

Wrongful Convictions and Innocence Projects in the UK: Help, Hope and Education(1)

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First published in Web Journal of Current Legal Issues

Summary

At the 2004 Solicitors' Pro Bono Group Awards, the Attorney General, Lord Goldsmith, outlined the twin aims of pro bono work in England and Wales as 'help and hope'. Pro bono work exists, he stated, to 'help' clients whose legal needs are not being met. It gives them 'hope', he said, that they may achieve justice in their cases. Lord Goldsmith went on to say that the greatest benefit to students involved in pro bono work in university student law clinics is that they learn about 'law in action', translating the law in books to the realities of law in practice, providing insight to the legal world into which law students will soon be a part. Against this background, this article presents a case for the widespread establishment of innocence projects within universities in the United Kingdom (UK) to assist alleged innocent victims of wrongful conviction. It argues that innocence projects are necessary because significant gaps exist in the legal provisions available to innocent victims who require help and hope in overturning their wrongful convictions, gaps generally considered to be accounted for. Furthermore, there are considerable educational benefits associated with the study of 'justice in error', adding valuable insight and experience into the law curriculum. In so doing, it, firstly, distinguishes between miscarriages of justice and the wrongful conviction of the innocent. It, then, considers the structures of criminal trials and appeals to underline the inevitability of the wrongful conviction of the innocent and the inability of the existing appeal provisions to guarantee that innocent victims of wrongful conviction will overturn their convictions. It shows that a major consequence of the decision by the organisation JUSTICE to end its concern with the wrongful conviction of the innocent when the Criminal Cases Review Commission (CCRC) was established is a shift of a concern about the wrongful conviction of the innocent to a more legally-orientated concern with miscarriages of justice by the groups and organisations that attempt to redress the problem. It identifies the general omission of the unmet legal needs of innocent victims of wrongful convictions by the pro bono student law clinic movement. It considers the innovative University of Bristol Innocence Project in terms of its promise to provide help and hope to innocent victims of wrongful conviction, and the educational benefits that student involvement in innocence projects can provide.

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Introduction

At the 2004 Solicitors' Pro Bono Group Awards (House of Lords, 2004), the Attorney General, Lord Goldsmith, outlined the twin aims of pro bono work in England and Wales as 'help and hope'. Pro bono work exists, he stated, to 'help' clients whose legal needs are not being met. It gives them 'hope', he said, that they may achieve justice in their cases. Lord Goldsmith went on to say that the greatest benefit to students involved in pro bono work in university student law clinics is that they learn about 'law in action', translating the law in books to the realities of law in practice, providing insight to the legal world into which law students will soon be a part. Against this background, this article presents a case for the widespread establishment of innocence projects within universities in the United Kingdom (UK) to assist alleged innocent victims of wrongful conviction. It argues that innocence projects are necessary because significant gaps exist in the legal provisions available to innocent victims who require help and hope in overturning their wrongful convictions, gaps generally considered to be accounted for. Furthermore, there are considerable educational benefits associated with the study of 'justice in error', adding valuable insight and experience into the law curriculum. In so doing, it, firstly, distinguishes between miscarriages of justice and the wrongful conviction of the innocent. It, then, considers the structures of criminal trials and appeals to underline the inevitability of the wrongful conviction of the innocent and the inability of the existing appeal provisions to guarantee that innocent victims of wrongful conviction will overturn their convictions. It shows that a major consequence of the decision by the organisation JUSTICE to end its concern with the wrongful conviction of the innocent when the Criminal Cases Review Commission (CCRC) was established is a shift of a concern about the wrongful conviction of the innocent to a more legally-orientated concern with miscarriages of justice by the groups and organisations that attempt to redress the problem. It identifies the general omission of the unmet legal needs of innocent victims of wrongful convictions by the pro bono student law clinic movement. It considers the innovative University of Bristol Innocence Project in terms of its promise to provide help and hope to innocent victims of wrongful conviction, and the educational benefits that student involvement in innocence projects can provide.

The distinction between miscarriages of justice and the wrongful conviction of the innocent

To help to illuminate the unmet legal need of innocent victims of wrongful conviction, it is instructive

to make clear, firstly, the distinction between miscarriages of justice and the wrongful conviction of the innocent – terms which are often, incorrectly, used synonymously and/or interchangeably. A distinguishing feature of miscarriages of justice is that whatever allegations there may be, a miscarriage of justice cannot be said to have occurred unless and until an applicant has been successful in an appeal against a criminal conviction, and until such time s/he remains an alleged miscarriage of justice. An example that illustrates this well is the case of the *Birmingham Six* (see Mullen, 1986) who had two unsuccessful appeals before they were officially acknowledged and recorded in the official statistics as victims of wrongful conviction/imprisonment. I have noted previously that, in this sense, definitions of miscarriages of justice can be said to be entirely ‘legalistic’: they are defined by law, they are wholly determined by the rules and procedures of the criminal justice system, and if those rules and procedures change, then the way in which miscarriages of justice are defined will also change. Moreover, miscarriages of justice are distinct from the specific problem of the wrongful conviction of the innocent as a successful appeal against a criminal conviction is *not* evidence of the wrongful conviction of the innocent. On the contrary, a successful appeal against criminal conviction denotes an official and systemic acknowledgement of what might be termed a breach of the ‘carriage of justice’, and it bears no relation to whether a successful appellant is factually guilty or factually innocent: these are not questions that our criminal justice system pursues (Naughton, 2005, pp. 165-167).

This is not to infer that general concerns about miscarriages of justice are inappropriate. Rather, it is to separate the specific problem of the wrongful conviction of the innocent from general concerns about miscarriages of justice. It is to isolate the wrongful conviction of the innocent as a particular problem to highlight the limits of the criminal justice system, which, as will be shown below, cannot guarantee that all innocent victims of wrongful conviction will overturn their convictions.

