

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :  
:  
VS :  
:  
ROBERT POWELL : NO. 09-CR-189  
:

TRANSCRIPT OF PROCEEDINGS  
OF ARRAIGNMENT AND GUILTY PLEA

BEFORE: HONORABLE EDWIN M. KOSIK  
United States District Judge

DATE: Wednesday, July 1, 2009

PLACE: United States District Court  
Middle District of Pennsylvania  
235 North Washington Avenue  
Scranton, Pa 18503

A P P E A R A N C E S:

For The Government: GORDON ZUBROD, ESQ.  
Assistant United States Attorney

For Defendant: MARK SHEPPARD, ESQ.  
JOSEPH D'ANDREA, ESQ.

LAURA BOYANOWSKI, RPR  
OFFICIAL COURT REPORTER

1 THE COURT: Remain seated, please.

2 MR. ZUBROD: Good morning, Your Honor. May it please  
3 the Court, we're here in the case of the United States of  
4 America versus Robert Powell, Criminal Number 09-189. Pursuant  
5 to a negotiated plea, Mr. Powell will be entering a plea of  
6 guilty to a two-count information. The first count alleges a  
7 violation of Title 18 United States Code Section 4, Misprision  
8 of a Felony, that is wire fraud. Additionally, he will be  
9 pleading guilty to a violation of Title 18 United States Code  
10 Section 3, Accessory After the Fact, that is Conspiracy to File  
11 False Tax Returns.

12 THE COURT: Thank you.

13 MR. SHEPPARD: Mark Sheppard on behalf of Mr. Powell.  
14 With me is my co-counsel, Joe D'Andrea. The defendant is  
15 present. I apologize, Your Honor, for the way that I am  
16 speaking. I am still suffering from that Bell's Palsy and  
17 didn't want you to think I hit the sauce a little early this  
18 morning.

19 THE COURT: No problem because we won't expect you to  
20 say too much.

21 MR. SHEPPARD: I am hoping to say as little as  
22 possible.

23 THE COURT: You are Robert Powell?

24 THE DEFENDANT: Yes.

25 THE COURT: We don't know each other. Will you

1 agree?

2 THE DEFENDANT: I agree with that, Your Honor.

3 THE COURT: This proceeding may take about 20  
4 minutes. In it I must ask you a number of questions. Your  
5 responses must be under oath if you'd be kind enough to raise  
6 your right hand. Remain seated. This young lady will  
7 administer the oath.

8 (The defendant was placed under oath at this time.)

9 BY THE COURT:

10 Q. State for the record your age and the extent of your  
11 education.

12 A. I'm 49 years old, Your Honor. I have a Bachelor of  
13 Science Degree in Business Management and a Juris Law Degree.

14 Q. Of course. And you practice law?

15 A. I do, Your Honor.

16 Q. Very good. The purpose of these questions even though  
17 you're knowledgeable with the law is for the Court to determine  
18 independently in each case regardless of the individual's  
19 status in life whether or not the plea they are going to enter  
20 is voluntary and knowing of one's rights before such a plea is  
21 entered. Do you understand that?

22 A. I do, Your Honor.

23 Q. So we're not trying to insult your intelligence. We are  
24 doing what we are obliged to do in every case.

25 A. I understand, Your Honor.

1 Q. Are you presently under the care of a physician or a  
2 physician psychiatrist?

3 A. I am not, Your Honor.

4 Q. Taking any kind of medication that would affect your  
5 ability to understand the -- why we're here?

6 A. No medications whatsoever, Your Honor.

7 Q. Counsel for the government in introducing the case told us  
8 there's a plea agreement; is that correct?

9 A. Yes, Your Honor.

10 Q. You authorized your lawyers to negotiate that agreement in  
11 your behalf?

12 A. I did, Your Honor.

13 Q. As a matter of fact, you and your lawyer have signed the  
14 agreement; isn't that correct?

15 A. That's correct, Your Honor.

16 Q. Please listen. I will ask Mr. Zubrod to give us the  
17 highlights.

18 MR. ZUBROD: In broad brush, Your Honor, the plea  
19 agreement calls for Mr. Powell to enter a plea of guilty to the  
20 two-count indictment that I have previously mentioned to the  
21 Court.

