

# AIDWYC

## ASSOCIATION IN DEFENCE OF THE WRONGLY CONVICTED

The AIDWYC Journal – No. 3

www.aidwyc.org

April 2003

### Innocents Behind Bars

*AIDWYC's 2002 benefit concert and conference on wrongful conviction was held November 15th-17th, 2002 in Toronto. The conference featured the courageous testimony of a number of victims of miscarriages of justice along with the inspirational voices of those modern day champions who have fought relentlessly on their behalf.*

#### The “Real” Story

Renowned Los Angeles trial lawyer, civil libertarian and philanthropist Johnnie Cochran Jr. set the tone for a truly awe-inspiring weekend on the first day of AIDWYC's “Innocents Behind Bars” conference.

Though Cochran is probably best known for his representation of high-profile clients such as Michael Jackson and O.J. Simpson, in his own eyes, the most significant case of his career has been his 25-year battle to free a man who had been wrongly imprisoned.

Indeed, at the time of the O.J.Simpson trial Cochran told OJ-obsessed media that they were “missing the real story. The real story is Geronimo Pratt.”

Geronimo Pratt (now known as Geronimo ji Jaga), a member of the Black Panther Party, was framed for a 1968 murder in Santa Monica, California, convicted in 1972 and sentenced to life in prison. His conviction had been engineered as political retribution against the Black Panthers.

Cochran represented him at that trial and continued to fight to establish his innocence until Geronimo was finally released and his conviction overturned in 1997 after he had spent 27 years in prison.

#### Benefit Concert

The opening night of the conference also offered the opportunity to enjoy hours of entertainment by the generous artists and musicians who performed at the “Sounds Like Justice 2” benefit concert.

Over the following two days, conference participants heard from many of the world's pioneers in wrongful conviction work as well as the powerful voices of those who have experienced these injustices first-hand.

#### DNA Technology

Barry Scheck and Peter Neufeld, who established the Innocence Project at Cardozo Law School in New York in 1992, spoke about the impact of DNA technology on the

criminal justice system. Post-conviction DNA testing has to date resulted in 115 exonerations in the United States and has also contributed in many cases to finding a DNA match with the actual perpetrator of the crime.

#### Faulty Scientific Evidence

Neufeld also spoke of the need for follow up investigations and peer reviews whenever it is discovered that scientists have given faulty scientific evidence at trial. A full audit of all previous trials at which they have testified needs to be conducted to check whether similar faulty evidence has resulted in other wrongful convictions.

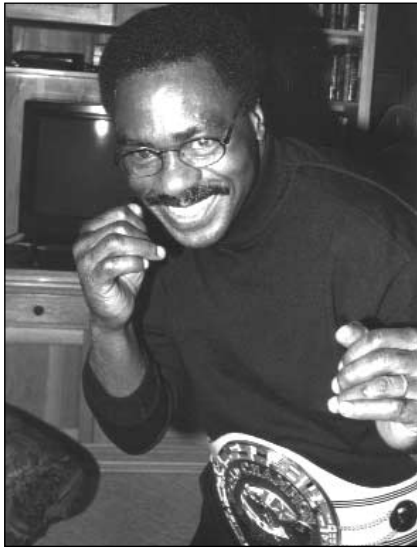
#### False Confessions

Scheck expressed the hope that the resolution of the “Central Park jogger” case may finally lead to the videotaping of all custodial interrogations in all U.S. jurisdictions.

*cont'd on page 4*



David Milgaard, Clayton Johnson, Steven Crawford, Ronald Dalton, Ruben Carter, Michel Dumont, Réjean Hinse, Jean Francois Longt in, Maria Bentley



*Rubin "Hurricane" Carter is the Executive Director of AIDWYC. A prize-fighter, he spent 20 years in jail in the U.S. for a crime he did not commit.*

We here in Canada live next door to a country which considers itself the leader of the free world and yet is the only western industrialized nation that insists upon maintaining the anachronism of the death penalty. They are not even ashamed of the rampant racism in its selective application and even kill children and mentally disabled adults. We don't have to look far to find plenty to be outraged about.

It's not hard to be outraged when you look at the crazy politics of electing judges and district attorneys whose livelihoods depend on satisfying a vengeful but poorly informed electorate.

It's not hard to be outraged when you hear that lawyers in Louisiana and Mississippi representing indigent defendants in capital cases receive the ridiculous sum of one thousand dollars - and

that's the maximum - no matter how intensive the investigation, the preparation or the trial. And in Georgia the fee is even less!

It's not hard to be outraged when a simple DNA test would prove someone's innocence or guilt but such tests are still arbitrarily withheld.

It's not hard to be outraged when people accused of heinous crimes are not afforded competent and capable counsel.

AIDWYC is now in its 10th year of existence and is still working tirelessly to free the wrongly convicted. We have certainly enjoyed success, but our work will continue until the justice system recognizes the need for change and until every innocent person has been released from the tombs of injustice.

I am honoured to be the Executive Director of this organisation and I hope that you will join me as I, along with the other members of AIDWYC, continue in our efforts to see that justice does prevail.

## Opening Round

by Rubin "Hurricane" Carter

### THE INVESTIGATORS GROUP ANNUAL CHARITY GOLF TOURNAMENT

*in support of  
AIDWYC & THE SCHIZOPHRENIA  
SOCIETY OF ONTARIO*

at KLEINBURG GOLF and C.C.  
(Nashville Side Rd,  
just west of Highway 27)

**on Tuesday,  
May 20th, 2003**

Shotgun start at 1:00pm

The Investigators Group Inc. and IGI Security Services have the pleasure of presenting its first annual charity golf tournament. Ticket cost, including green fees, motorized cart and dinner is \$125.00 p/p.

Those wishing to donate prizes or sponsor a hole can contact the tournament organizers. Any donations will be greatly appreciated!

Fax request form to (705) 431-2322 or mail form and payment (cash or cheque) to: Larry Grzybowski

1962 Mill Street, Innisfil, Ontario, L9S 2A2  
**Full payment required by May 10th, 2003.**

For further information please contact  
Larry Grzybowski @ (416) 726-3562

## A Word from the President

by Peter Meier

*Peter Meier is the President and a  
founding director of AIDWYC.*

The Innocents Behind Bars and Sounds Like Justice Benefit Concert and Silent Auction were a huge success. On behalf of the Board members of AIDWYC I would like to thank all the many volunteers for their dedication in putting these events together.

Thanks are also due to the guest speakers who came from across Canada, the United States, Britain and Israel and to the participants from all around the world. Each speaker expanded our knowledge on how wrongful convictions occur and how the system can be improved to prevent future occurrences. The participation by the wrongly convicted was particularly poignant and we are grateful for their eloquent testimony of suffering at the hands of the justice system.

AIDWYC awards were presented to:

Solange Tremblay in recognition of her commitment to seeing justice prevail in the case of Michel Dumont, demonstrating that one person can make a difference; Alastair Logan in recognition of his unflinching dedication to truth and justice no matter the personal cost; and Jim McCloskey in recognition of his ceaseless efforts on behalf of the wrongly convicted and for creating a model of advocacy that inspires all who work to correct miscarriages of justice.

The only regret is that not everyone was there who needed to hear the lessons to be learned. We will try to include them at the next conference.

I would also like to mention the truly herculean efforts of Win Wahrer, our Executive Assistant, without whose dedication none of this would have been possible.

Thanks again to all those who gave so generously of their time and expertise to make these events so successful. And, of course, to our sponsors for their generosity in supporting AIDWYC's work.

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We welcome contributions and comments. Please send these to: Vicki Preston, Editor, The AIDWYC Journal, 85 King Street East, Suite 318, Toronto, Ontario M5C 1G3, or by email to aidwyc@on.aibn.com.

Thanks to Monique Findlayter of Humber College for the use of her photographs in this issue.

We are indebted to the generous sponsors of this edition (see pages 18 & 20) for making its production possible.

# News Updates

See *AIDWYC Journal No. 2* for a summary of all of *AIDWYC's* cases, past and present.

## Canada

### Steven Truscott

Steven's application to the Minister of Justice under section 690 of the Criminal Code, prepared by AIDWYC and filed in November 2001, has received unprecedented support across the nation. Over seven thousand petition signatures have been submitted to the Minister, a coalition of 26 Members of Parliament and 32 Senators support the application as does Steven's union, UNITE, along with the CAW and Steelworkers.

A number of events and campaigns have been organised to demonstrate the overwhelming public support of Canadians from all walks of life, the most recent being a "mock trial" at the Peel County Courthouse in Brampton held by the law class of Humberview High School of Bolton, Ontario.

There are four options legally available to the Minister:

1. To order a new trial - Steven would appear before the Superior Court of Ontario in Goderich where he was convicted. After the Crown indicates it will call no evidence he would be acquitted. This is Steven's preferred option.

2. To issue a "free pardon" under the Criminal Code from the Federal Cabinet. This would be a finding of innocence; Steven is not seeking an act of mercy or forgiveness.

3. To refer the case to the Ontario Court of Appeal for a decision.

4. To refer the case to the Supreme Court of Canada for a decision.

We hope to see the Minister's decision within the next few months.

On a sad note, Isabel LeBourdais, author of *The Trial of Steven Truscott*, the main influence in bringing about the Supreme Court of Canada Reference on Steven's case in 1966, died in Toronto on March 14th, 2003 at the age of 93.

### Donald Marshall

Donald Marshall Jr. has moved from his home in Halifax to Toronto in order to be near a hospital where he is awaiting a double lung transplant which it is hoped will save his life. Marshall, 49, suffers from chronic obstructive pulmonary disease.

He was wrongly convicted of murder at the age of 17 in 1971 and served 11

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years before his release and exoneration.

A Commission chaired by Mr. Justice Hickman released its report in 1989, ruling that Marshall, a Mi'kmaq Indian, had been a victim of racism.

### Thomas Sophonow

Thomas Sophonow was wrongly convicted in 1983 and spent nearly four years in jail. In 2001, the Cory Commission awarded him \$2.6 million in compensation. \$2.3 million of this amount remained outstanding until earlier this year when Sophonow dropped his lawsuit against the government of Manitoba.

He purchased a new home for himself and his family with some of the money.

"I've been fighting for 20 years. Now it's all over," he said.

## U.S.A.

### Steven Crawford

Steven Crawford, who was released last year after spending 28 years in jail has filed a lawsuit against Pennsylvania authorities for his wrongful conviction.

The case was filed by his attorneys from the law firm of Goldberg, Katzman and Shipman who represented Crawford free of charge and succeeded in securing his release last June. Also joining his legal team is Johnnie Cochran Jr. who will be involved in his civil suit.

Although claims of this sort are usually made in the federal court, this one has been filed in Dauphin County Court.

"We've made the decision that Mr. Crawford's best interests are served being vindicated in the same courthouse where he was improperly convicted on three occasions," one of his attorneys explained.

### Maurice Carter

Maurice Carter has been in jail in Michigan for 27 years serving a sentence for assault with intent to murder. His case was endorsed by AIDWYC in 2001.

In January, a request for a new trial was filed in the Berrien County Trial Court. The judge ordered the county prosecutor, who opposes a new trial, to respond to this request and to Carter's claim of innocence by April 25th. The Citizens Committee for the Release of Maurice Carter has launched an email campaign for residents of Michigan to write to their public officials to support a new trial.

### Kenneth Charron

Canadian citizen Kenneth Charron has been in prison in Missouri on a rape

charge for the past 17 years. Although AIDWYC did not specifically support his claim of innocence, we did support his right to DNA testing which he claimed would exonerate him.