To be sure, our system of criminal justice is not about the objective truth of a suspect’s or defendant’s guilt or innocence. Adversarial justice is a contest, regulated by principles of due process, compliance with the rules and procedures of the legal system. During the legal process, errors can be made, forms of police malpractice and misconduct, prosecution non-disclosure, poor defence, incorrect forensic expert evidence, and so on, can occur (see, for example, JUSTICE, 1989; Walker and Starmer, 1999; Woffinden, 1987; Brandon and Davies, 1973; Greer, 1994; Sargant, 1970; McConville and Bridges, 1994; Walker and Starmer, 1993), with the result that innocent people will, inevitably, be wrongly convicted (Naughton, 2005c). Criminal trials are not a consideration of factual innocence or factual guilt. They determine if defendants are ‘guilty’ or ‘not guilty’ according to the evidence before the court, governed by the prevailing principles of due process. Correspondingly, criminal appeals do not seek to determine the guilt or innocence of appellants: under s. 108 of the Magistrates Courts Act 1980 appeals against conviction are allowed to the Crown Court for criminal convictions given in the Magistrates’ Courts, so long as the potential appellant did not plead guilty. Under s. 79 of the Supreme Court Act 1981 such appeals are by way of a full re-hearing to determine if the appellant/defendant was ‘guilty’ or ‘not guilty’ in line with criminal trials. In more serious cases, appeals to the Court of Appeal (Criminal Division) (CACD) do *not* attempt to determine innocence or guilt either, but, rather, s. 2 of the Criminal Appeal Act 1996 instructs that it (a) shall allow an appeal against conviction if it thinks that the conviction is unsafe; and (b) shall dismiss such an appeal in any other case. There are also specific rules under s.4 that regulate the CACD to ‘receive any evidence which was not adduced in the proceedings from which the appeal lies’, but only within certain criteria. S. 4, for instance, specifies that the CACD ‘shall, in considering whether to receive any evidence, have regard in particular to: (a) whether the evidence appears to the Court to be capable of belief; (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal; (c) whether the evidence would have been admissible at the trial on an issue which is the subject of the appeal; and (d) whether there is a reasonable explanation for the failure to adduce the evidence at the trial’ (see, also, Naughton, 2005a).⁽²⁾ In these highly technical processes, miscarriages of justice, as evidenced by successful

appeals against criminal conviction, are routine, even mundane, occurrences, which number around 5,000 per annum (Naughton, 2003). At the same time, however, some innocent victims of wrongful conviction who do not fulfil the criteria of the appeals system will not be able to overturn their convictions (Naughton and McCartney, 2005, pp. 151-152; discussed further below with reference to the limits of the CCRC).

Contrary to this, public discourses about miscarriages of justice, deriving from campaigning and victim support groups (for example, INNOCENT, 2005; The Portia Campaign, 2004; Action Against False Allegations of Abuse, 2004; Merseyside Against Injustice, 2002), the media (for example, Gillan, 2001; Goodman, 1999; Foot, 2002; Woffinden, 1998) and, even, academia (for example, Brandon and Davies, 1973, p. 19; Baldwin and McConville, 1978, pp. 68-71; Green, 1995, p.8; Sanders and Young, 2000, p. 9) routinely (miss)conceive successful appeals against criminal conviction as *prima facie* evidence of the wrongful conviction of the innocent. Indeed, public expectations are quite straightforward, in many ways black and white, that the criminal justice system exists and functions to convict the guilty and acquit the innocent. Public discourse works from the premise that the appeals system exists because the criminal justice system is a human system that can and does make mistakes and that innocent people can be wrongly convicted in criminal trials. The function of the appeals system, then, from this perspective, is to correct the errors of criminal trials by overturning the convictions of the innocent.

Public discourse is reinforced by political discourse that also states that the intention of criminal trials is the conviction of the guilty and the acquittal of the innocent. This was recently expressed by the Prime Minister (Tony Blair) in rolling out the removal of the safeguards against the wrongful conviction of the innocent under the Criminal Justice Act (2003) (CJA). The intention of the Act is to 're-balance' the system so that more guilty offenders are convicted (Home Office, 2002, p.15). At the same time, it was stressed that 'there is an absolute determination to ensure that the innocent are acquitted in criminal trials' (Tony Blair cited Home Office, 2002, p. 11).

A distinction between miscarriages of justice and the wrongful conviction of the innocent emerges, then, whereupon a miscarriage of justice is entirely *internal* to the workings of the criminal justice system, wholly dependent upon how 'justice' is defined: miscarriages of justice, as evidenced by successful appeals against criminal conviction, derive from technical decisions made from the existing rules and procedures of the appeal courts. Alternatively, concerns about the wrongful conviction of the innocent are wholly *external* to the criminal justice system, which is *incompatible* with public/political discourses. This is emphasised in the following quotation from Clive Walker (1993, p. 4 *my italics*) about the inherent legal nature of miscarriages of justice, which, at the same time, further emphasises the distinction between miscarriages of justice and public/political concerns about the wrongful conviction of the innocent:

'Some observers attempt to distinguish between those who are really "innocent" and those who are acquitted "on a technicality". However, a conviction arising from deceit or illegalities is corrosive of the State's claims to legitimacy on the basis of due process and respect for rights. ...Accordingly, *even a person who has in fact and with intent committed a crime could be said to have suffered a miscarriage [of justice] if convicted on evidence which is legally inadmissible or which is not proven beyond reasonable doubt*'.

