Miscarriages of Justice: Limits to Reparation

The harmful consequences of miscarriages of justice and the pressures on prisoners maintaining innocence to admit their guilt

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How big is the 'iceberg'? a zemiological approach to quantifying miscarriages of justice

Michael Naughton

Introduction

Previous critical researches into miscarriages of justice in England and Wales' Criminal Justice System (CJS) have not generally addressed the question of the likely scale of the miscarriage phenomenon in any systematic way. Rather, they have generally been directed towards individual *exceptional* miscarriage cases, brought about through extra-judicial procedures, that have exemplified particular 'errors' or 'fallibility' in the CJS's legislative framework. Despite this, many critical analyses of miscarriages have routinely speculated upon the possible scale of England and Wales' miscarriage phenomenon by asserting that the exceptional miscarriage being 'exposed' is the 'tip' of some much greater 'iceberg'. But, just how big the iceberg might be has hardly received any critical attention at all.

In this context, this essay draws from zemiology the holistic study of the social, psychological, physical and financial harmful consequences of social phenomena. It argues that by focussing upon exceptional cases, those cases of criminal conviction that are routinely quashed by the Court of Appeal (Criminal Division) (CACD), or more mundanely quashed by the Crown Court from the magistrates' court have received no attention at all. As a result, the likely scale of England and Wales' miscarriage phenomenon that can be inferred from the official statistics, the size of the official iceberg, has been overlooked. In consequence, an extensive range of harmful consequences that also accompany *routine* and *mundane* miscarriages have also been neglected. In conclusion, it is noted that there are a number of legitimate structural rules, procedures and practices that can cause miscarriages that might never be acknowledged in the official statistics of successful appeal against criminal conviction. When these are also considered, the true number of miscarriages of justice may be higher than portrayed in the official statistics, as may the harmful consequences.

To this end, the essay is structured into three parts. Firstly, England and Wales' appellate structure is briefly outlined. Secondly, the Lord Chancellors Department's (LCD) official statistics of successful appeals against criminal conviction are analysed and three categories of miscarriage discerned the *exceptional*, the *routine* and the *mundane*. Finally, the third part discusses the zemiological approach to social phenomenon and the significance of incorporating even the most apparently routine and mundane of quashed criminal convictions within the critical miscarriage rubric.

The appellate structure

Within England and Wales' CJS there are a number of appellate opportunities available to those who receive criminal convictions. In order of ascending judicial superiority:

- the Crown Court deals mainly with appeals by persons convicted in magistrates' courts against their conviction or sentence or both;
- the Court of Appeal (Criminal Division) (CACD) hears appeals in criminal matters from the Crown Court;
- an appeal can be made to the House of Lords where it has been certified by the CACD that a point of law of general public importance was involved in a decision;
- the Attorney General has the power to refer what are thought to be unduly lenient sentences for offences triable on indictment to the Court of Appeal;
- the Criminal Cases Review Commission (CCRC) can refer cases that have already been through the appeals system and have not succeeded for any reason back to the appropriate appeal court' (Chapman and Niven, 2000, pp. 42-43); and,
- when all domestic appellate attempts have been exhausted, criminal appeal cases can also be taken to the European Court of Human Rights at Strasbourg (see European Court of Human Rights website: http://www.echr.coe.int/).

In terms of official miscarriage statistics, the LCD collects statistics from each of these appeal courts in terms of applications for leave to appeal and their success. Taken together, these statistics would provide a picture of the scale of England and Wales' miscarriage iceberg that can be inferred from the official statistics.

Exceptional miscarriages

Although the LCD publishes official statistics of *all* the criminal convictions that are successfully quashed upon appeal in the various appeal courts, current official definitions, public perceptions and critical miscarriage discourse have been almost entirely focussed upon the cases of *Stephen Downing* (see Vasagar, 2000; Vasagar, 2000b; Vasagar and Ward, 2001); *Derek Bentley* (see Campbell, 1998; Birnberg, 1998; Oliver, 2002); *Mahmood Mattan* (see Lee, 1998; Wilson, 2001), *John Kamara* (see Quinn, 1999; Carter and Bowers, 2000; Gillan, 2001), the *M25 Three* (see Hardy, 2000; Bird, 2000; Times Law Report, 2000), the *Cardiff Three* (see Carroll, 1998; Lewis, 1999); and so on. All of these were exceptional cases of successful appeal against criminal conviction that were referred back to the CACD by the CCRC having previously failed through routine appeal procedures.

Table 1 represents the number of criminal convictions that were quashed by the CACD as a result of being referred back to the CACD by the CCRC since it started handling casework in March 1997. In the year 1998, for example, there were 7 cases that were successfully quashed in the CACD after referral by the CCRC. This compares with a total of 341,000 criminal convictions from the Crown and magistrates courts in the same year, 1998 (Home Office, 2000). Thus, depicting only the minutest of icecubes.

Table 1: Criminal Cases Review Commission: Successful quashed convictions after referral back to CACD*

Year	1997**	1998	1999	2000	2001***	Total	Average per year
Number of quashed convictions	0	7	10	10	9	36	7

Source: Criminal Cases Review Commission, 2001. * The methodology upon which this analysis is based differs from the CCRC's own analysis in that it only includes those criminal convictions that were successfully quashed after referral back to the CACD that involved no further action. That is, this analysis does not include

those 'quashed' convictions that were included by the CCRC that resulted in an altered charge or sentence. Nor does it include those 'quashed' convictions that the CACD referred for retrial. ** Figures for the year 1997 are from 31 March when the CCRC started handling casework. *** Figures for the year 2001 are up to and including to October.

This is not to suggest that the trend to focus upon exceptional cases is entirely misguided. To be sure, accompanying this trend is an important 'tradition of CJS reform' (Naughton, 2001, pp. 50-52) whereby the Government has introduced corrective legislation in an attempt to resolve the public crises of confidence that were induced by the high profile that these cases attain. For example, the Court of Appeal (Criminal Division) (CACD) has its roots in the Government's legislative response to the public pressures that were exerted by the *Beck* case, which exemplified the urgent need for a court of criminal appeal (Report of the Committee of Inquiry into the Beck Case, 1904; Pattenden, 1996); capital punishment was abolished in the Government's legislative response to the public crisis of confidence in criminal justice that was engendered by the cases of *Bentley*, *Evans-Christie* and *Ellis*, which together exemplified the question of the justness and/or appropriateness of the continuance of capital punishment (see Block & Hostettler, 1997; Christoph, 1962); the Police and Criminal Evidence Act (1984) (PACE) (see Fisher, 1977; Police and Criminal Evidence Act, 1985) which imposed guidelines on police conduct were a consequence of the pressures brought about by the *Confait Affair* which exemplified the consequences of procedural disregard (see Price & Caplan 1976; Price, 1985); and, the establishment of the Criminal Cases Review Commission (CCRC) was a direct consequence of the cases of the *Guildford Four* and the *Birmingham Six* which exemplified the need for an independent body for the investigation of suspected or alleged miscarriages once existing domestic appeal processes had been exhausted (Royal Commission on Criminal Justice, 1993).

In this context, analyses of exceptional miscarriages are important as they often exemplify problems in the CJS's legislative framework in need of corrective reform. But, they represent only a minute part of England and Wales' miscarriage phenomenon. And, they, therefore, capture only a minute part of the harmful consequences that miscarriages of justice engender.

Routine miscarriages

A major limitation of concentrating on exceptional miscarriage cases that are brought to light via the extra-judicial procedures of the CCRC, is that all manner of *routine* miscarriages have been neglected. For, in addition to the *exceptional* miscarriages there are also all those criminal convictions that are obtained in the Crown Court that are routinely successful in appeal to the CACD on a daily basis. Indeed, if 'miscarriages' are also considered to be those criminal convictions that are routinely quashed upon appeal by the CACD, then they can, perhaps, be said to be far more widespread than is commonly first thought. Table 2 shows that in the decade 1989-1999, for example, the CACD abated a yearly average of 770 criminal convictions over 8,470 in total.

Click HERE for Table 2: Court of Appeal (Criminal Division): Successful appeals against criminal conviction 1989-99 (inclusive)

Source: Lord Chancellor's Department (1999) *Judicial Statistics Annual Report* London: HMSO Cm 4786; Lord Chancellor's Department (1998) *Judicial Statistics Annual Report* London: HMSO Cm 4371.

To put this figure into context, as well as to give some indication of the split between the *routine* and *exceptional* miscarriages contained in the official miscarriage statistics, it is worth comparing the CCRC's reported case statistics in a little more detail. If the 36 cases that were successfully quashed upon being referred back to the CACD by the CCRC since 1997 are compared against all the official CACD statistics, then in the year 1997 alone, 832 appeals against criminal conviction were successful in being quashed through routine appeal procedures. But, by incorporating routine miscarriages within critical analyses, the official scale of England and Wales' miscarriage phenomenon increases from an annual average of 7 cases to an annual average of around 770 cases, and the miscarriage iceberg as it is conventionally perceived and understood is increased a hundred fold.

Mundane miscarriages

In addition to successful appeals in the CACD from the CCRC and the Crown Court, criminal convictions obtained in the magistrates' court can be appealed in the Crown Court. When the criminal convictions from the magistrates' court that are quashed upon appeal to the

Crown Court are also taken into account conceptions of England and Wales' official miscarriage phenomenon are even further extended.

For example, Table 3 shows an annual average of 3,546 quashed convictions at the Crown Court for criminal convictions that were given by the magistrates' courts between 1998-2000 (inclusive). If this average is added to the CACD annual average then an official picture of England and Wales' miscarriage phenomenon, the official miscarriage iceberg, is multiplied to an annual average of 4,316 cases.

Table 3: Crown Court: Successful appeals against criminal conviction in the magistrates' court 1998-2000 (inclusive)

Year	1998	1999	2000	Total	Average
	3,980	3,575	3,090	10,645	3,546

Source: Lord Chancellor's Department (2000) *Judicial Statistics Annual Report* London: HMSO Cm 5223; Lord Chancellor's Department (1999) *Judicial Statistics Annual Report* London: HMSO Cm 4786; Lord Chancellor's Department (1998) *Judicial Statistics Annual Report* London: HMSO Cm 4371.

Zemiology

But, are these routine and mundane successful appeals against criminal convictions really miscarriages? Or, are they, as advocates and defenders of the system contend, a manifestation of the safeguards that are contained within the CJS, functioning in the interests of the protection of the criminal suspect population (see, for example, Pattenden, 1996, pp. 57-58). Of course, in a sense the criminal convictions that are routinely quashed by the CACD and mundanely quashed by the Crown Court *are* a sign of 'the carriage of justice' and that people who are wrongly convicted in England and Wales *do* have rights of legal redress. But, safeguards are supposed to exist only for use in extreme circumstances and only then are they supposed to be used in the last resort. By concentrating the critical miscarriage agenda only upon exceptional cases, the safeguard argument is sustained. But, by widening the critical miscarriage gaze to incorporate *routine* and *mundane* miscarriages any notion of the right to appeal as a last resort appellate safeguard collapses. By so doing, safeguards can themselves be conceived as merely routine and

mundane legal procedures that do not stand up to critical scrutiny (c.f. McBarnet, 1981, pp. 11-25).

