

The good, the bad and the ugly

Cardiff Law School Innocence Project: reflections on the first four years

In this article reflecting upon the growth of the innocence project movement within UK universities, Julie Price¹ offers a unique, warts-and-all personal insight into the day-to day practical challenges she and her students have faced since founding their innocence project in 2005.

Introduction

The first innocence project in the UK was launched by Michael Naughton at Bristol in January 2005². Cardiff's was the second, in September 2005.³

At the start of this new decade it seems timely to reflect candidly on our experiences at Cardiff. The learning curve of newer projects may be less acute. Whilst not wishing to duplicate information available via the Innocence Network UK (INUK)⁴, there is no substitute for hearing first-hand examples, to illustrate the trials, tribulations and rewards that accompany this niche area of pro bono work.

Background

Conventional due diligence was notably absent from the decision-making process of whether to have an innocence project at Cardiff. With a Legal Practice Course teaching background, and my sole dalliance with criminal law being three penalty points on my driving licence, this was an alien environment for me, and frankly I'd never heard of an innocence project before. Armed only with a bucketful of enthusiasm, a free rein, and more front than Barry Island, in mid-2005 I set about exploring what a law school of our size could practically do, cheaply, by way of pro bono. Coincidentally, the founder of South Wales Liberty had invited me to an Open Day for innocence projects at Bristol in September 2005. There I met a lovely Welsh family whose son was maintaining innocence, and I rashly agreed to take on that case as our first.

Thus was born the Cardiff Law School Innocence Project – there was no deliberation or discussion, but instead a gut-driven decision. I suspect that other projects are wisely commenced with more comprehensive groundwork research! So what questions/issues have we faced, how did we deal with them, what would we do differently, and what do I know now that I wish I knew then?

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² The Innocence Network UK (INUK) was established by Dr Michael Naughton at a press conference on the eve of the Inaugural Innocence Projects Colloquium, held at University of Bristol, School of Law, 3rd September 2004.

³ Leeds University was starting a project in October 2005, but has never been a member of the INUK.

⁴ The umbrella organisation for innocence projects based in the UK. See <www.innocencenetwork.org.uk>www.innocencenetwork.org.uk

1. Should a project comprise students from just one discipline (usually law), or should it be truly interdepartmental?

Most innocence projects in the UK are law-student exclusive, with few notable exceptions⁵.

These educational vehicles are attractive to departments other than law. Some universities⁶ have successfully integrated students from different disciplines within one innocence project. Our experience at Cardiff was not that. Initially, it was a law-only project, but within months the school of Journalism expressed keen interest. We therefore planned to convert to a joint project, secured some joint funding from our teaching and learning fund, but there were problems, not least of which was the name.

2. Don't underestimate the importance of a name where there is one interdisciplinary innocence project within one university.

Our journalism school naturally did not want to be part of a law school project, whereas the law school had already established the name of its project, been formally launched as such, invested in publicity materials and did not want to lose its own identity. If we were to change our name to the Cardiff University Innocence Project, that would have been the simplest solution, but there were more politics involved than simply taking the path of least resistance. If a new innocence project planned within other universities is interdepartmental from the outset, then there should be no issue with it taking the university name. So perhaps Cardiff is a notable exception to the rule here, but those issues could similarly apply if one university has more than one innocence project.

3. How would staff supervision work where there is a joint project?

As a solicitor, and heading up pro bono generally at Cardiff, I needed to ensure that we worked in accordance with legal practice protocols, whereas there was naturally a journalistic approach on the part of that department. Eventually, our projects parted ways and one became two! Several months of tension ensued about names, but thankfully relations between the two innocence projects are now harmonious within the one university, with very different approaches and names⁷.

4. To launch or not to launch?

Whilst being good for publicity, was a formal launch desirable, and if so, who should do the honours? There is no shortage of people whose wrongful convictions have been overturned, willing to do launches. But one thing I hadn't accounted for was the very raw politics involved. Through South Wales Liberty, we secured Shami

⁵(Glasgow Caledonian: forensic psychology; Cardiff Nexus: Journalism and other non-law; Winchester: Journalism.

⁶ For example, Portsmouth

⁷ <http://www.innocencenetwork.org.uk/membership.htm> accessed 11 January 2010

Chakrabarti⁸ to launch our Cardiff project in early 2006. I was proud of this perfect choice, and considered it a coup for us. However, still new to all this, I had not realised that as Liberty⁹ nationally were no longer supporting individual cases of miscarriage of justice (South Wales Liberty were, but were about to relaunch themselves in order to continue with individual casework) some people in this world were not happy with Liberty. Some high-profile INUK contacts therefore decided to boycott our launch at short notice. Once again, relations were soon resumed, and there was no long-term damage done. Nonetheless, I soon learned that emotions run high in this miscarriage of justice world, and present themselves in challenging ways.

5. At what point do you formally launch your project?

Another issue to bear in mind is that if you launch in a blaze of local publicity, you will naturally increase expectation that you will deliver. I know of one innocence project that was formally launched, but at least a year later had only a handful of keen but frustrated students, and no clients had been requested. That was perhaps premature, and cynics might even say it was disingenuous. You need to be clear in your promotional launch material what your expected time-line is for taking on cases, especially if you decide upon an early launch, perhaps for the purpose of raising awareness for fund-raising.

