

# **The Winston Churchill Memorial Trust of Australia**

Report by Estelle Blackburn

2007 Churchill Fellow

To study the different models of organisations that work for the wrongfully-convicted victims of injustice.

I understand that the Churchill Trust may publish this Report, either in hard copy or on the Internet or both, and consent to such publication.

I indemnify the Churchill Trust against any loss, costs or damages it may suffer arising out of any claim or proceedings made against the Trust in respect of or arising out of the publication of any Report submitted to the Trust and which the Trust places on a website for access over the internet.

I also warrant that my Final Report is original and does not infringe the copyright of any person, or contain anything which is, or the incorporation of which into the Final Report is, actionable for defamation, a breach of any privacy law or obligation, breach of confidence, contempt of court, passing-off or contravention of any other private right or of any law.

Signed:  
Estelle Blackburn

Dated: 28 December 2008

**INDEX**

|  | <u>Page</u> |
|--|-------------|
| <u>INTRODUCTION</u>  | 3-4         |
| <u>EXECUTIVE SUMMARY</u>                                   | 5           |
| <u>FELLOWSHIP PROGRAM</u>                                  | 6           |
| EXTRA-CURRICULAR UNIVERSITY<br>BASED INNOCENCE PROJECT     | 7           |
| INDEPENDENT NON-PROFIT<br>INNOCENCE PROJECT                | 7-8         |
| JOURNALISM SCHOOL-BASED<br>INNOCENCE PROJECT               | 8-9         |
| COMMUNITY-BASED INNOCENCE PROJECT                          | 9           |
| INDEPENDENT GOVERNMENT-RUN<br>ORGANISATION TO REVIEW CASES | 9-10        |
| COMMUNITY BASED UMBRELLA ORGANISATION                      | 10          |
| <u>CONCLUSIONS</u>   | 11          |
| <u>RECOMMENDATIONS</u>                                     | 12          |

## INTRODUCTION

Injustice through the wrongful conviction of innocents has occurred throughout history. It is, unfortunately, unavoidable. The justice system is human, therefore it is fallible. But it behoves those who play a part in the justice system to willingly rectify its mistakes when they are discovered. It is never too late. The longest-standing wrongful conviction known to have been rectified is that of Grace Sherwood, who was exonerated by the Governor of Virginia, USA, on 10 July 2006, 300 years to the day after she was convicted and jailed for being a witch.

Possibly the most famous case in the US is that of Rubin “The Hurricane” Carter, a black boxing champion who was finally exonerated 22 years after having been convicted, along with acquaintance John Artis, of the murder of three people in a bar in New Jersey in 1967. He was exonerated in 1985 (charges completely dropped in 1988) after a long, public campaign including the vocal support of celebrities such as Bob Dylan and Muhammad Ali.

Famous cases in the British justice system include that of Timothy Evans, hanged for murder in 1950 and granted a free pardon sixteen years later, after research and the book “10 Rillington Place” by Sir Ludovic Kennedy. Evans’ tenant Reginald Christie was executed for the same murder and others in 1953. They also include the wrongful convictions for IRA bombings of the ‘Guildford Four’ and the associated ‘Maguire Seven’ and the ‘Birmingham Six’, exonerated in the 1990s after 15 and 16 years of wrongful imprisonment.

The most famous in Australia, which employs the adversarial British justice system, is that of Lindy Chamberlain, wrongly convicted in 1982 of the 1980 murder of her infant daughter Azaria at Uluru (her husband Michael, convicted of being an accessory after the fact). She was released in 1986 and finally exonerated in 1986.

These and other cases have brought public attention to the possibility of injustice. Yet most people don’t concern themselves with the issue and the terrible toll it takes on the innocent prisoner and his family. While lawyers regularly call for judicial reform, there is no public outcry, people assuming it won’t happen to them or to anyone in their family, and, apart from maybe the popular, publicised cases, taking the attitude that ‘there’s no smoke without fire’.

However injustice is disturbingly common, the occurrence estimated to be one per cent of the prison population. Fortunately there are groups of dedicated people who put time and energy into helping the victims of injustice.

