



CHIEF JUSTICE RONALD D. CASTILLE
SUPREME COURT OF PENNSYLVANIA
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PHILADELPHIA, PENNSYLVANIA 19103

MEMORANDUM

TO: Honorable John M. Cleland
Chair of the Interbranch Commission on Juvenile Justice

FROM: Chief Justice Ronald D. Castille *RD Castille*

DATE: November 4, 2009

RE: **In Re: Expungement of Juvenile Records and Vacatur of Luzerne County Juvenile Court Consent Decrees or Adjudications From 2003-2008**

As the Interbranch Commission on Juvenile Justice undertakes its review of the juvenile justice system, I thought that a summary of the judicial proceedings before the Supreme Court of Pennsylvania may assist the Commission in understanding the measures that have been taken by the Court to rectify the travesty of justice perpetrated upon the affected juveniles and to restore the integrity of the juvenile justice system in Luzerne County. The Supreme Court continues to be engaged in addressing the juvenile matters that have come under scrutiny because of the judicial misconduct that occurred in the Luzerne County Juvenile Court. The Court is committed to redressing those harms caused by the judicial misconduct, and substantial steps have already been undertaken to accomplish that goal.

The matters addressed herein are of public record and do not constitute or contain any reference to or identification of the internal deliberations of the Supreme Court or other bodies, persons or institutions assisting the Supreme Court in its actions in this matter. All internal, non-public deliberations are subject to the deliberative process privilege and are not waived by virtue of this background Memorandum.

The judicial proceedings that brought this matter to the forefront began on April 29, 2008, when the Juvenile Law Center ("JLC") filed an Application for Exercise of King's Bench Power or Extraordinary Jurisdiction in In Re: J.V.R.; H.T., a Minor Through her Mother, L.T., 81 MM 2008. The JLC's Application requested that this Court exercise its King's Bench power or extraordinary jurisdiction "to end the practice of the Luzerne County Common Pleas Court of conducting delinquency hearings without counsel for children - or without lawful waivers of counsel." The Application asserted that data collected by the Pennsylvania Juvenile Court Judges' Commission showed that approximately 50% of all delinquency proceedings in the Luzerne County Juvenile Court proceeded without the juvenile being represented by counsel. The JLC argued that Luzerne County's practice violated a juvenile's constitutional, statutory and rule-based right to counsel, citing In Re Gault, 387 U.S. 1 (1987), 42 Pa.C.S. § 6337, and Pa.R.J.C.P. 151.

The JLC Application was unusual because, although the JLC had a few named clients, it did not seek to have this Court act in its traditional review posture, focused on individual cases. Indeed, the Application was not limited to the cases or concerns of the JLC's named clients. Rather, the request was investigative in nature. Essentially, the JLC sought to have this Court exercise its plenary authority in order to undertake a far-flung investigation into juvenile cases in Luzerne County. Thus, the JLC requested that this Court investigate and identify every instance since October 1, 2005 in which a juvenile was the subject of a delinquency proceeding in the Luzerne County Juvenile Court, who proceeded without legal representation, and either was adjudicated delinquent or otherwise subjected to court supervision. The JLC requested that, with respect to those juveniles, the Supreme Court either expunge their records or grant other appropriate relief. The JLC also requested that we issue appropriate relief to those juveniles who lacked counsel and remained either in custody or under the supervision of the Luzerne County Juvenile Court. The JLC also requested automatic expungement of the records of all unrepresented juveniles who were adjudicated delinquent on or after October 1, 2005 and were no longer under the supervision of the Luzerne County Juvenile Court. The JLC focused on the juvenile matters arising after October 1, 2005, because that was the effective date of the Supreme Court of Pennsylvania's procedural rules relating to the assignment of counsel to juveniles and the waiver of counsel.