6. Publicity can be time-consuming

As well as the time involved in organising a high-profile launch (very little administrative back-up was available to me, so it fell largely upon myself and my students), and liaising with the university's public relations department, the cost of putting on a decent buffet and drinks reception was about £700. Then there was the drafting of press releases, doing press interviews, and the inevitable public interest that followed the launch. I had a series of visits from people wanting to tell me their stories, and many phone calls. Now, of course, such enquiries are referred to the central INUK casebank, but at the time, that was partly me!

7. When and how are students trained?

In Cardiff's early days, there wasn't an annual national training programme, but as this seemed the obvious solution, I was jointly involved in creating one. This now happens early in the undergraduate term (in 2009, it was 30th and 31st October¹⁰). My problem is that for our LPC and BVC/BPTC students, this is some 8 weeks into term, and thus there's a two month period when they could be doing casework, but haven't had training. In contrast, for undergraduates there's often the problem that this is still very early in the term to allow staff to organise attendance. Timing will never be ideal for everyone, and has to be a compromise.

⁸Director of Liberty. See <http://www.liberty-human-rights.org.uk/about/2-people/21-staff/index.shtml>>accessed 11 January 2010

⁹See <<http://www.liberty-human-rights.org.uk>> accessed 11 January 2010

¹⁰ For full details of the INUK training programme, see <http://www.innocencenetwork.org.uk/events_past.htm> accessed 11 January 2010

I have found it useful to start the ball rolling to gauge interest among students in early summer, for the next year. As I do not involve first year students, that works for us. They can then be set initial pre-reading, to try to secure an understanding of innocence project work in advance of training-proper. I do not set any preliminary assessments to ensure that work is done, and this is a weakness, as I have no way of knowing if any advance work has been done. It would be relatively easy to set a test, but I have avoided this to date due to a desire to avoid increasing my workload.

8. Is the national training enough?

No. It never could be. The situations faced in each case are unique, with different relevant areas of practice/procedure/law. Students have to take responsibility for their own, continued, (life-long) learning, and you need to rely on supervising lawyers to supplement knowledge. For staff, the question is how and when to supplement training, partly to renew enthusiasm some months into casework. We have dealt with this reactively, for example arranging talks by former police personnel to deal with a particular point raised in a case, and sessions delivered by supervising lawyers. The important thing is to make sure that students know that they will feel lost – that is inevitable - but that they must ask questions.

9. What is the optimum number of students in a project?

We have not got this right yet. We started off with about 70 students working on 10 cases. Some of the cases fell by the wayside for various reasons, and this number of students was unmanageable. This year, we are down to 45 students working on 6 cases. This is still a large number to manage and I'm aiming to reduce this further next year. I suppose I have to pose the question – what is an ideal number that we can educate generally about these issues, whilst occupying them in a meaningful way with practical tasks?

As staff supervisor, you need to get to know the students personally, and to make sure that all are pulling their weight. Our Innocence Officer (see 12 below) liaises with the 6 case managers to collect time sheets and minutes from meetings. I find that best progress is made if I or our Casework Consultant¹¹ attend all meetings.

10. Time commitment – for staff and students

I confess that I don't keep a timesheet for myself of the time I spend on innocence, partly because it would frighten me! However, much of my time over the last four years has been spent on INUK development, rather than my own project, often for mutual benefit, so it would be difficult to disentangle time spent.

¹¹ Dr Dennis Eady, founder of South Wales Liberty, now South Wales Against Wrongful Convictions, referred to in Conclusion

In the early years, I kept a distance from the detail of the cases, because: a) I didn't have time to read and digest all cases, and b) I relied on students and supervising lawyers to get up to speed on case detail.

With hindsight, I believe it is essential for someone who can offer continuity to have a thorough grip on the paperwork and the facts. That would ideally be the staff supervisor, or could be, for example, a Ph.D student. This is less important if the supervising lawyer puts in the time to be fully conversant with all the papers, but we have found that they like to rely on summaries, pragmatically because they simply do not have time.

11. So, how much time is involved for a staff supervisor?

OK – I can't give you a definitive answer, sorry. But, in a nutshell, the whole thing takes more time than you anticipate, if you want to do it properly.

12. How are students selected?

We have an elected Innocence Officer, who is a member of the Student Law Society. She is the channel of communication between me and the caseworkers. She organises things generally, such as case manager meetings (which we hold every 3 weeks at 5pm on a Monday).

Selecting the right students is not a science, like most things. At Cardiff, demand has always been high. I have allowed all students to attend the national training, and afterwards to reflect seriously about whether they wish to apply for casework, and about one-third drop out at that stage. In past years, I have required different things by way of application: an essay, a piece of practical research, a considered reflection upon any two aspects of the training (I bring innocence project work under the Personal Development Planning¹² umbrella). This year, we moved to a job-style application when students had to sell themselves as if they were applying for a job, which I considered to be good practice for future career planning. Quality was variable, and I gave feedback to those who were unsuccessful. Should I allow unsuccessful students to reapply the following year?

My dilemma is to create balanced teams for continuity year on year. LPC and BVC students have more advanced skills, but less time, although are available for longer periods of the year. I also try to have at least one local student on each team, and find they are available for skeleton holiday cover, which is important.

¹² Following the 1997 Dearing Report (National Inquiry into Higher Education (HE)), all UK HE institutions signed up to PDP in 2001. PDP can be described as “a structured and supported process undertaken by an individual to reflect upon their own learning, performance and/or achievement and to plan for their personal, educational and career development. See, for example, Quality Assurance Agency for Higher Education (QAA), 2004, *Publications: Progress files for Higher Education* <<http://www.qaa.ac.uk/crntwork/progfileHE/contents.htm>>

It is easier to acknowledge at the outset that you will attract an element of CV hunters as well as idealists who might be unprepared for the realities of the challenges they will face. I see no inherent problem with students wishing to boost their CVs, provided of course that they actually do the tasks required of them and take it seriously, and there are mechanisms by which students can be removed from a team if they are not pulling their weight. We have discussed whether casework should be limited to students who are stronger academically. Ours attracts a fair number of applications from those who averaged Pass or Third Class degrees in their first year, who are keen to boost the extra-curricular elements of the profiles, whereas they could be putting that time into raising their grades.

