

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

MARY JO MILLER, Individually )  
and on behalf of her minor )  
daughter, Marissa Miller, )  
et.al., )

Plaintiffs )

vs )

09cv540 )

GEORGE SKUMANICK, JR., in his )  
official capacity as District )  
Attorney of Wyoming County, )  
Pennsylvania, )

Defendant )

BEFORE: HONORABLE JAMES M. MUNLEY  
United States District Judge  
for the Middle District of Pennsylvania

TRO Hearing

Thursday, March 26, 2009  
Scranton, Pennsylvania

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

For The Plaintiffs:

ACLU OF PENNSYLVANIA  
BY: WITOLD J. WALCZAK, ESQ.  
313 Atwood Street  
Pittsburgh, Pennsylvania 15213

For The Defendant:

KREDER, BROOKS, HAILSTONE and LUDWIG  
BY: A. JAMES HAILSTONE, ESQ.  
MICHAEL J. DONOHUE, ESQ.  
220 Penn Avenue  
Suite 200  
Scranton, Pennsylvania 18503

-AND-

JAMES E. DAVIS, ESQ.  
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Tunkhannock, Pennsylvania 18657

KRISTIN L. YEAGER, RMR, CRR - COMPUTER TRANSCRIPT

## W I T N E S S            I N D E X

	Direct	Cross	Redirect	Recross
Mary Jo Miller	6	28	34	34
George Skumanick	36	49	53	--

## E X H I B I T            I N D E X

For Plaintiff:	Identified
Exhibit No. 1	9,42,53
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1 THE COURT: This is the matter of Miller, et al. v.  
2 Skumanick. Representing the Plaintiff in this matter is Mr.  
3 Walczak and Ms. Burch, and representing the Defendant Wyoming  
4 County and Mr. Skumanick are Mr. Hailstone and Mr. Davis.

5 I just want to go over some preliminary housekeeping chores  
6 before we get started. Counsel, however I rule, whether I grant  
7 a TRO or deny a TRO, all right, we have to hold a preliminary  
8 injunction hearing, and we are scheduling that hearing now --  
9 and I'm doing this to give you time for discovery if it's  
10 appropriate -- to schedule the preliminary injunction hearing  
11 on Tuesday, June 2nd.

12 There is an application or motion filed by the Plaintiff in  
13 this case to proceed with the pseudonyms as Jane and Nancy Doe.  
14 Does the Defense have any objection to that?

15 MR. SKUMANICK: Yes, we object to the petition as filed,  
16 Your Honor.

17 THE COURT: What's the reason for your objection?

18 MR. SKUMANICK: One, they're asking this Court for  
19 extraordinary remedy, which, under the prevailing case law,  
20 should not be granted. Mr. Hailstone can speak more to that  
21 matter, and I would ask him to be allowed to.

22 MR. HAILSTONE: Your Honor, I didn't hear what Your Honor  
23 was asking us if we were objecting to. That it has been filed  
24 or --

25 THE COURT: They have filed a motion to proceed as

1 pseudonyms for Jane and Nancy Doe.

2 MR. HAILSTONE: Right. We don't object to the pseudonyms,  
3 no.

4 THE COURT: But you do?

5 MR. SKUMANICK: No, I thought you were talking about the  
6 lawsuit, in general.

7 THE COURT: So there's no objection.

8 MR. HAILSTONE: We would agree to protect the identities of  
9 the underage girls, Your Honor.

10 THE COURT: What about these photographs? Have they been  
11 shared with the Plaintiff?

12 MR. WALCZAK: We have seen them, we have asked for copies,  
13 we have, to this date, not received copies.

14 THE COURT: The Plaintiff should be provided with copies of  
15 them, and if you're going to file them in Court, they should be  
16 filed under seal.

17 MR. HAILSTONE: Yes, as long as everything is kept under  
18 seal. We are talking about underage girls, we're all for that,  
19 and whatever mechanism we have to do after the hearing today,  
20 we will do that.

21 THE COURT: I understand that we have some testimony to  
22 take, and following the testimony, brief argument.

23 MR. WALCZAK: Yes, Your Honor.

24 THE COURT: Remember, ladies and gentlemen, this is an  
25 application for a temporary restraining order, it's not a

1 hearing on the merits, all right.

2 MR. WALCZAK: Yes, Your Honor. Thank you. If I might ask,  
3 because relevant to our presentation of the evidence and I  
4 think certainly relevant to Your Honor's ultimate legal  
5 determination are the photographs, and I would ask that we be  
6 given copies now so I can show those to the witness, and Your  
7 Honor certainly will be able to see them.

8 MR. SKUMANICK: Frankly, Your Honor, that goes to the  
9 merits, doesn't it? It goes to the merits of whether or not --

10 THE COURT: No. Is that an objection?

11 MR. SKUMANICK: Yes, sir.

12 THE COURT: I overrule your objection. Provide counsel with  
13 copies of the photographs, all right.

14 Mr. Walczak, if you can just tell me where we're at. You  
15 propose that you are going to call, what I believe you said at  
16 our conference, two witnesses.

17 MR. WALCZAK: I'm going to call Mrs. Miller, the mother, who  
18 can lay out the background facts, and I was going to call Mr.  
19 Skumanick as an adverse witness.

20 THE COURT: All right, do you want to proceed?

21 MR. WALCZAK: Plaintiffs call Mary Jo Miller.

22 THE COURT: Mr. Hailstone, you were standing. Did you want  
23 to say something?

24 MR. HAILSTONE: No, Your Honor.

25 M A R Y J O M I L L E R IS CALLED, AND HAVING BEEN

1 DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE COURT: Good afternoon, Mrs. Miller. If you would just  
3 pull your chair in and speak into that microphone, we will all  
4 be able to hear you, all right. Keep your voice up if you  
5 would.

6 DIRECT EXAMINATION

7 BY MR. WALCZAK:

8 Q. Good afternoon, Ms. Miller.

9 A. Good afternoon.

10 Q. Where do you live?

11 A. Tunkhannock, 18 McCord Street.

12 Q. How long have you lived there?

13 A. About 12 years.

14 Q. Were you born there? I know you're not 12 years old, but  
15 did you grow up there and come back?

16 A. I did grow up in Tunkhannock, I was born in New Jersey.

17 Q. Do you have a family?

18 A. Yes.

19 Q. Tell me just about your immediate family.

20 A. I have a son, 24, a daughter 22 and Marissa 15.

21 Q. Marissa is your youngest?

22 A. Correct.

23 Q. You're a single mom at this point?

24 A. Yes.

25 Q. Do you have an out-of-home job?

1 A. I do.

2 Q. What do you do?

3 A. I'm a para educator at the Tunkhannock Area School  
4 District.

5 MR. HAILSTONE: Your Honor, could we approach just for a  
6 second?

7 THE COURT: Sure.

8 (At this time a discussion was held on the record at  
9 sidebar.)

10 MR. HAILSTONE: I will need clarification. We aren't  
11 referring to them as Jane and Nancy Doe?

12 MR. WALCZAK: We are referring to Jane and Nancy Doe as  
13 Jane and Nancy Doe, but the girls who are identified can  
14 obviously be identified.

15 THE COURT: They're identified, okay.

16 MR. HAILSTONE: Okay.

17 (At this time the discussion at sidebar was concluded.)

18 BY MR. WALCZAK:

19 Q. Now, you mentioned that you work in the Tunkhannock School  
20 District.

21 A. Correct.

22 Q. In the fall of 2008, did the issue of sexting emerge in  
23 the district?

24 A. It did.

25 Q. And what do you understand sexting to be?

1 A. Pictures and cell phone texting.

2 Q. Sexually-suggestive?

3 A. Correct.

4 Q. What do you know about what was going on in Tunkhannock,  
5 if anything?

6 A. I don't really know what was going on at the school, I  
7 didn't attend assemblies; just hearsay what was going on.

8 Q. When is the first time that you, personally, became  
9 implicated in this so-called issue of sexting?

10 A. I received a certified notice on February 6. I was going  
11 out of town, so I did not pick it up.

12 Q. Did you know who it was from?

13 A. No, I didn't even look, I just knew it was certified, I  
14 didn't pay any attention to anything else. When I returned on  
15 Sunday, I then, you know, went about -- I knew it was there and  
16 I would pick it up. Went to school one day and got a call from  
17 Juvenile Probation explaining that he was doing follow-up calls  
18 for Mr. Skumanick regarding --

19 MR. HAILSTONE: Objection, Your Honor. Hearsay.

20 THE COURT: Sustained. But, of course, remember this is an  
21 application for a TRO. But rephrase your question.

22 MR. WALCZAK: Your Honor, it's actually not raising this  
23 for the truth of the matter asserted.

24 THE COURT: Overrule the objection. You can proceed.

25 BY MR. WALCZAK:

1 Q. In summary, what was the gist of what was told to you?

2 A. That my daughter was implicated in cell phone sexting, and  
3 that to remind me that there was a meeting on Thursday the 12th  
4 at the courthouse, and if I had any questions, I needed to call  
5 the D.A.'s office, personally.

6 Q. This conversation took place when?

7 A. Monday morning -- Monday, early afternoon.

8 Q. What did you do after that?

9 A. I called her father and talked to her, and asked her if  
10 there was any possible way, she was upset, and she said she had  
11 never done anything like that. So I picked up the letter after  
12 school that day, and my ex-husband and I discussed it with her.  
13 And the next morning at school, I phoned Mr. Skumanick at his  
14 office.

15 Q. So you picked up the letter --

16 A. Monday.

17 Q. -- Monday afternoon on the 9th.

18 MR. WALCZAK: And, Your Honor, if I could mark this as  
19 Plaintiff's Exhibit No. 1.

20 (At this time Plaintiff's Exhibit No. 1 was marked for  
21 identification.)