Another angle on miscarriages that comprehensively calls into question the notion of safeguards and points towards the critical necessity of including *routine* and *mundane* miscarriages within the rubric of England and Wales' miscarriage iceberg is the zemiological perspective. In essence, zemiology takes a more holistic approach to the study of the consequential harm(s) of socio-legal phenomena - social, psychological, physical and financial - that have profound impacts and effects. It is then well placed to determine whether the law is in need of review and/or re-constitution (Gordon et al, 1999; Hillyard and Tombs, 2001).

Elsewhere, these ideas have been applied and the harmful social, psychological physical and financial consequences of miscarriages of England and Wales' CJS have been briefly outlined, and the financial consequences of the likely penal costs of containing the wrongfully convicted more fully developed (Naughton, 2001, pp. 56-61). What have previously received less attention are the crucial zemiological questions of the potential scale of England and Wales' miscarriage phenomenon and the forms of harm that both accompany, and are associated with, routine and mundane successful appeals against criminal conviction. Indeed, from a zemiological perspective the distinction between exceptional, routine and/or mundane miscarriages is not so straightforward. Even the most apparently routine and mundane wrongful criminal convictions also involve an extensive range of zemiological harms, and not always to a lesser degree.

For example, in June 1998, 58 motorists won a joint action against Greater Manchester Police after being wrongly convicted of drink-driving offences. It transpired that a kit that was being used to determine blood alcohol levels contained a fault that actually introduced alcohol into the suspect's sample and gave a positive reading even if the suspect had not been drinking. The zemiological costs attached to this case were as substantial as in many exceptional cases. Some of those concerned served prison sentences, some lost their businesses, several suffered mental breakdowns, and some even tried to take their own lives (see Ford, 1998).

Conclusion

This article has noted the general generic trend of critical researches to focus upon exceptional miscarriage cases that are produced through extra-judicial procedures and the accompanying tradition of CJS reform. Without doubt, this trend and tradition are important and have been significant in effecting many progressive changes to the CJS, such as those described. However, the trend to focus on exceptional successful appeals against criminal conviction serves to reduce perceptions of the true scale of England and Wales' miscarriage phenomenon, and it diverts critical attention from the forms of harm that accompany those cases of criminal conviction that are routinely quashed by the CACD, or more mundanely quashed by the Crown Court from the magistrates' court. As a result, both the likely scale of England and Wales' miscarriage phenomenon that can be inferred from the official statistics, the size of the official iceberg, as well as an extensive range of harmful consequences that also accompany *routine* and *mundane* miscarriages have been overlooked.

It must also be acknowledged that the legislative events that brought about the establishment of the CACD, the abolition of capital punishment, the introduction of PACE (1984) and the creation of the CCRC were not about the correct legality of the challenges in the exceptional cases that preceded them. On the contrary, they were largely brought about because they were able to induce a public crisis of confidence in the CJS by demonstrating the harmful consequences to the individuals in these cases, as well as the future potential harm to other criminal suspects and convicts. This then prompted Government intervention to resolve the crisis by demonstrating, through the introduction of corrective legislation, that the potential harm to criminal suspects that might be innocent of their criminal charges and convictions had been reduced. In this context, a more thorough zemiological analysis of miscarriages, *routine* and *mundane* as well as *exceptional*, might bring about more profound and wide-ranging legislative changes to the CJS that might more appropriately address the potential causes of miscarriages and their accompanying harmful consequences. *Routine* and *mundane* miscarriage cases are of as much critical importance as *exceptional* miscarriages. Not only to the question of the likely size of England and Wales' miscarriage iceberg, but also to questions of the likely size of the accompanying zemiological icebergs of social harm, psychological harm, physical harm and financial harm. In short, if miscarriages continue to be conceived only in exceptional terms not only will they continue to only concern the tip the miscarriage iceberg, they will also only be able to

capture the tip of a range of social, psychological, physical and financial harms that miscarriages engender.

Finally, it must be noted that this essay has only considered the likely scale of England and Wales' miscarriage phenomenon in the entirely legalistic and retrospective confines of the official statistics. That is, a miscarriage has only been considered to have occurred when an appeal against criminal conviction has been successfully achieved. But there are a whole host of additional structural obstacles, barriers and disincentives that also need to be taken into critical consideration to gain a purchase on the full scale of England and Wales' miscarriage phenomenon. For example, there is the 'time loss rule'. Under this 'rule' when the criminally convicted apply for an appeal they are advised that if their appeal is ultimately unsuccessful it could result in substantial increases to their sentence. Research conducted by JUSTICE found that 'the effect is to transform a minor check on wholly groundless applications into a major barrier in some meritorious cases' (Justice, 1994, p. 7). Another example is the Criminal Procedure and Investigations Act (1996) (CPIA) which introduced a regime for advance disclosure that is at odds with the operational practices of police officers, the Crown Prosecution Service (CPS) and defence solicitors. As a consequence, 'errors', whether inadvertent or otherwise, may not be recognised and the result is a system that presents real risks of future miscarriages of England and Wales' CJS (see Taylor, 2001). There are also the potential miscarriages that result from charge, plea and sentence 'bargaining' that induce innocent people to plead guilty to criminal offences that they have not committed (see Baldwin and McConville, 1977).

In this context, the 4,316 miscarriage cases that make-up the annual average of official miscarriage statistics (the official statistics of successful appeals against criminal conviction) can themselves be conceived as just the tip of some even greater miscarriage and zemiological icebergs.

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Why the Failure of the Prison Service and the Parole Board to Acknowledge Wrongful Imprisonment is Untenable

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Abstract: This article analyses key documents that were produced in collaboration between the Prison Service and the Prison Reform Trust. It identifies an organisational inability on the part of the Prison Service and the Parole Board to acknowledge that the courts can return incorrect verdicts and that wrongful imprisonment can, and does occur. It argues that this renders the ways in which the Prison Service and the Parole Board deal with life prisoners who maintain that they are innocent of the crimes for which they were convicted untenable. To demonstrate this, the article distinguishes two broad categories of wrongful imprisonment. It concludes that those charged with a duty of care for, and the possible release of, those given custodial sentences by the courts must, therefore, be prepared to 'think the unthinkable' and make adequate provision for the innocent victims of wrongful imprisonment that are sure to come their way.

Two key sources of information given to life prisoners about the structure of their sentences and the procedures through which they might possibly achieve release from prison are the Prisoners Information Booklets *Life Sentenced Prisoners 'Lifers'* (Prison Reform Trust and HM Prison Service 1998) (to be referred to as *Lifers* in subsequent references in this article) and *Parole Information Booklet* (Prison Reform Trust and HM Prison Service 2002). 'Possible release' because there is no certainty that a life prisoner will be released if they do not satisfy the release procedures (Prison Reform Trust and HM Prison Service 1998, p.2). The format of the booklets is a deliberate 'user-friendly' attempt to inform prisoners through a 'frequently asked questions and answers' guide written from a prisoners' 'voice' that is answered from the institutional 'voice' of the Prison Service and Parole Board.

'Lifers'

Perhaps, the two most important questions and answers contained in *Lifers* to this discussion are as follows. Firstly, the prisoner asks:

> What do I have to do to prepare for release? (Prison Reform Trust and HM Prison Service 1998, p.8)

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The answer from the Prison Service seems fairly straightforward and to give eminently practical advice about how to progress through the prison system:

> The first thing to do to prepare for your release is to work on any areas of concern which contributed to the offence or offences which you were convicted of (known as the 'index offence'). Prison staff will expect you to work with them to see what these areas are when they are preparing your life sentence plan. This may involve you taking part in offending behaviour programmes such as the Sex Offender Programme, or you may have to have drug or alcohol counselling. Working on the areas of concern should help to reduce the risk you present to the public. This is the most important factor taken into account when considering whether you are safe to be released or moved to an open prison. The way you behave in prison plays an important part in decisions about your progress. You need to try to show that you are likely to be able to steer clear of trouble on the outside. (Prison Reform Trust and HM Prison Service 1998, p.8)

It is at once apparent, however, that the answer from the Prison Service does not allow for the possibility that some life prisoners might be innocent of the crimes for which they were convicted. On the contrary, it assumes a particular *kind* of person as constituting the typical life prisoner. Such people are likely to need counselling for either sex offending, alcohol or drug problems; they need to be cured of these problems before they can be released from prison in order to protect the public; and, they need to be able to demonstrate the ability to stay out of trouble.

Perhaps, even more significantly, the prisoner then explicitly asks:

> What if I say I am innocent? (Prison Reform Trust and HM Prison Service 1998, p.9)

The answer from the Prison Service is unequivocal:

> Prison staff must accept the verdict of the court, even if you say that you did not commit the offence for which you are in prison. They need to be sure that areas of concern and offending behaviour are identified and that you work on them. Whether or not you are eventually released will depend on an assessment of the risk you might be in the future, rather than whether or not you have accepted the court's verdict. (Prison Reform Trust and HM Prison Service 1998, p.9)

There is a curious contradiction about this answer. By including the question in a frequently asked questions booklet that advises lifers about the terms and conditions of their sentences and release plans, the Prison Service is implicitly signalling that a significant number of life prisoners would be likely to ask such a question. The answer, however, betrays the organisational inability of the Prison Service to even consider that some life prisoners may be innocent. Instead, they completely side-step the question and merely reaffirm the Prison Service's official position – it does not matter what life prisoners may say, or whether or not they accept the verdict of the court, they are regarded as guilty of the offences for which they were convicted.

It is within this context that the recommendations of the Parole Board about whether or not life prisoners should be released need to be considered. On this matter, *Lifers* describes the organisational remit and

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purpose of the Parole Board. It outlines the differential procedures for the different types of 'lifer'. It spells out the time between reviews and the time taken by the Parole Board in reaching its decisions. But, most significantly, it emphasises the importance of the role of prison staff in preparing the dossiers that are considered by the Parole Board when making their decisions (Prison Reform Trust and HM Prison Service 1998, pp.12–15). This serves to undermine the official organisational independence of the Parole Board in terms of its formal relations with the Home Secretary and the Prison Service. Informally, there is little doubt that the parole process is entirely dependent upon the forms of discourse that are constructed by prison staff about whether or not all prisoners, including lifers, should progress through the stages of their sentences in their recommendations.

Parole Information Booklet

The extent to which the Parole Board embodies the policy of the Prison Service is confirmed in the following question and answer exchange from the *Parole Information Booklet*. First the prisoner maintaining innocence enquires:

> What happens if I maintain my innocence? Can I still get parole?' (Prison Reform Trust and HM Prison Service 2002, p.8)

The answer from the Parole Board corresponds almost exactly with the Prison Service's policy:

> You do not have to admit your guilt prior to making an application for parole, nor is denial of guilt an automatic bar to release on parole licence. It is not the role of the Parole Board to decide on issues of guilt or innocence, and your case will be considered on the basis that you were rightly convicted. The Board will consider the likelihood of you reoffending by taking into account the nature of your offence, any previous convictions, your attitude and response to prison, reports from the prison and probation service and your own representations. (Prison Reform Trust and HM Prison Service 2002, p.8)

This emphasises the problem that is commonly referred to as the 'parole deal', which is very much akin to a 'plea bargain' for it attempts to make innocent prisoners acknowledge guilt for crimes that they did not, in fact, commit. For Peter Hill (2001), significantly, both offer the same essential 'deal' in an attempt to obtain judicial finality in cases: 'We say you are guilty. Admit it and you get something in return'. The rationale behind the parole deal is connected to a range of 'cognitive skills', 'thinking skills', 'reasoning and rehabilitation' and various other 'offending behaviour' programmes and courses that have come to dominate regimes within prisons in England and Wales over the last decade. These courses are almost universally based on the work of psychologists in the correctional service of Canada and work from the premise that as offenders 'think' differently to law-abiding citizens, once their 'cognitive distortions' are corrected then they can be released with a reduced risk of reoffending (Wilson 2001). The effect is that whilst the Prison Service officially acknowledges that it is unlawful to refuse

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to recommend release solely on the ground that a prisoner continues to deny guilt, it tends to work under the simultaneous assumption that denial of offending is a good indicator of a prisoner's continuing risk.

