



# I N Q U I R Y

THE QUARTERLY NEWSLETTER OF THE INNOCENCE NETWORK UK ]

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## Innocence Projects: Saving investigative journalism for the next generation

By George Berridge  
Journalism Student, University of Winchester Innocence Project

The greatest victories in journalism are claimed when a hidden truth is found. Be it uncovering the plots of the corrupt, the failings of those in power or affirming the long-pleaded innocence of someone put away as a result of a miscarriage of justice.

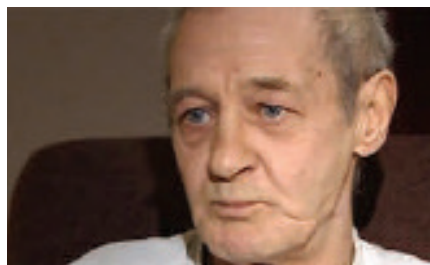
Innocence projects investigate the possibility of the latter and, sometimes, find the two to the former were responsible.

Even though the UK now has the CCRC (Criminal Cases Review Commission) and the SCCRC (Scottish Criminal Cases Review Commission), those still protesting innocence can often find it difficult to get their cases referred back to the appeal courts. This is where Innocence Projects step in.

To see why the work done by the projects is so important, it is necessary to look at what happens when the justice system – for whatever reason – fails to bring true justice.

Paddy Hill was one of six convicted of the Birmingham bombings of 1976 – an attack which left 21 dead and 162 injured. He spent 16 years in prison until his conviction was overturned and he was released in March, 1991.

He was arrested, not because he was guilty, but because the police needed a conviction. In conversation with Amelia Hill of the Guardian, he recounts his arrest: "They jammed a pistol in my mouth and smashed it around, breaking my teeth so badly it was agony to even have a sip of water until I finally saw a dentist, two weeks later. They told me they knew I was innocent but that they didn't care."



Paddy Hill Paddy Hill, wrongly convicted of the Birmingham bombings on 1976

He spent the time in prison becoming, as he calls it "dehumanised"; the constant risk of attack, and the perpetual isolation left him feeling "dead." Even now, after his release and a £1m payout, he lives an anhedonic life. He spent much of his money trying to rebuild relationships with his family, as well as trying to buy help for others on the inside who claimed to be wrongly convicted.

It was after reading about Paddy's case that I became involved with the University of Winchester Innocence Project. As a student journalist, I saw working on a case not just as a matter of righting a wrong, but as a potential scoop.

Hundreds of box files filled with potential lapses in official accounts, false alibis and unusual police actions – it is a thought that sets the hearts of most hacks racing.

Innocence Projects are the perfect proving ground for wannabe investigative journalists. They require hours and hours of work, scouring hundreds of pages with a fine-toothed comb, re-evaluating the official statements and lines of inquiry. At present, only one journalism course in the England – mine, at the University of Winchester – is involved with the innocence project.

This is something that I hope changes in the future.

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## Innocence Projects: Saving investigative journalism for the next generation



Investigative journalism is now in peril, there is a chance that innocence projects could play a part in its salvation.

The chilling effects of Lord Justice Leveson's report in to standards and ethics of the press, the subsequent announcement of a royal charter, and the ongoing battle to monetise the internet while newspaper sales remain in decline have all meant that investigative journalism has begun to wither.

Only the news organisations with heavy funding can continue to plough resources into long-term research and investigation, like that carried out by the Sunday Times Insight Team and Private Eye.

Journalists, it is off-quoted, are only as good as their next story. This used to mean the quality of your scoop, but for hundreds of journalists it now means the speed at which a press release can be re-worded. While the idea of ploughing hours into a lead or a story is noble, it is now far from practical. Newspapers in general have created somewhat of a trap for reporters – low wages and a demand for constant news has led to an increasing amount of churnalism (copy ripped straight from the wires or a press release).

Speaking to a sub-editor on a national paper recently, he told me how newsrooms have changed. Where editors used to send out reporters on just the nose of a story and encouraged them to go out and meet contacts and talk to people, now everything is done behind a desk. This is all done in the name of efficiency and profit.

The reality of this for young journalists is not a pleasant one. Few journalism courses run modules specifically aimed at training investigative hacks (the spontaneous aspects don't fit with the modular model of universities).

These issues leave us in a position where, even if strong financial backing is available, there are fewer journalists with the experience behind them to actually carry out the work.

If journalists no longer have the chance to learn the real ins and outs of investigative journalism, then what hope is left for the press or the people they could be helping?

One such person is Paul Blackburn, who was wrongfully imprisoned for 25 years at the age of just 15 and since his release has become a campaigner for the Innocence Network UK. I was given the chance to speak to him recently at a talk he gave at the University of Winchester Innocence Project. Listening to him, I felt exactly like I did reading the piece on Paddy Hill: angry.

Angry that incompetence and corruption had taken away the life of someone who hadn't even finished school.

Blackburn, who came from what he himself described as a "disturbed background". Was charged with attempted rape and murder of a nine year-old boy: no forensic evidence ever linked him to the scene and the police interviews he gave – it was found on appeal – should never have been used.



Paul Blackburn spent 25 years in prison since the age of 15 for attempted rape and murder.

He lived every day under threat of death – as someone convicted under a child sex offence, he was seen as "less than human".

