.D. Pa.). Three other related cases have also been filed: *B.W. et al. v. Powell et al.*, No. 09-cv-286 (M.D. Pa.); *Conway v. Conahan*, No. 09-cv-291 (M.D. Pa.); and *Humanik v. Ciavarella et al.*, No. 09-cv-630 (M.D. Pa.). Plaintiffs' counsel in each of the above cases have reviewed this Motion and support the request for clarification and modification sought herein. Plaintiffs' counsel in all of these cases appreciate this Court's efforts to vacate and expunge the records of their clients who appeared before Ciavarella during the time period 2003 through 2008.

the records of those juveniles as well. At the conclusion of the federal litigation, all the sealed records shall be permanently destroyed.⁶ Any party or individual seeking access to these sealed records shall seek a court order from a federal court.

In the alternative, Movants seek clarification that nothing in the May 4 Notice shall prevent any federal court from issuing an Order that, prior to any expungement in accordance with the March 26 Order and May 4 Notice, Luzerne County Clerk's Office and Probation Office must make and preserve records for the sole purpose of use in the federal litigation.

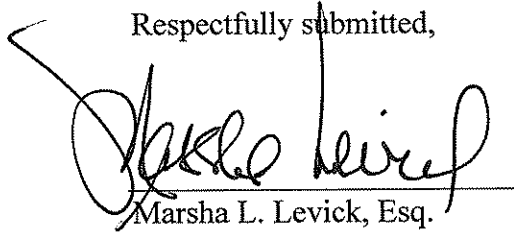
Conclusion

In his first interim report to this Court, the Special Master described his recommendation to vacate the adjudications and expunge the records for one class of cases as "one step towards righting the wrongs which were visited upon these juveniles" that would "help restore confidence in the judicial system." First Interim Report and Recommendations of the Special Master, at ¶ 13, *approved and adopted* by March 26 Order. The Court's May 4 Notice imposes unnecessary and additional barriers to righting these wrongs by providing insufficient notice, insufficient procedures for preserving copies of the juvenile records for use in pending federal litigation and by suggesting that the orders for vacatur and expungement do not apply to youth who request copies of their records. The Notice may inadvertently perpetuate skepticism about the judicial system if youth, parents, and the public perceive that this Court is imposing obstacles on youth and families who wish to pursue a civil remedy for the harm suffered.

⁶ It is permissible to expunge a record, while still retaining a physical copy of the record. Rule 172 of the Pennsylvania Rules of Juvenile Court Procedure specifically provides that courts may issue orders to "expunge *or* destroy the juvenile court file" (emphasis added), indicating that a record that is expunged is not necessarily destroyed.

WHEREFORE, for the foregoing reasons and any other reasons that may appear to this Court, movants respectfully request that this Court to grant this motion to clarify and modify the May 4 Notice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marsha L. Levick". The signature is written in a cursive style and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2009 I served by U.S. Postal Service (first class) this Motion to Clarify and Modify and attachments thereto, upon the persons indicated below, which service satisfies the requirements of Rules 121 and 122 of the Pennsylvania Rules of Appellate Procedure:

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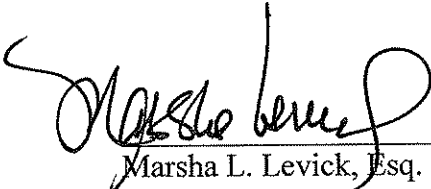
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Senior Judges' Chambers
633 Court Street
Reading, PA 19601-3540



Marsha L. Levick, Esq.

EXHIBIT A

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

**IN RE: NOTICE OF PENDING EXPUNGEMENT OF JUVENILE RECORDS
AND VACATUR OF LUZERNE COUNTY JUVENILE COURT CONSENT
DECREES AND ADJUDICATIONS FROM 2003-2008**

RELATED TO:

IN RE J.V.R.; H.T., A MINOR : No. 81 M.M. 2008
THROUGH HER MOTHER, L.T.; :
ON BEHALF OF THEMSELVES :
AND SIMILARLY SITUATED YOUTH :

REVISED NOTICE

On March 26, 2009, this Court entered a *per curiam* order in No. 81 MM 2008, adopting and approving the First Interim Report and Recommendations of the Special Master and recognizing, *inter alia*, that certain juveniles who appeared in Luzerne County Juvenile Court between 2003 and 2008 are eligible to have their consent decrees and adjudications of delinquency vacated and their juvenile court records expunged. The Court specifically authorized the Special Master to grant such relief as expeditiously as possible. The Court also recognized that: "The Special Master has noted that some of the affected juveniles or their counsel may wish to delay expungement until they can collect records and information for use in pending civil lawsuits."