There can also be a tension between those who approach this as pre-training professional work, and take a narrow approach to finding strict legal grounds for appeal, rather than keeping an open mind. But I put this down to a more fundamental nationwide problem of persuading practising lawyers to approach our work more broadly, maintaining innocence as a focus, rather than being driven by the current approach taken by the Court of Appeal ie. only to consider new evidence or new lines of argument.

We regularly get requests to participate from students in other departments, such as psychology, criminology and forensic linguistics. Within law, there is more demand for places than I can service and I have to give my own students priority, even though I acknowledge that to include other students would provide a better-balanced approach and would be educationally beneficial for all concerned. However, at Cardiff I can direct them to the Nexus project which recruits from all disciplines.

13. Don't rely too heavily on individual students: teamwork generally

In one case, I relied too heavily on one student, who had an amazing ability to retain and accurately recall at will all the case detail. I was happy to let him manage the team, and only found out afterwards that they were all in awe of his knowledge and he in fact did most of the work himself. Closer contact with all the team members would have exposed this at an earlier date, when it became clear that whilst the information was in his head, it had not been properly converted to permanent record.

I find better results if students, within teams, are always working in pairs on any particular task. They benefit from peer support and teamwork, rather than sole responsibility. Casework really is about teamwork, and team leaders play a critical role, so need guidance on how to manage a team and deal with conflict. Our teams gel with varying degrees of success, and that seems down solely to the personality of the Case Manager (until now, the teams have chosen their own managers). Some of our teams have created different roles within their teams. For example, as well as a Case Manager, there is an Assistant Case Manager, a Secretary, an IT officer, and a File Manager. It seems that they like to have a title as it formalises their responsibility.

We are considering formalising our approach to case organisation and how the investigation is conducted, rather than let each team operate its own system. Each case is of course different, but we think there is room for standardising more of what

we do so that each team is working to the same templates. For example, we are experimenting with a formal “action plan” that allows only a small number of issues to be worked on at the same time, to ensure that progress is made on each before moving to a new issue. We are aware, too, that if we were using an electronic case management system properly, then much of this might be done for us.

14. Small things can be long-winded

For example, letters sent. Our letters go out on Cardiff Law School headed paper, with the INUK logo at the foot. Students email me a draft, which I correct, top and tail, and send out. I then have to upload the final version onto Blackboard¹³. All letters are sent from me, and students’ first names only are given where relevant. Letters received all come to me. I post a message on Blackboard notifying students that a letter has been received. The hard copy goes in the in-tray in the innocence room and will be on the correspondence file for the next meeting, so that we can discuss how to respond to it. I am often tempted to simply send a quick reply if an acknowledgment of receipt is all that is required, but I usually remember that this is about educating students, so it’s best for them to conclude that and to draft that simple letter. I’m sure that other colleagues will have a more efficient correspondence system.

15. How many clients should you have?

This is linked to how many students you have, but isn’t an easy equation. In the early days, when you are waiting for case files, you will need to be creative to occupy students. There’s a rush of activity when the paperwork arrives. Then, some years into a case, a lot of effort is needed to prepare an application to the CCRC¹⁴, but after that the file is essentially on hold. Expect peaks and troughs.

16. What type of case should you take on?

There are probably not enough good murders to go round! I know of one project where students were uncomfortable with a rape case, and how students feel about a case will often dictate the effort that they put into it (although this should not be the case). If students are involved in all decisions, then they assume ownership of the case, and this becomes a non-issue. However, it remains a fact that some of the more difficult sex cases, such as the historical abuse cases, will be difficult or impossible to do justice to, however morally compelling they appear at the outset.

Taking on a local case brings with it advantages as regards local knowledge, publicity, easy access to the scene, witnesses etc. But some projects deliberately choose not to take on local cases, because there will inevitably have been local

¹³ Blackboard is Cardiff University’s Virtual Learning Environment (VLE). This is a web-based application that supports online learning and teaching.

¹⁴See <<http://www.ccr.gov.uk/>>. The Criminal Cases Review Commission is the independent public body set up to investigate possible miscarriages of justice in England, Wales and Northern Ireland.

solicitors and barristers involved, and possibly allegations of negligence of the original defence team, which in itself brings problems of local politics.

17. Where do students work?

We have secured the use of a broom-cupboard (sorry, a small room that will seat 3 people), but we are lucky, as space is at a premium. Our problem is that 45 students work on our project, and demand for the room is high during term time. We have a timetable on the door for students to book the room. This gets quickly filled at the start of a week, and if a team fails to turn up in its allotted slot, that is frustrating.

We bought 2 computers and a printer out of our budget, for this room. We were given filing cabinets and a desk from law school stock. We bought a heavy duty scanner to link with Casemap (see 19 below). We have had to take a pragmatic approach and allow students to take files to the library to work on. We have had a few hairy moments, I must confess, when files have gone “missing”. On one occasion, our law librarian found one under the issue desk. Students were working later than undergraduate office hours, and did not know where to return the file, knowing they were not permitted to take it home. We now have a protocol for working out of hours, so this should not happen again.