In a similar vein, David Wilson (2001), conceptualised the situation as one which political philosophers would describe as a *throffer* – the combination of an offer or promise of a reward if a course of action is pursued, with a threat or penalty if this course of action is refused. This plays out with the prisoner being offered an enormous range of incentives including more out-of-cell time, more visits and a speedy progress through the system, to follow the course of action desired by the prison regime – to go on an offending behaviour course to ensure that the prison's performance target is met. This is made to appear as an entirely rational and subjective choice, especially as it will be the basis for ensuring early release through parole. At the same time, if the prisoner does not go on a course and accept guilt for criminal offences that they did not commit, the threat of continued imprisonment remains, as the prisoner will be deemed too much of a 'risk' for release at all (Berlins 2002; Hill 2002a, 2002b; Woffinden 2000, 2001). An often cited example is the case of *Stephen Downing* whose conviction was quashed in January 2002 after he had spent 27 years of incarceration for an offence for which he might normally have served twelve years had he not been classified 'IDOM' – in denial of murder (see Editorial 2002). To emphasise the problem of the parole deal, it was reported when Stephen Downing's conviction was quashed by the Court of Appeal (Criminal Division) (CACD) that: 'All the prison officers knew Stephen was innocent. They were begging him to say he had done it [murdered Wendy Sewell] so they could release him' (Hill 2002c).

The Parole Board's Reply

In response to the publicity of Stephen Downing's successful appeal and the public's concern with the parole deal, the Parole Board (2004) responded that:

> There was a considerable misunderstanding about the position of those maintaining innocence in prison and how this affects their eligibility for parole.

In fact, they argued:

> A myth has grown up that unless a prisoner admits and expresses remorse for the crime that they have been sentenced for, they will not get parole. This is not true.

In support of their argument, the Parole Board lists five points that they say disprove the existence of the parole deal. Despite this, this section considers each of the Parole Board's points in turn and shows that they do not disprove the parole deal, they actually prove that prisoners who maintain their innocence are less likely to be recommended for parole. Moreover, it appears that life prisoners who maintain their innocence who refuse to go on offending behaviour programmes, on the grounds that they have no offending behaviour to confront, may be deemed too much of a risk to ever be recommended for release.

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First, the Parole Board (2004) acknowledges that it would be unlawful to refuse parole solely on the grounds of denial of guilt or not being able to take part in offending behaviour programmes which focus on the crime committed. In the same breath, (same paragraph) however, they state that despite this:

> The Board is bound to take account not only of the offence, and the circumstances in which it was committed, but the circumstances and behaviour of the individual prisoner before and during the sentence.

This entirely undermines any notion that the Parole Board takes seriously the existence of innocent prisoners. It gives hope to prisoners maintaining innocence that they have an equal chance in law of achieving freedom with prisoners who were guilty of the offences for which they were convicted. It, then, demolishes that hope by insisting that they must take account not only of the offence for which they were wrongly convicted, but also their behaviour during their sentence.

Second, the Parole Board (2004) argues that:

> It is important to understand that the Board is not entitled to 'go behind' the conviction and overrule the decision of a judge or jury ... The Board's remit extends only to the assessment of risk, and the bottom line is always the safety of the public.

I do not know of anyone who expects the Parole Board to overrule the decisions of the courts; that would be a truly bizarre situation. But, the way in which they hide behind their organisational remit and refuse to acknowledge the reality of innocent prisoners cannot be justified. As I will show in more detail below, the courts are not infallible. Wrongful imprisonment can, and does, occur, not only for crimes that innocent men and women did not, in fact, commit, but, also, for crimes that did not, even, occur. This fact has been proven in dozens of high-profile cases that have been overturned in the Court of Appeal.

Third, the Parole Board (2004) reports that:

> The figures for 2003 show that in 24% of cases where prisoners maintained their innocence, parole was granted. This compares with 51% of all applications granted. This shows, according to the Parole Board, that the belief that 'if you don't admit the crime, you don't get parole' is patently untrue.

The statistics presented do, indeed, show that *some* innocent prisoners achieve a parole licence. At the same time, however, they actually emphasise that prisoners who maintain their innocence are less likely to achieve parole against prisoners who are guilty or acknowledge their guilt on pragmatic grounds in the hope of achieving release. They have half as much chance. This does not dispel the 'parole deal' it proves it!

Moreover, the figures just cited by the Parole Board do not only relate to life prisoners, they, also, include all 'long-term prisoners' who receive a custodial sentence in excess of four years (Prison Reform Trust and HM Prison Service 2002, p.1). As such, they can very much be conceived as a 'red herring' to the charge of the parole deal, as there is no way of knowing

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how many of the 24% were life prisoners who maintained their innocence and did not go on offending behaviour courses and, yet, were still recommended for release.

Fourth, the Parole Board (2004) employs a particularly perverse logic. They say that their:

> Core task of assessing the risk of future harm to the public is often made more difficult when dealing with those who deny guilt. This is because there may simply be less information to go on, particularly where the prisoner has not been able to undertake any relevant offending behaviour work. Detailed reports of a wide range of offending behaviour programmes are a key source of information for Board members in working out how a prisoner operates and copes with life and therefore what the risk to the public of a future offence might be.

This shifts the focus of why prisoners who maintain their innocence are less likely to be recommended for parole to the victims of wrongful imprisonment themselves. It blames them for *their* own failure to comply with the needs of the Board and undertake relevant offending behaviour courses and provide the detailed information to assist Board members in their deliberations. This brings the parole deal into clear view and puts life prisoners who maintain their innocence in an impossible catch-22 position. The only realistic way of achieving release is to acknowledge that they are guilty of the criminal offences for which they were wrongly convicted, murder, rape or sex abuse, and work with prison staff on that aspect of their behaviour, even if they have never behaved in such a way.

Finally, the Parole Board relies on further statistical evidence in the form of a breakdown of 50 release cases recommended by the Board. 'The fifty were all serving mandatory life sentences for murder. Of these, nine had maintained their innocence in whole or in part throughout their sentence' (Parole Board 2004).

Again, this reference to statistics only serves to further strengthen the concern that prisoners who maintain their innocence are at a disadvantage in terms of Parole Board decisions. This is because the survey cited decreases the statistical average from 24% of successful applicants to the Parole Board in 2003 who maintained their innocence to a maximum of 18% of the mandatory life prisoners surveyed. This figure is decreased still further when it is taken into account that an unknown of the 18% referred to did not maintain their innocence for the whole of their sentences, but only part of it. This leaves us none the wiser and raises the crucial question: How many of the nine mandatory lifers who the Parole Board recommended should be released *did* maintain their innocence for the whole of their sentences and did not attend offending behaviour programmes?

As a final insight into the mind-set of the Parole Board, it is interesting to note that the 'majority' of the mandatory lifers who were recommended for parole, whether or not they maintained their innocence, *had* 'also undertaken a variety of offending behaviour work such as anger management, assertiveness, thinking skills, all of which helped the Board' (Parole Board 2004).

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Whatever the Parole Board might say, then, they have not provided any evidence to support their claim that the parole deal is a 'myth'. On the contrary, the evidence that they put forward actually proves that the parole deal does exist. Prisoners who maintain their innocence and are unable to take part in offending behaviour programmes because they have no offending behaviour to confront are less likely to be considered for parole than offenders who admit their guilt and comply with the requirements of the prison and parole regimes.

Critique

As integrated institutions of the criminal justice system, it is, perhaps, not surprising and, to some extent, highly understandable that they work from a premise that the other parts of the system are functioning correctly, and that, therefore, the verdicts of the courts, for instance, are accepted as correct. The fundamental flaw in such a logic is that it contradicts common sense: no human system is infallible. As such, the courts, inevitably, convict the innocent; some prisoners who maintain their innocence *are* innocent and innocent victims of wrongful imprisonment are certain to go before the Parole Board.

This was not only openly acknowledged by the most recent overhaul of the criminal justice system, the Royal Commission on Criminal Justice (1993), it was the working premise:

> All law-abiding citizens have a common interest in a system of criminal justice in which the risks of the innocent being convicted and the guilty being acquitted are as low as human fallibility allows ... mistaken verdicts can and do sometimes occur and our task [when such occasions arise] is to recommend changes to our system of criminal justice which will make them less likely in the future. (pp.2–3).

Contrary to this, the failure of the Prison Service and the Parole Board to acknowledge that the courts are fallible and put in place strategies to provide for the needs of innocent life prisoners can not only be conceived to be disingenuous, it borders on the illegal. These could take the form of more appropriate cognitive skills courses that inform life prisoners about the possible avenues open to them to overturn their wrongful convictions. They could take the form of workshops that assist life prisoners who maintain their innocence to deal with the loss of liberty, frustration and anxiety of wrongful imprisonment and the impacts upon family relations (Keirle and Naughton 2003).

Instead, the Prison Service and the Parole Board ratchet-up the difficulties faced by prisoners who maintain their innocence and apply a policy that is blind to the history of wrongful criminal convictions since the creation of the Court of Criminal Appeal almost a century ago, as evidenced by successful appeals against criminal conviction. This includes the 118 cases of wrongful criminal conviction that have been overturned by the Court of Appeal (Criminal Division) (CACD) following a referral by the Criminal Cases Review Commission (CCRC) since it started handling casework in 1997 and March 2004 (Criminal Cases Review Commission

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2004). It includes the 8,000 or so cases of wrongful criminal conviction that have been quashed by the CACD through routine appeals over the last decade. It also includes over 85,000 cases of wrongful criminal conviction that have been overturned by routine appeal procedures in the Crown Court against convictions given in the magistrates' courts over the last two decades (Naughton 2003b). Indeed, from such a perspective, miscarriages of justice can be conceived as a routine feature of the criminal justice process (Naughton 2003a).

As this specifically relates to the problem of wrongful imprisonment, an analysis of previous cases of successful appeal against criminal convictions reveals two broad categories of wrongful imprisonment:

- Victims of wrongful imprisonment for crimes they did not, in fact, commit; and,
- Victims of wrongful imprisonment for crimes that did not occur.