22 THE COURT: Do you want to proceed?

23 MR. SKUMANICK: Your Honor, frankly, we would stipulate  
24 that this is part of the pleadings.

25 THE COURT: Could we have a sidebar?

1 (At this time a discussion was held on the record at  
2 sidebar.)

3 THE COURT: You said to me, George, in chambers that you  
4 were not going to participate in this. I have also been  
5 informed that you have two lawyers here. Now, you understand, I  
6 mean, you're an experienced trial lawyer. You have two lawyers  
7 representing you and --

8 MR. SKUMANICK: Who only got into this less than 24 hours  
9 ago.

10 THE COURT: Well, can you talk to your lawyers and have  
11 them present the questions? You're represented by counsel.

12 MR. SKUMANICK: If we had more time, we would be able to do  
13 that, Your Honor.

14 THE COURT: This is an emergency hearing, it's a TRO, okay.  
15 We are not going to say, you're going to ask a question, then  
16 he's going to ask a question, that's ridiculous. Who is going  
17 to -- if it's going to be you, you're it, all right? If it's  
18 going to be Mr. Hailstone, Mr. Davis, whoever. Who is going  
19 to--

20 MR. SKUMANICK: Well, Your Honor, this is such a bizarre  
21 set of circumstances.

22 THE COURT: I understand, I understand all the pressures  
23 and everything else.

24 MR. SKUMANICK: There's no pressure on me, at all.

25 THE COURT: I'm just saying, I understand.

1 MR. SKUMANICK: What I'm saying is --

2 THE COURT: I want to know who is representing you and who  
3 is going to be participating in this hearing? Have you  
4 discussed this, at all?

5 MR. SKUMANICK: We didn't have an opportunity, at all, Your  
6 Honor.

7 THE COURT: Well, discuss it right now.

8 (At this time a discussion was held off the record at  
9 sidebar.)

10 (At this time the discussion resumed at sidebar.)

11 MR. HAILSTONE: Your Honor, I will represent Mr. Skumanick.

12 THE COURT: Okay.

13 MR. SKUMANICK: I'm not trying to antagonize the Court.

14 THE COURT: I understand.

15 MR. DAVIS: If the Court please, I intend to remain at  
16 counsel table, but I will be silent.

17 THE COURT: It's just a matter of practicality.

18 (At this time the discussion at sidebar was concluded.)

19 THE COURT: Was there an objection or a point by the  
20 defense?

21 MR. HAILSTONE: The point simply was this was a document  
22 attached to the pleadings, and we will stipulate to its  
23 authenticity and that it was sent.

24 BY MR. WALCZAK:

25 Q. Ms. Miller, I show you what's been marked Plaintiff's

1 Exhibit No. 1. Do you recognize this?

2 A. Yes, that's the letter I received.

3 Q. That's the letter you picked up from the -- registered  
4 letter you picked up from the Post Office on Monday afternoon?

5 A. Correct.

6 Q. You took it home, then, and your ex-husband came over?

7 A. Yes.

8 Q. What's his name?

9 A. James Miller.

10 Q. That's Marissa's father?

11 A. Yes.

12 Q. Was Marissa present and looking at this letter, as well?

13 A. Yes, she was.

14 Q. Let's take just a quick look at this letter. In the first  
15 sentence, it says, Marissa Miller has been involved  
16 dissemination of child pornography.

17 A. Correct.

18 Q. What was your reaction to reading that?

19 A. I was shocked. Knowing my daughter, she would absolutely  
20 never participate in such a thing, there was no investigation,  
21 I had never been questioned, no one had ever approached --

22 MR. HAILSTONE: Objection, Your Honor. She's stating that  
23 there had been no investigation. Ms. Miller doesn't know  
24 anything about what the police --

25 THE COURT: Overrule the objection. This is a party

1 Plaintiff.

2 BY MR. WALCZAK:

3 Q. So you read this letter, and did you discuss this with  
4 your daughter?

5 A. I did.

6 Q. What was her reaction?

7 A. She was upset, she said she had never taken any photos of  
8 herself, nude photos of herself on a cell phone or sent them to  
9 anyone.

10 Q. So you, specifically, asked her about cell phones?

11 A. Yes.

12 Q. Why is that?

13 A. Because it was saying that it was cell phone photographs.

14 Q. And when you go down to the second paragraph there, where  
15 it says, "We have scheduled a meeting with all identified  
16 juveniles", do you see that?

17 A. Yes.

18 Q. And did you go to that meeting?

19 A. We did.

20 Q. And the next sentence in that second paragraph reads,  
21 "Following the meeting, you will be asked to participate in the  
22 program." Did I read that correctly?

23 A. Um-hum.

24 Q. And then it says, "Participation in the program is  
25 voluntary". And then the last sentence in that paragraph,

1 "Please note, however, charges will be filed against those that  
2 do not participate or those that do not successfully complete  
3 the program." Did I read that correctly?

4 A. You did.

5 Q. At this point, did you know what the program he was  
6 referring to was?

7 A. No.

8 Q. What did you do -- what's the next thing that you did,  
9 after reading the letter and talking to Marissa?

10 A. Tuesday morning, when I went to school, I phoned his  
11 office.

12 Q. His, I'm sorry, who is his?

13 A. I'm sorry, Mr. Skumanick's office.

14 Q. That's pursuant to the directive in here saying that if  
15 you're unable to attend, please contact his office?

16 A. Correct. And I spoke with him and asked him could he  
17 please explain the letter, because I was unclear, as I had  
18 never been informed before. He told me he had her cell phone in  
19 his possession with a full nude photo, and I stated she was  
20 standing right there with me, in school, and I stated that I  
21 was holding her cell phone in my hand, and it had never been  
22 anywhere but in our possession.

23 He stated that the photo was nude, and I asked if it was  
24 time dated and stamped, because I would require to see that,  
25 you know, that it was proof from her phone. He agreed to a

1 meeting later that afternoon at 1, and my ex-husband and I went  
2 to his office.

3 Q. Let me just stop you. Did he answer you whether the photo  
4 was time dated and stamped?

5 A. No.

6 Q. And he also told you during this conversation that he had  
7 a fully nude photo of Marissa?

8 A. Correct.

9 Q. Did you do anything before you went to the meeting at 1:00  
10 on that day?

11 A. I went to my cell phone carrier and asked for a printout  
12 of any pictures, text messaging dated from September to  
13 current, from her phone.

14 Q. Why did you do that?

15 A. Because I wanted to see -- I wanted to match it with the  
16 photograph that he said he got from her phone.

17 Q. Were you able to get such a printout?

18 A. I was.

19 Q. What did that printout tell you?

20 A. She had no picture messaging from September until the end  
21 of October, and then there were some text pictures, texts or  
22 text messages from that point on.

23 MR. HAILSTONE: Your Honor, I'm going to object, because we  
24 are here for the TRO, I think counsel is getting into the  
25 merits of a possible criminal case. This is information we have

1 never been handed before. I just don't think this is right for  
2 today.

3 MR. WALCZAK: Your Honor, I mean, part of the Rule 65  
4 standards is a consideration of likelihood of success on the  
5 merits. This is an essential part of our claim. That's all the  
6 questions I have about this printout.

7 THE COURT: Overruled.

8 BY MR. WALCZAK:

9 Q. So you had this printout so you would be able to match  
10 whether the photograph Mr. Skumanick told you about actually  
11 came from Marissa's phone?

12 A. Correct.

13 Q. But you couldn't tell from this printout what photos she  
14 had sent after October?

15 A. No.

16 Q. Just that she had sent some photos?

17 A. Correct.

18 Q. So you then went to visit with Mr. Skumanick. Where was  
19 this meeting?

20 A. In his office in the Wyoming County Courthouse.

21 Q. Who went to this meeting?

22 A. My ex-husband and myself.

23 Q. Tell us what happened at this meeting.

24 A. We met with Mr. Skumanick, he showed us the photograph of  
25 my daughter, we identified and agreed it, indeed, was her. I

1 asked Mr. Skumanick, when he said that she would be charged if  
2 we didn't take this class, he was requiring this class or  
3 felony charges would be filed. I asked about a right by jury  
4 trial for my daughter, and he told us that she was a juvenile  
5 and she was not entitled to that.

6 My ex-husband and I were upset and wanted to know -- I  
7 mean, we looked at the picture, and it had -- it was a slumber  
8 party photograph from three years earlier.

9 Q. Let me stop you there.

10 MR. WALCZAK: I'm sorry, Your Honor, we have one copy of  
11 this exhibit.

12 MR. SKUMANICK: That's all the copies I have here.

13 MR. WALCZAK: I understand that. I have one copy which, I  
14 guess, Your Honor -- I can show it to establish that this is  
15 the photo, and then have Your Honor look at it.

16 THE COURT: Sure.

17 MR. WALCZAK: So I would mark this, and we are going to  
18 introduce This under seal, but would mark this as Plaintiff's  
19 Exhibit No. 2.

20 (At this time Plaintiff's Exhibit No. 2 was marked for  
21 identification.)

22 BY MR. WALCZAK:

23 Q. I'll show you what's been marked Plaintiff's Exhibit No.

24 2. Is this the photograph that Mr. Skumanick showed you?

25 A. Yes.

1 Q. Now, on the phone, Mr. Skumanick had told you he had a  
2 full nude photo of your daughter, correct?

3 A. Correct.

4 Q. This isn't a fully nude photo.

5 A. Correct.

6 Q. Did you recognize this picture?

7 A. I did.

8 Q. Why did you recognize it? Where had you seen it?

9 A. The summer -- she had a bedroom in the attic, which, it's  
10 very hot. The summer she got out of seventh grade, she had a  
11 sleepover with her friends, and it was hot and it was bedtime,  
12 late, and they were playing around with their digital camera,  
13 and a picture was taken, as you see, with her on the phone and  
14 that was it.

