

# AIDWYC

## ASSOCIATION IN DEFENCE OF THE WRONGLY CONVICTED

The AIDWYC Journal – No. 4

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April 2004

### On My Journey for Justice *by Steven Truscott*

*“Steven rode with Lynne on his bicycle north on the County Road like an ordinary fourteen year-old boy with an ordinary twelve year-old girl on an unremarkable evening. He rode back to the base appearing just as ordinary. The proposition that in between those two rides he performed a brutal, bloody rape and murder defies reason. We submit that the evidence as it now stands fails to prove that happened, and effectively proves that it did not.”*

- AIDWYC's final submissions on behalf of Steven Truscott in August 2003.

Justice Kaufman's report to the Minister of Justice was filed in April 2004. We await the Minister's decision.

The most common question asked of me by media and the public is why I am not bitter. With that in mind, I have decided to address my overall stability which is due to family and friends around me.

The thought came to me years ago, that there was no sense being mad at people because half of them did not know I was mad at them and the other half did not care. I have tried my best to have a positive outlook on a horrible situation, not allowing bitterness or anger to take hold, as it would only lead to physical and mental problems.

Today, I credit my birth family for their love and support shown to me over the 10 years of my incarceration and my marital family for their love, strength and devotion every day.

To those outside of my family who have rallied to my cause, I will be forever grateful. Isabel LeBourdais, author and mother from Toronto, pioneered the way for me and millions of Canadians in her 1966 book “The Trial of Steven Truscott”. This book led to a Supreme Court of Canada hearing. In March of 2000, Fifth Estate aired a documentary “His Word Against History” which had a huge response leading to two updates.

Following the documentaries, the producer Julian Sher and researcher Theresa Burke were commissioned by Random House to write a book about the case. In the fall of 2001, the book “Until You Are Dead” was released to wide acclaim. The book was on the best-seller list, and deservedly so. In November 2001, AIDWYC lawyers submitted a 690 brief to the Justice Minister of Canada requesting a new trial. All persons involved in the submission of the 690 are to be commended for their hard work and dedication on my behalf. My sincere thanks go to

the lawyers involved - James Lockyer, Phil Campbell, Marlys Edwardh and Jenny Friedland. A special thanks also to Win Wahrer, AIDWYC's Director of Client Services.

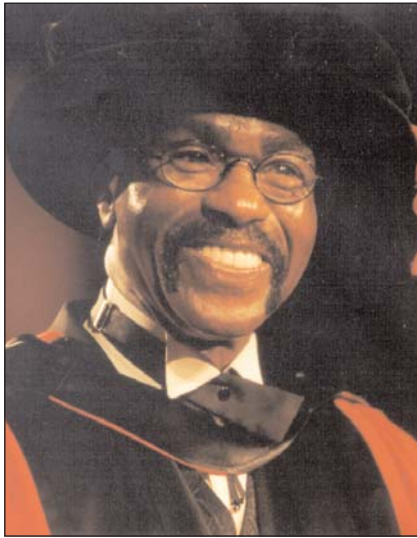
Last, but certainly not least on my list, is my wife. If anyone really wants to know how I have survived the last 34 years - Marlene is the answer. She brought me into her world in 1970 and made my life so fulfilled that I never had to look back. With my wife and three children, I lived as normal a life as anyone would want or expect. Marlene had been involved in my case long

before I met her and always maintained the truth would come out someday. In the fall of 1997 when we became involved with Fifth Estate and AIDWYC, she expressed her desire to be actively involved in the research. When boxes of material containing thousands and thousands of sheets of paper were obtained from the Crown, Marlene requested copies of all of them. For four years she worked like a Trojan on these papers - sorting, filing, making maps and charts and researching many aspects of the case. Compiling all her information into a brief by hand (we did not have a computer then), she ended up with



Isabel LeBourdais & Steven Truscott in the yard outside Collins Bay Penitentiary, 1968. Photo by Julien LeBourdais.

cont'd on page 4



## A Message from the Executive Director Dr. Rubin Hurricane Carter

The importance of standing up and being counted when an injustice occurs is exactly what defines AIDWYC's character. Our ability to care about another human being ultimately determines what kind of society we wish to live in. I have often been quoted as saying "When those who have not been injured by a wrongful conviction become as outraged as those of us who have, only then will change take place."

People who have been wrongly convicted cannot win their fight for freedom and bring change to our justice system unless all citizens are concerned about the violation of their human and God-given rights.

For many years, AIDWYC has been the voice of the wrongly convicted, the only organization in Canada that has fought to free the wrongly convicted and

will continue to do so. That is our mandate: to defend innocent people and to hold accountable those who pursue those wrongful convictions under the colour of law.

We need to be always ready and willing to stand up for what is real, right, good and true and this takes commitment. It takes courage. It takes the ability to put oneself in another person's shoes and work as diligently and as tirelessly for a total stranger as you would want someone to work for you if the circumstances were reversed.

Prison is not a country club. It is a horrible, dehumanizing place. It is amazing that anyone survives there.

It is important that AIDWYC continue to demand the necessary changes needed in the criminal justice system so that no human being will ever again suffer the unnecessary humiliation and despair of being wrongly accused, wrongly convicted and then abused by the criminal justice system that rewards the guilty and punishes the innocent.

We have to have people in law enforcement who are trained to investigate a case thoroughly. Sometimes the police and prosecutors, rather than seeking justice, often act as though they are seeking only a conviction.

Cases go bad when those in charge are so convinced that they have the right person that they have "tunnel vision" – which means that they cannot see anything that is not consistent with their theory. Let's be clear about this: the police and the prosecutor do not wish to convict an innocent person, but they are trapped in a tunnel and are completely unaware of it. Everything seems clear and bright, all heading in the right direction – which is, of course, proving the case against the innocent person they are sure is guilty! They do not realize that they are ignoring everything outside of this tunnel – evidence that, if pursued, might possibly show that they are wrong. And to make matters worse, having "tunnel vision" leads also to another phenomenon called "Meyer's Law" which is that if

the facts do not fit the theory, then the facts must be discarded. In other words, change the facts and replace them with lies!

Many instances of this occurred in the case of Guy Paul Morin who was wrongly convicted of raping and killing a little girl. For example, the little girl's mother and step-brother told the police that they had returned home at a particular time and found her gone. The original time that they gave made it impossible for Morin to have committed the crime. The police and the crown knew this, but were so convinced that he was guilty that they managed to get the mourning mother to change the time that she returned home. The original statement would have demolished the case against Guy-Paul – the changed testimony, however, strengthened it! And so an innocent person was convicted of a horrible crime.

Perhaps the most important point, one that is perfectly obvious but always seems to be forgotten, is that convicting an innocent person is not only horrible for the person convicted, but it also means that the guilty person is still free to commit more crimes. The only person(s) who truly benefits from a wrongful conviction is the crown attorney who secured that wrongful conviction, and the guilty person who is avoiding being rightfully convicted.

### CONFERENCE

AIDWYC, with the assistance of Jerome Kennedy and Dave Howell, is currently putting the programme together for a conference planned for September 2004 in St. John's, Newfoundland.

There will be a Friday evening dinner with entertainment, a keynote speaker and silent auction, followed by a one-day Saturday conference with special emphasis on the Canadian inquiries including the participation of some of the wrongly convicted.

Contact AIDWYC for further information nearer the time and look out for announcements on our website and in the press within the next month or two.

#### CONTENTS

- 1 On My Journey for Justice
- 2 Opening Round
- 2 Conference
- 3 News Updates & New Endorsements
- 4 Almost 45 Years
- 5 Pro Bono Law Ontario Award
- 5 AIDWYC Awards
- 5 A Tribute to Peter Meier
- 6 The Case of Maurice Carter
- 8 Towards a New Professionalism:

- Principles and Practice for Transforming Investigative Interviewing in the 21st Century
- 14 Romeo Phillion: 65 Going on 32
- 15 Jim Driskell
- 16 Finding my Own Humanity
- 17 A Father's Perspective
- 18 Kevin Cooper
- 18 William Mayo
- 19 The Lamer Inquiry
- 19 Honourary Doctorate

#### 19 Additional Resources for the Wrongly Convicted

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](mailto:aidwyc@on.aibn.com).

We are indebted to the generous sponsors of this edition (see pages 19 & 20) for making its production possible.

# News Updates

## Canada

### David Milgaard

A public inquiry into David Milgaard's wrongful conviction will be headed by Alberta Justice Edward MacCallum, assisted by Commission Counsel Douglas Hodson of Saskatoon. AIDWYC and Joyce Milgaard, David's mother and one of AIDWYC's founding members, were both granted standing as parties on April 20th.

### Robert Baltovich

Robert Baltovich's appeal was to be heard on April 19th but Justice Michael Moldaver has delayed the appeal until September 20th in order to read approximately 5,000 pages of fresh evidence that was not heard at Mr. Baltovich's trial in 1992.

### Michel Dumont

Michel Dumont has been waiting since 2001 for a response from the Quebec Government to his civil suit for compensation for his wrongful conviction. He has set up an email petition at [www.micheldumont.qc.ca](http://www.micheldumont.qc.ca).

### Chris Bates

AIDWYC's Regional Representative for Newfoundland, Jerome Kennedy, is representing Chris Bates on his appeal to the Quebec Court of Appeal to strike his guilty plea. Mr. Kennedy hopes to have the appeal filed next month.

### Clayton Johnson

Clayton Johnson is still awaiting the Government of Nova Scotia's decision regarding his request for compensation following his exoneration in February 2002.

### Peter Frumusa

A settlement was reached in January 2004 in Mr. Frumusa's malicious prosecution lawsuit against Niagara police and Crown attorneys. He spent 9 years in jail before he was exonerated in 1998.

### The Odhavi Case

In December 2003, the Supreme

Court of Canada ruled in the Odhavi case that the relatives of an unarmed man shot in the back in a police chase following a bank robbery could sue the police.

In the Special Investigations Unit investigation that followed the shooting death of Manish Odhavi in 1997, officers actively avoided and refused to cooperate with the investigators. The Odhavi family sued the police for abuse of public office and negligent supervision by senior management.

AIDWYC and the Osgoode Hall Innocence Project were granted intervenor status in this case in 2002 and argued that police must be held accountable for abusive performance or non-performance of statutory and constitutional duties. Intentional or reckless breach of duty by police and prosecutors, or the failure to properly implement mandatory procedures or policies, has resulted in a number of wrongful convictions. AIDWYC's role in this case was to advocate for procedural and substantive protections to prevent the conviction of innocent persons as well as to promote means of addressing miscarriages of justice.

The Supreme Court's decision is particularly important as a deterrent to prevent public officials from engaging in misconduct.

## U.S.A.

### Max Soffar

Max Soffar's long-awaited decision from the Fifth Circuit Court of Appeals came on April 21st, 2004.

The court granted his petition for a writ of habeas corpus, set aside his conviction and sentence for capital murder and ordered his release from custody within 120 days unless the State commences a retrial. Though the State is expected to appeal the decision, Max's lawyers and supporters (including Texas writer Kinky Friedman - see <http://www.kinkyfriedman.com/lastroundup.html>) are hopeful he will soon be free for the first time in 24 years.

