



A8 || THE CITIZENS' VOICE | SUNDAY, FEBRUARY 20, 2011

[THE UNITED STATES OF AMERICA V. MARK A. CIAVARELLA JR.]

Ten days of drama, intrigue: Ciavarella trial at a glance**DAY 1:***Monday, Feb. 7, 2011*

Overruling defense objections seeking a more thorough questioning of prospective jurors about media-induced bias, U.S. District Judge Edwin M. Kosik pushes through jury selection in one day.

**Judge Edwin M. Kosik****DAY 2:***Tuesday, Feb. 8, 2011*

In opening arguments, the prosecution alleges Ciavarella turned the courthouse into a "cash cow," while the defense hints Ciavarella might take the stand in his own defense.

DAY 3:*Wednesday, Feb. 9, 2011*

Robert K. Mericle and Robert J. Powell testify they paid Ciavarella and former judge Michael T. Conahan \$2.8 million. Mericle says his payments were legal. Powell says he was extorted.

DAY 4:*Thursday, Feb. 10, 2011*

Powell testifies he feared the judges would stop sending juveniles to his centers and ruin him financially. He said Ciavarella pressured him to "hold the water" and lie to investigators.

**Robert J. Powell, witness for the prosecution****DAY 5:***Friday, Feb. 11, 2011*

Stephen Carpenito, Lawrence Durkin and Jeffrey McCarron, three attorneys who appeared in Ciavarella's court in cases involving Mericle or Powell, say he never revealed his relationship and financial ties to the two men.

Quote-unquote

Quotes from the courtroom during the final days of Mark A. Ciavarella's corruption trial:

Feb. 15 – Day 7**Mark Ciavarella, Defendant:**

"I never asked Bob Powell for a dime. The only money I ever got from Bob Powell was rent money."

"You couldn't demand anything from Bob Powell. He was a self-made man. He had an ego as big as this courtroom. No one could extort Bob Powell. Not a president, not a pope, not a judge."

"I will tell you I filed a fraudulent tax return in 2005. You won't get any argument from me... I filed a fraudulent tax return in every year but 2004."

Feb. 16 – Day 8**Gordon Zubrod, Assistant U.S. Attorney:**

"Mark Ciavarella's essential defense is 'I didn't rob the bank, I just drove the get-away car.' It doesn't matter."

"You can't take money for doing your job. Judge Ciavarella was the juvenile court judge. As juvenile court judge he took steps to get the new facility built. If the county wasn't going to build it, he was going to make sure it was built privately."

Al Flora, Defense attorney:

"The admission to tax filing violations doesn't mean Mark Ciavarella paid a bribe or a kickback. It doesn't mean he extorted Robert Powell."

"He (Ciavarella) acknowledged standing there that this was not a bribe of a kickback, it was a finder's fee. Why didn't the government challenge him? They didn't challenge him because they couldn't."

Feb. 18 – Day 9**Cindy Ciavarella, Defendant's wife:**

"I'm doing OK. Holding up. Supporting my husband. It's the worst nightmare that you can even imagine. It's horrible for your family. I don't wish it on anybody, that's for sure."

Feb. 19 – Day 10**Flora:**

"The jury rejected 95 percent of the government's case. The government really got hurt today on this entire case and it stands for the proposition of what Mark Ciavarella said all along was true: he never took a kickback, he never took a bribe and he never extorted Robert Powell."

Peter J. Smith, U.S. Attorney

"The defendant, and this should be noted by everyone, has been found guilty of racketeering, one of the most serious offenses in the criminal code, originally intended to be aimed at thugs and street criminals — organized crime. It is no small thing, no right thing, for any public official at any level of the government to stand convicted by a jury of the crime of racketeering. I find it interesting that a man just convicted of racketeering is claiming any sort of victory out there today. I wonder what he would consider a defeat."

Sandy Fonzo, mother

Her son committed suicide after falling into a depression triggered by his experience in Ciavarella's court. She confronting the former judge outside the courthouse.