Although the Missouri Attorney General's office was denying him that right, they agreed to allow the tests to go ahead when AIDWYC paid for them.

When the results became available earlier this year, semen samples from the scene of the crime were found to match Charron's DNA.

AIDWYC maintains that the right of imprisoned convicts to DNA testing is essential where it has the potential to expose miscarriages of justice.

## Saudi Arabia

### William Sampson

One of AIDWYC's stated objectives is to try to prevent Canadian citizens from being executed anywhere in the world. William Sampson, born in Nova Scotia, has been in prison in Saudi Arabia since December 2000. Along with six Britons and a Belgian, he has been accused of taking part in two car bombings in Riyadh in November 2000 in which a British citizen was killed and others were injured. Sampson and a British citizen were sentenced to death by beheading at a secret trial.

Saudi authorities claim that the bombings were the result of a turf war between expatriate bootleggers. Other bombings have occurred since the men were imprisoned, some of which are suspected to be the work of religious extremists against Western targets.

Sampson's case is currently before the Saudi Supreme Judicial Council. In the event that his sentence is upheld, there is still the chance of commutation and a pardon from the Saudi Crown Prince. No Westerners have been executed in Saudi Arabia.

AIDWYC Directors Rubin Carter, Paul Copeland and James Lockyer met with the Saudi ambassador to Canada, Mohammed al-Hussaini, last October to express AIDWYC's concerns about Sampson's case. They are also working with the Department of Foreign Affairs to assist in any way possible to secure his release. Amnesty International has launched a campaign appealing to the Saudi authorities for his death sentence to be commuted. Full information on where to write to add your voice is available at [http://web.amnesty.org/web/content.nsf/pages/gbr\\_Saudi\\_Arabia](http://web.amnesty.org/web/content.nsf/pages/gbr_Saudi_Arabia).

cont'd from page 1

In this infamous 1989 case in which a young woman was brutally attacked in New York's Central Park, a group of five black youths were convicted after allegedly confessing to the crime. They served a number of years in jail before being released when another man confessed to the assault, DNA evidence linked him to the crime and it became clear that the original confessions were false.

## Voices of the Wrongly Convicted

Speaking with the authority that can belong only to those who have directly experienced the trauma of being wrongly convicted, the testimony of this panel was extremely powerful.

The stories of Rubin Carter, Steven Crawford, Ronald Dalton, Michel Dumont, Réjean Hinse, Clayton Johnson, David Milgaard, Gregory Parsons and Maria Bentley (the niece of Derek Bentley, hanged in the UK in 1953 at the age of 19, and exonerated over 40 years later) illustrated how they became victims of a system which failed to function as it should in each of their cases. The extent to which they had been dehumanised as they were caught up in the machinery of this (as Rubin Carter put it) "diabolical system" was evident from the analogies they used to describe their experience. "It was as though I was the ball and they were the pingpong players", one said. And another: "They are all playing a game and we are just pawns in their game."

For those familiar with the costumes, the rules, rituals and jargon of the courtroom, it may be difficult to appreciate how utterly intimidating it can be to someone who is not one of the "players". But this panel communicated to the conference participants a sense of the powerlessness that each of them had felt. Somehow a system designed to serve and protect them had gone terribly wrong, was now persecuting them and, in a final twist of cruel irony, assigning them to a "correctional" facility.

Each speaker gave the audience some sense of the frustration, anger and despair that they have had to endure:

Réjean Hinse: "I am filled with hate. Not only for the justice system in Quebec, but for the society that allowed this injustice. Such a society should not exist."

Clayton Johnson: "Nothing can ever bring back the years I lost with my girls."

Ronald Dalton: "Tell everyone you

LeBourdais spoke about the remarkable achievement of his mother in challenging the justice system in the mid 1960's. Julian Sher discussed the impact of Steven's case in changing Canadians' confidence in the infallibility of our legal institutions and Linden spoke about the impact that two cases in particular - Steven's and Wilber Coffin's (executed in 1959) - had



Peter Neufeld

Joyce Milgaard

Barry Scheck

photos thanks to Montique Findlayner

know that it could happen to any one of them."

David Milgaard: "It is wrong to expect the innocent to have to ask for 'the royal prerogative of mercy' for something they didn't do."

Michel Dumont: "How can I describe what it was like when finally one person believed in me?"

Montreal lawyer Jean-François Longtin, who has acted for both Réjean Hinse and Michel Dumont, pointed out what perhaps should be obvious if we recognise that every system is fallible - that we should pay more attention to those who stubbornly for years maintain their innocence after being imprisoned. Perhaps we might then find the wrongly convicted more rapidly.

David Milgaard's mother, Joyce Milgaard, asked participants to write to the Saskatchewan government to urge them to hold the long-promised inquiry into David's case.

## The Case of Steven Truscott

The panel assembled to discuss the Steven Truscott case included Linden McIntyre and Julian Sher of CBC's "Fifth Estate" and Julian LeBourdais, the son of Isabel LeBourdais. Julian Sher is also the author of the book about Steven "Until You Are Dead" published in 2001.

Philip Campbell, one of Steven's lawyers on his application under section 690 of the Criminal Code, gave a summary of the case. Then Julian

on abolishing the death penalty in Canada. He described Steven's story as being "Canada's story" symbolising how we used to be (the Ontario Attorney General at the time of Lynne Harper's death in 1959 announced that her murderer was wanted "dead or alive") and how far we like to think we have come since then.

He agreed that the media can play an important role in uncovering miscarriages of justice and bringing them to public attention, though he believes that the media is not culturally conditioned to follow this kind of case - they are usually interested only if there is already some receptivity existing. Though there are always individuals who may follow a particular case, corporate management of the media tends to remove it further and further from the communities it is supposed to serve.

Illustrating Linden's point, Steven talked about how people often refer to his case as "our" case. He also pointed out how so much of the public support has been organised by women, and how he has noticed that in many cases of wrongful conviction, there is a woman behind the fight for justice.

"We're kind of lucky in this country that they've abolished the death penalty", he noted, "and we're hoping that we might have some effect on other countries that still have the death penalty."

## Psychological Effects

AIDWYC Director Mel Green introduced Dr. Adrian Grounds, Senior Lecturer in forensic psychiatry at the University of Cambridge, England. Mel explained that when AIDWYC had been looking for literature about the psychological effects of wrongful conviction for the Sophonow Inquiry in 2001, they

had discovered Dr. Grounds' extensive work in assessing wrongly convicted individuals and brought him from England to testify in Winnipeg.

Dr. Grounds spoke of the severe trauma experienced by those who are imprisoned for crimes of which they are innocent as well as the significant 'collateral damage' that is inflicted on their families. These men could become so totally focused on their legal case, that they sometimes even cut off contact with their families as being too much of a distraction.

A fuller account of Dr. Grounds' speech can be found on page 8.

## American Justice

"Injustice anywhere is a threat to justice everywhere".

Professor Stephen Bright, Director of the Southern Center for Human Rights reminded us of these words of Dr. Martin Luther King Jr.

This public interest legal project based in Atlanta, Georgia has been fighting for more than twenty years for the civil and human rights of people of colour, poor people, and other disadvantaged citizens facing the death penalty or confined to prisons and jails in the South - the nation's "death belt".

Suggesting that in the USA it is better to be rich and guilty than poor and innocent, he gave example after example of human rights abuses and Constitutional violations occurring with regularity in the southern states.

From the appalling abuse of prison inmates to the travesty of trials - even in capital cases - where poorly paid and incompetent public defenders were sometimes drunk, asleep, on drugs or suffering from Alzheimers while representing their clients, the picture he painted of what passed for "justice" in the South shocked the conscience of everyone present.

In many cases, the constitutional right to an attorney was simply ignored and the accused did not have any representation at all. So much for "equal justice under the law"!

Professor Bryan Stevenson, Executive Director of the Equal Justice Initiative of

Alabama told a similar tale about the extent of discrimination and injustice in the South. Convicts in Alabama, for example, have their voting rights permanently removed. This has resulted in the disenfranchisement of over 30% of that state's black male population.

Both speakers, however, despite the harrowing content of their talks, were



Professor Stephen Bright



Cindy Wasser & Sandra Babcock



Professor Bryan Stevenson

inspirational and deeply motivating. Their work is all the more heroic when one considers what it must take to maintain their dedication and "keep their eyes on the prize" as Professor Stevenson put it, in the face of such pervasive injustice.

Jim McCloskey, founder of Centurion Ministries in New Jersey, the first organisation created to free the wrongly convicted in 1983, reported that 26 innocent men and women have now been exonerated through the work of his organisation. See page 10 for further information on Centurion Ministries.

Sandra Babcock, an attorney practicing in Minneapolis, specializes in international criminal law. She represented Joseph Stanley Faulder, a Canadian national executed in June 1999 - a case with which AIDWYC was involved, sending three delegations to Texas to protest the violation of Faulder's Vienna Convention rights and trying to prevent the execution.

Sandra told conference delegates the story of how AIDWYC Director Cindy Wasser, who was part of those delegations, had travelled to Auschwitz some months later. She was approached there by an American woman who recognised her from a television interview and told her that she had been so inspired when she heard Cindy talk about Faulder's case, that she had gone back to school to study law so that she too might work to help fight injustice in her country.

## Saving Lives Abroad

Gar Pardy, Director General of the Consular Affairs Bureau at the Department of Foreign Affairs, Mark Warren of Amnesty International, Dr. Philip Berger of St. Michael's Hospital in Toronto and Minneapolis attorney Sandra Babcock discussed some of the

difficulties involved in trying to save the lives of Canadians facing the death penalty abroad.

Although publicity can draw attention to the case and often results in political pressure, in other cases it can annoy foreign

governments and make the situation worse for the accused. There is, therefore, no single recipe for success. Each case must be treated with caution and on an individual basis.

Mark Warren said that overall he believed there were changes for the better. He encouraged the audience to use the technology available today to help spread awareness and gain support for issues of injustice. He mentioned the case of Amina Lawal, sentenced to death by stoning by a Sharia court in Nigeria in March 2002, as an example of how the effective use of the Internet has ensured that her case is known globally.

(Of particular note on this subject is that subsequent to the conference, on January 11th, 2003, outgoing Illinois Governor George Ryan issued a blanket commutation of 167 death row prisoners. Many of AIDWYC's recommendations adopted by the Morin and Sophonow inquiries were cited in Ryan's "Commission on Capital Punishment" which led to this decision.

The full text of Governor Ryan's speech is available at [www.cuadp.org](http://www.cuadp.org).)

## Disclosure

A panel discussing the role of public inquiries included Newfoundland's retired Justice Alex Hickman, who chaired the Marshall Inquiry, Justice Michel Proulx of the Quebec Court of Appeal, Justice Marc Rosenberg of the Ontario Court of Appeal, Steven Sherrif, Senior Crown Counsel and Winnipeg defence lawyer Richard Wolson who

was counsel on the Sophonow Inquiry.

Justice Hickman observed that recommendations with respect to disclosure are now fairly well entrenched in Canada. Justice Rosenberg pointed out that it was the Marshall Inquiry that led to the *Stinchcombe* decision by the Supreme Court of Canada which set the current disclosure standard in 1991. Until then wrongful convictions were viewed as isolated events. The Inquiries have shown that they do not occur in a vacuum, but that there are systemic problems. This was a great change in the legal culture - that we only learn if we own up to our mistakes.

