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JUDGES IN THE DOCK

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Abstract

This article refers to judges, in the UK and elsewhere, who have themselves been convicted of or accused of a crime, whether while still officiating as a judge, before their appointment, or after their retirement. The most obvious criminal offence of which judges are guilty is bribery. This is considered in this article, but there is a wide range of offences from smuggling to murder, including, along the way, perjury, perverting the course of justice, two judges sent to prison for passing sentences which were much too heavy and one judge imprisoned for passing a sentence which was much too light. It examines the ways in which such judges have been dealt with and disparities of sentence.

Keywords: perjury; perverting the course of justice; points-swapping; sentencing.

[A] INTRODUCTION

When one thinks of judges and criminals, it is usual to think of two discrete groups, but there are occasions when they overlap. There are many reasons for this. This note looks at some instances and also at the different ways in which the judges have been punished.

¹ For this article I have had to rely overwhelmingly on online newspaper reports. Some of these were clearly wrong, and I have not used them. Some reports from reputable sources conflicted with each other. Sometimes I have referred to the discrepancy. More often in these instances I have chosen the source which seemed more plausible or reliable. I have also, reluctantly, had to rely for some information on Wikipedia where the points have not been covered in newspapers or the newspaper sources are no longer available. I have, I hope, included all my sources so readers can follow up if they wish. I owe a large debt of gratitude to Mr H Louis Sirkin, an eminent member of the Ohio bar. He became counsel for Tracie Hunter before her proposed retrial and remains so to this day. He has given me great help in explaining the case with care and patience. The views on that case and other cases are my own, unless otherwise stated.

[B] KEITH BRUCE CAMPBELL: THE JUDGE AS SMUGGLER

Keith Bruce Campbell was born in New Zealand in 1916. He moved to London in the late 1930s. After the Second World War he was called to the bar and built up a practice specializing in divorce law. At that time many barristers were specialists in defended divorces, an area of law which has almost completely disappeared now. He became a QC in 1964. In 1968 he was elected to Parliament as a Conservative Member of Parliament (MP). His stint as an MP was short; he lost his seat in 1970. In 1976 he was appointed a circuit judge. He was known as HH Judge Bruce Campbell, presumably because there was or might be another Judge Campbell.

Apparently he had a friend who was a second-hand car salesman. Together they bought a yacht, *Papyrus*. On a trip to Guernsey in 1983 Campbell and his friend stocked up with 10 cases of whisky, 9460 cigarettes and 500 grams of tobacco. They then attempted to smuggle these into England, but were caught at Ramsgate. When interrogated Campbell initially alleged the items seized were for his own use. At his trial Campbell pleaded guilty and was fined £2,000. This sentence seems light for a judge. In his favour he pleaded guilty and was of previous good character. The sentence may have been in line with sentencing guidelines obtaining at that time. Nevertheless, this criminality by a judge was very serious and obviously an aggravating feature. In fairness, he was clearly ruined. Lord Hailsham LC removed him from office, although he was allowed to keep his judge's pension (Blom-Cooper 2006).

It is not known what possessed the judge to commit this act of folly. Was he persuaded to do it by his friend? Was he greedy or just short of money? Were the goods really for his own use?

[C] CONSTANCE BRISCOE: PERVERTING THE COURSE OF JUSTICE

Constance Briscoe was an achiever. Born in England in 1957, of Jamaican parents, Briscoe was the third of a family of 11 children. Her mother had seven children, including Constance, by her husband and four children by a second relationship with Garfield Eastman. Briscoe worked her way through university, supporting herself by undertaking various menial jobs, and in 1983 she was called to the bar. Over time she built a successful and distinguished career, practising mainly in criminal law, although in 2007 her application to become a QC was rejected (Davies

2014). In 1996 she was appointed a recorder (a part-time judge) and was one of England's first black women judges.

Briscoe first came to the attention of the public in 2006 when her autobiography, *Ugly*, a 'misery memoir', was published. In the book Briscoe claimed that during her childhood she had suffered constant physical and emotional abuse from her mother, who had beaten and starved her, and subjected her to a commentary of disparaging and belittling remarks (Weathers 2008). The book was a huge success; nearly a million copies were sold and it featured for 20 weeks on the *Sunday Times* hardback bestseller list. It was translated into 16 languages (Cheston 2014). In 2006 Briscoe was nominated for a Woman of the Year award (Darley Anderson 2022). She became something of a celebrity, appearing on television and radio (Davies 2014).

Her mother strongly denied the accusations in the book, which she described as 'a piece of fiction' (*The Guardian* 2008) and sued her daughter and the publishers, Hodder & Stoughton, for libel. The trial took place in 2008. (By that time Briscoe had written a sequel, *Beyond Ugly*. It appears that that did not feature in the libel trial.) Four sisters and a brother gave evidence for their mother at the trial (*Evening Standard* 2012). Briscoe's older sister, Patsy, said 'I actually couldn't believe what I was reading' (Clare 2014). None of Briscoe's siblings supported Briscoe. After the trial she said, 'I can quite understand why my family went into collective denial' (*The Guardian* 2008). Notwithstanding that, Briscoe won the case by a unanimous verdict of the jury. They found that the allegations in the book were substantially true.

Briscoe next came to prominence as a result of a case in which she had been neither judge nor party. It involved Chris Huhne and his wife, Vicky Pryce. Huhne was an MP and a rising star in the Liberal Democrat Party. He had twice stood as a candidate in elections for leadership of the party, being a runner-up each time. He became a cabinet minister in the Coalition Government following the 2010 election.

In 2003 he had been guilty of a speeding offence. He already had points on his licence and the points for speeding would have led to his being disqualified from driving. He asked his wife to say that she had been driving the car at the time of the offence. The points would not have led to her being disqualified. She agreed to this and the deceit was successful.

So far so good. Things took a turn for the worse in June 2010 when Huhne left his wife, Pryce, and three children after 25 years of marriage (Pidd 2010). Shortly afterwards in September 2010 Briscoe's partner of 12

years, Anthony Arlidge QC, left her for a woman aged 25 (*The Telegraph* 2012). Pryce and Briscoe were friends and neighbours. According to Huhne they suddenly became firm friends at that time and began plotting Pryce's revenge against him (Huhne 2014). Briscoe had had dealings with the media following the publication of her autobiographies, and she offered to help Pryce get her story about swapping points into the newspapers (Bowcott & Davies 2014).

They approached a freelance journalist, Andrew Alderson, and told him about the points-swapping. However, they falsely told him that Huhne had swapped the points not with Pryce, but with Jo White, who worked for Huhne in his constituency (PA Media Lawyer 2013). Presumably, this was done to protect Pryce. Why Jo White was picked on is a mystery. The allegation was a complete lie and obviously defamatory, as well as possibly exposing White to the risk of prosecution. It was an unfortunate choice because White had not had a driving licence at the time.

Alderson approached the *Mail on Sunday's* news editor, David Dillon, in an attempt to sell the story. Pryce said that she believed about the swap with White because it was what Huhne had told her. She said that Huhne had bullied White into accepting it (Davies 2014). Before the *Mail on Sunday* published the story, it was published by the *Sunday Times* in May 2011. Pryce had confessed her part in the matter to the political editor of the *Sunday Times*, Isabel Oakeshott, in March 2011. Oakeshott knew that the *Mail on Sunday* had been informed about the swap, but did not know that Briscoe was acting as an intermediary for Pryce with the *Mail on Sunday* (PA Media Lawyer 2013).

Briscoe apparently went on purportedly acting for Pryce with the *Mail on Sunday* without keeping her informed, and it appears that it was Briscoe who first spilled the beans to the *Mail on Sunday* that it was Pryce and not White who had taken the points. Briscoe told the *Mail on Sunday* that Pryce had told her about the swap in 2003. The object of this appears to have been to bolster Pryce's story and to counter a suspicion of recent fabrication due to the marriage breakup. It was untrue and Pryce claimed not to know about this conversation. At her trial Pryce said that she had no recollection of the 2003 conversation and had been 'really shocked' when she was told about it during a police interview.

'I got so upset when they started reading [Briscoe's] statement that I had to stop the interview and go outside.' She had turned to Briscoe for legal advice, to sit in on meetings with the *Mail on Sunday* and check contracts. But Briscoe was working 'behind my back' to 'her own agenda' in giving details to the press and police – including

private and embarrassing texts between Huhne and their youngest son, Peter.