In order to effectuate the authorized expungements as soon as possible, while also providing an opportunity to those juveniles, their parents, guardians, or legal representatives who may wish to secure copies of their records prior to expungement to

do so, the following procedures are adopted, clarifying and modifying this Court's Order of March 26, 2009:

1. Any juvenile who is eligible to have his or her adjudication or consent decree vacated and record expunged will, before the records are expunged, have the opportunity to obtain copies of his or her complete record from the Luzerne County Juvenile Court Clerk's Office and from the Luzerne County Juvenile Probation Office. Juveniles eligible ("Eligible Juveniles") for vacatur and expungement include any juvenile:

- a. who during the calendar years 2003, 2004, 2005, 2006, 2007, or 2008, appeared in the Juvenile Court of the Luzerne County Court of Common Pleas for an adjudication hearing, a disposition hearing, or any other proceeding before Judge Mark A. Ciavarella, Jr.; and,
- b. who was not represented by counsel at said hearing or proceeding; and,
- c. who did not waive his/her right to counsel, or did not waive it in conformity with Pa.R.J.C.P. 152, or, for proceedings prior to October 1, 2005, did not waive it in a manner such that there is evidence in the record of waiver meeting the standard enunciated in Commonwealth v. Monica, 528 Pa. 266, 597 A.2d 600 (1991); and,
- d. where all of the offenses alleged in the Petition(s) fall within one or more of the following categories:
 - i. offenses graded as misdemeanors of the third degree;
 - ii. offenses graded as summary offenses;

- iii. theft offenses graded as misdemeanors of the second degree or third degree pursuant to 18 Pa.C.S. § 3903(b);
 - iv. offenses under the Controlled Substance, Drug, Device and Cosmetic Act (“CSDDCA”), 35 Pa.C.S. § 780-113(a)(31);
 - v. offenses under the CSDDCA, 35 Pa.C.S. § 780-113(a)(32); and
 - vi. offenses under the CSDDCA, 35 Pa.C.S. § 780-113(a)(16).
2. On or before May 22, 2009, the Special Master shall send individual notice to all Eligible Juveniles at their last-known addresses listed in the Clerk’s Office and/or Probation Office records. If the juvenile is under the age of eighteen, the notice shall also be addressed to the juvenile’s parent and/or guardian. This notice shall inform the juvenile that he or she is eligible to have his or her adjudication or consent decree vacated and his or her record expunged and shall notify the juvenile of the process, described below in paragraph 3, for obtaining a copy of his or her complete records prior to expungement.
3. If any Eligible Juvenile would like a copy of his or her complete records, the juvenile, parent, guardian, or legal representative must send a letter requesting a copy of the complete records to the Special Master by June 19, 2009. This written request shall state the juvenile’s full name and date of birth and the address to which the complete record should be sent. Any request from a legal representative of a juvenile must include a signed authorization from the juvenile, or parent/guardian if the juvenile is under age eighteen, that the legal representative is authorized to seek these records. The requests should be mailed to the Special Master at the following address:

Honorable Arthur Grim
Berks County Courthouse
Senior Judges' Chambers
633 Court Street
Reading, PA 19601-3540

Eligible Juveniles who request a copy of their records shall receive a complete physical copy of their records, including but not limited to any and all juvenile delinquency records, juvenile court records, probation records and reports, placement records and reports, and written transcriptions of all juvenile court hearings related to the juvenile.

4. A juvenile's request for a copy of his or her complete file shall not delay the process of vacating his or her adjudication or consent decree. When the Special Master receives confirmation from the Luzerne County Clerk's Office and Juvenile Probation Office that a copy of the complete records has been sent to the juvenile, parent, guardian, or legal representative, the record will be expunged and placed under seal pursuant the provisions outlined in paragraph 5 below.
5. All records eligible for expungement pursuant to this Court's March 26, 2009 Order shall be completely expunged in accordance with Pennsylvania Rules of Juvenile Court Procedure, Rule 172. A complete physical copy of these expunged records, including but not limited to the juvenile delinquency records, juvenile court records, probation records and reports, placement records and reports, and transcripts of all juvenile court hearings, shall not be destroyed, but shall instead be placed under seal by the Luzerne County Juvenile Probation Office and the Luzerne County Clerk's Office for the sole