Crimes They Did Not Commit

Wrongful imprisonment for crimes that they did not commit, relates to the conventional view of a miscarriage of justice victim where a criminal offence *has* been committed but the wrong person or persons are convicted (Naughton 2004). In an attempt to reduce the occurrence of such victims of wrongful imprisonment, this category has been the main focus of all existing research into miscarriages of justice (see, for example, Woffinden 1987; JUSTICE 1989, 1994; Huff, Rattner and Sagarin 1996). In reward for their efforts, researches have uncovered a variety of causes of wrongful imprisonment including: the perennial problem of prosecution non-disclosure as, for example, in the case of *John Kamara* who spent 20 years of wrongful imprisonment for the murder of Liverpool bookmaker John Suffield because the prosecution failed to disclose over 200 witness statements taken by Merseyside police to the defence lawyers at the original trial (Carter and Bowers 2000; Liverpool Echo 2000); police misconduct as in the case of *Robert Brown* who spent 25 years of wrongful imprisonment for the murder of Annie Walsh as a result of police corruption, bullying and non-disclosure of vital evidence (Hopkins 2002); problems with identification, for example, the cases of *Reg Dudley* and *Robert Maynard* who each served over 20 years of wrongful imprisonment as a consequence of a 'bargain' between the police and an informant who received a reduced sentence for his part in a robbery (Dudley 2002; Campbell 2002; Campbell and Hartley-Brewer 2000; Woffinden 1987, p.343); and, false confessions, for example, the case of *Andrew Evans*, who spent 25 years in prison following his false confession for the murder of Judith Roberts (Duce 1997; Randall 1997).

Crimes That Did Not Occur

In addition to victims of wrongful imprisonment for crimes that they did not commit, there are victims who have been, and continue to be, convicted

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and given life sentences for crimes that did not even occur (Naughton 2003c). This might appear far-fetched, but recent cases of successful appeal have documented well the problem that juries have, for instance, in adjudicating between competing and conflicting expert forensic scientific evidence. For example, Sally Clark overturned a mandatory life sentence for the murder of two of her children when conflicting forensic evidence suggested that the chances were they died of natural causes (Sweeney and Law 2001); Angela Canning was given a double life sentence for the murder of her two children who were, probably, the tragic victims of 'cot death' (Frith 2003); Sheila Bowler was cleared of the murder of her aunt, Florence Jackson, after she had served four years of a life sentence, when new forensic evidence showed that she most probably died of accidental drowning (Jessel 1994, ch.11); Patrick Nichols spent 23 years in prison for the murder of Gladys Heath, a family friend, until competing forensic science compellingly argued that she had probably suffered a heart attack and accidentally fallen down a flight of stairs (Tendler 1998); and, Kevin Callan served three years for the murder of his four-year-old step-daughter, Amanda Allman, until he, himself, became an expert in neurology and was able to counter the convicting evidence and offer the more plausible explanation that she died as a result of a fall from a playground slide (Bunyan 1995). These are just a small sample of such cases that have been overturned following new forensic evidence.

A difficulty that arises in trying to calculate the possible scale of the problem of victims of wrongful imprisonment for crimes that did not occur is that none of the above cases was officially attributed or recorded as such. On the contrary, they were all put down to the failures of individual expert forensic scientists, who either through error, or deceit, corrupted the course of justice. This, effectively, individualises the problem and all sight is lost of the likely scale of the problem. At the same time, it renders invisible the victims in the many similar cases that might never be successfully overturned.

As this relates to convicted prisoners who are currently serving life sentences who continue to maintain their innocence, Nick Tucker is currently serving a life sentence for the murder of his wife who, more than likely, died following a tragic road traffic accident. This case is particularly pertinent as five separate pathologist reports into the case all agree that Carol Tucker died of accidental causes (Woffinden 2002). Similarly, Jong Rhee is also maintaining his innocence following the death of his wife in what contesting forensic science evidence holds to have been an accidental guest house fire (Woffinden 1999). And, following fresh evidence that was found by a BBC programme that challenged the testimony of expert witness Professor Roy Meadow, Donna Anthony, who is currently serving two life sentences for the murder of her two children who it is believed died of 'cot death', is in the process of making a second appeal (BBC News Online 2003). In addition, in direct response to Angela Cannings's successful appeal, 258 parents who were convicted for killing a child under two years old are to have their cases reviewed and, if they relied on expert evidence, they will be fast tracked to the court of appeal (BBC News Online 2004a).

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Conclusion

This article has considered two key sources of information available to life prisoners about the structure of their sentences and the criteria that they must satisfy to achieve release. It has, also, considered the Parole Board's reply to the public's concern that life prisoners who maintain their innocence were being denied parole because they would not accept the verdicts of the courts. In so doing, the main conclusion to be drawn is that the organisational inability on the part of the Prison Service and the Parole Board to acknowledge the fallibility of the courts is untenable. As no human system can be perfect, and wrongful criminal convictions are a routine feature of the criminal justice process, it is inevitable that innocent people will be the victims of wrongful imprisonment. This needs to be acknowledged by the Prison Service and the Parole Board and more adequate and appropriate mechanisms for dealing with prisoners who maintain their innocence need to be devised. A failure to do so exacerbates the harm caused to the victims of wrongful imprisonment and their families. It entails significant expenditure in terms of retaining the innocent in prison indefinitely, which the Prison Service can ill afford (Naughton 2001). It calls the penal and parole systems into disrepute and undermines one of the primary aims of the criminal justice system: 'to dispense justice fairly and efficiently and to promote confidence in the rule of law'.[1]

Note

1 This article was based on a paper given at the Progressing Prisoners Maintaining Innocence Conference, Vaughn House, 46 Francis Street, London, 21 February 2004. Many thanks to all who participated in the session, particularly to Andrew Green and Hazel Keirle.

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

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Summary

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

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Introduction

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

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

To help to illuminate the unmet legal need of innocent victims of wrongful conviction, it is instructive to make clear, firstly, the distinction between miscarriages of justice and the wrongful conviction of the innocent – terms which are often, incorrectly, used synonymously and/or interchangeably. A distinguishing feature of miscarriages of justice is that whatever allegations there may be, a miscarriage of justice cannot be said to have occurred unless and until an applicant has been successful in an appeal against a criminal conviction, and until such time s/he remains an alleged miscarriage of justice. An example that illustrates this well is the case of the *Birmingham Six* (see Mullen, 1986) who had two unsuccessful appeals before they were officially acknowledged and recorded in the official statistics as victims of wrongful conviction/imprisonment. I have noted previously that, in this sense, definitions of miscarriages of justice can be said to be entirely 'legalistic': they are defined by law, they are wholly determined by the rules and procedures of the

criminal justice system, and if those rules and procedures change, then the way in which miscarriages of justice are defined will also change. Moreover, miscarriages of justice are distinct from the specific problem of the wrongful conviction of the innocent as a successful appeal against a criminal conviction is *not* evidence of the wrongful conviction of the innocent. On the contrary, a successful appeal against criminal conviction denotes an official and systemic acknowledgement of what might be termed a breach of the 'carriage of justice', and it bears no relation to whether a successful appellant is factually guilty or factually innocent: these are not questions that our criminal justice system pursues (Naughton, 2005, pp. 165-167).

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

To be sure, our system of criminal justice is not about the objective truth of a suspect's or defendant's guilt or innocence. Adversarial justice is a contest, regulated by principles of due process, compliance with the rules and procedures of the legal system. During the legal process, errors can be made, forms of police malpractice and misconduct, prosecution non-disclosure, poor defence, incorrect forensic expert evidence, and so on, can occur (see, for example, JUSTICE, 1989; Walker and Starmer, 1999; Woffinden, 1987; Brandon and Davies, 1973; Greer, 1994; Sargant, 1970; McConville and Bridges, 1994; Walker and Starmer, 1993), with the result that innocent people will, inevitably, be wrongly convicted (Naughton, 2005c). Criminal trials are not a consideration of factual innocence or factual guilt. They determine if defendants are 'guilty' or 'not guilty' according to the evidence before the court, governed by the prevailing principles of due process. Correspondingly, criminal appeals do not seek to determine the guilt or innocence of appellants: under s. 108 of the Magistrates Courts Act 1980 appeals against conviction are allowed to the Crown Court for criminal convictions given in the Magistrates' Courts, so long as the potential appellant did not plead guilty. Under s. 79 of the Supreme Court Act 1981 such appeals are by way of a full re-hearing to determine if the appellant/defendant was 'guilty' or 'not guilty' in line with criminal trials. In more serious cases, appeals to the Court of Appeal (Criminal Division) (CACD) do *not* attempt to determine innocence or guilt either, but, rather, s. 2 of the Criminal Appeal Act 1996 instructs that it (a) shall allow an appeal against conviction if it thinks that the conviction is unsafe; and (b) shall dismiss such an appeal in any other case. There are also specific rules under s.4 that regulate the CACD to 'receive any evidence which was not adduced in the proceedings from which the appeal lies', but only within certain criteria. S. 4, for instance, specifies that the CACD 'shall, in considering whether to receive any evidence, have regard in particular to: (a) whether the evidence appears to the Court to be capable of belief; (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal; (c) whether the evidence would have been admissible at the trial on an issue which is the subject of the appeal; and (d) whether there is a reasonable explanation for the failure to adduce the evidence at the trial' (see, also, Naughton, 2005a).(2) In these highly technical processes, miscarriages of justice, as evidenced by successful appeals against criminal conviction, are routine, even mundane, occurrences, which number around 5,000 per annum (Naughton, 2003). At the same time, however, some innocent victims of wrongful conviction who do not fulfil the criteria of the appeals system will not be able to overturn their convictions (Naughton and McCartney, 2005, pp. 151-152; discussed further below with reference to the limits of the CCRC).

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

The function of the appeals system, then, from this perspective, is to correct the errors of criminal trials by overturning the convictions of the innocent.

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

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

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

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

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

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

A case that starts to unearth the wrongful conviction of the innocent and separates it from miscarriages of justice is the Cardiff Three. But, the Cardiff Three, convicted for the murder of Lynette White in 1988, did not overturn their convictions in 1992 because they were innocent. On the contrary, in line with all successful appeals they had to get the CACD to agree that a lack of integrity in the way that their convictions were obtained rendered them unsafe. This was achieved when Lord

Taylor quashed the convictions asserting that whether Steven Miller's admission to the murder of Lynette White were true or not was 'irrelevant', as the oppressive nature of his questioning (he was asked the same question 300 times) required the interview to be rejected as evidence. It was a breach of due process, more specifically the rules of evidence under the Police and Criminal Evidence Act (1984) (PACE) (Paris, Abdullahi and Miller (1993) 97 Cr App R99). In keeping with the general uncertainty that results from successful appeals, doubts prevailed for the next decade about whether or not the Cardiff Three were involved in the murder until the case made British legal history and the real killer of Lynnette White, Jeffrey Gafoor, who had been traced by the National DNA Database, was convicted for her murder in July 2003 (BBC News, 2003a).

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

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

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

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

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

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

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

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

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

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

Despite this, alleged innocent victims of wrongful conviction still have, on the face of it at least, a large number of other campaign organisations and victim support groups to turn to. These include United Against Injustice (UAI) (United Against Injustice, 2005), a federal system of miscarriage of justice organisations, which support small groups (for example, the Justice for Colin James Campaign (see Scandals in Justice, 2002), Justice for John Taft Campaign (see Justice for John Taft

Campaign, 2002) within their geographical location. The organisations affiliated to UAI include INNOCENT (Innocent, 2005), Merseyside Against Injustice (Merseyside Against Injustice, 2004), Falsely Accused Youth Leaders (Falsely Accused Youth Leaders, 2005) and London Against Injustice (London Against Injustice, 2005).