### Steven Crawford

Steven is still trying to adjust to life outside of prison after 28 years. The civil suit filed on his behalf by Johnnie Cochran Jr. has not yet been resolved.

## NEW ENDORSEMENTS

New endorsements in April 2004 by AIDWYC's International Review Committee are:

### Greg Brown Jr. - Pennsylvania

The case makes little sense. The prosecution theory was that Greg and his mother set a fire to collect insurance money (family members were inside the house including a baby). The amount of insurance was far below the value of the house. There was no evidence directly linking Brown to the arson. The crime scene had been cleaned up prior to his arrest. His mother was never charged. The insurance company paid the claim. Brown was 17 at the time of the fire in 1995 and was convicted of triple murder.

### Cy Greene - New York

Cy Greene was just refused parole. He has been in prison for 19 years on a murder conviction. There was really no case against him, except that he was identified by someone who was himself a suspect (and who first called Greene to the attention of police) and by another witness who picked him out in a totally improper procedure. The evidence of one eyewitness was that the killer was a black man about 6 feet tall, while Greene is markedly shorter at just over five feet. The evidence is so weak that the presiding judge wrote a letter supporting early parole. Myron Beldock (Rubin Carter's lawyer) strongly supports Greene and is acting for him pro bono.

### Robert Hilliard - Louisiana

Hilliard has been in prison for 28 years on a murder conviction following a terrible trial with poor counsel, crucial evidence suppressed, witnesses who were probably guilty themselves, and an incorrect description of the crucial statement by the victim's wife introduced not by her but by a detective. There were a number of alibi witnesses.

### Anthony Persiano - New York

Two eyewitnesses in this murder case did not testify but their evidence would have been inconsistent with Persiano's guilt; the one witness, and essentially the only evidence against him, wasn't sure it was him and Persiano did not fit the description of the killer. There was a supposed confession, not signed and repudiated by Persiano. There are alibi witnesses. It is difficult to understand how he was convicted, but perhaps the "confession" carried the day.

### Scott Watson - New Zealand

Scott Watson was convicted of the murder of Olivia Hope and Ben Smart, though their bodies have never been found. He does not fit the description of the perpetrator, nor does his boat fit the description of the one involved in the crime. The case features tunnel vision, tainted forensic evidence and testimony altered in return for a lighter sentence.

cont'd from page 1

her finished product for those who could benefit from their contents. When I read Julian's well-written book, I saw a lot of her work on those pages and I felt so proud of her and grateful to Julian. I also felt proud and thankful to the AIDWYC lawyers for acknowledging her work in their excellent s.690 application, giving my wife the place of importance she so rightly deserves.

We have received mail and emails from all over the world. Marlene copies all of the letters for me to read and then she answers them. Also, she creates updates and newsletters for our support list as they become available. The public has certainly played a major role in sup-

porting us and keeping our hopes and spirits alive.

Without the help of those mentioned here, this process would only be a dream. Now, it has gone beyond a dream and I am experiencing reality on my "Journey For Justice".

\* \* \* \* \*

"Of the two options available to the Minister, ordering a new trial and bypassing a Reference to the Court of Appeal is by far the bolder remedy. The Minister, even if he concludes that Steven Truscott is innocent, has no statutory power to direct an acquittal; the most he can do is order a new trial. The Crown cannot justify a Reference, result-

ing in a further delay of justice for Mr. Truscott of two years or more... We urge the Minister to order a new trial because that is the upper limit of his powers. If he had the power to acquit, we would be urging that remedy." (AIDWYC's submissions to the Minister).

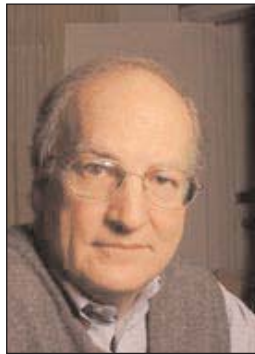
*Please write to the Minister of Justice (no postage required if mailed in Canada) to urge him to grant Steven a new trial and bring his case to a speedy conclusion:*

*The Honourable Irwin Cotler  
House of Commons  
Ottawa, ON, K1A 0A6  
Tel: (613) 992-4621  
Fax: (613) 990-7255  
email: cotler1@parl.gc.ca*

## Almost 45 Years

by Julien LeBourdais

It's been almost 45 years since I first heard the name Steven Truscott. In 1959, my mother, Isabel LeBourdais, a writer and activist, read about a 14-year-old boy (6 months younger than I) who had been tried as an adult and sentenced to hang. She was appalled. She didn't know Steve and had no opinion about his guilt or innocence but she soon came to know the Truscott family and to believe him to be innocent. Her involvement changed the Truscott family's life as it changed my family's life.



Julien LeBourdais

Originally planning to write an article, her work soon became a book as it consumed her life. Mom interviewed lawyers, doctors, police officers, Truscott friends and neighbours, trial witnesses as well as Steve and his family. She pored through transcripts and trial exhibits. Steve's case was a regular discussion topic at our dinner table.

Jack McClelland, of McClelland & Stewart Publishers, was eager to publish the book. Throughout the early 1960s, I remember Mom having very spirited conversations (arguments) with McClelland in our living room. She was criticizing lawyers, judges, police officers and our legal system. McClelland was getting cold feet. He wanted her to soften her tone – ease up in her criticism. Mom refused and looked for another Canadian publisher. They all turned her down - afraid of shattering the status quo.

It's worth noting that Canada was a different place in the 1960s. People didn't criticize the justice system. It would be an affront to society. Even worse was the idea that a WOMAN would have the nerve to do so.

Repeated rejection by publishers took its toll on Mom. My father, sister and I felt her pain and frustration. As was her way, she threw herself into Steve's case and she was getting nowhere. During this time, my father died – never seeing the book in print. In 1965, Mom sent her manuscript to noted British publisher Victor Gollancz who accepted it without changing a word. Subsequently, McClelland agreed to publish the Canadian edition – the same book he was earlier afraid to touch.

When "The Trial of Steven Truscott" was published in 1966, it caused an immediate sensation. There was massive media attention and questions in Parliament. Mom appeared on "This Hour Has Seven Days", CBC TV's flagship program. Mom was likely the first person to use the word "penis" on Canadian TV. Host Laurier Lapierre, interviewing Steve's mother Dot, wiped away a tear as he spoke with her – an incident still talked about today. Although it was no surprise that some judicial officials didn't like Mom's book, not one of them has found a factual error to this day.

Truscott and LeBourdais became recognizable names to the public. I am still often asked "are you related to...?" Even though the federal government did not appoint the royal commission Mom called for, public opinion was decidedly on Steve's side. (Today, I would guess it's about 99 per cent).

Failure to bring about Steve's exoneration was a crushing blow for my mother. However, she always remembered that her pain was infinitely less than Steve and his family's. For the next 25 years, none of us wavered in our belief in Steve's innocence but there seemed little more we could do. Mom died in March 2003 never knowing about the recent developments in the Truscott case.

Six years ago, I became involved once more. Contacted by James Lockyer and AIDWYC, I loaned them Mom's files. This material was also used by CBC TV's "The Fifth Estate" and by

Julian Sher in his book "Until You Are Dead". Steven Truscott was back in the news again. I attended Steve's press conference and participated in the 2002 AIDWYC conference.

I am very pleased that everyone has such respect for the groundbreaking contribution made by Isabel LeBourdais. I have been proud to represent her.

For almost half her life, her dream was to see Steven Truscott finally exonerated. I hope it is not long before we all see her dream come true.



Isabel LeBourdais, 1989.  
Photo by Jose San Juan.

## Pro Bono Law Ontario Award to AIDWYC



The Pro Bono Law Ontario (PBLO) Distinguished Service Award was presented to AIDWYC on May 28th, 2003 at the first ever Law Society 'Access to Justice' Symposium. On hand to accept the award for AIDWYC were lawyers James Lockyer and Mel Green, Rubin "Hurricane" Carter and Win Wahrer.

Presenting the award were Law Society Treasurer, Professor Vern Krishna, Q.C. (second from the right), Chief Justice of Ontario, the Honourable R. Roy McMurtry (middle) and Ron Manes, Chair of the symposium and Past President of PBLO, (far right).

The award recognizes AIDWYC's "exemplary work in providing pro bono legal services to persons of limited means."

"The Law Society has a particular interest in and commitment to a society that values and promotes access to justice for its citizens," says Law Society

Treasurer, Professor Vern Krishna. "We are particularly pleased to join PBLO in recognizing AIDWYC for their important work in making legal services accessible to those most vulnerable in our society and for giving so generously of their time, energy and expertise.

"It is obvious that these lawyers take very seriously their public duty to provide legal services to those most in need and it is truly a wonderful opportunity to recognize [AIDWYC as] role models for all of us in the profession."

AIDWYC was nominated by Steven and Marlene Truscott, who wrote "AIDWYC has been instrumental in correcting a number of well-known cases of wrongful convictions... In working to rectify these errors, AIDWYC performs a vital role within the justice system. We are really impressed with the dedication shown by all those involved with AIDWYC who give something back to the community."

## A Tribute to Peter Meier

AIDWYC held a very special tribute dinner in honour of its President, Peter Meier, on May 14th, 2003. The evening included performances by two Juno award winners, Liberty Silver and Sonia Collymore, harpist Sharlene Wallace, who plays for three different symphony orchestras, Joan Browne, flutist from the Hamilton Symphony Orchestra, Rory Gus Sinclair on bagpipes and the 'Peter Meier Singers'.

There was a blessing by Fred Franklin of the Quaker Religious Society of Friends who is recognized internationally for his work in the justice and prison systems and a presentation by the Hon. Justice Gregory T. Evans, Honourary President of AIDWYC and retired Chief Justice.

Members of Peter's family, friends, AIDWYC directors, staff and volunteers, as well as a number of Canada's

*AIDWYC Journal No. 4 – April 2004*

wrongly convicted, including David Milgaard, Chris Bates and Ronald Dalton, came from across Canada to honour an extraordinary man. Among those paying tribute to his life and work were:

**Rubin Carter:** "You are a man of great dignity, poise, quick wit, a man who is a respecter of all persons, who will walk the extra mile to help his fellow man, who cares deeply and genuinely. You are a peacemaker, a diplomat, a thinker, a man of action, quiet and unassuming, stalwart, strong of character. AIDWYC is fortunate to have you as its President and I am fortunate to have you as my friend and colleague."

**Brian D. King:** "You have given a great contribution to society in your relentless pursuit of justice in your support and efforts for those that are now free from incarceration after being wrongfully convicted. Not only will your efforts be reflected by those that are now liberated but also by those in the future, as the strength of AIDWYC and its purpose and principles grow."

**David Milgaard:** "I asked for the opportunity to come forward and thank you for the time and effort you have given to the wrongly

## AIDWYC AWARDS

### Win Wahrer

"In acknowledgement of your selfless dedication to the wrongly convicted, their families and friends."

*presented by Rubin Carter and Peter Meier at the AIDWYC AGM, Nov 2003*

### Solange Tremblay

"In recognition of your commitment to seeing justice prevail in the case of Michel Dumont. You have demonstrated that one person can make a difference."

