

Luzerne County Court scandal

March 1 Crime of punishment?

Parents question Ciavarella's rulings

By [Terrie Morgan-Beseckertmorgan@timesleader.com](mailto:Terrie.Morgan-Beseckertmorgan@timesleader.com)
Law & Order Reporter

Phillip Swartley isn't sure what was worse: the endless pushups and jumping jacks at 7 in the morning or the spit that would fly from his counselors' mouths as they screamed at him inches from his face.



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Phillip Swartley, 15, and his mother, Amy, say Phillip is still struggling to recover from emotional harm he suffered after being sent away to a juvenile detention facility for 10 months for stealing change from several cars.

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Kimberly Bryk, 36, of Exeter Township holds a photograph of her daughter, Jamie. Bryk said Jamie, now 18, has never been the same after spending more than a year in several juvenile treatment facilities for getting into a fistfight with another girl.

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At age 14, the Wilkes-Barre youth had been declared a juvenile delinquent and sent away for treatment, first to a wilderness-style juvenile detention camp and later to a reformatory school.

His crime? He and a friend entered several open cars in Ashley and stole some change, a pre-paid cell phone and a portable music player, he and his mother, Amy, said.

Suddenly the once carefree, basketball-playing teen found himself locked up for 10 months. Each day he struggled to control the rage that was building inside as he worked to earn his release.

What he could not control, he and his mother said, is the sense of helplessness and anger that still haunts him today as he tries to comprehend why he was put away for a misdemeanor crime that, if committed by an adult, likely would have resulted in probation and a fine.

It's a question thousands of other juveniles and their parents asked during the 12 years now-disgraced Judge Mark A. Ciavarella Jr. presided over Luzerne County's juvenile court.

People such as Kimberly Bryk of Exeter Township and her daughter, Jamie, who spent more than a year lodged in juvenile detention facilities for a fist fight with another girl, and Sandy Fonzo of Wilkes-Barre and her son, Ed, who bounced in and out of several detention facilities after he violated probation on an initial charge of possession of drug paraphernalia.

Today those parents and their children think they may have an answer:

Ciavarella and Judge Michael Conahan pleaded guilty on Feb. 12 to accepting more than \$2.6 million in kickbacks in exchange for rulings that favored the PA Child Care and Western PA Child Care juvenile detention centers formerly co-owned by Butler Township attorney Robert Powell.

Federal prosecutors allege, in part, that Ciavarella benefited financially by sending children to the centers even when probation department officials recommended against detention.

The judges, who will be sentenced in several months, have agreed to serve more than 7 years in prison.

As the judges await their sentencing, the Swartleys, Bryk and Fonzo say they are left to deal with psychological and emotional harm that resulted from what they believe were unjust sentences.

They and dozens of other families, many of whom have joined several class action lawsuits, tell tales of a legal system that went terribly awry, yanking first-time offenders who had committed minor offenses away from their families for months.

Amy Swartley and the other parents acknowledge their children committed the crimes for which they were charged. And they agree that they deserved to be punished and would have benefited from a treatment program.

The problem, they say, is that Ciavarella was too quick to send children to outside treatment facilities when probation and outpatient counseling might have worked equally well. Though he has admitted accepting kickbacks, Ciavarella has adamantly denied he sent children away in exchange for money. In several interviews before charges were filed against him, Ciavarella insisted his decisions were always based on what he believed was the best interest of the child.

A review of Ciavarella's sentencing habits show he has always been prone to send children away, even before 2003 – the year he has admitted he began taking kickbacks. Statistics from the state show the county's placement rate averaged 20 to 24 percent from 2002 to 2006, the latest data available, compared to a statewide average of about 10 percent.

Regardless of whether Ciavarella's actions were based on his judicial philosophy or for his

financial benefit, parents say the ramifications for the children he sentenced have been severe. They contend that, rather than help their child, their incarcerations left them indelibly injured and jaded against the justice system.