This is not merely a theoretical or abstract academic argument. It is supported by the case law on successful appeals against criminal conviction, which shows, further, that the CACD, for instance, does not consider the question of an appellant's innocence or guilt. Instead, for convictions to be overturned they have to be thought to question the integrity of the trial in which they were given and, thus, be rendered unsafe. This is evident, for example, in the following extract from the appeal judgement that

quashed the Bridgewater case:

‘This Court is not concerned with the guilt or innocence of the appellants, but only with the safety of their convictions. This may, at first sight, appear an unsatisfactory state of affairs, until it is remembered that the integrity of the criminal process is the most important consideration for courts which have to hear appeals against conviction. Both the innocent and the guilty are entitled to fair trials. If the trial process is not fair, if it is distorted by deceit or by material breaches of the rules of evidence or procedure, then the liberties of all are threatened’ ([R v Hickey & Ors \[1997\] EWCA Crim 2028](#))

The problem with such judgements is that they can fuel whispering campaigns that lump together victims of miscarriage of justice and, potentially, innocent victims of wrongful conviction and conceive both as ‘getting off on technicalities’, as, indeed, all criminal appeals are highly technical affairs governed by strict rules and procedures. This, in turn, can act to allow the issue of accountability for miscarriages of justice and/or the wrongful conviction of the innocent to be sidestepped. It, in effect, acts to subjugate the problem of the wrongful convictions of the innocent from the public/political gaze until such time that the real perpetrators of the crimes for which they were convicted are apprehended and convicted. It suggests that until such an unlikely scenario occurs, their innocence should remain in doubt.

A case that starts to unearth the wrongful conviction of the innocent and separates it from miscarriages of justice is the Cardiff Three. But, the Cardiff Three, convicted for the murder of Lynette White in 1988, did not overturn their convictions in 1992 because they were innocent. On the contrary, in line with all successful appeals they had to get the CACD to agree that a lack of integrity in the way that their convictions were obtained rendered them unsafe. This was achieved when Lord Taylor quashed the convictions asserting that whether Steven Miller’s admission to the murder of Lynette White were true or not was ‘irrelevant’, as the oppressive nature of his questioning (he was asked the same question 300 times) required the interview to be rejected as evidence. It was a breach of due process, more specifically the rules of evidence under the Police and Criminal Evidence Act (1984) (PACE) ([Paris, Abdullahi and Miller \(1993\) 97 Cr App R99](#)). In keeping with the general uncertainty that results from successful appeals, doubts prevailed for the next decade about whether or not the Cardiff Three were involved in the murder until the case made British legal history and the real killer of Lynette White, Jeffrey Gafoor, who had been traced by the National DNA Database, was convicted for her murder in July 2003 ([BBC News, 2003a](#)).

The case of the Cardiff Three, then, not only provides a milestone in British policing, but it confirms the wrongful conviction of the innocent, distinguishing it from the general problem of miscarriages of justice. At the same time, the case of the Cardiff Three highlights the difficulties that the innocent face in overturning criminal convictions and, then, in their attempts to prove their innocence: given the limits of the appeals system, not all innocent victims of wrongful conviction will be able to overturn their convictions and attain a miscarriage of justice; nor will all victims of miscarriages of justice be fortunate enough to have the real perpetrators of the crimes for which they were convicted brought to justice and their innocence proven.

The Criminal Cases Review Commission and the failure to guarantee that innocent victims of wrongful conviction will overturn their convictions – the need for help

As the problem of the wrongful conviction of the innocent relates to the Criminal Cases Review

Commission (CCRC), the body set up in the wake of notorious cases such as those of the *Guildford Four* (May, 1994) and the *Birmingham Six*, it is important to note that it, too, was not designed to rectify the errors of the system and cannot ensure that all innocent victims of wrongful conviction will overturn their wrongful convictions. Instead, the ability of the CCRC to refer wrongful convictions of the innocent back to the CACD is significantly limited by its subordination to the criteria of the CACD. Under the provisions in the Criminal Appeal Act 1995, the CCRC merely *reviews* (as it clearly states in their name!) cases of alleged or suspected miscarriage of justice with a view to referring them back to the Court of Appeal (Criminal Division) if it is believed there is ‘a real possibility’ that the case will be overturned.⁽³⁾ In this sense, the CCRC can be said to act as a filter for the CACD and sanction the successful appeals of guilty offenders if their convictions were procedurally incorrect, whilst, at the same time, remaining helpless to refer the cases of innocent victims of wrongful convictions if they are unable to fulfil the ‘real possibility test’.

The ‘real possibility test’ as applied by the CCRC is, essentially, then, an attempt by the Commission to ‘second-guess’ the appeal courts (James, 2002). A recent Report by the Home Affairs Select Committee expressed concern that the CCRC is, perhaps, too dependent upon the Court of Appeal in determining the outcome of its reviews and in decisions as to whether or not to refer cases (for example, Home Affairs Select Committee Reports, 2004, questions 5 and 8), a position recently publicly reiterated by a Commission Member.⁽⁴⁾ This has led to widespread concerns that too few cases fulfil the criteria for referral back to the CACD. Of the 5,772 cases processed by the CCRC between 31 May 1997 (when it started handling case work) and 31 December 2003, for example, only 4% had been referred to an appropriate appeal court, with around half that number resulting in an overturned conviction (Home Affairs Select Committee Reports, 2004, question 34).

The CCRC, then, can be conceived as entirely concerned about miscarriages of justice as defined by criminal law, as opposed to the possible wrongful conviction of the innocent as expressed in public/political discourses. It operates entirely within the parameters of the criminal justice process to uphold the integrity of due process, but does not question the possibility that due process can cause miscarriages of justice and/or the wrongful conviction of the innocent (Naughton, 2005b). It cannot refer cases back to the appeal courts in the interests of justice as understood and expressed by public and political discourse (James et al, 2000, pp. 140-153). If, for example, the CCRC turns up evidence that indicates an applicant’s innocence that was available at the original trial it may not constitute grounds for a referral (Nobles and Schiff, 2001, pp. 280-299).