The Luzerne County District Attorney responded that the claims were not supported by a factual record and that the JLC should not be allowed to by-pass the lower courts and should be required to develop a record. Under pre-existing authority, the Administrative Office of Pennsylvania Courts ("AOPC") responded on behalf of the Luzerne County Court of Common Pleas and then-President Judge Mark A. Ciavarella, who had presided over the Luzerne County juvenile court in the relevant time period. The AOPC advised the Supreme Court that any prospective relief would be moot because of the implementation of new, written notices to juveniles who were charged with crimes and

their parents, and by conducting waiver of counsel colloquies in accordance with Pa.R.J.C.P. 152 going forward. Then President Judge Ciavarella suggested that he removed even the appearance of impropriety by assigning a replacement judge to preside over all juvenile cases in Luzerne County. Amicus briefs filed on behalf of the Office of Attorney General ("OAG") and the Department of Public Welfare ("DPW") encouraged review because of the statistics reflecting the high percentage of juveniles who were unrepresented by counsel. None of the parties urging exercise of extraordinary review suggested how the Court was to undertake the requested investigation; nor did the executive party (the District Attorney) or the executive *amici* (the OAG and the DPW) assert that they were unable or were disinclined to conduct investigations into the allegation of denial of procedural rights.

The JLC subsequently filed an Application for Leave to File Response, which the Court granted. In response to the point that the new procedures put in place by the Luzerne County Juvenile Court ensured that a juvenile's right to counsel would be safeguarded in present and future proceedings, the JLC contended only that with these new procedures Luzerne County had effectively conceded the merits of the JLC's claims.

Nothing in the pleadings suggested criminal conduct related to juvenile proceedings by former judges Ciavarella or Conahan, nor was there any information, or allegation, respecting the PA Child Care facilities or the judges' connection thereto.

This Court considered the allegations presented by the JLC regarding the violations of the juveniles' right to counsel, and the Respondents' counter-arguments regarding the absence of a factual record demonstrating the deprivation of the right to counsel in the hundreds of cases estimated to have been affected by the common pleas court's procedures, and the changes that the common pleas court represented that it had implemented with regard to informing juveniles and their parents of the right to counsel, as well as the fact that Ciavarella had removed himself from juvenile cases going forward. Based upon the parties' filings, this Court entered an order denying the JLC's Application for Exercise of King's Bench Power or Extraordinary Jurisdiction on January 8, 2009.

On January 26, 2009, the United States Attorney's Office for the Middle District of Pennsylvania filed a Bill of Information against Senior Judge Michael T. Conahan, the former President Judge of the Luzerne County Common Pleas Court, and Mark A. Ciavarella, the then-current President Judge, detailing charges for honest services wire fraud and conspiracy to defraud the United States. The charges arose from undisclosed payments in excess of \$2.6 million that were made to the judges by Robert Powell, Esquire, a former co-owner of PA Child Care and Western PA Child Care, and Robert K. Mericle, the builder involved in the construction of the juvenile facilities. The U.S. Attorney's Office contemporaneously announced that it had reached agreements with Conahan and Ciavarella to plead guilty to these charges.

On January 30, 2009, the JLC filed a Motion for Leave to File Motion for Reconsideration *Nunc Pro Tunc* and a Motion for Reconsideration of Denial of Application for the Exercise of King's Bench Power or Extraordinary Jurisdiction. The JLC requested that the new information regarding the federal indictment be considered since it was not available until after the fourteen-day filing period for reconsideration had expired. On February 2, 2009, this Court entered an order vacating the January 8 order, pending further court order.

The public disclosure of the federal criminal charges against two sitting judges resulted in the grant of the reconsideration request. In its Motion for Reconsideration, the JLC sought to enlarge the class of juveniles to include all juveniles who were adjudicated delinquent by Ciavarella during the entire time that he received illegal payments, i.e., from 2003 through May 23, 2008, the date that Ciavarella ceased to preside over delinquency proceedings in Luzerne County. On February 5, 2009, Luzerne County District Attorney Jacqueline Musto Carroll filed a reply, concurring in the JLC's reconsideration request for the appointment of a special master to review the juvenile cases.