22 Additionally, he further agrees to cooperate in the  
23 ongoing prosecution of others, to pay restitution as determined  
24 by the district court and to forfeit the following assets: The  
25 first is a 2002 Ocean Yacht 56 Super Sport named Reel Justice,

1 which is presently registered in Tiverton, Rhode Island. He  
2 also agrees to forfeit his interest in a 1981 Saber Liner 5 Jet  
3 and its two Garrett engines identified by serial number. In  
4 exchange, the United States has agreed to bring no other  
5 criminal charges against the defendant directly arising out of  
6 the operative facts of the investigation into Pennsylvania  
7 Child Care and Western Pennsylvania Child Care and will further  
8 recommend that Mr. Powell receive a three-level departure for  
9 acceptance of responsibility.

10           Should Mr. Powell provide substantial assistance in  
11 the prosecution of all other related parties, the United States  
12 will seek a downward departure from the applicable sentencing  
13 guideline range.

14           THE COURT: Okay. Now, you alluded to the fact that  
15 under the terms of that agreement the defendant is cooperating  
16 with the government?

17           MR. ZUBROD: He is, Your Honor.

18           THE COURT: And is that cooperation in the context of  
19 providing substantial assistance?

20           MR. ZUBROD: Yes, sir.

21           THE COURT: Okay. Mr. Powell, counsel for the  
22 government has been brief in alluding to the terms of that plea  
23 agreement, some of which are very important. And does that  
24 comport with your understanding of those terms?

25           THE DEFENDANT: It does, Your Honor.

1 THE COURT: Do you or counsel feel that some comment  
2 should be made concerning any of the terms that have been  
3 outlined or may not have been alluded to?

4 MR. SHEPPARD: No, Your Honor. We believe they are  
5 accurate. Thank you.

6 BY THE COURT:

7 Q. Okay. I am obliged to tell a defendant at this stage that  
8 in federal court the judge has no idea at this point what an  
9 appropriate sentence would be in your case. There's no  
10 provision in the plea agreement indicating that the parties  
11 have arrived at some sentence that they're going to suggest to  
12 the Court.

13 Because we have sentencing guidelines in federal court, we  
14 won't have an idea as to an appropriate sentence until such  
15 time as the probation department conducts an investigation and  
16 we know something about this offense, we know something about  
17 your background as an individual. And other factors are taken  
18 into account under those guidelines, and a range of sentence is  
19 then determined.

20 And the guidelines then offer that range of sentence for  
21 the Court to consider and not to be compelled to adopt it but  
22 to give consideration to it as providing a reasonable and a  
23 fair sentence. Is that understood?

24 A. That's understood, Your Honor.

25 Q. Now, because of an important provision in that plea

1 agreement that you're going to cooperate with the government  
2 and provide substantial assistance, in the event a defendant  
3 provides substantial assistance according to that agreement,  
4 the government may at the appropriate time move for a downward  
5 departure in the sentence that is to be imposed. And if such a  
6 motion for downward departure is made -- and only the  
7 government can make that motion except in one or two instances,  
8 none of which are applicable here -- then that basically takes  
9 the guidelines off the table and the Court has greater  
10 discretion and is not limited in any way by the guidelines that  
11 are being offered.

12 And ordinarily if the government recommends a certain  
13 level of departure, we accept that departure and sometimes we  
14 even exceed it if we think it's appropriate in any given case.  
15 Is that understood?

16 A. That's understood, Your Honor.

17 Q. Okay. Now, we're dealing with a serious crime, a felony.  
18 You understand that if we accept your plea of guilty and you're  
19 adjudged guilty, you stand to lose certain rights?