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

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

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

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

For instance, INNOCENT, one of the most prominent campaigning organisations, is supporting Darren Southward, convicted of murder in July 1989, after he killed his mother's ex-boyfriend, George Robertson, by hitting him repeatedly on the head with a hammer after he had broken into the

victim's home after a night in the pub to warn him to keep away from his mother. INNOCENT's argument is that Southward, who has always admitted killing Robertson, was a much younger and smaller man who acted in self-defence, that he was pressured into pleading guilty, and that he is innocent of murder and should more appropriately, have been convicted of manslaughter (INNOCENT, 2005a). A similar case is Barrington Moses, supported by the organisation Innocents In Prison, who recently had his case referred back to the CACD by the CCRC. In March 1997, Barrington Moses was convicted of the murder of Clare Hergest by drowning her in a bath. Moses has always admitted that he killed his former partner, running an (unsuccessful) defence of diminished responsibility at his original trial. The referral by the CCRC follows his third application to the Commission, which it, presumably, believes fulfils the 'real possibility test' due to developments in the understanding of the law of provocation (see Criminal Cases Review Commission, 2005).

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

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

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

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

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

Clinics can also be either 'generalist' or 'specialist'. A generalist clinic may aim to replicate 'high street' practice as closely as possible by taking on a wide range of matters. On the other hand,

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

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

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

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

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

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

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

Although the UoBIP is currently an extra-curricula initiative (it has been mooted that it could, possibly, become a taught unit in the future), all members undertake an Induction Unit on

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

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

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

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

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

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

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

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

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

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

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

In addition, student participation in this area truly bridges the 'gap' by undertaking casework that campaign groups/organisations are not equipped to undertake that may contribute to overturning wrongful convictions, which would then provide evidence-based research with which to lobby for reform. An indicator of the potential success that student investigations of alleged wrongful convictions promises is the pioneering work on criminal appeals that have exhausted the criminal appeals provision at the Student Law Office of Northumbria University (University of Northumbria, 2005b). Students there have had a notable success through their 'live-client' programme, particularly in overturning the case of Alex Allan who had served six years of imprisonment following a conviction for his alleged part in an armed robbery (see, Woffinden, 2001; Verkaik, 2001). While the Student Law Office at Northumbria is not an 'Innocence Project' as such, because they do not require clients to make a declaration of factual innocence, and they will even represent guilty offenders if the case is held to have educational merit, it is the closest manifestation of the type of student projects that have proliferated in the US (see, for example, The Innocence Project, 2005) and Australia (for example, see, Griffiths University Innocence Project, 2005), a closer look at which can be instructive as to the potential benefits arising from university-based innocence projects in the jurisdictions in the UK.

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

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

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

Conclusion

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

Significantly, a network of innocence projects in universities in the UK would also advance the developing Innocence Network UK which would, in turn, facilitate academic studies into wrongful convictions and miscarriage of justice, which could influence criminal justice system reform and government policy. The Innocence Network UK, in common with the networks in the US and Australia, would provide a forum to attract funding for research into the criminal justice system and collate research undertaken and identify knowledge gaps. It would extend and support the work carried out by voluntary organisations, which may have a more focused role, overcoming resource constraints.

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

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

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

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

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

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

6. The Inaugural Innocence Projects Colloquium, University of Bristol, 3 September 2004, was attended by the Principal Legal Advisor, the Public Relations Officer and four Case Review Managers from the CCRC.

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

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

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

Innocence Projects

Dr Michael Naughton, explains the background to The Innocence Network UK's work in England and Wales*

In direct response to the growing awareness that the problem of the wrongful conviction of the innocent was not sufficiently resolved by the creation of the Criminal Cases Review Commission (CCRC), the body set up in the wake of notorious cases such as the Guildford 4 and the Birmingham 6 to investigate alleged cases of miscarriage of justice that failed in their first appeals, the Innocence Network UK (INUK), the co-ordinating organisation for innocence projects based in UK universities, was launched in September 2004.

The INUK (see innocencenetwork.org.uk) brings together under one umbrella academics, victim support groups and campaigning organisations, criminal appeal lawyers, forensic scientists and investigative journalists, with three main aims:

- To raise public awareness of wrongful convictions as a continuing cause for concern, despite the existence of the Criminal Cases Review Commission;
- To facilitate research that identifies the causes of wrongful convictions in the interests of effecting legal reform to reduce their occurrence; and;
- To encourage the establishment of Innocence Projects within universities in the UK.

Under the auspices of the Innocence Network UK, affiliated innocence projects exist not only as a resource for student education about the ills of the criminal justice system, but additionally they provide opportunities for research on the various aspects of the problem and the obstacles that innocent victims of wrongful conviction/imprisonment experience which, in turn, can be fed back into the criminal justice system to effect legal reforms that will reduce the possibility of wrongful convictions in the future.

Innocence projects

Since the launch of the INUK, innocence projects have been established at Bristol, Cardiff and Leeds, and there are as many as ten others in the pipeline. The defining feature of innocence projects is their investigative role, with students involved in real criminal cases of alleged innocent victims of wrongful conviction. The work is primarily conducted by undergraduate and/or postgraduate or vocational students in law schools, but is open to other relevant disciplines with a critical interest in the limitations of the criminal justice system, including sociology, social policy, journalism, politics, and so on. The work is supervised by academics in conjunction with practising solicitors, with priority given to prisoners who both maintain their innocence and have exhausted their legal appeals, although innocence projects may also consider other cases, including those where individuals have already been released from prison.

The practical objective of innocence project case-work is an attempt to find legal grounds in the hope that alleged innocent victims of wrongful conviction are successful in achieving a referral back to the Court of Appeal (Criminal Division) (CACD) or, if they are a second or out-of-time appeal, via the CCRC. There is no definitive criteria for innocence projects, other than that they are concerned with allegations of factual innocence as opposed to allegations of technical miscarriages of justice. Innocence projects exist because innocent people are wrongly convicted.

The inevitability of the wrongful conviction of the innocent

'Inevitability' is not a term that is generally encouraged within academic circles. But it is entirely appropriate in the context of the likelihood of the wrongful conviction of the innocent under the existing arrangements. Criminal trials are not concerned with whether defendants are factually innocent or factually guilty in any straightforward sense; they are highly technical affairs which attempt to determine if they are 'guilty' or 'not guilty' of criminal offences on the basis of the reliability of the evidence before the court.

The following quotation taken from the House of Lords ruling in the case of *Director of Public Prosecutions v. Shannon* [1974] 59 Cr.App.R.250 sums up the legal position succinctly:

'The law in action is not concerned with absolute truth, but with proof before a fallible human tribunal to a requisite standard of probability in accordance with formal rules of evidence'.

The history of successful appeals against criminal conviction in England and Wales highlights the practical limitations of criminal trials, showing that 'probabilities' are not certainties and there are a plethora of causes of wrongful convictions that are well documented. These include:

- unreliable confessions such as in the cases of Robert Downing, the Cardiff Newsagent Three, Andrew Evans, and King and Waugh who between them spent almost a century of wrongful imprisonment based on the unreliable confessions of the vulnerable;
- financial and other incentives which created unreliable 'cell confession evidence' that featured most recently in the case of Reg Dudley and Robert Maynard who each served over 20 years of wrongful imprisonment as a consequence of a 'bargain' between the police and an informant who received a reduced sentence for his part in a robbery in exchange for the necessary evidence for conviction;
- non-disclosure of vital evidence as in the case of John Kamara who also spent 20 years of wrongful imprisonment because over 200 statements were withheld from his defence team;
- malicious accusations such as in the case of Roy Burnett who spent 15 years of wrongful imprisonment for a rape that the Court of Appeal said 'almost certainly never happened', or Roger Beardmore who spent three years in prison (of a nine year sentence) for the paedophile rape of a young girl who later admitted that she had lied to get her mother's attention;
- badly conducted defences such as in the case of Mark Day who was convicted for murder with two others despite the fact that he did not know his co-defendants, a fact that his defence failed to bring to the court's attention;
- 'racism' such as in the case of the M25 three, the case in which three black men were wrongly imprisoned for 10 years despite the fact that witnesses had claimed that two of the offenders were white and four of six victims had referred to at least one of the offenders as white; and
- failures with forensic science expert witness testimony as in the cases of Sally Clark and Angela Cannings who were both convicted of murder and given life sentences for murdering their children who, more than likely, died of natural causes.

And this is by no means an exhaustive list of the causes of wrongful convictions.

It is acknowledged that successful appeals are not evidence of factual innocence. Yet, the aforementioned are examples that all successful appeals do serve as testimony to a diverse range of failings of the criminal justice system at the pre-trial and trial stages, to which innocent victims can fall prey. This raises questions about the adequacy of the opportunities available to innocent victims of wrongful conviction to overturn those wrongful convictions when they occur.

Inability of the appeals system to guarantee that the innocent will overturn their convictions

Despite the fact that innocent people can be wrongly convicted in criminal trials, criminal appeals, too, are highly technical matters which attempt to determine not whether appellants are factually guilty or factually innocent, but whether convictions are 'safe' or 'unsafe', according to whatever are the prevailing strict criteria for the Court of Appeal (Criminal Division) (CACD) to receive, and determine the outcome of, appeals, i.e. the Criminal Appeal Act 1968.

Successful appeals are, essentially, achieved by showing a possible lack of integrity of the due processes that led to the conviction, showing that they were somehow transgressed. Fresh evidence is another possible way of overturning an alleged wrongful conviction by demonstrating its unreliability, but evidence available at the time of the original trial may not count, even if it proves that the convicted person is innocent. Criminal appeals are not about rectifying the wrongs of criminal trials and ensuring that the innocent overturn their convictions.

As for the CCRC, despite the fact that it was created out of a public crisis of confidence that innocent victims had been wrongly convicted, not even it was designed to remedy the faults of the system and cannot ensure that all innocent victims of wrongful conviction will even achieve a referral back to the appeal courts, let alone overturn their wrongful convictions. Instead, under the provisions in the Criminal Appeal Act 1995, the CCRC merely *reviews* cases of alleged or suspected miscarriage of justice with a view to referring them back to the CACD if it is believed there is 'a real possibility' that the case will be overturned.

The CCRC tries to 'second-guess' the appeal courts. In practical terms, if it is found that the procedures of the criminal justice process were contravened or fresh evidence suggests a conviction is unsafe, there is a good chance that the case will be referred back to the Court of Appeal. As such, the CCRC will, logically, refer the cases of guilty offenders if their convictions were procedurally incorrect. At the same time, they are often helpless to refer the cases of innocent victims of wrongful conviction if they do not meet the required criteria.

The CCRC cannot refer cases back to the appeal courts in the interests of justice as popularly understood. It does not do what the public thought that it was set up to do. Most worrying, perhaps, if the CCRC turns up evidence that indicates an applicant's innocence that was available at the original trial it may not even constitute grounds for a referral. The recent decision by the CCRC not to refer the case of John Roden, despite claims that the Case Review Manager who investigated his application believed that he had a 'compelling' case, emphasises the limits of the criminal appeals system, generally, and the failure of the CCRC, specifically, to, once and for all, have a mechanism that can truly overturn all convictions given to the innocent.

This is not to say, however, that some innocent victims of wrongful conviction and/or imprisonment will not be able to find grounds and overturn their convictions. Rather, it is emphasise that, as it stands, the criminal appeal system, even with the CCRC, does not provide access to justice for all innocent victims of wrongful conviction/imprisonment who are not able to show a breach of integrity with their conviction or find fresh evidence of innocence that was not available at their original trial, raising an array of unmet legal needs that have yet to be appropriately recognised and/or acted upon by the wider pro bono movement.