The Supreme Court's extraordinary jurisdiction empowers this Court to assume jurisdiction with respect to "any matter pending before any court or district justice of this Commonwealth involving an issue of immediate public importance, assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done." 42 Pa.C.S. § 726. This Court's "King's Bench jurisdiction allows the Court to exercise 'power of general superintendency over inferior tribunals' even when no matter is pending before a lower court." In Re Dauphin County Fourth Investigating Grand Jury, 943 A.2d 929, 933 n. 3 (Pa. 2007) (citation omitted).

On February 11, 2009, this Court entered an order granting the JLC's reconsideration request and assumed plenary jurisdiction over the matter. Because there was no matter pending before the lower court, the Court assumed jurisdiction under our King's Bench authority in order to address the handling of the juvenile delinquency proceedings in light of the public disclosure of the criminal conduct of Ciavarella and Conahan. The Honorable Arthur E. Grim, of Berks County, was appointed to serve as the Special Master to assist the Court by reviewing the juvenile matters and by submitting recommendations concerning appropriate remedial measures. The order directed Judge Grim "to review all Luzerne County juvenile court adjudications and dispositions that have been affected by the recently-revealed criminal allegations, 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." Once the affected cases were identified, Judge Grim was ordered to recommend remedial action on an individual basis, a class basis, or both.

The order observed that “[t]he goal of this Court is to determine whether the alleged travesty of juvenile justice in Luzerne County occurred, and if it did, to identify the affected individuals and to rectify the situation as fairly and swiftly as possible.” Judge Grim was directed to file an Interim Report within 120 days of the entry of the order.

Judge Grim scheduled a proceeding with the parties for February 24, 2009, to address his proposals involving the adjudications of delinquency, dispositions, and consent decrees imposed upon juveniles who had appeared without counsel before the Luzerne County Common Pleas Court during the calendar years 2005, 2006, 2007 and 2008. Those present at the proceeding included counsel for the named parties, and counsel for the Office of Attorney General, the Defender Association of Philadelphia, the Luzerne County District Attorney, the County’s Chief Public Defender, the County’s Chief of Probation Services, the Chief Deputy Juvenile Probation Officer, Luzerne County’s Acting Court Administrator, and the President of the Luzerne County Bar Association.

On February 26, 2009, Judge Grim entered an order directing the Luzerne County Juvenile Probation Department to provide a list of all juveniles who appeared before Judge Ciavarella between January 1, 2003 and May 28, 2008. The list was to identify the name of the juvenile, the offense for which the juvenile was adjudicated delinquent, the disposition, whether the juvenile was represented by counsel, and, if not, whether there was a waiver of counsel.

First Interim Report and Recommendations of the Special Master

In the Court’s Special Master’s First Interim Report and Recommendations, Judge Grim proposed procedures to expeditiously identify less serious juvenile matters where he believed that summary relief could be afforded by vacating the underlying adjudications and consent decrees, and ordering expungement of such records. The eligible juveniles would include those who had committed specified offenses, and had appeared in Juvenile Court during the calendar years 2003- 2008, who were not represented by counsel, and had not voluntarily, knowingly and intelligently waived the right to counsel. The juveniles could not have been the subject of any prior or subsequent petitions that resulted in adjudications of delinquency or consent decrees, or the subject of any pending juvenile proceeding.

The juvenile cases included those charges where all of the offenses either stemmed from a single course of conduct or related incidents, or were handled as part of a single proceeding or hearing. The recommendation was limited to specific offenses, including:

- (a) offenses graded as misdemeanors of the third degree;

- (b) offenses graded as summary offenses;
- (c) theft offenses graded as misdemeanors of the second degree to third degree pursuant to 18 Pa.C.S. § 3903(b);
- (d) offenses under the Controlled Substance, Drug, Device and Cosmetic Act ("CSDDCA"), § 780-113(a)(31);
- (e) offenses under the CSDDCA, § 780-113(a)(32); and
- (f) offenses under the CSDDCA, § 780-113(a)(16).