‘Certainly I was not expecting a judge and a lawyer, someone who was supposed to be my friend, to go out of her way to tell people, without my consent, that I had taken the points ...

I was having friendly conversations with her, telling her about these issues, and it seems they were being given directly to the press’ (Davies 2014).

Until Briscoe told the *Mail on Sunday* about her alleged conversation with Pryce in 2003, the paper had been treating the story as a marital tiff, of little importance (Huhne 2014).

The allegations about the driver-swap were investigated by the police. Briscoe was interviewed and repeated her story that Pryce had told her about the swap as far back as 2003. She told them that Vicky Pryce had confided that her husband coerced her into accepting the punishment that should have been his. Briscoe also told them that she had had no contact with the newspapers, that she was not close to Pryce, and that she was acting as a simple witness to fact (Dalrymple 2014). In due course she provided two witness statements to the police.

Eventually, Huhne and Pryce were brought to trial. Briscoe was to have been a star witness at their trial. She had been regarded as independent and unimpeachable.² However, when the trial began, in February 2013, the jurors were told by the prosecution that they would not be calling her as she could not be regarded as a ‘witness of truth’ (Davies 2013). This is an extraordinary statement by a prosecutor. Her statement must have been in front of the jury because, as stated above, Pryce referred to it at her trial. The prosecution counsel told the jury in opening that Pryce and Briscoe ‘appear to have cooked up a plan to go and see the press about Huhne taking the points’ (Davies 2013).

In fact Briscoe had been arrested in October 2012. At the time of Pryce’s trial Briscoe had not been charged, but was on bail. It had transpired that Briscoe had lied to the police. In her witness statement to the police she had lied about her relationship with Pryce and about acting as an agent for her with newspapers. She had attempted to present herself as an independent witness. Between June 2010, when Huhne left Pryce, and Briscoe’s arrest, Briscoe rang or texted Pryce 848 times, and Pryce rang or texted Briscoe 822 times. She had altered her witness statement by

² It is not clear what evidence Briscoe would have given. Her evidence of what Pryce had told her would be hearsay against Huhne. It may have been admitted under section 120 of the Criminal Justice Act 2003 as evidence of a previous consistent statement by Pryce.

adding a letter 'T', thereby changing its meaning to suggest that she had refused to speak to journalists, and she thereafter delivered a false copy of the altered statement to an expert so that he could support her claim that the alteration was due to a printer fault (Davies 2014). The police proved her lies about contact with journalists '[a]fter a long legal tussle with the newspapers to get them to disgorge their sources' (Dalrymple 2014).

She was charged with three counts of perverting the course of justice. She pleaded not guilty. Her first trial, in January 2014, resulted in a hung jury (Hartley-Parkinson 2014). At her retrial in May 2014, she was convicted by the jury and sentenced to 16 months' imprisonment made up of four, five and seven months for the three counts (Best 2014). In the event she obtained early release from prison in November 2014, when she had served less than half of her sentence (Davies 2015).

[D] MARCUS EINFELD: PERVERTING THE COURSE OF JUSTICE, PERJURY AND TRAFFIC OFFENCES

Constance Brice was not the only judge to get into trouble in connection with points-swapping. Marcus Einfeld had had a very distinguished career in Australia. Born in 1938, he was called to the bar in 1962, appointed a QC in 1977 and appointed a judge of the Federal Court in 1986. Among many other posts he served as the inaugural President of the Human Rights and Equal Opportunity Commission, the inaugural President of the Australian Paralympic Committee, an executive member of the New South Wales Jewish Board of Deputies and founder and first chairman of the Australian Campaign for the Rescue of Soviet Jewry. Despite his Jewish background, and the fact that he had been a frequent spokesman for Israeli causes, in 1997 Yasser Arafat, President of the Palestinian National Authority, chose him to assist in overhauling the National Authority's legal system (*The Sydney Morning Herald* 2006a)

Einfeld retired from the bench in 2001. Five years later, in 2006, he received an A\$77 speeding ticket for driving at 6.2 mph above the limit. The offence was alleged to have taken place on 8 January 2006 in MacPherson Street, Mosman, a suburb of Sydney. His speed was hardly that of a reckless driver, and the fine should not have posed any great problem for him, but he was determined to be acquitted. The prosecution alleged his main motive was to avoid losing demerit points on his driver's licence (Hall 2012). He already had eight demerit points on his licence. The fine would have left him with one point on his licence (*The Sydney*

Morning Herald 2006b). Presumably, he would still have been allowed to drive so long as there was one point left.

His defence would be to deny that he was driving, not to challenge the speed. He chose to put the blame on an old friend, Professor Teresa Brennan. She now lived in the United States of America (USA) and had been visiting him at the time of the offence. In response to the speeding ticket he made a false statutory declaration, nominating Professor Brewer as the person ‘in control’ of the vehicle at the relevant time. He elected to have the matter tried by a local court. He attached a letter to his written plea notice, addressed to the presiding magistrate, stating: ‘My plea of not guilty is because I was not the driver of the car at the time and place stated ... I am happy to come to court on a convenient day to swear to these facts if required’ (Ackland 2009).

The case came on for hearing on 7 August 2006. By then, presumably, Professor Brennan had long since returned to the USA. Einfeld gave sworn evidence. He appears to have felt that his story needed embellishing. Not only was he not driving the car; he wasn’t even in it. He had lent it to Professor Brennan. Not only was he not in the car; he wasn’t even in Sydney. He had gone to Forster, a coastal town nearly 200 miles from Sydney, on 6 January 2006. To top it all, he did not even know MacPherson Street, the site of the alleged offence. He was successful and the case was dismissed (Ackland 2009).

It is not known why he chose to blame Professor Brennan. However much of a friend she had been, he had not been in touch with her for a long time. He probably thought she would never hear about the case; she never did. When Vicky Pryce and Constance Briscoe originally approached Alderson, the journalist, they falsely accused Jo White of being party to the points swap, an unfortunate choice since she did not even have a driving licence. Einfeld’s choice of Professor Brennan was an even more unfortunate choice. He clearly hadn’t consulted her—he couldn’t have: she was dead. She had been killed in a car crash three years before Einfeld’s speeding offence (Ackland 2009).

He might have got away with this had it not been for some enterprising journalists from *The Daily Telegraph*.³ They investigated and discovered the truth. One of them, Viva Goldner, questioned Einfeld about this. One might have thought that this was a good time for Einfeld to recognize that the game was up, to confess his guilt and throw himself on the mercy of the court. But no, he wished to dig himself into a deeper hole. At this

³ A local Australian tabloid, not to be confused with the English national broadsheet.

stage the story becomes pure farce. Unfazed by the journalists' discovery, Einfeld told Goldner that there were in fact two Professor Teresa Brennans, both of them Australians living in the USA, where both of them had died in car accidents. He had not been referring in court to the one who had died in 2003 (Ackland 2009).

On 9 August 2006 Einfeld gave a television interview in which he re-asserted his innocence. The next day the police began an investigation into whether he had committed perjury. Later he produced a 22-page statement describing the events of that day (Hall 2012).

On 29 March 2007 Einfeld was arrested and charged with a number of offences. The history of what happened thereafter is convoluted. Einfeld was originally charged with 13 offences, but by the time of the trial he was left facing one charge of perjury and one of perverting the course of justice (McClymont 2007).

Einfeld's proposed defence had changed. He still claimed that the fictitious second Professor Brennan had been driving his car. He no longer claimed to have been nearly 200 miles away in Forster. On the day in question he had 'suddenly remembered' that he had a lunch appointment with a journalist, Vivian Schenker, in Freshwater, a suburb of Sydney. Because he had lent his car to Professor Brennan, he had had to borrow the car of his 94-year-old mother to get to the lunch appointment (Ackland 2009).

In the end Einfeld did not go through with this. When the case finally came on for hearing on 31 October 2008, he pleaded guilty to the charges of perjury and perverting the course of justice. He was sentenced to three years in prison, with no opportunity for parole before the end of two years. In the event he was paroled after two years.