Swartley's son, Phillip, now 15, suffers from such extreme anxiety that he can't be in crowds; Bryk's daughter, Jamie, 18, still has scars on her arms from the cuts she inflicted upon herself while locked up; Fonzo's son, Ed, 21, was unable to control his pent up anger and is now in a state prison on assault charges.

In Bryk's case, her mother said Jamie's ordeal began in 2005, when she and another girl got into a fight over a boy at a local bowling alley. It was her first offense.

"A week later we got a letter saying we had to go to court. We went to the probation department. My husband asked if we needed a lawyer and they said absolutely not," Bryk said.

Bryk, 36, said she was given no chance to speak at the hearing before Ciavarella, which lasted no more than 60 seconds.

"They took her away in shackles. I was 4 □ months pregnant. My husband pretty much carried me out of there," she said.

Jamie was initially placed in PA Child Care for 1 □ months. She was next sent to Vision Quest. She was supposed to be there three to six months, but was held for nine months after she started to self mutilate by cutting herself – a behavior Bryk said she learned at the center.

"Prior to her cutting herself she told me of how kids there were cutting themselves and then, lo and behold, she started cutting herself," Bryk said.

Kimberly Bryk said she hired an attorney, who was finally able to get Jamie transferred to the Bridgeview treatment center in Wilkes-Barre. She stayed there another 1 □ months before being released home.

Today, Bryk said her daughter is trying to rebuild her life. She is being home-schooled and hopes to graduate this year. But the psychological scars of her incarceration remain.

"It absolutely harmed her," Bryk said. "She hates the law and doesn't trust people. I really truly believe that place screwed her up."

Phillip Swartley bears emotional scars as well.

He was released from custody eight months ago, but said he still can't shake the feeling that he's about to be "jumped" every time he walks into a crowd.

It's a defense mechanism he developed following his stay at the Glen Mills reformatory school near Philadelphia.

His fear became so intense that his mother had to remove him from school. He's now educated at home by tutors.

“Once he got released home, every time I’d try to get him to go to school he’d curl up in a ball and become physically sick,” Amy Swartley said.

Phillip, also a first time offender, was sent to the Adventure Challenge Therapy Camp in Jim Thorpe, formerly known as Camp Adams, in September 2007 for several days before being transferred to Glen Mills.

The camp, operated by the nonprofit Youth Services Agency, is a wilderness-style program that focuses on physical training and teaching children discipline.

It was a favorite of Ciavarella’s. State statistics show that an average of 70 percent to 80 percent of the children who appeared before him from 2001 to 2008 were sent to that camp over some other facility. Prosecutors have not alleged any financial connection between Ciavarella and Youth Services.

Swartley said each day would start about 6 a.m. After breakfast, the juveniles took part in vigorous physical training exercises that Phillip said pushed some to the limit.

“They’d make you jump up and down, do pushups, situps,” he said. “Some kids have disabilities and can’t get down do a pushup and get back up &hellip If one person messed up they’d make the whole group start over again.”

The time Swartley spent at Glen Mills was far more difficult, he said.

Ciavarella often sent children there who were booted from a local school district for disruptive behavior. Swartley and his mother insist that, other than some truancy issues, he had no other problems at school.

At Glen Mills, Swartley said he found himself thrown in with dozens of juveniles, many of whom had committed far more serious crimes than he had. At 5 feet, 5 inches tall and 100 pounds, he was an easy target.

“Kids would try to take your sneakers because you were the new one. I couldn’t do anything about it. If I told the staff, everyone would say he’s a snitch. That would make it even worse so you were better off keeping your mouth shut,” he said.

Things were extremely regimented and he often had trouble dealing with the staff.

“Sometimes they’d have you standing there for hours with the staff yelling in your face. They expect you not to make any facial expressions, not to look away or look down,” he said. “I understand we’re juveniles and we did wrong, but you don’t have to treat us like we killed somebody.”

Ciavarella had sentenced Swartley to an indefinite stay at the school. He was released after the Juvenile Law Center in Philadelphia, a juvenile rights advocacy group, filed a court petition on his behalf.