He wrote to journalists on the outside often, asking for help. Few were interested in taking the time to look over the evidence. When Blackburn walked free he was greeted by a mob of journalists wanting a statement. His response was one of anger: all he thought was this: "Where have you been?"

Paul and Paddy, two men, convicted for crimes they did not commit, spent years behind bars before they found justice. The same story is true for many others, whose lives will be permanently ruined by false imprisonment. Ruined not just by the sentence itself but the quality of life which has to be endured after release – if indeed there is one. A chance to rebuild becomes almost impossible for most; constant denial of job opportunities and friendships. You are said to be a free man once released, but to believe that would be a fallacy.

It was my awareness of the injustices mentioned above and those that had yet to be discovered that pushed me forward through weeks of dissecting HOLAB forms, action files, transcripts and statements.

Working on a case for an Innocence Project requires dedication and a lot of time but for me it's been invaluable and has reinforced in my mind the reason I want to become a journalist: to look for the facts, even if they are hidden. Those I have worked with have echoed these thoughts.

If more journalism courses become involved in working on Innocence Projects, perhaps investigative journalism can once more become a force – a force young journalists use to revitalise newsrooms. A new generation who are willing to put in the hours of hard graft and aim to do what all great journalists have done before them: find the truth and use it to make a difference.

# Nunn v Chief Constable of Suffolk Constabulary [2012] EWHC 1186 (Admin) Case comment

By Louise Hewitt  
Casework Manager, University of Greenwich Innocence project

Claims of innocence based on forensic evidence retained by the police could be affected as a result of a High Court decision in May last year.<sup>1</sup> The potentially far reaching consequences of the case may mean that individuals hoping to rely on new testing techniques may not be able to do so because the police are under no obligation to disclose the forensic material.

Kevin Nunn was convicted of murdering Dawn Walker on 20 November 2006 after a six week trial. Nunn had been in a relationship with Walker, but she had been seeing other men. They did not live together. At the time when Walker was believed to have been murdered, Nunn had visited her at home and the subsequent conversation had resulted in the breaking off of their relationship. Nunn claimed this was amicable but neighbours said they heard the pair arguing. The prosecution claimed Nunn had argued with Walker and then killed her.<sup>2</sup> He had then burnt her body near to the River Lark where it was subsequently found, but had returned the body to her home before later removing it. Nunn had been identified by one of Walker's neighbours who said she saw him moving a long heavy object from the victim's home on the day the body was found. Nunn claimed that Walker had called her the day after he had visited her at home, but the prosecution used medical evidence that showed Walker was already dead at that time. Nunn was the only person that had a key to her house and tape identical to that which had been found near to her body was also found in the victim's house. Nunn, in his defence, had suggested that another man with whom Walker had been in a relationship was responsible for her death.<sup>3</sup> This man had been violent towards the victim and he had also spoken to the same witness that had identified Nunn leaving the house, about how to commit the perfect murder. His description bore some resemblance to what actually happened to the victim.



Kevin Nunn and Dawn Walker

Despite an extensive examination of a substantial number of items, no sufficient DNA profile could be created, that could be used to connect Nunn or anyone else with the murder.<sup>4</sup> Four sperm cells were found on the victim's body, and members of the Forensic Science Service (FSS) gave evidence as to the possibility that these cells had been deposited by secondary or tertiary transfer. Walker had been to the gym and there was evidence she used the male changing room. It was therefore, possible there could have been such a secondary or tertiary transfer. The FSS report stated that the sperm samples had been retained for future testing.

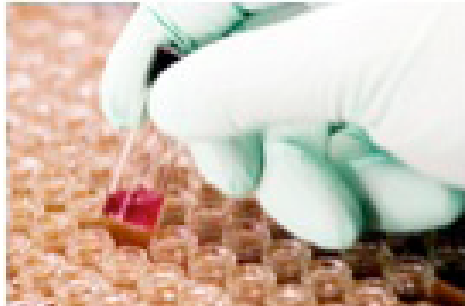
In 2010, Nunn instructed his solicitors to make an application to the Criminal Cases Review Commission (CCRC), and requested the release of forensic items from Suffolk Constabulary the force that had concluded the original investigation.<sup>5</sup> Nunn's solicitors requested that the DNA be re-examined using new techniques, which had improved since 2005. In addition, the reports from the FSS were requested for re-examination. However, none of these tests could necessarily exclude the claimant as the murderer. Suffolk Constabulary refused to disclose the requested information because, following the Attorney-General's Guidelines, there was no doubt cast on the safety of the conviction and, therefore, no information that justified a further review.<sup>6</sup> The High Court upheld this decision.

In doing so the Court highlighted a number of principles that they deemed relevant on the legal obligation of the State to guard against miscarriages of justice.<sup>7</sup> The first was the system of investigation, prosecution and defence which culminates in a trial.<sup>8</sup> Lord Bingham had previously summarised the protection in *R v CCRC ex parte Pearson* [1999] 3 All ER 498 as police investigations being controlled by statutes, codes and rules, prosecution entrusted to an independent professional prosecuting body, and legal aid made available to fund people to defend themselves. He added that the process of trial by judge and jury was one of the main protections afforded to individuals accused of crimes. Secondly the CPS is under a duty to act in the interests of justice, a long established common law principle (*R v Puddick (1865) 4 F&F 497 at 499 per Crompton J*).<sup>9</sup> Thirdly, the State is under strict obligations of disclosure and that under Section 7A of the Criminal Procedures and Investigation Act 1996 (CPIA) the statutory duty of continuing disclosure ceases upon conviction, acquittal or discontinuance of the prosecution.<sup>10</sup> However, the Attorney-General's Guidelines on disclosure provide for post-conviction disclosure where material comes to light after the conclusion of a trial which might cast doubt upon proceedings and CPS policy entitled *Reviewing Previously Finalised Cases* is also similar. Fourthly, an appeal can be made to the Court of Appeal which is under a duty to consider whether the conviction is safe and finally the CCRC was established to investigate miscarriages of justice.<sup>11</sup>