*presented by Rubin Carter at the AIDWYC Conference, Nov 2002*

### Jim McCloskey

"In recognition of your 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."

*presented by Joyce Milgaard at the AIDWYC Conference, Nov 2002*

### Alastair Logan

"In recognition of your unflinching dedication to Truth and Justice no matter the personal cost."

*presented by Peter Meier at the AIDWYC Conference, Nov 2002*



*The Hon. Justice Gregory T. Evans presents Peter Meier with an award*

convicted. I want you to know I care about you because you have cared about others."

**Win Wahrer:** "I am forever thankful to Lizette Morin who insisted I call you in 1992 because an inmate advised her that you would be a vital member of the Justice for Guy Paul Morin Committee. The candle light vigil became the beginning of a journey that has blessed me with a wonderful, irreplaceable friend... It is a joy to work with you everyday... I am still amazed by you, the person, multi-faceted, a man for all seasons, a role model. I trust you. I can count on you. You are a true and wonderful friend."

# The Case of Maurice Carter

Maurice Carter is 60 years old. He suffers from end-stage Hepatitis C, Parkinson's disease and diabetes. He is not receiving the evaluation and treatment he needs for his condition because he is locked up in a Michigan prison serving a life sentence for a crime he did not commit. Because he is in jail, he is not eligible for the liver transplant that could save his life. He is now in the 29th year of his imprisonment and his supporters are afraid that time is running out for him. When Judge John T. Hammond was asked last year to speed up the court process because Maurice is dying, his response was "Everybody dies sooner or later anyway." Then, in November 2003, he denied Maurice's request for a new trial, filed on his behalf in November 2002 after five years of painstaking work by dedicated lawyers Gary Giguere, Keith Findley, John Pray, Michele LaVigne and Lawrence C. Marshall.

Police did not hand over all their documentation on the file until 2000 and prosecutors consistently and strenuously block every attempt to re-open the case and re-examine the extraordinarily weak evidence that convicted him in 1976. Maurice's continuing insistence that he is not guilty has effectively cost him the opportunity to be considered seriously for parole.

Where, in this instance, do we see what has been termed by the United States Supreme Court "the evolving standards of decency that mark the progress of a maturing society" inherent in the Eighth Amendment? It is hard to imagine a much clearer illustration of cruel and unusual punishment - whether it was the incarceration 28 years ago of an innocent man, or the lack of compassion the government shows for Maurice Carter today.

The story begins December 20, 1973, when Tom Schadler, a white, off-duty police officer in Benton Harbor, Michigan, was Christmas shopping with his wife, Ruth, at the Benton Harbor Wig and Record Shop on East Main Street. The only other people in the store were the clerk, Gwen Gill (now Baird), and an unidentified black man. Suddenly, without warning, the black man pulled out a gun and shot Schadler

five or six times in the head and neck. Schadler survived the attack, followed the gunman out of the store and shot at him with his service revolver. However, the gunman was not found in the subsequent police search of the area and Schadler was not able to provide a description of the shooter except in very general terms. The original police report states that he and



his wife had not got a good enough view of him to give a detailed description. Tom Schadler spent the next few days in hospital, but recovered quickly and was back at work within a month.

At the time of the shooting 29-year-old Maurice Carter from Gary, Indiana, who was in town looking for work, was staying at the nearby Benton Harbor Hotel. As he walked out of the hotel that afternoon, he was asked by police conducting the downtown area search to go with them to the crime scene. He did as they asked and stood outside the store while Gwen Baird, the African American store clerk who had spent more than ten minutes with the gunman in the store before the shooting, was asked if she could identify him. She immediately told police it was definitely not him and that the shooter had a very dark complexion, whereas Maurice Carter's complexion was light. The police released Maurice Carter and he returned soon after to Indiana.

Two years went by and the shooting had still not been solved when police arrested Wilbur Gillespie, a man with whom Maurice Carter had been acquainted, on unrelated drug charges. Gillespie faced a possible life sentence as a repeat offender, but the charges were dropped when, after initially refusing, he agreed to testify that he had seen Maurice Carter running from the crime scene on the day of the shooting. On the

basis of that testimony, police obtained a warrant for Maurice Carter's arrest and extradition proceedings were begun to bring him from Indiana to Michigan.

On his arrival in Benton Harbor in January 1976, *The Herald Palladium* newspaper published a picture of him two-columns wide on its front page as the man who had been arrested suspected of shooting Officer Schadler. A week later, police held a line-up that included Maurice Carter where Tom and Ruth Schadler identified him as the gunman and a third witness, Nancy Butzbach, said she had seen him at the scene. All three had previously failed to identify him in photo line-ups and only "recognized" him after his picture had been in the paper. Nancy claimed to

have witnessed the gunman fleeing the shop from a second-floor window across the street. However, the distance (over 140ft) would actually have made it impossible for her to have distinguished any facial features of the man and, indeed, on the day after the shooting she had told police that she saw only "the shadow of a black man" running away from the shop.

Gwen Baird, who, at the time of the shooting, had unequivocally stated that Maurice Carter was not the shooter, was not invited to view this new line-up. In fact, as soon as she saw the photograph in the paper, she called police to tell them they had the wrong man.

None of this information was presented to the jury. All they heard was the testimony of Tom Schadler, Ruth Schadler and Nancy Butzbach who were "certain" Maurice Carter was the gunman, and testimony from a number of other bystanders who gave wildly varying stories in their descriptions of the gunman and his clothing. No mention was made of the fact that trial testimony by the various witnesses conflicted with their prior descriptions and statements to police.

At trial, Wilbur Gillespie recanted his earlier statements and admitted to fabricating his story out of fear, and in hope of sparing himself a possible life sentence. He testified that he had, in fact, been with Maurice Carter in the hotel at the time of the shooting and therefore knew that he was not the assailant.

Despite the fact that Gillespie was subsequently prosecuted for perjury and sentenced to 15-30 years in prison for his false allegations against Maurice Carter, the prosecution against Maurice Carter was, unbelievably, not abandoned at this point.

The case against him now rested exclusively upon very weak and contradictory eyewitness testimony. There was absolutely no physical evidence. There were no fingerprints, no fibres, no blood, no hairs. And there was no motive: he was new to Benton Harbor, was looking for work in town, and had no reason to want to shoot Officer Schadler.

Eyewitness identification by strangers is notorious for its unreliability, and the testimony in this case had all of the hallmarks of faulty identification. The case was very poorly defended, however, and most of the information that would demonstrate the unreliability of the eyewitness accounts was never brought to the (all-white) jury's attention. They found him guilty of assault with intent to murder and he was sentenced to life in prison.

Over the years since his conviction, many individuals and organizations have come to support Maurice after realizing how flimsy the evidence against him is and what a grave injustice has been done to him. AIDWYC endorsed his case in 2001 after a thorough review of the evidence convinced directors that he is factually innocent of this crime. Maurice has also taken several lie detector tests, all of which he passed with no signs of deception. Major television networks and newspapers have investigated his story and reported on it, many expressing their disbelief that he remains behind bars and all of them raising concerns about the conviction.

His most dedicated supporter, however, is Doug Tjapkes, a church organ salesman and former journalist who first met Maurice in 1995 when visiting the prison where he is incarcerated. As Doug got to know Maurice and his case better, he became completely convinced of Maurice's innocence and absolutely committed to securing his freedom.

Together with Maurice, he founded "Innocent!", a non-profit organization dedicated to assisting and encouraging supporters, families and friends of prisoners who have been wrongly convicted.

Thanks to Doug's leadership, the Citizens Committee for the Release of Maurice Carter, formed in 2000, has been joined in its efforts by local religious and community leaders, AIDWYC, the University of Wisconsin-Madison Law School Innocence Project, the Northwestern University Law School's Center on Wrongful Convictions, the Medill School of Journalism Innocence Project, and the Michigan Innocence Project at Thomas M. Cooley Law School. The Kalamazoo law firm of Levine and Levine agreed to serve as Michigan counsel for Maurice on a pro bono basis.

Last June, a rally to promote the effort to win a new trial or release for Maurice Carter was held in Benton Harbor and Rubin "Hurricane" Carter (no relation) spoke on his behalf. He was backed by members of the Illegals Motorcycle Club, a group of Toronto criminal lawyers who had played an important role the previous year in the release of Steven Crawford after 28 years in jail in Pennsylvania (see AIDWYC Journal issue no. 2). They tried to set up a meeting to discuss the case with Berrien County Prosecutor James Cherry and Assistant Prosecutor Beth Wild, but the request was denied. Cherry said he believed "no useful purpose would be served" by such a meeting.

They arrived to find the town in a state of emergency in response to riots that had begun several days earlier sparked by the death of a young black man in the course of a police chase. Racial tension runs very deep in the region and, fuelled by a number of incidents over the years, is said to date back decades to the time of Maurice Carter's imprisonment.

After the request for a new trial was denied, Maurice's attorneys filed an Application for Leave to Appeal with the Michigan Court of Appeals in December, 2003. But that process may take years – years that Maurice Carter probably does not have. In the meantime, his supporters are petitioning Michigan Governor, Jennifer Granholm, to commute his sentence, even though

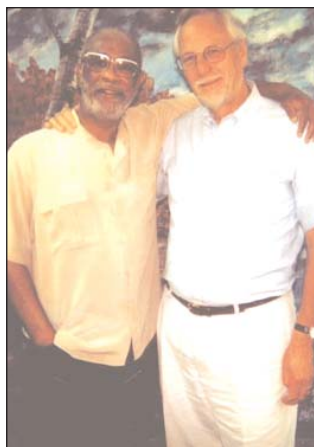
the Michigan Parole Board voted against the move, 7-2, in November.

Early this year, Doug Tjapkes organized a 10 by 20 foot mobile billboard asking the governor to show compassion towards Maurice. Mounted on a truck, the billboard was driven to press conferences on March 18th in nearby Grand Haven's Chinook Pier, Grand Rapids and outside the state Capitol building in Lansing. At that time Doug also released new statistics showing that Maurice Carter has served more time on an attempted murder charge than almost anyone in the United States. The truck belongs to Captive Audience Advertising of Grand Haven, which donated its use for the day.

According to the Governor's office, they are currently reviewing his medical records and his file "to determine if he poses a danger to the community".

"He's very, very sick," Tjapkes said. "He was admitted at the hospital after falling into a coma on February 23rd. We're appealing to the Governor now to say, "We've got a very sick man here. He's elderly. He's certainly no threat to society and he's served three times more than the national average for anybody on an attempted murder charge." Even if he had done it, he's done more than his time and it's time for him to be out."

In 1976, thinking that there had simply been some mistake and that he only needed to go and clear his name, Maurice Carter waived extradition to return to Benton Harbor from Indiana. Over 28 years later he is still waiting to go home.