15 Q. And in the photo, she's wearing a bra.

16 A. Correct.

17 Q. And it's just from the waist up?

18 A. Correct.

19 Q. You said it was taken by a digital camera. Do you know  
20 whose digital camera? I don't want you to identify the other  
21 ones.

22 A. It was one of the girls that were there.

23 Q. Now, the other girl in the picture is Grace Kelly, is that  
24 correct?

25 A. Correct.

1 Q. And she's a long-time friend of your daughter's?

2 A. Yes.

3 Q. And she's also the same age?

4 A. Yes.

5 Q. How old were the girls when this photo was taken?

6 A. Well, it was -- 12, Marissa turned 13 that November.

7 Q. So this would have been taken the summer before eighth  
8 grade?

9 A. Correct.

10 Q. And do you remember what your reaction was, when you first  
11 saw the photo some years ago?

12 A. I laughed at them and told them that they were goof balls.

13 Q. So you didn't punish your daughter for being shown in this  
14 picture?

15 A. No.

16 Q. And as far as you know, somebody else took the photo, not  
17 your daughter or Grace?

18 A. Right.

19 Q. Is this girl still in the school district?

20 A. No.

21 Q. And as you said, it was taken on a digital camera?

22 A. Yes.

23 Q. Do you know or have you talked to your daughter about  
24 whether she knows how this photograph ended up on somebody  
25 else's phone or computer?

1 A. We have discussed it, we're not sure. I mean, we can only  
2 assume that, perhaps, a My Space or Face Book page, maybe, the  
3 girl put it onto her pictures.

4 Q. But your daughter never actually had custody of the  
5 digital image?

6 A. No.

7 Q. So you looked at this picture. Did you say anything to Mr.  
8 Skumanick? I mean, were you surprised that he was calling this  
9 child pornography?

10 A. Well, I was actually relieved when I saw it, because I  
11 recalled the photo and was not alarmed by it and just tossed it  
12 and said, Oh, Marissa and Grace.

13 Q. Did you question Mr. Skumanick about why he would charge  
14 your daughter for this?

15 A. Yes. Well, when we threw the photo down and I said,  
16 Marissa and Grace, he asked, Grace who? And we declined to  
17 answer Grace who. And my ex-husband said, How can you  
18 say -- there's nothing wrong with this photo. There's girls in  
19 magazines that sell bras. And he said it was provocative, it  
20 was a provocative photo.

21 Q. Did he identify the charges that he was threatening to  
22 bring against your daughter?

23 A. He said that the felony charges would be the criminal use  
24 of a communication device and child pornography, distribution  
25 of child pornography.

1 Q. Those are the only two charges he mentioned?

2 A. Yes.

3 Q. Did he talk about a program?

4 THE COURT: I didn't hear what charges.

5 MR. WALCZAK: Distribution of child pornography and  
6 criminal use of a communications facility, Your Honor, it's 18  
7 Purdon's 7512. And it, too, is a felony and requires a  
8 predicate felony, as well.

9 BY MR. WALCZAK:

10 Q. When you left that meeting, was there any doubt in your  
11 mind about the choice that you faced?

12 A. My -- well, it was conflicting. My ex-husband was  
13 concerned that -- he had stated to us that if you didn't take  
14 the class, there would be the felony charges, and if you took  
15 it, it was going to be washed away, there would be no record,  
16 so that would be the safest bet. So my ex-husband and I  
17 discussed -- he was concerned with her having the possibility  
18 of probation or fighting it and having criminal charges.

19 Then, we returned home and discussed it with her, and she  
20 was adamant, when we told her what photo it was, you know, she  
21 just was adamant that she didn't do it and didn't believe that  
22 there was anything wrong and didn't want to be charged with a  
23 felony.

24 Q. Just so I understand, she didn't deny that that was her in  
25 the picture and that she was in the picture?

1 A. Correct, she did not deny that.

2 THE COURT: Okay, anything else?

3 MR. WALCZAK: I want to move to the February 12th meeting,  
4 which really is important for all of the photographs.

5 BY MR. WALCZAK:

6 Q. So even though you had gone and met with Mr. Skumanick on  
7 February the 10th, you still went to this meeting that was  
8 advertised in the February 5th letter from Mr. Skumanick, and  
9 that was on Thursday --

10 A. The 12th.

11 Q. -- February 12th. Where was that meeting?

12 A. At the courthouse in a courtroom.

13 Q. Were there other families of students there?

14 A. There were.

15 Q. How many families would you say were there?

16 A. I'm guessing, approximately, 15.

17 Q. Did you know many or all of these families?

18 A. I knew some.

19 Q. So, just briefly, what happened at this meeting? Mr.  
20 Skumanick was there?

21 A. Yes, he introduced himself and explained why he was there,  
22 why we were all there, introduced the Juvenile Probation and  
23 Victim's Resource Representative, told the courtroom of the  
24 dangers of sexting and why he was offering to -- you know, if  
25 you didn't do this, you would have the felony charges, so they

1 were offering to wipe it away if you just followed their orders  
2 with the course and probation.

3 Q. Again, did he discuss the charges he was threatening to  
4 bring?

5 A. Yes, he said criminal use of a communication device and  
6 child abuse.

7 Q. Did he say anything about what the repercussions would be  
8 for the students, if they were convicted of these charges?

9 A. That they were felonies.

10 Q. I mean, because the kids are juveniles, did he say  
11 anything else about being convicted of a felony as a juvenile?

12 A. I don't recall.

13 Q. He then said, if they took the classes, then, everything  
14 would be wiped away?

15 A. Correct.

16 Q. Did he say anything about this program or course?

17 A. He told us it was still -- they were still working on the  
18 exact details of the course and he would get back to us.

19 Q. Now, at this meeting, did a father of a girl stand up and  
20 ask Mr. Skumanick a question about how he could be prosecuting  
21 his daughter?

22 A. There was a gentleman who mentioned his daughter was in  
23 her bikini, and he didn't understand what was wrong with that.  
24 Mr. Skumanick said it was provocative. My ex-husband stood up  
25 and asked Mr. Skumanick who was deciding what was provocative?

1 And Mr. Skumanick said, I could charge everyone here with  
2 felonies, we are doing the right thing and offering this class,  
3 and that's the law, and if you don't like it, too bad.

4 Q. From the questions that were asked at that meeting, could  
5 you tell if other parents were objecting to Mr. Skumanick's  
6 proposal?

7 MR. HAILSTONE: Objection, Your Honor.

8 THE COURT: Sustained.

9 BY MR. WALCZAK:

10 Q. Did Mr. Skumanick give the parents a deadline for deciding  
11 when they had to advise him if they were accepting the program  
12 and the offer or would be charged?

13 A. Yes, at first, he said 48 hours, but then with consulting  
14 with the rest of the team, they came up with, approximately, 10  
15 days to two weeks.

16 Q. When you left the meeting, was there any doubt in your  
17 mind that if you didn't accept the program that Mr. Skumanick  
18 was going to charge your daughter?

19 A. No, I knew that that was the alternative.

20 MR. WALCZAK: One last area, Your Honor.

21 BY MR. WALCZAK:

22 Q. I show you what's been marked as Plaintiff's Exhibit No.  
23 3. Aside from -- well, let me ask you, do you recognize this  
24 document?

25 A. Yes, you shared it with me.

1 Q. What do you believe this to be?

2 A. This is an outline of the course that Mr. Skumanick had  
3 developed with Victim's Resource and Probation.

4 Q. When did you get this document?

5 A. I never received it from, you know, the court associates,  
6 I received it from you.

7 Q. Now, I would just like to note, on the first page, it has  
8 a date. Do you see that date written, handwritten?

9 A. I do.

10 Q. On the cover page, it says 2/5/09.

11 A. Um-hum.

12 Q. If you would look up above that, there's the top row of  
13 text, a Court-assigned line there. But below that, where it  
14 says, District Attorney's office, do you see that?

15 A. Am I on the first page?

16 Q. Yes, on the first page, near the very top.

17 A. Okay, at the top here. Office of the District Attorney.

18 Q. Right, but like a header on the page, what's the date  
19 there, next to District Attorney's office, like, a FAX header?

20 A. March 5, 14:40.

21 Q. So did you get this sometime after March 5th?

22 MR. HAILSTONE: I'm going to object, Your Honor. She  
23 testified she never saw this and only saw it through her own  
24 attorney. This is a Court outline that would have been given to  
25 anyone who wanted to participate.

1 THE COURT: Overruled.

2 BY MR. WALCZAK:

3 Q. At the time you went to the February 12 meeting, you were  
4 not given a copy of this, correct?

5 A. No.

6 Q. And to your knowledge, nobody else had been given a copy  
7 of this, either, at the February 12 meeting --

8 A. No.

9 Q. In fact, you didn't see this until your lawyer and myself  
10 sent it to you?

11 A. Correct.

12 Q. Now, if you would turn -- did you have an opportunity to  
13 go through this?

14 A. I did.

15 Q. It's your understanding this is the program education  
16 course that Mr. Skumanick is proposing?

17 A. Yes.

18 Q. Do you have --

19 MR. HAILSTONE: Your Honor, I'm going to object to the  
20 relevance of this. I don't know how the existence of the  
21 course--

22 THE COURT: Why don't you -- why is it relevant?

23 MR. WALCZAK: Because she objects to sending her daughter  
24 to this class, and I have very few questions just to bring that  
25 out.

1 MR. HAILSTONE: But, Your Honor, she didn't know anything  
2 about the course, which she objected to sending her daughter  
3 to.