purpose of the following federal civil lawsuits currently pending before the U.S. District Court for the Middle District of Pennsylvania: *H.T. et al. v. Ciavarella et al.*, No. 09-cv-357 (M.D. Pa.); *B.W. et al. v. Powell et al.*, No. 09-cv-286 (M.D. Pa.); *Conway v. Conahan*, No. 09-cv-291 (M.D. Pa.); and *Humanik v. Ciavarella et al.*, No. 09-cv-630 (M.D. Pa.) (collectively, the Federal Litigation). Any party or individual seeking access to these sealed records for the purposes of the Federal Litigation shall seek an order from the federal court. No party or individual shall have access to these records without a valid court order. At the conclusion of the Federal Litigation, all the sealed records shall be permanently destroyed.

6. After the Special Master enters orders of vacatur of consent decrees or adjudications and/or orders of expungement, the Special Master shall send a copy of the final orders to each juvenile whose adjudication or consent decree has been vacated and/or whose record has been expunged.
7. This Notice shall be published in the Wilkes-Barre Times Leader, the Citizens' Voice, the Scranton Sunday Times, and the Luzerne Legal Register.
8. In all other respects, the Court's Order of March 22, 2009 remains in full force and effect.

By the Supreme Court of Pennsylvania

EXHIBIT B



ADMINISTRATIVE OFFICE of PENNSYLVANIA COURTS

NEWS RELEASE

CONTACT: Art Heinz, Communications Coordinator
(717) 795-2062

WWW.PACOURTS.US

Supreme Court Begins Expungement Process for Juvenile Adjudications in Luzerne County

HARRISBURG, May 5, 2009 - The Supreme Court of Pennsylvania today issued instructions for qualified individuals to obtain copies of Luzerne County Juvenile Court records prior to the court-approved expungement of those records.

The court's action applies to juveniles who are eligible, under a March 26, 2009 Supreme Court order, to have the adjudication of their cases vacated and their records expunged. These cases, involving minor offenses, were heard in Luzerne County Juvenile Court by former Judge Mark A. Ciavarella between 2003 and 2008.

The expungement of a record effectively wipes the slate clean by removing all public references to a court proceeding in dockets or files. An estimated 800 juveniles will be affected by this unusual process which has been prompted by the Supreme Court's expressed intent to correct a "travesty of juvenile justice" in Luzerne County.

Ciavarella and former Senior Judge Michael T. Conahan have pleaded guilty to federal fraud and tax charges in connection with kickbacks they received relating to the construction of two private juvenile detention centers.

The Supreme Court on February 11, 2009, appointed Senior Judge Arthur E. Grim, the former president judge of Berks County and chairman of the state Juvenile Court Judges' Commission, as Special Master to conduct a comprehensive review to determine if Luzerne County juveniles were improperly committed to detention centers or denied their constitutional right to counsel in cases before Ciavarella.

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The court on March 26 adopted and approved Judge Grim's First Interim Report and Recommendation which advocated that cases of juveniles who had appeared before Ciavarella on minor charges, without legal representation, be vacated and the records be expunged. The court authorized Grim to vacate the adjudications and expunge the records "as expeditiously as possible."

In its action today, the Supreme Court issued a notice stating that eligible juveniles, their parents, guardians or legal representatives may request copies of juvenile records by writing to the Special Master no later than June 1, 2009. The request must state the juvenile's full name and birth date and explain what records are being requested and the reason for the request. Requests are to be mailed to:

Honorable Arthur E. Grim
Berks County Courthouse
Senior Judges' Chambers
633 Court Street
Reading, Pa. 19601-3540

The court's notice said that after June 1, 2009, Grim will proceed to vacate adjudications and expunge records.

Once that phase of his work is completed, Judge Grim will proceed to review juvenile cases involving more serious offenses in Luzerne County and make recommendations to the Supreme Court involving those cases.

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*EDITORS NOTE: A copy of the notice by the Supreme Court is attached
<http://www.pacourts.us/OpPosting/Supreme/out/81mm2008notice.pdf>.*

Other news releases and copies of Supreme Court orders relating to Luzerne County Juvenile Court issues may be seen on the "For the Media" page of the Web site of Pennsylvania's Unified Judicial System at www.pacourts.us.

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