However, Nunn's defence team submitted that there was a further and general duty of disclosure post-conviction.<sup>12</sup> The main submission was that the desire to prevent miscarriages of justice was a principle which underpinned the duty of disclosure, and the reasons for that duty were relevant both pre-conviction and post-conviction. The Attorney-General's guidelines made it clear that if material came to light which cast doubt on the safety of the conviction there was a duty to consider disclosure. Scientific advances in fields such as DNA had resulted in convictions being quashed. If the State was not obliged to consider the implications of scientific developments on those convicted of crime it must follow that those acting for a convicted defendant have a right to undertake the relevant scientific testing. The Attorney General's Guidelines should be interpreted as meaning there is a duty of disclosure where there is material which might cast doubt on the conviction after the relevant testing. The CCRC was under no duty to obtain information or material, or to investigate a case. It had complete discretion to investigate based on the representations made to it, and it would not undertake the enquiries requested by Nunn.

## Nunn v Chief Constable of Suffolk Constabulary [2012] EWHC 1186

The High Court, however, held that the duty of the State to provide disclosure or investigate ceases upon conviction, and, therefore, a person convicted of a crime had no further right of disclosure to facilitate the reinvestigation of the case.<sup>13</sup> It is necessary to show something that may materially cast doubt on the safety of the conviction before the duty on the police and the CPS is activated.



The view construed by the High Court appears to be narrow. Whilst s.7A of the CPIA provides that the statutory duty of continuing disclosure ceases upon conviction, there is no legislation that provides for disclosure post-

conviction, only guidelines set by the CPS and Attorney-General. Greater clarity needs to be given to this area of law. The CPS Guidelines, as highlighted by the Court, state that a 'review may be required as a consequence of a subsequent trigger' and examples of those scenarios where a review of post convictions may be required includes 'where a new scientific breakthrough raises questions over the safety of earlier convictions. Therefore, it is arguable that the development of new tests that were not available at the time of conviction, such as the ability to analyse small DNA samples, and where forensic material has been kept to be re-tested such as the sperm cells, could meet this CPS criteria. These guidelines were not, as the High Court said, similar to the Attorney-General's Guidelines, which provide that only where new material comes to light which may cast doubt on the conviction, would there be a duty to disclose.

Whilst the Court's view is that the State does not have a duty to disclose beyond conviction unless Nunn met the relevant criteria, the forensic evidence formed only part of one of a number of issues the claimant was raising. These included matters relating to the re-examination of CCTV footage, failures of the defence team and a proper cross examination of the identification witness. The request to disclose the forensic material for further testing was clearly part of a cumulative approach which would form an application to the CCRC.

If the CCRC was duty bound to be the final arbiter on decisions to disclose such material as requested by Nunn, based on the representations made to it, then arguably it would fulfil an important place in the list of the High Court's safeguards. However, this is not the case and the CCRC has complete discretion as to whether it refers a case back to the Court of Appeal. That discretion also extends to obtaining information and material as well as investigating cases. Discretion is not sufficient to form a safeguard against miscarriages of justice, there should be firm statutory footing that specifically addresses this issue and prevents narrow interpretations of statutory provisions, as appears to have been the case with Nunn.

The point of law that this case raises is of the utmost importance to claims of innocence, where the claimant requires disclosure of retained material. The outcome of Nunn's appeal to the Supreme Court will be of great interest to many lawyers and academics, not least the numerous Innocence Projects around the country whose work on behalf of their clients could be significantly impacted as a consequence of the decision in this case.

1 [2012] EWHC 1186 (Admin)

2 *Ibid* para 4

3 *Ibid* para 5

4 *Ibid* para 6

5 *Ibid* para 8

6 *Ibid* para 10

7 *Ibid* para 20

8 *Ibid* para 21

9 *Ibid* para 22

10 *Ibid* para 23

11 *Ibid* para 25

12 *Ibid* para 27

13 *Ibid* para 32

# 'The Case of Eddie Gilfoyle' by Eddie Gilfoyle Support Group

By Review by Lucy Burgess  
Student Caseworker, University of Bristol Innocence Project

It has been 20 years since Eddie Gilfoyle was sentenced to life imprisonment for the murder of his wife Paula. Eddie has served 18 years in prison, and is now subject to stringent conditions which he describes as '*worse than prison*', all the while proclaiming his innocence. Paula Gilfoyle was found hanging in the garage of her home on 4 June 1992. And it is only now, 20 years later, that some of the most vital evidence is finally being brought to light.

This booklet, written by Eddie's devoted support group and launched at an event hosted by Lord Hunt of Wirral, outlines clearly and concisely the tremendous ordeal that Eddie has been through and still continues to endure. The chapters document in a factual and honest manner Eddie and Paula's relationship, Paula's death, the murder investigation, police errors, Eddie's trial and unsuccessful appeals, and details new evidence that could finally prove Eddie's innocence.