Access to the room has been a problem. There is a unique key, which means that even the cleaners do not have access (hence our purchase of an innocence vacuum cleaner and a tin of Pledge). The key is lodged in the general undergraduate office. Our protocol is that students must return the key immediately after opening the door. Despite this prominent warning, we have managed to lose one key.

18. Computers

With client confidentiality in mind, how do students type up work on files, where is the work saved, and how is it backed up? Initially, all of our work was done on two computers in the innocence room, saved onto the hard drive, and backed up on memory sticks. This meant I would have to go into that room to correct letters, save final copies etc, and it was not convenient. More importantly our IT people were not happy with this system, especially when one hard drive became full and we almost lost a lot of work. Our system is now networked and students have a password to access the shared innocence drive, where all work is saved, and is accessed remotely, plus it has the usual university back-up facilities.

19. Case management systems

This is linked to the computer point. At what point do you decide how to manage your paperwork – paper files and/or electronically? I have no doubt that an electronic case management system, such as Lexis Nexis’ Casemap¹⁵, that is free to INUK members

¹⁵ See <<http://law.lexisnexis.com/casemap>>

under a sponsorship deal, makes life a lot easier, and presentation is more professional. I understand that Ben Rose of Hickman Rose¹⁶ is a big fan of this system, which he apparently says contributed greatly to the management of the high-profile case of Andrew Adams¹⁷. To an IT dinosaur like me, it seems to do everything for you except make coffee. However, it is very labour-intensive at the outset because the paperwork has to be physically scanned onto a computer before you can start to use Casemap's many features. We invested in a heavy-duty scanner (about £700) for this purpose, and a few of our cases have been scanned in. Casemap has been networked and works in conjunction with our shared drive (apologies for the absence of a technical explanation here). But we have not yet started to use it properly. We plan in the very near future to have a student working party exploring our next steps to properly implement our use of Casemap. This can be contrasted with our university's other innocence project based at the journalism school, where Paul Mason swears by this tool and his students weekly synchronise their work via laptops, avoiding the extra steps that we had imposed upon us by networking it.

I think that for new projects it is a very attractive use of students' time in the early days, before they are armed with vast piles of paperwork, to explore the features of Casemap, and to take the online "webinars".

20. Paperwork

This is what I consider to be the biggest headache for innocence projects – lack of a complete set of files. When a new project starts up, it should be aware that it can be difficult to trace the original defence files. If a conviction was more than six years ago, the file may have been destroyed. Even if you are able to trace files via previous solicitors, often there will be chunks missing. Furthermore, it's not always easy to work out what is actually missing, or what is used and unused material. The prosecution schedules are the starting point to piece together the jigsaw, but you cannot expect to receive whole files of copy papers from the Crown Prosecution Service (CPS). We have found that some CPS areas are more helpful than others when we ask for particular copies, but that it is impossible to persuade them to send you volumes of copies just because you have gaps in yours.

21. Unexpected costs

It's true to say that an innocence project can be started on a shoestring. However, as ours has become more established, our need for money has grown. It has become evident that it would be far better if we were properly funded to be able to pay for useful things such as court transcripts, and essential things such as scientific tests. It would make our job easier if we knew what was argued at the trial, and in the USA transcripts are available to prisoners as of right (there is a small maximum cost that can be charged, as I understand it). In the UK, transcription services are provided by

¹⁶ <http://www.hickmanandrose.co.uk/>

¹⁷ See <<http://www.hickmanandrose.co.uk/Press-Releases/14-january-2007-andrew-adams-appeal.html>> for background information to the case

private commercial organisations¹⁸, who have to keep tapes for 5 years only. If tapes are available, they can be typed up by the commercial provider at a rate of about £140 an hour. Even for a short trial, this is an exorbitant cost beyond the reach of our pro bono projects. At the time of penning this account, we have written to a transcription company asking if they would provide pro bono copies of the tapes to our project, to allow our students to make copies for our own use only. I am not hopeful. On the subject of availability of transcripts generally, I pose the question whether commercial transcription companies might be persuaded as a matter of corporate social responsibility to make copies of tapes available free of charge to our projects rather than destroy them after five years? We could use these as unofficial copies for our own use. It would not necessarily be a commercially-unwise act on their part, as I think it's safe to say that if we did not have access to these informally, we could not afford to pay commercial rates for them.

22. Barristers and solicitors to supervise

We were aiming for a mix of local solicitors and barristers to supervise our students. We had an excellent response to our initial request for help. However, the reality is that practitioners are busy and sometimes cancel meetings at short notice. They also don't generally have time to read all of the papers, so rely heavily on what students prepare for them. As staff supervisor, this puts me under extra pressure to make sure that the students are right!

Another issue with practitioners is that they tend to be very narrow in how they view our cases. They are used to getting straight to the point – are there legal grounds for appeal? As time goes by, we are moving in the right direction in educating practitioners, and we all appreciate how much pressure they are under with legal aid cutbacks.