20 A. I do, Your Honor.

21 Q. You lose the right to vote -- possibly lose the right to  
22 vote, to hold public office. In all events, you lose the right  
23 to possess a weapon for any purpose whatsoever. Is that  
24 understood?

25 A. That's understood, Your Honor.

1 Q. Okay. I believe the most important consideration at a  
2 time such as this is for the Court to determine if the  
3 defendant understands that he has a right to a trial before a  
4 Court and jury. You discussed that with your lawyers?

5 A. I have, Your Honor.

6 Q. Because if you elected to stand trial, you'd have the  
7 benefit of a presumption of innocence that means a number of  
8 things. First, in the trial of the case, there'd be no  
9 obligation on your part to utter one in word in explanation or  
10 defense of your conduct, nor would you be required to call  
11 witnesses to do so.

12 It's not that a defendant cannot testify or call  
13 witnesses. As a matter of fact, if you can't afford the  
14 witnesses in any given case, the government would be obliged to  
15 pay for those witnesses to come in to testify in your behalf.  
16 It's just that in the criminal case in our system the defendant  
17 has no obligation to do anything whatsoever because he's  
18 presumed to be innocent and the government has a duty to  
19 establish each and every element of the case with which that  
20 person is charged by a standard we refer to beyond a reasonable  
21 doubt.

22 And those elements will be alluded to by counsel for the  
23 government at an appropriate time here this morning. I want  
24 you to know what I'm telling you about a jury trial would also  
25 be told to a jury probably in greater detail and the jury would



1 be told if the government fails in any particular to establish  
2 the elements or any element of any of the crimes, the jury  
3 would have a duty to return a verdict of not guilty. We would  
4 define for them what reasonable doubt is under the law and  
5 emphasize that it applies to each and every element of the  
6 crime, okay?

7 A. Yes, Your Honor.

8 Q. Okay.

9 THE COURT: I will ask counsel for the government now  
10 to tell us what the evidence would be if the case did go to  
11 trial.

12 MR. ZUBROD: May I approach, Your Honor?

13 THE COURT: Anything you want to do.

14 MR. ZUBROD: May it please the Court, the factual  
15 predicate of this case is as follows: As I --

16 THE COURT: By the way, I can hear you better if you  
17 sit at the table.

18 MR. ZUBROD: The factual predicate of this case is as  
19 follows: Your Honor, as the Court is well aware having  
20 participated in the guilty plea in that matter, Michael Conahan  
21 and Mark Ciavarella were judges for the Court of Common Pleas  
22 for Luzerne County. Between approximately January 2002 and  
23 January of 2007, Judge Conahan -- Michael Conahan served as  
24 president judge for Luzerne County between 1996 and 2008.  
25 Judge Ciavarella served as judge of the juvenile court for

1 Luzerne County. In approximately January of 2007, Judge  
2 Ciavarella became president judge for Luzerne County. As  
3 judges for the Court of Common Pleas, the defendants owed a  
4 fiduciary duty to the citizens of the Commonwealth of  
5 Pennsylvania and to the judiciary of the Commonwealth of  
6 Pennsylvania and were required to file an annual statement of  
7 financial interest with the Administrative Office of the  
8 Pennsylvania Courts reporting the source of any income, direct  
9 or indirect.

10 The Administrative Office of the Pennsylvania Courts  
11 maintains offices in Cumberland County, the Middle District of  
12 Pennsylvania and Philadelphia County in the Eastern District of  
13 Pennsylvania. As judges of the courts of common pleas, Judges  
14 Conahan and Ciavarella owed a fiduciary duty to the citizens of  
15 the Commonwealth of Pennsylvania, and one source of that duty  
16 owed by the judges was imposed by Pennsylvania Constitutional  
17 Law Article 5 of the Pennsylvania Constitution.