Judge Grim further recommended that for all cases that satisfied the criteria set forth in 18 Pa.C.S. § 9123(a) (governing "expungement of juvenile records"), he be granted authority to direct that the records of these juvenile cases be expunged, after providing the District Attorney and the juveniles with notice and an opportunity to object. Judge Grim noted that some of the juveniles who were eligible for expungement of their records might wish to delay the expungement until they obtained records and information needed to proceed with independent federal civil actions brought on their behalf. He recommended that expungements in such cases be delayed until the juveniles had been notified and been given time to object.

In addition, Judge Grim recommended that the Luzerne County Probation Office be granted the authority to release copies of the Luzerne County Juvenile Court daily lists from January 1, 2003 to May 31, 2008 to the District Attorney and to the JLC's counsel. The list identified the names of juveniles scheduled to appear in court on that day, the offenses alleged, whether the juvenile had counsel, and the Juvenile Court's rulings. Judge Grim stipulated that the materials would be used solely for the purpose of analyzing the number and types of cases that may fall under his jurisdiction, and could not be used by any party to contact juveniles, victims, or any other individual associated with the juvenile cases.

The release of the daily lists was subject to additional restrictions, including:

- (a) authorizing only two attorneys and two support personnel of the JLC to view the materials;
- (b) authorizing only two attorneys and two support personnel of the District Attorney's Office to view the materials;
- (c) prohibiting copying of the materials without prior approval;
- (d) requiring that the materials be stored in a locked file cabinet, or similar location to which access was restricted, when not being used; and
- (e) directing that the materials be returned to Judge Grim at the conclusion of this litigation.

On March 26, 2009, this Court entered an order adopting and approving the entirety of the First Interim Report and Recommendations of the Special Master, subject to two qualifications. First, the Court stated that its primary concern was to identify and correct

the miscarriages of justice in the adjudications of delinquency and consent decrees as quickly as possible. To accomplish this, the Court directed Judge Grim to promptly enter orders of vacatur and expungement once the cases that met the established criteria had been identified. Judge Grim's discretion to provide reasonable advance notice to affected juveniles, and his ability to entertain specific, supported requests to delay the effect of expungement was unaffected.

Second, the Court directed that the release of the Juvenile Court daily lists was for the sole purpose of identifying those juveniles, whether they were presently represented or not, who fit the criteria for the accelerated disposition proposed by Judge Grim, and not for the purposes of collateral litigation. Judge Grim was authorized to modify the security provisions and to expand those provisions as events required.

Supreme Court Notice Dated May 4, 2009

On May 4, 2009, this Court issued a Notice adopting procedures to effectuate the authorized expungements of juvenile records and to facilitate those juveniles, parents, guardians, or legal representatives who wished to obtain copies of records maintained by the Luzerne County Juvenile Court Clerk's Office and the Luzerne County Juvenile Probation Office. The Notice was captioned "In Re: Expungement of Juvenile Records and Vacatur of Luzerne County Juvenile Court Consent Decrees or Adjudications From 2003-2008" to make clear that it encompassed all eligible juveniles in the affected time period, and not merely those juveniles represented by the JLC or other identified counsel. (The JLC was not at this time recognized as legally representing the entire class of Luzerne County juveniles.)

The Notice indicated that requests for such records were to be submitted in writing to Judge Grim by June 1, 2009. The requests were to include the full name of the juvenile and birth date, explain what records the juvenile needed, and state the reason that he or she needed them. The Court directed that the Notice be published in the Wilkes-Barre Times Leader, the Citizen's Voice, the Hazelton Standard Speaker and the Luzerne Legal Register. The Times Leader, the Citizen's Voice and the Hazelton Standard Speaker are newspapers of general circulation. The Luzerne Legal Register is Luzerne County's official law journal.

On May 8, 2009, the JLC filed a Motion to Clarify and Modify the Court's May 4, 2009 Notice. The JLC requested that the Court issue a Revised Notice that would: (1) clarify that all eligible juveniles who request copies of their records are not precluded from having their adjudications vacated and their records expunged; (2) direct that individual notice be sent to all juveniles who were eligible for vacatur and expungement under the specified criteria. An analysis of the JLC's motion determined that the Court's primary concern for ensuring swift remedial measures for the juveniles would not be advanced

by the proposed modifications and would delay unnecessarily remediation of the juveniles' cases.