23. Dealing with the Press

Whilst initially attracting local press/media interest is attractive to raise the profile of a project, it does not come without its own complications. We attracted two documentary items by ITV Wales¹⁹ on one of our cases, each giving us a significant chunk of airtime. Despite taking about 3 days to film, and the logistics of transporting 15 students 50 miles, we were pleased with the results. Both documentaries were appeals for fresh information, and the latter included a £10,000 reward (the drafting of which in itself was an interesting learning curve) offered by our client's family. We distributed about 1,000 leaflets which were delivered to a pre-targeted area. What we had not bargained for was that the local newspaper would revive the story, including a plea from the victim's family to leave matters be, as "the correct person was behind bars". Whilst we learned that ITV had its own protocol for notifying the victim's family of the renewed story, we did not know how we should deal with the comments from the victim's family via the newspaper's blog. We chose to make no response, to avoid causing further hurt to the victim's family, and to revisit that decision if fresh

¹⁸ For example, the Mendip group <<http://www.mendipmediagroup.com/legal-transcriptions/>>

¹⁹ These were aired in 2007 and 2008 as part of the Wales This Week programme

evidence was forthcoming as a result of the reward. It was not. We were also unprepared for antagonism between members of our client's family as to the amount of the reward offered, and this further reminded us of the need to retain an objective distance from the family.

24. Dealing with the client's family

We have made the most wonderful friends on one case in particular. But I am acutely aware that I should not be saying this if we maintain the position of "professional non-alignment". We have been to the family's house, had copious cups of coffee and a fabulous buffet, and 12 of us shared a pub meal with our client's parents. In short, we now love the family, and have even sent the family dog a Christmas card! That is going beyond what is reasonable, and I know that I should not have allowed it to develop to this extent. However, in my defence I have to say that if you are involved in making a TV programme with a family, and work closely with them for over 3 years, there is a fair chance that human nature will dictate that you may well find yourselves in the same position. When you see how a family is affected by a possible wrongful conviction, you have to have a very hard heart not to be similarly drawn in. You have been warned!

25. Prison visits – to visit or not?

Why would you want to make a prison visit? You need to be clear as to your objective. At Cardiff, we have made a total of 14 prison visits, which I believe is more than any other UK innocence project. These include regular visits to our two clients in HMP Cardiff, and also visits to HMP Gartree, and HMP Rye Hill. Out of our six remaining clients, there is only one whom we have not yet visited (until recently he's been based in North Yorkshire, so the distance and cost involved have been a factor in this). Additionally, HMP Long Lartin would not allow us a legal visit to a previous client.

We work to the protocol of not allowing students to make unaccompanied visits. We secured legal visits to Gartree and Rye Hill (with introductory letters to the prison from our supervising solicitors). But both are 3 hours from us, so with a total of 6 hours travelling, an hour going through security, and a two hour visit, this was a long and expensive day. My university insists on car hire for trips exceeding 100 miles. The cost of car hire, petrol, and feeding students meant that each topped £160. We thought that this was money well spent, and students thought it was invaluable to meet the client as there were questions we wanted to ask that would not elicit full and frank answers without the guarantee of confidential correspondence if they had been posed in a letter.

If you think that a prison visit is essential, but you cannot secure a legal visit, a family visit will be the only option. Your client will have to sacrifice the visit of a family member so that he/she can get you a visiting order, and the disadvantage is that the visit will not be in confidential surroundings, and you will not be able to take in files.

Also, the security procedure for family visits tends to be more lengthy than for legal visits.

26. Rule 39

Be aware that even if you mark your letters with “Rule 39 Legal Correspondence”²⁰, you will be at the mercy of each prison as to whether they will treat your letters as legally-privileged correspondence, as innocence projects do not formally have this privilege. We have recently been able to persuade HMP Shepton Mallet that our letters should be treated as legally privileged, so it may be worth you asking the prison where your client is based if they will treat your letters in this way. The Security Manager/Head of Security is the person to ask.

27. Forensic science elements

My students have felt inadequate as to their general knowledge of any scientific elements of the conviction, and I had not expected this lack of confidence. I think we’ve succeeded in concluding that no-one is expecting them to be experts and there are experts that can be called upon to advise on this. They are now happy to research basic scientific elements of a conviction. They are pleased with the availability of a forensic scientist and other specialists via the INUK.

28. How did we deal with a case where we thought the client was guilty?

We had this one case for about a year. No bodies had ever been found, and the client was convicted many years after the disappearance of the victims, on circumstantial evidence, plus he owned a sea-going boat. All of his correspondence concentrated on specific technical issues he had with his trial. He was simply not prepared to directly answer our questions to enable us to establish alternative theories. He had written widely on his case, but his papers were in essence highly complex procedural complaints, and gave us the feeling he was “playing mind games”. None of us were comfortable with the case. We eventually concluded, with the guidance of our supervising solicitor, that the client displayed signs of psychopathic behaviour. Our solicitor helped us to draft a letter explaining why we could no longer be involved. This may sound judgmental and against the ethos of objectively investigating the evidence with a view to trying to establish the truth. Even though this was one of our early experiences, it was such an uncomfortable case, that I’m sure we would conclude the same today.

²⁰ Prison Rule 39 provides for correspondence between prisoners and their legal advisers to be treated as privileged. This means that such correspondence must not be opened, read or stopped, except in special circumstances. See <
http://psi.hmprisonservice.gov.uk/PSI_2005_002_legal_and_confidential_access_correspondence.doc>
accessed 11 January 2010

29. How long should you keep a case before concluding that there's very little you can do on a realistic practical basis?

This is a current, unresolved problem for us. We have been working on one case for over three years, with no headway as of yet. We have to balance the hope that we are giving to the client by keeping the case alive, with the need to avoid giving false hope. Our current approach is to explore and exhaust all reasonable avenues to the extent that we have capacity. This has to be balanced with the desire to best utilise students' time productively on matters that might be more feasible to explore. We would not close a file prematurely. In most cases, if we felt we were at a dead end, we would probably keep the file "on hold" if the client so agreed, in case there were future developments that meant we could reactivate our investigations.