4 THE COURT: She has a copy of the outline.

5 MR. HAILSTONE: After the case was filed.

6 THE COURT: I overrule the objection.

7 MR. WALCZAK: Your Honor, just a point of clarification on  
8 Mr. Hailstone, that this was provided on March the 5th, as per  
9 the FAX header, so before the lawsuit was filed.

10 BY MR. WALCZAK:

11 Q. In going through this Court outline, is there anything in  
12 here that you did not find appropriate for your daughter?

13 A. I did, which was what made us, before the suit was filed,  
14 to decide definitely not to do it. There was an exercise where  
15 she had to write an essay as to why what she did was wrong and  
16 how it affected the victim in the case. She was the victim. And  
17 I just didn't agree with that, she did nothing wrong, so why  
18 should she have to write an essay on why what she did was  
19 wrong. So I did not like that.

20 And the other point was gaining and understanding what it  
21 is to be a girl in today's society. Who decides what it is to  
22 be a girl? There's so many different cultures and beliefs, I  
23 mean, who is to say what it is to be a girl in today's society?

24 Q. So from what little you knew about the course, from what  
25 you saw in the curriculum, those were, at least, two things

1 that concerned you and were a reason you didn't want to send  
2 Marissa to the class?

3 A. Correct.

4 MR. WALCZAK: That's all I have, Your Honor.

5 THE COURT: Any questions?

6 MR. HAILSTONE: Yes, Your Honor. Thank you.

7 CROSS EXAMINATION

8 BY MR. HAILSTONE:

9 Q. Ms. Miller, do you still have the letter dated February 5,  
10 2009 from Attorney Skumanick in front of you?

11 A. I do.

12 Q. When you were talking to your attorney about this letter,  
13 you mentioned that you immediately thought of the cell phone  
14 because it's written right in the letter, isn't that what you  
15 said?

16 A. Perhaps, that's what I said.

17 Q. Where, in this letter, February 5th letter does it mention  
18 cell phones?

19 A. It does not.

20 Q. So when you received this letter, you started thinking of  
21 cell phones because you understand that people take pictures  
22 with cell phones and exchange them with cell phones, correct?

23 A. Correct.

24 Q. So this was something that you had knowledge of about your  
25 daughter and other children that you know, isn't that correct?

1 A. Because the phone call from Juvenile Probation told me  
2 what it was in reference to.

3 Q. Okay, but the letter itself doesn't mention cell phones?

4 A. No.

5 Q. Now, isn't it true that even though there is no jury trial  
6 in juvenile adjudications, there is a process by which a fact  
7 finder will determine whether or not there is a criminal  
8 conduct, isn't that correct?

9 A. I am not familiar.

10 MR. WALCZAK: Objection, Your Honor. He's asking her about  
11 knowledge of the legal system.

12 THE COURT: Well, if she knows. Do you know?

13 THE WITNESS: I don't know.

14 THE COURT: The answer is she doesn't know.

15 BY MR. HAILSTONE:

16 Q. But you did testify to the fact that you knew that there  
17 was no jury trial for juvenile offenders, isn't that correct?

18 A. I asked -- no, I did not, until I asked him about her  
19 right to a trial by jury.

20 Q. Did you go any step further to determine what, exactly,  
21 her rights were?

22 A. No, he was not willing to talk.

23 Q. Did you, yourself, try to find out what her rights would  
24 be, under the juvenile system?

25 A. Mr. Skumanick was unwilling to speak to us.

1 Q. Please just answer my question.

2 A. No.

3 Q. So you, yourself, did not attempt to find out what her  
4 rights were?

5 A. No.

6 Q. Now, you've talked about the fact that you were presented  
7 with a choice by Mr. Skumanick that he would institute charges  
8 against the children or they could begin some kind of a  
9 process, some kind of a course, because he was concerned about  
10 this, correct?

11 A. He was -- he didn't display concern, he did not say he was  
12 concerned.

13 Q. Well, I will take that back. When you went to the meeting  
14 at the school, how many families were there?

15 A. At the courthouse, not the school.

16 Q. At the courthouse.

17 A. I'm guessing, maybe, 15, I'm not sure.

18 Q. Would you be aware of how many children there are at  
19 Tunkhannock High School?

20 A. There's, approximately, between 180 and, you know, 250  
21 graduating class.

22 Q. Do you know how many children the 15 families represent  
23 out of that 200 and some kids?

24 A. No.

25 Q. Now, you are aware that out of the 15 families that were

1 there, 11 of these families accepted the offer that the  
2 District Attorney gave them, isn't that correct?

3 A. I'm unaware of anything that went on.

4 Q. But you are aware that you, yourself, did not and some  
5 other families did not, correct?

6 A. Right.

7 Q. And you and some other families made contact with the  
8 American Civil Liberties Union?

9 A. Correct.

10 Q. Now, you also mentioned during your testimony that you  
11 sought evidence that your daughter didn't disseminate pictures,  
12 isn't that correct?

13 A. I'm sorry?

14 Q. You sought evidence, by getting her phone records, that  
15 your daughter wasn't sending pictures of herself, isn't that  
16 correct?

17 A. Correct.

18 Q. So you would agree that that would be a wrong thing for  
19 her to do?

20 A. Absolutely.

21 Q. You also stated during your testimony that you believe the  
22 photograph of your daughter was taken by someone other than  
23 your daughter, correct?

24 A. I know that it was, yes.

25 Q. And it has, in fact, been disseminated, isn't that

1 correct?

2 A. Apparently. He would not say where the photo came from.

3 Q. So your daughter doesn't know who disseminated that photo?

4 A. No.

5 Q. You also stated that you felt the photograph was okay

6 because there are girls in magazines in the same kind of

7 clothes, correct?

8 A. Correct.

9 Q. And you'll agree with me that the clothes she had on was a  
10 bra, and that's all you can basically see?

11 A. Right.

12 Q. Do you know if these girls in magazines that you have seen  
13 were under age?

14 A. I have no clue.

15 Q. Now, Ms. Miller, you testified that the District Attorney  
16 told the family members that he made a determination that the  
17 pictures were provocative, correct?

18 A. Correct.

19 Q. And you have made a determination that the picture of your  
20 daughter and the only one that you really have any sway over  
21 was not provocative, isn't that correct?

22 A. Correct.

23 Q. Now, with regard to the course outline that you were  
24 talking about, you received that after you contacted the ACLU,  
25 correct?

1 A. I received that from my attorney, yes.

2 Q. I'm sorry?

3 A. When he requested it from Mr. Skumanick.

4 Q. At that point, you refer to Vic as your attorney, you were  
5 under the impression you were being represented by the ACLU,  
6 correct?

7 A. We had been talking.

8 Q. But you never received it from the District Attorney's  
9 office, correct?

10 A. Correct.

11 Q. Did you ever ask to participate in the program?

12 A. We were given the two weeks to decide. The meeting that we  
13 were supposed to go to to decide whether we were or were not  
14 taking it, we were on vacation, we were out of town, so, no, we  
15 never -- I could never ask because we weren't there for the  
16 meeting.

17 Q. I'm sorry. Did you ever make a determination that you  
18 weren't going to participate in the program?

19 A. Yes.

20 Q. Okay. So the vacation has nothing to do with your  
21 determination as to whether you wanted your daughter in the  
22 program?

23 A. Correct.

24 THE COURT: Okay.

25 MR. HAILSTONE: If I could just consult for one second.

1 THE COURT: Sure. Okay.

2 MR. HAILSTONE: Thank you very much.

3 MR. WALCZAK: Your Honor, just one point of clarification,  
4 very quickly.

5 THE COURT: Please.

6 REDIRECT EXAMINATION

7 BY MR. WALCZAK:

8 Q. Mr. Hailstone asked you whether you thought it was -- you  
9 went and got the cell phone records and asked if you thought it  
10 was wrong to send photos?

11 A. Correct.

12 Q. Do you think it's wrong to send all photos or only certain  
13 kind of photos?

14 A. Certain photos. I mean, you wouldn't want to send naked  
15 photos.

16 Q. You wouldn't be happy if your daughter did that?

17 A. No. And if I had seen the photo and known it was going on  
18 My Space, I would have said, No, it's not.

19 MR. WALCZAK: Thank you.

20 RECROSS EXAMINATION

21 BY MR. HAILSTONE:

22 Q. Ms. Miller, so you do not believe that the photo that is  
23 in question should have been disseminated to anyone other than  
24 your daughter and yourself, maybe, some of her friends, isn't  
25 that correct?

1 A. It was a personal photo in my home, which we are entitled  
2 to our privacy. There was nothing --

3 Q. And I guess the clarification -- and I think your own  
4 attorney wants to know -- do you have a problem with the  
5 content of the photo?

6 A. I do not.

7 Q. So the content lies --

8 A. In privacy.

9 Q. If your daughter wanted to disseminate this photo, you  
10 would have no problem with that?

11 A. No, I would tell her, No, and if she did, I, as her  
12 parent, would handle her punishment.

13 Q. Why wouldn't you allow her to disseminate this particular  
14 photo?

15 A. I wouldn't want her to put it on the internet, you know.

16 Q. But that's not my question. She could make copies of it  
17 and hand it out. Why wouldn't you want her to disseminate this  
18 particular photo?