Unmet legal needs of a different order

The conventional approach to unmet legal needs relates to equal access to justice and fair treatment by the justice system, generally conceived as the inability of clients to pay for legal assistance. From this perspective, legal professionals and/or student law clinics that offer pro bono advice and/or assistance operate entirely within the parameters of the existing legal framework and do not conceptualise the unmet legal needs of potential clients who are the victims of the limitations of the existing legal framework.

Alternatively, innocence projects in the UK are an outgrowth of a sustained critical analysis of the inability of the criminal appeals system to rectify all wrongful convictions which operates outside of the parameters of the legal system to open-up insights of quite different unmet legal needs that victims of wrongful convictions portray in their struggle to obtain justice in their cases. Due the limitations of the current criminal justice process, innocent victims of wrongful conviction can exhaust all existing legal remedies and still remain unable to overturn their convictions. Moreover, innocent victims of wrongful conviction who receive custodial sentences are discriminated against in all manner of ways precisely because they are innocent.

Put simply, prisons are meant for the guilty, not the innocent. As such, innocent prisoners do not fit into the regular requirements of the penal regime. For instance, they often refuse to comply with their sentence plans and many will not undertake offending behaviour programmes. For them, it is tantamount to admitting to crimes that they did not commit. In consequence, they fail to make equal progress though the prison system with their guilty counterparts. In two separate cases, Robert Brown and Paul Blackburn each spent 25 years in prison maintaining their innocence until they were able to overturn their convictions on appeal. It is likely that if they had acknowledged guilt, confronted their offending behaviour and, thus, demonstrated a reduced risk of re-offending, they would, probably, have served around half that time. During their wrongful imprisonment, they were deprived of better jobs and training opportunities to put pressure on them to admit guilt on the basis that they were, in the terminology of the Home Office, "in denial" of their crimes. The possibility that they were innocent and had no offending behaviour to confront and, so, presented no risk of re-offending was not even considered by the Parole Board because they are "not allowed to go behind the conviction, nor the decisions of the courts". There are prisoners who have maintained innocence for the last 35 years who may never be released.

Conclusion

The foregoing has sketched out some of the key issues in the emergence of the Innocence Network UK and innocence projects in England and Wales. It would be surprising if the same matters were not present within the specific jurisdiction of Scotland's criminal justice system. Inspired by the CCRC, the Scottish Criminal Cases Review Commission (SCCRC) was established under the Criminal Procedure (Scotland) Act 1995 (as amended by Section 25 of the Crime and Punishment (Scotland) Act 1997). And, although it has broader referral criteria than the CCRC, it, too, is subordinated to the decisions of the High Court under normal appeals procedures.

The Miscarriages of Justice Organisation (MOJO), established by Paddy Joe Hill of the Birmingham Six, and affiliated to the INUK, has a base in Glasgow with an extensive list of alleged innocent victims of wrongful conviction/imprisonment in urgent need of assistance. The door is open for innocence projects to emerge within Scottish universities and make the INUK a truly United Kingdom network.

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Factual Innocence versus Legal Guilt

The Need for a New Pair of Spectacles to view the Problem of Life-Sentenced Prisoners Maintaining Innocence

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We tend to see the world through the spectacles that we happen to be wearing, which may be the spectacles that we are required to wear for the purposes of the jobs that we do, or the situations that we find ourselves in through no fault of our own, or maybe even for the positions that we take for ideological reasons. As this relates to the debate about life-sentenced prisoners maintaining innocence, victim support groups tend to work from the basis that those who allege that they are innocent are, in fact, innocent, because the flaws of the criminal justice system mean that they might be. Alternatively, however, the post-conviction system, prison, psychology, parole and probation services, work from the premise that all prisoners are guilty of the crimes that they were convicted of. The discursive currency used by the opposing sides in this tension has resulted in something of a stalemate: on the one hand, a situation that has become known as the 'parole deal' is claimed, whereby life-sentenced prisoners say that they are required to acknowledge their guilt for crimes that they say they did not, in fact, commit in order to make progress though the prison system and achieve their release;[1] on the other, the post-conviction system labels prisoners maintaining innocence as 'deniers' who must be encouraged to acknowledge their guilt and address their offending behaviour as a necessary prerequisite for progression and possible release: possible release because there are no certainties that life-sentenced prisoners will ever be released if they do not satisfy the requirements of the Parole Board to demonstrate a reduced risk of re-offending.

Against this background, this article argues that a new pair of spectacles is needed to unlock the current impasse. Although both sides of this conundrum do have a certain validity, both sides are, at root, untenable: whilst it is true to say that all prisoners maintaining innocence are *legally* guilty of the crimes that they were convicted of in the sense that they were convicted in a court of law, and that it is likely that most prisoners maintaining innocence will also be *factually* guilty of committing the crimes that they were convicted of, it is equally possible that some prisoners maintaining innocence may be *factually* innocent, a problem that the post-conviction system has, hitherto, made no attempts at all to address. As I have come to see it, the crux of this tension resides in a fundamental failure by each side to understand what the other side

[1] The 'parole deal' as described here is not, strictly, limited to life-sentenced prisoners. It applies, also, to all prisoners serving four years or more who are also required to meet the requirements of the Parole Board to make progression and/or release.

means due to a lack of clarity about the precise meaning of the terms 'innocence' and 'guilt' in the engagement: whilst opponents of the alleged 'parole deal' think in terms of factual innocence and factual guilt, advocates of 'denial' think in terms of legal guilt and, possibly, legal innocence as a counterpart, although this fails to feature in the debate in any sense at all. Instead, a new way of understanding and responding more proactively to the claims of prisoners maintaining innocence is needed that can break through the deadlock, not only for prisoners maintaining innocence who may be innocent, but also for an overcrowded prison system in which there is no should be no place and is no for the factually innocent.

The article is presented in four main parts. First, it discusses the key legal authorities that lend credence to the idea of a 'parole deal', which underpins the stance of the victim support and campaigning organisations. Second, as it is the Parole Board which, generally, makes the decisions about whether life-sentenced prisoners maintaining innocence will be allowed to progress through the stages of their sentence plans, it analyses the Parole Board's response to the charge that it discriminates against prisoners maintaining innocence, also providing the case law that determines how it responds to claims of innocence by prisoners. Third, an analysis is undertaken that adjudicates the tension between factual innocence and legal guilt to clarify, further, the different approaches and underlying perspectives of the adversaries in the struggles around prisoners maintaining innocence. Finally, as a possible way out of the current impasse, the typology of prisoners maintaining innocence, created as part of my work with the Innocence Network UK to identify and filter eligible cases, is briefly outlined.

The 'parole deal'

The term the 'parole deal' first entered public consciousness when Stephen Downing successfully appealed against his conviction for the murder of Wendy Sewell in January 2002. Downing had served 27 years in prison maintaining his innocence until he was able to overturn his conviction. At the time, it was widely reported in the media that if he had acknowledged guilt, confronted his offending behaviour and, thus, demonstrated a reduced risk of re-offending, he would, more than likely, have served around 12-15 years. It was, also, reported that during his imprisonment he was deprived of better jobs, training opportunities and parole consideration to put pressure on him to admit his guilt on the basis that he was – in the terminology of the Home Office – IDOM: 'in denial of murder'. The possibility that he had no offending behaviour to confront and that he presented no risk of re-offending as he was innocent of the crime was not even considered by the Parole Board because it is 'not allowed to go behind the conviction, nor the decisions of the courts' (Parole Board, 2005).[2]

Quick on the heels of Downing, other similar successful appeal cases followed, such as Robert Brown (see Hopkins, 2002) and Paul Blackburn (see Naylor, 2004), each of whom spent 25 years in prison maintaining their innocence, also longer than they would have done had they admitted their guilt and complied with their sentence plans,

[2] An exception to this general rule is the case of Susan May. She was released on licence on her tariff date, 26 April 2005, despite maintaining innocence throughout the whole of her sentence and refusing to undertake any offence-related course work.

which ratcheted up the pressure on the Parole Board. These cases became emblematic of the alleged 'parole deal' and led to the emergence of Progressing Prisoners Maintaining Innocence (PPMI), a banner organisation made up of other grass roots victim support and campaigning organisations, amid claims that such cases were the tip of a much greater 'parole deal' iceberg as some prisoners have been maintaining innocence for 40 years who may never fulfil the required criteria to overturn their convictions. It was noted that the history of miscarriages of justice demonstrates that no human system can be perfect and, therefore, logically speaking, at least *some* prisoners maintaining innocence may, in fact, *be* innocent (Naughton, 2005a). It was argued that ways must be found to take this into account when reviewing prisoners maintaining innocence and appropriate ways of identifying and progressing innocent prisoners through their sentences need to be devised (Naughton, 2004).

The Parole Board's response

Although the 'parole deal' should not be restricted to the way that the Parole Board treats prisoners maintaining innocence (explained below), as it is the Parole Board that, generally, makes the decisions about whether prisoners maintaining innocence should progress though their sentence and/or be released, it has become the focus of the debate. Moreover, and perhaps most significantly, in reaction to the pressure of Downing's successful appeal, it was the Parole Board that responded by appointing its first ever public relations officer to fend off negative publicity of its role in such matters. It argued that claims of a 'parole deal' were 'untrue', and, that it is a 'myth' to say that prisoners maintaining innocence must admit and expresses remorse for the crimes that they have been convicted of in order to get parole (Parole Board, 2004). Indeed, the Parole Board stressed that legal precedent has established that it would be unlawful for it to refuse parole solely on the grounds of denial of guilt or anything that flows from that (such as not being able to take part in offending behaviour programmes which focus on the crime committed) (as determined in Parole Board, 2004; *R -v- Secretary of State for Home Department ex parte Hepworth, Fenton-Palmer and Baldonzy* and *R -v- Parole Board ex parte Winfield* [1997] EWHC Admin 324).

On the other hand, the Parole Board simultaneously asserted that although it is required *not* to discriminate against prisoners maintaining innocence it is, equally, legally bound to assume the correctness of any conviction and take account not only of the offence, and the circumstances in which it was committed, but the circumstances and behaviour of the individual prisoner before and during the sentence (as determined in Parole Board, 2004; *R v The Secretary for the Home Dept & the Parole Board ex parte Owen John Oyston [unreported]* (see *The Independent*, 15 October 1999).

The rationale for the working practice of the Parole Board as it tries to find a way to navigate these two seemingly conflicting positions was underlined as follows: 'It is important to understand that the Board is not entitled to "go behind" the conviction. That means we cannot overrule the decision of a judge or jury. That is the job of the appeal courts and the Criminal Cases Review Commission [(CCRC) which reviews alleged miscarriages of justice and refers cases back to the appeal courts if it is thought that there is a 'real possibility' of the conviction being overturned]. The

Board's remit extends only to the assessment of risk, and the bottom line is always the safety of the public' (Parole Board, 2004).

Through the Parole Board's spectacles, then, it works from the premise that convictions are correct and prisoners are guilty and it would be contrary to its statutory remit to even consider that some prisoners may be innocent: '...we are a[n] organisation created by law, and operating under the law. The law says the [Parole] Board must treat all prisoners as guilty...What the courts have said repeatedly is that the Board must ignore any representations by the prisoner that he (sic) is innocent. The Board must assume he (sic) is guilty' (McCarthy, 2005: 1-2).