30. Working with solicitors at a distance has been problematic for us.

We had one case where the client had a solicitor working towards an application to the CCRC, as well as acting in prison law matters such as advising on re-categorisation and parole. The solicitor was based 200 miles from us, and is one of the most prominent criminal appeals solicitors in the UK. He had agreed that we could work with him, as the client had written to the INUK asking for help. The solicitor photocopied about 4 lever-arch files for us, but obviously kept the originals. This was a case dating back to the 1980s, and much of the paperwork was missing anyway. The solicitor asked us to look at one particular aspect of the original trial – negligence of the original team. My students researched this area generally from case law and put together a mini academic essay on negligence. But as there was only one recent case (Andrew Adams²¹) that had featured negligence in overturning a wrongful conviction, the students found this to be a very difficult practical task, and felt they were of no assistance.

Another of our original cases also involved a lot of documentation apparently being destroyed. We made a limited start on the case, but the client soon informed us that he had taken on his own solicitor who had advertised in Inside Time²². So we lost this case (the new solicitor didn't see that we could add anything), although he did ask us to find information relating to media coverage. We did this in conjunction with the Journalism School's project. From these two cases, we learned that students have to be prepared to be asked to do "menial" or on the other hand very difficult tasks, and they have to be prepared to lose ownership of cases, after they've put in work on them.

31. Lack of access to police investigation information

This has been a big problem for us, and this difficulty is spelled out on the INUK website as a limitation of innocence projects. Quite simply, we don't have access to

²¹ R v Andrew Adams [2007] EWCA Crim 1 (1 January 2007)

²²The National Newspaper for Prisoners – see < www.insidetime.org/>

the police HOLMES²³ database and we believe that this would hold the key to unlocking the truth in many cases.

Two of our cases are worth illustrating in this regard.

Case A (a murder from the 1980s): there are pieces of evidence that give rise to suspicion as to the integrity of the police investigation, to say the least. It is not appropriate to go into detail here, but two examples are useful. There was apparently vomit at the scene, and it was the “modus operandi” of a well-known burglar to vomit due to nerves. Police questioned our client’s work colleagues about what he had to eat, yet police denied that there was vomit at the scene. Also, a police officer’s wife gave evidence about a handwritten note and there are serious doubts about the creation and context of this note, which might be verified with proper access to police logs and action records.

Case B: our client has obtained some copies of pages from police logs that show multiple changes to entry times and referencing of exhibits. Furthermore, two handwritten notes apparently written by the deceased implicating our client were key to his conviction. It is clear to us that the notes have been written by different people, and our client considers that they bear a resemblance to the handwriting in some of the police logs. We are hampered by not having access to the full investigation records to try to establish any breaches in police procedure.

32. Trying to find exhibits for retesting

At the moment, this ranks in the top three difficulties we have faced, and are still facing. We have obtained forensic science reports recommending retesting, commonly in view of advances in scientific methodology. We thought that it would be straightforward to get those items retested. But, no it is not! In two of our cases, we cannot get legal aid via our supervising solicitors to commission retests – in the one case, the client has been released from prison on life licence and is working, therefore does not qualify for legal aid. In the other case, the test is considered to be speculative, therefore our client had to raise the money via his family for the tests. In this latter case, we have been trying to locate the item for retesting for many months. Students researched and obtained extracts from police manuals about storage of exhibits. We wrote in accordance with advice to request that the item be sent to our forensic scientist. Greater Manchester Police force responded that, whilst they would co-operate with the CCRC, they would not do so with our project. Our supervising solicitor is now trying to see if they will release it via him. All of this is taking an inordinate amount of time, which is frustrating for all concerned.

In the case where our client is working, he cannot afford to pay for tests, even if we can secure the release of the key items. We are considering our options, but it may be that we have to explore with the CCRC whether they will use their special powers to

²³In 1986, UK Police Forces started to employ the original Home Office Large Major Enquiry System (HOLMES) in all major incidents. HOLMES 2 is an investigation management system to assist law enforcement organisations in their management of the complex process of investigating serious crimes. See <<http://www.holmes2.com/holmes2/whatish2/>> accessed 11 January 2010

commission these vital tests. The CCRC has already referred this particular case following an earlier application in 1999, but it was rejected by the Court of Appeal.

We have another two cases that have reached this stage. We have obtained estimates from various experts, and are working with our supervising solicitor to apply for legal aid for these. We eagerly await the outcome with a mix of hope and pessimism, because of the importance of these tests to our chances of being able to persuade the CCRC to review these cases.

33. INUK Forum still in its early days

INUK-member projects have access to a staff forum²⁴ which allows members to exchange experiences and expertise. Given that the innocence project movement in the UK is still relatively new, there are still only a small number of projects that have reached an advanced stage of casework. Thus, of necessity, the forum has to date only been able to touch upon a small number of issues and no-one yet has any huge expertise. There are of course a few exceptions (Bristol's project has had the first referral by the CCRC to the Court of Appeal²⁵, and has developed expertise in fibre evidence). Clearly, this resource will expand organically as other projects advance in casework.

34. Access to witnesses

We have interviewed some witnesses during our investigations— one was a new one, and another had been a major defence witness. We remain cautious of approaching witnesses because we are aware that a high-profile campaigner has in the past been charged with attempting to/perverting the course of justice by approaching witnesses. We will always take a cautious approach and seek express permission from our supervising lawyers before so doing, but this remains an underlying concern for me. An alternative may be to involve an enquiry agent, but again this has funding implications, and can be seen as an “open –ended” cost without any guarantee of progress.