While she’s glad her son is home, Amy Swartley said he and she live in a constant state of fear that even the slightest technical violation could send Phillip back to an out-of-home

placement.

“Everyone knows he’s on probation. They know all it’s going to take is to say ‘Phillip hit me’ or ‘Phillip took this’ and he’s gone,” Amy said.

Ciavarella was known to have a zero tolerance policy for children who violated probation, recommitting some over and over again.

That was the case of Fonzo’s son, Ed.

Ed was a 17-year-old senior at Coughlin High School in September 2003 when he was charged with possession of drug paraphernalia

At first, Fonzo said she and her husband welcomed the chance to bring their son before Ciavarella. Ed had been giving her a hard time, staying out late and being disrespectful, and she figured the judge would give him a stern lecture.

“We thought we’d put a scare into him. That would straighten him out and it would be the end of it,” Fonzo said.

It was Ed’s first offense, so Fonzo didn’t hire an attorney, expecting nothing more than probation. She was stunned when Ciavarella immediately had him taken into custody and transported to PA Child Care, where he remained for a month pending a psychological evaluation.

Ed was a standout wrestler. Numerous teachers and coaches wrote letters on his behalf while he was at that center, she said. He was looking forward to being released and regaining his spot on the wrestling team.

But Ciavarella refused requests to send him to outpatient counseling and instead sentenced him to four months at the Northwestern Academy boot camp in Coal Township, a military style program.

After his release, Ed was placed on probation. Fonzo said she thought that was the end of it. But one week before his probation was to end, he got into a fight at a local swimming hole and was charged with simple assault.

Certain that if he appeared before Ciavarella he would be sent away again, Ed fled the state, Fonzo said. His parents located him about a month later and brought him back, but did not notify probation because they, too, were certain he’d be sent away.

For the next two years he lived without incident. Then, in the fall of 2005, Ed was involved in a minor traffic accident. Police ran his license plate and learned there was an arrest warrant for him for failing to appear on the juvenile probation violation.

By this time Ed was 19. He had a full-time job in the construction industry and was working toward his GED.

Under state law, juvenile court can retain jurisdiction over a person until they reach age 21. Ed

went before Ciavarella and was sent away again – this time for 120 days to Western PA Child Care.

“For two years he had a normal life, then he gets ripped out of his life again for a probation violation. It was just ridiculous,” Fonzo said.

What’s even more upsetting, Fonzo said, is that Ed was tried in adult court on the simple assault charge – the one that led to the probation violation – and was found not guilty. By that time he had been released from Western PA Child Care on the probation violation.

Fonzo said she believes pent up anger from his unjust incarcerations helped fuel a rage within her son that he was unable to control.

In November 2006 that rage exploded on a man with whom Ed got into an argument while at a party. Ed, a weightlifter who stands 6 foot 1 and weighs 230 pounds, punched the man in the face, injuring him so badly that he required two surgeries. He was tried and convicted of aggravated assault and other charges in 2008 and is now serving a 3-to-6-year sentence in prison.

While she agrees Ed has to take responsibility for his actions, Fonzo said she can’t help but wonder how his life might have turned out had he never been sent away that first time by Ciavarella.

Ed had missed going to the state wrestling championship by just a few points. He was looking to earn a scholarship to college through wrestling. By the time he returned from the boot camp he was so far behind in school he could not catch up and dropped out.

“If he was in school his senior year and got a scholarship, none of this would have happened,” she said.

Ed is currently serving his sentence at the State Correctional Institution at Mercer. Fonzo said she can only hope he will overcome the rage he feels for the justice system once he is released. In the meantime, she’s dealing with her own feelings of guilt.

“You feel like a failure, like you failed your kid because there is nothing you could do. I keep trying to tell my son you did not deserve this. He has no faith and no hope.”

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Terrie Morgan-Besecker, a Times Leader staff writer, may be reached at 570-829-7179.

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