Having said this, the Parole Board is still able to satisfy its statutory remit not to discriminate against prisoners maintaining innocence who will not comply with their sentence plans as it does not technically, nor officially, base its decisions not to recommend progression or release *solely* on the ground that a prisoner maintaining innocence will not acknowledge their guilt and undertake offence-related work. Rather, it is, generally, unable to recommend progression or release to prisoners maintaining innocence who refuse to undertake offence-related work because it does not have the necessary evidence in the form of successfully-completed specified offence-related courses to show that the prisoner maintaining innocence has reduced his/her risk of reoffending (McCarthy, 2005: 9).

Factual innocence versus legal guilt!

As may already be apparent from the foregoing, the conflict between those that see prisoners maintaining innocence as victims of a 'parole deal' and those that see them as 'deniers' stems from the different spectacles worn by the opposing sides based on where they are positioned in terms of either making challenges to the criminal justice system about alleged cases of wrongful conviction and/or imprisonment or working as part of the post-conviction system. To illuminate what the opposing sides mean when they utter the key terms 'innocence' and 'guilt' it is, perhaps, instructive to consider a scenario between a fictitious life-sentenced prisoner maintaining innocence as s/he attempts to navigate her/his way through the maze of the post-conviction system that works from the premise that all prisoners are guilty..

When a life-sentenced prisoner maintaining innocence arrives at a prison s/he is informed that s/he will be expected to comply with a tailor-made sentence plan and specified offending behaviour programmes, the successful completion of which provides the evidence by which the Parole Board will ultimately make decisions about whether to recommend progression and/or release. In response, the lifer maintaining innocence remains steadfast in asserting his/her innocence, meaning factual innocence of the crime(s) that s/he was convicted of. The response from the member of staff in the prison, whether it be a prison officer, a prison governor, or a member of staff from prison psychology or probation services, is equally unwavering in asserting that the prisoner will be considered to be guilty for the purposes of the various requirements of the prison regime (Naughton, 2005b). From the spectacles of the prisoner maintaining innocence, what makes matters even worse is that s/he is also informed that a prerequisite of many offence-related programmes is that s/he gives a full and frank account of his/her crimes. A failure to do so will result in a delay in progression

as compared with his/her guilty counterparts (or counterparts who accept their guilt), and, possibly, no progression at all if the life-sentenced prisoner refuses to undertake essential offending behaviour programme that are a requirement of his/her sentence planning.

Understandably, perhaps, this serves only to frustrate the life-sentenced prisoner maintaining innocence still further who may not be able to provide any kind of account of a crime that s/he says s/he did not do. Moreover, prisoners maintaining innocence know that they may still have an opportunity to overturn what they believe to be a wrongful conviction in the appeal courts, and may even be told by their appeal lawyers that they should not undertake any offence-related courses as it may look like they are admitting to the crimes that they were convicted of, which may harm their appeal hopes (Naughton, 2005b). Under these circumstances, it is not difficult to comprehend why prisoners maintaining innocence often take offence at the allegation that they are guilty and refuse point blank to comply with any aspect of the prison and parole regimes that will not take seriously even the possibility that they might be innocent.

It is important to observe that because the prisoner maintaining innocence uses a currency of factual innocence and factual guilt, s/he hears the prison representative tell them that they are *factually* guilty, when, in reality, they are being told that they will be regarded as *legally* guilty for the purposes of prison procedures and, ultimately, Parole Board decisions which determine whether they are eligible for progression and/or release. These matters are only further obscured as staff in prisons either do not realise that they are making accusations to prisoners that are interpreted in terms of factual guilt or who choose not to make clear that they mean that prisoners maintaining innocence are regarded as legally guilty, irrespective of whether they are factually innocent or factually guilty or whether they are mounting an appeal or an application to the CCRC.

Such encounters are played out each and every day in every prison in the country. They contribute to the statistical data disclosed in a PPMI meeting with senior representatives from the various agencies that together make up the post-conviction system, which revealed that there are currently many thousands of prisoners maintaining innocence that are not complying with the requirements of their sentence planning, progression and release schemes, and which the prison and parole systems do not know what to do with.[3] The scale of the problem of prisoners maintaining innocence was confirmed by a recent survey, which claimed that approximately 40% of all male and female prisoners say that they are not guilty of the crime for which they were convicted (Inside Time, 2006).

On this basis, the critique of the post-conviction system's position offered here is not on the grounds that it is unreasonable to regard prisoners maintaining innocence as legally guilty, for they all are. Rather, the post-conviction system collectively, as opposed to the Parole Board, specifically, is seen to be lacking in its apparent refusal to take any steps whatsoever to engage, on any practical level at all. This inattention to the extensive scale of the problem of prisoners maintaining innocence not only

[3] The Meeting was conducted under 'Chatham House Rules', meaning that those present are free to use the information received. But neither the identity nor the affiliation of the speaker(s), nor that of any other participant may be revealed.

forecloses any meaningful discussion on, or action in response to, the problem of prisoners maintaining innocence at all, but it is contributing to a mounting problem that raises critical questions about the entire criminal justice system of which the constituents of the post-conviction system - Prison Service, prison probation and prison psychology services, and the Parole Board - form integral parts (Naughton, 2006b).

To label all prisoners maintaining innocence as 'deniers', denying the possibility that some prisoners maintaining innocence may well be innocent is contrary to any notion of justice, however defined. Most significantly, the key purposes of the criminal justice system, that is to 'protect the innocent' and 'raise confidence that the system is fair' (Criminal Justice System, 2007), is not advanced by a policy of totally disregarding the plight of prisoners who may be innocent and find themselves in prison because of the failings of the criminal justice system (discussed below). Moreover, the criminal appeals system exists precisely because people can, and are, wrongfully convicted and imprisoned.

A bifocal approach

In contrast to the rigid positions taken by the adversaries in the conflict between the advocates of the 'parole deal' and 'deniers', the Innocence Network UK (INUK) adopts what might be called a 'bifocal approach' to the problem of prisoners maintaining innocence in its attempts to distinguish potentially innocent victims from prisoners who maintain innocence when they are not. In particular, what is termed the 'typology of prisoners maintaining innocence' is employed as an objective screening process that separates prisoners (or alleged innocent victims of wrongful conviction who are no longer in prison or did not receive a custodial sentence) who are clearly *not* innocent from those that *may be* innocent. Devised as part of my work with the INUK in an attempt to provide reliable referrals to member innocence projects for further investigation, the 'typology' is a practical demonstration that we (the INUK) do not just believe all who claim innocence are innocent. At the same time, however, the INUK accepts that the shortcomings of criminal trials, coupled with the limits of the criminal appeals system to guarantee that all innocent victims of wrongful conviction and imprisonment will be able to overturn their convictions (discussed below), means that it is *possible* that alleged innocent victims in prison may be innocent.

In essence, applicants to the INUK are sent a detailed questionnaire that asks for a full account of the basis of their claim of innocence and any part that the applicant may have played in the crime that they have been convicted of, among many other things such as the prosecution's case against them, their defence case, appeal history, parole status, and so on. From an analysis of the INUK questionnaires, a range of reasons and motivations for why convicted people say that they are innocent when they are not have thus far emerged. These range from prisoners that maintain innocence in the hope that they will overturn their cases on an *abuse of process* (to acknowledge guilt effectively prevents such a possibility) such as applicants who claim that they are innocent because of certain procedural irregularities alleged to have occurred during one or more stages of the criminal justice process, for instance, the arrest and/or interrogation, the police investigation, and/or during the trial that led to the conviction

itself. It includes those who are *ignorant of criminal law* and do not know that their behaviour is criminal, such as the applicant convicted of a joint enterprise crime who believed that because he did not actually hit the person who died in a fight between two rival gangs that he was innocent of the murder for which he was jointly convicted. It includes those who know that their actions constitute a criminal offence but *disagree* that it should, such as the applicant who believed that because he had video evidence that his former girlfriend had once consented to have sex with him he could never be guilty of rape; and, it includes cases where *innocence is maintained to protect loved ones* from the knowledge that they were lied to by the perpetrators of crime, such as the man who promised his mother that he would never commit another burglary, and claimed that he had been 'fitted-up' by the police when he was reconvicted for a subsequent burglary. It was only when his mother had died that he admitted his guilt for his crimes.[4]

In addition to the foregoing categories or prisoners maintaining innocence who are not innocent, another category relates to prisoners who may, in fact, be innocent. Criminal trials are not concerned with whether defendants are innocent or guilty in any straight-forward sense; they are highly technical affairs which attempt to determine if they are 'guilty' or 'not guilty' of criminal offences on the basis of the reliability of the evidence before the court. The many and varied flaws of the evidential processes in criminal trials are revealed in successful appeals against criminal conviction: police officers transgress procedures (e.g. Birmingham Six, Guildford Four, Cardiff Newsagent Three) and have even been shown to make deals with suspects for incriminating evidence to obtain criminal convictions (e.g. Bob Dudley and Reg Maynard); prosecutors can fail to disclose vital evidence (e.g. John Kamara, Judith Ward, M25 Three, Cardiff Three); forensic science expert witnesses exaggerate their findings or make mistakes (e.g. Sally Clark, Angela Cannings, Donna Anthony, Kevin Callan); people make false accusations (e.g. Mike Lawson, Basil Williams-Rigby, Anver Sheikh, Warren Blackwell); and defence lawyers can fail to adequately represent their clients (e.g. Andrew Adams) (see, for example, Naughton, 2007, Chapter 3).

It must be acknowledged that successful appeals are not evidence of innocence. Yet, the aforesaid examples demonstrate the diverse range of failings of the criminal justice system at the pre-trial and trial stages, to which innocent victims can fall prey, raising questions about the adequacy of the opportunities available to innocent victims of wrongful conviction to overturn those wrongful convictions when they occur.

The problem with the criminal appeals system, however, is that it, too, is highly technical as it attempts to determine not whether appellants are guilty or innocent, but whether convictions are 'safe' or 'unsafe' from the perspective of the prevailing rules of criminal appeals. As such, if and when innocent victims are wrongly convicted and imprisoned, they may not be able to overturn their convictions unless they are able to show a breach of process that led to the conviction. Fresh evidence is another possible way of overturning an alleged wrongful conviction by demonstrating the evidential unreliability of the conviction. Most crucially, however, evidence available at the time of the original trial may not count, even if it proves that the convicted person is

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[4] This example was also provided in a 'Chatham House Rules' discussion between PPMI and senior representatives from the post-conviction system.

innocent. Criminal appeals are not about rectifying the wrongs of criminal trials and ensuring that the innocent overturn their convictions (see, also, Naughton, 2006a).

Conclusion

The reasons why prisoners maintain innocence are complex and varied: although all prisoners are legally guilty, and most will also be factually guilty, it is equally true that some prisoners who say that they are innocent are likely to be factually innocent. In devising and deploying the typology of prisoners maintaining innocence, the INUK keeps sight of the various categories of prisoners maintaining innocence who are not innocent *and* the limits of the criminal justice system that mean that innocent people can be wrongly convicted and may remain unable to overturn their convictions. It is an attempt to marry up the entirely legitimate concerns of those against the wrongful conviction and imprisonment of the innocent with the equally valid concerns of those that attempt to deal with so-called 'deniers' who will not confront their guilt whilst they are in prison and demonstrate a reduced risk of re-offending. The idea is to present the beginnings of a new way of thinking about the problem of prisoners maintaining innocence in the hope that new forms of action are devised and proactively deployed that might more appropriately deal with prisoners who say that they are innocent.