Steven Sherrif described how participating in the conference had been a very humbling and shocking experience for him. "I have been a prosecutor for over 30 years", he said, "and you'd think it would be hard to shock me. Yet you have already had a profound impact on me and I will be encouraging more prosecutors to attend in the future."

He went on to say that convicting the innocent was the only thing he feared about his work and that it is one thing to read about these cases and gain an intellectual understanding about them, but entirely different to meet them and hear them speak.

Throughout the conference, reference had been made a number of times to finding a more accurate term for "prosecutorial misconduct". Mr. Sherrif's suggestion of "criminal misconduct" was greeted with loud applause.

He explained that although the law on disclosure is settled, knowledge of the law has not filtered into the police community in the way that it should have. When he lectures on disclosure to the police he is often met with blank stares which shows him that there is still a knowledge gap between prosecutors and police officers.

As many police forces don't have the resources to train their officers, there should be a project organised to take disclosure training to the field.

## Expert Testimony

Justice Proulx spoke at some length about expert testimony and the dangers of junk science. "Expert evidence", he said, "is the source of a fundamental paradox in our legal system. It can dis-

credit the system and it can come to its rescue. We know that forensic science, including DNA testing, has saved the innocent, but we cannot ignore numerous instances where forensic experts were clearly responsible for miscarriages of justice.

"I know of only one other category of witnesses who are paid for their tes-



Marlys Edwardh, Justices Hickman, Rosenberg & Proulx, Steven Sherrif

timony: the informers! Forensic scientists who run with the hounds cannot be expected to give a savaged fox the kiss of life.

"Fundamentally experts and lawyers are enmeshed in an insidious relationship. They think they can be loyal to the same cause, but they cannot, and as long as expert witnesses are kept in a system that requires them to be loyal to the party or the institution, we will encourage the tunnel vision strongly denounced by Justice Kaufman in the Morin Inquiry.

"The solution resides in a substantial change in our culture which would be reflected in a system that: 1) gives total freedom to experts; 2) makes them fully accountable and bound to respect a code of ethics; and 3) encourages mediation between experts before the trial (the so-called "bear pit" model)."

## Eye Witness Identification

Richard Wolson spoke about the dangers of eye witness testimony. Although some of the public inquiry recommendations on this issue have been adopted, there are still occasions where the testimony of experts, such as Dr. Elizabeth Loftus, is required to present research into human memory and the unreliability of eye witness testimony.

Citing the Supreme Court's ruling in *R. v. Hibbert*, he hoped at the very least that trial judges would be vigilant about charging juries with the information that faulty eye-witness identification is one of the most common factors in wrongful conviction.

Marlys Edwardh, moderator for this panel, asked whether the ruling of the Ontario Court of Appeal in *R. v. McIntosh* (1997), where expert evidence on eye witness testimony was not allowed, closes the door on this question.

Justice Rosenberg answered that the subject is not presented in *McIntosh* in a way that really gave the Court the chance to examine it fully, so neither the Crown nor the defence should be discouraged from raising the issue again.

## Jailhouse Informants

Richard Wolson put forward the view that jailhouse informants should be prohibited from testifying and that

Justice Cory's recommendations in the Sophonow Inquiry should be adopted as law in this country. This would allow jailhouse informants to testify only in rare cases, such as kidnapping where they may, for example, have knowledge of the whereabouts of the victim.

Justice Cory describes jailhouse informants as "the most deceitful and deceptive group of witnesses known to frequent the courts... They rush to testify like vultures to rotting flesh or sharks to blood. They are smooth and convincing liars... They constitute a malignant infection that renders a fair trial impossible. They should, as far as it is possible, be excised and removed from our trial process."

Steven Sherrif thought that to have an outright ban on jailhouse informants would risk "throwing out the truth in some cases", but agreed that the jury should certainly be warned that this species are a dangerous breed.

"None of them do it for God and country", he said, "they do it for themselves."

Though he described them as a "potentially lethal species", he favoured using a committee as a "coarse filter" to determine whether unsavoury witnesses (both from jail and from the street) should be allowed to testify.

After the Morin Inquiry, the Ontario Ministry of the Attorney General set up a committee for this purpose and has found that only about half of the informants pass muster, resulting in a number of murder prosecutions being withdrawn.

The test used is "does that witness

have something that is independent of the witness such as wiretap evidence or a letter written by the accused and smuggled out of jail?"

## Remedies for the Wrongly Convicted

AIDWYC Director Mel Green opened this discussion with Justice Cory's recommendation from the Sophonow Inquiry that "there should be a completely independent entity established which can effectively, efficiently and quickly review cases in which wrongful conviction is alleged. In the United Kingdom, an excellent model [The Criminal Cases Review Commission] exists for such an institution." He stated that it is essential for a post-conviction review mechanism to be independent and at arm's length and not in any way beholden to the state - which is responsible for the wrongful conviction in the first place.

Green explained that section 690 of the Criminal Code was due to be replaced on November 25th by section 696.1, that the scope of review would be expanded and counsel for the Minister would be able to compel testimony. These are important advances, but there is still no autonomy - they report to the Minister of Justice, Canada's ultimate prosecutor. "All AIDWYC wants", Green said, "is a mechanism to eliminate our *raison d'être*."

Hersh Wolch, defence counsel on a number of high-profile cases of wrongful conviction, pointed out that the 690 process takes far too long. He said that

the federal government does not implement an independent review mechanism because they say that Canada's cases of wrongful conviction are different from the UK's. He has no idea what this means. Another argument they use is that no conflict of interest exists since the federal and provincial departments of justice are two different bodies. They do not understand why this is still an inappropriate process.

Dr. Arye Rattner, of Haifa University's Centre for the Study of Crime, Law and Society, is co-author of the book "Convicted but Innocent".

He spoke about the need for the justice system in Israel to become more willing to admit that mistakes are made and about how few retrials have been approved by the Israeli Supreme Court.

Alastair Logan has extensive experience representing victims of wrongful conviction in the UK, including the Guildford Four. He welcomed the opportunity to compare the advantages and disadvantages of one country's justice system to another's.

Whilst Canada hopes for the implementation of an entity modelled on the UK's CCRC, he pointed out some of the limitations that have been apparent in Britain. To begin with the CCRC has to operate within the system that already exists. When it was formally established in 1997 it immediately inherited some 2,000 cases, some of them decades old.

Some three years were spent at the beginning training people to do the work. The CCRC has a limited budget, but it needs to create a career path to encourage good and experienced people

to participate. The CCRC should be producing regular reports identifying the systemic problems and it needs to be expanded to be on a par with the Law Commission. Although the vision was there in the creation of the CCRC, it hasn't achieved its potential. Canada can learn from this and look at the bigger picture.

On the subject of disclosure, he noted that the UK has a statute that requires discretionary disclosure - i.e. "you tell me what your defence is and we will give you whatever is relevant to that disclosure". He also explained that the right to silence has been abolished, ostensibly in order to combat terrorism (despite the fact that the conviction rate for terrorism at the time was 98.7%).

A more recent threat to civil rights in Britain which, in the current climate of terrorism, is being called upon more frequently, is the claim for "Public Interest Immunity" (PII). Where it has been decided that information would cause damage to the public interest, a PII certificate is granted so that government documents or information are not disclosed at court proceedings.

He does not believe that the British justice system has developed a healthy capacity to learn from its mistakes. It still sees miscarriages of justice as an embarrassment. "At the end of the day", he said, "there is still no real accountability. Those who put innocent people in jail are not called to account. It is not acceptable that a single innocent person spend a single day in jail for a crime they have not committed because *that* is our standard of justice."

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## Converging Interests

by Bruce McFarlane

*Bruce McFarlane, Deputy Minister of Justice & Deputy Attorney General, Manitoba, wrote this letter to AIDWYC after attending the conference.*

There is, I think, an important principle for all of us to remember. Post-conviction reviews do not necessarily need to be adversarial in nature. In fact, it is preferable that they not be adversarial. My suspicion is that those of us who are on a day-to-day basis involved in an adversarial system naturally gravitate to the same sort of process after conviction, where the issue is whether anything went wrong. That, unfortunately, leads

to fights over whether exhibits should be released for DNA examination and other sorts of issues that ought to be dealt with on some other level - preferably a more collegial one. That is the way that [AIDWYC Director] Paul Bennett and I handled the post-conviction review of Sophonow, and it is the way that we are handling a current Manitoba case involving [AIDWYC Director] James Lockyer.

The point is simply this. No one can, in good conscience, support the occurrence of wrongful convictions. Where there is at least some basis to believe that something might have gone wrong, it is in the interests of both the Crown and the defence and, I contend, the police to take a close look. If something did go wrong, we have to fix it. That may mean compensation in some cases and in others it might mean some other form of

remedy. My principal thesis, however, is that to the extent possible we ought to avoid rigid application of the adversarial process in the post-conviction search for whether something went terribly wrong.

Some people have asked me why I went to the conference in Toronto. The reason is outlined above. I think that both the Crown and the defence have a clear interest in ensuring that wrongful convictions do not take place in Canada.

On this point, our interests converge. Through increased Crown attendance at conferences such as this, I believe that we can raise awareness of the prospects of wrongful convictions. That, in turn, will cause everyone involved to watch out for the "flags" that could signal that a case is headed in the wrong direction.

It is the small things like this that are, I believe, the greatest guard against miscarriages of justice.



*Dr. Adrian Grounds*

## Psychological Effects of Wrongful Conviction

*by Dr. Adrian Grounds*

*Dr. Adrian Grounds is a Senior Lecturer in forensic psychiatry at the Institute of Criminology and the Department of Psychiatry, University of Cambridge, England. He gave evidence at the Soponow Inquiry in Manitoba in 2001. This article is a summarised version of his speech at AIDWYC's November 2002 conference.*

During the last ten years I have carried out clinical assessments of 17 men released from prison after their convictions were quashed. What I know about this topic I have learned from them and their families and I want to acknowledge them at the outset.

My initial assessments ten years ago were of four of the group known as the "Birmingham Six" and one of the "Guildford Four", both groups being notorious miscarriages of justice which led to a major review of the English criminal justice system by a Royal Commission. One outcome of that review was the creation in 1997 of a new independent body to investigate claims of miscarriages of justice, the Criminal Cases Review Commission (CCRC).

Before these initial assessments I did not expect to find much. These men did

not have significant past histories of psychiatric illness, and generally the research literature on the effects of long-term imprisonment had concluded that there was little good evidence of psychological deterioration in custody. What I found was wholly unexpected. The assessments revealed a pattern of disabling symptoms and psychological problems that were severe, unfamiliar to me, and the same in all the cases.

In the years since then I have assessed twelve more men released on appeal. Most had been wrongly convicted of ordinary, non-terrorist offences of murder. Their clinical conditions were similar.

Those who had been in prison for longest had lost a generation of family life. Parents had died and children had grown up. Young men who entered prison as fathers of young children were released as middle aged men with grandchildren.

Most of the men had changed in personality in ways that caused distress to them and their families. In fourteen of the seventeen cases the personality change caused significant impairment and fitted the diagnostic category of 'enduring personality change after catastrophic experience' in the World Health Organisation's International Classification of Diseases. The men had marked features of estrangement, loss of capacity for intimacy, moodiness, inability to settle and loss of a sense of purpose and direction. They were withdrawn, unable to relate properly. Families consistently said the men had changed - they were not the people they used to be.

Twelve of the men had post-traumatic stress symptoms, usually relating to specific events of extreme threat or violence following arrest or in prison.