Maurice Carter & Doug Tjapkes

*If you have not already done so, please add your voice to the many who have already written requesting that the Governor of Michigan, Jennifer Granholm, commute Maurice's sentence and set him free. You can write to her at:*

*Gov. Jennifer Granholm, P.O. Box 30013, Lansing, MI 48909, USA. Tel: 517-373-3400, Fax: 517-335-6863, email/website: [www.michigan.gov](http://www.michigan.gov).*

*For further information on Maurice's case see [www.aidwyc.org](http://www.aidwyc.org) and [www.aboutinnocent.org](http://www.aboutinnocent.org).*

# Towards a New Professionalism: Principles and Practice for Transforming Investigative Interviewing in the 21st Century

by Dr. Tom Williamson



*Dr. Tom Williamson is a psychology graduate, a chartered forensic psychologist and holds a Ph.D. for his research into police interrogation. He retired in 2001 after 37 years as a police officer in England, thirty years of which he served at Scotland Yard. He is currently a Senior Research Fellow at the Institute of Criminal Justice Studies at the University of Portsmouth, England.*

*This article is taken from a speech given at the International Symposium on Police Interviewing at the Ecole Nationale de Police du Quebec, February 9-11, 2004.*

## INTRODUCTION

The post-modern international context in which custodial questioning occurs is changing dramatically and in complex ways. The questioning of victims, witnesses and suspects lies at the heart of any investigation and criminal justice system. A moral and legal basis for custodial questioning should be respect for human rights as set out in the International Bill of Human Rights. Some states have responded to the threat of terrorism by wholly or partly denying suspects their rights and introducing processes that result in the militarisation of criminal justice that leads to erosion of human rights. Rights exist irrespective of any reciprocal obliga-

tion to give anything back, but experience has shown that respect for human rights does provide a sound basis for reciprocity between the police and the population being policed. This relationship can be damaged due to an over-reliance on confession evidence that subordinates the importance of evidence from witnesses and victims and can lead to miscarriages of justice. States' constitutional arrangements and their types of criminal justice process can exacerbate the reliance on confession evidence.

Confession-oriented approaches to police interviews can encourage human rights abuses. In jurisdictions where police interviews are tape recorded, analysis of the tapes can reveal low levels of questioning skill. **Attention is drawn to research which shows that the outcome of an interview with a suspect correlates highly with the strength of the evidence in the case.** A principled approach to investigative interviewing is advocated which elevates the importance of interviews with witnesses and victims, and treats the investigation as a search for the truth.

Analysis of miscarriage of justice cases in England, Canada and United States of America reveals that there are commonly recurring contributing factors. One factor is 'tunnel vision' where the investigator becomes so focussed upon an individual or incident that no other person or incident registers in their thinking. Legislative responses to miscarriages of justice have led to greater transparency in the conduct of investigations and the use of recording technology to ensure compliance and accountability. A framework for minimising miscarriages of justice is described.

These developments mean that sound scientifically-based training programmes are urgently needed to assist investigators to acquire skills necessary to function at the higher professional standards that will be required in the

21st Century. By providing accreditation for skills training and pathways into higher education programmes, investigators and interviewers can also develop a deeper knowledge and understanding of the scientific research and social context of their work. There is sufficient common ground in the academic and practitioner communities for agreement on evidence-based best-practice policies which not only reinforce ethical values and respect for human rights but also investigative effectiveness, minimising the risk of false confessions and miscarriages of justice.

The questioning of victims, witnesses and suspects lies at the heart of any criminal justice system. In drawing attention to the need for greater professionalism in the way investigators gather evidence through questioning, this paper will examine:

1 The dynamic context created by complex international social developments associated with 'globalisation' and 'risk'.

1 The risk arising from the militarisation of criminal justice in response to terrorism.

1 The influence of written and unwritten state constitutions on the concept of rights and the consequences for reciprocity between the police and the policed where there is an erosion of rights.

1 Investigation as a search for the truth and the distorting effects of adversarial systems of criminal justice, over-reliance on confession evidence and tunnel vision.

1 The lessons that can be learned from studying miscarriages of justice and the arrangements in England and Wales to address these concerns.

1 The need for investigators and interviewers to be trained to operate at higher levels of skill and educated to have a deeper knowledge and understanding of the scientific research relating to investigative interviewing and a greater awareness of its social context.

## GLOBALISATION AND RISK

It is axiomatic that we all now live in a 'Global Village'. The end of the 20th Century was marked by the growth of the phenomenon of globalisation, a term which sociologists use to describe those processes which are intensifying worldwide social relations and interdependence. The connections between the local and the global are quite new in human history and driven by rapid advances in communication and transportation (Giddens (2002: 48-76).

The impact of globalisation is reflected in the rise of individualism, rights and consumerism and the gradual spread of liberal democracy dramatically illustrated in the fall of communism. These developments have also provided new opportunities for criminal networks and cross-border crime flows (Loader and Sparks 2002: 97-98).

Globalisation has given rise to what has been characterised as the 'risk society', which Beck argues is a way of dealing with hazards and insecurities brought about by the process of modernisation and globalisation. (Beck 1992: 21, Giddens *op. cit.*: 65-68).

These processes identify 'which risks are selected for particular attention, which categories of person and which places come to be regarded as bearers or containers of intolerable risk'. (Loader and Sparks *op. cit.*: 95)

We all live in a risk society that can be conveyed by an ambient sense of risk, including the risk of victimisation. The elevation of risk and perceptions of risk has led to heated debates about crime and punishment and the state's capacity to deliver security. Law enforcement agencies, generally created as agents of the state in the 19th Century, operating in this changing environment find themselves facing greater pressures for accountability and transparency.

The global communications revolution has created a mass mediated society in which blame is attached when the media identify a risk. In this environment, according to Loader and Sparks (*op.cit.*), 'every failure of propriety or competence in risk manage-

ment is potentially a scandal'. Risk management, propriety or ethical values and professional competence have therefore become key challenges for law enforcement agencies if they are to adapt to post-modern life in the 21st Century.

This is taking place at a time when there is public pressure on states to react in more penal ways to the perception of crime than was the case for liberal democracies in the post-war period (Young 1999).

The concept of individual rights has been slowly developing. Following the Second World War the countries of the world came together under the newly constituted United Nations and one of their first actions was to endorse at their meeting on 10th December 1948 in San Francisco the Universal Declaration of Human Rights.

The first 50 years has been spent in gaining international acceptance of the *principle* of human rights and the next fifty years is likely to be spent achieving compliance with the *practice* of human rights.

Rights form the basis for the relationship of reciprocity between the state, including law enforcement agencies, and the individual. Respect for citizens' rights is the basis for reciprocity in policing (Wright 2002: 44-46). Investigations and interviews conducted in ways that respect these rights will strengthen reciprocity.

History and academic research shows that all too frequently police investigations have been associated with a deviant culture where the ends have been thought to justify the means. (Klockars 1980, Williamson 1990).

A challenge faced by those who advocate an approach to criminal justice based on respecting human rights is that the public may regard respect for rights as an example of the State going 'soft' on crime.

In countries where torture is not practised, psychological process can be abused in the same 'ends justifies the means' way in order to obtain confession evidence (Gudjonsson 2003, Kassin 1998, Kassin and Wrightsman 1985, Ofshe and Leo 1997(b)). Both approaches involve an abuse of human rights. States can be complicit and culpable in both types of abuse.

## Terrorism, Risk and Militarisation of Criminal Justice

The events of September 11th 2001 mark a watershed in international governance, disturbing legal cultures and how states should respond to the threat of terrorism. The erosion of rights is particularly prone to happen at times of national emergencies. The use of military interrogation techniques on suspects detained in Northern Ireland led to the government of the Republic of Ireland successfully taking action against the government of the United Kingdom in the European Court of Justice in what became known as the 'hooded men' case because of the way bags were put over the heads of detainees. The court found that the men had not been tortured but that they had been subjected to degrading and inhuman treatment (*Ireland v United Kingdom* (App. No. 5310/71, Ser. A. 25; (1979-80) 2 EHRR 25,4).

In this case five interrogation techniques, referred to variously as "interrogation in depth", or "disorientation" or "sensory deprivation" techniques were used to obtain information:

1. Wall standing – forcing a detainee to remain for long periods in a stress position.
2. Hooding – putting a dark coloured hood over the detainees' heads.
3. Subjection to continuous, loud noise.
4. Deprivation of sleep.
5. Deprivation of food and drink.

Ultimately the Court took the view that the five techniques "did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood", and concluded that recourse to the five techniques amounted to a practice of inhuman and degrading treatment – in breach of article 3 of the European Convention on Human Rights.

However, it should be noted that in a later case, *Selmouni v. France* [Application no 25803/94, Report 11 Dec 1997] the Court considered that 'certain acts which were classified in the past as "inhuman and degrading treatment" as opposed to "torture" could be classified differently in future.' It took

the view that 'the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.'

More recently the link between rights and policing was made explicit in another Government Inquiry in Northern Ireland, the Patten Commission, which has led to fundamental changes in the police structure in Northern Ireland:

*'It is a central proposition of this report that the fundamental purpose of policing should be the protection and vindication of the human rights of all, policing means protecting human rights.'* (Patten 1999: 18 (emphasis added))

International and national law protects human rights, although derogation of some rights, but not others, is permitted under circumstances. States cannot derogate from the right not to be tortured.

The rights enshrined in the Universal Declaration of Human Rights were given legal force in two International Covenants – one protecting economic, social and cultural rights such as the right to work, social security, health and education, and the other expressing civil and political rights such as the right to life and prohibitions of arbitrary arrest and detention and torture. There now exist a variety of subject-specific human rights treaties (such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) and regional treaties (such as the European Convention on Human Rights). Furthermore, there are a large number of non-treaty human rights texts, some addressed specifically to police, such as the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. One such text, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment sets out good practice for the treatment of detainees, especially in pre-trial detention. Principle 21 of these Principles states:

- It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purposes of compelling him to confess, to incrimi-

nate himself otherwise or to testify against any other person.

- No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

Whilst these provisions set standards of behaviour for the conduct of interviews, no international instrument provides guidance on techniques of interviewing that would enable and empower interviewers to operate in accordance with these standards.

The treatment of detainees at Guantanamo Bay appears to be similar to the military interrogation techniques that resulted in the European Court finding against the government of the United Kingdom in the case of the hooded men. We do not know enough about how the 660 men (and boys) in Guantanamo Bay are being treated to know whether it amounts to torture, but it certainly appears to amount to inhuman and degrading treatment. Human rights organisations have criticised the detention and interrogation of detainees and identified the principal violations of international human rights as follows:

1 The US government has created zones where people are considered to be outside the law and have no legal channels to assert their rights.

1 People are being kept in indefinite detention without charge or trial.

1 They are being held in conditions that may amount to cruel, inhuman or degrading treatment and that violate other minimum standards relating to detention.

1 Those who do go on trial will be tried by military commissions which are not independent of the executive.

1 The military commissions will allow a lower standard of evidence than is admissible in courts, including hearsay evidence.

1 The commissions will have the power to hand down death sentences without the right of appeal to an independent and impartial court.

1 Detainees have only a limited right to effective defence being restricted to US military lawyers.

1 There is a concern that people in US custody may have been transferred for interrogation in another country where there is a likelihood of unfair trial, torture, the death penalty and inadequate human rights protection, which is a

breach of the principle of *non-refoulement*. (Amnesty International 2002).