"My kid's not here anymore! My kid's not here! He's dead! Because of him! He ruined my (expletive) life! I'd like him to go to hell and rot there forever! No! You know what he told everybody in court? 'They need to be held accountable for their actions. You need to be! Do you remember me? Do you remember my son? An all-star wrestler? He's gone. Shot himself in the heart. You scumbag! You ruined my (expletive) life!'"

Ciavarella:

"Absolutely never took a dime to send a kid anywhere. If that was the case, that would have been in this trial. You don't think the government would have put me on trial for that if that was the case? Never happened. Never, ever happened."



JASON FARMER / TIMES-SHAMROCK

Former Luzerne County Judge Mark A. Ciavarella Jr. is surrounded by members of the media after he was found guilty on 12 of 39 federal charges on Friday.

The attorneys

Case study: How prosecution, defense questioned Ciavarella

By Michael R. Sisak

STAFF WRITER

SCRANTON — The prosecutor stepped away from the podium, letting Mark A. Ciavarella Jr.'s confessions hang in a beat of awkward silence.

"Let's just summarize," Assistant U.S. Attorney William S. Houser said, turning back toward Ciavarella, the former Luzerne County judge turned defendant turned confessor. "You're guilty for the 2005 tax year?"

"Yes, sir."

"And the 2006 tax year?"

"Yes."

And the 2003 tax year. And conspiracy to defraud the government.

In the first 10 minutes of a captivating, three-hour cross-examination, Houser, a career prosecutor, had compelled Ciavarella to concede guilt on four of the 39 charges in his indictment. And there would be more.

After an intermission for lunch, last Tuesday, Houser pressed Ciavarella into divulging that a series of transactions encapsulated in the most serious charge, racketeering, were part of a scheme to avoid paying taxes.

Ciavarella also admitted under Houser's questioning to filing fraudulent statements of financial interest, presiding over civil cases where he had an ethical duty to recuse himself, pocketing \$15,000 to \$20,000 in campaign cash and failing to fully consider the legality of accepting a finder's fee from a commercial developer.

"I'd say it was satisfying," Houser, 52, said Friday after a jury convicted Ciavarella on 12 charges, including the tax and conspiracy counts, racketeering and four counts of mail fraud that stemmed from the fictitious financial interest statements.

The jury acquitted Ciavarella on 27 counts, including that he accepted bribes and kickbacks and that he extorted the former co-owner of a for-profit juvenile detention facility, Robert J. Powell.

Powell, the star prosecution witness, escaped a heavy cross-examination last week after Judge Edwin M. Kosik short-circuited attempts by Ciavarella's attorney, Al Flora Jr., to question him about high credit card bills that he said indicated a lavish lifestyle. The interruption, and Powell's seeming impenetrability, prompted Flora, who approaches his cross-examinations extemporaneously, to quickly retreat.

Houser, in sharp contrast, said he worked on the Ciavarella cross-examination for four days,



KRISTEN MULLEN / THE CITIZENS' VOICE

Assistant U.S. Attorney Gordon Zubrod, left, and Assistant U.S. Attorney William Houser.

aided in his research and preparation by Assistant U.S. Attorney Michael Consiglio, who assisted on the Ciavarella trial, and Christian A. Fisanick, the chief of criminal prosecutions.

"That wasn't something that just happened at the spur of the moment," Houser said.

Flora, who declared the verdict a "major victory," despite the possibility of a 12-to-15-year prison sentence, said Ciavarella had planned all along to admit "what he did wrong."

"With regard to things he didn't do, he's not going to admit to it," Flora said, "even if it means working out a deal with the government."

Houser flexed his research and preparation repeatedly during the cross-examination, playing a videotaped news interview and producing a court transcript to splash doubt on Ciavarella's claims about the timing of the finder's fee arrangement and widen the scope of things he did wrong.

The videotape, of a 2002 news report from WBRE-TV, showed Ciavarella and former judge Michael T. Conahan discussing their plan to close of the county's dilapidated juvenile detention center. At the time, Houser said, the former judges were aware they would receive a finder's fee from the developer, who was building a for-profit detention facility.