Since release ten men had suffered from depressive disorders, four from severe anxiety attacks (or panic disorder), four had paranoid symptoms and three had alcohol or drug dependence. Those with drug and alcohol dependence had become socially isolated and used alcohol or drugs to try and blot out their depression and post traumatic stress disorder (PTSD) symptoms.

There were other pervasive and disabling symptoms. Most had chronic difficulties in sleeping, and moodiness and irritability that made them very difficult to live with. All were changed in a way that one person perfectly captured when

she said there was a permanent loss of joy.

Most men had intense, chronic feelings of bitterness, as did some families, and all had strong and unresolved feelings of loss.

Generally these were people without previous psychiatric histories, and in all cases the psychiatric conditions appeared to be directly attributable to the wrongful arrests, convictions and imprisonment.

Whilst imprisoned there were difficulties of family visits and separations. For the men visits could be emotionally intolerable, particularly when the children kept asking when he was going to come home. Some found the emotional turmoil before and after visits so unbearable that it was easier not to have them.

Often for years the men were isolated in their claims of innocence. They were notorious and their guilt was assumed. They had to cope with unsuccessful appeals and assumed that in failing to get their convictions overturned they would probably never be released, because whilst they did not admit responsibility for their offences they would not get parole.

Generally they became wholly preoccupied with their legal case, and the pursuit of it, and continual campaigning dominated their existence. Typically they protested their innocence without let up year after year after year.

All the men were released suddenly and without the gradual, supervised return to society that is usually provided for long-term prisoners. After being maximum security prisoners for years, they were typically taken to the Appeal Court, the decision was given and they were released with a small amount of money and a bag of possessions to their waiting families and the media.

They had marked and embarrassing difficulties in coping with ordinary practical tasks in the initial days and weeks, for example, crossing busy roads and going into shops. Some had more persistent difficulties, not knowing, for example, how to work central heating, tv remote controls, videos, credit card cash points at banks; and experiencing shame which prevented them asking for help. The men also typically had little sense of the value of money, couldn't budget, spent recklessly and got into debt.

They had learned to deal with emotional pressures and stresses in prison by blocking off painful feelings, avoiding communication and isolating themselves. The men continued to use similar strategies of withdrawal, self-isolation and uncommunicativeness after release. They would avoid social contact and shut themselves away for hours. Whilst this may have been adaptive in a prison context, it was maladaptive in a family, and relatives found it upsetting and bewildering. It was particularly notable that the men reported that they did not talk to families or partners about their prison experience.

They found little in common with their peers who were now at a different stage of life. All the released men talked of feeling on release psychologically the age they had been on entry to prison.

All described difficulties in family and close relationships. Some experienced a profound estrangement: a loss of closeness that never returned. These acknowledgments that they no longer had feelings of closeness towards those who had stood by them were difficult to admit to and a source of immense guilt. This estrangement had gradually developed over the years in prison and the way they handled prison visits and correspondence was probably significant in leading to the gulf in mutual knowledge that separated them. Characteristically, the men and their families avoided disclosing to each other the difficulties they were experiencing. Partners didn't want to worry the men by disclosing their own anxieties, such as lack of money, or children being ill. The men would similarly hide their problems. In consequence, after release the men and their families could not speak about what they had experienced, nor understand or cope with each others' emotions. What had developed was mutual incomprehension and lack of knowledge about what they had each gone through.

The families of the men separately suffered. Some gave vivid accounts of being victimised and ostracised, and of chronic fear. Some families changed their identity; the children suddenly lost their fathers and suffered disruption and hardship. For years their weekends were spent in gruelling journeys and prison visits. After release they also found permanent estrangement in family relationships. The children's accounts of this

echo those given by the children of the 1940s, for whom the arrival home of the 'stranger' was a recurring theme in the memories of children whose fathers were away in the war.

The enormity of what happened to these 17 men and their families is difficult to grasp. The forms of suffering and damage they experienced were numerous and interacted and compounded one another. The harms extended over time and generations. At the end of many of these assessments, I was left with a strong clinical impression of irreversible damage that could not be substantially remedied, and help had to be directed towards assisting those concerned to find a way of living with it; coping with their emotional conflicts and grief, and gaining a better level of understanding of their difficulties.

When families say, as they do, that the time since the man has been out has been worse than the years of prison; and when the men say, as they do, that sometimes they wish they were back inside, that is a measure of how severe and intense the burdens can be after release.

To begin with I frankly couldn't make sense of the psychological problems of these men. They were profoundly psychiatrically disabled but in a way that I had not seen before. It was only after I began to discover some of the literature on others subjected to chronic trauma that the picture became clearer.

The difficulties in close relationships and the loss of feelings of emotional closeness to their families, which were the most distressing and disabling features of the men's experience, are well described in the psychiatric literature on war veterans. The characteristic clinical syndrome that may follow chronic psychological trauma has been a particular focus of study in war time and the difficulties of adjustment amongst soldiers returning home have also been well documented.

A psychiatric study by Solomon gave a detailed account of these problems:

"Especially problematic for the PTSD veteran is the resumption of the more demanding and intimate roles of husband and father. Most PTSD casualties are removed and detached from their families. Some casualties with-

draw physically: ....The majority stay at home but are there little more than in body. ....Many neither talk nor listen. Wrapped up in their continued suffering, they describe being unfocused, cut off, or in a world of their own ...

"...The family often remains bewildered by the veteran's unusual behaviour, whereas the veteran, locked in his silence, becomes even more detached and cut off. He deprives himself of the emotional support his family could potentially give, and deprives his family of the emotional connection and involvement that is their due" (Solomon 1993 pp 109-111).

Three forms of help are required. First at the time of release ex-prisoners need a specialist residential place for them to stay and receive support in the initial days. They need to be informed and educated about the problems they are likely to experience, so that they are not surprised and bewildered by them. Secondly, the ex-prisoners need individual help of two kinds - treatment for specific conditions, such as depression, for example, and long term counselling to help them come to terms with the lost years. Thirdly, separate work with the family is needed to support them and help them develop understanding and coping strategies.

Lastly, there is a need for research. There needs to be a proper representative study of a larger cohort of people released on appeal to determine whether these findings are correct and to develop explanatory models. If such a study had a comparison group of other long-term prisoners it would be possible to assess the extent to which the findings in these cases are specific to miscarriages of justice and to what extent they apply more widely to other prisoners.

There is also a case for a more ambitious project, namely a substantial longitudinal prospective study of the consequences of long-term imprisonment. The number of life sentence prisoners in custody has been steadily increasing in Britain as well as other jurisdictions. This makes a pressing case for comprehensively studying what long-term imprisonment does to people.

*This article is used by permission of the author. A longer version will appear in a forthcoming issue of the Canadian Journal of Criminology and Criminal Justice devoted to the topic of wrongful convictions.*



*James C. McCloskey*

## Centurion Ministries

Executive Director and Founder of Centurion Ministries, Jim McCloskey was raised in Philadelphia and graduated from Bucknell University in 1964. He served as a naval officer in Japan and Vietnam for three years and then worked as an executive in management consulting until 1979. At the age of 37 he felt called to leave the secular world of business to enter a seminary and study for a degree in Divinity, planning to become a Presbyterian pastor.

As a student chaplain volunteering at Trenton State Prison in New Jersey he met Jorge De Los Santos who was serving a life sentence for murder. Troubled by his cries of innocence, Jim obtained transcripts of his trial and read them. He soon discovered that Jorge had been convicted based on the jail-house testimony of a career criminal.

Jim gave Jorge a very special Christmas gift in 1980 when he told him that he had decided to take a year's leave of absence to work full time on reinvestigating Jorge's case. He formed a defence committee, succeeded in raising \$25,000 and retained a first-class lawyer - Paul Casteleiro.

In the first year of their investigation, they found Richard Delli Santi, the star witness against Jorge, who not only recanted his testimony but also told Jim of two other cases in which he had given false testimony prior to that one. As Jim put it "This guy claimed to have heard more confessions than a Catholic priest!"

This informant had, under direct examination by the prosecution, stated

that he had not ever testified against anyone else. When the prosecutor's file was examined, Jim found pretrial notes in the prosecutor's own handwriting where he had written that Richard Delli Santi was "in the habit of giving testimony."

Based on these findings, a Federal judge ruled that even upon a casual reading of the trial transcripts, Delli Santi's testimony "reeked of perjury". He reversed the conviction and Jorge was freed and cleared on July 26, 1983 after serving 8 years in prison for a crime of which he was completely innocent.

By that time, Jim had returned to the seminary to earn a Masters of Divinity degree, but two other events in the summer of 1983 led him in a different direction from his original plans. He met two more New Jersey lifers in whose innocence he came to believe and, at around the same time, his parents came into some money and gave each of their children a tax-free gift of \$10,000.

"I looked upon this gift as manna from heaven", he says. "I had had no money while we were working to free Jorge, but I saw that \$10,000 could be used as the seed money to start a whole new organisation dedicated to freeing the innocent."

Jim named the organisation after the Roman Centurion in the Bible who, standing at the foot of the cross, said, "Surely, this one is innocent."

Since 1983, Centurion Ministries has been involved in freeing a total of 27 innocent men and women from prison. A full catalogue of their clients and brief summaries of their cases can be seen on their website [www.centurionministries.org](http://www.centurionministries.org).

The two men from New Jersey whom Jim had met in 1983 - Rene Santana and Damaso Vega - were both later freed - Rene in 1986 after 10 years in prison and Damaso in 1989 after 7 years in prison.

Paul Castelerio is still working with Jim over 20 years later and has successfully overturned seven cases of wrongful conviction in New Jersey and Georgia with Centurion Ministries.

The first organisation in the world to recognise the problem and work to free the wrongly convicted, Centurion Ministries has served as a model and an inspiration to the many other groups and projects now established in a number of different countries that are following in Jim's footsteps.

Some years before AIDWYC was founded, David Milgaard, in prison in Canada for a murder of which he was

innocent, heard about Jim's work on television. He wrote to his mother, Joyce, who coincidentally was visiting Princeton, and she contacted Jim to ask him to help with her son's case.

At the time Jim was overwhelmed with U.S. cases and didn't have the resources to add another one to the existing load. But Joyce persevered, volunteering at Centurion Ministries that summer and later, when further information supporting David's innocence and implicating serial rapist Larry Fisher as the actual perpetrator became available, Jim sent Paul Henderson, the organisation's staff investigator, to Saskatoon.

Paul and Joyce worked together to investigate and interview every known previous victim of Fisher in order to understand his modus operandi. From their reports, Jim drew up a detailed comparative analysis to show the similarities in how each attack was conducted and demonstrate that Fisher, and not David, was the probable murderer of nurse Gail Miller.

David was finally freed in 1992 and Larry Fisher was subsequently convicted of Gail Miller's murder. DNA testing arranged by AIDWYC in 1997 conclusively established David's innocence and linked Larry Fisher directly to the crime.

Centurion Ministries is now working shoulder to shoulder with AIDWYC on another Canadian case - that of Jim Driskell in Manitoba.

"I love working in Canada and with the Canadians", Jim McCloskey says. "No matter how long it takes, I can't wait for the day when AIDWYC and Centurion Ministries can together walk Jim Driskell out of jail as a free and exonerated man."

One of Centurion Ministries' other major cases at the present time is that of Walter Lomax - a man who has already served 35 years in prison for a Baltimore City murder which Jim says he could not possibly have committed.

