

INTERBRANCH COMMISSION ON JUVENILE JUSTICE
Opening Statement of the Hon. John M. Cleland, Commission Chair
November 9, 2009

Good afternoon. I am John Cleland, a judge of the Superior Court of Pennsylvania and Chairman of the Interbranch Commission on Juvenile Justice.

Today, ten weeks after being organized, and nearly eleven months after the original indictments against Michael Conahan and Mark Ciavarella were returned by the United States Attorney, this Commission begins our hearings here in Wilkes Barre.

Many of you might be aware of the work we have already done over the last two and a half months. Perhaps you may have read in the newspaper about the hearing we held in Harrisburg last month or may even have watched it on television.

But before we begin to hear from the witnesses who have been called to testify during the next two days it is important to keep in mind the purpose of this Commission's work. The Interbranch Commission on Juvenile Justice was created by the three branches of state government: the judiciary, the legislature, and the executive. We have been directed to conduct a noncriminal investigation into the failure of the juvenile justice system, to take steps designed to restore public confidence in the administration of justice, and to make recommendations to avoid a repeat of such a breakdown elsewhere in Pennsylvania.

Our focus is on the juvenile justice system. We are not blind to the fact that as events have unfolded during the last year, there have been investigations and indictments that have extended far beyond what went on within the confines of Mark Ciavarella's courtroom. But it is not our function to investigate the decisions of school boards, or the actions of municipal authorities, or to inquire into pay to play bidding processes, or the numerous other instances of crime and corruption that have been alleged or admitted.

Our focus is on what happened in the juvenile justice system – what went wrong and what can be done about it.

We want to know what went on in those courtrooms – were the established rules of juvenile procedure followed, was evidence properly presented, what did the prosecutors do, what did the defense lawyers do, what did the juvenile probation officers do, what did the judge do?

We want to know what the processes were that led to children being in those courtrooms in the first place – which cases were selected for prosecution, how were charges determined, who advised children and their parents about their rights, how were disposition recommendations developed?

And we want to know what happened after those children left the courtroom – where were they placed, who paid for it, who monitored the placements and the child's need for continued placement?

Given the criminal charges pending against them, we understand we have no reasonable likelihood of hearing from former judge Conahan and former judge Ciavarella. Frankly, however, in terms of the work of this Commission -- in terms of meeting our responsibility to develop recommendations to reform the juvenile justice system -- not hearing from them may be no great loss.

The practical reality is that those who may be motivated by greed and the drive for power are not likely to be deterred by any laws, rules or regulations that we recommend or which may ultimately be adopted. That is the nature of criminality.

None of us should hold any illusions that the recommendations of one more commission, or the creation of one more regulatory agency, or the enactment of one more law, or the adoption of one more rule of court will prevent this from ever happening again. The fact is that there were laws, and rules of juvenile procedure, and administrative regulations already in place that could have stopped or prevented these abuses.

Having said that, be assured we will do whatever we reasonably can do to develop recommendations for improvements that we believe could

deter criminality by those who administer the juvenile justice system, and that will make the juvenile system more humane for children, while continuing to protect community safety.

But if we are to truly effect meaningful reform we must focus not only on how to stop bad behavior; we must also focus on how to encourage good behavior.

How do we create a system in which those who see corruption call the police? How do we create a system in which prosecutors who see a judge flagrantly disregard the law make a report to the Judicial Conduct Board? How do we create a system in which the Judicial Conduct Board can respond quickly and effectively to allegations of misconduct? How can we develop a system in which we select and educate our juvenile court judges so that glib sloganeering -- and using phrases like "zero tolerance" -- is not mistaken for thoughtful judicial reflection? How do we create a system in which lawyers, whose unique role it is to advance justice and protect liberty, actually uphold the great traditions of an honored profession?

In short, those of us on this Commission are troubled by the same questions that have troubled you here in Luzerne County.

We have asked ourselves whether it is possible that people can persuade themselves there is nothing they can do to correct what they know to be wrong. We have asked ourselves whether it is possible that people can get so used to a culture of corruption that corruption loses its meaning.

We, like all of you who have lived out the tragedy of this judicial scandal, know the answer to those questions. And the answer, unfortunately, is "yes." People can persuade themselves there is nothing they can do; and corruption can lose its meaning.

What we don't know, and what we hope to find out today and in future hearings, is what it would have taken to encourage people to act. We know people in this community did not consciously choose to stand on the side of injustice at the expense of children. But what was it that made it so hard to do the right thing? Were people afraid? And, if so, afraid of what? What repercussions? What retributions? Where they intimidated? By whom? And

how? What protections would they have wanted? Where would they have wanted to take the information they had? Did they have confidence that their supervisors, or county officials, or law enforcement, or the Judicial Conduct Board or the attorney Disciplinary Board would have acted professionally?

These are the questions we need answered. What we need to hear is the soul searching that we know the people of this community have been doing. Only when we hear that, and understand that, can we develop what will be the truly meaningful kind of recommendations yielding a legacy that will turn this tragedy to good. If we know those answers, perhaps we can make recommendations so when others are confronted with the choice of doing the easy thing or doing the right thing, doing the right thing will be easier.

In the end, it is the collective responsibility of all of us to uphold the rule of law that binds us together in a democracy. We all have a stake, after all, in protecting the welfare of our friends and neighbors. But how do we support and encourage each other in that common effort?

To the extent we can address that universal question in the context of this one tragedy in this one Pennsylvania county, to the extent we can help shape our law in a way that promotes the mutual confidence that those who stand for justice do not stand alone, then we will, all of us, have done something meaningful indeed.

I am joined at this table by the other members of the Commission.

They are:

- ◆ Tod C. Allen, Director of Court Advocacy, the Crime Victim Center, Erie County;
- ◆ Valerie Bender, Senior Research Associate at the National Center for Juvenile Justice in Pittsburgh;
- ◆ Kenneth J. Horoho, a Pittsburgh attorney and former President of the Pennsylvania Bar Association;
- ◆ Magisterial District Judge James A. Gibbons from Lackawanna County;

- ◆ Jason J. Legg, District Attorney of Susquehanna County;
- ◆ Robert L. Listenbee, Chief of the Juvenile Unit of the Defender Association of Philadelphia;
- ◆ George D. Mosee, Jr., Chief of the Juvenile Division and Deputy District Attorney of Philadelphia;
- ◆ Judge John C. Uhler, a judge of the Court of Common Pleas of York County, and former President Judge of the Court;
- ◆ Ronald P. Williams, Regional Director of the Pennsylvania Department of Agriculture;
- ◆ Judge Dwayne D. Woodruff, a juvenile court judge from Allegheny County.

We look forward to hearing your thoughts.

###

