

INQUIRY

THE QUARTERLY NEWSLETTER OF THE INNOCENCE NETWORK UK

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CRIMINAL JUSTICE SYSTEM STILL FAILING THE INNOCENT

*On the 15 December 2011, INUK is-
sued the following Public Statement
detailing how innocent victims of
wrongful conviction are still failed by
the criminal justice system despite
the establishment of the Criminal
Cases Review Commission. The Public
Statement outlines the key failings of
the Criminal Cases Review Commis-
sion and recommendations for re-
forms so that it can better assist the
innocent.*



History of the Criminal Cases Re- view Commission

For the last fifteen years, the Criminal
Cases Review Commission (CCRC)
has been the last resort for innocent
victims of wrongful conviction.

Established by the Criminal Appeal
Act 1995, the CCRC took over the
power of the C3 Division of the Home
Office where the Home Secretary had
the discretion of sending cases back
to the Court of Appeal 'if he saw fit'.
The creation of the CCRC followed the
recommendation of the Royal Com-
mission on Criminal Justice (RCCJ) in
1993. The RCCJ was, in turn,
prompted by a public crisis of confi-
dence in the entire criminal justice
system that was caused by the high-
profile cases of the Guildford Four,
Birmingham Six, Maguire Seven, and
so on, in which Irish people were
wrongly convicted for terrorist crimes
committed by the IRA. The RCCJ's

inquiry substantiated long-standing
criticisms that successive Home Sec-
retaries were failing to refer cases
back to the Court of Appeal despite
strong evidence of innocence. This
failure was due to political influences
and an entrenched reluctance of
Home Secretaries to challenge the
Courts.

To address this apparent constitu-
tional problem, the CCRC was set up
as a non-departmental body on 1
January 1997 and took over responsi-
bility from the Home Office and
Northern Ireland Office for reviewing
alleged miscarriages of justice on 31
March 1997. The role of the CCRC is
**to act as an independent public
body**, funded by government to re-
view alleged miscarriages of justice
and decide if they should be referred
back to the Court of Appeal. It has
jurisdiction over criminal cases at any
magistrates' or Crown Court in Eng-
land, Wales and Northern Ireland. The
CCRC's remit extends to the reviews
of both convictions and sentences. It
also possesses wide investigatory
powers under ss.17-19 of the Criminal
Appeal Act 1995, including the power
to gain disclosure of materials from
any public body

The CCRC receives an average of
1,000 applications a year. As of 14
November 2011, the CCRC has com-
pleted its review of 13,282 applica-
tions, out of which 483 convictions
and/or sentences have been referred
and 320 quashed. This equates to a
referral rate of less than four per
cent, significantly less than the ten
per cent of applications that were re-
ferred to the Court of Appeal each

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year by C3 Division, which was accused of being slow, inefficient, reactive rather than pro-active, and of showing too great a deference to the Court of Appeal.

Why the Criminal Cases Review Commission is failing

The inadequacies of the CCRC have become increasing apparent with a growing pipeline of convictions that have been refused referrals by the CCRC despite doubts about the reliability of evidence that led to their convictions. They highlight deep-seated failings with the CCRC, both in terms of how it makes decisions on whether to refer cases back to the appeal courts and the way in which it reviews applications from alleged victims of miscarriages of justice.

Lack of Independence from the Courts

The main problem with the CCRC is its lack of independence from the Courts. In its recommendations, the RCCJ called for the 'creation of a new body independent of both the Government and the courts for dealing with allegations that a miscarriage of justice has occurred'. Whilst the CCRC is independent from Government, the RCCJ's recommendation that it should also be independent from the Courts did not materialise.

Pursuant to s.13(1)(a) of the Criminal Appeal Act 1995, the CCRC cannot refer applications to the appeal courts unless 'there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made'. The 'real possibility test' subordinates the CCRC entirely to the appeal courts and restricts its review and decision-making processes to the appeal courts' criteria for quashing convictions, despite the fact that, generally speaking, applicants to the CCRC must have already failed in an appeal at the Court of Appeal. As such, it is, perhaps, not surprising that the CCRC refers so few cases.

One of these restrictions placed on CCRC applicants is the requirement for fresh evidence or argument not available at the time of the trial. This requirement follows the Court of Appeal's provisions on the admissibility of evidence under s.23 of the Criminal Appeal Act 1968. This requirement restricts the CCRC's ability to assist the innocent if the evidence of their innocence was available at the time of the original trial or previous appeal. If evidence supporting the defence/ the appellants claim of innocence was available but was not produced at trial either by reason of omission, or, tactical decision by trial counsel, such evidence will not, generally, constitute the kind of fresh evidence or argument required by the CCRC.

Overall, the current operations of the CCRC presupposes that jury decisions are always correct which prevents the CCRC from rectifying errors that were known at trial or first appeal. Further, it means that the CCRC often cannot rectify errors of judgment or omissions made by defence counsels/solicitors, notwithstanding the reality that defendants often have little knowledge of the criminal trial process and rely entirely on the judgment and expertise of their legal representatives.

Incompetent Investigations

The 'real possibility test' and the requirement for fresh evidence not only impact on the CCRC's consideration on whether or not to refer a case back to the appeal courts, but also its case review process. As a review (as opposed to investigatory) body, the CCRC generally does not undertake re-investigation of cases. Its case review methodology can be characterised as a 'desktop review', often limited to an appraisal of the arguments or evidence presented to it by applicants – first, to assess whether the evidence is 'fresh' and second, to consider if the application meets the 'real possibility test'. Furthermore, re-

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search indicates that Case Review Managers at the CCRC very rarely undertake prison visits to interview applicants. There is no systematic training for Case Review Managers on investigative methods, which often mean that quality of reviews received by applicants can be **inconsistent** and very much a lottery.

This places a substantial burden on alleged miscarriage of justice victims seeking another chance of an appeal through the CCRC. Often with little or no resources, they have to undertake the substantial task of investigating their own cases and seek fresh evidence or arguments to present to the CCRC. Rather than being assisted by the CCRC in this arduous process, they are faced with the additional hurdle of trying to convince the CCRC of the significance of the evidence and how it could render their convictions unsafe.

The 'real possibility test' that governs the CCRC's case review approach may also jeopardise the chances of success in cases that it does refer to the Court of Appeal. In practice, once the CCRC is satisfied that the 'real possibility test' has been met; it will prematurely end its review and stop investigating other lines of inquiry presented to them. The Criminal Justice Act 2003 also placed an additional requirement that appeals heard on referral by the CCRCs may not be on any ground outside the CCRC's grounds of referral. Consequently, appeals following CCRC referrals are often heard on very narrow grounds (see case examples at the end of this document). On occasions, this may even result in the appeal courts dismissing appeals referred to them by the CCRC without having a full sight of all other evidence that could have supported the applicant's claim of innocence.

Proposal for reform

In light of the limitations of the CCRC outlined above, we recommend the following legislative and policy reforms which are aimed at firstly, en-

hancing the CCRC's independence by unshackling it from the Court of Appeal; and, secondly, improving the thoroughness and quality of its case review process.

1) We call for the **immediate repeal of the 'real possibility test'** under s.13 of the Criminal Appeal Act 1995.

2) The 'real possibility test' to be replaced with a test that allows the CCRC to refer a conviction back to the Court of Appeal if it thinks that **the applicant is or might be innocent.**

3) CCRC reviews cannot, therefore, be restricted to the mere pursuit of fresh evidence that was not available at the time of the original trial or the first appeal **but must consider all the evidence.**

4) Under s.16 of the Criminal Appeal Act 1995, the CCRC's role currently extends to considering and reporting to the Secretary of State on any conviction referred to it by the Secretary of State for consideration of the exercise of Her Majesty's Prerogative of Mercy. To enhance the CCRC's independence from the Court of Appeal, we recommend an expansion of the use of the Royal Prerogative of Mercy through the introduction of the following:

a) new legislation that allows the CCRC, in instances where the Court of Appeal dismisses an appeal against conviction heard following a CCRC referral, to refer a conviction to the Secretary of State to consider exercising the Royal Prerogative of Mercy; and,

b) new legislation that places a duty on the CCRC to consider referring a conviction to the Secretary of State to consider exercising the Royal Prerogative of Mercy in such circumstances.