Although Jim McCloskey created Centurion Ministries out of a spiritual calling, it is not a religious organisation. It is irrelevant to them what religion, if any, an inmate or beneficiary practices. Their sole concern and focus is on an inmate's factual innocence.

Further information is available from Centurion Ministries, Inc., 221 Witherspoon Street, Princeton, NJ 08542, tel: 609-921-0334, fax: 609-921-6919, [www.centurionministries.org](http://www.centurionministries.org).

# Out West

by Hersh Wolch

Hersh Wolch is a lawyer practicing in Alberta. He has been involved in many of AIDWYC's cases.

## Steven Kaminski

A landmark decision was reached in January this year when Canada's Minister of Justice, Martin Cauchon, ordered a new trial for Alberta's Steven Kaminski who had already served a full sentence for a rape he did not commit.

This is the first time in 40 years that a justice minister has chosen the option under section 696.1 (formerly s.690) of the Criminal Code of ordering a new trial instead of sending a case back to the Court of Appeal for a final decision. It has implications for other victims of wrongful conviction currently petitioning for relief under section 696.1, most notably Steven Truscott, whose decision by the Minister is still pending.

Steven Kaminski was convicted in 1992 of raping a co-worker. He claimed that the sex had been consensual, but the judge did not believe him, stating that the woman, a newlywed, would not have had sex with another partner so soon after her marriage.

Kaminski, who already had a criminal record, was declared a dangerous offender and sentenced to seven years in prison. He lost his appeal in 1994.

In 1996 the Crown learned of new information in Kaminski's case which showed that

the woman he had been accused of raping had sex a number of times with the police officer assigned to the investigation and had accused him too of rape, though she later withdrew the allegation.

On the basis of this new evidence, a section 690 application was submitted to the Minister in 1996. It took another 6 years before a new trial was ordered - precisely the kind of delay which supports one of the arguments for the 690 process to be abandoned in favour of an independent review commission.

Within a few weeks of the Minister's decision, Alberta Justice announced that it would not go ahead with a new trial and stayed the charges.

Steven Kaminski will now be seeking compensation from the province, the RCMP and the Federal Minister of Justice for his wrongful incarceration. He has suffered through the nightmare catch-22 situation of all those who are wrongly convicted. Their protestations of innocence are seen as proof that they have no remorse - often denying them the chance of parole - instead of being taken as a sign that a miscarriage of justice may have occurred.

## David Milgaard

David Milgaard spent 23 years in jail after being convicted of the murder of nurse Gail Miller in January 1969 in Saskatoon. He was released in April 1992 after the Supreme Court of Canada ordered a new trial and was exonerated in July 1997 through DNA testing which tied serial rapist Larry Fisher to the

crime. In January 2000 Larry Fisher was convicted and sentenced to life imprisonment for the murder of Gail Miller. His appeal is due to be heard on the 15th of this month.

Prior to Fisher's conviction, the Saskatchewan and Federal governments agreed in May 1999 that there would be an inquiry into David's wrongful conviction once Fisher's trial was completed. As Joyce Milgaard, David's mother, said in her book telling the story of her son's ordeal: "It was important that lessons be learned from the tragedy and steps taken so that it would not be repeated. We wouldn't agree to any settlement until they agreed."

The inquiries into the wrongful convictions of Donald Marshall, Thomas Sophonow and Guy Paul Morin have been critical to uncovering and understanding the systemic problems that lead to miscarriages of justice and have led to important changes in our justice system.

Newfoundland has recently announced that it will hold an inquiry into that province's wrongful convictions. Yet, almost four years from the time it was promised, there is still no word of an inquiry in Saskatchewan. Write to Saskatchewan's Minister of Justice to urge him to honour this commitment and to show your support for an inquiry.

Honourable Eric Cline, QC  
Minister of Justice & Attorney General  
Room 355, Legislative Building  
Regina, Saskatchewan S4S 0B3  
Fax: 306-787-1232

# Out East

by Jerome Kennedy

Jerome Kennedy is AIDWYC's Regional Representative for Newfoundland.

On January 10, 1991 19 year old Gregory Parsons was charged with first degree murder in the death of his mother, Catherine Carroll. On February 15, 1994 Mr. Parsons was convicted of second degree murder and sentenced to a term of life imprisonment with no parole for 15 years. Mr. Parsons was convicted on the hearsay evidence of approximately 40 Crown witnesses. There was no direct evidence of any type which connected him to his mother's death.

On March 25, 1999 Mr. Justice William Marshall of the Newfoundland Court of Appeal released Gregory Parsons on bail pending appeal. On December 6, 1996 the Court of Appeal allowed Mr. Parsons' appeal and ordered a new trial. On February 2, 1998 new DNA evidence established that Gregory Parsons did not kill his mother. In November 1998 an acquittal was entered. A compensation agreement was reached in April 2001.

As counsel for Mr. Parsons I was convinced of two points - Gregory Parsons was an innocent man and Catherine Carroll's killer would never be found. However, the two main police investigators in the new investigation always maintained they would find the killer. In May 2001 Brian Joseph Doyle was arrested for the murder of Catherine Carroll. In November 2002 a guilty plea was entered and on February 20, 2003 Mr. Doyle was sentenced to a term of life

imprisonment with no parole for 18 years. (See R. v. Doyle [2003] N.J. No. 45 (Green C.J.T.D.).

In sentencing Mr. Doyle, Chief Justice Derek Green stated:

*At Mr. Parsons' trial, Crown counsel in her closing address to the jury, is reported to have said: You have to ask yourselves the following question, if Greg Parsons didn't cause his mother's death who did? (See, R. v. Parsons [1996] N.J. No. 317 (NFCA) [Quicklaw] at para 59).*

*The Court of Appeal rightly criticized this statement as improper as it had the tendency to shift the onus to Mr. Parsons to prove who did kill his mother. The circumstances of the case now before the court provide a dramatic example of how the justice system can fail to function properly when a jury is invited to engage in such improper reasoning, and that invitation goes uncorrected.*

*Following the acquittal of Mr. Parsons, the question of the prosecutor, improperly posed at the trial, remained: if Gregory Parsons did not kill his mother, then who did?*

*Fortunately, a renewed and more broadly focused police investigation, some dedicated and intense inter-provincial detective work with the help of new DNA evidence, the acknowledgement of the prisoner in the dock today and his identification of the site where the murder weapon could be found means that 12 years after Catherine Carroll's death, the answer to the prosecutor's question, improperly asked at the time, can now be properly answered by Brian Doyle.*

On March 21, 2003 the Newfoundland Justice Minister appointed the retired Chief Justice of Canada, Antonio Lamer, "to conduct a public inquiry into various aspects of the administration of justice in Newfoundland and Labrador."

The Terms of Reference state that Chief Justice Lamer is to inquire into the conduct in the investigations into the deaths of Catherine Carroll and Brenda Young and the resulting criminal proceedings against Gregory Parsons and Randy Druken. The Commission is also to inquire into why Ronald Dalton's murder appeal took 8 years before it was brought on for a hearing in the Court of Appeal. To date no meetings have taken place in relation to the conduct of the inquiry. It is hoped that the procedure adopted will be similar to that adopted in the Morin and Sophonow Inquiries. While the Terms of Reference relating to Gregory Parsons and Randy Druken are generally acceptable the restriction on the Dalton case is very disappointing.

I feel that the failure to inquire fully into Mr. Dalton's wrongful conviction stems from the fact that the Department of Justice refuses to accept that he is innocent. Despite the opinions of 10 forensic pathologists, the acquittal by a jury after a 5 month trial and a statement by the Court of Appeal that Mr. Dalton's case is one of wrongful conviction, the Crown still refuses to accept this fact. The government's attitude demonstrates the type of tunnel vision which can lead to wrongful convictions.

In any event, I remain cautiously optimistic that this inquiry will be a worthwhile and educational experience.



*Max Soffar with his wife Sandi*

## Max Soffar

by Sandi Soffar

My husband Max is on death row in Texas. He has been in prison for 23 years for a crime he did not commit.

A staunch right-wing Texan Republican, when I first went to college, I had planned to become a prosecutor. I knew I could never have prosecuted a case where I didn't believe one hundred percent that the right person was on trial. Yet I have learned over the last few years - to my amazement - that convictions can be secured with absolutely no physical evidence. It seems that there are some prosecutors who simply don't care whether there is evidence or not; nor do they care how they get the conviction. I am also amazed at the lack of integrity and absence of effort by some of the court-appointed defense attorneys. As I have come to understand more about how the system works and, later, in researching Max's case, my perceptions about the criminal justice system have changed completely.

In Dallas, you rarely hear of executions. You could ask almost anyone in the Dallas-Fort Worth area and they would be really surprised to learn how many people are actually executed each year. However, I have noticed in Houston that it is covered much more in the media. The media is key to educating the public about what is actually happening. The general perception tends to be that inmates on death row have televisions, are allowed phone calls and basically lead an easy life.

I had absolutely no idea before this experience how the men and women on death row are treated. In fact, they are confined to their cells 23 hours a day. They are allowed just one hour for soli-

tary recreation. Every time they leave their cells they are strip searched and cuffed with a minimum of two guards escorting them. They get one two-hour visit a week when they can talk on the phone with their visitor as they sit behind a glass barrier. There is no physical contact ever - even on the day of execution. To look out of the window they have to stand on their bunk. Those who are not very tall have to roll up their bedding to see outside.

There still exists a huge misconception that because an inmate is given a court-appointed attorney, that attorney is actually putting forth an effort to save their client's life. The recent news of the Houston Police Department's crime laboratory problems is a start in helping the public become informed as to the injustice that occurs in some cases.

Max's case is just one example of how the system can go horribly wrong.

After 21 years of imprisonment, his conviction was set aside, only for that decision to be set aside again in response to an application by the State. In January of this year, oral arguments were heard at the 5th Circuit Court of Appeals in New Orleans in front of a three judge panel. We are currently waiting on the ruling.

Jim Schropp, whose firm has been representing Max pro bono for about 14 years, argued the case before the Appeals Court. Jim Schropp and Jonathan Scott have put years and years into this case. They have sacrificed personal time with their families and have both been absolutely amazing. David Koepfel and Brad Lucas have also been working on the case for over a year and done remarkable work. All four attorneys were in New Orleans for us and did an outstanding job at the hearing. We will never be able to thank them enough for everything they have done. Their actions speak volumes as to what their firm - Fried, Frank, Shriver, Harris & Jacobson - stands for. Their integrity, character and generosity says so much. It is only because of people like them that my faith in humanity was restored after I had been so badly disillusioned as I learned of the corruption in the legal system. Max and I simply could not have better attorneys. They are absolutely our greatest support.

We have also received so much support and encouragement from AIDWYC. AIDWYC Directors Rubin Carter and Melvyn Green came to our hearing on January 20th, 2003 to show support and belief in Max's case. Rubin had been working in Australia and came

back just for the hearing. Mel came from Canada and took time away from his practice. We're both so grateful to the AIDWYC Board for supporting and endorsing our case and, in particular, to Win Wahrer who not only organized the January trip, but is always positive and encouraging and keeps in constant contact with Max and myself.

In addition, the University of Houston's Innocence Project investigated Max's case and made the determination that he had been wrongly convicted. Professor David Dow from Houston University has provided a lot of help to our attorneys and at our September 2001 hearing the court was filled with law students from the University.

Although it takes a great deal of patience and understanding, I try to cope by always staying positive. Max and I only have two hours together a week so we make every single minute of that time count. The conditions in which Max lives make me appreciate everything a thousand times more than I already did. I don't have bad days any more. Things don't always go my way, but when something happens that isn't working the way I would like it to, I just think about where my husband is and how he is treated. It reminds me of all I have to be grateful for.