The organisations they work with are generally called ‘Innocence Projects’, a term coined by the two lawyers Barry Scheck and Peter Neufeld who founded the

first Innocence Project in the Cardozo Law School at Yeshiva University in New York, in 1992. Since then, Innocence Projects have sprung up through out the USA, Canada, and more recently, Britain. Most of them model themselves on the Cardozo Innocence Project.

This is essentially a unit within the law school, an option which students can take during their law degree study. They work on well-screened cases, with the guidance of lawyers. The strict guidelines include only accepting cases where there is DNA involved, where the innocence-claiming prisoner has exhausted all appeals and where is quite clearly no association at all with the crime. When a case is selected, there is to be no contact with the prisoner or the prisoner's family.

An innocence project has recently been established in Perth. It is incorporated and has offices in Council House Perth. At the time of my application. The Innocence Project WA was working with several law schools in Perth with the aim of having one agree to an innocence project on the law school model, as is Australia's first innocence project, established at Griffith Law School in Queensland, in 2001.

The Fellowship allowed me to travel to the USA, Toronto and the UK to look at other models, with a view to ensuring that the Innocence Project WA is the broadest, most effective possible, providing support to victims of injustice and their families, as well as reviewing their cases for fresh evidence for an appeal.

I acknowledge with gratitude the Winston Churchill Memorial Trust for affording me this opportunity and all innocence project operators who sacrificed valuable time from their important work to provide me with the information I sought.

## **EXECUTIVE SUMMARY**

Estelle Blackburn  
Journalist/writer  
17/26 Wellington Street, Mosman Park 6012, Western Australia  
(08) 93841037; [estelle3@inet.net.au](mailto:estelle3@inet.net.au)

I undertook the six-week Fellowship between in September and October 2008. It enabled me to research the various models of organisations that work for the wrongfully convicted, other than the law school-based model of Australian innocence projects. I was able to visit an extra-curricular university project, a non-profit private organisation with a Board, executive staff and volunteers from all walks of life, a journalism school-based project, a community-based project supporting and advising family and friends of injustice victims, the UK's independent Government-funded Criminal Cases Review Commission and the umbrella organisation for community groups around the UK, attending its 7<sup>th</sup> UK Miscarriage of Justice Day.

### **Highlights**

- Being invited to attend a monthly review meeting of staff, pro bono lawyers and volunteer case investigators to discuss their progress.
- Being given a complete copy of the Innocence Institute of Western Pennsylvania's manual.
- Meeting at Northern Arizona University Professor Robert Schehr, who liaises closely with the Griffith University Innocence Project on the Gold Coast.
- Meeting with the producer of the television series which exposed miscarriages of justice in the UK 'Rough Justice', David Jessel, now a Criminal Cases Review Commissioner, as an addition to Commissioner John Weeden who gave me a whole morning to explain its operation.
- Meeting the instigator of the innocence projects and the UK Innocence Network, Dr Michael Naughton, obtaining a copy of a guide for victims of miscarriage of justice, and meeting many other innocence workers and victims and their families at the UK Miscarriage of Justice Day.

### **Recommendations**

- The Western Australian Government immediately establish an independent body to investigate miscarriages of justice, along the lines of UK's Criminal Cases Review Commission.
- The Innocence Project of Western Australia take the role of an umbrella organisation for any number of innocence projects, community, law school, journalism school etc., as many as possible being encouraged to look at the large number of claims of injustice.

### **Implementation and Dissemination**

I will present my findings to the Western Australian Attorney General, the Innocence Project of WA and the four WA universities, will speak to community groups and will create media opportunities to speak out.