The sentence was regarded by many as a harsh one. In the two years since his lies had been exposed, he had been pilloried in the press, with accusations of falsifying his curriculum vitae, including PhDs which had been purchased from US diploma mills.⁴ This seems to have influenced even senior lawyers. There was a call to strip Einfeld of his pension, which Chief Justice Spigelman of New South Wales refused. Pointing out that for retired judges their pensions were a deferred part of their salary, he went on to say that:

[C]riminal law was sufficient punishment, and that it would be even more unusual if the offence 'bears no relationship' to the judge's former duties. Spigelman continued that then-federal Attorney

⁴ See eg *The Sydney Morning Herald* (2006b).

General Robert McClelland and state attorneys-general should ‘impose a cooling off period on themselves’ for reacting to vehement short-term ad hoc media campaigns (Lion 2012).

Sydney barrister, Charles Waterstreet, commented that the maximum fine for making a false declaration about the driver was A\$1,000 (Waterstreet 2009)

It was even thought that there was a whiff of antisemitism in the sentence. Barry Cohen, a former Australian Minister for Home Affairs, observed:

many journalists ... feel it is beholden upon them to mention that a person is Jewish, particularly if they have been naughty ... [Einfeld] received three years in custody ... By comparison ... a young lady living in Canberra got four years for killing her boyfriend. Shortly after Marcus Einfeld was sentenced, Stephen Linnell, one of the top advisers to Victoria police commissioner Christine Nixon, pleaded guilty to three counts of perjury and disclosing confidential information of the Office of Police Integrity. He received an eight-month suspended sentence and a \$5,000 fine. The glaring difference between these crimes and the punishments incurred is extraordinary.

[E] RICHARD GEE: CROOKED CONVEYANCING?

Fortunately, Bruce Campbell and Constance Brice are the only English judges in modern times to have been convicted of any serious crimes. There was a prosecution against another circuit judge, Richard Gee.⁵ He was a former solicitor who was appointed to the circuit bench in 1991. He was clearly a wealthy man. He owned homes in Belgravia, the USA and Portugal; he drove a Mercedes car with personalized number plates (Buncombe 1998). In 1992 suspicions were aroused about his possible involvement in a mortgage fraud (The Free Library 1998). In 1995 he was arrested and charged with conspiring to defraud banks and building societies. The case did not reach trial until 1998.

The allegations were that, while he was still a solicitor, he had carried out conveyancing for a group, led by a woman, in a string of ‘utterly bogus’ transactions (Dyer 1999). The trial lasted 76 days (Dyer 1999); the jury deliberated for a record 13 days (Buncombe 1998); the result was a hung jury. It was planned to hold a retrial, but in a very unusual intervention the Attorney-General issued a *nolle prosequi*, which prevented any retrial. He did this after Gee had produced medical evidence from psychiatrists that he would be a suicide risk if he were to be retried.

⁵ So far as is known, not related to an Australian judge of the same name.

The Lord Chancellor was left with a difficult decision of whether he could rely on a civil standard of proof (balance of probabilities) to dismiss a judge for alleged criminal misbehaviour (proof beyond a reasonable doubt). Judge Gee relieved him of this quandary by resigning in December 1999. It turned out that he was being further investigated by the police for legal aid fraud (Dyer 1999). Apparently nothing came of this. Like Bruce Campbell he was able to keep his pension.

[F] SIR ROBERT MEGARRY: TAX TROUBLE

Bruce Campbell, Constance Brice and Richard Gee were all circuit judges. So far as the High Court is concerned, only one judge has ever stood trial in the dock of the Old Bailey and that was before his appointment to the bench. Robert Megarry was born in 1910, the son of a solicitor. He did not spend much of his time studying as a Cambridge undergraduate and came out with a third-class degree. He then qualified and practised as a solicitor for several years before becoming a barrister in 1944. He went on to develop a successful practice at the bar. At the same time, notwithstanding his poor degree, he also built a career as a lecturer and writer.

He kept his income from the bar and his income from lecturing separate. His clerk looked after the former and his wife looked after the latter. In 1954 he was prosecuted for submitting false tax returns, having omitted to declare certain items of income. It transpired that his clerk had assumed that Megarry's wife was dealing with these and his wife had assumed that his clerk was. He was represented at trial by Frederick Lawton, later to become an eminent Court of Appeal judge. Megarry was acquitted. The trial judge directed the jury that there had been a genuine mistake and Megarry had had no intention to defraud the revenue.

In 1967 he was appointed a Judge of the High Court, Chancery Division. He became an extremely distinguished judge. In addition to his judicial career he was an exceptional academic lawyer, the author of many textbooks, including co-authorship of *Megarry and Wade*, a leading textbook on land law (Blom-Cooper 2006).

[G] MARK CIAVARELLA JR AND MICHAEL CONAHAN: KIDS FOR CASH

In the UK in modern times there have only been the two cases referred to above (Bruce Campbell and Constance Brice) where judges have been convicted of serious crimes. In the USA one is almost spoiled for choice

(see eg Berens & Shiffman 2020). This must be due in part to the fact that there are a vast number of judges in the USA, getting on for about 50,000 (Statista 2022). Another reason is probably the fact that some judges are still elected rather than appointed (Nathan 2012: 433-441). Unfortunately, their behaviour can sometimes be found as part of a general aura of corruption.

By far the most egregious crimes in the USA committed by a judge acting in his judicial capacity were those of Mark Ciavarella, closely followed by his co-defendant, Michael Conahan. It is no exaggeration to characterize Ciavarella's behaviour as wicked.

Ciavarella was born in 1950 and Conahan in 1952. After several years of practising law both were elected as judges on a Democratic ticket in Luzerne County, Pennsylvania. Ciavarella was elected for a ten-year term in 1995, and re-elected for a further ten-year term in 2005. Conahan served as a judge from 1994 till 2007. In the last four years of his tenure, he was President Judge of the County. This post gave him a discretion with the county budget (Urbina & Hamill 2009). Conahan was the presiding judge of the juvenile court (Pilkington 2009); Ciavarella also presided over a juvenile court (Pavlo 2011).

Many judges with a criminal jurisdiction quickly build up a reputation as harsh sentencers, and, less commonly, as lenient sentencers. Ciavarella's sentencing went beyond the bounds of ordinary harshness. Some examples of offences for which he ordered juveniles to be held in a juvenile detention centre were:

- ◇ stealing a \$4 jar of nutmeg;
- ◇ a girl throwing a sandal at her mother;
- ◇ slapping a friend at school, an offence for which a 14-year-old child was held for six months (Pilkington 2009);
- ◇ trespassing in a vacant building;
- ◇ helping a friend shoplift DVDs from Wal-Mart (Chen 2009).

Kevin Mishanski, aged 17 and of previous good character, was facing an assault charge. He had hit a boy causing him to have a black eye. Kevin's mother had been told that he would be put on probation. Ciavarella sentenced him to 90 days in detention. He was taken away in shackles, in front of his mother (Urbina & Hamill 2009).

Edward Fonzo, a promising young athlete in high school and of previous good character, was arrested for possession of 'drug paraphernalia', at

the age of 17. Ciavarella sentenced him to months in private prisons and a wilderness camp (Pavlo 2011).

Hillary Transue was a star student at her high school, who had never been in any kind of trouble. She thought the vice-principal of the school was overly strict. At the age of 14 Hillary carried out a prank. She published a spoof page on MySpace⁶ in which she pretended to be the vice-principal and made fun of her strictness. She made it clear that this was a joke; at the bottom of the page she wrote, 'When you find this, I hope you have a sense of humour.' She was charged with harassment. When she appeared before Ciavarella she thought she might get a stern ticking-off. He did not even allow her to put her case. Less than a minute into the hearing he banged his gavel and said 'Adjudicated delinquent'. He sentenced her to three months in a juvenile detention centre. She was handcuffed and led away in front of her shocked parents (Pilkington 2009; Urbina & Hamill 2009).

Reports differ as to the youngest children sentenced to detention by Ciavarella. One report says they were as young as 12 (Clarke 2021), and others that they were as young as ten (Newman 2011; Rubinkam 2020). Ciavarella 'often ordered youths he had found to be delinquent to be immediately shackled, handcuffed and taken away without giving them a chance to say goodbye to their families' (Rubinkam 2020).