Max is involved in all of our important decisions. He is my priority. It is essential that he knows he can depend on me - if I say I am going to do something or be there at a certain time, I make absolutely sure to follow through on my commitments.

I know that Max didn't commit this crime. Without a doubt, I believe in him. He is the most important thing in my life and I couldn't love him more if I tried.

*Max Soffar was arrested on August 5th, 1980 for the theft of a motorcycle in Texas. After being threatened by the police that they would "put him away" for life as an "habitual offender", and in a misguided attempt to "bargain" his way out of this situation, over the next few days he made several statements to police, first of all implicating a friend and then himself in a shooting in which three people had been killed a few weeks earlier. Max had worked previously as a police informer, was very susceptible to police pressure and had a tendency to tell the police what they wanted to hear. At the time he was addicted to drugs and did not appreciate the consequences of these statements. Except for his own statements, which are filled with inconsistencies and which he immediately recanted, there is no other evidence to link him to the murders.*

*AIDWYC endorsed Max's case in October 2001.*



photo by Joe Bryker & Wayne Glowacki,  
courtesy of the Winnipeg Free Press

Joyce Milgaard, James Patrick  
Driskell & Rubin Carter

## Jim Driskell

by James Lockyer

*James Lockyer is a founding  
director of AIDWYC.*

On November 8, 1989, Winnipeg police raided a garage in Winnipeg. The garage had been rented since September, 1988 by Mr. Driskell. He, in turn, had allowed a friend, Perry Harder, to use it. The police found quantities of stolen property in the garage and assessed it to be a “chop shop” operation, where stolen vehicles are plundered for parts for resale.

On that same day, Perry Harder was arrested by Winnipeg police and charged with offences of break, enter and theft and possessing stolen property. His statements to the police implicated Driskell who was arrested two days later and charged with the same offences.

A preliminary hearing into the charges against Harder and Driskell was set to be heard on June 21st, 1990.

Harder did not appear in court for the hearing and a warrant was issued for his arrest. The charges against Driskell were dismissed. Harder, it later turned out, had not been seen by anyone since June 16th.

Three months later, the badly decomposed body of Perry Harder was discovered in a shallow grave on the edge of Winnipeg. He had been shot three times in the chest.

Within weeks, investigators charged Jim Driskell with Harder’s murder, on the theory that he had killed his friend out of fear that he had been intending to testify against him at the June hearing.

Driskell’s lawyer, Greg Brodsky, pro-

duced ample evidence at Driskell’s trial that his own lawyer at the time, as well as Harder’s lawyer, had known that Harder was planning to plead guilty and that he would not testify against Driskell. Driskell knew from his lawyer that the Crown had agreed there was no case against him and he fully expected the charges against him to be withdrawn.

This evidence alone should have been enough to completely discredit the police and Crown theory.

Damning forensic evidence against him, however, was supplied by a hair and fibre expert from the Winnipeg RCMP lab who testified regarding three scalp hairs that had been found in Driskell’s vehicle which, it was alleged, had been used to transport the victim’s body. Driskell had always denied that Harder had ever been in his van.

Telling the jury that the hairs were “consistent” with Harder’s hair, the expert went on to explain that “the chances of just accidentally picking up a hair and having it match to a known sample are very small. So if the hair is consistent, that means it either came from the same person as that known sample or from somebody else who has hair exactly like that.”

This “scientific” evidence corroborated the testimony of the Crown’s two star witnesses - both career criminals - whose credibility might otherwise have been seriously in doubt.

Jim Driskell was found guilty of first-degree murder and sentenced to life in prison with no chance of parole for 25 years. He has consistently protested his innocence and, to date, has served 13 years of that sentence.

In March 1993, prompted by a series of media reports questioning Driskell’s guilt, the Winnipeg police conducted an internal review of the investigation. Their report, however, was not made public.

Three years ago, Dan Lett, a reporter with the Winnipeg Free Press, began his own investigation into Jim Driskell’s case, uncovering new evidence that shows Driskell did not receive a fair trial and that the jury was misled.

The jury never got to hear, for example, that the two star witnesses received thousands of dollars in return for their testimony. Nor did they know that one of them had tried to recant his testimo-

ny just one week after the trial, saying that he had been pressured by the police into giving false evidence (a fact that was discovered by the police during their 1993 review, but not disclosed to Driskell’s lawyer). Additional evidence from police informants regarding other suspects was also not made available to the defence.

When AIDWYC lawyers Alan Libman and James Lockyer took up Jim Driskell’s case in 2001, they realized the need to re-analyse the hair evidence - this time using DNA testing rather than the simple “comparison” tests that had been run years earlier. Manitoba agreed to pay for the tests and last December, Forensic Science Services (FSS) in England determined that the three hairs in fact belonged to three different people, none of them Harder.

Though this evidence in itself does not exonerate Driskell, it significantly undermines the case brought against him at trial.

AIDWYC’s Ruben (Hurricane) Carter, Joyce Milgaard, James Lockyer and Alan Libman spoke on behalf of Jim Driskell at a press conference held last month and Jim McCloskey of Centurion Ministries is joining AIDWYC in a full re-investigation into the case. Full access to the 1993 police review report is also being sought.

We have also arranged for other items from the original investigation to be tested for DNA.

In addition, Manitoba has launched an unprecedented audit of all trials where faulty hair and fibre evidence may have affected the verdict and has asked AIDWYC to appoint a defence representative to work with them on this task. Manitoba defence lawyer Ian Garber has agreed to be our choice.

AIDWYC is currently pressing Manitoba Justice to join forces in applying to the federal government under section 696.1 for Driskell’s case to be referred back to the Manitoba Court of Appeal.

Without their involvement, the application may take years to be processed. Their support would not necessarily endorse Driskell’s claim of innocence, but would allow the new evidence to be heard in court where a decision on whether a new trial is warranted can be made.



*Prof. Elizabeth Sheehy, Matthew McGarvey,  
Vice-Dean Rosemary Cairns way,  
Frank McNally & Zahra Ahmed*

# Bringing Innocence to the Nation's Capital

*by Matthew McGarvey*

*Matthew McGarvey is a criminal  
defence lawyer with Reynolds  
Dolgin, Ottawa.*

After seven years of criminal defence practice, I found to my surprise (although probably to no other criminal lawyers') that my initial idealism was fading under the harsh light of reality. I decided it was time to return to first principles and to put them into action. What better place to return to first principles than law school, the perpetual haven of energetic idealists (occasionally within the faculty, no less)? I noticed an announcement indicating that Dianne Martin was sponsoring a conference at Osgoode whose purpose was to export "The Innocence Project" to other Canadian law schools. Osgoode, through Dianne, was the second project (after Benjamin Cardozo Law School in New York), and the first in Canada, but while law schools stateside had sprouted their own branches, there had been no expansion in Canada.

I contacted Bruce Feldthusen, the dean of the University of Ottawa common law section, to see if there was any

interest in establishing an innocence program here in the nation's capital. The idea was well received, although it remained to be seen whether the faculty and resources could be made available to put a plan into action. I, along with two students, went to the conference to see not whether, but how it could be done.

Dianne's conference was a wealth of information and inspiration. We came back ready to propose a plan of action to set up the Ottawa Innocence Project. Meetings were held, plans were made to develop a curriculum, clinical program, and everything in between in the space of two months or so. Then in a fit of sage wisdom (that's what you get, being an academic) some of the faculty proposed a much more sensible option - enlist two eager students to develop the program from the ground up.

Thus, Frank McNally and Zahra Ahmed began their directed research project to initiate The Innocence Project at the University of Ottawa. Their task was twofold - develop a sound academic program with a complete syllabus, and develop a practical plan for implementation of the clinical side of things. The latter was done under my supervision, in the context of evaluating a prospective case referred to us by Dianne. Under the supervision of Professors Elizabeth Sheehy and Daphne Gilbert, as well as Vice-Dean Rosemary Cairns Way, the academic program was developed.

I am pleased to say their work has provided us with a practical model on which to build a project over the next couple of years. For next year, we hope to have four students picking up where Zahra and Frank leave off. The students will still be conducting the course as a directed research program, but it now has its own course code and listing in the calendar, and I will be formally adopted as an adjunct member of the faculty. We hope to solicit another case or two to begin the clinical work.

To spur student recruitment, Phil Campbell kindly volunteered his time to come up in March so that he could, in his usual articulate manner, tell the student body how rewarding innocence work is. I am sure that room full of energetic idealists will produce more reason for optimism during the next school year.

I would encourage anyone who is moderately inclined in the direction of exonerating the innocent to consider

starting, joining, or assisting a student project. The energizing spirit that can still be found on our law campuses, combined with a lawyer's experience in the verdict mill can, with the able support of the dedicated people of AID-WYC and Innocence Projects across the continent, expand and further institutionalize our most worthy cause.

I would like to thank Dianne Martin in particular, and the Osgoode Hall Law School Innocence Project as a whole, for all of their assistance and inspiration. I would also like to thank Frank and Zahra for their hard work (which has been particularly selfless as they are both graduating and will not directly reap the benefits of their own labour), Phil Campbell for his support and friendship, and Professors Feldthuisen, Cairns-Way, Sheehy and Gilbert for their ongoing support of this project.

## The Ottawa Innocence Project

*by Zahra Ahmed  
& Frank McNally*

Ottawa is known for its cultural life, the Rideau Canal, the Bytown Market, Parliament Hill and the BluesFest. We hope that innocence work will one day be added to that list. It may be a lofty ambition, but we feel that its time has come. The Innocence Project at the University of Ottawa started with the initiative from Matthew McGarvey last year and ended with a detailed, comprehensive business plan this year. In between, we have experienced a mix of emotions - frustration, excitement, fatigue, joy and hope. I suppose it was similar in some respects to the preparation of a section 690 application to the Minister of Justice.

Instead of sitting through yet another law course, we decided to take on a different kind of challenge in our last year of law school. Our job was to create a viable business plan to establish an Innocence Project at the University of Ottawa, drum up student support for the Project and work on a potential wrongful conviction case with a local criminal defense attorney. Although it involved substantially more work than your average law school course, its rewards far exceeded what one would expect from a letter grade. We developed a familiarity with the causes of wrongful convictions that we will carry with us when we enter

practice. We were also fortunate enough to be able to start up a project that can potentially have an enormous impact on our community.

In the fall semester we were given an outline by the professors who were supervising our work (Professors Rosemary Cairns-Way, Elizabeth Sheehy and Daphne Gilbert). Within the outline, there was a requirement to submit a "course proposal" outlining a future Innocence Project for a mere 10% of our final grade (the remainder of the evaluation consisted of file work, annotated bibliography and research paper). After discovering how much work we were putting into it, luckily they bumped it up to 25%. To get a head start, we contacted the Innocence Projects at both Osgoode Hall Law School in Toronto and Benjamin N. Cardozo Law School in New York to get their guidance on what we should include in our business plan. By working on a file with Matthew McGarvey we got a good sense of some of the issues that students will face when working on a potential innocence file. In the end, we combined precedent and our experience to create a course proposal that encompasses academic work, file

work, structural issues and fundraising.