The Court denied JLC's Motion on May 21, 2009. In considering the matters raised by the JLC, the Court was guided by its paramount concern that tainted adjudications and consent decrees of affected juveniles in Luzerne County be undone as expeditiously as possible in order to remedy the immediate harm to the juveniles and to restore confidence in the integrity of the county's juvenile justice system. The remedial actions taken and authorized by the Court contemplated that orders of vacatur and expungement would be entered promptly in all of those cases that met the criteria identified by Judge Grim and approved by the Court's Order dated March 26, 2009.

Second Interim Report and Recommendations of the Special Master

Separate civil actions have been filed in federal court by certain individual juveniles who claim to have been adversely affected by Conahan's and Ciavarella's actions. In addition, counsel representing certain juveniles have sought class certification; to this Court's knowledge, the federal district court has yet to rule upon certification. In response to this Court's May 4, 2009 Notice, the defendants in Wallace v. Powell, 09-CV-286 (U.S.D.C., M.D. Pa.); Conway v. Conahan, 3:09-CV-0291; H.T. v. Ciavarella, 09-CV-357 (U.S.D.C., M.D. Pa.); and Humanik v. Ciavarella, 3:09-CV-0630 (U.S.D.C. M.D. Pa.), filed, in federal court, a Motion for Preservation Order Directed to the Third Parties. The motion requested that the federal court issue an order prohibiting the destruction of the documents and records related to any juvenile who appeared in the Luzerne County Juvenile Court, until the federal civil litigation was concluded. The federal plaintiffs concurred with the motion.

On June 25, 2009, Zygmunt A. Pines, Esquire, Court Administrator of Pennsylvania, submitted a letter to presiding U.S. District Court Judge A. Richard Caputo on behalf of the Supreme Court. Mr. Pines' letter addressed this Court's interest in swiftly remediating the travesty of juvenile justice in Luzerne County, and our concern that juveniles who were not named plaintiffs in the federal litigation might have an interest both in privacy and in expungement that differed from the interest of those actively seeking monetary compensation in federal court. The letter nevertheless assured Judge Caputo of our Court's intention to abide by any order of the federal court in the interest of comity.

On July 2, 2009, Judge Caputo denied the motion for preservation, reasoning as follows:

For this Court, by order of preservation for discovery purposes in a civil suit, to directly interfere with the Supreme Court's determination to expunge, erase and leave no trace would reverse appropriate policies in

the relief addressing the fundamental issue of integrity in the system, and would otherwise thereby disrupt the delicate balance necessitated in our system of federalism, Further, the fate of the Pennsylvania Court's remedy and the question of juvenile records preservation is best left to the Pennsylvania Courts The issue of preservation of individual records in the context of an order of expungement is thus available for the determination of the court ordering the expungement.

Judge Caputo's decision paved the way for Judge Grim to implement the first phase of expungements in accordance with this Court's primary directives.

In his Second Interim Report and Recommendations of the Special Master, Judge Grim proposed a solution to the question of record preservation. Judge Grim expressed his opinion that for those identified juveniles who had requested that their juvenile records be preserved under seal for the duration of the federal litigation, this Court should grant that request. He indicated that the juveniles would have the benefits resulting from record expungement by having the expungement orders available to demonstrate the absence of a juvenile record to an employer, school, or military branch; by having their names and other information removed from the records and electronic databases of the Pennsylvania State Police, local police, and other state and federal databases; and by having no records found during any subsequent search of Luzerne County records.

Judge Grim submitted recommendations that divided the class of affected juveniles into three groups. The first group included eligible juveniles who neither had requested a delay in expungement nor were named plaintiffs in the federal cases. As to those juveniles, Judge Grim proposed entering orders of vacatur and expungement forthwith. The second group included juveniles who had both requested a delay in expungement and were named plaintiffs in the federal cases. For those juveniles, Judge Grim proposed to provide them with copies of their records, and then to enter orders of vacatur and expungement that would preserve the original records under seal until the conclusion of the federal litigation. The final group included juveniles who requested a delay in expungement pursuant to our May 4, 2009 Notice, but who were not named plaintiffs in the federal cases. For those juveniles, Judge Grim proposed to provide them with copies of their records, and then to enter standard orders of vacatur and expungement.