In 1967 the United States Supreme Court had ruled that children had a constitutional right to be advised and represented by counsel. But in Pennsylvania, as in many other states, children could waive that right. About half the children sentenced by Ciavarella had waived that right (Urbina & Hamill 2009). Many of them had been advised by the probation service that they did not need a lawyer because their offences were so minor (Hurdle 2009). Not only did Ciavarella pay little attention to pleas in mitigation by the defendants, 'he also routinely ignored requests for leniency made by prosecutors and probation officers' (Urbina & Hamill 2009). Many of the juveniles were first-time offenders (Clarke 2021).

It may be that Ciavarella was naturally severe, but in order to understand his motivation properly it is necessary to be familiar with the system of private prisons in the USA. The American criminal justice system relies in part on private prisons.

A public prison is not a profit-generating entity. The end goal is to house incarcerated individuals in an attempt to rehabilitate them or remove them from the streets. A private prison, on the other hand,

⁶ An American social network.

is run by a corporation. That corporation's end goal is to profit from anything they deal in.

In order to make money as a private prison, the corporation enters into a contract with the government. This contract should state the basis for payment to the corporation. It can be based on the size of the prison, based on a monthly or yearly set amount, or in most cases, it is paid based on the number of inmates that the prison houses.

Let's suppose that it costs \$100 per day to incarcerate someone (assuming full capacity, including all administration costs), and the prison building can hold 1,000 inmates. A private prison can offer its services to the government and charge \$150 per day per inmate. Generally speaking, the government will agree to these terms if the \$150 is less than if the prison was publicly run. That difference is where the private prison makes its money (Bryant & Brown 2021).

In about 2002, soon after becoming President Judge of the County, Conahan used the discretion he had in fixing the county budget to cease government funding of the county's public juvenile detention centre. He argued that it was in a poor condition and that the county had no choice other than to turn to private detention centres (Urbina & Hamill 2009). Thus he entered into a contract whereby juvenile defenders who were sentenced to be detained would be sent to a private detention centre, which had recently been built. At some time later Conahan entered into a further contract in respect of another private prison. Both private prisons were built by Robert Mericle and co-owned by property developer Robert Powell, an attorney.

The basis of payment under the contracts was that the Government would make payments based on the number of inmates in the prison. Obviously, in order to maximize the profit of these facilities it was important that they should be kept full. Conahan and Ciavarella were bribed to set up these arrangements under a secret agreement that they would ensure that the prisons would be kept full. For this they received kickbacks amounting to \$2.6 million. Conahan was responsible for securing the contracts, and Ciavarella was responsible for the sentencing (Urbina & Hamill 2009), although Conahan did some sentencing as well (Moran 2011).

Apparently the corruption did not come to light publicly until early 2007 (Urbina & Hamill 2009)⁷ when it became known as the 'Kids for Cash' scandal. In January 2009 the judges were indicted and in February 2009 the two judges pleaded guilty to the charges then facing them

⁷ The exact sequence of events is unclear. An investigation into the judges was made by the FBI and the IRS but the exact dates of these investigations were not made public.

(Urbina & Hamill 2009).⁸ It is not clear what finally led to any action being taken against the judges. Laurene Transue, the mother of Hillary (the author of the spoof MySpace page), protested to the local Juvenile Law Center. This '[set] in train a process' which led to the uncovering of the scandal (Pilkington 2009). It has been suggested that, among other information, the scheme was 'undone by a tip from a reputed underworld friend of Conahan's' (Geden 2014). Conahan had a friend, William D'Elia, whom he often met for breakfast. D'Elia was reputed to be the boss of a Pennsylvania mafia family. In 2006 he was arrested on charges of witness tampering and conspiracy to launder drug money. After his arrest he turned informant and gave investigators information that led them to the judges (Moran 2011). Further information was provided to the Federal Bureau of Investigation (FBI) by a fellow judge, Anne Lokuta, who was herself facing disciplinary charges (McAuley 2013).

It was a disgrace that the misconduct of Conahan and Ciavarella went on for so long. For years youth advocacy groups complained about the harsh sentences, to no avail (Urbina & Hamill 2009).

The regulatory authorities had a lot to answer for. The Pennsylvania Judicial Conduct Board was fairly useless. From 2004 to 2008 it received four complaints about Conahan.⁹ It did not investigate any of them, nor even request any documentation. As late as April 2008 when the Juvenile Law Center, based in Philadelphia, petitioned the Pennsylvania Supreme Court for relief for the breach of civil rights of several hundreds of teenagers who had been tried without adequate assistance of counsel, the petition was refused. It was only reconsidered in January 2009 when Ciavarella and Conahan had been charged with corruption (Vadala 2022)

The juvenile hearings were held in private. This was done to protect the privacy of the children. It had the unhappy effect that the public at large were unaware of what was going on, but Bob Yeager, a former director of the Office of Juvenile Justice in Pennsylvania, points out that the juvenile proceedings 'are kept open to probation officers, district attorneys, and public defenders, all of whom are sworn to protect the interests of children ... It's pretty clear those people didn't do their jobs' (Urbina & Hamill 2009).

It does seem that this was a situation where there was an aura of corruption. Marsha Levick, a lawyer with the Juvenile Law Center, said, 'There was a culture of intimidation surrounding [Ciavarella] and no

⁸ The history of the charges facing the judges is quite complicated and will be referred to in more detail below.

⁹ It is not known whether these complaints related to sentencing.

one was willing to speak up about the sentences he was handing down' (Urbina & Hamill 2009). The judge who finally sentenced Conahan in 2011 referred to 'the deep-rooted political culture that produced him, one in which corruption is tacitly accepted' (Moran 2011). Also in 2011 the Federal Government concluded a four-year investigation of public corruption in Luzerne and Lackawanna counties. It implicated 'more than 30 people, including state lawmakers, county officials, school board members and others' (Moran 2011).

Charges against the judges were made public in January 2009. It was at this point that the Pennsylvania Supreme Court decided to reconsider the petition from the Juvenile Law Center that it had previously rejected (Vadala 2022). The charges included conspiracy to deprive the public of the 'intangible right of honest services' (ie corruption) and conspiracy to defraud the USA by failing to report income to the Internal Revenue Service (IRS) (ie the kickbacks) (Urbina & Hamill 2009). The charges also described actions by the judges to assist in the construction and population of juvenile detention centres.

The prosecutors and the judges reached a plea deal whereby in return for pleading guilty, paying fines and restitution, and accepting responsibility for their crimes they would receive prison sentences of 87 months (Urbina & Hamill 2009 and Moran 2011). These sentences were far below federal sentencing guidelines.

In February 2009 the judges entered pleas of guilty on the basis of the plea deal. They were released on bail awaiting sentencing. Ciavarella remained remarkably relaxed. He invited into his home a journalist from the English *Guardian* newspaper for an interview. He hoped that with good behaviour he would spend only six years in prison. Despite his pleas he strongly denied that he had accepted any money in exchange for sentencing juveniles to detention centre. He claimed that the money that had been paid to him was a 'finder's fee', a sort of legitimate commission for help in building the detention centre. Indeed, his motives in sentencing were positively altruistic. He said 'that he regarded his court as a place of treatment for troubled adolescents, not of punishment. "I wanted these children to avoid becoming statistics in an adult world. That's all it was, trying to help these kids straighten out their lives"'. He further alleged that the percentage of children he sentenced to custody had remained steady from his appointment in 1996 till he stood down in 2008. In fact in the first two years of his term he sentenced 4.5% of defendants to custody: by 2004 he was sentencing 26% (Pilkington 2009).

In July 2009 the judges came back to court when they appeared before Judge Kosik, a judge who showed independence and integrity. He rejected the plea deal, not least because of Ciavarella's continued refusal to accept that the payments had been a *quid pro quo* for his sentencing, despite overwhelming evidence to the contrary. At that time Conahan too was not accepting full responsibility for his actions. The men's attitude did not justify an exceptionally lenient sentence.¹⁰ In August 2009, after an unsuccessful attempt to appeal Kosik's ruling, both judges changed their pleas to not guilty. In September 2009 a grand jury returned an indictment against both judges containing 48 counts. These included racketeering, fraud, money laundering, extortion, bribery and federal tax violations (Ralston 2020). In 2010 Conahan changed his plea back to guilty (Moran 2011). On 23 September 2011 he was sentenced to 17.5 years in prison (Moran 2011). At the hearing he had shown remorse. He said: 'The system is not corrupt. I was corrupt. My actions undermined your faith in the system and contributed to the difficulty in your lives. I am sorry you were victimised.' He was bitterly disappointed by the sentence, but decided not to appeal (Moran 2011).