Ciavarella, in earlier testimony, said he considered the finder's fee, "legal money."

"Who told you that was legal money?" Houser asked.

"Rob Mericle."

"Anybody else?"

"No."

Houser pondered Ciavarella's logic and legal acumen. He has served as an attorney for Mericle and, at the time of their discus-

sion, was a sitting judge.

"When did you start to turn to Rob Mericle to give you legal advice?" Houser wondered.

Ciavarella shared half the finder's fee with Conahan, Houser said, as a reward for the official action he took in 2001 and 2002 to ensure the for-profit facility would be built. Those steps included an order ending juvenile placements at the county facility, the elimination of the facility's staff from the court's budget and the return of its license to the state Department of Public Welfare.

"I thought he was entitled to the finder's fee as much as I was. He was the individual who made the project happen," Ciavarella testified. "He got the people in the room to do what they needed to do to get the job done. He did a heck of a job. A lot more than I ever did."

"And he did it all in his capacity as a judge?" Houser asked.

"Yes."

"Are judges in the business of paying finder's fees?"

"No," Ciavarella testified. "I let him participate in the finder's fee I was entitled to. It was my decision to let him participate in what I was also receiving."

Ciavarella, backing away from the idea he was rewarding Conahan, called sharing the finder's fee, "more of a friend thing than a business thing."

"Isn't it true you're changing your testimony because you're boxed into a corner?" Houser asked.

Conahan, according to Ciavarella, directed Mericle sent the payment to the co-owner of the for-profit facility, Robert J. Powell, who passed it through Schuylkill County attorney and banker Robert Matta, who transferred it to the account of the Conahan-owned firm Beverage Marketing.

Conahan engineered the series of transactions, Ciavarella said, because he wanted to use part of the payment to pay Powell \$50,000 for use of his luxury yacht, Reel Justice. The funds were also placed in the Beverage Marketing account, Ciavarella later confessed, because Conahan had agreed to pay Ciavarella his share of the finder's fee as a "fictitious loan."

"That's why I never paid taxes on this, because I considered this a loan," Ciavarella testified. "I may be dumb, but I'm not stupid."

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Former state Sens. Musto, Mellow await trial on charges

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Two other former county judges, Michael T. Toole and Michael T. Conahan, Ciavarella's co-conspirator, are awaiting sentencing after pleading guilty in U.S. District Court.

Toole, 51, faces a likely sentence of 27 to 33 months in prison for accepting an illegal gratuity from an attorney and for failing to pay taxes on a "finder's fee" he received from another attorney. His sentencing is scheduled for March 25. Conahan, 58, faces up to 20 years on a racketeering conspiracy charge. His sentencing date is not set.

All three former judges are Democrats.

Former state Sen. Raphael J. Musto, 81, is awaiting trial on charges that he accepted bribes and kickbacks from a construction company and another government official. The Pittston Township Democrat was indicted late last year just a week before his retirement from the Senate after 28 years in office. No trial date has been set.

Prosecutors have not named the construction company involved in the Musto case, but in June, FBI agents seized records of work performed by a Musto-owned building

owner Robert K. Mericle made the \$997,600 payment to Ciavarella that resulted in the former judge's racketeering conviction. Mericle testified at the trial that he had given cash to other politicians.

Mericle, 47, faces 12 to 18 months for failing to report a felony in the Ciavarella case. His sentencing has not been scheduled.

Another former Democratic state senator who retired last year, Robert J. Mellow, 68, is the target of a federal grand jury investigating extortion, money laundering, fraud and related offenses, a federal appeals court wrote in a ruling last week.

The Third Circuit Court of

Appeals confirmed the investigation in denying a motion by Mellow's lawyers to unseal an affidavit used to secure federal search warrants for Mellow's home in Archbald and his office in Peckville in June.

Two other Lackawanna County politicians, Commissioner A.J. Munchak, 64, and former Commissioner Robert Cordaro, 49, are awaiting trial on federal charges that they pocketed at least \$475,000 in kickbacks or bribes from vendors during the four years their Republican administration controlled county government. No trial date has been set.