18 There were other sources of law including the  
19 Pennsylvania Code of Judicial Conduct and Administrative Orders  
20 of the Pennsylvania Supreme Court regarding matters related to  
21 judges of the Courts of Common Pleas. As judges, this duty  
22 included but was not limited to the duty to refrain from  
23 conduct that constitutes a conflict of interest, to recuse  
24 themselves from matters in which they have a conflict of  
25 interest and to file a truthful and complete annual statement

1 of financial interest with the Administrative Office of  
2 Pennsylvania Courts reporting sources of all income, direct or  
3 indirect. That duty also included the duty arising from their  
4 position as judges to disclose material information relevant to  
5 their ability to engage in impartial discretionary decision  
6 making. Regarding the misprision of a felony, from in or about  
7 June of 2000 to on or about April 30th, 2007 Judges Conahan and  
8 Ciavarella had an understanding among themselves that they  
9 would engage in a material scheme to defraud the citizens of  
10 the Pennsylvania and to defraud those citizens of their right  
11 of the honest services of the judges as Courts of Common Pleas  
12 for Luzerne County, perform free of deceit, from  
13 self-enrichment, from concealment and from conflict of  
14 interest.

15           Between approximately January of 2003 and January  
16 1st, 2007, Judges Conahan and Ciavarella accepted a total of  
17 more than 2.8 million from Robert Powell, who is an attorney,  
18 and from an -- he was the owner of P. A. Child Care and Western  
19 P. A. Child Care, and an individual that we referred to as  
20 Participant No. 2 both in the charges against Judges Conahan  
21 and Ciavarella and in this case. He was a builder of  
22 Pennsylvania Child Care and Western Pennsylvania Child Care.

23           Mr. Powell paid the judges approximately \$772,500  
24 often disguising the payments as rental fees relating to  
25 docking his boat at the judge's condominium in Jupiter,

1 Florida. That was false. These payments included the  
2 following payments: January 13, Mr. Powell issued a check in  
3 the amount of \$18,000 to the Pinnacle Group of Jupiter, L. L.  
4 C. On January 13th, 2004, he issued a second check in the  
5 amount of \$52,000 to Pinnacle. On or about February 15th,  
6 2004, Mr. Powell through Vision Holdings, Inc., issued a check  
7 in the amount of \$78,000 and identified it on the check as,  
8 quote, reserving lease, unquote, to Pinnacle Group.

9           On February 15th, 2004, the same date, through Vision  
10 Holdings, Mr. Powell issued a check in the amount of \$75,000  
11 and identified on the face of the check the purpose of the  
12 check was, quote, rental Feb, March, April to Pinnacle Group.  
13 On or about February 15th, the same date, 2004, Mr. Powell  
14 issued another check in the amount of \$47,000 and identified it  
15 on the face of the check as, quote, slip rental fees to  
16 Pinnacle Group. On April 30th, 2004, Mr. Powell through Vision  
17 Holdings issued a check in the amount of \$75,000 and identified  
18 on the face of the check as lease expenses April, May and June  
19 to Pinnacle Group.

20           On April 30th, Mr. Powell through Vision Holdings  
21 issued a check in the amount of \$25,000 and identified on the  
22 face of the check as dock expenses related to April, May and  
23 June to Pinnacle Group. On or about July 12th, 2004, Mr.  
24 Powell through Vision Holdings wire transferred \$120,000 to  
25 Pinnacle Group of Jupiter. On September 23rd, 2004, Mr. Powell

1 through Vision Holdings wired transferred a hundred thousand  
2 dollars to Pinnacle Group of Jupiter. On or about August 16th,  
3 2006, Mr. Powell caused a series of checks in the amount of  
4 \$42,000 to be cashed and gave the cash proceeds to the judges.  
5 On October 13th, 2006 Mr. Powell caused a series of checks in  
6 the amount of \$30,000 to be cashed and gave the proceeds to the  
7 judges.

8           On November 1st, 2006, Mr. Powell caused a series of  
9 checks in the amount of \$20,000 to be cashed and gave the  
10 proceeds to the judges. On or about November 20th, 2006, Mr.  
11 Powell caused a series of checks for \$50,000 to be cashed and  
12 given to the judges. On or about December 18th, 2006, Mr.  
13 Powell caused a series of checks in the amount of \$31,500 to be  
14 cashed, and again he gave the proceeds to the judges.