Meanwhile Ciavarella's case had come on for hearing before a jury. He was now facing 39 counts. He still denied any *quid pro quo* for the payments to him. On 8 February 2011 the jury found him guilty on 12 of the 39 counts, including racketeering related to his accepting the illegal payments. Apparently, he had been unable to convince them that by ordering children, many of them first offenders and some innocent, to be put in handcuffs, shackled and led out of court without being allowed to speak to their parents, he had been trying to help them straighten out their lives.

On 11 August 2011 Judge Kosik sentenced Ciavarella to 28 years in prison (Pavlo 2011). The sentence has justifiably been described as a life sentence (Pavlo 2011); he was 61 when the sentence was passed; if he serves it in full, he will remain incarcerated until he is 89. The good news is that with good behaviour he could be released in fewer than 24 years (aged a mere 85).

The harm done by Ciavarella and Conahan is incalculable. In August 2009 Ed Rendell, the Governor of Pennsylvania, said that 'The lives of these young people and their families were changed forever.' Reports vary widely as to how many juveniles were affected. Eventually the

¹⁰ In attempting to justify the plea deal one of the prosecutors said that it had been made because the case involved 'complex charges that could have resulted in years of litigation'. A man sitting in the audience was heard to say 'bull' (Urbina & Hamill 2009).

Pennsylvania Supreme Court overturned some 4,000 (Rubinkam 2020) or 5,000 (Newman 2011) convictions.

Edward Fonzo, the 17-year-old athlete of previous good character, sentenced for possession of ‘drug paraphernalia’, spent months in private prisons and a wilderness camp. He missed his entire senior year in high school. According to his mother he never recovered from the experience. In June 2010 he took his own life at the age of 23 (Pavlo 2011).

It has been alleged that for many months after she came out of detention, Hillary Transue (the MySpace spoofer) was ostracized by friends and neighbours, labelled a delinquent (Pilkington 2009), but this does not seem entirely accurate. Hillary has recently written about her experience:

Ciavarella didn’t care what you did, or why you did it; nothing would prevent him from sending you away if you ended up in his courtroom. My mother screamed as I was shackled and taken away in a daze. I wasn’t even out of the room before the next child was brought before the court. The wheels of justice felt more like a conveyor belt. ... When I returned from my time in placement, I was angry, obstinate, defiant and searching for opportunities to challenge authority. It was only because of my support system—my family, friends and community—that I was able to reestablish any sort of faith in people who claimed to be acting in my best interests. ... Many of [my peers] are gone, many are struggling, only a few of us have been able to move forward (Transue 2021).¹¹

Ciavarella made multiple appeals with varying degrees of success. In January 2018 an appeal against three of his 12 convictions was allowed, not on the basis that he was innocent, but on the basis that his lawyers should have raised a defence of statutory limitation.¹² As a result he claimed to be entitled to a reduction in his sentence on the remaining counts. The District Judge ruled that he had no jurisdiction to alter the sentences and went on to say that, even if he had had jurisdiction, he would not have made any reduction. He referred to Ciavarella’s ‘abuse of public trust and the harm to juveniles’ and also the fact that he ‘refuses to acknowledge the scope of his remaining crimes’. Even at this late stage Ciavarella still denied that there had been any *quid pro quo* for the money he had received (Rubinkam 2020). At the time of my writing

¹¹ Lauren Ciavarella Stahl, a lawyer and one of Mark Ciavarella’s three children, now works helping distressed youths, including some who were victims of her father. She is helped in her work by Hillary Transue, the MySpace prankster (Stephanie (nd)).

¹² He was clearly unfortunate in his choice of lawyers. The judge ordered a retrial on the three counts; the prosecution later stated that they did not intend to have a retrial. I am unable to understand this. Whether the charges were statute barred must have been decided by the court. If they were statute barred, a retrial made no sense. If they were not statute barred, why were the convictions overturned?

this, he languishes in Ashland, the Federal Correctional Institution in eastern Kentucky, with an expected release date of 18 June 2035 (Kalinowski 2021).

Conahan has been a little more lucky. In June 2020 he was released from prison and confined to his home. Anonymous prison officials revealed that this was, at least in part, because he was particularly vulnerable to coronavirus. Initially this was to be for 30 days. It appears, though, that he may now be left on home confinement for the rest of his sentence (Sisak & Balsamo 2020). This should not be too much of a hardship. He and his wife live in a \$1.05 million home in a private, gated community, known as The Estuary, along the waterfront in Delray Beach, Florida.

Many of the former defendant children pursued a civil claim against Ciavarella and Conahan. In August 2022 the two former judges were ordered to pay over \$200 million to nearly 300 plaintiffs. This was made up of \$106 million in compensatory damages and \$100 million in punitive damages. The plaintiffs' lawyers recognized that in reality it was unlikely that the plaintiffs would recover anything or anything substantial, but one of the lawyers, Marsha Levick, said:

To have an order from a federal court that recognizes the gravity of what the judges did to these children in the midst of some of the most critical years of their childhood and development matters enormously, whether or not the money gets paid (National Public Radio 2022).

[H] KUPLASH OTEMISOVA: THE QUALITY OF MERCY¹³

Kuplash Otemisova, a judge in Kazakhstan, was a polar opposite to Ciavarella. She got into trouble for being too lenient. In August 2013 a man called Aleksandr Sutyaginsky appeared before her. He was a Russian businessman, who had built up a high profile in Kazakhstan and was very well connected there. He was often to be seen at important events with high-ranking Kazakh and Russian officials, and not only in the company of the President of Kazakhstan, Nursultan Nazarbaev, but also in the company of the President of Russia, Vladimir Putin.

Notwithstanding this, in March 2013 he had been convicted of ordering a murder. The order was in fact not carried out. Sutyaginsky was sentenced to serve 12 years in prison.

¹³ There is very little information in English about this lady. I have only found two short articles, from the same source and which contain much the same information. Consequently, this case raises a lot of questions which I am unable to answer.

It is not clear why he was appearing in front of Otemisova. She took the view that, because the murder never took place, the sentence was excessive. She reduced the sentence to six years' imprisonment. Amazingly even that was too much; she ordered the sentence to be suspended. It is also not clear what power she, apparently a judge of first instance, had to alter the sentence. Evidently she did have the power, since Sutyaginsky was released. Sutyaginsky (no fool he) promptly decamped to Russia and his whereabouts became unknown.

The next month Otemisova was herself arrested. On the known facts it might be suspected that she had been bribed or intimidated, yet it does not appear that either of these offences were alleged against her.¹⁴ The charge was 'making a wrong court ruling that led to an aggravated situation', in other words, incompetence. The details of the charge are based on an English translation. It may be that 'a wrong court ruling' encompasses 'wrong because of bribery' in the Kazakh language. However, her lawyer said that the charges¹⁵ against Otemisova violated her rights as a judge. Such rights cannot have included the right to be bribed, so it seems that the charge was indeed based on incompetence.

In March 2014 Otemisova was convicted in the District Court of Almaty, Kazakhstan's largest city, and sentenced to four-and-a-half years in prison (RFE/RLs Kazakh Service 2014a & 2014b).

[I] TRACIE HUNTER: AN UNDIGNIFIED EXIT

On 22 July 2019 a sentence of six months' imprisonment was activated against former Ohio Juvenile Court judge, Tracie Hunter, causing uproar in court. The story of how Hunter got to this point is full of twists and turns.

In November 2010 Tracie Hunter was elected a judge for the Hamilton County Juvenile Court on a Democratic ticket. She was due to take office in January 2011. She was the first African-American, Democrat judge in that court (Tracie Hunter Ballotpedia nd; Odrama 2019). In fact there was a dispute about the election result. Hunter lost initially. She sued on the basis that certain ballots had not been counted. There was eventually a recount, which she won. As a result of this dispute, she was not sworn in until 25 May 2012.

¹⁴ In view of recent developments, one may wonder whether Sutyaginski's friendship with Vladimir Putin was in any way a factor.

¹⁵ I know of only one charge.