19 A. I don't know, just, I wouldn't want her in her bra showing  
20 everyone, looking at her in her bra.

21 MR. HAILSTONE: Nothing further, Your Honor.

22 THE COURT: Good. Thank you very much. Anything else?

23 MR. WALCZAK: Plaintiff's call George Skumanick as an  
24 adverse witness.

25 G E O R G E S K U M A N I C K IS CALLED AS OF CROSS

1 EXAMINATION, AND HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE COURT: Good afternoon, Mr. Skumanick.

3 THE WITNESS: Good afternoon, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. WALCZAK:

6 Q. Good afternoon my name is Vic Walczak, I'm an attorney for  
7 the Plaintiffs. We met.

8 A. Yes, sir.

9 Q. You are the District Attorney for Wyoming County,  
10 Pennsylvania?

11 A. Yes, sir.

12 Q. You are the chief prosecuting officer?

13 A. Yes, sir.

14 Q. So you are a Government employee?

15 A. Yes, sir.

16 Q. How long have you been in that position?

17 A. Since June 12, 1989.

18 Q. When did you first become aware of this issue of sexting  
19 in Tunkhannock?

20 A. Would have been early to mid-October of 2008.

21 Q. How did you find out about it?

22 A. The school district contacted local police and me about  
23 images that they had come in contact with, due to violation of  
24 cell phone policies at the school.

25 Q. Did you undertake an investigation after that?

1 A. The local police did who were handling the case.

2 Q. Did you direct that investigation?

3 A. They asked me for advice and stuff as to what they should  
4 do.

5 Q. Did you give advice to the school district about  
6 conducting the investigation?

7 A. No, to my knowledge, the school district really didn't  
8 conduct an investigation.

9 Q. Now, the school district confiscated cell phones where  
10 photographs were found, correct?

11 A. Yes.

12 Q. As I understand it, the evidence that you have acquired  
13 that underlies the prosecutions that you have threatened here  
14 came from cell phones confiscated in the high school, is that  
15 correct?

16 A. The high school and middle school, yes.

17 Q. High school, oh, and middle school?

18 A. Yes.

19 Q. How many families or how many kids have been targeted, if  
20 you want to pick another word, I don't want to put words in  
21 your mouth, how many students --

22 A. Did we identify as being involved at this point?

23 Q. Yes.

24 A. Number is close to 20. I didn't bring all the files with  
25 me, so I don't have an exact count.

1 Q. As I understand it, there are two categories of minors  
2 that have been targeted. One are students on whose phones,  
3 naked or semi-naked pictures of minors were found, correct?

4 A. Yes.

5 Q. The other category is girls who are pictured in the photos  
6 found on the cell phones?

7 A. Yes.

8 Q. And none of the students or minors that you have  
9 identified are based on the fact that they have distributed,  
10 it's either possession or participation in the photograph?

11 A. And/or distribution by the fact that someone had to send  
12 it out, initially, as in the one case where it's fairly  
13 apparent who took the photo; it was a self-portrait.

14 Q. And so you're making an inference, if it ends up on  
15 somebody else's phone, that it must have been sent?

16 A. It had to be sent by somebody.

17 Q. Do you have any cell phone records showing that it was  
18 sent by that person to the cell phone that you confiscated?

19 A. I'm not going to comment on that at this point.

20 Q. Now, you confiscated five cell phones?

21 A. The school did, we did not.

22 Q. Those cell phones were turned over to you?

23 A. Turned over to local police.

24 Q. And local police work for you?

25 A. No.

1 Q. With you?

2 A. They work for their municipalities, they work with me as  
3 chief law enforcement officer in the county.

4 Q. So between the school district and the police department,  
5 they brought hundreds of photos to you?

6 A. I think the number of photos is irrelevant.

7 Q. Well, I'm asking the questions here.

8 A. I'm not going to comment, because I don't think it's part  
9 of this proceeding.

10 THE WITNESS: Your Honor, I think it's -- the investigation  
11 is ongoing, and I would not want to hamper that.

12 MR. WALCZAK: I fail to see how disclosing how many  
13 photographs you looked at is going to compromise his  
14 investigation.

15 THE COURT: Can you approximate a number?

16 THE WITNESS: There were a large number of photographs,  
17 Your Honor, I mean, probably over 100.

18 BY MR. WALCZAK:

19 Q. Now, in early November, you began speaking publicly about  
20 the issue of these photographs being found in the school, is  
21 that correct?

22 A. Yeah, after, apparently, a parent contacted WNEP -- we  
23 didn't contact the media, apparently, the parent did, after we  
24 sent a letter out with the school district just warning people  
25 about, Don't do this.

1 Q. So you sent a letter to who?

2 A. To everybody -- every parent in the school district. The  
3 school district sent a letter and sent a letter to every parent  
4 in the school district.

5 Q. What did that letter say?

6 A. Basically, that we found out that this is occurring, we  
7 recommend you check children's cell phones, that the  
8 possibility of charges exist if these photos are found on these  
9 phones, and that, frankly, it's our duty as parents to ensure  
10 the safety of their children by checking their cell phones,  
11 since you're paying the bill for them probably.

12 Q. And you were quoted in the local Tunkhannock newspaper in  
13 early November saying that --

14 MR. HAILSTONE: Objection, Your Honor. Now, we are getting  
15 into newspaper quotes, which I think we can agree that  
16 sometimes you're misquoted. I don't know where we are going  
17 with this.

18 THE COURT: Is it relevant? I thought this was going to be  
19 very brief testimony, okay. Is this relevant?

20 MR. WALCZAK: Your Honor, I think it is relevant.

21 THE COURT: Overrule the objection. I will allow the  
22 question. And he's asking the witness, and the witness can  
23 say -- straighten out that he didn't say something.

24 MR. WALCZAK: I'll try to cut through some of this.

25 THE COURT: If you can.

1 BY MR. WALCZAK:

2 Q. Mr. Skumanick, you've made statements publicly, in the  
3 media, you have made -- you attended a school district  
4 assembly, I believe, on November 14th, 2008, and you had a  
5 meeting with parents on February the 12th, 2009, correct?

6 A. Yeah, well, we did it with the school district in  
7 November, we were holding an assembly for each grade in  
8 Tunkhannock, 12th through 5th, also, Lackawanna Trail, the  
9 other school district in my county, and what we did was simply,  
10 both the school -- the school re-advised the children on the  
11 cell phone policy, and we simply put it out there, you know,  
12 Don't do this because it is foolish, you know, and here are the  
13 possibilities if you get caught doing this.

14 Q. Both in your public statements where you're quoted in the  
15 media and in your statements at the assembly to the students in  
16 November at Tunkhannock High School, and in your statements to  
17 the parents on February 12th, you have been consistent that you  
18 will prosecute these children, including Ms. Miller, Ms. Kelly  
19 and the girl known as Nancy Doe with felony charges, is that  
20 correct?

21 A. I think I made it very clear that was a distinct  
22 possibility, and that's why we made the offer we did of  
23 developing the course and making the offer we did.

24 Q. And, again, you've been very consistent in this.  
25 Throughout this time, you have identified two possible charges,

1 one is what's commonly referred to as child pornography, which  
2 as you well know, is sexual abuse of children, correct?

3 A. Children.

4 Q. And the other charge?

5 A. Criminal use of a communications facility.

6 Q. Again, that is a felony, as well?

7 A. Yes, sir. But I never said that was an inclusive list. I  
8 felt they should hear the worst possible scenario so that they  
9 had a better idea of the true severity of what they were doing.

10 Q. Now, you're saying that was never an inclusive list. You  
11 never identified any other charge in your public statements,  
12 did you?

13 A. No, you know, like I said, to me, frankly, it would have  
14 been easier for us to simply charge them. We didn't need to  
15 give them any opportunity to do anything else other than be  
16 charged.

17 Q. So the answer is, no, you did not suggest that any other  
18 charges could be brought?

19 A. No, I didn't say they couldn't be, I just never mentioned  
20 other charges.

21 Q. If you could take a look at --

22 A. This is the February 5th letter.

23 Q. Yes, I would show you what's been marked as Plaintiff's  
24 Exhibit No. 1, and I've now given away all of my copies.

25 THE COURT: Can you share it with him? Can you show it to

1 him?

2 THE WITNESS: He can have my copy, I don't think I need it.

3 MR. WALCZAK: I have a copy here.

4 BY MR. WALCZAK:

5 Q. Now, this is the letter you sent to Mary Jo Miller dated  
6 February 5th, correct?

7 A. Which I believe we stipulated to.

8 Q. Now, you sent the exact same letter, except for the  
9 address, the addressee and the name of the minor to all of the  
10 parents of the children who you were targeting?

11 A. Yes.

12 Q. It's the exact same letter?

13 A. Yes.

14 Q. If you'll go down to the second paragraph there.

15 A. Um-hum.

16 Q. Where it says;

17 "Following the meeting, you will be asked to participate  
18 in the program."

19 Did I read that correctly?

20 A. Yes.

21 Q. And then the next sentence says;

22 "Participation in the program is voluntary."

23 A. Yes.

24 Q. And that's your position, that this is a voluntary  
25 program?

1 A. I can't force somebody to do it.

2 Q. But then the next sentence in the letter reads;

3 "Please note, however, charges will be filed against those  
4 that do not participate or those that do not successfully  
5 complete the program."

6 Did I read that correctly?

7 A. Sure, yes.

8 Q. That's still your position to this day?

9 A. Yeah, I stipulate that the letter is accurate and remains  
10 so.

11 THE COURT: Is that it?

12 MR. WALCZAK: One minute, Your Honor. Your Honor, I'm  
13 sorry, I want to introduce The photograph of Nancy Doe, and the  
14 one copy that I was given --

15 THE COURT: There's no objection to it?

16 MR. HAILSTONE: We object, Your Honor. The woman -- the  
17 child isn't here today, her parent isn't here today.

18 THE COURT: Is it necessary?

19 MR. WALCZAK: We have a verified complaint, Your Honor. But  
20 I guess Mr. Skumanick's objection is me showing this exhibit,  
21 which has those photographs, to Ms. Miller, is that he didn't  
22 want Ms. Miller to see the other girl's photograph, but I just  
23 want to make sure it's okay to use this as an exhibit to show  
24 Mr. Skumanick.