5) The CCRC's case review process is generally limited to desktop reviews. Whilst its powers to obtain material disclosure from public bodies un-

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der s. 17 of the Criminal Appeal Act 1995 are useful, particularly for cases where police or prosecution non-disclosure is a feature, they are limited in cases where full re-investigations of witnesses are required. We propose changing the CCRC's focus to enable it to undertake more fieldwork investigations, including the interviewing of witnesses, crime-scene reconstructions and the interviewing of applicants.

Cost

The reforms proposed above, aimed at making the CCRC a more adequate body to assist the innocent, would potentially save millions of pounds from the public purse by shortening the length of time that those wrongly incarcerated might otherwise spend in prison.

The average costs to taxpayers for each year a male prisoner spends wrongly incarcerated are as follows:

Category A (dispersal prison): £64, 597

Category B: £34, 359

Category C: £32,109

Furthermore, prisoners maintaining innocence who have been given indeterminate sentences are faced with what is commonly termed the 'parole deal'. They frequently serve sentences way past their given tariffs and are unable to progress through the prison system or achieve parole due to their refusal to admit guilt and undertake offending behaviour courses.

The Innocence Network UK (INUK) to date **has received applications from over 1,000 prisoners, of which almost 200 were deemed to have a plausible claim of innocence**. Due to their refusal to cooperate with the prison and probation services, it is quite common for the prisoners maintaining innocence to spend extended period in high security or segregation units. To give an illustration of costs, the 200 applicants to the

Innocence Network UK (INUK) are costing approximately **£7 million for every year** that they fail to achieve release. More specifically, the Innocence Network UK (INUK) currently has 21 clients in Category A (highest security) prisons, out of which seven have been in Category A for over ten years, including one who has been in Category A (and has spent extended periods in segregation) for the last twenty years. Collectively, these 21 'clients' currently in Category A are costing the state over **£1.3 million per year**.

Case Studies

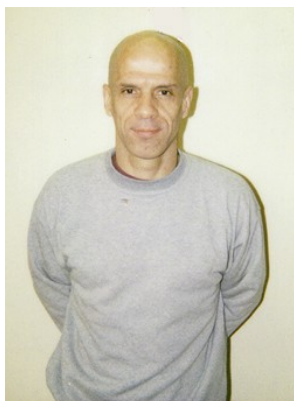
Neil Hurley

Neil Hurley was convicted on the 5 May 1994 of the murder of Sharon Pritchard, who was his ex-partner and the mother of two their children. The victim was found naked and bludgeoned to death on a playing field close to her home in Croeserw, South Wales. Neil Hurley was arrested and convicted primarily on witnesses who testified to his acrimonious relationship and allegations of violence against the victim prior to her death. However, crucial suspects were omitted from the police investigation, including one who returned home on the morning of the murder with his clothing covered in blood and mud. Between 1994-2005, a number of witnesses retracted their testimonies, claiming that they were pressured by the police into giving evidence. Two senior police officers who led the investigation have also since been convicted and imprisoned for corruption and malfeasance of public office. Neil Hurley made three unsuccessful applications to the CCRC. In 2009, the Innocence Network UK (INUK) submitted a fourth application to the CCRC requesting DNA testing on over 100 exhibits collected from the crime scene, the victim and Mr Hurley himself, all of which were never subjected to DNA testing. Neil Hurley is currently 5 years past tariff and continues to maintain his innocence.

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Ray Gilbert

Ray Gilbert was convicted in 1981 of the murder of Liverpool bookmaker John Suffield. He was convicted on his own confessions and his guilty plea, which he claimed, was coerced out of him by police officers and criminals who were on remand with him. With borderline intelligence and a speech impediment, Gilbert's vulnerabilities were clearly not recognised at the time of his interrogation which took place over two days without the presence of a solicitor. In 2001, his co-accused Johnny Kamara overturned his conviction due to over 200 witness statements supporting his defence that were not disclosed by the police. Although the statements also support Gilbert by pointing to other suspects, the CCRC refused to accept that his confessions and guilty plea were made falsely and refer his conviction. Gilbert has to date served 30 years in prison, 15 years past his tariff, and continues to maintain his innocence. The Innocence Network UK (INUK) is currently trying to locate the exhibits from the crime scene for possible DNA testing said by Merseyside Police to have been lost.



Susan May



Susan May was convicted in 1993 of the murder of her 89-year-old aunt, Hilda Marchback. She was convicted on the flimsiest of evidence, comprising mainly of three alleged fingerprint marks claimed to be hers that were said to contain the victim's blood.

However, there are doubts about the testing method and whether the marks are indeed Susan's fingerprints and even whether they did contain human blood. Another piece of evidence against Susan was a remark she allegedly made to a police officer relating to scratches found on her aunt's face, which the prosecution claimed she could not have known about unless she had caused them. Susan has always denied making the remark and the notebook in which the police say the words were logged has gone missing. Susan May's case was referred to the Court of Appeal by the CCRC in 1999 on the basis of police impropriety, but the appeal was dismissed in 2001. Two subsequent applications to the CCRC detailing new evidence that casts further doubts on her conviction have also failed on the basis that the CCRC does not think that there is a real possibility that the Court of Appeal will quash her conviction. *I*

SCOTTISH CRIMINAL CASES REVIEW COMMISSION MEETING BY MARK ALLUM

On the afternoon of the October 17th 2011, Dr Michael Naughton, Gabe Tan, Ryan Jendoubi and Mark Allum met with Gerard Sinclair and Gordon Newall of the Scottish Criminal Cases Review Commission (the Commission) to discuss the submission made by the University of Bristol Innocence Project (UoBIP) on behalf of William Beck. William Beck had twice before applied to the SCCRC and each time had been refused a referral to the High Court of Justiciary. UoBIP's submission was in reply to the Commission's statement of reasons denying Mr Beck a referral for the third time.

Gerard Sinclair began the meeting by praising the quality of the UoBIP submission and it became immediately clear that the Commission was very willing to engage with us and discuss the various

SCOTTISH CRIMINAL CASES REVIEW COMMISSION MEETING BY MARK ALLUM

strengths and weaknesses of UoBIP's submission. It also became clear, however, that the Commission was not easily to be swayed.

The first point raised was with regard to our interpretation of the test in *McInnes v HMA* [2010] UKSC 7. We had observed that there were two parts to the McInnes test, the first of which was to ascertain whether there had been a failure to disclose evidence. Our submission suggested that where this was proven to be the case it would be quite legitimate to say that 'a miscarriage of justice may have occurred' and so we submitted that this clearly satisfied the Commission's test and that they should refer the case. However, whilst, in Scotland, there is no statutory requirement for the Commission to have regard to the likely outcome of any referral, it was explained to us that the Supreme Court has imposed upon the Commission an artificial 'real possibility' test, similar to that contained in the Criminal Appeal Act 1995 of England and Wales. This has led to the Commission adopting the view that it must have regard to the second part of the McInnes test, whether the undisclosed evidence would have had a bearing on the jury's decision. The Commission deny that this 'real possibility' test means it has to second guess the High Court of Justiciary. It would seem to us though, that not only does the Commission have to second guess the High Court of Justiciary, it has to second guess the High Court of Justiciary which is itself second guessing a jury.

The next point of contention was with our use of *Stillie v HMA* [1990] SCCR 719. We had suggested that the Court had held that although there was misdirection in Stillie, this misdirection



Ryan Jendoubi and Mark Allum outside the office of the SCCRC

did not amount to a miscarriage of justice because the rest of the charge to the jury was fair and well balanced. The Commission disagreed with us on our interpretation of Stillie.