## FELLOWSHIP PROGRAM

10 -13 September:

**Northern Arizona Justice Project, Northern Arizona University, Flagstaff, Arizona, USA.**

Director, Professor Robert Schehr  
Executive Officer, Ms Jodi Shorr, and staff

17 - 21 September:

**Association in Defence of the Wrongfully Convicted, Toronto, Canada.**

Executive Director, Ms Win Wahrer  
Board member, Mr Rory Sinclair  
Staff, lawyers and volunteers

22 – 26 September:

**Innocence Institute of Western Pennsylvania, Point Park University, Pittsburgh, Pennsylvania, USA**

Director, Professor Bill Moushey  
Staff, volunteers, students

30 September – 1 October

**Innocent, Oldham, Manchester, UK**

Co-founder Dr Andrew Green and Chairperson Ann Craven.  
Case workers and families of injustice victims

7 October

**Criminal Cases Review Commission, Birmingham, UK**

Commissioners John Weeden and David Jessel

18 - 19 October

**Miscarriage of Justice Day, Leeds, UK**

Dr Andrew Green and other justice workers, United Against Injustice staff,  
Dr Michael Naughton of the UK Innocence Network, Dr Paul Mason of Cardiff  
University, many organisers of smaller community groups spread throughout UK.

## **MODELS OF INNOCENCE PROJECTS OTHER THAN LAW SCHOOL CURRICULUM BASED**

### **Extra-Curricular University-based Innocence Project**

I visited the Northern Arizona Justice Project which is based at the Northern Arizona University, but it is not a unit to be taken as part of a degree.

The very enthusiastic Director, Professor Robert Schehr, of the Department of Criminology and Criminal Justice at the university, and his Executive Officer Jodi Shorr, explained to me how the project worked and gave me written material about the Project, and Professor Schehr gave me several of his articles printed in law journals and other academic publications.

I was impressed with this Project in that even though it is very small, with one paid executive officer who is a graduate student, one small office and a conference room, and only two volunteer students to do case reviews.

It showed me that a university-based Innocence Project did not need to be a part of the curriculum, therefore requiring much academic approval and planning, but could be established simply, by a willing university with an enthusiastic leader and a small staff.

I was impressed with the advertising this Project does through its tee shirt which they presented me with. The quote on the back gives the general public with something to think about, hopefully affecting those people who don't have any interested in wrongfully convicted people, and it draws a lot of comments when I wear it: "If the wrong person is in prison, the right person is free to cause more harm."

### **Independent non-profit Innocence Project**

I visited the Association in Defence of the Wrongfully Convicted (AIDWYC), seeing their offices and meeting staff and volunteers. Executive Director Win Wahrer gave me a lot of her time and invited me to join in an evening meeting in which case workers reviewed their progress with staff and lawyers

AIDWYC is a non profit organisation which works for factually innocent people who have been wrongfully convicted, providing Canada's only independent review of claims of wrongful conviction, and also to prevent the occurrence of wrongful convictions through legal education and reform.

I learnt from AIDWYC that one way in which to reduce the number of cases looked at is to restrict the work to murder cases and insist there must be some proof of the accused being 'factually innocent', through such evidence of DNA. I would not recommend this, having worked on two cases where this was not available, and been involved in or observed others.

While AIDWYC welcomes any volunteers, be they educated students doing case work - and I met one who was a former prestigious orchestra musician and now law student – or people willing to do administrative work, I learnt that there can well be a problem with administrative volunteers making errors, such as filing material in wrong places, and so can require too much people resource in close supervision.

Another point of interest I learnt here is the amount of work that has to go into fundraising to augment any government/law organisation funding, and the benefit of having a 'big name' attached to the Project. Until recently, Rubin (the Hurricane) Carter was on the Board and he attracted a lot of attention and ticket sales when involved in fund-raising events. They have found it far more difficult since his departure.

I learnt that innocence workers in Canada are, as in Australia, calling for an independent, government-funded organisation along the lines of the Criminal Cases Review Commission in the UK.

The lawyer who is closely connected to AIDWYC and works on many of its cases, James Lockyer, is one who is very vocal about this.

### **Journalism-school based Innocence Project**

At Point Park University in Pittsburgh, Pennsylvania, I saw how an Innocence Project can be incorporated in a journalism school as units to be selected towards a journalism degree.

I met with the Director of the Innocence Institute of Western Pennsylvania, Professor Bill Moushey, who is a working investigative reporter for the local newspaper while also the journalism professor at the university.