Given those conditions and the militarisation of justice, it is not clear what reliance, if any, can be placed on evidence obtained through custodial questioning in these conditions. The militarisation of criminal justice has often been associated with torture and extra-judicial executions (Huggins, Haritos-Fatouros and Zimbaro 2002).

According to Kofi Annan, Secretary General of the United Nations:

*'There is no trade-off between effective action against terrorism and the protection of human rights. On the contrary, I believe that in the long term we shall find that human rights, along with democracy and social justice, are one of the best prophylactics against terrorism'*

(Annan. Statement at United Nations Security Council meeting on counter-terrorism, 18 January 2002)

The militarisation of criminal justice is a strategy that fails on moral, legal and utilitarian grounds, and in light of bitter previous experience

## THE CRIMINAL JUSTICE CONTEXT AND ITS INFLUENCE ON A SEARCH FOR THE TRUTH

Even if Al Qa'ida had not attacked the United States on 11th September 2001, investigators and interviewers within liberal democracies were facing challenges regarding the reliability of evidence obtained during an investigation. When miscarriages of justice are identified and become public knowledge in industrialised countries they invariably draw attention to police incompetence and sometimes to police corruption and lead to calls for politicians to act to reform the system (MacPherson 1999). Media criticism of recent examples of police investigative incompetence in Japan has led to a far-reaching reform programme (Ellis et al in press). The Japanese system lays heavy emphasis on confessions (*ji haku hencho*), (Bayley, 1991: Finch, 1999), with the police concentrating on obtaining confessions at the expense of interviewing witnesses and gathering physical or forensic evidence (Watson 1995).

It is important that a political response should go beyond making the police the 'fall guys' for weaknesses in the criminal justice system (McBarnet 1979).

## Learning from Miscarriages of Justice in England and Wales

There has been a continuous stream of officially recognised miscarriage of justice cases in the UK. Gudjonsson identified twenty-two landmark British Court of Appeal cases in his presentation at the Criminal Justice Institute's Wrongful Convictions Conference at Harvard Law School in April 2002.

These were all cases that involved disputed confessions. In many of these cases psychological evidence relating to suggestibility and compliance was considered seriously by the Court (Gudjonsson 2003). There is an increasing willingness for the courts to accept expert evidence from forensic psychologists such as Gudjonsson.

Analysis of the history of criminal investigation in England and Wales would show that the police role in detecting offences has primarily been one of interrogation and less that of enquiry. To understand why a confession was so important it is necessary to consider the way in which various systems of justice operate.

The adversarial system is not a search for the truth (Zander 1994a). The way in which a prosecution case is prepared was examined by McConville et al (1991) who argued that the investigation was not a search for the truth, but rather investigators manipulating the paperwork in ways that supported a conviction. Inconvenient information was filtered out and witness statements were shaped by police questioning to support a prosecution account.

The investigative process turned on the central role of interrogation, and detention placed the suspect in a hostile environment where custodial questioning takes place on police terms. The members of the Royal Commission on Criminal Procedure (1981) were clearly influenced by the Miranda rules and this was reflected in the proposals that they made for regu-

lating custodial interviews in England and Wales. Their recommendations were included in the Police and Criminal Evidence Act 1984 (PACE) and the Codes of Practice issued under Section 66. The Act entitled suspects to free legal advice and also provided for the tape recording of interviews with suspects. It is now almost unheard of in the UK that an interview will be conducted which is not either audio or video tape-recorded and this has made a very important contribution to the regulation of custodial questioning and also in identifying skills deficits.

## The Important Contribution of Technology to Regulating Custodial Questioning

Technology provides an accurate record of an interview and enables a judgement to be made as to whether what was said was said freely. Early research into the quality of police interviews, which was possible through the analysis of video and audio tape-recordings, revealed that interviewing skills were generally poor. The interviewers appeared inept, nervous, ill-at-ease and lacking in confidence. Questioning was conducted on the basis of an assumption of the suspect's guilt. Suspects were given very little opportunity to speak and when they did so the interviewing officer(s) constantly interrupted them. The officers had a fragile grasp of the legal points needed to prove the offence. The interviewing style was harring and aggressive. There were examples of unfair inducements. (Baldwin 1992) This reflected a continuing over-reliance on confession evidence under the new legislation. The reliance on confession

evidence also meant that witnesses and victims were frequently not interviewed thoroughly and so were unable to provide all the information they were capable of giving as evidence. The role of the police in the investigation of offences was still one of persuading suspects to confess rather than engaging in

a process of inquiry, which was a search for the truth.

In an analysis of over one thousand tape-recorded interviews in London, Moston et al (1992) found that there was a

very strong statistical correlation between the strength of the evidence and the outcome of the interview. Where the evidence was weak 77% of suspects denied the allegation and where the evidence was strong 67% of suspects made admissions. See Table 1.

## Developing a Principled Approach to Investigative Interviewing

Clearly there was a need for a change of culture to meet the aspirations of the new legislation and to prevent challenges to the evidence obtained through questioning. This resulted in the creation of a national committee on investigative interviewing that involved police officers, lawyers and psychologists. The committee produced the Principles for Investigative Interviewing which were circulated to all police forces in Home Office circular 22/1992 which encouraged officers to see their role as searching for the truth:

1 The role of investigative interviewing is to obtain accurate and reliable information from suspects, witnesses or victims in order to discover the truth about matters under police investigation.

1 Investigative interviewing should be approached with an open mind.

Strength of Evidence	No. of cases	% of admissions	% of denials	% neither admit nor deny
<i>Weak</i>	274	9.9	<b>76.6</b>	13.5
Moderate	363	36.4	45.2	18.5
<i>Strong</i>	430	<b>66.7</b>	16.3	17.0
Total cases	1067	-	-	-

Table 1 (taken from Moston et al (1992) Table 8)

Information obtained from the person who is being interviewed should always be tested against what the interviewing officer already knows or what can reasonably be established.

1 When questioning anyone a police officer must act fairly in the circumstances of each individual case.

1 Vulnerable people, whether victims, witnesses or suspects, must be treated with particular consideration at all times.

The circular marked the start of a very successful investigative interviewing training programme called PEACE that led to changing interviewer behaviour in the UK. PEACE is a mnemonic describing the stages in an interview:

- P** PREPARATION AND PLANNING
- E** ENGAGE AND EXPLAIN
- A** ALLOW INTERVIEWEE TO PROVIDE AN ACCOUNT
- C** CLARIFY, CHALLENGE AND CONCLUDE
- E** EVALUATE EVIDENCE OBTAINED THROUGH QUESTIONING

The national training programme has now become a mandatory part of the curriculum for the training of all police officers. The Youth Justice and Criminal Evidence Act 1999 allows videotaping of interviews with vulnerable witnesses, which can then be used as evidence-in-chief. The Association of Chief Police Officers has conducted a national review of investigative interview training that will recommend further training to take place at five levels or tiers:

- 1 Recruit (or probationary officer) training
  - 1 Investigators in volume crime
  - 1 Investigators in serious crime or specialist interviews with children or vulnerable interviewees
  - 1 Supervisors who would be line managers trained to supervise the interview process
  - 1 Interview Coordinators who would form a national cadre of highly trained and experienced investigators who have made a study of interviewing and can provide consultancy advice in investigations.

## Disclosure of Prosecution Evidence

The government has introduced legislation covering disclosure by the prosecution of all material collected during the course of the inquiry. This has provided a new level of openness and accountability, subjecting the investigation process to new levels of scrutiny strongly reinforcing the notion of an investigation as a search for the truth and curtailing selective disclosure of information by investigators or prosecution. In the UK, the Criminal Procedure and Investigations Act 1996 (Section 23) provides the basis for the disclosure of material gathered during the course of an investigation. (In Canada, the standards were set by the Supreme Court in *Stinchcombe* (1991).)

All information obtained during an investigation must be recorded.

## Criminal Cases Review Commission

The Criminal Appeal Act 1995 created the Criminal Cases Review Commission whose function is to review all allegations of miscarriages of justice. So far over 250 cases have been referred to the Court of Appeal in their seven years of existence. Over two thirds of those resulted in having their convictions quashed. The Commission has reviewed over four thousand cases and currently has 450 cases under review.

A similar review Commission has been established in Scotland, but with wider terms of reference, making intervention easier whenever they suspect a miscarriage of justice. A Home Affairs Select Committee of the House of Commons has investigated cases of historical child abuse and has drawn attention to what it believes to be wide-scale miscarriages of justice (HAC 2002). Cases of this type currently represent a significant proportion of the referrals to the Criminal Cases Review Commission.

## Learning from Miscarriages Of Justice In Canada

A symptom of what can go wrong in investigations and custodial questioning has been described in Canadian inquiries into miscarriages of justice as 'tunnel vision'. According to Justice Cory:

*"Tunnel Vision is insidious. It can affect an officer or, indeed, anyone involved in the administration of justice with sometimes tragic results. It results in the officer becoming so focussed upon an individual or incident that no other person or incident registers in the officer's thoughts. Thus, tunnel vision can result in the elimination of other suspects who should be investigated. Equally, events which could lead to other suspects are eliminated from the officer's thinking. Anyone, police officer, counsel or judge can become infected by this virus.*

*"I recommend that attendance annually at a lecture or a course on this subject be mandatory for all officers. The lecture or course should be updated annually and an officer should be required to attend before or during the first year that the officer works as a detective. Courses or lectures that illustrate with examples and discuss this problem should be compulsory for police officers and they would undoubtedly be helpful for counsel and judges as well."* (Hon. Peter de C. Cory 2001)

This description of 'tunnel vision' in police investigations and criminal justice, together with his recommendations to address the problem are taken from the Inquiry Regarding Thomas Sophonow, a miscarriage of justice case in Manitoba. A previous Canadian Inquiry (the Kaufman Commission on Proceedings Involving Guy Paul Morin) made a similar reference to tunnel vision (Kaufman 1998).

Tunnel vision is an enduring feature of 'cop culture' and the response by practitioners to miscarriages of justice is frequently to go into denial and assume that defendants somehow managed to get off on a technicality.

There is a rising tide of exonerations of prisoners in North America, many based upon DNA testing, which is revealing how frequently miscarriages of justice can occur. A recent review of the convictions of thirty-three innocent persons in Massachusetts revealed that mistaken eyewitness identifications occurred in over half of the identified miscarriages and misconduct by police or prosecutors in over one third. Both are features of 'tunnel vision' (Fisher 2003).

In April 2002, Governor Ryan of the State of Illinois published the Report of the Governor's Commission on Capital Punishment which he established to review death penalty cases in Illinois

and which found almost half of the defendants should not have been convicted. Chapter 2 of that report deals specifically with police and pretrial investigations and makes recommendations that law enforcement agencies take steps to avoid 'tunnel vision'.