However, notwithstanding the Commission's view, we stand by our assertion that Stillie can be distinguished

from Mr Beck's case be-

cause the correct 'beyond reasonable doubt' test was not iterated

sufficiently to counter the trial judge's misdirection. Again it would appear that the Commission has taken the view that it must have regard to the likelihood of the High Court of Justiciary overturning the verdict before referring a case.

A major part of our submission highlighted the unreliability of eyewitness identification and was supported by a report prepared by Professor Tim Valentine, an expert in face recognition, eyewitness identification and eyewitness testimony. Before the meeting the Commission referred us to a recent interim decision, in *Gage v HMA* [2011] HCJAC 40, where the High Court of Justiciary had ruled that the evidence of Professor Valentine was inadmissible. The court's justification for this was that a jury, properly directed, and using no more than its own life experiences would be quite capable of assessing the credibility and reliability of any eyewitness testimony. However, implicit in Professor Valentine's report is the inference that this is not the case. Indeed, the report elucidates the point that time and again witnesses who are completely sure they have identified the correct person have been proven wrong. Professor Valentine's opinions are backed up by sound scientific research. The court's views are based on

Helping the Innocent – A Symposium on the Reform of the Criminal Cases Review Commission

Date: 30 March 2012
Time: 9.30 am – 5.00 pm
Venue: Norton Rose LLP, London
(5 CPD Hours)

For booking information, go to: www.innocencenetwork.org.uk/events

Background

The Criminal Cases Review Commission (CCRC) is the public body established to review alleged miscarriages of justice. Set up by the Criminal Appeal Act 1995, the CCRC is the only gateway back to the Court of Appeal for convicted persons who have failed in their first appeal. 15 years on from the establishment of the CCRC, there is a growing list of cases which have been refused by the CCRC despite real doubts about the reliability of the evidence that led to their convictions. This has prompted a real concern amongst academics, criminal law practitioners, third sector organizations and ex-Commissioners at the CCRC that the body is an inadequate solution to the problem of wrongful conviction of the innocent and radical reforms to the body are urgently needed. With the support of Joseph Rowntree Reform Trust (JRRRT), the Innocence Network UK is organising a Symposium which will be hosted by Norton Rose LLP in London. The Symposium will discuss how the CCRC should be reformed to ensure that it could better assist the innocent. The Symposium will be chaired by Dr Eamonn O'Neill, an award-winning investigative journalist who contributed to overturning the convictions of Robert Brown and Stuart Gair who each spent 25 and 11 years of wrongful incarceration respectively. A report will be produced following the Symposium which will contain submissions by the speakers and other contributors.



Speakers:

Chris Mullin (Former MP)
Dr Michael Naughton (Founder and Director of INUK)
Professor Michael Zander QC (Emeritus Professor, LSE and Member of the Royal Commission on Criminal Justice)
Gabe Tan (Executive Director, INUK)
Mark George QC (Garden Court North)
Mark Newby (Solicitor Advocate, Jordans Solicitors)
Dr Eamonn O'Neill (Director, University of Strathclyde Innocence Project)
Professor Richard Nobles (Queen Mary University, London)
Dr Eamonn O'Neill (Investigative Journalist, University of Strathclyde)
Paddy Joe Hill (One of the Birmingham Six)
Susan May (alleged victim of wrongful conviction)
Eddie Gilfoyle (alleged victim of wrongful conviction)
Bruce Kent (Chair, Progressing Prisoners Maintaining Innocence)
Laurie Elks (Ex-Commissioner of the Criminal Cases Review Commission)
David Jessel (Ex-Commissioner of the Criminal Cases Review Commission)

Organised by:



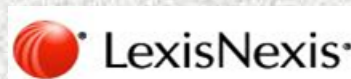
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SCOTTISH CRIMINAL CASES REVIEW COMMISSION MEETING

nothing more than precedent and there is no scientific proof to back up its assertions. However, the Commission's view remained that it was extremely unlikely the court would change its view on the admissibility of Professor Valentine's expert opinion.

On a more positive note, the Commission found merit in our submission regarding the trial judge's failure to give proper directions to the jury regarding the fallibility of eyewitness identification. We were able to suggest that the decision in Gage supported our submission regarding proper direction. Paragraph 29 of the decision states: *'On the particular issue of identification evidence, the court has its own safeguards. In a prosecution that rests on eyewitness identification the risk of a miscarriage of justice is notorious. The invariable practice in our courts is that the trial judge gives the jury a specific and thorough direction that warns them that in certain circumstances such evidence may be unreliable and refers by way of example to specific considerations that might be thought to affect the reliability of an identification made by an eye-witness'.*

We are extremely grateful to the Commission for meeting with us to discuss Mr Beck's case. Although we did not agree with many of the Commission's arguments, we did gain a valuable insight into and understanding of how the Commission perceives and performs its role. Following on from this meeting we were able to make a further submission addressing the points raised and understand that, at the moment, the Commission are undecided as to whether to refer the case or not. *I*

JOEL HICKS: SMILING IN THE FACE OF A FALSE ALLEGATION

BY AINE KERVICK

On 18th January, the Innocence Network UK (INUK) hosted a presentation by Joel Hicks entitled *Smiling in the face of a false allegation*. Joel Hicks, described as a 'fundraiser extraordinaire', is the Founder of the charity *Always with a Smile*. In his poignant presentation he outlined the distressing circumstances that led him to such an unusual career choice. A victim of false allegations of inappropriate conduct with a number of his former Sixth Form students, Joel was thrust into a series of investigations and unfounded allegations that can be disclosed on his Criminal Records Bureau checks to this day.

False allegations of a sexual nature have serious repercussions for the future of the accused, their family and friends. Allegations of this nature often never proceed past the investigation stage and charges may never be brought but the impact on the person involved is devastating. Joel's story is as inspirational as it is disturbing. Introducing the

evening, Michael Naughton highlighted that this is the area within miscarriages of justice where the average member of the public is most likely to be involved. It really can happen to anyone. In attendance at the talk was Margaret Gardener, the Director of the False Allegations Support Organisation (FASO). FASO receives over a thousand calls each year from (mainly) men looking for help and advice. Accusations of this nature are a widespread problem and require attention.

Once an allegation is made it requires an inordinate level of effort on the part of the accused to clear their name. Even after an investigation is concluded and no charges brought, the stigma remains and it can be impossible for individuals to move forward from the investigation process. Of course there is a balance to be struck and child protection issues deserve the utmost attention. The fallback from this stance is a need to recognize the impact on innocence victims of false alle-

JOEL HICKS: SMILING IN THE FACE OF A FALSE ALLEGATION

gations and a need to balance their rights as individuals by taking a more sensitive and thorough approach to any such investigation.



Joel Hicks speaking at the University of Bristol

Background

Joel Hicks is clearly an exceptional individual. After graduating from Bristol University, he went on to join the Marines gaining the highest score that year in his Admiralty Assessment before being forced to withdraw due to colour blindness. Following this, Joel traveled and learnt Arabic in Egypt before returning home to the UK where a teacher at his former school suggested he take up a position as a science teacher. He joined the school in the spring of 2005 and expressed his reservations about teaching in a school where he knew many students socially through family relationships, but was assured he would receive appropriate support.

As a teacher, Joel settled in well and by the end of his second term he was made a permanent member of staff. At this time, school broke for the summer holidays and Joel began to receive abusive anonymous calls and emails containing slurs such as 'paedo' and 'kiddy fiddler'. His friends and family were also targeted. The stress of such abuse was unbearable and Joel returned in September with the intention of resigning. His resign-

nation was refused; he was assured that such incidents were common and that he would receive the school's support

Support was not forthcoming and Joel was soon told by the School Principal to cut off all family ties with students at the school following an anonymous allegation that he had supplied a female student with alcohol. He received no support from the heads of school and soon after the Child Protection Agency became involved. The mother of the girl involved was questioned and the daughter explained that no inappropriate behaviour had occurred.