15           THE COURT: With respect to a number of the payments,  
16 you keep saying that he gave them a check which was cashed and  
17 given to the recipients. Would you clarify what you mean by  
18 that?

19           MR. ZUBROD: This was a -- he cashed -- he caused to  
20 be issued a series of checks to individuals, either to himself  
21 or his law firm. He had those checks endorsed, and he had the  
22 checks cashed -- reduced to cash. These checks were usually in  
23 amounts under \$10,000. When he pooled all of the funds, he  
24 would put the funds into a Fed Ex box and give it to an  
25 employee and have that employee deliver the checks -- or I'm

1 sorry -- deliver the cash directly to Judge Conahan.

2 THE COURT: So the checks were not made out to the  
3 recipients? They received cash?

4 MR. ZUBROD: There was a series of checks made out to  
5 the Jupiter -- Pinnacle Group of Jupiter, but this cash --  
6 these were checks made out to -- either out to cash or to Mr.  
7 Powell or to his employees.

8 THE COURT: All right. Continue, please.

9 MR. ZUBROD: Finally, on or about December 1st, 2006,  
10 Mr. Powell paid Judge Conahan \$9,000 in cash from a check that  
11 had been cashed and was a referral fee for a case that had been  
12 settled. During the time period, the judges agreed to accept  
13 and accepted more than \$2.8 million from Mr. Powell and from  
14 Participant No. 2 related to the construction and operation of  
15 the juvenile detention facilities owned by P. A. Child Care and  
16 Western P. A. Child Care. The judges were acting as judges of  
17 the Court of Common Pleas for Luzerne County, and they had  
18 discretionary decision making authority in multiple matters  
19 relating to P. A. Child Care and Western P. A. Child Care  
20 without recusing themselves or disclosing to the parties the  
21 material conflict of interest and the material financial  
22 relationship with Mr. Powell who was owner of P. A. Child Care  
23 and Western P. A. Child Care and with Participant No. 2, who  
24 was involved in the construction of the juvenile detention  
25 facilities owned and operated by P. A. Child Care and Western

1 P. A. Child care.

2           Moreover, aware of this activity by the judges,  
3 Robert Powell took no steps to notify authorities of the  
4 criminal activity until after the commencement of the federal  
5 investigation.

6           Ultimately, Mr. Powell commenced cooperating with  
7 federal investigators, met with the judges and recorded  
8 incriminating conversations with them. These recorded  
9 conversations were instrumental in developing the case against  
10 the judges.

11           Regarding the accessory after the fact, count two of  
12 the information alleges that Mr. Powell by allowing Participant  
13 No. 2's finder's fee payments to Conahan and Ciavarella to be  
14 passed through Mr. Powell's business accounts by paying cash to  
15 the judges and by disguising payments by check to the judges as  
16 rental and leasing fees, he acted as an accessory after the  
17 fact to the judges' conspiracy between themselves to file false  
18 tax returns.

19           In other words, aware that the payments were being  
20 disguised as legitimate transactions, Robert Powell as an  
21 attorney was implicitly aware that the judges would have  
22 intended to falsely characterize of the nature of their income  
23 on their tax returns and not to disclose the cash payments from  
24 Mr. Powell on their statement of income.

25           For example, to conceal the payments to the judges,

1 the judges directed that false entries be made in the books and  
2 records of the Pinnacle Group of Jupiter, L. L. C. They also  
3 signed documents along with Mr. Powell and Participant No. 2  
4 indicating that the payments were going to Mr. Powell from  
5 Participant No. 2. The false paper trail was created by the  
6 judges not only as part of their honest services fraud scheme  
7 but also to defraud the Internal Revenue Service by falsely  
8 characterizing some of the income as rental income and by  
9 characterizing otherwise in order to receive their favorable --  
10 favorable tax treatment.