The CCRC’s position is that to refer such a case would be a waste of time as, whether the applicant is innocent or not, the case will not be overturned.⁽⁵⁾ Against this, I would argue that this overlooks and undermines other possible impacts that sending such cases back to the appeal courts might have, such as raising public awareness of the inability of the CCRC to refer all wrongful convictions of applicants thought (even by the CCRC) to be innocent. If the CCRC referred cases which indicated the wrongful conviction of the innocent, even if they were not capable of being overturned under the present arrangements, it would become apparent to the public that the CCRC is not doing what they (the public) believe that it exists to do.

The recent decision by the Commission not to refer the case of John Roden, despite claims that the Case Review Manager who investigated his application believed that he had a ‘compelling’ case, emphasises the limits of the CCRC (see Lewis, 2004). It also highlights the incompatibility between the operational remit of the CCRC and public and political discourses. It subjugates the matter from public discourse, while simultaneously raising questions about the CCRC’s possible incompatibility with Article 6 of the European Convention on Human Rights (James et al, 2000, pp. 140-153), as it is effectively the Commission which is making the crucial judicial decision that potential victims of wrongful conviction/imprisonment thought likely to be innocent, even by its own staff who conduct

independent investigations, cannot overturn their convictions. The CCRC has recently conceded that it is often unable to assist innocent victims of wrongful conviction and recognises the contribution that could be made by innocence projects in the UK.(6)

The limits of the groups and organisations that exist to support alleged victims of wrongful convictions – the need for hope

Prior to the establishment of the CCRC in January 1997, although it did not start handling cases until 31 May, JUSTICE was the main organisation for investigating alleged miscarriages of justice in England and Wales (JUSTICE, 1989, p. 2). Since its inception in 1957, JUSTICE began receiving requests for help by, and on behalf of, hundreds of prisoners alleging miscarriages of justice in their cases. Initially, because of the voluntary nature of the organisation, and the lack of staff and resources, it was decided that JUSTICE would operate a policy of not investigating individual cases. However, the sheer volume of allegations soon persuaded Tom Sargant, the organisation's secretary for its first 25 years, that there was a real need to investigate where he could and assist with appeals and petitions to the Secretary of State (JUSTICE, 1989, p. 1). Since that time, and until the establishment of the CCRC in 1997 (almost exactly 40 years) JUSTICE, in line with public and political discourse, assisted victims of miscarriages of justice if 'the allegation [was] of actual, rather than technical, innocence' (JUSTICE, 1989, pp. 1-2), and sought reform of the criminal justice system in order to protect the human rights of such individuals and uphold the rule of law (JUSTICE, 1994). When the CCRC was established, though, there was a general belief that the Commission was the solution to the problem of the wrongful conviction of the innocent, a belief shared by JUSTICE who ceased their concern with the plight of the wrongly convicted innocents. This is not surprising as it was JUSTICE who provided the blueprint for the CCRC to the Royal Commission on Criminal Justice (1993) that was brought into effect under the Criminal Appeal Act 1995 (see Royal Commission Criminal Justice, 1993).

A significant problem with this, as already shown above, is that the CCRC does not, specifically, address the plight of innocent victims of wrongful convictions. Rather, it is subordinate to the CACD and must apply the 'real possibility test' in its decisions about whether to refer an application or, as is more often, whether not to refer an application. As such the perennial problem of the wrongful conviction of the innocent remains, and JUSTICE's withdrawal from the plight of the factually innocent who are unable to overturn their convictions seems, at the very least, premature.

Despite this, alleged innocent victims of wrongful conviction still have, on the face of it at least, a large number of other campaign organisations and victim support groups to turn to. These include United Against Injustice (UAI) (United Against Injustice, 2005), a federal system of miscarriage of justice organisations, which support small groups (for example, the Justice for Colin James Campaign (see Scandals in Justice, 2002), Justice for John Taft Campaign (see Justice for John Taft Campaign, 2002) within their geographical location. The organisations affiliated to UAI include INNOCENT (Innocent, 2005), Merseyside Against Injustice (Merseyside Against Injustice, 2004), Falsely Accused Youth Leaders (Falsely Accused Youth Leaders, 2005) and London Against Injustice (London Against Injustice, 2005).

In addition, the United Campaign Against False Allegations of Abuse (UCAFAA), another federal system of groups and organisations, is concerned with false abuse allegations as a specific cause of miscarriage of justice. The organisations affiliated to UCAFAA include Action Against False Accusations of Abuse (AAFAA) (see Action Against False Accusations of Abuse, 2005), False Allegations Support Organisation (False Allegations Support Organisation, 2005) and Falsely Accused Carers and Teachers (FACT) (see Falsely Accused Carers and Teachers, 2005).

In addition to the federal miscarriage of justice organisations, there are, also, a host of national miscarriage of justice organisations and/or support groups including Miscarriages of Justice UK (MOJUK), which provides details of a large number of miscarriage of justice cases, works closely with prisoners and produces bulletins and newsletters which circulate and co-ordinate information to and between campaign groups/organisations (see Miscarriages of Justice UK, 2005), The Portia Campaign, which specialises in cases in which mothers are accused or jailed for murder or manslaughter of their children in contested circumstances (see The Portia Campaign, 2005), Miscarriage of Justice Organisation UK (MOJO), founded in 1999 by Paddy Hill (of the Birmingham Six case) and Mike O'Brien (of the Cardiff Newsagent Three case) to support miscarriage of justice victims and their families, and to attempt to redress the lack of welfare and aftercare provision for the wrongly imprisoned (Miscarriage of Justice Organisation UK, 2005), The Five Percenters, a cause-specific organisation that was established in January 1998 to campaign on behalf of people wrongly accused and/or convicted of 'shaken baby syndrome' (causing brain injury by shaking their baby) (The Five Percenters, 2005).