Anyone with initial misgivings about Eddie's case is left in no doubt by the end of this booklet that Eddie has been the victim of 'serious blunders and failures' committed by Merseyside Police. The booklet gives a narrative of the series of unfortunate events that led to Eddie's conviction. Errors were made at the scene of the crime, essential evidence was withheld from the defence or destroyed, witnesses' statements deleted, and items even planted at the scene in order to incriminate Eddie. Experts for the prosecution spoke outside their area of expertise during the trial and experts for the defence were not heard.

Fresh evidence has been consistently brought to appeal but none has managed to overturn Eddie's conviction. As the booklet explains, the recent unearthing of the 'padlocked metal box' is the most enlightening discovery yet. It contains diaries kept by Paula from when she was young, showing that she had attempted suicide at age 15 and on other occasions, and had 'troubled and traumatic' past relationships. This paints a very different picture of the 'bubbly' personality the Court had heard about, the image of a happy woman who would never take her own life. This box had been concealed by the police for 16 years. As the booklet explains, the Crown Prosecution Service has confirmed that if the content of this box had been known to them, they would have disclosed it to the defence. It would have been invaluable in defending Eddie.



Furthermore, doubt has been cast on the Crown's opinion that women do not commit suicide while pregnant. Paula was 8 ½ months pregnant when she died. It has come to light that the psychologist's report that formed this opinion was based on false statistics. It is now known that suicide is 'the leading cause of maternal death' with the majority occurring in late pregnancy.

These are just a few of the convincing arguments for Eddie's innocence presented in this thought-provoking booklet. From the start one feels frustrated at the lack of competence by the police force, and by the end there is a total shock and disbelief that the criminal justice could fail someone so badly. Eddie's story is a miscarriage of justice that is a living nightmare for him and his family; Eddie has already had 20 years of his life taken away and his sister Susan Caddick has tirelessly campaigned and will continue to do so until his conviction is overturned. To support Eddie's cause read this booklet and send your name to [eddiegilfoyle@aol.com](mailto:eddiegilfoyle@aol.com).

# There is no justice; there is just us

By Jessica Pham and Meg Tollitt  
Case Managers, Cambridge University Innocence Project

“They couldn’t seriously convict me of murder, I’m a VEGETARIAN!”

## Introduction

It was clear from the moment that Sunny Jacobs walked into the room that she was not your “typical” Death Row inmate. The self-confessed “hippy”, mother-of-two who “wouldn’t harm a fly” had a tiny frame and spoke with a small high-pitched voice. Yet she had been convicted, with her then husband Jesse Tafero, of the first degree murder of two police officers in Florida in 1976.

Although we should not judge any book by its cover, it was somewhat easier to believe that Sunny’s now husband, Peter Pringle, had once found himself on Death Row. A tall man, Peter spoke with a heavy Irish accent and described himself as having been involved with the police before getting in with the “wrong crowd”. Peter was placed on Death Row following his conviction for the murder of two police officers in Ireland in 1980.

After spending thirty one years on Death Row between them, both Sunny and Peter were completely exonerated. In a very moving evening, they shared their stories with us at Cambridge University’s Law Faculty.

Since Sunny and Peter’s stories are best told in their own words, we do not wish to recount the evening’s events in this article (but see <http://sunnyandpeter.com/>). However, we left the lecture theatre reflecting upon our own work, as case managers, for the University’s Innocence Project. Therefore in this brief article, we hope to draw upon some of what we heard and witnessed that evening to highlight the recurrent themes in miscarriages of justice which can easily go overlooked by members of the public and the Government. In light of a recent Call for Evidence on the Criminal Cases Review Commission<sup>1</sup> and prospective legal aid cuts, the need for increased public awareness about the problems underlying our criminal justice system is paramount. Only then can we begin to persuade our politicians to give due weight to addressing these problems: when justice fails, there is “just us”.



Sunny Jacob and Peter Pringle

Readers of this newsletter will be acutely aware of the fallible nature of our criminal justice system. However, just two days after Cambridge students heard of the plight of Sunny and Peter on death row, the CCRC’s Triennial Review Programme published a Call for Evidence on 19 October 2012. One of the principal aims of the Review is to ‘provide a robust challenge of the continuing need for’ the CCRC.<sup>2</sup> This is a serious cause for concern: the CCRC is at present the final point-of-call or safeguard for individuals who believe they have been wrongfully convicted. It has extensive legal powers under s. 17 of the Criminal Appeal Act 1995, to acquire any information from any public body in England, Wales and Northern Ireland, in order to review a case. This inquisitorial, as opposed to adversarial, approach is one critical distinction between the CCRC and what would be the final safeguard if the CCRC were to be abolished: the Court of Appeal. 22 cases were referred to the Court of Appeal by the CCRC in 2011/12,<sup>3</sup> each one meeting the threshold of ‘real

possibility’ that the conviction would be quashed or that the sentence would be adjusted. We should not be seduced by the desire to cut costs, at the expense of the fundamental civil right of these individuals not to be wrongfully convicted.

## Systematic failures

Dr Hannah Quirk<sup>4</sup> has suggested that the significance of Innocence Projects in the UK is less pronounced than in the US. Quirk alerts readers to ‘desperate circumstances’ in the US that do not exist in the UK, including the ‘parlous state of indigent defense (the American equivalent of legal aid), the spectre of the death penalty in many states and prosecutors who stand for election on their record of convictions’. Our criminal justice system has much to commend it in comparison to our North American counterparts. Yet as the recurrent themes in cases of miscarriages of justice demonstrate, no system is infallible.