INUK's typology of prisoners maintaining innocence helps to clarify the different meanings of 'innocence' and 'guilt' between prisoners maintaining innocence and staff in prisons and the Parole Board, providing a new vocabulary so that the different positions are more clearly understood. As such, it could be utilised for educative purposes to assist prisoners maintaining innocence and prison and parole staff alike to understand the basis and validity of claims of innocence, even facilitating compliance with sentence plans and offence-related programmes by prisoners who realise why they are not innocent. Most crucially, it could be embraced by the post-conviction system to separate the various types of prisoners maintaining innocence as part of the wider remit of contributing to the underpinning goals of the criminal justice system - protecting the innocent and promoting confidence that the system is fair.

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The Pressures on Life Sentenced Prisoners Maintaining Innocence to Admit their Guilt

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Introduction

The following provides a brief summary of the key findings of a survey undertaken as part of my contribution to Progressing Prisoners Maintaining Innocence (PPMI), an alliance, comprised of prison visitors, support groups, prison lawyers, investigative journalists and academics, that formed to try to progress innocent life prisoners through the prison system. It confirms and extends a situation referred to as the 'parole deal', a situation whereby life sentenced prisoners maintaining innocence claim that they are pressured to admit their guilt to crimes that they say they have not committed and undertake offending behaviour programmes stipulated on their tailor-made sentence plans to provide evidence of a reduced risk of re-offending.

Context

The notion of a 'parole deal' relates to cases such as Stephen Downing, Robert Brown and Paul Blackburn, each of whom spent in excess of 25 years in prison maintaining their innocence until they were able to overturn there convictions in the Court of Appeal (Criminal Division). As each overturned their convictions, it was widely reported in the media that if they had acknowledged guilt, confronted their offending behaviour and, thus, demonstrated a reduced risk of reoffending, they would, more than likely, have served around half of the time in prison that they spent. It was also reported that during which they were deprived of better jobs, training opportunities and parole consideration to put pressure on them to admit their guilt on the basis that they were – in the terminology of the Home Office - IDOM, 'in denial of murder'. The possibility that they had no offending behaviour to confront and that they, therefore, presented no risk of reoffending as they were innocent of the crimes they were convicted of was not even considered by the Prison Service and/or the Parole Board because they say that they are 'not allowed to go behind the conviction, nor the decisions of the courts'.

Key findings

Refusal to undertake offence related courses

The most significant finding of the research was a refusal on the part of prisoners maintaining their innocence to undertake offence related courses that results in an almost insurmountable barrier to progression – if they do the programmes they believe that it is tantamount to admitting guilt for crimes that they have not committed; however, if they do not complete the courses listed on their sentence plans

they are unlikely to make progress, and they certainly do not make equal progress with their counterparts that accept guilt for the crimes that they were convicted of.

This problem is exemplified in the following quotation:

> If I had a £1 for every time I've been told by Prison Officers' that unless I do courses and address my offending behaviour I will never be released, I would be a lot richer than the Chelsea owner (Respondent 37, Cat A, convicted of murder and arson in 2002).

It is reinforced by Prison Officers:

> I have been told by the prison officers that I will never be released as long as I persist in my innocence and will not progress (Respondent 61, Cat A, convicted of murder in 1991).

And, by OASys Reports:

> Sentence Planning Reports [OASys Reports] are always the same- until I address my offending behaviour I must remain in a Dispersal Prison (Respondent 64, Cat B, convicted of murder in 1995).

As the catch-22 applies to the specific refusals to undertake the Sex Offender Treatment Programme (SOTP), the following testimony sums up the situation:

> While in prison I have always complied with my sentence planning board, having completed the lifer induction, lifer induction update, anger management, stress management, ETS, social skills, inmate development and alcohol and drug awareness courses. The only course that has been recommended and I have not done is the SOTP course due to the psychology department refusing to offer me a place on it. It is due to not doing the SOTP that the prison service refuse to give me a progressive move (Respondent 68 convicted of murder in 1991).

As the catch-22 relates to specific refusals to take part in an Enhanced Thinking Skills (ETS) Programme, the following submission is insightful:

> Should I be the one who is forced to undertake Enhanced Thinking Skills to enable me to have empathy and compassion for others, yet I am being held incarcerated for a crime that I did not commit while I watch my family disintegrate around me. Whose Thinking Skills need enhancing? Or, who needs to show empathy or compassion for others when the whole system is based on a web of lies and deceit? (Respondent 43 convicted of murder in 1999).

Pressure to undertake offence related courses

Prisoners maintaining innocence reported that they were placed under pressure to admit to crimes which they maintained they had not committed. This pressure can be personal, so that they may re-join their families, for example.

> I am fully aware that by not giving in to this pressure [to 'confess' to a crime that I did not commit and undertake offending behaviour programmes] I may end my days in here and never be with my twin baby boys as they grow up (Respondent 10, Cat A, convicted of murder in 2004).

Alternatively, prisoners maintaining innocence may be institutional pressured as in the following quote:

> In 1993, I was shown a file by a former governor who was leaving the prison service. In it was a directive from the HO which advised that I should be 'pressured' into making a confession (Respondent 63, Cat B, convicted of murder in 1988).

Appellants

There seems to be a general consensus between prisoners maintaining innocence, lawyers acting on their behalf in making appeals, prison officers and prison psychologists that undertaking index offence related course work will have a detrimental effect on the outcome of their appeal. In terms of prisoners, the following quotations exemplify the problem:

> I feel that non-progression and non-release at point of tariff unless you 'confess' is used as leverage to get appellants to drop their cases (Respondent 10, Cat A, convicted of murder in 2004).

This is reflected in sentence plans:

> Sentence plan constantly includes courses that I cannot do because I am an Appellant. As a 'in denial' innocent person you are deemed to be deliberately refusing to comply with the prison regime and as such they set you courses that they know you will not be able to attend. Every time you attend a Sentence Planning it is evident that you will not be able to comply therefore placing you at odds with the system. Thus no movement except backwards (Respondent 50, Cat A, convicted of rape and murder in 2001).

It is claimed that prison officers and the psychologists who deliver the offence related courses regard prisoners 'in denial' as ineligible:

> I have been informed that I will not get out if I do not do courses as I am in denial, but told that I must admit guilt in order to qualify for a place on the courses (Respondent 29, Cat C, convicted of murder in 1993).

It is, even, evident in advice from appeal lawyers:

> I am making an appeal and was advised by my legal representative not to do the SOTP (Respondent 72, Cat B, convicted of rape in 2002).

Files and Reports

In general terms, prisoners maintaining innocence claimed that many files and reports on them were just not accurate.

> There will never be an unbiased report about me. They are trying to bury me under an avalanche of lies (Respondent 4, Cat B, convicted of murder in 1998).

> Most of the reports are ghost written and written from other reports that are themselves ghost written and in the event that you are actually interviewed, you find that you have been grossly misquoted and anything you say is gleefully twisted to what they say you said, with no chance whatsoever of having to put it right (Respondent 49, Cat A, convicted of murder in 1996).

This can relate to probation staff:

As the probation service are involved in parole write-ups I am constantly being made aware of their stance on prisoners maintaining their innocence. It is a no go area (Respondent 51, Cat C, convicted of rape and indecent assault in 2001 my italics).

It can relate to prison psychologists:

I have taken any courses that I have been asked to – SOTP; ETS; social skills; and so on. A major problem as I see it is that there is just too much false information coming out of the psychology department (Respondent 30, Cat B, convicted of murder and rape in 1987).

It can relate to the parole Board:

Being a model prisoner is meaningless...[the] Parole Board do not pay any attention to positive reports of my behaviour. Instead, they focus on the negative reports which are full of errors, misinformation and lies. At my last hearing, a false report by a psychologist was the only thing that I was refused on. (Respondent 70, Cat C, convicted of murder in 1992 – 2 years over tariff).

Incentives and Earned Privileges Scheme

Prisoners maintaining innocence are often denied 'enhanced' status and the concomitant privileges, even if their behaviour is exemplary:

The CCRC have...referred my case back to the Court of Appeal. In the meantime, I have asked to do the SOTP course but have been told that I cannot do the course because I am waiting for an appeal in the Court of Appeal. However, in April 2005 I was informed that because I had not taken part in the SOTP course that my enhanced status was being withdrawn (Respondent 58, Cat C, convicted of rape in 2002).

I have steadfastly maintained my innocence and as such have refused to partake in any offending behaviour work. Because of this, on an Annual Sentence Planning Board in September 2003, I was reduced from enhanced status to standard and subject to loss of privileges. I have recently been given a set of written objectives to complete – one of which was 'to give a full and honest account of the index offence'. I was further warned that if I do not comply with my Sentence Plan, a 'regressive move will be sought' I have this in writing (Respondent 12 convicted of murder in 2001).

Category: Sometimes, no matter what courses have been completed, prisoners maintaining innocence can still face difficulties in progressing due to being kept in a higher security category than equivalent prisoners who admit their guilt.

I have undertaken the ETS course and want to do other courses to show that I am not a risk – e.g. anger management, social life skills and so on – but they are not available at the Cat C prison I am in. I have asked for a transfer so that I can do the other courses but I have been told that I cannot be transferred until I complete the SOTP (Respondent 72, Cat B, convicted of rape in 2002).

Not all prisons provide alternative courses to demonstrate lack of risk

This has significant impacts on the ability of prisoners maintaining their innocence to demonstrate that they do not present a risk to public safety, especially where a

particular programme has been identified as a requirement on the sentence plan! For example:

> As I am in Cat B establishment, I cannot undertake any courses to show my lack of risk (Respondent 52, Cat B, convicted of murder in 2000).

> I have done everything that has been asked of me except courses which relate to the index offence. I have undertaken enhance thinking skills but at the prison I am in they cannot offer any non-offence focused courses. A particular problem for life prisoners who are maintaining their innocence is the lack or shortage of non- offence related courses which could be undertaken to demonstrate absence of risk (Respondent 55, Cat A, convicted of murder in 1999).

> I have undertaken the ETS course and want to do other courses to show that I am not a risk but they are not available at the Cat C prison I am in. I have asked for a transfer so that I can do the other courses but I have been told that I cannot be transferred until I complete the SOTP (Respondent 72, Cat B, convicted of rape in 2002).

Conclusion

The implication of the survey, then, is that the 'parole deal' needs to be extended to include a more comprehensive analysis of the obstacles to progression for life sentenced prisoners maintaining innocence. More appropriately understood, the 'parole deal' includes at least the following agents/agencies who are putting pressure on prisoners maintaining innocence to admit to their index offences and comply with their sentence plans to progress through the prison system to achieve possible release, possible release because there are no guarantees that life sentenced prisoners will ever be released if they do not satisfy the requirements of the Parole Board to demonstrate a reduced risk of re-offending:

- Prison Governors (for example, respondent 63);
- Prison probation staff (for example, respondent 51);
- Sentence Planning Reports (for example, respondent 50; 64);
- Cat A Boards (for example, respondent 49);
- Prison Officers (for example, respondent 61; 37);
- Prison Psychologists (for example, respondent 32; 58; 65; 68);
- Parole Board (for example, respondent 73); and, even,
- Appeal Lawyers (for example, respondent 72).

This reveals the 'parole deal' for what it is – a pressure upon prisoners maintaining innocence to admit guilt for the crimes that they were convicted of that involves every part of the post-conviction system.