Taken together, the foregoing list appears extensive and would seem to indicate that those who fall through the gaps in the criminal appeals system are well catered for. Indeed, it suggests that there is a possible saturation of groups and organisations that exist to counter the problem of miscarriages of justice and/or the wrongful conviction of the innocent and that student involvement is, perhaps, unnecessary. The obvious problem, though, with the groups and organisations that exist to combat miscarriages of justice is that they are extremely limited in terms of resources and are, generally, not equipped to carry out the casework that is vital to unearthing fresh evidence that is necessary for overturning wrongful convictions. Instead, they have, generally, adopted one of three primary roles, although groups/organisations can, of course be a combination of all three roles: they are either orientated towards supporting alleged victims and the families of alleged victims of wrongful convictions (primarily the groups/organisations affiliated to UAI and UCAFAA), with providing information about miscarriages of justice to support campaigns (for example, MOJUK, The Portia Campaign) or with lobbying Parliament (for example, MOJO).

A more significant limitation with the groups and organisations against miscarriages of justice that exist is that they are just that, miscarriage of justice groups/organisations, as opposed to the wrongful conviction of the innocent groups/organisations. It appears that the establishment/existence of the CCRC has blurred into one amorphous issue general concerns about human rights, civil liberties and social justice under a banner of miscarriages of justice. Just as the CCRC is subordinate to the criteria of the CACD, the groups and organisations that stand against miscarriages of justice and/or the wrongful conviction of the innocent have, in practice, become subordinated to the criteria of the CCRC. As a result, miscarriages of justice as understood/expressed by public/political discourses as the wrongful conviction of the innocent have been *transformed* into miscarriages of justice as understood by the legal system: breaches of process that do not relate to questions of factual innocence and factual guilt. In consequence, the campaigning and support sphere has, effectively, become 'legalised' and now even supports cases of miscarriage of justice on technical grounds, which is contrary to the message that they transmit to their public audiences.

For instance, INNOCENT, one of the most prominent campaigning organisations, is supporting Darren Southward, convicted of murder in July 1989, after he killed his mother's ex-boyfriend, George Robertson, by hitting him repeatedly on the head with a hammer after he had broken into the victim's home after a night in the pub to warn him to keep away from his mother. INNOCENT's argument is that Southward, who has always admitted killing Robertson, was a much younger and smaller man who acted in self-defence, that he was pressured into pleading guilty, and that he is innocent of murder and should more appropriately, have been convicted of manslaughter (INNOCENT, 2005a). A similar case

is Barrington Moses, supported by the organisation Innocents In Prison, who recently had his case referred back to the CACD by the CCRC. In March 1997, Barrington Moses was convicted of the murder of Clare Hergest by drowning her in a bath. Moses has always admitted that he killed his former partner, running an (unsuccessful) defence of diminished responsibility at his original trial. The referral by the CCRC follows his third application to the Commission, which it, presumably, believes fulfils the 'real possibility test' due to developments in the understanding of the law of provocation (see Criminal Cases Review Commission, 2005).

This is not to suggest that there should not be legally-orientated groups and organisations that act as 'watchdogs' to ensure that the law is applied appropriately. It illustrates, however, the extent to which the support/campaigning community has lost sight of JUSTICE's agenda and the specific focus on factual innocence, as opposed to technical miscarriages of justice, and even if Southward and Moses, for example, were convicted of the wrong criminal offences it does not render them innocent. To repeat, criminal trials are not about innocence or guilt but, rather, guilt or not guilt. As such, whilst it could be argued that Southward and Moses should have been found *not guilty* of murder and *guilty* of manslaughter, they are not innocent. Such examples highlight the extent to which the traditional part played by the campaign community in raising public awareness and concerns about the wrongful conviction of the innocent has been subverted and JUSTICE's agenda on the specific problem of the wrongful conviction of the innocent has all but been forgotten.

The limits of pro bono student law clinic activity in the UK – the need for education

There is a flourishing pro bono student law clinic movement in the UK. Some clinical legal education programmes are part of assessed courses; others are voluntary extra-curricular schemes. The United Kingdom Clinical Legal Education (UKCLE) (UKCLE, 2005) website lists the growing number of institutions that provide clinical legal education and the extensive range of different schemes and activities that are taking place. These include 'simulation' clinics such as the Warwick Legal Training programme, University of Warwick (University of Warwick, 2005), which set out to simulate some of the experiences of live practice. Through the use of extensive case simulations, simulation clinics aim to provide realistic scenarios to give students a 'feel' for/of professional practice.

Alternatively, there are 'live' client clinics which range from full representation to partial representation and depend, also, on the level of 'cause lawyering' expected:

- Full representation – students normally manage the entire transaction or piece of litigation, as they would in a law firm. Examples include the Student Law Office, of Northumbria University (University of Northumbria, 2005) and the law clinics at Sheffield Hallam University (Sheffield Hallam University, 2005) and the Kent Law Clinic (University of Kent, 2005).
- Partial representation – students normally fulfil only part of the lawyering role, for example they give initial advice and representation before referring the case on to another agency, or they provide primarily case preparation and advocacy services.
- 'Cause lawyering' is where the emphasis is as much on campaigning or education as it is on 'conventional' legal representation of a class or individual. An example is StreetLaw, which aims to 'provide practical, participatory education about law, democracy, and human rights'. It is a specialised extension of the cause lawyering model, where law students are directly engaged in providing 'rights' education or supporting projects in conflict resolution or legislative reform for specific groups or communities. StreetLaw was pioneered in the US and South Africa, and has expanded into a global network. UK examples include the College of Law's

work with prisoners and schools and the University of Warwick's human rights project with local sixth formers (for more details, see, StreetLaw, 2005).