In January 2014 a grand jury indicted her on nine felony charges. These included two counts of tampering with evidence, two counts of forgery, two counts of theft in office and two counts of having an unlawful interest in a public contract (Tracie Hunter Ballotpedia nd). Among the charges it was alleged that she had backdated documents to thwart prosecutors appealing against her decisions (*The Enquirer* 2019). She pleaded not guilty. She was disqualified as a judge while the charges were pending, but still able to collect her salary of \$121,350 (Tracie Hunter Ballotpedia nd).

One charge related to her brother, Steven Hunter. He was variously described as a Juvenile Court worker (Perry 2014a), a police officer and a juvenile correctional officer (Odrama 2019). It was alleged that he had punched a teenage inmate in the face. He was facing disciplinary proceedings. His boss had recommended that he should be dismissed (Odrama 2019). Hunter ordered certain documents to be given to her. It has been alleged that they involved the teenager, including his medical and mental evaluations, documents which were protected by privacy law (Perry 2014a). It has also been alleged that she obtained documents from her brother's personnel file (Tracie Hunter Ballotpedia nd). However, it appears that at her trial no evidence was given of what the documents contained (Sirkin 2022). She then gave them to her brother, who, in turn, gave them to his attorney. The attorney refused to accept some of them, saying it would be unethical for her to do so (Perry 2014a). Some of the documents were, nevertheless, used the next day at the disciplinary hearing (Perry 2014b). Tracie Hunter did not deny getting the documents and passing them to her brother. Her defence was that she gave her brother nothing that was not a public record (Perry 2014b). If that was so, it is strange that she needed to procure the documents, which would have been readily available to her brother's attorney, and strange that her brother's attorney refused to look at some of them.

In September 2014 jury selection for Hunter's trial on nine counts began. At the beginning Hunter asked Judge Norbert A Nadel to recuse himself on the grounds that he could not be impartial. She made the motion herself, although she was represented by counsel. The motion was denied (Video 1). The trial then took place before Judge Nadel. On 14 October 2014, after a five-week trial (Perry 2014b), the jury found Hunter guilty on one count, that relating to her giving documents to her brother. There was a hung jury on the other eight counts (Tracie Hunter Ballotpedia nd). The special prosecutors said that they might seek a retrial on the other counts (Perry 2014b).

There had been nine white jurors and three black jurors. Shortly after the verdict the three black jurors filed sworn statements saying that they did not think Hunter was guilty. One of them, Kimberly Whitehead, said that the jury forewoman and the other white jurors were to blame for her verdict. All three black jurors had signed a verdict form finding Hunter guilty, and Judge Nadel had asked each juror individually to confirm that the guilty verdict was their verdict. “I did so because I was pressured into doing so, particularly by the jury foreman,”¹⁶ Whitehead wrote in her sworn statement. “I did not believe the evidence presented at trial had anything to do with the charge in count six of the indictment” (Perry 2014a). Evidently the black jurors were able to resist pressure on the other eight counts. The verdicts were upheld.

Sentencing was deferred until 5 December 2014, when Judge Nadel imposed a sentence of six months’ imprisonment. He said, ‘The evidence showed that the criminal conduct of Tracie Hunter has dealt a very serious blow to the public confidence of our judicial system and there’s no question about that.’ The prosecutors had asked for a prison sentence. A string of character witnesses had been called on behalf of Hunter, asking for probation. Nadel said that ordinarily a sentence of probation would be appropriate, but because of the ‘double whammy’ he felt he must impose a prison sentence. The double whammy was that as a public official and a judge herself a higher standard must be expected of Hunter than of a normal defendant (Video 3). On 26 December the Ohio Supreme Court issued a stay of the sentence pending the retrial of the other eight counts (Tracie Hunter Ballotpedia nd).

Judge Nadel retired and was replaced by Judge Patrick Dinkelacker for the retrial. When Nadel had retired Dinkelacker had stood for election to Nadal’s judgeship, although Dinkelacker had served for many years on the appeals court (Perry 2015). In April 2015 Hunter requested the Ohio Supreme Court to remove Judge Dinkelacker from the case, claiming he could not be impartial. It does appear that he had sat on appeals hearings by her and had decided against her. However, a poll of the judges at the trial court found that all of them would recuse themselves if asked to preside over Hunter’s retrial (Tracie Hunter Ballotpedia nd). They gave no reasons for this, although Hunter had said that no Hamilton County judge could be fair to her. This could only be resolved by appointing a retired judge (perhaps Judge Nadal, but she had already objected to him at the original trial), or a judge from outside Hamilton County (Perry 2015). The request was refused in April 2015 (*The Enquirer* 2019).

¹⁶ I have set out the quotes as they are reported. I do not know the sex of the jury foreman/forewoman.

In September 2015 there was a hearing before Dinkelacker.¹⁷ Hunter's attorney at that time, Clyde Bennett II, said he could no longer represent her. Apparently no reason was given. Hunter then proceeded to address Dinkelacker herself, listing the reasons why he should recuse himself. One of the reasons related to a fatal car accident in which Dinkelacker had been involved. It had happened in 2013 (*The Enquirer* 2019). Dinkelacker's car was one of two vehicles that struck and killed a woman who was walking in the middle of Central Parkway. She was found to have high levels of cocaine in her system. No charges were brought against Dinkelacker or the other driver (Williams 2019). In what way this should have disqualified him from presiding at Hunter's retrial is not clear. She was certainly doing herself no favours by bringing this up. Dinkelacker characterized her remarks as spiteful (Williams 2019).

The date for the retrial was set for 19 January 2016. Then something strange happened. On the day the trial was due to begin special prosecutors dropped the remaining eight charges. 'Special Prosecutor Scott Crosswell said they had made their point', and that, 'Whether Tracie Hunter is convicted of one felony or nine felonies makes little or no difference' (Tracie Hunter Ballotpedia nd). To this writer that excuse seems extraordinary in the extreme. Was it really believed that it made no difference whether a judge faces one charge or nine? Would the sentence have been no more severe? Was it not relevant that the charge for which Hunter had been convicted amounted, at the end of the day, to misuse of her judicial authority not relating to any case she was hearing, whereas other charges (forgery and theft) involved dishonesty? Hunter's co-counsel, Jennifer Branch, 'said she believed the charges were dropped because the prosecution knew it couldn't win' (Tracie Hunter Ballotpedia nd). There seems to be force in that.

Hunter made several unsuccessful appeals to state and federal courts, which delayed the implementation of the sentence until 22 July 2019. On that date, nearly five years after the sentence was originally imposed, she appeared in front of Judge Dinkelacker. The hearing was termed an 'execution of sentence' hearing (*The Enquirer* 2019).¹⁸ It was in many ways an extraordinary hearing.¹⁹ It began with Dinkelacker reading out a letter that had been sent to him that morning by one of the prosecutors, who was not present in court. The prosecutor stated his view that Hunter might be suffering mental problems and the judge might wish this to be

¹⁷ The purpose of this hearing is not stated.

¹⁸ Hunter's conviction was strictly for 180 days' imprisonment, probation and costs. The judge at the execution of sentence hearing had power to reduce those (Sirkin 2022).

¹⁹ The whole hearing may be viewed on YouTube. See Video 2.

investigated. The co-prosecutor, who was present in court, endorsed that view. Miss Hunter's co-counsel, David Singleton, emphatically denied any necessity for this and stated his personal experience with Hunter showed there was no need. No action was taken. The judge then began by saying:

On behalf of the justice system, preservation of the independence of the judiciary and spirit of transparency and to comply with the dictates of Ohio code of judicial conduct, I'm going to state the following. In no way, shape or form is this to be held against Miss Hunter...For the last several weeks I have received at my home [*'at my home'* emphatically repeated] ... 45 postcards from people, some of them signed—a few; some of them with return addresses—a few; but most of them anonymous. ... No other judge should go through what I've gone through with these, Facebook postings by certain people, whatever (Video 2).

He also referred to the concern caused to his wife by the postcards. He then proceeds to read out 18 of them. They nearly all state that the writer is a taxpayer or voter and ask or demand that the charges against Hunter be dropped. Several of them refer to the fatal car accident involving Dinkelacker. He made it clear that he would not be intimidated by any threats nor would he bow to any pressure. It was clear that the postcards were part of an organized campaign; they all bore the same address label.

Hunter's attorney, David Singleton, then made a plea in mitigation on her behalf, criticizing the six months' sentence. He also asked the judge to delay sentencing so that a motion could be filed to dismiss the case. This was refused.