Analysis of miscarriages of justice cases reveals that the contributory factors are depressingly similar. The list includes:

- 1 'junk' forensic science
- 1 abuse or misuse of informants, including jailhouse informants
- 1 manipulating witnesses to refute alibi evidence
- 1 misuse of offender profiling techniques
- 1 poor skills for interviewing witnesses and suspects
- 1 fabrication of evidence (perjury) or 'gilding the lily',
- 1 misconduct by lawyers
- 1 the psychological vulnerability of many suspects

Another important factor in miscarriages of justice has been 'cop' and 'prosecution' cultures:

- 1 the unprofessional relationship between corrupt cops and bad lawyers
- 1 'cop culture' where loss of objectivity and bad judgement manifests itself in either 'tunnel vision' or what some have called 'noble cause corruption', which is simply an attempt to control criminal activity by criminal or unconstitutional methods.

Most members of the public take police competence in the investigation of serious offences for granted. However there is mounting evidence from many jurisdictions that this confidence is frequently misplaced and there is a need to encourage greater investigative professionalism.

## Investing to Develop Investigative Professionalism

In the United Kingdom the government has established a Police Standards and Skills Organisation (see PSSO website [www.pssso.co.uk](http://www.pssso.co.uk)). It has identified the lack of detective skills as one of the major challenges facing the police service. A new programme to help professionalise investigating practice is being developed. This will see clear job descriptions being developed for each

police role. A competency framework for each role has also been developed. This will lead to a significant change in the way detective resources are trained and managed. A national register will be created for particular skills, including investigative interviewing. The training will have to be approved by a national board and the training deliverers will have to be licensed. Officers will be required to maintain a professional development portfolio to record the evidence of their continuous professional development. This will involve supervision by line managers, support from mentors and assessment by trained and qualified assessors against the defined competencies and standards. This will inevitably lead over time to a form of 'licence to practice'. Accreditation of the training will provide pathways into Higher Education. A Foundation Degree in Investigation and Evidence is already being developed by the Institute of Criminal Justice Studies, University of Portsmouth to commence in 2004.

These developments should lead to investigators in the 21st Century being skilled, qualified, educated and reflexive practitioners who can enable their agencies to become learning organisations. This is most unlikely to happen through the militarisation of criminal justice in response to terrorism.

## CONCLUSION

Human rights are universal and internationally guaranteed by treaties and regional conventions signed by the State. Any erosion of these rights during custodial questioning is not only contrary to international law but must inevitably lead to serious doubts about the reliability of evidence obtained through questioning in such circumstances. The reliability of evidence can also be affected by the way investigators adapt to the requirements of the system of justice in which they operate. There would appear to be a number of steps that societies can take in order to minimise miscarriages of justice that result from 'tunnel vision' and over-reliance on confession evidence.

Good pre-trial investigation and custodial questioning processes will provide better evidence, reduce the over-reliance on confession evidence and encourage a search for the truth. Making better use of forensic evidence

and more thorough questioning of victims and witnesses to enable them to give their best evidence will be more likely to enable courts to reach the truth. Greater sensitivity in interviewing those who are vulnerable would prevent many future miscarriages of justice. Quality legal representation for accused at public expense and disclosure of prosecution evidence are important safeguards. Formal systems for reviewing alleged miscarriages of justice are an important investment. Independent status for forensic science laboratories should prevent some of the 'junk' science that has been a feature in miscarriage of justice cases.

There needs to be greater recognition that truth and justice suffer when criminal justice systems become too adversarial. As Stephenson (1992) identified, many of the current systems are fundamentally flawed. New approaches to professionalising investigative competence are being developed which should lead to 21st Century investigators being skilled, qualified and educated in their disciplines, including investigative interviewing. Sound scientific research should be the foundation upon which this new professionalism is built. There is sufficient common ground in the academic and practitioner communities for evidence-based best-practice statements to be agreed which not only reinforce ethical values and respect for human rights but also investigative effectiveness, minimising the risk of false confessions and miscarriages of justice and the need for militarisation of criminal justice which is so threatening to the principles of liberal democracy.

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# Romeo Phillion: 65 going on 32

*Romeo Phillion was released on bail on 21st July 2003 after 31 years in prison, making him the longest-serving wrongly convicted person in Canada and setting a record that we hope will never be broken.*

When Justice David Watt released Romeo Phillion on bail last year he set an important legal precedent: Romeo was the first person ever granted bail pending ministerial review of his wrongful conviction. (Since then, another applicant – Jim Driskell – has been released while waiting for a decision on his review.)

AIDWYC lawyers James Lockyer and Phil Campbell argued on his behalf, based on the application AIDWYC and the Osgoode Hall Innocence Project had prepared for the Minister of Justice. Countless hours of work were also contributed by Romeo's sister, Simonne Snowdon, and her friend, Christine Simonelli, who put up the \$50,000 bail between them.

Visiting Romeo last month at Simonne's home in Mississauga, it became quickly apparent that he is still excited by having the chance to do many activities for the first time. As is common among those who have been wrongly convicted, he feels as though he is the same age he was when he first entered prison. Romeo explains: "I've always said that. I was 32 years old when I got convicted, and I still feel 32. My life starts when I got out. I feel like a kid, and I'll be 65 next month on April 29th".

He savours the little things in life that most of us take for granted and is obviously deeply touched by the many small gestures of kindness and support he has received, often from complete strangers. Someone sent him two Blue Jays tickets as a gift, another sent him a fishing rod when they read in the newspaper that in prison he had dreamed of going fishing. The pen with which Justice Watt signed his release, the court schedule for that day with the smiley face the registrar drew on it for him, a clock he was presented by Sheridan College – where he was so proud to have had the chance to give a talk to students about his experience – all are brought out and displayed as special treasures.

Since his release his family have gathered around him to help take him through the everyday tasks that were initially unfamiliar and confusing. He has learned how to cope with modern technology such as using an ATM (the first time he saw one, he exclaimed "Oh my God, the machine gives you money!")

"At first, everything was so fast. Mississauga was all built up – it had just been bush before – and I was scared and

nervous in cars, but now I'm used to it. I like going out and I like going to the store, to visit my brother in Burlington, and my niece takes me everywhere, to the mall, to



*Simonne Snowdon and Christine Simonelli (far left), Romeo's grand-nephew Aaron Snowdon (far right), lawyers James Lockyer and Phil Campbell and Innocence Project Directors and students (Dianne Martin, Chris Sherrin, Pieter Joubert and Anna Martin) surround Romeo (centre) on the day of his release.*

doctors' appointments, everywhere I need to go.

"No Frills", that was a bit overwhelming. A lot of stuff that I hadn't seen before that they put out on the market. So many things to choose from. But I like to go shopping. And I like video games."

Without the support of his family it's hard to imagine how Romeo could have coped.

"But I'm at a different level than they are, I don't want to call it 'institutionalized', because I'm getting out of it now, but if they understand it then it makes it easier for me", he says. "I feel different now from when I first came out. The first two months or so I was always looking every way and was a bit nervous. I was afraid if I go out that I may get lost because I didn't know the surroundings because it's grown so much. But I still have stress waiting and waiting for the decision from the Minister of Justice. It's so slow. They were really quick at putting me in, but taking me out is a bit longer!"

Though there was nothing to prepare Romeo for the sudden transition from one reality to another completely different one – all he received was a letter informing him of his court date and the time he would be collected to go there – this contrasts sharply with the support he has received since he was released. Romeo, Simonne and his brother-in-law, Don, can't say enough good things about

Deborah Rudeck, his social worker, who they describe as practically part of the family. She's helped him apply for a disability pension, for clothing and grocery allowances and, as Simonne says, "tries to help us in every which way but loose".

There's also a big difference in the medical care Romeo is now receiving. A number of suicide attempts while he was in jail, including swallowing a razor blade, have left him with some disabilities and he will need to undergo a stomach operation shortly. His dentures are 15 years old and have to be periodically crazy-glued together, but one of the first things he'll do once his pension comes through in May is replace them. Though things are tight financially, he hopes he'll then also be able to save a little each month so he can look forward to a future with some measure of independence.

"I'd like to have a little ranch and lots of animals, like goats, chickens, sheep, a couple of horses maybe."

I comment on the fact that he seems remarkably positive and cheerful, despite my probing for details of the inevitably more difficult aspects of his re-adjustment to society.

"I have to. It's in me. I don't feel no hate towards nobody, no grudges against nobody. That would create me being bitter and I don't want to be that. Who wants to be that? I want to meet people. I want to laugh, I don't want to cry. Like ever since I'm out, I'm enjoying every second of it. I'm out, you know. But I'm still not free, and that bothers me. My name's not clear, I'm still going around with a cloud over my head that shouldn't be there. And I'm still on bail, I've still got certain rules to go by. I can't go and see my twin brother in B.C., because I'm stuck. I have to stay in Ontario. (Remaining in Ontario is a condition of his bail.) I can call him, but I'd like to be able to jump on a plane and go and see him. So I've stepped into a larger prison. But I'm still there. I can't go past that line. I'll be glad when it's over with, so I can get on with my life."

"There's a lot of things I'd go and see but I can't depend too much on other people like that. And I don't have a license (though he's applied for one and plans to take a driving test) and I don't have the money for wheels. I'd like to go to the CN tower; I haven't been there yet. But I've got to go a step at a time, there are things

I'll get to doing when I cross that bridge."

Another one of Romeo's pastimes and one that seems to have proved therapeutic for him is visiting the local courthouse.

"Yes, that's right. I like to go to court and sit down in the courtroom and it's a change, I'm in the visitors box now, I'm looking in. I'll never be in the prisoner's box again, never. And the first time I go there the cops were all looking at me and they're like 'what are you doing here, you been charged?' and I say 'no, no, no I've got no charges, I'm just a spectator'" and we're all laughing.

"I think about things like that to do and I do them and then I know how I feel about them. And I feel great when I'm in the courtroom listening, and free. I look at the prisoners and I was one of them, you know. That gives me a good feeling of being on this side."

But how, I ask him, after his experience, can he watch that process taking place and have any kind of faith in the results?

"It's going to take time for that. It's going to take time. The more I see people get out on bail on cases like this, the more confident I will be. And other than that I won't be confident. I tell you there's a lot more inside that's in the same boat as I am. And I hope you'll take care of them. Then I'll have faith in the justice system when there's about a hundred coming out."

Aside from urging police not to fall into the trap of 'tunnel vision' and prosecutors to honour their obligation to disclose evidence (both factors which led to his

wrongful conviction), he advocates that police use video cameras for all interrogations (now the court-imposed standard in Canada, though not in the U.S.) and not to stand by and do nothing when they see someone do something wrong. He'd like to "shake the hand" of the anonymous person, presumably in the Ottawa police, who found a way to get the suppressed alibi evidence to him which eventually led to his release. But he singles out the parole system for special criticism:

"People say, 'they all say they're innocent'. You know what, they don't. All these years they just looked at me, yeah you were convicted, to us you're guilty. They didn't want to listen, they just ignored what I was saying. So they've got to start to consider the possibility that someone could be telling the truth. But they just want you to sit there and feel remorse for a crime you didn't commit. It's a farce."

And what about the thoughts that must come sometimes about the alternative life that was lost to him, about what 'might have been' if he'd not been in jail all these years? How does he cope with that?

"I don't really think about it. It would get me down. I just leave it aside, don't forget it, just leave it aside and when the time comes to deal with it, then I'll deal with it. I can't walk around thinking about that. It's going to come, it's coming, just deal with it when it comes. Right now let's deal with what's ahead."