Clinics can also be either 'generalist' or 'specialist'. A generalist clinic may aim to replicate 'high street' practice as closely as possible by taking on a wide range of matters. On the other hand, clinics may 'specialise' in the cases that they take. Examples in the UK include The Internship Programme, Centre for Capital Punishment Studies, University of Westminster (University of Westminster, 2005), which sends students to the US, Commonwealth Caribbean and a growing number of other jurisdictions to work on post-conviction appeals against capital sentences, and the American Legal Practice Option, University of Central England (University of Central England, 2005) also offers 'Death Row' and other externships in the US. Finally, clinical programmes can either be supported 'in-house' by suitably qualified members of academic staff, or may be delivered in conjunction with, and often under the supervision of, an outside agency – usually a form of local solicitors, law centre or such like.

Despite the growing number of student law clinics and the increased diversity of pro bono activity, however, there appears to be a general belief that legal aid for criminal matters is plentiful and there is little, if any, need for lawyers and students concerned with helping clients in urgent legal need, to take on criminal casework. This was evident by the exclusive concentration on issues and aspects of civil justice during the National Pro Bono Week events of 2004 (Solicitors' Pro Bono Group, 2004). The belief, and general operational remit of the pro bono community that criminal matters are effectively 'out of bounds' is, by and large, mirrored by the existing student law clinics in the UK, where students overwhelmingly deal with settling tenancy disputes, employment matters, consumer complaints, and so on. At a recent national conference on clinical legal education, hosted by Northumbria Law School, (University of Northumbria, 2004) it was explained that of all the law clinics currently in operation, only two were known to take on criminal casework, a finding supported by a recent extensive research report on law clinics (Grimes and Brayne, (2004). This is as true of voluntary clinics such as the University of Bristol Student Law Clinic, which includes around 120 students variously engaged with attempts to resolve the legal needs of local residents (University of Bristol, 2004), as it is of assessed clinics such as that at the College of Law, the largest provider of vocational legal training and education in Europe, which has over a thousand students engaged in pro bono work in a clinical environment (College of Law, 2004).

The general neglect of the criminal sphere by pro bono student law clinics appears, on the face of it, to be entirely appropriate. Pro bono student resources are themselves, limited and it is reasonable to focus on the areas that are thought to present the greatest need. Moreover, as already indicated, the inherent fallibility of criminal trials already appears to be accounted for by appellate procedures available to alleged innocent victims of wrongful conviction. A closer look, however, reveals that whilst it is generally true that financial assistance for qualifying applicants is provided throughout appellate processes by the Criminal Defence Service (Criminal Defence Service, 2005), it is also true, as indicated above, that the processes that exist to overturn alleged wrongful convictions of the innocent, and the provision of financial support (The Times, 2005), are proving insufficient.

The University of Bristol Innocence Project – help, hope and education

The University of Bristol Innocence Project (UoBIP) is the first dedicated innocence project in the UK. It was established in January 2005. It was officially launched to coincide with the 2005 National Pro Bono week (see, Morris, 2005; Robins, 2005). It is a collaborative venture of undergraduate law students working under academic supervision and guidance from local criminal lawyers: the solicitors

provide possible avenues for further exploration; the students then investigate individual cases in pursuit of grounds for possible appeal.

Supported, primarily, by Personal Development Planning (PDP) funds,⁽⁷⁾ the UoBIP aims:

- To educate students about the wrongful conviction of the innocent;
- To work on individual cases of prisoners maintaining innocence;
- To conduct research on the causes of the wrongful conviction of the innocent to effect legal reform.

Although the UoBIP is currently an extra-curricula initiative (it has been mooted that it could, possibly, become a taught unit in the future), all members undertake an Induction Unit on miscarriages of justice and the wrongful conviction of the innocent, covering crucial issues such as the distinction between miscarriages of justice and the wrongful conviction of the innocent, the key causes of miscarriages of justice, the appeals process, the CCRC and the CACD's criteria of fresh evidence. In essence, the Induction Unit is based on a taught unit on the LLM, MA and MSc Programmes that is delivered as a reading group to student members (see University of Bristol, 2005). The Induction Unit is assessed by a 1,500 word essay on an issue that is relevant to the problem of the wrongful conviction of the innocent or an aspect of the particular case that they are working on. Perhaps more significantly, third year students working on the UoBIP can elect to conduct their Research Project (Dissertation) on a related topic, adding a formal assessed element to the initiative.

The UoBIP, also, hosts talks by high profile victims of wrongful imprisonment; for example, Mike O' Brien, Cardiff Newsagent Three, visited in November 2005, to provide students with a more meaningful learning experience and an opportunity to engage more directly with the topic. It provides opportunities for student attendance and/or participation in local and national conferences on miscarriages of justice and wrongful convictions, where they engage with victims, their families, friends and other supporters. For example, members of the UoBIP attended and wrote the Report for the fourth Annual Miscarriage of Justice Day Meeting, Manchester, 15 October, 2005 (Tan et al, 2005).

Specialist workshops supplement the Induction Unit and the overall learning experience, providing students with specific skills. In the Autumn Term, 2005, these included case organisation (delivered by Andrew Green, United Against Injustice), the criminal appeal process and what constitutes fresh evidence (Ian Kelcey, Kelcey & Hall Solicitors), interviewing clients (Julie Price, Cardiff Law School), making applications to the CCRC and learning about the CCRC's decision-making processes (Penny Barrett, Commissioner, CCRC and Adrian Yeo, Case Review Manager, CCRC).

In line with the educational aims of the Project, all members keep 'Reflective Diaries' in which they write critical reflections of the workshops and, when they are working on cases, report their experiences and thoughts about the investigation process and the issues that arise along the way – gross violations of due process, the status of unused evidence, police and prosecutorial misconduct and error, poor defence, problems with forensic expert witnesses, and so on.

In terms of case-work, the UoBIP is a live client specialist clinic, offering assistance to prisoners who fall into the following categories:

- Prisoners with a declaration of factual innocence, as opposed to claims of a procedural miscarriage of justice;
- Prisoners with a significant amount of time remaining on their sentence, to allow time for student investigation;
- Prisoners who have no legal representation, or whose solicitors have granted permission for us

to assist.