On July 22, 2009, this Court entered an order adopting and approving Judge Grim's Second Interim Recommendations. The Court specifically granted Judge Grim the authority to act in accordance with the recommendations set forth in the Second Interim Report and Recommendations.

This Court then directed Court Administrator Zygmunt A. Pines to advise U.S. District Judge Caputo that Judge Grim had been authorized to broaden the group of juveniles

whose records were to be retained under seal. By letter dated July 31, 2009, Mr. Pines informed Judge Caputo of the Court's directive that had been issued pursuant to Judge Grim's request. The letter advised Judge Caputo that Judge Grim had been authorized to enter an appropriate order of preservation of the juvenile records with the understanding that the relevant records and files would remain under seal until further order of the Supreme Court.

Acting pursuant to this Court's grant of authority, Judge Grim entered an order on August 7, 2009, directing that the records in all cases in juvenile court presided over by Mark Ciavarella, in which adjudications of delinquency or consent decrees were entered between January 1, 2003 and May 31, 2008, were to be preserved under seal. The documents to be retained consisted of the following:

- (a) the actual case file from the Luzerne County Clerk of Courts' Office, including all original and other documents contained therein;
- (b) a certified copy of the Luzerne County Juvenile Court docket entries for the juvenile's case;
- (c) all documents in the juvenile's file in the Luzerne County Juvenile Probation Office to which the juvenile would be entitled; and
- (d) all notes of testimony, whether transcribed or not.

The documents were ordered to be kept under seal and in the custody of the Luzerne County Juvenile Probation Office, or other court-approved location. The sealed files are not to be accessed by any individual except upon written authorization by Judge Grim or by court order. The sealed files may not be destroyed until the conclusion of the trials in the federal actions, or termination of those actions by dispositive motion or agreement, and after thirty (30) days prior notice has been given. The specific manner of notice required was public notice by publication in the Luzerne County Law Journal (formally known as the Legal Register) and one general circulation newspaper in Luzerne County, and actual notice to counsel in the federal cases.

Third Interim Report and Recommendations

On August 12, 2009, Judge Grim's Third Interim Report and Recommendations ("Third Interim Report") was submitted to the Court. This Report laid out a plan for disposing of all remaining Luzerne County juvenile cases, including those involving more serious crimes. The parties were directed to file exceptions, if any, within 30 days of the date of service. On September 9, 2009, the Commonwealth filed Objections to the Third Report and Recommendations of the Special Master. No exceptions were filed by the JLC or any affected juvenile. The JLC was requested to file a response to the Commonwealth's objections within 15 days of that filing. On September 24, 2009, the JLC filed its Reply to Objections to the Third Report and Recommendations of the

Special Master by the Commonwealth of Pennsylvania. On October 7, 2009, the Commonwealth filed a "Sur-Reply," which responded to matters raised in the JLC's response.

Judge Grim recommended that all adjudications of delinquency and consent decrees entered by Ciavarella between 2003 and May 2008 be vacated. The class of cases included: (a) cases where juveniles waived counsel and (b) cases where juveniles did not waive counsel but were sent to either PA Child Care or Western PA Child Care, as well as (c) cases where juveniles had counsel and were not sent to either facility. (Judge Grim called the class (c) cases "the remaining cases.") The parties agreed that the adjudications and decrees in all cases should be vacated, and Judge Grim agreed with that assessment, stressing that "Ciavarella's actions have cast a pall over all of the juvenile matters he handled" in this period. Report ¶ 48. The disagreement between the parties centered upon the further recommended remedy of barring re prosecution.