He speaks too of a pivotal moment during his incarceration when he moved from despair to hope. As he lay on the operating table after his last suicide attempt, the surgeon asked him why he kept doing it. "I



Romeo (right), Simonne and their brother Armand some years before his conviction

## Jim Driskell

Romeo Phillion's successful bail application set the precedent for the November 2003 release of Jim Driskell after more than 13 years in jail.

Manitoba Court of Queen's Bench Justice John Scurfield determined that it would be unconstitutional for Mr. Driskell to remain in prison pending the application for ministerial review of his conviction.

In his judgment he wrote: "When the evidence is viewed as a whole, including both the original trial evidence and the new evidence, I am driven to conclude that Mr. Driskell has met the very high standard for release.

"The new evidence does not simply identify procedural irregularities as suggested by the Crown. It goes to the heart

of the Crown's case... In my opinion, there is a high degree of probability that the new evidence would have been admissible at the trial of this matter if it had been available and that it might reasonably have affected the result. Thus, I have very serious concerns as to the reliability of the conviction... If this were a simple appeal of the conviction, the court's focus would be on whether the appellant has demonstrated by the new evidence 'a reasonable possibility that the verdict might have been different'... In that regard, the DNA evidence alone is sufficient to lead me to this conclusion. It proves that a material piece of evidence upon which the jury may have relied was wrong."

A preliminary assessment by the federal Justice Department had already concluded that "there may be a reasonable basis to conclude that a miscarriage of jus-

told him my story and he said, 'Oh man, that's not how you're going to win. Live and fight the bastards.' That's exactly what he said and ever since then that's what I've done."

Refusing to take parole as "only for the guilty", he found strength and personal integrity in standing on principle, in the knowledge that he was right and that he would not leave prison until he left on his own terms - on bail, not on parole.

I asked what he would say to someone else who today is still sitting in a jail cell experiencing the same kind of despair that they will never be free unless they admit guilt for something they didn't do?

"Don't give up. Never give up. If you're innocent, don't take parole and the truth will prevail. They've re-opened all these cases, like mine, and that's the light in the tunnel. No matter how long it takes, don't give up. If I can do it for 31 years, then you can do it. Keep writing to people, to AIDWYC, to one of the Innocence Projects. It WILL happen, the only thing I can't tell you is when."

With his experience, Romeo speaks with a special voice of authority, his words carrying a weight that nobody else's can. And he had something to say to the general public too, reminding them that they have been paying for those 31 years of incarceration while the real perpetrator was out on the street: "Wake up, you're paying the taxes. You're just as much involved in this as anybody else, so wake up and smell the coffee and look at what's going on!"

"Hey", Don interrupts, feigning annoyance, "that's my expression 'wake up and smell the coffee' you've stolen there."

"Oh, yeah, and if you have a brother-in-law like this, well then that's a heavy load, but you don't have to get one like that.", Romeo quips, ensuring he gets the last word!



Rubin Carter with Jim Driskell

tice likely occurred."

A few days earlier, Chief Justice Jeffrey Oliphant had ordered the contents of a 1993 Winnipeg police internal review of the case to be made public. That review, which AIDWYC had sought to have produced for a long time, roused the interest of the media and public in the case, and provided the basis for some of the arguments made at the bail application.

## Finding my Own Humanity

by William Sampson

*William Sampson and his five co-accused were released from prison on August 8th, 2003 after being granted clemency by King Fahd of Saudi Arabia.*

As I prepare to enjoy an unexpected birthday, I am reflecting on events since my release eight months ago. At times it all seems surreal. Life for me will never be as it was; quite frankly I am not interested in its return to normal however that is defined.

Having expected and lived with death, my subsequent freedom is all the sweeter and more interesting than it might otherwise have been. Through the brutal inhumanity of my captors, I have found my own humanity. The process through which I went has left me battered and damaged, but still capable of rebuilding. What was done to me no one should suffer for any reason.

I will bear the physical scars permanently; mentally I know that I am healing and will continue to do so. The sensations that we all take for granted have been in part refreshed. Each smell, each taste and each touch is a novelty. After more than 2 years 7 months of sensory deprivation so much has had to be learnt. In some respects, I feel at times like a child given the keys to a toy store. Long may such feelings continue.

The first few months of freedom was taken up with medical matters. The condition of my heart and coronary arteries is stable but damage remains and is of concern. Dental work was completed by the end of February, giving me the ability to chew properly for the first time in 3 years. My physical condition is adequate, but there are still orthopaedic problems that need to be addressed, some of which will never be rectified. Whilst this is something that I must come to terms with, it does not concern or worry me. I still find

sleeping in a bed to be uncomfortable, and my table manners still have a touch of the farmyard, but slowly and surely friends and family are domesticating me.

Other time available has been divided between contacting and visiting friends and supporters, and in seeking redress for the crimes committed against me. The support and concern of so many strangers has touched me deeply. It has made me realise just how lucky I am. As for redress, I am working with the other detainees (Peter Brandon, James Cottle, James Lee, Raf Schyvens, Glenn Ballard, Les



Walker, Alexander Mitchell and myself), with Redress (an human rights NGO) and I am represented by Geoffrey Bindman, Mark Emery and Tamsin Allen of Bindman & Partners.

The group of detainees are pursuing redress for the crimes committed against us by officials of the Saudi Arabian government. To that end, Walker, Mitchell and I with our lawyer Geoffrey Bindman, are trying to bring an action against the officials concerned through the British courts. At present our case is before the Court of Appeal, alongside that of Ron Jones (also in litigation over his treatment at the hands of Saudi officials) and Redress. What is being argued is not the nature of the crimes committed against us, but whether or not we have the right to actually bring such a case. The Saudi Arabian government is arguing that under the terms of the British State Immunity Act (1978) we have no right to bring our case. The situation is similar to that in Canada, where in *Bhouzari v. Iran* the Canadian State Immunity laws are being used to prevent an individual from seeking redress for crimes committed against them by a state.

The national governments of the injured parties involved (Canada, Britain and Belgium) have seen fit to pass no comment on the actions of the

Saudi Arabian government or its officials. Should said governments conduct even the most cursory review of the facts of our treatment, they would be forced to conclude that our basic human rights were violated, that there was neither transparency nor due process in the application of what passes for law in that country. They would also be forced to conclude that the confessions extracted were obtained by torture. Ultimately, the governments of Canada, Britain and Belgium would have to support our claims of innocence.

This begs the question as to why the governments concerned have not conducted such an investigation and have not provided any support to the claims of the former detainees. In the case of the British government, the Department of Constitutional Affairs is actively supporting the Saudi state by joining in the Court of Appeal hearing in support of the State Immunity Act. In *Bhouzari v. Iran* the Canadian government is supporting the Iranian one by vigorously defending the application of its State Immunity Act, ensuring that its citizens do not have a right to seek redress for crimes committed against them by foreign states.

The concept of state immunity is outdated and inimical to any definition of human rights because it denies the right of individuals to seek redress against the actions directed against them by a foreign government.

In countries where the judiciary is not independent, where there is no due process and judicial transparency, it is impossible to seek redress. Under such circumstances, nation states such as Canada, Britain etc. need to recognise the right of at least their own nationals to seek redress in a legal and judicial environment that will allow them a fair hearing of their grievances. Anything less plays into the hands of regimes that continue to have no concern for human rights, and have no reason to reform. It is towards this end that I have become committed.

If I have one hope for the future, it is that I can live up to the freedom that was won for me, to never forget those that I have left behind, to never forget those who have been wrongfully arrested, wrongfully convicted and abused.

William James Sampson

16th April 2004

## A Father's Perspective

by John Suffield

*John Kamara was released from prison in May 2000 when his conviction was quashed by the UK's Court of Appeal after the case had been referred back to them by the CCRC (Criminal Cases Review Commission). He had spent 19 years in jail protesting his innocence in the March 1981 murder of John Suffield's son, also called John.*

Whilst browsing the Internet I was linked to your website and read the article by James Lockyer concerning the case of John Kamara. I am John Suffield, senior, and John Kamara was one of the two men who were originally convicted for the murder of my son, also named John Suffield.

Initially I should like to congratulate Mr. Lockyer for the accuracy of his review of John Kamara's appeal against conviction. I should also like to thank him for maintaining the dignity of my late son by referring to him by the title "Mr." Invariably the legal authorities refer to him by his surname only. This lack of respect for his memory is highlighted in the published findings of the Criminal Court of Appeal in the case of Regina v John Kamara in March 2000. It may seem to be such a small matter but it is a mark of respect which is deeply appreciated by my family, and in particular his mother.

As you will know, two men were convicted of my son's murder, John Kamara and Raymond Gilbert, and each given a mandatory life sentence of 12 and 15 years respectively. After conviction all contact between the law enforcement agencies and my family ceased. At that time there were no victim support or counselling services available to us and we were left to our own devices to rebuild our lives as best as we were able.

John is survived by his five younger brothers and sisters, his mother and myself, his father. Thankfully we have long since come to terms with our tragic experience and it is true to say that we now all enjoy a quality of life which, if different from the days before John died, is still the envy of many. We remember John, not for the horror of his death, but rather for the wonderful memories we all have of his time with us. We have learnt to count our blessings and we thank God for the privilege of having the experience of life with John.

The terms of a mandatory life sentence had never been explained to us and as a consequence we all thought that the two men had been released from prison, having served their respective tariffs of 12 and 15 years. We were therefore shocked when, in 1996, we were told by a national television company here in the UK that for a number of years they had been investigating the case of John Kamara and had come to the conclusion that he was innocent of the charge of murdering

our son. They intended to produce the evidence in a sixty-minute documentary which would be given national coverage. The director, presenter and a researcher visited us in our home and produced to us the evidence on which their claim would be based. Though it was persuasive, as a family we were not competent to judge the quality of the evidence. We therefore publicly called upon those whose responsibility it was to

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*"The media appeared to be confused over our position. They expected us to be angry and confrontational. That would have been good copy."*

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examine such evidence to give their considered judgement. I further stated that no one, least of all my family, would want an innocent man detained in prison for a crime he did not commit.

The media appeared to be confused over our position. They expected us to be angry and confrontational. That would have been good copy. I made many statements to the media and agreed that this programme would be traumatic and force my family to relive the horrors of the day John died but on this occasion our feelings must of necessity be secondary to the greater cause of justice.

It is a matter of record that in the following years the CCRC referred the case of John Kamara to the Criminal Court of Appeal where his conviction was quashed. My wife and I attended the appeal as observers because my family needed to know the truth of what happened on the day John died. Like the presiding judiciary we were convinced of John Kamara's innocence.

Outside the court I gave many interviews to the national media. Again they expected my family to be angry at the judgement. In fact the opposite was our view and I told them that I felt a degree of remorse for I had used the persona of John Kamara to vent my anger at his alleged involvement in the death of my son. I would need to make my peace with John Kamara.

On returning home to Liverpool I was surprised to find that our acceptance of the court's judgement was not the position being taken by the police service. They had made a press statement to the effect that they were not looking for anybody else in connection with my son's death and privately they told me that they still felt that John Kamara was guilty of his murder.