Joel's professional relationship with the Principal deteriorated from this point on and he was told he could not attend a girls' rugby social event. The principal would pass negative comments on Joel's teaching practice, clothing, the way he carried himself, his intelligence and integrity. Five weeks after being exonerated, Joel met with his principal who told him he was 'Damn lucky to get away with it' and that there was 'no smoke without fire'. Joel, again, handed in his resignation much to the dismay of his students who staged a sit-in protest and made complaints to other teachers.

Unbeknown to Joel at this time, the Principal had organised a secret 'trawling' investigation into his behaviour. Staff were asked to record any gossip or innuendo that they could gather from the students and a support staff member was told to secretly chaperone Joel during school hours. The police and social services were involved and meetings were set up to 'manage' his behaviour and attitude. Joel finished teaching on the 16th December 2005. On The 21st of December, police raided his home and he was arrested for sexually abusing two former students. He was never charged. Gossip garnered from the secret investigation was used as a basis for creating a case against him. A series of allegations were made

JOEL HICKS: SMILING IN THE FACE OF A FALSE ALLEGATION

concerning inappropriate touching, comments and behaviour. The two girls made 30 separate allegations in their statement at which point they had been at the school for ten weeks. The two girls were then taken to safe houses where they denied all allegations. Joel's computer and phone were searched and no incriminating evidence was found. Although the case had collapsed entirely, word had spread and the school continued to investigate in what Joel described as a 'witch hunt'.

In an example of gross police misconduct the Leicestershire police sent out a letter to local girls asking for any information relating to inappropriate behaviour at their school. People assumed that such effort by the police meant that something must have happened, echoing the approach of the Principal '*no smoke without fire*'.

Impact of False Allegation on Joel

At each stage in this process Joel exercised all his strength trying to dispute these false allegations. He fought every day and refused to move town. This is a testament to his courage and resolve and is the defining thread of his story. Joel refused to lose his pride and continued to defend himself. Four months after the arrest, his bail was cancelled and on the 22nd December 2006, almost a year after his arrest, the investigation ceased.

Following the investigation Joel became a target for further allegations. A girl claimed that he had sent her over 300 messages and emails asking her to have sex with him when she was just 13 years of age. The police took no action for ten months. In that time the girl contacted Joel and told him she had made up the allegation because she had heard he was a 'pervert'. When the police investigated the claim they realised that Joel was in the Middle East for a year at the time the girl was 13. In spite of this, the allegation is still disclosed when an enhanced CRB check is carried out on Joel.

After one year of false allegations Joel felt as

though he had lost everything and set about trying to rebuild his life. He claims that he survived because he was not aware of the difficulties ahead rather than as result of his personal strength. Although Joel's humility is admirable, having listened to his story it is hard to believe that his exceptional strength was not intrinsic to his survival of this impossible time.

Moving on?

Joel set about trying to create a new life having not worked for a year. He took an office job that he was sacked from after his boss received a phone call claiming that Joel was a paedophile. He then returned to his local boxing club and began coaching until the club was told it would be shut down if Joel remained employed there. Joel's difficulty finding employment was in spite of the fact that he has no criminal record and has never been charged with any crime. The cornerstone of our justice system, '*innocent until proven guilty*' is far removed from Joel's experiences.

The local authority refused to let him teach so Joel made a request under the Data Protection Act to see the contents of his file. He sought a meeting with the Local Authority to discuss his file, they agreed and later withdrew the offer. Then personnel changed and the process had to begin all over again. The obstacles facing Joel lasted well past the investigation stage and he was required to summon immense energy in his quest for justice.

In January 2010, Joel received a letter from the General Teaching Council informing him that his conduct was being investigated to determine whether he should be professionally reprimanded. His hearing was set for November of that year and Joel was not allowed to call witnesses. He was found guilty of 'not differentiating his relationship with his students from those with his family friends', but no punishment was given. As Joel highlighted during his presentation, the

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whole process from the first allegation to the final investigation lasted 2,096 days and cost well over £100,000 of taxpayers' money.

Years were taken from Joel, his family and friends. He felt trapped, isolated, didn't leave his house and felt immense guilt for what those close to him had to go through as a result of these allegations. Joel explains that although he would not wish the last 7 years on anyone, he doesn't claim that he would change anything that happened to him. He has learnt a valuable lesson; the only truly important thing in life is to be happy.

Always with a Smile

One year after Joel's initial arrest he decided on an impulse to sign up for a bog-snorkeling competition in Wales. Joel described the immense relief he felt when he realized no one was judging him and he soon signed up for similarly bizarre fundraising events such as a Gorilla fun-run and a Santa-dash. This gave him a focus and a sense of self worth because he was raising money for good causes and putting a smile on his face and the faces of others.

This new found purpose and sense of freedom helped Joel to think about his future in a new and meaningful way and he slowly began to rebuild his life. He went on to do a law conversion degree and to sit the Bar exams in Birmingham, gaining an outstanding, as well additional awards of 'Best Student' and 'Best Advocate'. He returned to his love of sport and took up ballroom dancing. Joel describes his process of 'reintegration into the community' culminating with him playing a leading role in the local production of 'The Full Monty'.

He now works in conjunction with Rainbows Children's Hospice and participates in around 40-50 charitable events a year. He has appeared on national media, TV, radio, magazines. Last year he took up a weekly column in the local newspaper and was proud to lead all 3 of the last community

carnival processions. Joel also works as a male model. There appears to be nothing he cannot turn his hand to and in watching his delivery of the presentation there was a definite sense that Joel is a unique person with a love of life.

Joel finished on a more somber note. After a very entertaining description of his visit to a sperm donation clinic, Joel informed us that he was infertile; he poignantly highlighted the serious impact his experience of false allegations has had on the rest of his life. Joel has a 'history' of allegations of sexual abuse of minors. It is highly unlikely he will ever be allowed to adopt a child.

The talk ended with a message of resilience from Joel '*Never give up. You are never going to live this life again*'. His story is inspirational and affecting. The only reason it could not to be described as tragic is because he has made it not so. His enormous strength, determination and courage has enabled him to not let the system swallow him up as collateral damage. Joel has triumphed over the odds but before Joel had even faced one allegation he had already demonstrated that he was an extraordinary individual who would go on to live a life less ordinary. It is clear he did not excel because of his difficulties but rather in spite of them.

False Allegations of Abuse: the bigger picture

No one would deny that the rights of children and the protection of their welfare is paramount. Child abuse is a problem that requires investigation and

"As soon as I was in the cross-hairs of the child protection machinery, that was it"
Joel Hicks

action. What is needed is greater appreciation that false allegations do happen and happen often. An allegation of child abuse is the most stigmatizing offence one could be accused of and the

JOEL HICKS: SMILING IN THE FACE OF A FALSE ALLEGATION

stigma pervades regardless of charge or conviction. It is also an area where the legal principle of innocent until proven guilty is regularly disregarded. As Joel was told by his Principal there is, 'no smoke without fire'. With such heightened emotions involved putting policy from paper into practice is not a simple task. Margaret Gardener regularly sees the procedural difficulties within the Child Protection System and explained:

The Child Protection investigation process was designed to be an integrated approach including police, social services and the child protection ser-

It is not the law, but the law in practice that is not working

vices, but in reality there is little integration and what is left is increased bureaucracy that makes any attempt to defend yourself increasingly difficult. Joel is incredibly strong and stood up for himself throughout his ordeal but the tragic reality is that most people are not as brave. They may not have the personal strength or support from family and friends. They may not be as intelligent, capable or as young as Joel and all these factors

mean that they cannot triumph over adversity as he has done. These people lose their whole lives.

Conclusion

Victims of false allegations face continuous stigma, lose their jobs and have immense difficulty regaining employment. In what effectively results in a life sentence, they suffer emotionally, psychologically and financially in seeking to challenge the allegation. Joel has used his unique philosophy and positivity to overcome these obstacles and has turned his life around, putting his energy into helping others. He is truly an inspirational individual and his talk highlighted the impact false allegations have on victims and their families.