11           The cash payments were not mentioned on the tax  
12 returns. The federal income tax returns relating to tax years  
13 2003 through 2006 were filed with the Internal Revenue Service  
14 and signed by Judges Conahan and Ciavarella which were  
15 materially false to the extent that they mischaracterized the  
16 income the judges had received from Robert Powell and from  
17 Participant No. 2. For tax years 2003 and 2006, the tax lost  
18 to the government for Judge Conahan's part in the scheme was in  
19 excess of \$200,000, and for that same time frame, the tax year  
20 -- the tax loss to the government for Judge Ciavarella's part  
21 in the scheme was also in excess of \$200,000.

22 BY THE COURT:

23 Q. Mr. Powell, you heard counsel for the government tell us  
24 the evidence that would be presented at the time of the trial  
25 concerning your relationship with the two individuals who were



1 judges in Luzerne County and the activity that occurred in  
2 financial transactions that occurred between you. Is what he  
3 tells us correct?

4 A. Yes, it is, Your Honor.

5 THE COURT: You want to outline the elements, Mr.  
6 Zubrod?

7 MR. ZUBROD: Yes, Your Honor.

8 THE COURT: If the case went to trial, what it is you  
9 would have to prove.

10 MR. ZUBROD: As to count one, the United States would  
11 have to prove that Mr. Powell in the Middle District of  
12 Pennsylvania having knowledge of the actual commission of a  
13 felony recognizable by the United States, and in this case it  
14 was honest services wire fraud in violation of Title 18 United  
15 States Code Section 1343 and Section 1346, having knowledge  
16 that an offense had -- had been committed, he knowingly and  
17 intentionally concealed that knowledge by cooperating in the  
18 creation of false records designed to hide, disguise and  
19 mischaracterize income received by Michael Conahan and Mark  
20 Ciavarella and by transferring tens of thousands of dollars in  
21 cash to Michael Conahan with the intent that the cash not be  
22 traceable as income and did not as soon as possible make known  
23 the fact of these criminal activities to some judge or other  
24 person, civil or military authority under the United States,  
25 which is a violation of 18 U.S.C. Section 4, Misprision of a

1 Felony Statute.

2           As to count two, the Accessory After the Fact, we  
3 have to show that between January 2003 and on or about April  
4 15th, 2007, again in the Middle District of Pennsylvania, Mr.  
5 Powell knowing that an offense against the United States had  
6 been and was being committed, that is in this case conspiracy  
7 -- Conspiracy to File False Income Tax Returns in violation of  
8 18 U.S.C. Section 371, knowing that, he knowingly and  
9 intentionally received, relieved, comforted and assisted the  
10 offenders Michael Conahan and Mark Ciavarella in order to  
11 hinder and prevent the offender's apprehension of trial and  
12 punishment in violation of 18 U.S.C. Section 3 and that  
13 hindering, that aiding and abetting is the same acts which  
14 occurred in count one which I previously stated to the Court.

15           THE COURT: Do you understand those elements?

16           THE DEFENDANT: I do, Your Honor.

17           THE COURT: Counsel, you --

18           MR. SHEPPARD: If I may, Your Honor, just with regard  
19 to the prior question to Mr. Powell about the factual basis, I  
20 just want to make one point clear for the record. Mr. Zubrod  
21 in outlining the facts stated that Mr. Powell was aware of this  
22 activity of the judges -- he used this activity after laying  
23 out a litany of activities -- I don't believe it is accurate to  
24 say that Mr. Powell was aware of all those activities that were  
25 laid out by Mr. Zubrod. And in particular, Mr. Powell was

1 unaware that Judge Ciavarella or Judge Conahan were violating  
2 any rights of any juveniles, and I don't believe the government  
3 will dispute that. I just want to make sure that's clear on  
4 this record.