I also met with his office staff and student volunteers, attended one of his classes and read several of his articles in the Pittsburgh Post Gazette.

Professor Moushey gave me a complete copy of the Project's manual and university curriculum, so I have a ready starter's kit for any journalism school prepared to follow this model.

I could see the advantage of having a very experienced journalist at the head of the Innocence Project, and the advantage of it being linked with a newspaper,



such as Post Newspapers or The Sunday Times in Perth, giving the students a ready outlet for their stories. Seeing their progress and results in print would ensure their enthusiasm did not flag.

This Innocence Project is very successful in winning cases and raising awareness of injustice, though it struggles for funding, but I could see the particular experience and personality of Professor Moushey was a major contributing factor. There are several people in Perth who are currently working in the media, who I believe could fill such a role.

### **Community-based Innocence Project**

By visiting Innocent in Manchester, I was awakened to the fact that Innocent Projects do not have to take on a case and do all the investigation into the applicant's claim of innocence.

This group meets monthly in the Pennine Lounge in Oldham, Greater Manchester, to give support to families, friends and supporters of victims of injustice and to give advice to those who are working to find fresh evidence for an appeal for their loved ones.

It is the loved ones who do all the leg work, giving progress reports to the group, and getting advice from others there who have done it before them, some successfully as Chairperson Ann Craven, some so far unsuccessfully, and co-founder Dr Andrew Green.

They are not open meetings, but I was invited to attend by Dr Green. I attended a meeting and spent time with Dr Andrew Green. While Dr Green says it is rather bogged down with old cases – a problem for any Innocence Project – it supported my view that an Innocence Project that allows no contact between the reviewer and the prisoner of family works with extra difficulty in not being able to consult and gain information, and does not provide a support role.

### **Independent Government-run organisation to review cases**

I was given a full morning at the Criminal Cases Review Commission, Birmingham, UK, where Commissioner John Weeden went into great detail about the organisation and its methods. This included giving me time with another Commissioner, David Jessel of 'Rough Justice' fame and much written material.

There has been much criticism of the CCRC, largely that its role is to determine if there is a real possibility that appeal courts will overturn a conviction rather than being designed to rectify the errors of the system and ensure that the innocent overturn their wrongful convictions. As with the system in Western Australia via the Attorney General, it cannot refer cases of wrongful conviction if the required

criteria of fresh evidence or fresh arguments are not met, including if evidence that proves innocence was available at the original trial. I also learnt of criticism that the Commissioners are not selected at random but each has a vested interest to protect.

Another criticism is that it does nothing to review how an injustice occurred and introduce processes to prevent that happening again. Commissioner Weeden explained this was on the agenda, but reviewing cases had to take priority.

However, the main advantage of a government-run organisation is that it has the power to gain access to documents and information which volunteer groups are not privy to. This is essential if cases are to be truly reviewed with all the information available to them.

While it might not be a perfect organisation, it demonstrates executive understanding of the incidence of injustice and willingness to be active in overturning wrongful convictions.

Commissioner Weeden expressed to me his willingness to come to Western Australia to speak to anyone about the CCRC if it would be of any help in establishing one in this State.

### **Community-based umbrella organisation**

By attending the 7<sup>th</sup> National Miscarriage of Justice Day, held at Leeds, UK, I met members of United Against Injustice and saw them in action. United Against Injustice is the national federation of support and campaign groups for miscarriage of justice victims.

By attending this day of inspirational speeches, I met the key-players in many of the other community-based Innocence Projects in Britain – e.g. London, Kent, and learnt how these groups work under the umbrella organisation.

At this large gathering I was able to meet and speak to the Founder and Co-ordinator of the Innocence Network UK, Dr Michael Naughton, and the journalism lecturer and Director of the Cardiff Nexus Innocence Project at Cardiff University, Dr Paul Mason.

I learnt from this day that small support and help groups could be formed throughout Western Australia, under the umbrella of the Innocence Project of WA.