Investigations should adhere to the concept of innocent until proven guilty and not stigmatise innocent individuals well into their future. Going forward it is clear that it is of vital importance to have thorough investigations that take into account the sensitive nature of such allegations and the impact that they have on an individual wrongly accused. *I*

UK SUPREME COURT ENDS ABSOLUTE IMMUNITY FOR EXPERT WITNESSES

BY HANS SHERRER

The UK Supreme Court put a chink in the armor of absolute immunity by its ruling in the case of *Jones v Kaney*, [2011] UKSC 13, that an expert can be sued for a breach of his or her duty to exercise reasonable skill and care in a legal proceeding. Although *Jones* related to an expert's conduct in litigation involving a traffic accident, the Court noted that the ruling also applies to an expert's negligence in a criminal case (see, para. 60).

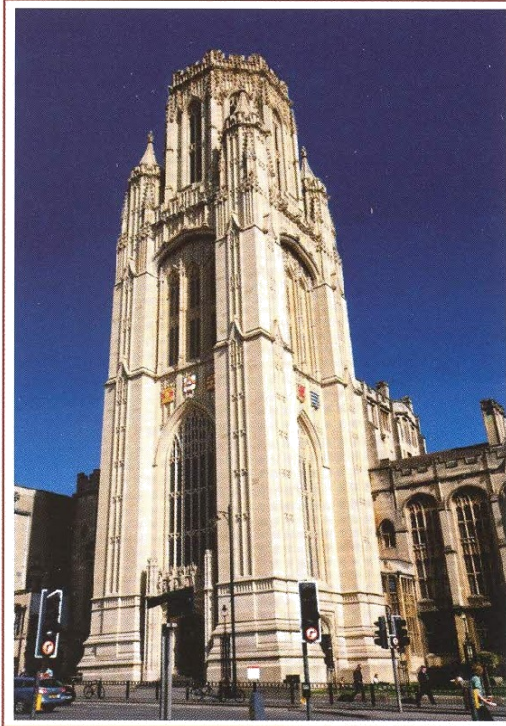
Expert witness immunity has been the law since the 1500s

Absolute immunity of expert witnesses for their conduct related to a legal proceeding dates back more than four centuries (see, *Cutler v Dixon* (1585) 4 Co Rep 14b; 76 ER 886). That immunity was granted prior to development of the law of negligence, and that liability may attach for making prejudicial misstatements. It was also established hundreds of years before it became



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UK SUPREME COURT

common for experts to contractually offer their services as witnesses. As with the absolute immunity granted other participants in a legal proceeding, it originated as a privilege against a claim for defamation. This was explained in *Dawkins v Lord Rokeby* (1873) LR 8 QB 255, 263, in which Kelly CB stated:

The authorities are clear, uniform and conclusive, that no action of libel or slander lies, whether against judges, counsel, witnesses or parties, for words written or spoken in the ordinary course of any proceeding before any court or tribunal recognized by law

In 1998 the Court of Appeal ruled in a case that involved an expert's conduct similar to that which precipitated the lawsuit in *Jones*, that the expert was absolutely immune from liability for negligence. (See, *Stanton v Callaghan* [1998] QB 75.)

The Court of Appeal affirmed the breadth of immunity in *Arthur JS Hall & Co v Simons* [2002] 1 AC 615, 740:

A feature of the trial is that in the public interest all those directly taking part are given civil immunity for their participation... Thus the court, judge and jury, and the witnesses including expert witnesses are granted civil immunity. This is not just privilege for the purposes of the law of defamation but is a true immunity. (Per Lord Hobhouse of Woodborough)

The facts of *Jones v. Kaney*

Mr Jones was on his stationary motorcycle when he was struck by a drunk driver in Liverpool on 14 March 2001. He retained a solicitor to explore the possibility of filing a lawsuit. Mr Jones had not only suffered severe physical injuries, but appeared to also have severe psychological after-effects as well, so his solicitor retained Ms Kaney, a

clinical psychologist to examine him. She wrote a report in July 2003 that detailed her opinion that Mr Jones was suffering from PTSD, and in September 2003 his solicitor filed a lawsuit against the driver and his insurance company. In February 2004 the vehicle's insurer admitted liability, so the only issues was the extent of the money damages Mr Jones would be awarded.

In December 2004 Ms Kaney wrote a second report that detailed that Mr Jones was suffering from depression and some symptoms of PTSD. The insurance company retained a psychiatrist who prepared a report that Mr Jones was exaggerating his physical symptoms. The judge ordered the two experts to discuss their respective findings and prepare a joint statement. The insurance company's expert prepared a draft joint statement that he discussed with Ms Kaney by telephone. She agreed to sign the statement without offering any amendments or comments.

That joint statement severely undercut Mr Jones' case because among other things it stated, "his psychological reaction to the accident was no more than an adjustment reaction that did not reach the level of a depressive disorder of PTSD" (para. 8). It also explained that Ms Kaney found Mr Jones to be deceptive and deceitful in describing his mental condition, and that both experts agreed his behaviour raised doubts about the truthfulness of what he reported.

When queried by Mr Jones' solicitor Ms Kaney admitted the joint statement she signed didn't reflect her true opinions about the psychological effects he suffered from the accident.

The judge denied the request of Mr Jones' solicitor to change their psychiatric expert, and so he had to settle for significantly less money than he would have without the joint statement signed by Ms Kaney.

Mr Jones then sued Ms Kaney based on her negli-

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gent conduct that was contrary to the reasonable skill and care that he expected her to provide when she was retained as an expert. In January 2010 his lawsuit was dismissed by the judge based on Ms Kaney's absolute immunity as an expert witness. However, the judge granted a "leapfrog certificate" that the case involved a point of law of general public importance, which allowed his appeal to be brought directly in the Supreme Court.

The Supreme Court's analysis and ruling in *Jones v. Kaney*

The Supreme Court's lead opinion was written by Lord Phillips. After reciting the history of expert witness immunity and the facts of the case, he explained that the original reason for granting immunity to the participants in a legal case was that it could have a chilling effect if they had to be concerned about being sued by a disgruntled litigant for their conduct.

However, in 2001 the Court of Appeal cracked the absolute immunity of barristers by abolishing immunity for negligent conduct in the case of *Hall v Simons* [2001] 1 AC 615. That happened 32 years after the Court of Appeal rejected a challenge by a client seeking damages from his former barrister for failing to exercise reasonable skill and care in his representation (see, *Rondel v Worsley* [1969] 1 AC 191).

However, a barrister is still protected by immunity from a defamation claim for a slanderous statement made during legal proceedings (see, *Medcalf v Mardell* [2002] UKHL 27, [2003] 1 AC 120, 142, per Lord Hobhouse).

The absolute immunity of expert witnesses was pierced in 2004 when they were held liable for a wasted costs order (see, *Phillips v Symes* (No 2) [2004] EWHC 2330 (Ch), [2005] 1 WLR 2043). It was further pierced in 2007 when the Court of Appeals held that expert witnesses do not have im-

munity against disciplinary proceedings related to evidence they give in a legal proceeding (see, *Meadow v General Medical Council* [2007] QB 462).

An expert's opinion can have a significant effect on the recommendation by legal counsel on how their client should proceed and what the client ultimately decides to do. If a case is resolved without a trial there is nothing in the record about the expert's role in the resolution of the case. Consequently, the role of an expert is analogous to that of a barrister in providing services to a client, which is clearly distinguishable from a witness whose only role is to provide truthful testimony about matters of fact.

There were concerns barristers could be negatively affected by the elimination of absolute immunity because it might inhibit their performance. However, there isn't evidence it has had that effect since a barrister is only liable for negligent conduct. Consequently, it is reasonable to think the impact on expert witnesses of eliminating absolute immunity wouldn't be any different.

Mr Jones' lawsuit was a perfect case to challenge the absolute immunity of an expert witness because Ms Kaney didn't deny that she signed the joint agreement that didn't express her views, and her negligent conduct caused him financial harm. Consequently, Lord Phillips concluded that:

The opinions by the four concurring judges addressed similar issues as Lord Phillips opinion. Mr Jones was thus able to proceed with his lawsuit against Ms Kaney.