Also as part of our efforts to set up the Innocence Project, we attended the conference organized by AIDWYC in Toronto in the fall of 2002. Hearing the experiences of the survivors of wrongful convictions as well as speakers such as Johnnie L. Cochran Jr., Professor Bryan Stevenson and Professor Steven Bright, to name a few, enhanced our understanding of the causes of wrongful convictions and increased our determination and commitment. At the end of the conference, we stepped out of Osgoode Hall with the words of Steven Crawford resonating in our minds: "There are many people who are in prison for crimes that they did not commit and are innocent. And it is only for organizations like AIDWYC and the Innocence Project that wrongful convictions are brought to light."

Then we got to work.

The Innocence Project at the University of Ottawa will consist of two phases. In Phase I, there will be a course entitled "Exonerating the Wrongfully Convicted". This six-credit course will involve four students. The students will be expected to write a directed research

paper on wrongful convictions and work on potential innocence files with Matthew McGarvey. In Phase II, we hope to see a full-fledged Innocence Project clinic engaging six to ten students in the difficult and exhilarating work of unearthing and remedying wrongful convictions.

As we developed the business plan, we received many words of support and encouragement from our fellow law students, professors, the university administration and the innocence community. We had fantastic turnouts at the two lectures that we hosted to raise awareness about the Project. Kirsten Edwards, Director of the Innocence Project at University of Technology, Sydney, Australia came to our law school in the fall semester to give a talk called "Miscarriages of Justice: The Australian Experience". Phil Campbell visited our campus in March and gave an exhilarating talk about the reasons why students should do innocence work. Both speakers were instrumental in inspiring many law students to lend their support to the Project.

For further information, contact us at: [ottawainnocenceproject@yahoo.com](mailto:ottawainnocenceproject@yahoo.com).

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# Osgoode Hall Innocence Project

## The Wrongful Conviction of Romeo Phillion

by Dianne L. Martin

*Dianne Martin is the Director of the Innocence Project at Osgoode Hall Law School, York University, Toronto.*

Romeo Phillion's application for review will be filed with Canada's Minister of Justice on May 12, 2003. Mr Phillion was wrongly convicted on November 7, 1972 of the 1967 murder of Ottawa firefighter Leopold Roy. He has been in prison for that offence for some 31 years - to date the record length of imprisonment in Canada for someone known to have been wrongly convicted.

Romeo Phillion's wrongful conviction fits the by now all too familiar pattern of

wrongful conviction in many ways. First, it was a high profile crime that shocked a community. When a popular and respected firefighter was stabbed in August 1967 in the course of a botched burglary in the apartment building where he worked as a part time superintendent, the crime inflamed Ottawa. Pressure on police to find the killer and solve the crime was substantial. That pressure increased as the crime remained unsolved despite an all out investigation, offered rewards and significant publicity. Second, the selected suspect was a reviled outsider. Romeo Phillion, the accused, a French Canadian bi-sexual with a lengthy record for petty crime who was "known to police" was classically a despised outsider in the Ottawa of the 1970's. The pattern of wrongful convictions in cases of heinous crimes and reviled accused continues. No reliable evidence connected Phillion to the crime. The conviction rested on what we now know to be a highly suspect source of evidence - an uncorroborated, retracted, confession. The support for the confession was an eye witness identification, which was virtually worthless in court, and the testimony of a coerced informant. However, as we

have seen so often before, that worthless conviction survived all appeals, despite Phillion's almost immediate recantation and a determined insistence of innocence that has been unwavering for 30 years.

Although he proclaimed his innocence to authorities from within hours of making a false confession, that he says he made only to obtain the reward money for his lover, it was not until the early 1990's that Romeo extended his efforts to prove his innocence beyond the correctional system. Inspired by the success of David Milgaard, and assisted by a financial settlement for the abuse he suffered as a boy in an Ontario training school, Romeo asked one of the lawyers who had worked on his appeal many years before, David Crane of Toronto, to assist him. He followed up those early steps by contacting the Innocence Project of Osgoode Hall Law School in 1998. The students advised the Department of Justice that the Innocence Project were investigating the case and the Ministerial review was halted.

Within months, Romeo was provided with the evidence that has unravelled the entire mechanism of his wrongful con-

*continued over ...*

*page 15*

viction. A file of copies of the police investigation reports in his case was left on his bunk by a correctional officer and then forwarded to the Innocence Project. Students reviewing the lengthy file discovered the proverbial "smoking gun". A police report, dated April 12, 1968 described the evidence that proved that Romeo Phillion's claims of innocence were true. One Detective McCombie had personally investigated the alibi put forward by Romeo. He wrote in an investigative report:

"It was also verified by the Service Station operator in Trenton that on August 9/67, Romeo Phillion had been in the service station between 12 and 1:00 p.m. and left his car radio because he could not pay for the service call and therefore making it impossible for him to return to Ottawa by 2:45 p.m. at the time the murder was committed. A letter will be sent to the New Liskard [sic] Police Department informing them of our theories and that we do not believe that Romeo Phillion is responsible for this murder."

This crucial evidence had never been disclosed to the defence. Trial counsel Arthur Cogan made several efforts at the preliminary inquiry to try to determine whether there was any evidence to support Phillion's muddled claim of an alibi

(he was charged with the crime almost five years after it was committed). Cogan was frustrated at every turn: by the law of the day which did not require full disclosure to the defence; by the decision of prosecuting crown Mac Lindsay not to disclose the alibi to him; by the evidence that the officer who had confirmed the alibi, Detective John McCombie, had lost his notes, and by Romeo Phillion's poor memory. At trial he decided not to call Romeo and not to call an alibi he could not corroborate. Instead he attempted to call polygraph evidence which confirmed Romeo's innocence.

The polygraph evidence was not admitted, but 30 years later the suppressed proof that Romeo Phillion is innocent of the murder Leopold Roy is being presented to the Minister of Justice.

AIDWYC director James Lockyer assisted and supported the students throughout their investigation and research as mentor and then, in the fall of 2001, agreed to act as counsel to the Innocence Project and Romeo Phillion to prepare the application to the Minister of Justice that will be filed next month. Two weeks ago, AIDWYC formally adopted Romeo Phillion as a wrongful conviction. Upon filing the application

to the Minister of Justice, James Lockyer and the Innocence Project will file an unprecedented application for bail for Romeo Phillion - so that his 31 years of wrongful imprisonment will end as soon as humanly possible.

It is enormously difficult to prevent and to remedy a wrongful conviction. From the exceptional efforts of trial counsel Arthur Cogan and appeal counsel David Crane, to the literally thousands of hours of hard work by the students and directors of the Innocence project, mentor and now counsel James Lockyer, the staff at Osgoode Hall Law School and the law firms of Pinkofsky Lockyer and Lockyer Campbell, to the countless hours of Romeo's sister Simone and his family and their friends, the effort has been monumental. The Innocence Project motto, with permission from Bruce Cockburn, is to "kick at the darkness until it bleeds daylight". The Innocence Project's commitment is to never quit until justice is done. That means that the efforts will continue until Romeo Phillion is free.

For further information contact Dianne Martin, Associate Professor, Osgoode Hall Law School, York University, 4700 Keele Street, Toronto, Ontario, M3J 1P3. See [www.yorku.ca/dmartin](http://www.yorku.ca/dmartin) or email [dmartin@osgoode.yorku.ca](mailto:dmartin@osgoode.yorku.ca).

## Gary Staples

In another Innocence Project case, Gary Staples, who spent two years in jail for a murder he did not commit, has settled his lawsuit against the Hamilton Police Service.

In December 1969, a Hamilton taxi cab driver was killed by a gunshot to the head. Gerry Burke was 24 at the time, and left a wife and two young sons. The police investigation had hit a brick wall until a woman who was facing theft and burglary charges offered to help the police in exchange for lenient treatment. She fingered her ex-boyfriend, Gary Staples.

He was arrested in April 1970 and held in jail until his trial the following year. At that trial he was convicted and sent to Kingston Penitentiary for life. The Court of Appeal ordered a new trial, which took place in 1972. At his second trial, the jury accepted the evidence that he was 50 kilometers away from the scene of the murder and had nothing to do with it. He was acquitted and freed after spending

almost two years behind bars. He returned to his hometown of Dunville, Ontario, where he was shunned and ostracized, as the "murderer who got away with it". Stores refused to serve him and people crossed the street to avoid speaking to him.

He spent the next 30 years trying to clear his name. Law students from the Osgoode Hall Law School Innocence Project tried to help him do this, and attempted to gain access to the Hamilton Police department's investigation file. The police said the file had been "purged" and that it no longer existed.

Two years later, Gerald Burke's sons, now in their early 30's, approached Dianne Martin, the Director of the Innocence Project, to see if they could find out more about their father's murder. Dianne assigned two students with very good experience to the file.

The Innocence Project contacted the Hamilton Police to arrange a meeting with the sons and at the meeting a complete file was produced. The police have never explained why false information had been given when the first request was made.

The law students and Mr. Burke's sons reviewed the file in October, 2000. They found a memo written by the lead police investigator in 1972 in which he admitted to his superiors that he had deliberately suppressed material evidence because, according to the memo, the testimony of one witness as to time of death "would have confused the jury". The inference is that that "confusion" would have resulted in an acquittal. There were also many other things in the file pointing toward a wrongful conviction, including several conflicting accounts by the woman who was the chief witness against him.

Mr. Staples and the sons joined together and filed a lawsuit against the Hamilton police. The matter was scheduled to go to trial in January 2003, but on December 5, 2002, (33 years to the day after Mr. Burke was murdered), a settlement was announced. The police have paid an undisclosed amount to Mr. Staples and have issued an apology to him and the members of Mr. Burke's family.

Toronto firm Sack Goldblatt Mitchell acted for Mr Staples in his civil suit.



Harold Levy

## How Quickly They Forget!

by Harold Levy

*Harold Levy has practiced in the criminal law courts of Ontario. He is a journalist with the Toronto Star, a prior member of the AIDWYC Board and edited the first issue of the AIDWYC Journal.*

At last year's trial of four men charged with murdering Maria Wong, York Region Detective Les Young testified that he had called a press conference and issued a fake composite sketch of a suspect in the slaying which had occurred four months earlier.

In fact, the composite was a picture of a man police were investigating, Christian Ortiz, which had been doctored to look like a composite drawing, Young told the trial of four men accused of murder in the Feb. 11 slaying of the restaurateur.

The ploy was done to "stimulate activity" among the suspects in the slaying, get them talking and meeting, so the police could get more evidence, Young, the lead investigator in the case, explained.

As Young testified, the media was given the impression that the composite photograph was made up from descriptions provided by witnesses in the neighbourhood, "when in fact it was not made up from witnesses descriptions in the neighbourhood...It was made up from a photograph of Christian Ortiz that we had altered to make it look like a composite."

Ortiz was later convicted of murder and sentenced to life-imprisonment along with the three other men.

"It was somewhat misleading but not outside the bounds of the law," Young told prosecutor Peter Westgate.

As I read these words I was shocked that the lessons of the Guy Paul Morin case had already been forgotten. (I am still troubled that Kaufman's brilliant report - after an extraordinary amount of work - had been ignored, and I welcome the opportunity to let off some steam in these pages.)

I recalled a news conference on April 16, 1985, when Durham Regional Police investigating the murder of Christine Jessop, released information from an FBI "psychological profile" describing the killer as a sane male, between the ages of 19 and 26, living in the area and known to the child (the 25-year-old Morin lived next door) who had sexually molested the young girl before taking her life.

At another news conference called to announce Morin's arrest on April 22, 1985, the police announced that Morin was one of the five suspects that they had been investigating and that "the profile matched him to a T."