35. Managing very large volumes of paperwork

We have 42 lever arch files on one case, and another 24 have just arrived. There is duplication, but that's not proving easy to sift. Our challenge is to maintain the integrity of the files, ensure that we know what is in each, and to try to highlight those aspects which will be of direct relevance to us. Be prepared for tons of papers!

36. Contrast this to having very little paperwork on a case

In a couple of cases we have dealt with, we have been unable to obtain files because in one case they were destroyed in a flood. In that case, the client had a solicitor, the

²⁴ <<http://www.innocencenetwork.org.uk/Forum.htm>> accessed 11 January 2010

²⁵ <<http://www.bristol.ac.uk/law/news/2009/115.html>> accessed 11 January 2010

case has now been referred to the CCRC, and the solicitor felt that our services were no longer required.

I don't know how good are a client's chances of ever having a fair review if files simply no longer exist. There will be duplicates of the prosecution files, so can we assume that the CCRC will fully explore that route to avoid undue prejudice to the client in circumstances beyond his control?

37. Redacted elements

This has posed a problem for us with our "mega-file". One police force was the subject of a review by another, and parts of the file that might provide us with critical information have been redacted. This left us with an incomplete set of information, without these key facts. Clearly, there is nothing that we can do in these circumstances, but it is frustrating.

38. Public Interest Immunity (PII)

Similar to the point above, where PII features in an investigation, we find more questions that we are unable to pursue, which leaves us feeling ill-equipped to investigate claims that a client is making. At times like this, we have doubted the ability of innocence projects to make a practical difference, but the reality is that where PII is involved, even expert defence lawyers are playing without a full pack of cards.

On a similar vein, one of our clients was the subject of a police undercover operation costing £1 million. He maintains that he has been framed, and without access to any information about the police operation, we are seriously hampered.

39. Holiday cover

Protocols naturally require that the client is contacted regularly by way of update and notified as to lack of activity outside term times. This still leaves me with an uneasy feeling over the long summer break. Of course, for many clients, innocence projects are the only hope and casework in term-time only is preferable to no help. But if I have spare funds at the end of a year, I do pay students to keep things ticking over, plus I try to find volunteers based in Cardiff to have some skeleton cover. Students are generally willing, but I have found that you need to ask, and organise a summer rota many months in advance.

40. A client's suicide threat

On one case, our client (with no known history of mental illness) told a prison visitor that he felt that he'd never get out of prison because he had no new evidence. He felt strongly that the evidence of his innocence was available at the original trial, and it wasn't his fault if he couldn't come up with something new, which is exactly the frustration that we all feel, and one of the reasons we collectively want to try to change things. He said that he had to end it, and this was the first time in 6 years that his visitor had ever heard him talk like that. We spoke and wrote to the prison to put

them on notice about his apparently frail psychological state, but his frame of mind remains a real concern, especially as regards future prison visits.

41. Other ethical conundrums

One client has told us that he lied at trial about his alibi, as did a close family member. He has told us who actually committed the murder. Is he telling the truth about that? What do we do with this information? If we are to seek the truth, do we not have a duty to reveal all that we know? Client confidentiality must feature here, as it would in a solicitor/client relationship. So should we withdraw from the case if the client will not permit us to pass on the information he has given us about the true perpetrator, as he claims? If he is reluctant in view of the repercussions of this, in a previous gang culture, this is understandable. But where do we stand? We have not yet resolved this dilemma.

Innocence projects are a fertile ground for myriad ethical dilemmas. Students regularly discuss in a healthy way – how will we ever know if he/she is innocent? Why should we spend our time and efforts for a person who was a well-known drug addict/gang member, and who has committed other serious crimes, if not this one? We are acutely aware that not all of the clients are of the teddy-bear persona, who were vicars and philanthropists in their previous lives.

42. Emotional involvement of students

Immediately after the training event, fired up by speakers such as Gerry Conlon²⁶, there's a huge surge of passionate cause-based enthusiasm. Students' lives are devotedly pledged to freeing innocent people. Within weeks, tutorial-preparation presses real-life to resume, leaving a core of (hopefully) reliable students.

Be prepared for students to become emotionally connected with a case – in a way, a small amount of that can be healthy, and it's all about balance. Open group discussions are useful to air feelings, and our girls are more open than our boys, unsurprisingly. Expect tears, and expect a flurry of emails from students around Christmas time, when sensitive students realise the impact upon clients and families at this emotional time, and express guilt at enjoying a turkey dinner when others don't have their freedom.

Two of our clients are from overseas, and have no prison visitors other than us. That is added pressure, and does bother students. They have asked if they can do extra family visits, but our protocols do not allow that, as it increases the pressure and there is the risk of legal matters being discussed, unsupervised.

²⁶Gerry Conlon was one of the so-called "Guildford Four" See, for example
<<http://www.guardian.co.uk/uk/2005/feb/10/northernireland.northernireland>>

43. Offers of help

Over the years we have had offers of help from many different sources (eg. Institute of Legal Executives students, non-law graduates, our own past students wishing to remain involved). It is heartening to see this goodwill. Our problem was our wish to accept such offers (after all, if someone volunteers to do something for nothing, it would be bad manners not to accept, wouldn't it?) when the reality is that those volunteers generally had little or no relevant experience or expertise. With hindsight, I might have drawn up a list of more administrative tasks that need to be done, to see if I could match volunteers with jobs (especially to harness the experience of our own past caseworkers). But I never seemed to have the time to invest in creating jobs for outsiders that could be done by students.