The CCRC’s latest Annual Report, for example, has observed an ‘emerging theme’ among cases referred to the Court of Appeal over the past year, relating to people who have entered the UK as asylum seekers or refugees but who were prosecuted and punished for offences linked to their entry to the UK. These people may arrive in the UK with passports that the UK government does not recognise and, lacking adequate legal advice, are oblivious to the defences available to them under English law when they plead guilty.

Another potential cause of injustice is the adversarial nature of the criminal proceedings. The key roleplayers within the system may not find it easy to uphold the presumption of innocence, even at a subconscious level, when the pressure to clear up cases efficiently constantly overhangs their work. Thus, it is unsurprising that the police or Crown Prosecution Service decline to disclose all the evidence available in a case for tactical advantage, an issue which is a *fortiori* exacerbated by the resource constraints upon these institutions when they are unable to investigate the full range of potential sources of evidence. Likewise, in the latest Annual Report of the CCRC, the first lines of the Chair's Foreword commends the organisation for not having experienced 'any material increase in queues or waiting times' for referrals to the Court of Appeal in their 'sixth successive year of cuts'.<sup>5</sup> This focus on expediency and the constant tension between administrative, managerial functions and judicial functions can thus be found at all stages of the criminal justice system.

It is easy for the public to assume that the criminal justice system is generally fair when not exposed to it. Even one term of studying Criminal Sentencing and the Penal System at Cambridge has destroyed several previously held misconceptions when one considers the actual evidence, such as statistical or qualitative research on the most fair and effective means of dealing with offenders. The systematic failures inherent in any criminal justice system tend only to come to light where a high-profile miscarriage of justice has occurred. Given the various obstacles to establishing a miscarriage of justice, as will be highlighted below from Bob Woffinden's article, it is unsurprising that the public remain little exposed to the reality of the failings of the criminal justice system.

One systematic failure that particularly struck a chord when Sunny was speaking to the Faculty is the successful reliance of the prosecution on circumstantial evidence; the analogy with the case we are working on at the moment was striking: as direct incriminating evidence was wanting, it would appear that the decisive factor was the jury's perception of the defendant's credibility at trial. Yet scientific advances since the trial could possibly explain this perceived lack of credibility, meaning that what one is left with is a serious conviction on flimsy evidence. A further problem is inadequate counsel: Peter Pringle was represented by a jailhouse lawyer, whilst Sunny Jacobs was represented by a public attorney. It has been suggested that the United Kingdom's narrow emphasis on whether a conviction is unsafe means that ineffective representation – from failure to follow client's instructions to errors in judgment and negligence – may be overlooked; 'courts in the United Kingdom are not overly concerned with counsel's conduct'.<sup>6</sup> This problem is set to be exacerbated with plans to cut the legal aid budget, as the Chair of the Bar Council has opined, resulting in 'second best' legal representation.<sup>7</sup>

In addition, Sunny and Peter's cases were tainted by the influence of political appointments. Of the 145 US attorneys appointed by President George W. Bush, 21 moved onto elected office or political appointments.<sup>8</sup> As candidates for public office, it is unsurprising that these former prosecutors have sought to highlight 'their Justice Department credentials and emphasised records of being tough on crime'.<sup>9</sup> It is instructive to recall that the UK has recently introduced Police and Crime Commissioners (PCC), responsible *inter alia* for setting out local policing priorities and budget allocation.<sup>10</sup> The coalition's intention was to make the police 'more accountable to the public they serve'. Yet many Commissioners across the country have been elected on a turnout of as low as 10% in some areas and never higher than 20%.<sup>11</sup> Given the US example, it is not safe to assume that even a PCC elected on a high turnout would have necessarily positive implications. By channelling a direct link between policing and politics,

with the replacement of police authorities<sup>12</sup> by an individual PCC, the new scheme risks seriously undermining the impartiality and objectivity of police supervision.

Other familiar problems in miscarriages of justice include cell confessions and prolonged interrogations. The situation is worse in the United States, where individuals on life sentences are effectively incentivised to give testimony through plea bargaining. Sunny Jacobs' prosecution rested primarily on the testimony of Walter Norman Rhodes, the real killer, who exchanged false testimony for a reduced sentence of three life sentences. Crucially, the evidence that Rhodes failed the polygraph test was suppressed by the prosecution. Peter Pringle's case was also tainted by non-disclosure. He recounted to us the convenient omission from the evidence of a photocopy of a police officer's notebook, which demonstrated that the officer had attributed an incriminating statement to Peter Pringle *before the interrogation* in which Pringle was supposed to have said it.

## The people and families behind the convictions

Death Row and murder convictions had always seemed to be confined to the realm of men, who are generally assumed to be the gender more inclined to behave violently – somewhat hyperbolically, Sunny explained that women "just go shopping". This challenge to perceptions resonated with our work for the Innocence Project, on a case where an ex-military official had been charged, convicted and served his sentence for the alleged murder of his wife. While all our efforts were of course aimed at finding a way to establish his innocence, there was again still a lack of surprise amongst the group at the conviction of a man, who had been involved in a career which incorporates forms of violence, for this violent offence.