Judge Dinkelacker offers Hunter the opportunity to address him. She declines through her lawyers. The judge then sets out in detail the history of the case, referring to the many appeals and applications made by Hunter, all of them resulting in findings that she had received a fair trial. After he has been speaking for some time and is coming to the end of his recital, David Singleton interrupts him and he and his co-counsel, Jennifer Branch²⁰ confer with Hunter for several minutes. She then stands up and walks to the podium, seeking to address the judge. He declines to hear her, pointing out that he had given her an opportunity to speak and it had been turned down. He then orders the execution of the sentence imposed by Judge Nadel, including one year's community control and an order to pay the costs of the proceedings.

The judge then ordered a court deputy to take her away. At that point uproar broke out in the court, led by Miss Hunter's supporters, who were shouting and screaming. One of them rushed over to Hunter. It seems

²⁰ Ms Branch has now herself been elected a judge of the court.

she was trying to prevent her being taken into custody. The supporter was arrested and handcuffed. As this was happening one of the court deputies tried to take hold of Hunter. Yet another extraordinary thing takes place, leading to an undignified exit by Hunter. She goes limp and the deputy takes underarm hold of her from behind. She is then quite literally dragged from the court. She is passive, her high heels trailing along the floor. She claimed that she was injured when she was taken into custody, and on arrival at the prison she was initially placed in the medical unit (Odruma 2019). It appears that nothing came of this complaint.²¹

Tracie Hunter was the pastor at Western Hills Brethren in Christ Church (Tracie Hunter Ballotpedia nd). When she was in prison she agreed to a court-authorized work detail, whereby she would minister to fellow inmates. The detail enabled Hunter to have three days deducted from her sentence for every day she served as a minister (Brunsman 2019). As a result she earned early release and was released in October 2019, after serving 75 days of her sentence (Grasha 2020).

[J] LANCE MASON: THE JUDGE AS MURDERER

Lance Timothy Mason was born in 1967. His early career was mainly as a prosecutor (Goist 2018). In his mid-thirties he turned to politics. From 2002 to 2008 he was a member of the Ohio General Assembly, first as a state representative, then as a state senator. In 2008 he was appointed a judge of the Cuyahoga County Court of Common Pleas. He served there until August 2014, when he was arrested and charged with assault on his wife, who had been separated from him since the previous March.

He had attacked her while he was driving and while their two young daughters, aged six and four (Goist 2018), were seated in the back of the car. The police report showed that he had punched her 20 times with his fist, smashed her head five times against the car's centre console, breaking an orbital bone (Goist 2018) and continued to beat her, bite her and threaten her after he threw her out of the car. She needed facial reconstructive surgery as a result of the assault (Goist 2018).

When the police searched his home they found ammunition and weapons, including shotguns, semi-automatic rifles, handguns, smoke grenades, a bulletproof vest, a sword, and over 2500 rounds of ammunition. He pleaded guilty in August 2015 to assault, a second

²¹ An entry on Google, [www.guampdn.com > story > news](http://www.guampdn.com/story/news), said that Hunter spent the first seven weeks of her sentence in the medical unit, but a link to the article says the page cannot be found.

degree felony. For this vicious assault he was sentenced to only two years in prison. He was released after serving only nine months. Their divorce was finalized in November 2015.

In 2017 Mason was suspended indefinitely from practising law. In autumn that year a post became vacant as Cleveland's director of minority business development. The Mayor of Cleveland hired Mason from among 13 applicants. A city official said that Mason was the most qualified applicant.

On 17 November 2018, police were called to Mason's home. He had stabbed his ex-wife to death in front of their two children. A much-loved elementary school teacher, she had been dropping off the children as agreed when she had been attacked (Hlavaty & Bash 2018). Mason tried to flee the scene in his car, but crashed into a police car and a police officer standing in front of it. The officer suffered serious injuries to his lower legs and ribs (Donatelli 2019).

On 20 August 2019 Mason pleaded guilty to aggravated murder. He was sentenced to life in prison with the possibility of parole after 35 years. He was sentenced concurrently to five years' imprisonment for assaulting the police officer, 24 months for violating a protection order and 12 months for stealing a car (Ryan 2019).

[K] REFLECTIONS

In a democracy where judges are appointed, steps will usually be taken to ensure that they are of high integrity. It can be seen, though, that judges, like the police, form a cross-section of the society from which they come. It is, perhaps, noteworthy that the cash-for-kids judges and Tracie Hunter were elected by the public, not appointed by any judicial selection process. In an advertisement inviting voters to meet Ciavarella for his initial election in 1995, he described himself as 'A judge to protect us all' (Freeview 1995).

There is some similarity between the cases of Constance Brice and Tracie Hunter. Both were regarded as role models for the black community. Brice was one of the first black judges (albeit part-time) in the UK. Hunter was the first black Democrat judge in the Hamilton County Juvenile Court. Both of them pleaded not guilty to the charges against them. Brice's first trial resulted in a hung jury. Hunter's trial resulted in a hung jury on eight of the nine charges, and three black jurors later sought to recant their guilty verdicts.

It is clear that even in common law countries there is no consistency in sentencing. The cash-for-kids case was in a league of its own. One of Ciavarella's lawyers, William Ruzzo, said that the sentence was 'much too harsh ... This was a nonviolent offense ... I've had people convicted of murder who received as little as a 6-to-12 year sentence' (Newman 2011). But that is not to compare like with like. Ciavarella's gross misconduct continued repeatedly on a daily basis for years and traumatized literally thousands of children. This writer finds it hard to feel any sympathy for him.

By contrast, the sentence on Marcus Einfeld does seem much too harsh, especially when compared with the sentence on Constance Brice.

Einfeld faced two counts: Brice faced three.

Einfeld pleaded guilty: Brice pleaded not guilty.

Einfeld had been retired for five years at the time of the offences: Brice was still sitting as a recorder.

Einfeld's crimes were motivated to get himself out of trouble: Brice was motivated to get someone else into trouble, and not just Huhne; she initially was planning to get Jo White in trouble as well.

Einfeld was sentenced to three years' imprisonment, with no parole before serving two years. Brice was sentenced to 16 months' imprisonment and was released after about seven months. Huhne and Pryce had each been sentenced to eight months' imprisonment.

Einfeld's sentence falls into even starker contrast when compared with the sentence on Lance Mason for an extremely brutal assault on his wife, while still sitting as a judge, in front of their two very young children. He was sentenced to two years' imprisonment and released after nine months.

While there is no necessity for the sentencing in different countries to be consistent, the disparity between these sentences does seem a cause for raised eyebrows.

Tracie Hunter's case also leaves some room for disquiet. Her behaviour in court was bizarre and lacking in dignity. She was disrespectful to the judge. Nevertheless, the offence for which she was convicted was not a particularly serious one. The judge said that normally it would not attract a prison sentence. The documents that she procured and passed on did not involve any national security. There was no allegation that

she interfered with the hearing against her brother. The other charges against her were much more serious. As stated above, they included:

- ◇ two counts of tampering with evidence;
- ◇ two counts of forgery;
- ◇ two counts of having an unlawful interest in a public contract; and
- ◇ two counts of theft in office (Tracie Hunter Ballotpedia nd).

The nine felonies that she was charged with carried a maximum sentence of 13 years' imprisonment (Perry 2014b). A commentator, Jason Williams, has expressed the view that the real reason she was given a prison sentence was her arrogance and general unseemly behaviour (Williams 2019). For this offence it is arguable that a reprimand, suspension or dismissal from office might have sufficed, rather than a criminal prosecution. Hunter appealed to the United States Court of Appeals for the Sixth Circuit claiming that her prosecution was political and the prosecutors had behaved unfairly. Her appeal was dismissed, yet it appears that it was not without basis. The court said her trial was fair 'Although some of the statements in Hunter's trial might have pushed the bounds of professionalism' (McAfee 2022).

The behaviour of the prosecution was certainly reprehensible in relation to the retrial. They did not notify the defence of their decision to drop the remaining eight charges until the day fixed for the retrial (Sirkin 2002). They should have considered their position carefully before asking for a retrial, and they must have decided to drop the remaining charges well before the date set for the retrial. By leaving it till the very last minute to notify the defendant, they had ensured that she incurred high costs in relation to the retrial in addition to the costs incurred in the original trial in relation to the eight counts which resulted in a hung jury. None of these costs would be recoverable against the prosecution. More important, the prospect of a retrial and preparation for it must have caused tremendous stress to Hunter. The prosecution must have been aware of these factors.