Judge Grim's stated reasoning was as follows. Based upon allegations in the criminal information in United States v. Michael T. Conahan and Mark A. Ciavarella, Jr., 3:09-CR-028 (U.S. District Court, M.D. Pa.), Judge Grim concluded that Ciavarella had a financial incentive to send juveniles to PA Child Care, and that the financial incentive created an appearance of impropriety and conflict of interest requiring that Ciavarella's rulings and dispositions in cases where juveniles were committed to one of the PA Child Care facilities be vacated. Judge Grim referred also to Ciavarella's entry of a guilty plea in the federal criminal proceedings. Report at ¶¶ 18-23. However, on July 31, 2009, U.S. District Judge Edwin M. Kosik rejected Ciavarella's plea agreement, and on August 24, 2009, Ciavarella withdrew his guilty plea. That fact was the basis for one of the Commonwealth's objections.

On September 9, 2009, Ciavarella and Conahan were indicted by a federal grand jury in a 48-count indictment on charges of racketeering, fraud, money laundering, extortion, bribery, and federal tax violations. On September 15, 2009, Ciavarella entered a plea of not guilty to the new federal indictment.

Judge Grim also examined cases where juveniles appeared without counsel. Judge Grim reported to this Court that the Luzerne County Probation Office had performed a review of the cases in which juveniles appeared without counsel before Ciavarella for delinquency proceedings between 2003 and May 2008. The Probation Office identified the number of juveniles who appeared without counsel as follows: (1) 369 juveniles in 2003, (2) 434 juveniles in 2004, (3) 385 juveniles in 2005, (4) 356 juveniles in 2006, (5) 259 juveniles in 2007, and (6) 63 juveniles in the first five months of 2008, for a total of 1,866 juveniles.

Judge Grim reviewed a sampling of transcripts of hearings in which the juveniles were not represented by counsel, including 12 from 2005, 10 from 2006, 14 from 2007, and 2

from 2008. Report at ¶ 31. Judge Grim did not refer to any review of transcripts from proceedings conducted in 2003 and 2004. Based upon this sampling, however, Judge Grim concluded that “there is clear and convincing evidence that no juvenile who appeared before Judge Ciavarella without counsel between 2003 and May 2008 knowingly and intelligently waived his/her right to counsel.” Report at ¶ 32.

Judge Grim indicated that the appropriate remedy for a criminal defendant who proceeds to trial *pro se* without making a knowing and intelligent waiver of the right to counsel is to vacate the verdict. He concluded that “all juveniles who appeared before Ciavarella without counsel between 2003 and May 2008 for adjudication hearings or hearings which resulted in the entry of consent decrees are entitled to have the adjudications of delinquency and consent decrees vacated.” Report at ¶ 35.

Judge Grim then addressed the “remaining cases,” i.e., juveniles who appeared before Ciavarella with counsel between 2003 and 2008, and who were not committed to either PA Child Care or Western PA Child Care. He found that because of the wide scope of Ciavarella’s misbehavior, and the unusually large sum of illegal payments that Ciavarella received, Ciavarella’s actions cast a pall over all of the juvenile matters that he handled. Adding that counsel for the parties agreed with this remedy, Judge Grim recommended that the adjudications of delinquency and consent decrees in the remaining cases also be vacated. Report at ¶¶ 48-49.

Judge Grim then turned to the prospect of expungement and barring reprosecution, focusing on state constitutional double jeopardy principles. Judge Grim first examined whether reprosecution was precluded in the cases where counsel was waived or a juvenile was committed to a PA Child Care facility. He recommended that “new proceedings are barred by the double jeopardy clause of the Pennsylvania Constitution for all juveniles who appeared before Judge Ciavarella without counsel between 2003 and May 2008 for adjudication hearings or hearings which resulted in the entry of consent decrees.”

Judge Grim likewise concluded that new proceedings are barred by the state constitution’s double jeopardy clause for all juveniles whom Ciavarella committed to either PA Child Care or Western PA Child Care between 2003 and 2008. He found that Ciavarella’s actions were intentionally undertaken and constituted egregious conduct that prejudiced the juveniles to the point of the denial of fair hearings. He concluded that “Ciavarella’s actions in committing juveniles to juvenile facilities which were involved in making large, illegal payments to him is far more than judicial error; it constitutes misfeasance which ‘signals the breakdown of the integrity of the judicial proceedings.’” Report at ¶ 43 (citation omitted). Alternatively, Judge Grim suggested that this Court’s King’s Bench powers might be exercised to reach the same result. Report at ¶ 44.