25 MR. HAILSTONE: I don't know what the purpose of showing

1 the photo of the other person whose parents aren't here and she  
2 isn't here. I don't know if he's going to try to enter it into  
3 evidence, and then I would object.

4 MR. WALCZAK: I am going to enter it into evidence, and  
5 part of the reason we sought pseudonymous treatment is because  
6 it is a minor, this is a semi-naked photograph, and one issue  
7 is whether or not, in fact, you know, this is protected speech  
8 or whether it's even a crime, under Pennsylvania law.

9 THE COURT: Overrule the objection.

10 BY MR. WALCZAK:

11 Q. I show you what's been marked as Plaintiff's Exhibit No.  
12 4. Now, there's two photographs on that exhibit, correct?

13 A. Yes.

14 Q. And there are letters under the two photographs, one  
15 letter is A and the other letter is B, correct?

16 A. Yes.

17 Q. And do you recognize the people in photograph A?

18 A. Yes.

19 Q. Who are they?

20 A. One is Marissa Miller, the other is Grace Kelly.

21 Q. You were sitting in this courtroom when Mary Jo Miller  
22 testified today, correct?

23 A. Yes.

24 Q. And so the photograph that she was discussing, that's the  
25 photograph that's 4A, correct?

1 A. Yes.

2 Q. Now, photograph 4B, is that the photograph of the girl,  
3 the Tunkhannock girl who has been identified as Nancy Doe?

4 A. Yes.

5 Q. And that is the photograph that you believe constitutes  
6 child pornography?

7 A. Yes.

8 Q. And that is the photograph that you have focused on in  
9 telling Jane Doe that if she does not agree to send her child  
10 to this course, that you will prosecute her for child  
11 pornography or the communications facility charge?

12 A. Yes, or as an accomplice to that crime, yes.

13 Q. An accomplice to one of those two crimes?

14 A. Yes.

15 Q. And as part of this offer that you have made to the  
16 children, it's not just participating in the program, there's  
17 more to it, correct?

18 A. It's what's called a Consent Decree. In Pennsylvania,  
19 under juvenile law, a Consent Decree is what's called an  
20 informal adjustment, where you agree to be on probation for six  
21 months minimum, the Court, if probation wishes, can extend it  
22 to nine, however, they can also shorten it, if you complete  
23 what we deem necessary as part of the probationary process.

24 And in this case, it's the completion of the course, it's  
25 the course that we developed, and it's part of any probation

1 that we do that you remain free from drugs and alcohol.

2 Q. So as part of this, you're on probation for at least six  
3 months?

4 A. Or less, it could be less.

5 Q. Who decides that?

6 A. That would be up to the Probation Department, they can  
7 come to me and say, The child has completed the program, the  
8 child has done well, we don't feel further probation is going  
9 to serve, you know, any further interests of the child, and we  
10 can terminate it.

11 Q. So the Probation Department makes a recommendation to you  
12 about whether to shorten their time of probation?

13 A. We would talk about that, in conjunction, yes.

14 Q. So you are involved in deciding how long the probation is  
15 for the child?

16 A. Ultimately, that's up to probation, they would seek my  
17 opinion, but ultimately it's up to them.

18 Q. And there's also a charge for this program, as well, isn't  
19 there?

20 A. A 100-dollar fee that goes to the Victim's Resource Center  
21 to cover their copying costs for the materials of the program  
22 and for their staff time.

23 Q. While the girls are on probation, they are subject to  
24 random suspicionless drug testing as well, are they not?

25 A. Yes, like I said, it's part of any part probation that we

1 do is to remain free of drugs and alcohol.

2 Q. Now, if you are on probation, whether you're a minor or an  
3 adult, and you transgress the law again, you commit another  
4 crime, that is a factor that the Judge will consider on the  
5 subsequent offense that you're already on probation for  
6 something, correct?

7 MR. HAILSTONE: Your Honor, I'm going to object again.  
8 Relevance. I think we are getting far afield.

9 THE COURT: Yes, I'm going to sustain the objection.  
10 Anything further, Mr. Walczak?

11 MR. WALCZAK: Just one more line here, Your Honor.

12 BY MR. WALCZAK:

13 Q. Mr. Skumanick, you are aware of some students who have  
14 distributed these photographs whom you have not charged, are  
15 you not?

16 A. I don't understand.

17 Q. Let's take Nancy Doe's photograph. Now, Nancy Doe in the  
18 complaint has averred under oath that she did not intend for  
19 that photograph to end up on whoever's cell phone that you may  
20 have found it on in school, all right, that's what she has  
21 averred.

22 MR. HAILSTONE: Your Honor, she's not here to testify.  
23 Something that was written in the complaint, I can't  
24 cross-examine her, I don't think that the attorney can give her  
25 testimony here today.

1 MR. WALCZAK: It's her testimony, it's all under oath, but  
2 that's not the point.

3 THE WITNESS: Frankly, Your Honor, I would refuse to answer  
4 the question simply because that does go to current  
5 investigations that are ongoing.

6 THE COURT: Overruled. Anything else?

7 BY MR. WALCZAK:

8 Q. You are aware of some people who may have distributed  
9 these girls' photographs and you have not charged them, have  
10 you?

11 MR. HAILSTONE: Your Honor, this is a prosecutor in the  
12 middle of a prosecution. He can't answer that.

13 THE COURT: I meant to say your last objection, I  
14 sustained, not overruled. Thank you. Anything else?  
15 Cross-examine.

16 MR. WALCZAK: Thank you, Your Honor.

17 MR. HAILSTONE: Just quickly, Your Honor.

18 CROSS EXAMINATION

19 BY MR. HAILSTONE:

20 Q. George, what's your job?

21 A. My job is to prosecute crimes that occur in Wyoming County  
22 and protect the citizens of Wyoming County.

23 Q. You're elected to be District Attorney, correct?

24 A. Yes, sir.

25 Q. Do you, as in that position, have any part in writing the

1 laws of Pennsylvania?

2 A. No, sir, I simply enforce them.

3 Q. Now, you talked about -- and I don't want to get into the  
4 current investigation -- but with regard to what limited we are  
5 allowed to talk about here, how did you first become involved  
6 in problems at the Middle School and the High School in  
7 Tunkhannock?

8 A. The school contacted us based upon -- contacted local  
9 police, who contacted me, along with the school district. Our  
10 school district is very good about being very communicative  
11 with us and we try to cooperate with them as much as we can  
12 to, again, protect the kids. And they called us and said, We  
13 have these issues coming up, we have this problem, and we went  
14 up and sat down with the school, with probation and the police  
15 officers involved, and talked it over.

16 Q. When you were presented with this issue, what did you then  
17 do?

18 A. We initially sent a letter out to all the parents on  
19 November 3rd, we then held the assemblies that we talked about  
20 with all the classes from 12 through 5th in both schools, and  
21 we then identified, you know, the kids from the photos that we  
22 had and decided that, instead of just immediately charging  
23 them, that we give them an opportunity to try to learn a lesson  
24 here, without being charged and without the possibility of  
25 ending up with a criminal record, and we decided to develop

1 this program that we want to present.

2 Q. I want to talk about the program. Who developed the  
3 program?

4 A. It was the Victim's Resource Center, Juvenile Probation  
5 and my office.

6 Q. Now, the Victim Resource Center, what do they do, with  
7 regard to developing the program?

8 A. Their basic expertise is in dealing with crime victims and  
9 how crime, you know, really affects individual people, you  
10 know, and the dynamics of being involved in a crime on every  
11 level. And their task in this is to try to show how this can  
12 emotionally affect you down the road, not just now, but months  
13 or years down the road, since once these photos are out there,  
14 they never go away.

15 Q. Juvenile Probation, what was their role in this?

16 A. Their role was simply to try to, along with mine, to help  
17 educate the kids as to the criminal dangers of doing this, both  
18 now and in the future.

19 Q. And if the program wasn't accepted -- just a  
20 clarification. Did anyone accept to go into the program?

21 A. Yes.

22 Q. Off the top of your head, so far, how many have accepted  
23 that?

24 A. All but the three individuals that are named in the suit  
25 and one individual that the ACLU has indicated to me that they

1 represent.

2 Q. Do you know how many families that would be?

3 A. It's probably close to 10 to 15. Like I said, I didn't  
4 bring all the cases with me.

5 Q. And if people don't accept the program, what is the next  
6 step?

7 A. The next step is to decide if we are going to charge them,  
8 and then if we charge them, that they would be -- a juvenile  
9 petition would be filed, and they would then have an  
10 opportunity for a hearing in front of Judge Vanston in the  
11 Court of Common Pleas.

12 Q. So the charges aren't the end of it, correct?

13 A. No, sir.

14 Q. You've talked about the process by which you would charge,  
15 and then what would happen?

16 A. Then, there would be what's called an adjudication hearing  
17 before Judge Vanston in the Court of Common Pleas, and he would  
18 then make a determination as to whether or not the juvenile is,  
19 quote, delinquent, basically, that's the juvenile finding of  
20 guilty, and he would then determine, based upon after  
21 consultation with probation, to determine what their  
22 disposition would be, ultimately, their sentence.

23 Q. Okay. So there would be a factual hearing, basically,  
24 after charges were filed?

25 A. Yes, sir, and even if they were adjudicated, the juvenile

1 would then have a right to appeal to the Superior Court of  
2 Pennsylvania, the State Supreme Court, and ultimately through,  
3 possibly, a Federal Habeas Corpus in this Court.