5 THE COURT: I am not sure that's even implied in this  
6 statement.

7 MR. SHEPPARD: To the extent it may have been, I just  
8 want it to be clear.

9 MR. ZUBROD: We agree, Your Honor, there was no  
10 knowledge on the part of Mr. Powell that juveniles were being  
11 abused by these judges. What he was implicitly aware of,  
12 however, was that there was a conspiracy to file false tax  
13 returns and to avoid reporting income that they were receiving,  
14 or at the very least mischaracterizing the nature and source of  
15 that income.

16 THE COURT: Is it the government's position there was  
17 an understanding on the part of this defendant and possibly the  
18 other defendants that because these moneys were being paid in  
19 consideration for the favorable treatment in establishing a  
20 juvenile center that it wasn't just an outright gift, but there  
21 would have to be some consideration for those payments? It  
22 wasn't a finder's fee I presume.

23 MR. ZUBROD: That's correct, Your Honor. It was a  
24 finder's fee as to Participant No. 2, and yet the judges still  
25 wanted to disguise that --

1 THE COURT: That's the guy that's building the place?

2 MR. ZUBROD: Yes, sir. As to Mr. Powell, these were  
3 not finder's fees. These were payments that they had commended  
4 from him.

5 MR. SHEPPARD: That's correct, Your Honor, in order  
6 to be able to build the facility, not necessarily to take any  
7 subsequent actions. That's our point -- or correct to build  
8 both facilities.

9 THE COURT: I am not sure I completely understand  
10 what these payments were for and what they expected in return  
11 for the payments.

12 MR. SHEPPARD: To support Mr. Powell's and his  
13 partner's efforts to build P. A. Child Care and Western P. A.  
14 Child Care and to use those facilities through their activities  
15 in Luzerne County.

16 THE COURT: What did they expect from the judges?  
17 What were the judges to do for these payments?

18 MR. SHEPPARD: Well, Your Honor, there was -- there  
19 was no quid pro quo per se. That's why the crime was honest  
20 services fraud.

21 THE COURT: He has to have known they were committing  
22 a felony.

23 MR. SHEPPARD: Correct, Your Honor.

24 THE COURT: What was the felony that he was aware of  
25 that they were committing?

1 MR. SHEPPARD: Mr. Powell was aware that the judges  
2 were not disclosing and were, in fact, disguising these  
3 payments in terms of their obligations to report to the  
4 Commonwealth and the citizens of Luzerne County. That he was  
5 aware of, and that's what he's admitting to.

6 THE COURT: All right. You agree that was the  
7 limitation of this witness -- or this defendant's knowledge?

8 MR. ZUBROD: The -- the plea that he is pleading  
9 guilty to is the fact he was aware of -- that there was income  
10 tax evasion taking place for filing false tax returns. He was  
11 aware the income was not being reported or if reported it was  
12 being mischaracterized. He remained silent on that fact.

13 THE COURT: Those payments were being made to them  
14 because of their influence to have somebody receiving a  
15 contract to conduct a juvenile facility or juvenile facilities  
16 and that was the extent of his participation; is that right?

17 MR. ZUBROD: Yes, sir.

18 THE COURT: Okay. Although the government claims  
19 that the other defendant's participation exceeded those  
20 expectations; isn't that correct?

21 MR. ZUBROD: Yes, sir.

22 THE COURT: Okay. I can tell you that the most  
23 important element in both of these offenses and what  
24 distinguishes them from negligent or stupidity, even though  
25 stupidity is often a crime but because stupidity itself is not

1 a crime, it only becomes a crime if one acts knowingly and  
2 intentionally with respect to the allegations that have been  
3 outlined by counsel for the government. Do you understand  
4 that?

5 THE DEFENDANT: I do, Your Honor.

6 BY THE COURT:

7 Q. That is probably the most important element. And in  
8 defining that element for the jury, we would tell them they  
9 have to prove what was occurring in your mind. And sometimes  
10 it's difficult for people to read an individual's mind, and the  
11 only evidence they have from which they can conclude that you  
12 acted knowingly and unlawfully is from your actions as well as  
13 any words that were spoken that might be produced by the  
14 government. Do you understand that?