It was not until we met the man whose case we had been working on, and saw the effect that the failure of our legal system had on him, that it was clear that these negative assumptions we are often so quick to form of the "convicted" are often very misplaced. Studying a strictly purely doctrinal law degree means that it is often easy to forget the people behind the case names you desperately try to remember, or those given the life or death sentence, are actually real people whose lives are turned upside down by the decision of a court, especially when this decision results in a miscarriage of justice. The perceptions automatically formed by us, and by society in general, only provide further barriers to those like Sunny and Peter that the law has failed, and so are something not simply to be ignored, but to be challenged as far as possible.

Besides the struggles the convicted face in prison, on release, many former prisoners are forced back into society with, as Peter Pringle described his experience, no money, identification, passport, or social security number. Harry Fletcher of NAPO, the probation union, said in a report for the Guardian last year that 'over 50,000 short-term prisoners are released every year... they receive no assistance or help with rehabilitation'. Without even someone to meet them at the gates on release, it is not difficult to see how these vulnerable individuals can slip back into criminal habits without the guidance that they desperately need. As of November last year, and as part of their "rehabilitation revolution", the Coalition intends to impose mandatory post-release rehabilitation courses for short-sentence prisoner – *i.e.* those serving sentences of less than 12 months. While this is a clear benefit, it only highlights the lack of support for longer term prisoners, and the need for more publicly funded programmes to improve this area, rather than relying on individual organizations which often lack the resources and funding required to tackle this issue.

## There is no justice; there is just us

Further, the person we refer to by initial, or as the impersonal “defendant” often has a spouse, children or other dependants whose lives are also irreversibly changed for the worse by the guilty verdict their loved one received. This could not have been made clearer than by Sunny herself, who catalogued the painful wider impacts of her sentence to death – including the detention of her son for two months which resulted in his inhibited learning abilities, and the placing of her daughter under special supervision after suicide attempts. Further, after meeting the man whose case we had been working on as part of the Innocence Project at Cambridge University, it was clear that while our efforts may at time seem like nothing more than hours trawling through documents, the outcome of our work was central not just for him, but also for his new wife whose life could not help but be affected by the case’s ongoing impact. These wider impacts demand the need for a holistic approach with client handling. Organizations such as St Giles’ Trust operate to provide support to struggling families both while their loved one remains incarcerated and afterwards – running classes and workshops, and also visiting individual families. While these are efforts to be commended, as with prisoners leaving prisons, a wider support network is called for. The role of our law and legal system is to protect those whom it governs, and this does not simply mean that those accused should be given a fair trial in accordance with proper procedure, but also that consideration must be given to those so closely related to the convicted, that their lives too are so often destroyed as a result. While Sunny and Peter describe their life together now, with Sunny’s children, as “idyllic”, this was far from the reality for them for a long time, and is not reflective of the situation of many who have been, or are dependent on, someone who has been a victim of a miscarriage of justice.

### What should be done?

As mentioned above, the CCRC is presently the final safeguard against miscarriages of justice and is commendable in many respects. One only needs to look to the pre-CCRC era of the 1970s and 1980s to appreciate the significance of the CCRC. As Michael Mansfield QC has previously described,<sup>13</sup> there were only a limited number of ways to challenge a conviction after a Court of Appeal decision. The few individuals and organisations that did take on the ‘enormity of [that] task’, on a completely pro bono basis, were unsurprisingly faced with ‘unimaginable caseloads’. A permanent body devoted to investigating cases in an inquisitorial manner and sourcing the necessary expertise, for instance where forensic science could assist the investigation, was therefore an important addition to the criminal justice system. This need is still as prevalent now as it was then.

Sunny’s assertion, ‘there is no justice; there is just us’, is an allusion to a criminal justice system that is not immune to systematic failures and characterised by an all too often faceless approach to defendants. It would be unsurprising to find that the majority of the public are only concerned by this when the media choose to report a particularly extreme case of injustice. However, the cases of Sunny and Peter, of the four immigrants referred to the Court of Appeal last year, and of the cases investigated by Innocence Project caseworkers across the UK, all serve as reminders of the need for an external safeguard: one which operates at arm’s length from the criminal justice system, without the same degree of administrative and managerial constraints. Rather than lament the percentage of cases that the CCRC referred to the Court of Appeal in 2011/ 12 (2.32%), we should commend the fact that 878 cases were completed and closed. One would hope that these cases will have been thoroughly investigated and scrutinised by solicitors and Innocence Network UK caseworkers, thereby reducing the probability that an individual has

been convicted on the basis of evidence – or lack thereof – that had not been fully investigated due to time and resource constraints. It is conceded that the CCRC could be more efficient: such a low percentage of referrals suggests that the CCRC has devoted time and resources to cases which did not meet the threshold of ‘real possibility’ of being overturned. Perhaps a preliminary threshold for submitting a case to the CCRC would be desirable. In any event, a measure as drastic as the abolition of the CCRC would be a retrograde step in light of what has been discussed in this paper.