It is significant that the criteria of the UoBIP essentially resurrects JUSTICE's agenda and reinstates the concern with factual innocence, as opposed to technical miscarriages of justice. It was determined together with the first cohort of student members who, confronted by dozens of letters claiming wrongful conviction, reasoned, like Tom Sargent in 1957, that prisoners maintaining factual innocence were in most need of assistance.⁽⁸⁾

At the time of writing, the UoBIP has attracted letters from over 150 prisoners maintaining innocence. Once letters are received, prisoners are sent a Preliminary Questionnaire, which constitutes a Stage One Investigation, to enable us to obtain information about the case. Cases deemed to be eligible are then followed up with more specific correspondences to the prisoner maintaining innocence by the students about further questions raised by the Questionnaire and to his/her previous or current solicitors for their view on the merits of the case. The case is then filed until it is allocated for a full Stage Two Investigation. The Questionnaires are also utilised for research purposes on the various causes of wrongful convictions and the obstacles that the penal system presents to prisoners maintaining innocence (for example, see, Naughton, 2005e).

At present, the UoBIP comprises 20 student members: 2 postgraduate students who assist with the administration, 8 second-year undergraduate students who are actively engaged in case-work and 10 first-year undergraduate students who are on the Induction Unit and supporting the second-years on their cases. This year's recruitment drive attracted over 120 students. Despite a case-load that could easily accommodate such numbers, the intake was restricted to 10, due to the constraints placed on the Project by administrative resources, as well as pro bono criminal lawyers.

The educational benefits of student law clinics and pro bono initiatives are firmly established and well documented (for example, see, UKCLE, 2005b; 2005c). Similarly, there are considerable educational benefits associated with the study of 'justice in error', adding valuable insight and experience into the law curriculum. Those teaching potential future criminal lawyers can count the educational benefits of innovative programmes that avoid what has been termed 'the unacceptable face of law lecturing', where students experience mass-delivered, and 'dry' learning programs (Burridge, 2004, p. 1), whilst ensuring future practitioners develop a passion for justice, ethical practice, and pro bono work. Innocence projects can inspire future law students to work on criminal appeal work: as Metzger (cited Thorpe, 2004, p. 59) claims, 'the sort of work that really touches the soul in a way nothing else can'. Carole McCartney (2005), who recently conducted research into the educational gains of innocence projects in the US and Australia, summarised the likely educational rewards that would accompany innocence projects in the UK as follows:

- 'Lawyering' skills: dealing with clients, acting like a professional and dealing with other professionals, communication skills – written/oral/formal presentation.
- Critical thinking and analysis: Problem solving, creative/lateral thinking, collaboration.
- Case management: record keeping/time management, organisation and prioritising, dealing with interruptions and unscheduled work.
- Fact-finding: utilising variety of resources, use of different disciplines outside of law, application of law to the facts.

In addition, student participation in this area truly bridges the 'gap' by undertaking casework that campaign groups/organisations are not equipped to undertake that may contribute to overturning wrongful convictions, which would then provide evidence-based research with which to lobby for reform. An indicator of the potential success that student investigations of alleged wrongful convictions promises is the pioneering work on criminal appeals that have exhausted the criminal appeals provision

at the Student Law Office of Northumbria University (University of Northumbria, 2005b). Students there have had a notable success through their 'live-client' programme, particularly in overturning the case of Alex Allan who had served six years of imprisonment following a conviction for his alleged part in an armed robbery (see, Woffinden, 2001; Verkaik, 2001). While the Student Law Office at Northumbria is not an 'Innocence Project' as such, because they do not require clients to make a declaration of factual innocence, and they will even represent guilty offenders if the case is held to have educational merit, it is the closest manifestation of the type of student projects that have proliferated in the US (see, for example, The Innocence Project, 2005) and Australia (for example, see, Griffiths University Innocence Project, 2005), a closer look at which can be instructive as to the potential benefits arising from university-based innocence projects in the jurisdictions in the UK.

Further, it is argued that the existence, and success of innocence projects across the US, for example, has been termed 'the quiet revolution' as it has become a catalyst for reform, promoting change in local and state due process and civil rights recognition and protection (Schehr, 2003). Indeed, the Innocence Network in the US, which links all innocence projects, has an annual conference at which a national goal is set for the coming year, with concerted pressure then exerted on State legislatures around the country on the same issue, such as uniform tape-recording of interviews, or the preservation of evidence, a strategy that has met with some success.

Additionally, some states, such as North Carolina and Virginia, for instance, have established Innocence Commissions, which undertake and collate research on the wrongful conviction of the innocent, recruiting law students for some work. There have also been moratoria on executions following high profile and repeated exonerations of death row inmates, with the American Bar Association continuing to pursue further moratoria around the country (American Bar Association, 2005).

In view of the ongoing problem of the perpetuation of the wrongful conviction of the innocent in the UK and the limitations of the appellate processes, the CCRC, support organisations, and pro bono student law clinics, it is now clear that the UK needs to look to the developments in these other jurisdictions. The instigation of a widespread network of innocence projects within universities would provide help, hope and education in this vital area of the legal system. Additionally, it would garner support for the embryonic Innocence Network UK, launched in September 2004 (Innocence Network UK, 2005).

Conclusion

Whilst the pro bono student law clinic movement is vibrant and extensive, the UK remains in clear need of the help, hope, and the educational value that can be brought by innocence projects in universities. This article has sought to illustrate the need for, and the potential utility of, the widespread establishment of innocence projects in the UK. This will assist those wrongly convicted of criminal offences, who have exhausted domestic appeal processes and are now applying to, or have been rejected by, the CCRC. At the same time, innocence projects can also achieve important educational aims by providing insights into the operation of the criminal law that are currently extremely limited, bringing innovation into the law curriculum. Innocence projects resurrect the concern about the perennial problem of the wrongful conviction of the innocent, despite the establishment of the CCRC, pointing to the urgent need for reform.