15 A. I do, Your Honor.

16 Q. And if the jury believes that evidence, I'm satisfied they  
17 can conclude that you're guilty of count one and count two of  
18 this information. And we at the beginning noted the offense  
19 but failed to recognize that we were talking about an  
20 information. And I should make it very clear to you that in  
21 the federal system the government cannot charge a person with a  
22 felony without first going before a duly constituted grand  
23 jury. Do you understand that?

24 A. I do, Your Honor.

25 Q. And a grand jury consists anywhere from 16 to 23 people

1 who do not determine guilt or innocence. They simply inquire  
2 to the subject of a crime, as to whether there's probable cause  
3 that an offense has been committed and whether there's probable  
4 cause the person the government wishes to charge should be  
5 charged with that offense. And if at least 12 of those jurors  
6 decided that probable cause exists in each instance, that grand  
7 jury can return an indictment.

8       An indictment is not evidence of guilt but simply a  
9 vehicle by which a person is charged and required to come in to  
10 court to respond to those charges. That was not done here  
11 because I believe you waived the necessity of the government  
12 going before a duly constituted grand jury and agreed that we  
13 can proceed on the basis of the information which is in the  
14 form of an indictment except it's called information and it's  
15 signed by the United States Attorney instead of the foreman of  
16 a grand jury. But you have discussed that with counsel and,  
17 indeed, have executed a waiver I presume. Is that right?

18       MR. SHEPPARD: Yes, he has, Your Honor. It was part  
19 of the plea agreement. He executed that.

20       THE COURT: That will be filed of record or is filed  
21 of record?

22       MR. ZUBROD: I will confirm that it has been, Your  
23 Honor.

24       THE COURT: Well, again, I say if the jury believed  
25 that they would -- could find you guilty of those offenses.

1 Having said that, I ask you how do you plead?

2 THE DEFENDANT: I plead guilty, Your Honor.

3 THE COURT: When we are finished here, you are going  
4 to spend time with the probation officer. And to the extent  
5 your lawyers permit, you tell that probation officer what you  
6 think the judge should know about you. He will conduct the  
7 investigation we talked about earlier. And when it's  
8 completed, there will be a presentence report.

9 You will get a copy as will your lawyers and  
10 government's counsel. If you have anything that you object to  
11 in that report, you must first take up your objections with the  
12 probation officer who has the responsibility of trying to  
13 resolve them if he can. If he cannot, you'll come into a  
14 setting similar to this one and the judge will have to resolve  
15 the objections.

16 Before any judgment of sentence is imposed, we'll be  
17 very happy to hear from you as well as your lawyers and  
18 government counsel. Do you understand that?

19 THE DEFENDANT: I do, Your Honor.

20 THE COURT: Because this is an initial appearance ---  
21 is that correct, Mr. Zubrod?

22 MR. ZUBROD: It is, Your Honor.

23 THE COURT: Any objection to the defendant continuing  
24 under the same terms and conditions that now exist?

25 MR. ZUBROD: We do not, Your Honor. It is our



1 request that we -- we take a view he poses a low risk of  
2 nonappearance and he's not a danger to the community and that  
3 he should be released on his personal recognizance without  
4 pretrial services supervision.

5 THE COURT: It's so ordered subject to any conditions  
6 the probation office feels is necessary.

7 MR. SHEPPARD: Thank you, Your Honor.

8 THE COURT: Okay. Thank you.

9 THE DEFENDANT: Thank you, Your Honor.

10 THE COURT: That concludes our proceeding.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## C E R T I F I C A T E

I, LAURA BOYANOWSKI, RPR, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

\_\_\_\_\_  
LAURA BOYANOWSKI, RPR  
Official Court Reporter

## REPORTED BY:

LAURA BOYANOWSKI, RPR  
Official Court Reporter  
United States District Court  
Middle District of Pennsylvania  
235 N. Washington Avenue  
Scranton, Pennsylvania 18503

(The foregoing certificate of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.)