The government should be cautious when balancing the efficiency of this organisation with the interests of the potential victims of miscarriages of justice that the CCRC was set up to help. It seems that the balance could be tipping the wrong way: as the Triennial Review programme made explicit in its recent Call for Evidence on the CCRC, the programme’s purpose ‘as custodians of the public purse...is to deliver an efficient and effective service to the public’. In an article published in *The Guardian* online in 2010, Bob Woffinden lamented the CCRC’s ‘failure’, citing in support its ‘meagre tally’ of cases referred to the Court of Appeal since 2005.<sup>14</sup> Combined with a net expenditure in 2011/ 12 of £6.05m,<sup>15</sup> up from £5.95m in 2010/ 11, the support for the abolishing the CCRC on the basis of inefficiency at first sight appears well-founded. However, we should be reminded here of Nobles and Schiff’s suggestion that we should be committed to ‘potentially unlimited expenditure to ensure the safety of each and every conviction’.<sup>16</sup>

Furthermore, Bob Woffinden’s article overlooks the incidental benefits of the CCRC which cannot be gleaned from statistical analysis. Lord Justice Steyn, for example, observed a ‘general change in legal culture’ following the establishment of the CCRC: *The philosophy became firmly established that there is a positive duty on judges, when things have gone seriously wrong in the criminal justice system, to do everything possible to put it right.*<sup>17</sup> But for the CCRC and the Cambridge University Innocence Project, I would not have had this unique exposure to the mechanisms of the criminal justice system or been alerted to the need for an external safeguard without the resource constraints of government bodies. Whilst the Coalition Government has recently committed to increasing private and voluntary sector engagement in the provision of rehabilitative interventions for offenders,<sup>18</sup> processing individuals out of the criminal justice system, it is time that the government also recognised the potential of organisations such as Innocence Projects in the UK, processing individuals into the system.

### The importance of pro bono work

What struck me during Sunny’s speech was her total dependence on pro bono lawyers to assist her in overturning the wrongful conviction. My experience with the Cambridge University Innocence Project has also made me acutely aware of the need for pro bono legal advice and the importance mentioned above of having a working knowledge of law in practice, beyond the intricate details of legal textbooks.

It was not until the Supreme Court of Florida commuted Sunny’s sentence from execution to life imprisonment that two lawyers became interested in her case. What was particularly striking was Sunny’s complete reliance on those two lawyers who worked pro bono for ten years before her exoneration in 1992. Sunny’s example serves to highlight the importance of pro bono work in the present day when attitudes towards pro bono appear to pull in opposite directions. On the one hand, corporate social responsibility has seen a significant uptake by city law firms especially, with Clifford Chance, for instance, boasting an estimated £17m of lawyer hours spent on community and pro bono



work last year.<sup>19</sup> Every hour of pro bono work is valuable given the calibre of the lawyers engaged, although it is sometimes difficult to appreciate the real effect of pro bono work when presented in this quantitative way. The gratitude in Sunny's voice when she told us about how her exoneration was so dependent on the two pro bono lawyers who worked on her case, reminded me of the importance of free legal assistance. At a time when the Ministry of Justice has warned of a £350m budget cut to legal aid this March, with law centres and Citizens Advice centres already being forced to turn away those seeking advice,<sup>20</sup> the importance and necessity of work such as Innocence Projects in the UK is self-evident.

### There is no justice; there's just us

Yet such knowledge ought not to be confined to keen university law students participating in organisations such as Innocence, the Texas Defender Service or Lawyers Without Borders. Public engagement in the criminal justice system, and recognition of its imperfections, are crucial if we are to persuade the government to address them. Without an organisation specifically devoted to investigating alleged miscarriages of justice, individuals like Sam Hallam and Goldie Coats may not have been received the media attention that sparks a desire to reform the system. When miscarriages of justice arise, the victims of the system can only turn to external organisations and volunteers who are not constrained by the administrative burdens or adversarial approach that marks the criminal justice system. Sunny Jacobs alluded to this problem, succinctly expressed in just one phrase: 'there is no justice; there is just us'.

While asserting that there is 'no justice' may be going too far, the public should constantly be reminded of the limitations of the criminal justice system. Members of the public should recognise their potential to influence the mechanisms of the system, whether through volunteering for pro bono organisations, political lobbying or at least actively finding out about the difficulties facing the criminal justice system. By acknowledging the extent to which our justice system is resource-constrained, Sunny's contention holds true: in many cases, when justice fails, the remaining, last-ditch safeguard is 'just us'.

1 <https://consult.justice.gov.uk/digital-communications/ccrc-triennial-review>

2 *Ibid*

3 *CCRC Annual Report 2011/12* p. 8

4 Quirk, H S. "Identifying miscarriages of justice: why innocence in the UK is not the answer." *Modern Law Review* vol 70, no. 5(2007) : 759-777

5 *CCRC Annual Report 2011/12* p. 5

6 *Truly Ineffective Assistance*, Henderson (2002), p. 349

7 <http://www.guardian.co.uk/law/2013/jan/21/legal-aid-cuts-second-best-lawyers>

8 <http://online.wsj.com/article/SB10001424127887323300404578203881614820230.html>

9 *Ibid*

10 <http://www.bbc.co.uk/news/uk-politics-19504639>

11 <http://www.bbc.co.uk/news/uk-politics-19970734>

12 Formerly comprised of councillors and independent, appointed members, to one elected PCC

13 'No Going Back' in The Justice Gap: <http://thejusticegap.com/2011/03/no-going-back/> [Accessed 4th April 2013]

14 <http://www.guardian.co.uk/commentisfree/libertycentral/2010/nov/30/criminal-cases-review-commission-failed>

15 <http://www.justice.gov.uk/downloads/publications/corporate-reports/ccrc/ccrc-annual-report-accounts-2011-12.pdf> p. 26

16 Nobles R, Schiff D (2001) . "The Criminal Cases Review Commission: Reporting Success?" *Modern Law Review* vol. 64, (2) 280-299.

