

COMMENTARY

PRIVATIZATION OF JUVENILE DETENTION CENTERS

A Review of the Ciavarella Judicial Corruption Case
& the Need for More Governmental Oversight of Private Juvenile Detention Centers

by Vanessa M. Cross, J.D., LL.M.



On Friday, February 18, 2011, Mark A. Ciavarella, Jr., Pennsylvania's former Luzerne County Common Pleas juvenile court judge, was convicted by a federal jury on 12 of 39 counts of racketeering. This judicial corruption case has galvanized national attention regarding for-profit incentives under privatization of juvenile detention centers whose profit motive is in substantial part to increase community detention. The Ciavarella case illustrates how juvenile justice policies can be inappropriately influenced to achieve this very result.

A more vigorous study and debate across the nation is in order as it relates to decades of growth related to juvenile detention, with disparate impact among Black and Hispanic minority groups in the United States. Where the privatization of juvenile detention centers is adopted by a community, the Ciavarella case illustrates the crucial need for stringent state oversight of private juvenile detention centers' efforts to grow their businesses.

Privatization Fuels Judicial Corruption In Luzerne County, Pennsylvania

In 2002, the county-run juvenile detention center in Luzerne County, Pennsylvania was closed. This was encouraged by then judges Mark Ciavarella and Michael Conahan, both of whom presided over juvenile court proceedings in the county. Former judge Conahan helped PA Child Care, LLC, a privately owned company co-owned by his personal friend attorney Robert Powell, to obtain contracts with the county government to house juvenile youth offenders.

PA Child Care was then a newly formed for-profit detention center with a sister facility, Western PA Child Care operating out of Wilkes-Barre, PA. The contracts with the county government were reported to value in the tens of millions of dollars.

Ciavarella, the presiding juvenile court judge, apparently sent youth to PA Child Care and its sister facility

in droves. The federal verdicts for racketeering were related to his taking payments that he described as a "finder's fee" to the tune of approximately \$1 million dollars from these facilities. Testifying in his defense in the federal case, Ciavarella stated that he received the money from the builders but believed that his only wrong-doing was not reporting this income on his tax returns.

In the wake of the Ciavarella case, the Pennsylvania Supreme Court found just cause to overturn 4,000 juvenile convictions issued by Ciavarella. Associated Press (AP) reports provide statements from youth detained under Ciavarella's rulings. According to the AP, kids were as young as 10 years old.

In February 2009, Ciavarella and Conahan plead guilty to honest services fraud and tax evasion. This plea with federal prosecutors would have resulted in prison sentences of 87 months. U.S. District Court Judge Edward M. Kosik rejected the plea deal, ruling that the former judges failed to accept responsibility for their actions.

Subsequently, a federal grand jury in Harrisburg returned a 48-count racketeering indictment against both judges. Conahan plead guilty to a single racketeering charge on July 23, 2010 and to date awaits sentencing. Ciavarella was convicted on February 18, 2011 and to date awaits sentencing from the federal racketeering verdict.

A Look at National Statistical Reports

As seen in the Pennsylvania federal racketeering cases, it is important to keep a close watch on growth patterns related to juvenile detention when for-profit incentives are added into the equation. This is particularly important for communities who have elected to transfer responsibility for incarcerated citizens from the public sector to private companies.

"Between 1985 and 1995, the average daily population in the Nation's publicly operated juvenile detention centers increased by approximately 72 percent, resulting in a 642-percent increase in the number of overcrowded detention centers," states a 2000 report of the Office of Juvenile Justice and Delinquency Prevention

COMMENTARY

PRIVATIZATION OF JUVENILE DETENTION CENTERS

A Review of the Ciavarella Judicial Corruption Case
& the Need for More Governmental Oversight of Private Juvenile Detention Centers

by Vanessa M. Cross, J.D., LL.M.

(OJJDP).¹ "Most of the crowding is due to greatly increased rates of detention for minority youth."

Juvenile detention rates for Blacks and Hispanic youth had respectively increased by 180 and 140 percent from 1985 to 1995. The juvenile detention rates for white youth had decreased by 13 percent during the same period.

The national statistics regarding the juvenile detention of female youth also reports growth that correlates with the growth in adult female incarceration rates. Of the nearly 14 million nationwide, non-traffic arrests reported in 2009, 25.3% or 3,462,872 were females.² Of the females arrested in 2009, 17% were under the age of 18 and 4.7% were females under the age of 15.³ Black females were 2.5 times more likely than Hispanic females and nearly 4.5 times more likely than white females to be incarcerated in prison, jail or detention centers.

Conclusions and Recommendations

The Pennsylvania Supreme Court's opinion overturning thousands of juvenile convictions provides that Ciavarella ran his courtroom with "complete disregard for the constitutional rights of the juveniles," including the right to legal counsel and the right to intelligently enter a plea.⁴

In response to the so-called "cash-for-kids" corruption case in the Pennsylvania court system, the

Interbranch Commission on Juvenile Justice, a panel created by the former Pennsylvania governor Ed Rendell and the Pennsylvania General Assembly, found a breakdown of state oversight and "serious and chronic malfunction" within the Luzerne County juvenile court system.

Absent a community maintaining public sector juvenile detention centers, additional oversight procedures should be firmly in place upon privatization. In May 2010, the Commission issued dozens of recommendations regarding the Pennsylvania juvenile justice system, including increasing access to legal counsel for juveniles, reforming the board that regulates ethics and disciplines judges, and examining the use of courtroom shackles in juvenile court proceedings.⁵ The recommendations of Pennsylvania's Interbranch should be closely examined and considered by communities considering privatization of either detention centers or prisons.

It is ethically unsound and should be against public policy to allow juvenile detention centers to actively lobby for the passage of laws that could have the effect of increasing the detention and incarceration within communities. Government agencies charged with the administration of the juvenile justice system and entertaining privatization of juvenile detention centers should consider limiting certain types of lobbying efforts and require public reporting of political lobbying efforts by private-firm juvenile detention centers. Jurisdictions can consider legislating these issues or contracting governmental agencies can include lawful contractual terms that limit these private firms' lobbying efforts – especially judiciary lobbying – based on public policy considerations.

There is a clear need for governmental oversight where privatization of juvenile detention centers occurs within a community. This is important to ensure that privatization does not fuel judicial corruption, as illustrated in the Ciavarella case, or lead to an increase in juvenile detention that is neither safe or healthy for communities.

1 Data cited in the *ODJJP Fact Sheet Resources for Juvenile Detention Reform* are taken from the Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities, 1985–1995 (<http://www.ncjrs.gov/pdffiles1/ojdp/fs200018.pdf>).

2 *Crime in the United States, 2009*, a Uniform Crime Reporting (UCR) Program report (October 2010) (<http://www2.fbi.gov/ucr/cius2009/index.html>).

3 *Women & Girls in the Criminal Justice System – Facts and Figures*, National Criminal Justice Reference Service (NCJRS) (<http://www.ncjrs.gov/spotlight/wgcjs/facts.html>).

4 *In re: Expungement of Juvenile Records and Vacatur of Luzerne County Juvenile Court Consent Decrees or Adjudications from 2003-2008*, 2009 Per Curiam Order In the Supreme Court of Pennsylvania Middle District (http://www.wbcitizensvoice.com/pdfs/ciavarella_rulings.pdf)

5 "Interbranch Commission on Juvenile Justice," May 2010 Report (Pennsylvania) (http://www.aopc.org/NR/rdonlyres/6A64EA29-B7FD-4468-8CD1-075548469ED9/0/ICJFinalReport_100604.pdf)