In an attempt to have the trial transferred to another jurisdiction, the defence lawyers argued that this state-

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*"In a notorious case, the public dissemination of a purported profile, which has been reshaped to fit an identified suspect or accused...with the intent of inducing that suspect to incriminate himself or herself by words or conduct, is an improper use of criminal profiling."*

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ment prejudiced their client's right to a fair trial as it suggested to prospective jurors in the small community that the suspect must indeed be guilty because he matched the FBI profile.

They also criticized the statement of a police officer at a news conference that the profile could not be introduced into evidence at the trial because it wasn't legally admissible. .

This comment seemed to say: "You who will be chosen as jurors should remember this profile, as we cannot show it to you later when this matter

comes to court."

The potential prejudice was compounded by a statement by a police official: "I think there is a great sense of relief there now."

The implication was that now that the murderer had been caught, the community was safe.

Although there is a strong presumption that a trial should be held in the jurisdiction where a crime takes place, and successful "change of venue" applications are rare, Justice John Osler ruled that the defence lawyers had satisfied him there were strong reasons to believe a fair and impartial trial could not be assured unless such a change was made.

In reaching this decision, he noted that the massive media coverage was not in itself cause for a change of venue. He focused rather on the prejudicial effect of the widely reported police comments that Morin came well within the FBI profile.

After I read Young's limp defence of the fake composite, the Kaufman Commission of Inquiry into the Morin case came to mind.

Justice Fred Kaufman devoted 14 pages of his report - and three recommendations - to the dangers of criminal profiling.

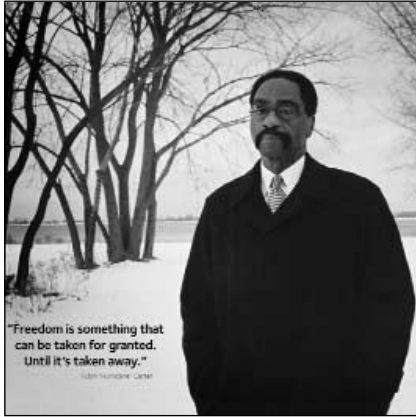
He concluded that by tailoring the profile to fit Guy Paul Morin and then publicly disseminating it, "the police helped ensure that Morin would never get a fair trial in that region and that people in the community who knew Morin would draw the same parallels."

Kaufman may not have recommended barring the practice altogether, but he made patently clear that, "in a notorious case, the public dissemination of a purported profile, which has been reshaped to fit an identified suspect or accused...with the intent of inducing that suspect to incriminate himself or herself by words or conduct, is an improper use of criminal profiling."

"Though police are permitted, in law, to use some forms of trickery, this technique stigmatizes the suspect in the community and may render a fair trial in that community an impossibility," he wrote.

Justice Kaufman released his report in April, 1998.

How quickly they forget!



Rubin "Hurricane" Carter

## AIDWYC Assists with Australian Innocence

by Lynne Weathered

*Lynne Weathered is Director of the Innocence Project at Griffith University Law School, based on the Gold Coast in Queensland, Australia.*

Rubin "Hurricane" Carter's fight for justice is well known to many Australians. That is one of the reasons his recent endorsement of the work of the Griffith University Innocence Project in Australia, has made a significant impact on the political and societal awareness of the problem of wrongful conviction in Australia. As he said, "Freedom is something that can be taken

for granted. Until it's taken away."

The Griffith University Innocence Project is a pro-bono project which brings together lawyers, law students and academics to investigate claims of wrongful conviction and, where possible, secure the release of innocent persons. Based in Queensland, the Project operates for the whole of Australia. The Project does not accept cases where a conviction would be overturned through a technicality rather than actual innocence. If investigations uncover fresh evidence of innocence, the Project engages the services of a pro-bono lawyer and a pardon or appeal is sought. The Project has had one success to date. Mr Carter's endorsement has resulted in the Project receiving well over 100 applications for assistance.

Like AIDWYC, the Griffith Project also takes applications from persons who are no longer imprisoned, but who still wish to prove their innocence. Several such applications have been received by the Project and many have stated they will do anything if the Project can assist them in clearing their names, both for their own and their families' sake. The long-term psychological implications that can follow from wrongful conviction are now being studied. This issue was the subject of one of many interesting and informative presentations given at the AIDWYC conference, held in November 2002. Five Australians attended the conference and all were sincerely moved and inspired by the work of AIDWYC, the speeches from those involved in this work, and as always, the voices of those who were innocent but convicted.

International interaction is important for the correction and prevention of wrongful conviction. The causes of wrongful conviction transcend geo-

graphical boundaries. We can all learn from the experiences in other jurisdictions, not just about the causes of wrongful conviction, but about reforms that will assist in its prevention.

The executive of the Project would like to sincerely thank all members of the AIDWYC Board for their support for our Australian Project and work. Mr Rubin Carter continues to inspire our work, as he does the lives of many people. His generosity and goodwill in the filming of the endorsement, despite the snow and freezing temperatures, is something for which we shall always be extraordinarily grateful (and one which for these reasons, I am sure Mr Carter will not forget either). We thank Mr James Lockyer whose message to our Australian students has motivated them further in their work and their passion for justice. We also wish to express a heartfelt thanks to Mr Carter's assistant, Gwyneth Chapman, whose buoyant spirit and exceptional organisational skills were integral to the actualisation of the endorsement.

Griffith University Innocence Project's Director, Lynne Weathered, is also the Executive Director of the Australian Innocence Network, an executive body designed to encourage and assist in the establishment of innocence projects or like-minded organisations throughout Australia. There are currently two Innocence Projects operating in Australia, and two more are in the development stage.

For further information contact Lynne Weathered, Director, Innocence Project, Griffith University Law School, GU PMB 50, GCMC Qld 9726, Australia. See [www.gu.edu.au/school/law/innocence](http://www.gu.edu.au/school/law/innocence) or email [innocence-project@mailbox.gu.edu.au](mailto:innocence-project@mailbox.gu.edu.au).

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*While we fight to ensure wrongful convictions never occur in the first place, we appreciate and support AIDWYC's vital role when they invariably do.*

# Can AIDWYC Help You?

If you, or someone you know, has been wrongly convicted and think that AIDWYC can be of help, please keep in mind the following criteria before contacting us:

1. We can only review cases of conviction on serious offences (almost exclusively murder), where you do not have the financial resources to hire expert defence counsel. With our limited resources, we have to prioritize.

2. The evidence in the case must be consistent with factual innocence.

3. You must have already been tried and convicted and largely exhausted your possibilities for appeal.

If you meet all three of these criteria, send us a brief outline of the facts of the case and its current status. Include your name and address, plus the name, address, telephone number and email (if available) of a relative or friend who we may contact on your behalf. We will also need contact information for your current or most recent lawyer.

On receiving the above, we will send out an information sheet for you to complete which will give us the basic information on your case, together with a release form to give AIDWYC access to any additional information we may need. When we have received these completed documents, we will contact

## Become a Member of AIDWYC

Membership in AIDWYC costs just \$25 annually and entitles you to receive all information distributed regarding the organization's regular activities, including the bi-annual AIDWYC Journal.

If you would like to receive future editions, please use this form to send us your subscription. Donations of any amount are always welcome. Back issues of the Journal are available on AIDWYC's website at [www.aidwyc.org](http://www.aidwyc.org).

We also need the voluntary services of lawyers and private investigators to assist in the process of determining which cases to adopt. If you can give some of your time to investigate or review a case, please contact us.

The activist and lobbying activities of AIDWYC preclude our giving a charitable

receipt for any specifics required to get started on a review.

Once we begin the review process, we need to find a lawyer to donate time to read over the materials and make an assessment of the merits of the case. The lawyer will submit a recommendation to our Review Committee who will then decide whether or not we can adopt or - for international cases, endorse - the case. If the case is in Canada, where our lawyers practice, we will then make application for legal aid to take the case further - to the appellate courts if possible; to the Minister of Justice under section 696.1 (formerly section 690) of the Criminal Code if not. For international cases we give our support in any way we can.

Please also be aware that we receive a great number of requests for assistance and that all of our work to date has been accomplished with very little funding. The process of review may take months or years and we are dependent on the voluntary assistance offered to us by lawyers who are willing to give their time and expertise. While this should not discourage anyone from applying to AIDWYC, it is important to have realistic expectations about acceptance criteria and the amount of time required.

Additional resources and information available for the wrongly convicted include:

**The Innocence Project** (DNA only)  
Benjamin N. Cardozo School of Law  
55 Fifth Avenue, 11th Floor

ble receipt for your AIDWYC membership dues and contributions. However, we can provide a charitable receipt for general donations to the JUR-ED Foundation, AIDWYC's education division and its special funds and projects which perform important research and public education.

Please return this form and your cheque payable to AIDWYC (or the JUR-ED Foundation) to:

AIDWYC, 85 King Street East,

New York, NY 10003-4391, USA  
[www.innocenceproject.org](http://www.innocenceproject.org)

**Centurion Ministries**  
221 Witherspoon St,  
Princeton, NJ 08542, USA  
[www.centurionministries.org](http://www.centurionministries.org)

**Truth in Justice**  
<http://truthinjustice.org/>  
*Includes list of U.S. and international innocence projects.*

**Innocent**  
533 32nd St, Grand Rapids, MI 49548, USA  
<http://aboutinnocent.org>

**Justice Denied Magazine**  
PO Box 23255  
Pleasant Hill, CA. 9523, USA  
[www.justicedenied.org](http://www.justicedenied.org)

**Southern Center for Human Rights**  
83 Poplar Street, NW  
Atlanta, GA 30303, USA  
[www.schr.org](http://www.schr.org)

**Equal Justice Initiative of Alabama**  
643 South Perry St, Montgomery  
AL 36104, USA [www.eji.org](http://www.eji.org)

**Department of Justice Canada**  
<http://canada.justice.gc.ca/>  
*Search for "conviction review" for Section 696.1 (formerly s.690) application procedure.*

**Criminal Cases Review Commission**  
Alpha Tower, Suffolk Street Queensway,  
Birmingham B1 1TT, UK  
[www.ccrcc.gov.uk](http://www.ccrcc.gov.uk)

**The Miscarriages of Justice Organisation**  
52 Outmore Rd., Sheldon, Birmingham  
B33 OXL, UK. (England & Wales only)  
[www.mojo.freehosting.net](http://www.mojo.freehosting.net)

**Talk Left**  
[www.talkleft.com/injustices.html](http://www.talkleft.com/injustices.html)

Suite 318, 3rd Floor, Toronto, Ontario, M5C 1G3, Canada.

Yes, I would like to become a member of AIDWYC for 2003 and enclose my cheque in the amount of:

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AIDWYC is a public interest organization dedicated to preventing and rectifying wrongful convictions. Founded in 1993 in response to the wrongful conviction of Guy Paul Morin, the original members set up a voluntary non-profit association with two broad objectives: first, eradicating the conditions that give rise to miscarriages of justice and, second, participating in the review and, where warranted, correction of wrongful convictions. Not everyone who claims to have been wrongly convicted is innocent. AIDWYC only adopts cases where we believe the applicant is factually innocent.

One of our guiding principles is that miscarriages of justice do not respect national borders. Our reach is therefore international. AIDWYC is affiliated with similar organizations around the world working to raise public awareness of the issues related to wrongful convictions, support those who have been wrongfully convicted with legal assistance and counselling and make representations to governments on reforms to the justice system. We also try to prevent Canadians from being executed anywhere in the world.



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