17 *R v Connor* [2004] UKHL 2, [4]

18 *Through inter alia payment by results and competed services: Transforming Rehabilitation – a revolution in the way we manage offenders - Consultation Paper* (2013)

19 <http://www.legalweek.com/legal-week/news/2221729/ashurst-joins-top-firms-in-hiking-pro-bono-incentives>

20 <http://www.guardian.co.uk/law/2012/dec/03/commission-legal-aid-cuts-demand-surges>

# News

## William Beck appeal dismissed



The appeal of William Beck was dismissed by the Court of Criminal Appeal in Edinburgh on the 30 April 2013, following a one-and-a-half day hearing in March this year. Mr Beck was convicted of armed robbery on the 12 December 1981 and has been protesting his innocence for more than 3 decades, claiming that he was a victim of misidentification. Following submissions by the University of

Bristol Innocence Project, the Scottish Criminal Cases Review Commission referred Mr Beck's conviction to the Court of Criminal Appeal on the basis that a miscarriage of justice may have occurred due to a number of significant misdirections by the trial judge. Although the Court of Criminal Appeal accepted that there were misdirections in the charge, it held that the misdirections were not sufficiently material to warrant quashing the conviction.

## Welcome

BPP Leeds has recently set up a member innocence project of INUK. The BPP Leeds Innocence Project will be led by pro bono supervising solicitor Emma Blackstone. Welcome on board!

## INUK Spring Conference for Innocence Projects

The INUK Spring Conference for Innocence Projects was hosted by White & Case LLP on the 22 March 2013. Attended by around 60 delegates from INUK member innocence projects, the conference included sessions by criminal solicitors Jane Hickman (Hickman & Rose), Matt Foot (Birnberg & Peirce), Mark Newby (Quality Solicitors, Jordans) and presentations by students from the University of Leicester Innocence Project and the University of Sheffield Innocence Project. INUK would like to thank White & Case LLP for hosting the event, in particular, partners Robert Wheal and John Reynolds and Social Responsibility Co-ordinator, Samantha Hudson.



## Innocence Network Conference

Dr Michael Naughton and Gabe Tan attended the Innocence Network Conference in Charlotte, North Carolina, on the 19-21 April 2013. The conference was attended by delegates from innocence projects globally, including the US, Canada, Australia, New Zealand and the UK. INUK is a member of the Innocence Network, an affiliation of organisations dedicated to providing pro bono legal and investigative services to individuals seeking to prove innocence of crimes for which they have been convicted and working to redress the causes of wrongful convictions. For more information, please see: [www.innocencenetwork.org](http://www.innocencenetwork.org).

## Awards and donations

INUK is pleased to report that it has received a donation of £5,000 from the Allen & Overy London Foundation. The monies will go towards INUK's staff cost and other core activities. INUK would like to thank the Foundation for its generosity.

Gabe Tan, Executive Director of INUK, has been given a Vodafone World of Difference Award. The award of £2,500 will go towards Gabe's ongoing work with INUK, including the assessment of applications from prisoners for casework assistance and the training of volunteers to undertake various roles.

## Case Statistics

Total number of enquiries for assistance:	<b>1240</b>
Total number of cases assessed/ under assessment by INUK:	<b>636</b>
Total number of cases deemed eligible for full investigation:	<b>223</b>
Total number of cases referred to member innocence projects for full investigation:	<b>110</b>
Total number of cases on the waiting list:	<b>113</b>
Total number of cases submitted to the CCRC/SCCRC:	<b>12</b>
Total number of referrals to the Court of Appeal:	<b>3</b>

(Statistics as of 17 May 2013)

## Applying for casework assistance

If you think that you have been wrongly convicted and would like to seek assistance from the INUK, please write to us to request a copy of our Guidance for New Applicants and Preliminary Questionnaire at the following address:

*Innocence Network UK,  
University of Bristol Law School  
Wills Memorial Building  
Queens Rd  
Bristol BS8 1RJ*

Alternatively, our Guidance for New Applicants and Preliminary Questionnaire can be downloaded from: [www.innocencenetwork.org.uk/contact](http://www.innocencenetwork.org.uk/contact).

Please note that we are generally unable to assist applicants who have not exhausted the normal appeals process.

All assistance by INUK member innocence projects are given on a pro bono basis.

## Sponsorship

INQUIRY is seeking sponsorship to help finance its publication. Logos of sponsors will be printed on the newsletter and will appear on the 'Newsletter' page of the INUK website.

**Sponsorship rate:** £1,290 per annum (4 issues of INQUIRY).

For more information on how to be a sponsor, please e-mail: [innocencenetwork@bristol.ac.uk](mailto:innocencenetwork@bristol.ac.uk).

## Advertising

INQUIRY will carry a limited amount of advertising for law firms and law schools to reach out to students and academics.

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- Recruitment of students for undergraduate/postgraduate/vocational programmes
- Recruitment of trainees
- Events/conferences

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## Call for Submissions

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 2013

### Next Issue

The deadline for the submissions for all of the above categories is 19 August 2013

## 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](mailto:innocence-network@bristol.ac.uk)



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Ms Gabe Tan (University of Bristol)

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