I responded, publicly, that this was a position we, as a family, could not accept. We had a duty to support our criminal justice system. The appeal court had quashed the conviction of the crown court of 1981 which meant that the "guilty" verdict was no longer sustainable. It is a maxim of English law that

a man is innocent until proven guilty and therefore John Kamara was innocent of the charge. I added that the police service were conspicuous by their absence at the Court of Appeal and that nobody who attended the three days of the hearing could fail to be convinced that John Kamara had been the victim of a miscarriage of justice.

I was concerned about the public perception of the appeal court's decision. There was much national comment about the circumstances that had led to this miscarriage of justice and there were calls for an enquiry. On the other hand, some in the legal profession, including John Kamara's original defence solicitor, told me privately that "John Kamara was as guilty as hell". How can they ignore the judgement of the court?

I felt it was my duty to back my words with positive action. I therefore agreed to meet with John Kamara in public and with the media in attendance. This I did within three days of the appeal being upheld. I shook hands with him and wished him well for the future. I assured him that my family accepted the court's decision and we looked upon him as an innocent man. This was the truth of the matter. I find that much of what I said at the time and my family's response to the judgement has been recorded on the Internet and can be found by inserting my name in the Google search engine.

For the past years I have devoted my time to helping those families who have experienced a homicide within the family. Despite our differences over the court judgement I enjoy an excellent relationship with the police service and other law enforcement agencies. I frequently give talks to these agencies and highlight the emotional problems experienced by the families of victims of homicide. I help in the training of police family liaison officers and my assistance is requested not only by the local police service but also other services beyond the boundaries of Liverpool.

My experience has not blinded me to the plight of offenders' families. I try to create an awareness that the offender's family are also victims of the crime. Invariably the offender will have parents and grandparents. He, or she, will possibly have a partner and children. They too will be faced with a form of bereavement when the offender is committed to prison for a long sentence. They too will experience emotional problems and could well be ostracised by their local community. They are worthy of our consideration.

There is so much more I could say about our experience over the last nine years since we became aware of John Kamara's claim of innocence. Perhaps one day I will write a book! In the meantime I wish you well in the good work you do, for undoubtedly there are many more miscarriages of justice awaiting to be highlighted.

Yours faithfully, John Suffield.

# Kevin Cooper

A press conference was held at Queen's Park on January 26th, 2004 on behalf of Kevin Cooper who has been on death row for 19 years and was scheduled to be killed by lethal injection in California on February 10th, 2004.

Rubin Carter, who himself faced a death sentence in New Jersey for three murders he did not commit in 1967, said "It is horrifying that, 37 years after my conviction for a triple homicide that I did not commit, Kevin Cooper is about to be executed for a quadruple murder he likely did not commit. I am going to California this week to fight for Mr. Cooper, and we must convince Governor Arnold Schwarzenegger to grant him clemency."

Steven Truscott, who was sentenced to death on September 30, 1959 when he was 14 years of age, said, "I spent three months on death row in the Goderich Jail for a crime I did not commit. I remember the horror of those three months, and then think of the 19 years that Mr. Cooper has been in the same situation, and words fail me. All people of good conscience must condemn what is happening to him."

Mr. Cooper was sentenced to death in 1985 for the 1983 murders of Douglas and Peggy Ryen, their 10-year-old daughter Jessica, and an 11-year-old

boy, Christopher Hodges. All four were hacked to death in the Ryen house. All the victims were white. Mr. Cooper is black. Outside the venue of his preliminary hearing, people hung an effigy of a monkey in a noose with a sign reading "Hang the Nigger"!!

The sole survivor of the attack was an eight-year-old boy who initially described the perpetrators as white or Latino. Another man, Kenneth Koon, has since confessed to having committed the murders with two accomplices.

Rubin Carter and Steven Truscott were joined at the press conference by Howard Hampton, the Leader of the Ontario N.D.P., John Sewell, former Mayor of Toronto, Wayne Samuelson, President of the Ontario Federation of Labour, Dr. Howard McCurdy, a leader in the Canadian black community and former member of parliament, and AIDWYC Director James Lockyer.

Supporters from all over the world emailed, phoned and faxed Governor Schwarzenegger's office, including Siegfried Nagl, the Mayor of Graz,

Schwarzenegger's home town in Austria, but the Governor nevertheless denied Mr. Cooper's bid for clemency.

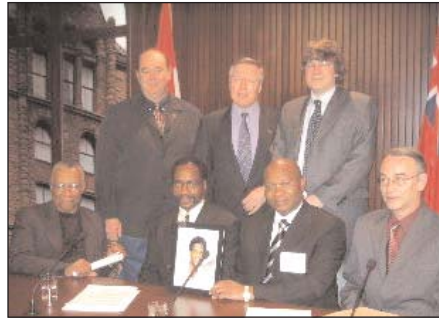
However, a last-minute stay was granted by the 9th Circuit U.S. Court of Appeal, to allow the DNA tests that would resolve his case "once and for all".

Despite three appeals to the United States Supreme Court by the District

Attorney and Governor Schwarzenegger to lift the stay, Kevin Cooper remains alive and waiting for the DNA evidence that could clear him to be gathered and tested as well as for fresh new evidence to be heard.

"There has been a tremendous amount of pressure" AIDWYC's Win Wahrer said. "We are into a crucial period now. The California justice system is under an international microscope. Most countries in the world find it absolutely barbaric and appalling that the death penalty exists. At the very least, any citizen deserves to have every stone turned over before a decision of this magnitude is made."

AIDWYC officially endorsed Kevin Cooper's case in January 2004.



# William Mayo

by Lon Garrick Rose

*Lon Rose is a Toronto lawyer and AIDWYC director*

William Mayo was convicted in Georgia in April 1992 of robbery, aggravated assault and burglary and sentenced to two life terms in prison although there was no death or serious injury as a result of the crime.

At the time of the incident Mayo was a 26-year old role model for black youth and was involved in mentoring underprivileged teens. He had no criminal history. He had an excellent academic record and was about to graduate with a major in psychology and a minor in criminal justice.

On November 3rd, 1991 Mayo took a road trip from Chicago to Atlanta. He brought with him two young men, Wilson and Thomas, whom he had been mentoring, to show them campus life. He also wanted to pick up some belongings from acquaintances he had stayed

with in the past and, parking near their home, went to collect his things, leaving the two young men in the car.

While he was gone, Wilson and Thomas left the car and entered a nearby home belonging to a Mr and Mrs Johnson, an older couple whom they robbed and assaulted at gunpoint.

Returning to the car, they met up with Mayo again and drove off. A short time later the car was stopped by the police and a gun was found under the driver's seat. All three were arrested.

At trial, Wilson and Thomas who, although young, were established criminals, testified that Mayo had entered the Johnson's home with them, held the gun and told them what to do.

Although the Johnsons had first reported to police that there were only two perpetrators, after they had been told that three were pulled over in the car, the story changed to include three assailants. They failed to pick Mayo in a photo line-up on the day of the incident and only identified him five months later in court.



A year after the conviction, Thomas (who, it later turned out, had been using a false name) recanted his testimony to say that Mayo had no involvement in the crime and that he had been coerced into blaming him by the police and prosecutor. Wilson also recanted and testified that he lied at trial, that Mayo had not been involved and that he had been given a deal for implicating him.

Despite this testimony, the case was not re-opened. The two co-accused still insist that Mayo had no knowledge of the crime and have spoken out in the media as to his innocence. There is no physical evidence connecting Mayo to the gun, the property taken or the crime scene. There are no inculpatory remarks attributed to him and he has consistently maintained his innocence.

William Mayo appears to be factually innocent of the charges. A combination of factors have resulted in an obvious injustice.

The WJM Innocence Coalition in Atlanta ([www.freemayo.com](http://www.freemayo.com)) are working towards securing a new trial for him and AIDWYC officially endorsed his case in September 2003.

# The Lamer Inquiry



Greg Parsons

Newfoundland & Labrador's inquiry into the wrongful convictions of Ronald Dalton, Greg Parsons and Randy Druken, headed by former Chief Justice of Canada Antonio Lamer, commenced in September 2003.

Lamer set aside a week in November to consider the contradictions posed by the inquiry's terms of reference. AIDWYC, represented by Melvyn Green, was invited to participate in this exercise. The Commissioner ultimately

determined that he had the constitutional authority to decide Dalton's and Druken's factual innocence and, more recently, his mandate was expanded to allow him to review the correctness of Parsons' compensation.

The first phase of the inquiry covered compensation related to the eight-year delay in Dalton's appeal; phase two, dealing with Greg Parsons' case, began in December.

"If anything comes from this inquiry, I hope it's change," Greg said. "When your five-year-old child looks at you and says 'I know why you were in jail daddy, because you killed your mother' – it makes you angry".

Yet one of the lead investigators in his case was so infected by 'tunnel vision' that despite the subsequent conviction of the actual perpetrator, he still

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refused to accept Parsons' innocence during the inquiry.

The third phase of the inquiry, dealing with the case of Randy Druken, has been postponed until September as the result of a provincial public service strike.



Dr. Rubin "Hurricane" Carter and Lynne Weathered

## Honourary Doctorate

by Lynne Weathered

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

Griffith University was privileged to award an honorary doctorate to AIDWYC's Executive Director, Rubin "Hurricane" Carter, in recognition of his contribution to civil rights and social justice throughout the world, and for choosing life and humanity

the wrongly convicted. He also devotes time and attention to supporting the spirits of wrongly incarcerated people and also to helping those eventually released in their difficult transformation to life 'on the outside'. He is particularly able to help others through his wisdom and remarkable lack of bitterness over the harsh hand in life he had been dealt.

Mr Carter has developed a profound knowledge of the law respecting remedies for wrongful convictions and dedicates his time, energy and prestige to securing justice for the wrongly convicted in Canada, in the United States and in a growing number of other countries around the world including Australia.

Mr Carter continues to inspire the work of the Griffith University Innocence Project as he does with Innocence Projects and other like-minded organisations around the world, as well as all those who hear him speak.

Mr Carter has tirelessly given of himself through a deep-seated commitment to criminal and social justice. For him to continue to give so much, after so much was taken from him, illustrates the spirit of the man before us today. Rubin Carter, through his life, allows us to realise that it is possible, even through the darkest hours, the darkest days or darkest years, to never give up hope, to believe in yet unknown possibilities, to dare to dream."

over defeat and bitterness.

Griffith University and the Innocence Project hosted a special ceremony and dinner in Brisbane, Australia on Thursday, 9 October 2003 at which the doctorate was awarded. Following are excerpts from the doctoral citation.

"Mr Carter is active in attempts to secure the release of

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  
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)

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

**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 0XL, UK. (England & Wales only)  
[www.mojo.freehosting.net](http://www.mojo.freehosting.net)

**WJM Innocence Coalition**  
1100-J Riverwood Lane  
Roswell, Georgia 30075, USA  
[www.freemayo.com](http://www.freemayo.com)

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Fax: (416) 203-9088  
email: aidwyc@on.aibn.com  
website: www.aidwyc.org

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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