## **CONCLUSIONS**

I set out on my Fellowship with the idea that I would need to select one model as the best. I returned with the view that all were very worthwhile, that the energy of anyone interested in helping in this needy area should be garnered – law students, journalism students, community members – and that any number of innocence projects can work independently on different cases. As there is an Innocence Project just established in Western Australia, it would be ideal that this is the umbrella organisation for other groups, while also carrying out its own reviews of cases.

I also began the Fellowship with the view that there had to be a choice between a volunteer or academic innocence project and a government-run Criminal Cases Review Commission. I returned with the view that a CCRC was vital to justice in Western Australia, along with the other forms of innocence project. It would mean when any of these projects succeeded in finding enough fresh evidence to apply to the government for a fresh appeal, it would do so through the CCRC instead of the current practice of through the Attorney General.

While there could still be dissatisfaction about the level of fresh evidence required and the decisions of the CCRC, it does have the benefit of there being a group of people making the decisions rather than one Attorney General on the recommendation of one Solicitor General, and the benefit of being independent of the government.

When the Criminal Law Congress, meeting in Perth in 2006, called for the creation of a CCRC, the then Attorney General, Mr Jim McGinty, replied in the media that there was a lot to be said for community activism. 'When you look at the work done by people like Estelle Blackburn, Colleen Egan and John Quigley, such a body could result in the delivery of less not more justice.' The work by the others and me has exhausted us and I believe it is the responsibility of the government to correct the mistakes of the justice system.

I believe we should have a government body, to whom the Innocence Projects and any other activists or individuals take their findings and requests for fresh appeals.

I returned from my six-week Fellowship with a far better knowledge of the various ways that people passionate about justice work for those suffering from injustice, along with knowledge of many more tragic cases that these organisations are working on, links with many kindred-spirits who are prepared to do something about the seeming endless incidence of injustice, and with others who have suffered. My Fellowship program accentuated the need for The Innocence Project WA garnering as many foot-soldiers in the fight against injustice as possible.

## **RECOMMENDATIONS**

### **1. Criminal Cases Review Commission**

I strongly recommend that the Government of Western Australia create an independent, government-funded organisation to investigate claims of miscarriages of justice - along the lines of the UK's Criminal Cases Review Commission, created in 1997 following a Royal Commission to review the British criminal justice system after the miscarriages of justice on the Guildford Four and Birmingham Six.

An earlier State Government acknowledged that there was a problem with the justice system in Western Australia, in 2002 holding a Royal Commission into alleged police corruption. The number of cases is unabated, some publicised, others unknown by the general public. More needs to be done, yet the former Western Australian Attorney General, Jim McGinty, rejected a call by the Criminal Law Congress held in Perth in October 2006 for such a Commission.

It is timely that the new State Government, which gained power while I was overseas on my Fellowship, takes over the running of fresh appeals through the creation of a Criminal Cases Review Commission.

This will put on notice those in power whose lack of attention to comprehensive, ethical criminal investigations and representations in court, whether on purpose or unwittingly, and give the general population far greater confidence in the Government's concern for justice and fair treatment of accused people, criminals and victims in the justice system of Western Australian.

### **2. Multiple Innocence Projects**

My other recommendation is that there be no restriction to one model of innocence project but that each model has great value and each could work in Perth, independently, yet under the umbrella of the Innocence Project of WA.

It appears likely that Edith Cowan University will form an innocence project in its law school, under the ambit of the Innocence Project of WA.

I highly recommend that:

- other universities also institute innocence projects either as part of the law curriculum or journalism curricula, or as an extra-curricular activity for student volunteers.
- any people working on their own case or that of a family member join with others in a similar position and any interested general public to form a

community group, for the purpose of general support for each other, advice on research and provision of information to those seeking to help post conviction and pre-conviction. These groups could be formed throughout Western Australia.

- the above types of innocence projects work under the umbrella organisation the Innocence Project of WA, to be the collection, screening and distribution point for prisoners' applications, meeting quarterly with the various projects to distribute cases and hear reports of progress made. Apart from these meetings, the projects work independently, working under their own individual arrangements, and applying for a new appeal to the Criminal Cases Review Commission either through the Innocence Project or independently.

\*\*\*\*\*