

## Pennsylvania Supreme Court Silenced Attorney Whistleblowers Who Could Have Reported "Kids for Cash" Judicial Scandal

The New York Time [details](#) what is certainly the biggest judicial scandal in Pennsylvania history:

Things were different in the Luzerne County juvenile courtroom, and everyone knew it. Proceedings on average took less than two minutes. Detention center workers were told in advance how many juveniles to expect at the end of each day — even before hearings to determine their innocence or guilt. Lawyers told families not to bother hiring them. They would not be allowed to speak anyway.



Judge Mark Ciavarella

“The judge’s whim is all that mattered in that courtroom,” said Marsha Levick, the legal director of the Juvenile Law Center, a child advocacy organization in Philadelphia, which began raising concerns about the court to state authorities in 1999. “The law was basically irrelevant.”

Last month, the law caught up with Judge Mark A. Ciavarella Jr., 58, who ran that juvenile court for 12 years, and Judge Michael T. Conahan, 56, a colleague on the county’s Court of Common Pleas.

In what authorities are calling the biggest legal scandal in state history, the two judges pleaded guilty to [tax evasion and wire fraud](#) in a scheme that involved sending thousands of juveniles to two private detention centers in exchange for \$2.6 million in kickbacks.

Following the revelation of the scandal, the Interbranch Commission on Juvenile Justice [was commissioned](#) by an act of the Pennsylvania General Assembly with the

support of the governor to investigate the scandal. The 11 member commission, which had four appointed by the Chief Justice, three by the Governor and four by the leadership of the House and Senate, authorized investigate circumstances that led to corruption in the juvenile court of Luzerne County resulting in federal criminal charges against two judges, to restore public confidence in the administration of justice and to prevent similar events from occurring there or elsewhere in the Commonwealth.

During the hearings, Commission members [questioned](#) why attorneys had remained silent when they knew about problems in Judge Ciavarella's court. A [summary of the final report](#) included a finding that attorneys had remained silent and that they should be reminded of their ethical responsibilities to speak out about judicial misconduct:

- Ensure that judges and lawyers are aware of their ethical responsibility to report misconduct, and develop educational materials so the general public is aware of how to report judicial misconduct.

The final report criticized attorneys for not fulfilling their ethical obligation to report judicial misconduct and chided the Disciplinary Board for not prosecuting attorneys for not reporting such misconduct.

Perhaps not surprisingly since the 11 member panel was made up of four appointees from the Pennsylvania Chief Justice that another reason for attorneys not speaking out was not considered. That reason was that the Pennsylvania Supreme Court had in the years leading up to the "Kids for Cash" scandal took away the licenses of attorneys who had publicly claimed judges had engaged in misconduct. Attorneys in Pennsylvania had received a very loud and clear message from the Pennsylvania Supreme Court that if they engaged in whistleblowing they could well lose their license.



Judge Michael Conahan

In 1999, Attorney Neil Warner Price was charged with misconduct for accusing a judge had engaged in impropriety in a criminal case he was personally involved in. In giving Price a five year suspension, the Pennsylvania Supreme Court said that he had not met the steep burden of proving the accusations were true and had instead "relied on rumors innuendo and his own perceptions" and that "the vast amount of documentary evidence [Price] presented did not support his claims."

In 2000, Attorney Robert Surrick was charged for alleging that a judge had been motivated by political influence and that "outside intervention" was the only explanation for a negative ruling on a foreclosure matter with which he was personally involved. In that case, the Pennsylvania Supreme Court rejected Surrick's defense that he believed his allegation to be true and instead employed a "reasonable lawyer" standard for measuring whether Surrick had engaged in misconduct under Disciplinary Rule 8.2, the rule governing attorney criticism of judges. The "reasonable lawyer" standard is considered the most strict standard that has been used by some states in enforcing Disciplinary Rule 8.2, governing attorney criticism of judges, i.e. states with a "reasonable lawyer" approach to Rule 8.2 broaden the number of attorneys who can be sanctioned for criticizing judges. Surrick was given a five year suspension.

In 2006, the Pennsylvania Supreme Court dealt with a disciplinary matter involving attorney Eugene Andrew Wrona who had accused a Lehigh County Judge William Ford of misconduct in the handling of a child support matter. In particular, Wrona

alleged in a letter to the presiding judge of the county, a motion for disqualification and in a later press release posted on the website of The Center for Children's Justice - Pennsylvania Chapter, that Judge Ford had helped suborn perjury by participating in or allowing staff members to alter audio tapes of the hearing to remove a false statement witness. The Pennsylvania Supreme Court found that it was not enough that Wrona believed, and still believed, the allegations to be true. The court found Wrona had failed to prove his allegations and that "the general public is well-served" by Wrona's disbarment.

Given the three cases involving two five year suspensions and a disbarment all for speaking out about Pennsylvania county court judges, it is not surprising that that Pennsylvania attorneys chose not to say anything rather than accuse Luzerne County judges Mark A. Ciavarella Jr. and Michael Conahan of misconduct in the "Cash for Kids" kickback scheme. Any attorney who dared to lodge such allegations faced the real possibility they would lose their license. Should any of those attorneys dared to take that risk, that attorney would have faced a shifting burden of proof that placed the responsibility of proving substantial details of the kickback scheme. Even if the attorney can successfully prove that off, he might still have to spend a year or more defending himself against disciplinary charges that damage his reputation and cost him a small fortune. Most attorneys would choose to remain silent in the face of possible judicial misconduct than pay off.

In imposing the lowest threshold for discipline (the "reasonable lawyer" standard) in enforcing Rule 8.2, the Pennsylvania Supreme Court chilled attorney free speech and slammed the door on lawyers who might have otherwise blown the whistle on the outrageous judicial misconduct in Luzerne County. In its harsh sanctions of attorneys who accused judges of misconduct, the Pennsylvania Supreme Court was not acting to protect the public but instead to protect their colleagues from criticism they considered unseemly. The public - including countless families and hundreds of children - paid a hefty price for the Court's silencing of attorney free speech.