It follows that I consider that the immunity from suit for breach of duty that expert witnesses have enjoyed in relation to their participation in legal proceedings should be abolished. I emphasise that this conclusion does not extend to the absolute privilege that they enjoy in respect of claims in defamation (para 62)

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Possible consequences of *Jones v. Kaney*

Jones v Kaney created a form of qualified immunity for expert witnesses identical to that created for barristers in the 2001 case of *Hall v Simons*. Civil liability doesn't attach unless a person can prove they were harmed by an expert or a barrister working on their behalf who failed to exercise reasonable skill and care in the performance of their duties.

It is unlikely there will be a significant number of lawsuits lacking merit filed against experts as a result of *Jones*, not only because experts are now on notice they can be held financially accountable for their negligent conduct, but as Lord Phillips observed:

What is intriguing about the cases of *Jones* and *Hall* is that when the Court of Appeal upheld the absolute immunity of barristers in *Rondel v Worsley* [1969] 1 AC 191, the Court rejected that

The litigant without resources will be unlikely to succeed in persuading lawyers to act on a conditional fee basis. A litigant in person who seeks to bring such a claim without professional support will be unable to plead a coherent case and will be susceptible to a strike out of application. For these reasons I doubt whether removal of expert witness immunity will lead to a proliferation of vexatious claims (para 59)

they were immune from civil liability because they didn't have a contractual relationship with their clients and couldn't sue for fees. A barrister's absolute immunity (at the time) stemmed from his status that "as an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public ..." (see, *Rondel*, per Lord Reid, page 227).

Thirty-two years later in *Hall* that absolute immu-

nity was allowed to be pierced because a barrister's negligent conduct has no relationship to their role as an officer of the court and is not deserving of blanket protection from liability.

That same rationale can be applied to a prosecutor's conduct in a criminal case that sabotages the administration of justice in contravention to their obligation as an officer of the court. Thus, a prosecutor's conduct related to a trial such as concealing exculpatory reports and/or witness statements, deals for prosecution favorable testimony, and remaining silent when a witness is known to be testifying perjurally, are indefensible breaches of the prosecutor's legal obligation to exercise reasonable skill and care in carrying out their duties. Conduct of that sort cannot be justified as warranting absolute immunity from civil liability because it doesn't just undermine the administration of justice, but it is contrary to a prosecutor's "overriding duty to the court, to the standards of his profession, and to the public..." (see, *Rondel*, page 227).

Consequently, a prosecutor ought to be as civilly liable to a defendant for prejudicially negligent conduct as is the defendant's barrister (and expert(s)) for causing infinitely less harm than a prosecutor's misuse of his position of public trust, since a barrister's liability is not predicated on their contractual relationship with their client but by their legal obligation to exercise reasonable skill and care in carrying out their duties.

Police already only have qualified immunity for civil liability related to investigative activities carried out prior to the initiation of criminal charges (see, e.g. *Darker v Chief Constable of the West Midlands Police* [2001] 1 AC 435). In *Darker* Lord Clyde noted in favoring that the suit against the police be allowed to go forward that:

I'm suggesting that in a particularly egregious case of a prosecutor's breach of their legal duty by causing harm to an innocent person by contrib-

UK SUPREME COURT

uting to the person's conviction of a crime the person didn't commit, that a test case might be

Since the immunity may cut across the rights of others to a legal remedy and so runs counter to the policy that no wrong should be without a remedy, it should be only allowed with reluctance, and should not readily be extended. It should only be allowed where it is necessary to do so.

(*Darker*, per Lord Clyde, pages 456-457)

brought to challenge the absolute immunity of prosecutors. The principle enunciated by Lord Clyde in *Darker* "that no wrong should be without a remedy" is as applicable to prosecutors in a legal proceeding as it is to barristers. The objective of such a suit would be to establish that prosecutors are only shielded from civil liability by the same qualified immunity that is enjoyed by a defendant's barrister. The elimination of absolute immunity would not be expected to have any effect on prosecutors who conscientiously carry out their duties.

However, it would expose prosecutors who now have no reasonable constraint in their pursuit of a conviction at all costs to being the defendant in a meritorious lawsuit filed against him or her when an innocent person is proven to have been convicted by their underhanded tactics and dirty deeds.

Likewise, arguments can be crafted to extend *Jones'* qualified immunity to prosecution experts so they can be held civilly liable for illicit conduct that undermines the administration of justice by contributing to the conviction of an innocent person.

* Hans Sherrer is editor and publisher of *Justice:Denied* – the magazine for the wrongly convicted. Their website is www.justicedenied.org. He also maintains the world largest database of wrongly convicted persons at www.forejustice.org/search_idb.htm I

**JUSTICE
DENIED**

The Magazine for the
Wrongly Convicted

WHATEVER HAPPENED TO THE BIRMINGHAM SIX?

BY DR EAMONN O'NEILL, DIRECTOR, UNIVERSITY OF STRATHCLYDE INNOCENCE PROJECT

Prelude

On the 12th March 2011, the Miscarriages of Justice Organisation (MOJO) held an event in Glasgow called 'Whatever Happened to the Birmingham Six?' and I was asked to act as chairperson for the event, something I was delighted to do, not only as someone who'd served on MOJO's management board, but also as someone who'd followed the Birmingham Six's appalling story most of my adult life.

I should also confess that part of the unexpected pleasure was that I was keen to watch a special screening of the Granada TV film 'Who Bombed Birmingham?' which was featured as part of the occasion. The production was a tour-de-force in British docudrama-making, starring John Hurt as Chris Mullin (later an MP) who investigated the case for Granada TV, and Martin Shaw as Ian McBride, the brilliant Granada producer on *World in Action*.

For me watching that film was like being taken back in a time machine to 1980s journalism when

WHATEVER HAPPENED TO THE BIRMINGHAM SIX?

there were only analogue phones, certainly no mobiles, a few workable phone-boxes on street corners, dodgy electric typewriters and the occasional glamorous fax machine which no-one could use.

More darkly, it was also the era of IRA terrorist attacks in the UK, unbridled Thatcherism, and the press playing the role of a scrutinising Opposition in absence of the actual politicians seeming to do much. It was also an age of some fine British investigative journalism in both print and broadcast. Few of the programmes I watched as a student exist now – *First Tuesday*, *Scottish Eye* and of course, *World In Action* have all gone – and those that do remain seem diminished in many ways. The BBC's *Rough Justice* series which was dedicated to uncovering wrongful convictions was in full flow back then but it too would find itself falling out of popularity – not with viewers – but with programme commissioners who invented something called 'Factual Entertainment' in the early 1990s. I arrived in network TV as an enthusiastic young journalist in 1989 and left it a more cynical journalist about to turn 30 years old, in 1997.

Oddly-enough, a decade and a half-later, I see the development of today's digital platforms as a good thing for serious investigative journalism and I find myself in my mid-forties, more optimistic about my profession and craft, than I have been for some time. Yes, I still think the final gatekeepers of serious journalism should be an experienced journalist for all sorts of legal and technical reasons, but I do think that the access which the internet affords anyone means that the average person wanting to research, connect and publicise an alleged miscarriage of justice case will find it easier than it was decades ago. However, I still understand why people seek out journalists for help and I certainly understand why investigative journalists in particular were traditionally labelled the unofficial 'last court of appeal'

when the forgotten, exploited and disenfranchised found themselves in one of life's ditches.



Sitting beside Paddy Hill, and the Guildford Four's Gerry Conlon and their lawyer Gareth Pierce in Glasgow at this event last year was an honour for me. I thoroughly enjoyed introducing them to the audience and relished watching the superb Granada TV production all over again. Some members of the University of Strathclyde's Innocence Project were in the sell-out audience that day too, alongside INUK's director Dr Michael Naughton and Gabe Tan.