4 MR. HAILSTONE: Thank you. Nothing further, Your Honor.

5 MR. WALCZAK: Your Honor, just one line of questions here.

6 REDIRECT EXAMINATION

7 BY MR. WALCZAK:

8 Q. Mr. Skumanick, on your --

9 MR. HAILSTONE: Objection, Your Honor. This is Redirect  
10 based on what I asked. I don't think I talked about any  
11 articles or anything. He's entering into evidence --

12 THE COURT: What's the point of this?

13 MR. WALCZAK: Your Honor, Mr. Skumanick, in response to Mr.  
14 Hailstone's question about what the next steps is, said that he  
15 has to decide if to charge. And, Your Honor, this is the first  
16 time that Mr. Skumanick has said publicly or to any of these  
17 parents in private that there is any doubt about what he's  
18 going to do, and this one article and headline, just the  
19 headline, makes it crystal clear.

20 THE COURT: You can ask him the question. Okay, please,  
21 it's limited to that question.

22 MR. WALCZAK: That's all I'm doing.

23 BY MR. WALCZAK:

24 Q. Mr. Skumanick, again, on exhibit -- Plaintiff's Exhibit  
25 No. 1, do you still have that up there? That's your February

1 5th letter.

2 A. Yes.

3 Q. It reads, "If you", I guess that's a typo, "If your  
4 son/daughter successfully completes this program, no charges  
5 will be filed, no record of his or her involvement will be  
6 maintained." That's at the bottom of the first paragraph,  
7 right?

8 A. Yes.

9 Q. But the bottom of the second paragraph, "Please note,  
10 however, charges will be filed against those that do not  
11 participate or those that do not successfully complete the  
12 program." Correct?

13 A. Yes.

14 Q. There's no equivocation there, correct, not in this  
15 letter?

16 A. No, and we can do it that way, that's fine with me.

17 Q. This is the letter that you sent to all of the parents,  
18 correct?

19 A. Yes. Like I said, that's fine with me. If they want to be  
20 charged, I can charge them.

21 Q. Let me show you what's been marked as Plaintiff's Exhibit  
22 No. 5. Do you recognize this?

23 MR. HAILSTONE: Your Honor, I think this has been asked and  
24 answered.

25 THE COURT: I think so, too.

1 MR. WALCZAK: It's my last line of questions, Your Honor.  
2 I'm almost done.

3 THE COURT: I'll give you one more question, one more  
4 question.

5 MR. WALCZAK: About three questions, Your Honor. I've just  
6 got to establish what this is.

7 THE WITNESS: Your Honor, I could short-circuit this by  
8 saying, this is a copy of the New Age Examiner, and frankly, I  
9 don't write the headlines for the newspaper.

10 THE COURT: Right.

11 BY MR. WALCZAK:

12 Q. My question is, this is the local paper for Tunkhannock?

13 A. Yes.

14 Q. Okay, and this is a headline that appeared in that paper?

15 I'm not asking you whether you wrote it, but this is the  
16 headline that appeared in that paper on Wednesday, February the  
17 18th?

18 A. Oh, yes.

19 Q. And it reads "DA":

20 MR. HAILSTONE: I'll object Your Honor.

21 THE COURT: Sustained. Anything else?

22 MR. WALCZAK: Thank you, Your Honor.

23 THE COURT: Thank you very much. Any further witnesses?

24 MR. WALCZAK: No further witnesses.

25 THE COURT: Any witnesses?

1 MR. HAILSTONE: No.

2 THE COURT: Look, this is an application for a temporary  
3 restraining order, there's four -- I'm going to ask each  
4 counsel if they would give us a brief summary as to how you or  
5 have not established these four factors; namely, the likelihood  
6 of success if it goes beyond today, how the moving party would  
7 be irreparably harmed, and the extent to which the non-moving  
8 party will suffer irreparable harm, if it's issued, and how the  
9 public interest is involved, all right. So if you would,  
10 briefly.

11 MR. WALCZAK: Yes, Your Honor. On the first factor.

12 THE COURT: You're not asking for money damages in this,  
13 right?

14 MR. WALCZAK: Your Honor, we have sued Mr. Skumanick only  
15 in his official capacity. This is just a case about vindicating  
16 Constitutional principles.

17 Mr. Skumanick has made it very clear in posing a choice to  
18 the Plaintiffs that either you agree to participate in this  
19 course during which students must write about why it is what  
20 they did was wrong, and they must explore what it means to be a  
21 girl, and if they don't accept that, then, he is going to bring  
22 felony criminal charges.

23 Now, if, in fact, there was even a close call that these  
24 photographs amounted to child pornography, then, some kind of  
25 plea agreement may be appropriate. But Your Honor has now seen

1 both of these photographs, and under Pennsylvania law, under  
2 the Pennsylvania statute, there's no way these photographs can  
3 be considered child pornography.

4 Now, the first one involving Marissa and involving Grace  
5 is -- I mean, that's a photo that you might see in the J.C.  
6 Penney or Sears catalog in Sunday's newspaper. They do have  
7 children who show -- who model underwear in that picture. And  
8 under Pennsylvania's statute, there is a definition of what is  
9 child pornography. That definition, in essence, is -- I should  
10 be more precise. It either has to depict -- this is under 6312  
11 Sexual Abuse of Children, Section A is prohibited sexual act.  
12 It's either got to depict sexual activity, and certainly  
13 neither of these photographs do that, or it has to be the lewd  
14 exhibition of the genitals.

15 THE COURT: Okay, you say that, as far as the statute is  
16 concerned, that these young women could never be found guilty  
17 of the charges, so what's the irreparable harm that they face,  
18 irreparable harm?

19 MR. WALCZAK: Your Honor, the irreparable harm is that they  
20 are forced to decide whether to suffer a prosecution, for which  
21 there is absolutely no basis, or be forced to go into a  
22 program. And, again, it's two sides of the same coin, in terms  
23 of the Constitutional Rights that are violated by the students  
24 being forced into this program. On the one hand, you have the  
25 students who have to go to this program and talk about why what

1 they did is wrong. Now, they don't -- you know, whether they  
2 think what they did is wrong really doesn't matter. The  
3 Government may not compel people to say things they don't want.  
4 I mean, there is a long line of cases involving compelled  
5 speech beginning with Barnett and the Pledge case and Rolley v.  
6 Maynard, and we have cited all of these cases in our brief.

7 Forcing these girls against their will to come in and talk  
8 about why what they did is wrong when they don't believe that  
9 what they did is wrong is a violation of their rights.

10 Second, when it comes to the parents, again, we have cited  
11 a long line of Supreme Court cases involving parents' rights,  
12 starting with Pierce and Meyer back in the 1920's, and it has  
13 been reaffirmed by the Supreme Court in this decade, and it is  
14 a line of cases that is repeatedly invoked by the United States  
15 Court of Appeals for the Third Circuit. The case that I think  
16 is most instructive for this one is the Grunke case decided by  
17 the Third Circuit, I think it's in 2000 or 2002, where you had  
18 a teenager in high school who was suspected of being pregnant,  
19 and she was on the swim team, and the swim team coach coerced  
20 this girl against her will into taking a pregnancy test. And  
21 the parents filed a lawsuit against the school district and  
22 against the swim team coach saying, It is none of his business.  
23 He cannot intrude into that area.

24 The same thing here. You heard Ms. Miller testify that she  
25 does not believe that taking the photograph, aside from

1 dissemination, there's no evidence that Marissa or Grace  
2 disseminated this photo, she does not believe that they did  
3 anything wrong in taking that photograph, and to force her  
4 child into a program that is going to teach them something  
5 different is a violation of her rights under the 14th  
6 Amendment, Substantive Due Process Clause, to direct and  
7 control her child's upbringing. The same is true for Nancy Doe,  
8 as averred in the complaint.

9       So the two rights at issue are the right against compelled  
10 speech and the right of parents to direct and control the  
11 upbringing of their children. Moreover, there is a direct First  
12 Amendment right. You have Mr. Skumanick, who has asserted the  
13 authority and is ready to invoke that authority to charge  
14 children with child pornography, which is a felony, which  
15 results in being placed on Megan's Law or soon will, under the  
16 Adam Walsh Act passed by Congress, Pennsylvania has to amend  
17 its statute by the middle of the summer to say that, if  
18 juveniles are convicted of a felony, they have to register  
19 under Megan's Law, be on the web site for at least 25 years,  
20 will be prohibited from working in child-related professions,  
21 so we are talking about, sort of, the nuclear weapon of sex  
22 offenses here.

23       And if Mr. Skumanick has asserted that he can charge girls  
24 like Marissa and Grace who are wearing their underwear, or as  
25 Ms. Miller testified, a girl in her bikini, because Mr.

1 Skumanick deems that to be provocative, that has a chilling  
2 effect on my clients.

3 THE COURT: Is there a public interest involved?

4 MR. WALCZAK: Your Honor, there is absolutely a public  
5 interest in the District Attorney not misusing his power, not  
6 threatening people with charges for which there's absolutely no  
7 basis, in order to coerce children and their parents to  
8 participate in a program that they don't want to participate  
9 in, that they shouldn't be forced to participate into, to pay  
10 money, to be on probation, to be randomly drug-tested and give  
11 up their Fourth Amendment right to privacy, Your Honor, I  
12 submit there is absolutely an interest in doing that. So that's  
13 the irreparable harm to my clients.

14 In terms of irreparable harm to the Defendants, you know,  
15 if Mr. Skumanick is willing to let them take a class, then, it  
16 really can't be that bad, these are not children who would be  
17 put in jail for anything like this, and frankly, you know, one  
18 of the things that we found most offensive here is the fact  
19 that these girls that he's gone after, they may have done  
20 something careless, they may have done something stupid, it's  
21 not a good thing to create a digitized image of yourself in a  
22 compromised or embarrassing position. I don't know if Your  
23 Honor has followed what happened to Michael Phelps, he's got  
24 about one hundred million reasons why it's a bad idea.