Significantly, a network of innocence projects in universities in the UK would also advance the developing Innocence Network UK which would, in turn, facilitate academic studies into wrongful convictions and miscarriage of justice, which could influence criminal justice system reform and government policy. The Innocence Network UK, in common with the networks in the US and

Australia, would provide a forum to attract funding for research into the criminal justice system and collate research undertaken and identify knowledge gaps. It would extend and support the work carried out by voluntary organisations, which may have a more focused role, overcoming resource constraints.

There are significant limitations with our system of criminal justice and appellate procedures, the pro bono student law clinic movement and the practical assistance that victim support organisations can provide, which innocence projects can contribute to overcoming. The UoBIP exists to address these limitations, and the wheel need not be re-invented. An indication of the interest that already exists in establishing innocence projects in other universities was apparent at an Open Day, hosted by the UoBIP, 30 September 2005, which brought together representation from ten institutions. Since the Open Day, innocence projects have been established at Cardiff (for details, see Cardiff Law School Innocence Project, 2006)⁽⁹⁾ and Leeds (for details, see University of Leeds Innocence Project, 2006), and others are in the pipeline. All that is now required is the requisite enthusiasm and action from other universities for the innocence network to flourish.

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1. This article is an outgrowth of the following papers: ‘Wrongful convictions and innocence projects: help, hope and education’, Society of Legal Scholars Annual Conference, Strathclyde University, Glasgow, 6-9 September 2005; and, ‘Miscarriages of justice, the wrongful conviction of the innocent and the implications for campaigning’, South Wales Liberty Annual General Meeting, Friends Meeting House, Charles Street, Cardiff, 18 August 2005. Thanks to all who participated in the sessions and have engaged in the debate since, in particular, Carole McCartney, Andrew Green, Dennis Eady, Mike O’Brien, Aneurin Morgan Lewis, Gabe Tan, Julie Price and the Anonymous Review Panel for provoking me to clarify my thoughts.

2. On this matter, the Anonymous Review Panel commented that: ‘The observation that the criminal justice system is not about factual innocence or guilt seems odd --- appeals may turn on evidence of innocence, e.g. through DNA.’ However, assuming we are talking about the CACD, the statutory position is clear on the issue, even if/when DNA evidence, to follow the same example, is introduced in criminal appeals that is/was able to prove an appellant’s factual innocence, leaving aside the fact that DNA is not foolproof, appellants will not and, according to law *should not*, be declared innocent. On the contrary, the DNA evidence, if it was considered by the CACD to (a) meet the requirements in s.4 and is received as evidence, and, (b) meet the requirement in s.2 and the appeal judges ‘think that the conviction is unsafe’, then the appeal will be allowed, i.e. the conviction will be adjudged to be unsafe. It is feasible, however, that even DNA evidence (or any other evidence for that matter) that indicates an appellants innocence that does not satisfy the requirement in s. 4, i.e. that ‘there is a reasonable explanation for the failure to adduce the evidence at the trial’, will not be received by the Court. This was recently alleged in the case of John Roden following a refusal by the CCRC to refer his case back to the CACD (discussed further below with specific reference to the limits of the CCRC). These matter are, of course, only complicated still further by appeal court judgements that step outside of their statutory remit and wander into public/political discourse territory when they quash convictions but state that the judgement does not mean that the successful appellants are innocent, such as in the case of the M25 Three (see Times Law Report, 2000), for example, implying that the successful applicants have ‘gotten off on a technicality’ and that appeals are, indeed, about innocence and guilt when, according to the statutes, they are not.

3. It is interesting to note that the Scottish Criminal Cases Review Commission (SCCRC), established under s. 94A of the Criminal Procedure (Scotland) Act 1995 (as amended by s. 25 of the Crime and Punishment (Scotland) Act 1997 to provide post-appeal reviews in alleged miscarriage of justice cases in Scotland, does not have to second-guess whether the appeal stands a ‘real possibility’ of being overturned. Instead, the SCCRC may refer a case to the High Court if they believe (a) that a miscarriage of justice may have occurred; and (b) that it is in the interests of justice that a reference should be made.

4. John Weedon, Commission Member, Criminal Cases Review Commission, speaking in a personal capacity at All Party Group on Abuse Investigations Conference, House of Commons, Westminster, London, 4 December 2004.

5. John Wagstaff, Principal Legal Advisor, Criminal Cases Review Commission, speaking in a personal capacity at United Against Injustice 3rd Annual Miscarriage of Justice Day Conference, Conway Hall, Holborn, London, 9 October 2004.

6. The Inaugural Innocence Projects Colloquium, University of Bristol, 3 September 2004, was

attended by the Principal Legal Advisor, the Public Relations Officer and four Case Review Managers from the CCRC.

7. The Quality Assurance Agency for Higher Education (QAA) now requires that all universities offer students structured opportunities to become more critically reflective. All universities vary in how they will offer/deliver PDP opportunities. Sometimes they will be built into degree courses - study skills help, a work placement, regular sessions with a personal tutor. The UoBIP ticks all of the required PDP boxes and allows dedicated undergraduate law students thinking seriously about a career in criminal law to make the most of the opportunities available to them during their time at university, helping them plan ahead for future employment success. It adds structure and relevance to critical reflection.

8. This is not to suggest that alleged innocent victims of wrongful conviction who have completed their sentences and continue to maintain innocence and try to overturn their convictions, as in the case of Sue May (see INNOCENT, 2006), for example, or who do not receive a custodial sentence at all are less important or less deserving cases.

9. To reduce the administrative burden and assist a more direct route to student investigations on live client cases, Cardiff Law School Innocence Project has thus far received ten cases from the UoBIP database.