I squinted into the shadows as I delivered the opening remarks printed below and hoped my words and reflections helped everyone focus a little bit on why we were all there. To be honest, I was half-hoping to catch sight of my younger self – maybe half the age I am now – still a student, eagerly clutching a notepad and pen, and imagining he looked something like a real journalist. I know my trade seems like it's hit a rocky time lately, but if I had caught a glimpse of that fresher-faced, thinner and full-head of hair version of me, I'd have whispered to him to keep doing what he was doing; keep learning from his mistakes; keep respecting the work of those who went before him; and above all, keep investigating those tough stories that will come his way. I'd have said those things because sometimes jour-

WHATEVER HAPPENED TO THE BIRMINGHAM SIX?

nalists don't choose their stories – it's the stories that choose the journalists.

And if it's a miscarriage of justice story then, by God, I'd have told him he'd better be ready for the fight of his life.

Extract from the opening remarks

The central reason we're gathered of course, is to mark the release 20 years ago of the group of men who came to be known as The Birmingham Six: Hugh Callaghan, Patrick James 'Paddy' Hill, Gerard Hunter, the late Richard McIlkenny, William Power and John Walker.

These men were convicted of terrible atrocities which took place in Birmingham pubs on 21st November 1974 – terrorist acts attributed to the Provisional IRA – causing a total of 21 deaths and 162 individuals to sustain injuries.

Unwittingly, by the night's end, the six men would themselves be casualties of those bombings. Five of them were waved off by a sixth – Hugh Callaghan – to attend a funeral and visit relatives in Belfast. Before they boarded the ferry they were stopped and searched by Special Branch officers. They were then taken to Morecambe Police station for forensic tests. They were questioned, tested and abused during that visit. They were also handed over to the notorious West Midlands Serious Crime Squad. By the evening of the 2nd of November Hugh Callaghan was also under arrest. The six men were now the target of a massive investigation and a framing-operation the likes of which Britain had never seen.

Their crime? Being Irish in the wrong place at the wrong time.

The trial in May 1975 heard evidence that forensic tests had allegedly proven to 99% reliability that two of the six – one of whom was Paddy Hill – had handled explosives. This evidence and even the test itself, was later proven to be nothing less than complete and utter rubbish.

But, the court thought otherwise and the six were sentenced to Life terms in August 1975.

By the time the six appeared back in court in November of that year, they showed clear physical signs of abuse. A challenge was mounted and 14 prison officers were charged – none were convicted. Further cases against the police also fell on deaf ears. By 1980, Lord Denning, the Master of the Rolls said the following when considering one of the Six's many court battles:

"Just consider the course of events if their [the Six's] action were to proceed to trial ... If the six men failed it would mean that much time and money and worry would have been expended by many people to no good purpose. If they won, it would mean that the the Home Secretary would have either to recommend that they be pardoned or to remit the case to the Court of Appeal. That is such an appalling vista that every sensible person would say, 'It cannot be right that these actions should go any further.'"

This 'appalling vista' analysis amounted to a policy of 'Stuff the Six: Let's save the system'.

The men were only successful on their third appeal in 1991. By then the case had attracted a huge international campaign and a legal team spearheaded by the formidable skills of Gareth Pierce. Along with the men themselves, she is – and remains – one of the real heroes in this terrible saga.

That 1991 appeal heard fresh evidence of police fabrication in the case against the men and suppression of evidence which, if heard, could have given them a very different verdict. There was also the question of the complete discrediting of the men's alleged confessions and the revelation that the forensic evidence from 1974 was not worth the paper it was written on... even by the standards of the day. In fact in the immortal

WHATEVER HAPPENED TO THE BIRMINGHAM SIX?

words of one expert I like to quote every so often the forensic case against the six was shown to be 'So wrong, that it wasn't even wrong...'

The men were finally released, their convictions overturned, on March 14th 1991 – and for those of us old enough to remember it – it was a hopeful and unforgettable day.



Indeed, as someone who was hiking in the youthful foothills of a career in journalism – and with sights set on specialising in investigations in particular – the press campaign which eventually emerged on behalf of the six was equally inspiring. The work of individuals like Chris Mullin and Ian McBride and the team at Granada was superb. But make no mistake – many in the press actively promoted the opposite position and covertly encouraged whispering campaigns in the years that followed saying the men were guilty. Indeed, in one of his books, an early journalistic supporter of the Birmingham Six, Ludovic Kennedy recounts how he asked two high profile dinner guests who claimed the six were guilty if they minded that he pass on their comments to the men's lawyers?

"Why?" they asked.

"So I can have their lawyers serve you a writ of libel..." came the reply.

The conversation ended fast.

Today you are about to see an extraordinary documentary 'Who Bombed Birmingham?'

It is the first time it has been shown on the big screen since the night it was broadcast on March 28th 1990. For some of you it might seem like a glimpse into a long-forgotten world in an era before you were even born; for those of us who lived through it, and especially for the key members of today's panel, it won't seem so long ago. It was a fearful time; speaking truth to power was not popular; and supporting certain causes was seen as tantamount to treason. Actually, come to think of it – maybe not much has changed after all?

Speaking as a journalist, please forgive me for drawing particular attention to the work of Chris Mullin. He was vilified, attacked and ridiculed in ways that would have broken a lesser man. In the end, his work was proven to be accurate and the judicial system was shown to be broken. He is also one of the heroes of this story.

On the back of the men's release a Royal Commission on Criminal Justice was established and from that, with great hope, came the Criminal Cases Review Commission in 1997. Later, we will debate whether the system really has changed; whether the CCRC is living up to its promise; and find out more about what happened to the Birmingham Six in the intervening two decades.

Meantime, let's sit back and watch 'Who Bombed Birmingham?' and learn a thing or two about investigative journalism, the justice system itself, what happens when the innocent are framed by the powerful – and the real heroes of this dark drama – the Birmingham Six themselves. **I**



Dr Eamonn O'Neill

**Book Review: *Actual Innocence* by Barry Scheck, Peter Neufeld and Jim Dwyer
By Jozia Sadiq, University of Sheffield**

Marion Coakley, 15 years – Innocent. Dennis Fritz, death row – Innocent. Walter Snyder, 45 years – Innocent. Robert Miller, death row – Innocent. Ron Williamson, death row – Innocent. Glen Woodall, two life terms, plus 335 years on top – Innocent. Calvin Johnson, Jr., life – Innocent. The list is disconcertingly endless.

The causes vary, yet ultimately produce the same result – the conviction of an innocent person. Mistaken identifications, false eyewitness accounts, flawed court procedure, intimidation by police officers and racial prejudice all account for as necessary in our search for the truth, concealing their reality as tools of oppression. What are relied upon by our society and legal system as essential in the search for justice, become to the innocent, 'harmless errors', where a lump sum is awarded to compensate for the irreparable damage of imprisonment.

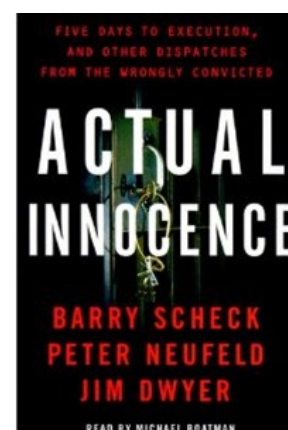
Scheck, Dwyer and Neufeld demonstrate, through personal dealings with miscarriages of justice, how unreliable eyewitness accounts can actually be. In *Actual Innocence*, the account of victims who claim to have seen their rapist by the light through their window for the period of three seconds is deemed sufficient for the purposes of conviction. Similarly, supposed chance encounters of victims with the perpetrators of their crime, in a police station, is considered adequate identification of the rapist.

Other causes of wrongful convictions are 'junk science' where prosecution forensic experts produce DNA which they claim matches the DNA of the defendant on the basis of no substantive evidence. Such flawed information is allowed to be presented to the jury without any opposition, as a result of sloppy defence lawyering. Many of the innocent men of *Actual Innocence* have received

an inadequate defence, where one man was represented by a lawyer who slept throughout most of the trial!