25 But the fact that it's careless or dumb or irresponsible,

1 which a lot of teenagers are, doesn't make it a crime. And  
2 these girls allowed themselves to be photographed, as they did,  
3 they did not allow that -- they did not want those pictures to  
4 be disseminated as they were. That is a fact of the modern age  
5 and the ease with which these pictures can be distributed, but  
6 they did not distribute these pictures all over. These girls  
7 have already been victimized by somebody else. And if Mr.  
8 Skumanick wants to work with the school district and the police  
9 and probation and Victim's Resources to educate these students  
10 about the dangers of doing this and about what they should do  
11 properly, God bless him, that's a great thing to do.

12 But to run around threatening children with felony charges  
13 for which they could be on Megan's Law for 25 years is an abuse  
14 of authority.

15 THE COURT: Okay, very good. Mr. Hailstone.

16 MR. HAILSTONE: Your Honor, just a clarification. There's  
17 been no testimony about dissemination, all we have is one of  
18 the mother's saying that she believes her daughter when the  
19 daughter says she didn't disseminate, and we have no testimony  
20 from any of the other Plaintiffs in this case as to who sent it  
21 out. They could have, for all we know, I think that's a  
22 twisting of the testimony we have heard today.

23 As far as your four points, Your Honor, likelihood of  
24 success on the merits. What the Plaintiffs ask for you to do  
25 today is make a determination as to whether the pictures fall

1 under the specific statute in Pennsylvania, and as we have also  
2 pointed out here today, there are other statutes, possible  
3 criminal charges that could be brought. There is also a way  
4 that this is going to ultimately be adjudicated before a Judge,  
5 a County Judge, who would have this at his disposal. Success on  
6 the merits, I don't think they have it here, Your Honor,  
7 because they can't prove -- well, first of all, we only heard  
8 from one mother, so we don't know what the others would  
9 testify, we don't know what the children would testify.

10 I wouldn't drag any of these children onto the stand, but  
11 ultimately they would be the ones prosecuted, they would be the  
12 ones that would be able to give their side of the story.

13 THE COURT: I mean, this is the sexual abuse of children  
14 statute.

15 MR. HAILSTONE: Correct, Your Honor.

16 THE COURT: Where they talk about prohibited sexual acts  
17 and the definition of what that means.

18 MR. HAILSTONE: Correct, Your Honor.

19 THE COURT: So maybe you could put this into the context in  
20 which it's prosecuted. You know, it seems like the child here  
21 or the children seem to be the victim, the perpetrator and the  
22 accomplice. I mean, does that make any sense? How does that  
23 make sense?

24 MR. HAILSTONE: Right, Your Honor. It's a difficult thing  
25 to wrap your mind around, mainly, because what you're dealing

1 with here is a whole generation of kids that are doing this to  
2 themselves, and they are becoming both victim and perpetrator.  
3 There was a problem, the District Attorney weighed in on it  
4 because he saw it as an issue, and like he said, he doesn't  
5 write the laws, he followed the most appropriate law that he as  
6 a prosecutor had --

7 THE COURT: I understand that fully.

8 MR. HAILSTONE: -- to use at his disposal to prosecute  
9 these cases. As he was asked about dissemination and who is  
10 disseminating, he can't get into that today, but those are  
11 other issues that do come out of this, Your Honor.

12 THE COURT: Well, can you tell me what the public interest  
13 is?

14 MR. HAILSTONE: The public interest, I think, is two-fold.  
15 First of all, the public interest of your bench not wanting to  
16 use its extraordinary equity powers in reaching down into the  
17 State prosecution and stopping the State prosecution or making  
18 a decision for the prosecutor whether he should, I think that's  
19 a very important public interest.

20 THE COURT: That's a good point. You know, we have some  
21 very serious Constitutional questions that arise from these  
22 very unusual circumstances.

23 MR. HAILSTONE: Right, and I think the other public  
24 interest in this, Your Honor, is whenever a prosecutor makes a  
25 decision to prosecute, a prosecutor has to have leeway to offer

1 a plea, offer some kind of an out, and that's just the way the  
2 system is. What the Plaintiffs would have you believe is that  
3 he has no right to do that and he shouldn't have any right to  
4 do that.

5 THE COURT: How are these pictures illegal under  
6 Pennsylvania law? And I heard the word, provocative, being  
7 mentioned. Who determines what's provocative and what's not?

8 MR. HAILSTONE: Exactly, Your Honor. The fact finder in the  
9 State Court has to make that decision. The decision can't be  
10 made by some parents who they decide that the picture that the  
11 daughter had or was disseminating was fine. The decision has to  
12 be made by the fact finder in the Court below.

13 THE COURT: So you say these pictures are illegal, right,  
14 am I right they violate the law?

15 MR. HAILSTONE: Um-hum.

16 THE COURT: And how can the child, in a sense, be depicted  
17 in an illegal image and be prosecuted under the statute?  
18 Explain that to me.

19 MR. HAILSTONE: The statute doesn't distinguish between who  
20 took the picture or who even participated in it. If they  
21 participated in it by being there and allowing themselves, in  
22 some cases, or taking the picture of themselves themselves, it  
23 becomes, under the statute, illegal. Ultimately, though, that  
24 is something that has to be made -- that determination has to  
25 be made by the fact finder.

1           In this case, it would be the Juvenile Court, Judge  
2 Vanston of Wyoming County, and he would make that  
3 determination. You know, the Court's involvement now simply is  
4 to say that the prosecutor, you have no right even to make that  
5 decision or that determination, much less that you're wrong on  
6 the law.

7           THE COURT: Let me ask you this one. This harm that may  
8 come to the Defendant, what's the harm that could come to the  
9 Defendant or to Wyoming County, if the Court issues a temporary  
10 restraining order, in order to examine these things? How does  
11 that compare with the potential harm that's faced by these  
12 three young women? Can you balance that out for me?

13           MR. HAILSTONE: Your Honor, tying the hands of a  
14 prosecutor, I think, is the clear harm to the District Attorney  
15 and Wyoming County in this part. And I think what it really  
16 does is send a chilling effect out for all people that may or  
17 may not have the prosecutor charges against them pending what  
18 then can they do? They come before you, for whatever reason,  
19 looking for the Federal Courts to get involved, and ultimately,  
20 the Federal Court is tying his hands because of this one thing.

21           The pre-arrest review, as it were, doesn't lie with the  
22 Federal Court, it should lie with the prosecutor, and he has to  
23 make those determinations, and that's the harm to the  
24 prosecutor and that's the harm to Wyoming County.

25           THE COURT: Thank you very much.

1 MR. WALCZAK: Your Honor, if I could very briefly respond.

2 THE COURT: Yes.

3 MR. WALCZAK: Your Honor focused on provocative. I would  
4 note that provocative is not in the statute, that's not the  
5 standard, that is the standard Mr. Skumanick has chosen to  
6 apply, that's not in the statute. Mr. Hailstone indicated that  
7 there would be a trial and the kids would have to come and  
8 explain the circumstances, they don't know about distribution,  
9 Mr. Skumanick indicated he did not have any evidence that these  
10 kids distributed the photographs.

11 And it's my understanding, and I don't practice criminal  
12 law, it's my understanding there is still a right not to take  
13 the stand in a criminal or juvenile proceeding and not to be  
14 forced to explain. The burden is on the Government, the burden  
15 of proof in a criminal case is on the Government. If they don't  
16 have the evidence, then, that's it.

17 Third, two very quick last points. I appreciate that Mr.  
18 Skumanick may be well-intentioned here, but I would harken back  
19 to Justice Brandeis' famous quote in *Olmstead v. United States*,  
20 277 U.S. 438 at 485, it was most recently cited by the U.S.  
21 Supreme Court in a case called *Chandler v. Miller*, 520 U.S. 305  
22 at 322, 1997, that's a case where the Supreme Court struck down  
23 a random drug testing program for public employees.

24 And the quote is;

25 "Experience should teach us to be most on our guard to

1 protect liberty when the Government's purposes are beneficent.  
2 Men born to freedom are naturally alert to repel invasion of  
3 their liberty by evil-minded rulers. The greatest dangers to  
4 liberty lurk in insidious encroachment by men of zeal  
5 well-meaning but without understanding."

6 Your Honor, that's what we have here. Mr. Hailstone says  
7 we are trying to tie the hands of the prosecutor, we are not  
8 tying the hands of the prosecutor, but we are trying to stop a  
9 prosecutor who is way beyond his authority.

10 THE COURT: Okay, thank you. What I wanted to do, the  
11 Plaintiff has filed a brief. I would like to give the Defense  
12 an opportunity until 2:00 tomorrow afternoon to file a brief,  
13 all right. And I think they filed a brief that's 30 pages, but  
14 any aid you could give the Court. I'm going to take this under  
15 consideration, and Mr. Skumanick had agreed to delay bringing  
16 the charges against these persons in this matter so that we  
17 could hear this hearing today.

18 MR. SKUMANICK: As an officer of the Court, you have my  
19 word, no charges will be brought until this Court reaches a  
20 decision.

21 THE COURT: Okay, thank you very much. We will take it  
22 under advisement, hopefully, by Monday or Tuesday, so we can  
23 look at all of these aspects of your argument. Thank you very  
24 much.

25 (At this time the proceedings were adjourned.)

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

1  
2  
3 I, KRISTIN L. YEAGER, Official Court Reporter for the  
4 United States District Court for the Middle District of  
5 Pennsylvania, appointed pursuant to the provisions of  
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7 that the foregoing is a true and correct transcript of the  
8 within-mentioned proceedings had in the above-mentioned and  
9 numbered cause on the date or dates hereinbefore set forth; and  
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11 been prepared by me or under my supervision.

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13 S/Kristin L. Yeager  
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Official Court Reporter

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