Turning to expungement in these cases, Judge Grim next recommended that “[i]f new proceedings are barred by the double jeopardy clause for the juveniles enumerated in paragraphs 43. and 44., who had their prior adjudications of delinquency or consent decrees vacated, then they are entitled to have their juvenile delinquency case records expunged pursuant to 18 Pa.C.S. § 9123(a)(1).” Report at ¶ 45. Judge Grim recommended the same course of action under the alternative exercise of the Court’s King’s Bench powers.

Judge Grim next considered whether the juveniles in the “remaining cases” were entitled to the additional remedy of dismissal with prejudice and expungement, ultimately drawing a distinction between completed cases and open cases. With respect to the juveniles in the remaining cases “who have received final discharge from commitment, placement, probation, or any other disposition or referral, and who have paid all fines, restitution, and fees assessed against them,” Judge Grim recommended that the petitions against them be dismissed with prejudice and that the expungement of their records be handled in accordance with 18 Pa. C.S. § 9123. He reasoned that there is no benefit to having new proceedings in those matters as the juveniles have received all of the services, assistance and supervision that was needed, that they have complied with court-imposed conditions, and they have served their debt to society. Report at ¶ 51.

With respect to the juveniles in the remaining cases who have not received final discharge, or who have not paid all fines, restitution, and fees assessed against them, Judge Grim recommended that he individually review those cases to determine an appropriate resolution. Report at ¶ 52.

The Commonwealth raised two objections to the Third Interim Report, asserting: (1) that the matter should be “remanded” to Judge Grim for a determination as to the effect of the withdrawal of Ciavarella’s guilty plea on the Third Interim Report; and (2) Judge Grim erred by recommending that a majority of the affected juvenile cases be dismissed with prejudice and that new proceedings be prohibited under double jeopardy principles.

On October 29, 2009, this Court entered a Per Curiam Order addressing the Third Interim Report. The Court denied the Commonwealth’s request that the matter be remanded to Judge Grim for a determination of whether additional evidentiary proceedings should be conducted based on the withdrawal of the agreement to plead guilty by Mark Ciavarella in United States v. Michael T. Conahan and Mark A. Ciavarella, 3:09-CR-028 (U.S. District Court, M.D. Pa.).

The Court approved Judge Grim’s recommendation that, for all cases in which Ciavarella entered adjudications of delinquency or consent decrees between January 1, 2003 and May 31, 2008, orders shall be entered vacating those adjudications and consent decrees, regardless of whether the juvenile was represented by counsel. The

Court also approved Judge Grim's recommendation that the expungement of the juveniles' records proceed in all of those cases, with copies to be retained under seal in accordance with any other court order.

The Court accepted, in part, Judge Grim's recommendation with respect to those of "the remaining cases" that are not yet final. The Court has directed the Luzerne County District Attorney's Office to submit a document under seal to Judge Grim identifying the specific juvenile cases in which it intends to proceed with further delinquency proceedings, and to file a sealed copy of the document with the Court within thirty days of the order. With respect to those juvenile cases where the Commonwealth expresses an interest in exercising its discretion to initiate further delinquency proceedings, Judge Grim shall permit the juvenile to pursue claims of double jeopardy, or any other theory, in support of an argument that re prosecution should not be permitted.

Judge Grim has been authorized to vacate and dismiss with prejudice those juvenile adjudications and consent decrees in the "remaining cases" that are not identified by the Commonwealth as matters that it would intend to pursue. Judge Grim has been granted the authority to direct that the records of those juvenile matters be expunged, with copies to be retained under seal in accordance with any other court order. The Court has directed Judge Grim to make a further recommendation to the Court respecting disposition of the cases where a prospect of re prosecution has emerged. The Court has retained jurisdiction over the matter.

cc: All Justices