Scheck, Neufeld and Dwyer's dedication to the search for justice is clearly conveyed in their book, *Actual Innocence* and the introduction of the Innocence Project, which now provides support to the wrongfully imprisoned throughout the United States. The authors of this book not only compel us to face the realities surrounding the imprisonment of an innocent individual, but also to address the problems they face in re-adjusting to life beyond their release as a non-ex-offender. They have successfully exonerated innocent individuals by exposing the flaws present in the evidence relied on in previous trials, as well as making use of DNA.

As well as discussing the successes of the Innocence Project, whose numerous exonerations have been as a result of the use of DNA, the authors of *Actual Innocence* provide solutions to right these wrongful convictions. Such solutions include providing support for innocent individuals upon their release from prison whom are unable to attend ex-offender programmes because of their innocence, insinuating almost that their conviction and subsequent imprisonment never occurred! **I**



Bold

In the days of old, when I was bold
struggle was not conjecture, but reality.
The daily acts of sabotage were cold
in the battle for control.



Furnished by a desire for justice,
protest was solution to all injustice.
Seen as a subversive militant,
the system has become an irritant.

Targeted by stitch-up merchants
who hide behind their uniforms.
Set ups, beatings to make me confirm,
all part of the daily norm.

Tainted for submitting paperwork on a regular basis.
Ridiculed, berated, agitated, demonstrated
liquidated to eradicate a disciplinary matter,
only mayhem will resolve the problem.

Kept in down to moron's black book,
Home Office cretins will be shook.
Another mistake they forgot to unlook
As justice finally puts me back on the block.



By Raymond Gilbert (HMP, Liverpool)
Maintaining innocence since 1981



Innocence Network UK (INUK)

‘Educating to overturn and prevent the wrongful conviction of innocent people.’

INNOCENCE NETWORK UK SPRING CONFERENCE

Date: Friday, 27 April 2012

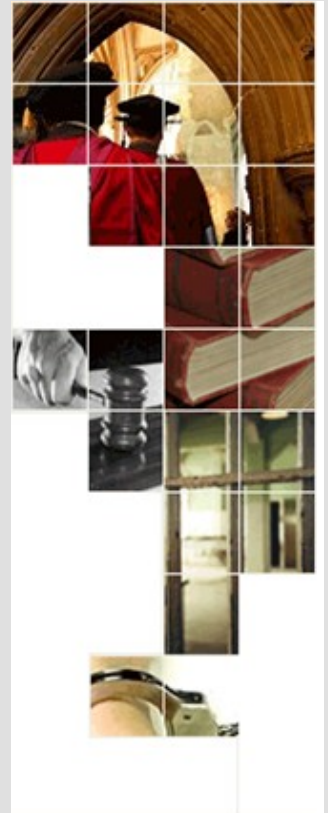
Time: 1 pm to 5.30 pm

Venue: Cleary Gottlieb Steen & Hamilton LLP, City Place House, 55 Basinghall Street, London EC2V 5EH

Organised by:



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For booking information, go to: www.innocencenetwork.org.uk/events

News

Casework News



Gary Critchley

Gary Critchley, one of INUK's cases, has been granted parole after serving 31 years in prison. Gary Critchley was convicted in 1981 of the murder of Edward McNeill, who was found bludgeoned to death in a London squat. Convicted on mainly circumstantial evidence, Gary Critchley has always maintained his innocence and served more two decades over his recommended sentence of 9 years. In 2011, INUK referred his case to its member innocence project at White and Case LLP, which is believed to be the first innocence project in the world to be set up in a corporate law firm. Led by associates Rory Hishon and David Milton, White and Case LLP Innocence Project is currently seeking DNA testing on materials collected from the crime scene.

Two applicants who were convicted of robbery and a sexual offence respectively have had their cases referred to the **University of Exeter Innocence Project** by INUK for full investigation.

Since publication of INQUIRY Issue 3, INUK has assessed a total of **28 applications for assistance**, out of which 5 have been deemed eligible for full investigation.

Innocence Project Directors' Day

INUK hosted its first **Innocence Project Directors' Day Meeting** at the School of Law, University of Bristol on the 4 Feb 2012. The meeting brought together Directors of INUK member innocence projects who spent the day exchanging practical casework solutions, investigative techniques, tips on recruitment, supervision and case



Innocence Project Directors at the University of Bristol organisation. The Directors also heard presentations from students of the University of Bristol Innocence Project on the casework they have undertaken and the learning outcomes from their innocence project experience.

Talks/Communications



Jennifer Thompson

INUK organised a talk by **Jennifer Thompson**, who is the co-author of *Picking Cotton* at the Watershed, Bristol on the 7 March 2012. Attended by an audience of 200, Jennifer gave a frank and emotional account of her experience as a victim of a brutal rape she suffered as a

twenty-two year old college student. It was her compelling testimony in that case that sent a young man to prison, not once, but twice, for a crime he did not commit. That man, Ronald Cotton, was eventually freed thanks in large part to his persistence in proclaiming his innocence and the development of sophisticated DNA tests. Partners in the event were the Bristol Festival of Ideas, University of Bristol Law School, the School of Sociology, Politics and International Studies

News

and the University of Bristol Centre for Public Engagement.

On the 18 January 2012, the University of Bristol Innocence Project hosted a talk by **Joel Hicks** who spoke about his experience of false allegations by his former students and the extensive impact the allegations have had on his life despite all criminal charges against him being dropped. The talk was also attended by Margaret Gardener, Director of the False Allegation Support Organisation which provides a helpline for individuals claiming to be victims of false allegation for sexual offences. (For details, see article by Aine Kervick, p 8).

Dr Michael Naughton, Founder and Director of INUK gave a seminar at the University of Sheffield entitled 'How the Presumption of Innocence Renders the Innocent Vulnerable to Wrongful Convictions' on the 8 February 2012. The seminar was organised by the University's Centre for Criminological Research.

Publications

G. Tan, 'Justice should not Depend on Luck' (2012) *Socialist Lawyer*, Issue 60.

M. Naughton, 'No Champion of Justice' (2012) in J. Robins (Ed.) *Wrongly Accused: Who is Responsible for Investigating Miscarriages of Justice?* (London: Solicitors Journal).

E. O'Neill, 'Remembering the Roots' (2012) in J. Robins (Ed.) *Wrongly Accused: Who is Responsible for Investigating Miscarriages of Justice?* (London: Solicitors Journal)

Press Coverage

'Lawyers backing Gary Critchley's bid to clear his name demand forensics from 1980 murder scene'

Sunday Mercury, 11 March 2012. (Feature article on White and Case LLP Innocence Project and its investigation on the case of Gary Critchley.)

'Fighting simple justice' Bristol Evening Post, 7 March 2012 (Feature article on Dr Michael Naughton and his work with INUK.)



Case Statistics

As of March 2012, 104 cases have been referred to INUK member innocence projects for full investigation. 101 cases deemed eligible by INUK are currently on the waiting list pending referral to an innocence project. INUK has received 1,056 enquiries for assistance and 453 full applications.



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INQUIRY welcomes submissions for any of the following categories:

- 1) Feature Articles on any issue relating to wrongful convictions and/or innocence project work (no more than 2,000 words).
- 2) Reviews of books, articles or films on the subject of wrongful convictions and/or innocence projects (no more than 1,000 words).
- 3) Innocence Project News from Members (no more than 250 words)
- 4) Research Updates (no more than 250 words)
- 5) Student articles on any issue relating to wrongful convictions and/or innocence project work (no more than 1,000 words).

Please note: all submissions from students must be from member innocence projects and must be vetted and sent via their staff director.

DEADLINES & SCHEDULES FOR 2012

Next Issue

The deadline for the submissions for all of the above categories is Monday 21st May 2012.

INSTRUCTIONS

All submissions and expressions of interest should be sent by e-mail with INQUIRY in the subject line to:

innocence-network@bristol.ac.uk

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