The prosecution could have given a neutral reason for not proceeding, for example, saying it was not in the public interest. By saying that it would not add anything to Hunter's sentence, they left a smear hanging over her in respect of charges which the prosecution had been unable to prove. In a later appeal Hunter alleged unsuccessfully that she had been prosecuted because of politics (McAfee 2022). If she had been convicted of the other eight charges, a sentence of six months' imprisonment might have been considered light by way of retribution and vindication of the law.

On the other hand, if the motive for the prosecution had been political, to get rid of a troublesome judge,²² any prison sentence would do.

There clearly was a difficulty in choosing a judge for the retrial. Hunter objected to all the local judges and all of them would have recused themselves from sitting in any event. Nevertheless, to select a judge in a sensitive trial who had several times sat on and dismissed appeals by Hunter does not seem an obvious way of showing justice to be done. Dinkelacker had been asked by the Ohio Supreme Court to explain his answer to Hunter's allegations that he could not be fair. In his response Dinkelacker referred to a decision he had made against Hunter, finding her in contempt of court. He wrote, '(Quite) frankly, it was the right decision ... Hunter committed contemptible acts and the Court of Appeals did its duty in finding such' (Perry 2015). He may well have been right, but it is not likely to have inspired Hunter's confidence in his judicial impartiality. At an appeal against Dinkelacker's costs orders on 16 July 2021, the Appeal Court said he had 'abused (his) discretion' in awarding prosecution costs for transcripts incurred after Hunter had been sentenced. Moreover, in 2019 her counsel had issued a motion to reduce the costs award. The prosecutors had filed no response, and Dinkelacker had made a decision on the motion without holding a hearing. 'The court also said it had "serious questions" about whether it was proper to assess nearly \$15,800 in transcript costs between the verdict and the sentencing two months later' (Grasha 2021).

At the Appeal hearing to the US Court of Appeals for the Sixth Circuit, Hunter's counsel had tried to raise objections to over 50 improper remarks by the prosecution in rebuttal. Since her counsel at the trial had failed to object to nearly all of these, there was a procedural default; the court would only consider the four or five objections that had been raised. It found that these remarks by the prosecution had been improper, but did not affect the overall fairness of the trial (Sirkin 2022).

It would not be right to conclude this article without a reference to Judge Linda R Reade, the chief judge of the Northern District of Iowa. She has not been mentioned above, nor will her behaviour be examined in detail now, because she was never charged with any criminal offence, yet her case has shades of both the cash-for-kids scandal and Tracie Hunter's crime. Reade, a former federal prosecutor, was appointed a judge of the federal district court in 2003. At that time her husband owned stock in the two biggest private prison companies in the country.

²² Various complaints had been made against her other than those that resulted in charges.

In 2008 a raid was being planned on the largest kosher slaughterhouse in the USA to catch illegal immigrant workers. In the months before the raid Reade had repeated meetings with immigration officials and federal prosecutors. In March 2008 she met officials from the United States Attorney's Office where they discussed an overview of charging strategies.

Following these meetings Reade and other court officials:

created 'scripts' for the post-raid hearings that included model plea bargains for the as-yet uncharged defendants. 'What I found most astonishing,' one defense attorney later wrote to a member of the House Judiciary Committee, 'is that apparently Chief Judge Reade had already ratified these deals prior to one lawyer even talking to his or her client. Camayd-Freixas²³ says that although there were several judges at the hearings, 'The entire proceedings were scripted' by Reade and court clerks (Michaels 2017).

The raid took place on 12 May 2008. Nearly 400 workers were arrested. At that time it was the biggest raid on a workplace that had ever taken place in the USA. The usual practice in such raids was to charge the illegal immigrants with civil violations and then deport them.

But most of these defendants, shackled and dragging chains behind them, were charged with criminal fraud for using falsified work documents or Social Security numbers. About 270 people were sentenced to five months in federal prison, in a process that one witness described as a judicial assembly line (Michaels 2017).

It is not clear how many defendants were sent to private prisons. Reade did not have control over this. Many of them were first sent to government-run prisons, but many of them were transferred to other prisons several times.

Five days before the raid Reade's husband bought between \$30,000 and \$100,000 worth of additional stock in the two private prison companies. About five months later he sold (apparently all) his prison stocks; they were collectively worth between \$65,000 and \$150,000.²⁴

Federal judges may invest in stocks, but to guard against conflicts of interest, they are subject to a code of conduct²⁵ overseen by the Judicial Conference, a policymaking body for the federal courts. Its code, mirrored in federal law,²⁶ says judges should avoid 'impropriety and the appearance of impropriety in all activities,' and should disqualify themselves from cases where their 'impartiality might

²³ An interpreter at the proceedings after the raid.

²⁴ Precise figures are not available.

²⁵ [Code of Conduct for United States Judges](#).

²⁶ [28 US Code § 455—Disqualification of justice, judge, or magistrate judge](#).

reasonably be questioned.’ This includes situations where the judge or the judge’s spouse or dependent child ‘has a financial interest in the subject matter in controversy ... or any other interest that could be affected substantially by the outcome of the proceeding.’ The code states that judges ‘should refrain from financial and business dealings that exploit the judicial position.’ ... While Reade’s husband held stock [in the two private companies], Reade did not rule on cases directly involving the companies. Nevertheless, ethics experts say the prison investments raise the appearance of impropriety because they might cause a reasonable person to question whether her judgment was affected by her personal interests. ‘I am uneasy about the perception problem created when a judge may be financially vested in more people going to prison when she has defendants coming before her for sentencing every week,’ says Charles Gardner Geyh, a professor at the Indiana University Maurer School of Law. ‘The judge shouldn’t have any significant financial incentives for a longer sentence or a shorter sentence, or financial incentives to approve a very large raid or to disapprove a very large raid,’ says former Deputy Attorney General Heymann, now a professor emeritus at Harvard Law School. ‘A judge is supposed to have no financial incentives that could affect or might appear to affect her actions in any substantial way’ (Michaels 2017).

There is no direct evidence that Reade told her husband about the raid, yet it seems an almost inescapable inference. Her disclosure of confidential material bears similarity to Tracie Hunter’s crime:

Flamm²⁷ was also troubled by Reade’s husband’s purchase of prison stocks just before the Postville raid. ‘A reasonable person might question whether or not the judge’s husband was essentially trying to benefit the judge and himself financially by virtue of knowledge the judge acquired in her judicial administrative position,’ he says. The Judicial Conference code of conduct states that judges may not use ‘nonpublic information acquired in a judicial capacity’ to inform their business dealings (Michaels 2017).

Reade’s unusual imposition of prison sentences has echoes of the cash-for-kids scandal. Not only was no disciplinary action taken against Reade for conflict of interest or otherwise, she was later honoured at a ceremony for her decade of service as the top federal judge in Iowa’s Northern District. She continues to sit and has lifetime tenure (Michaels 2017).

²⁷ An American ethics expert and the author of a book on judicial disqualification.

[L] CONCLUSION

What is noticeable from this disparate collection is the remarkably uneven manner in which punishment has been imposed.

Finally, what was the motivation of the judges convicted of crimes? With one exception, they have ruined their careers (if still sitting at the time of the crime) and their reputations. The exception is Lance Mason, who, in the year following his release from prison for beating up his wife, was appointed Cleveland's director of minority business development. Amazingly, both at the trial for assault and at the trial for murder, he received many letters of support, including letters from former fellow judges. After the assault one of the letters was from an Ohio congresswoman, Marcia Fudge. In it one of the things she said was that the assault was 'out of character'. One would hardly expect a judge beating up his wife in front of his children to be in character! In fact it was not out of character, as the subsequent murder showed (Goldenberg 2018).

It looks as if Bruce Campbell really was involved in smuggling for profit. Why Einfeld should have risked all to avoid traffic points is a mystery. Brice seems to have been motivated by spite; the cash-for-kids judges by greed; Hunter by concern for her brother; Mason by rage. At the end of the day, judges have shown that they can be as lacking in judgment as anyone else.

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