44. Cultivate your Local prison

We have spent time developing a relationship with Cardiff prison. We have two clients there, but equally important is our wish to educate prison staff in what we are trying to achieve. It has paid dividends. For two years running, we sent 60 students to watch a play performed by prisoners and staff at the Prison, followed by a chance to chat informally to the “lifers” afterwards, who naturally had amazing stories to relate to keen young law students. This was a unique experience that will stay with our students for many years.

Cardiff prison allows us to conduct legal visits, rather than family visits, and they have even extended this privilege to another INUK innocence project that is not run by a lawyer. We think that these are significant, and extremely helpful, concessions that have been achieved because of the nurturing of the relationship.

Conclusion

Armed with that elusive hindsight, do I regret entering this world of passions and frustrations? Frequently. But ask me again, if we manage to get an innocent person out of prison, and I guarantee a different answer.

Innocence projects are not for the faint-hearted. However, I need to issue a caveat here. Cardiff was “in” at the very early stages of the movement within the UK – dare I say, we were one of its pioneers? Innocence Projects with staff who have an academic or practising criminal law background will have a core knowledge that I did/do not have. Furthermore, newer projects can join the INUK and take advantage of its staff forum and other resources to share expertise. Much of my time in the last four years has been taken up helping develop the INUK so that others don't have to reinvent the wheel. However, since jointly organising the revamped national training in October 2009, I am no longer involved with INUK in any policy/direction way, and am thus now able to devote more time to the Cardiff project.

One parting tip from me is – if you can find some funding, consider employing a “case consultant”, even if it's only for a few days a week. Over the past few months,

using the last of our public engagement funding, I've been able to capitalise on the experience of one of the unsung heroes of the miscarriage of justice world. Dr Dennis Eady has worked tirelessly, voluntarily, for 16 years on a multitude of cases. He offers us ideas, direction, creativity, and a dogged persistence that is invaluable. In return he experiences from us a fresh approach to casework as we approach it with an educational bias, and we are not a campaign group.

I only hope that I can find replacement funding to renew and properly fund this contract, because I think he will be key to the medium-term success or otherwise of our casework.

Postscript

The motivation of universities to start an innocence project varies. It may be the need to start an inexpensive clinical legal education venture from scratch, or to add another string to that university's pro bono bow. In Cardiff's case, "education" via the vehicle of actual casework was our reason, to assist the vast majority of our students who are headed for the vocational path to legal practice; virtually none of our students have a deep-seated academic interest that they intend to pursue at postgraduate level. In its early years, INUK's motto started with the word "Educating", although that has recently been adapted to ensure that the cause itself is not lost within an educational ethos²⁷. Other universities are motivated by research. Indeed, the INUK database and members' casework to date have revealed a plethora of pressing research opportunities, enough to satisfy numerous research agendas. But, it has simultaneously exposed some raw nerves in the form of systemic problems with the criminal justice appeals procedure/system at the highest level, as well as other politically-challenging policy issues²⁸.

David Jessel²⁹ has, among other things, expressed concern over what he sees as a misplaced concentration on the concept of factual innocence by critics of the CCRC, many of which can be seen in the latest CCRC book³⁰. My students concentrate on practical casework rather than any "twee academic" (per Jessel) arguments, but still they see the very real, not academic, problems that face a client unable to use evidence that was available at the time of trial, which, if heard by a jury, may have resulted in an entirely different outcome.

Michael Naughton's response to Jessel³¹ opines that claims of innocence at the post - appeal stage "may be valid and require full investigations akin to public inquiries that take the possibility of innocence seriously. Such investigations must step outside of the strict confines of the procedural dictates of the criminal appeals system, which

²⁷ The motto on the INUK website until November 2009 was "Educating to overturn and prevent wrongful convictions"

²⁸ See "The Criminal Cases Review Commission: Hope for the Innocent?" edited by Michael Naughton, published by Palgrave Macmillan, ISBN 978-0-230-21938-0, particularly chapters 1, 2 and 16

²⁹ <http://www.guardian.co.uk/uk/2009/dec/15/prisons-and-probation>

³⁰ See footnote 28

³¹ Guardian Online, 11 February 2010: "Why 'safety in law' may fail the innocent - the case of Neil Hurley": <http://www.guardian.co.uk/uk/2010/feb/11/neil-hurley#post-area>

involves searching the masses of unused evidence and exploring scientific techniques that may settle the claim of innocence one way or the other, regardless of whether it constitutes new evidence or was or could have been available at the time of the original trial or whether a jury has heard evidence of innocence and chosen not to believe it – defence lawyers can make mistakes and juries can get it wrong as successful appeals against criminal conviction bear testimony”.

Innocence project students are among our future generation of lawyers, so we surely have a duty to them to show that we can as a society recognise where laws are not working, and that academics, students and lawyers can join together with policy makers and those in the front line to act upon those shortcomings to make changes, despite any political or other embarrassment. So with this (perhaps naïve, but we prefer to call it innocent) approach in mind, at Cardiff we welcome the renewed interest in wrongful convictions that this CCRC book has spawned. It facilitates our short-term plans to consolidate our experiences to date, to learn for ourselves how our applications to the CCRC are progressed, and to reflect upon the student education aspects of our innocence project work. We plan at Cardiff (with our clients’ permission) to acknowledge openly that we have not been able to conduct the full investigations that are warranted into our clients’ claims (investigations which the CCRC themselves could make as they have the statutory power) due to lack of either finance and/or access to key materials. However, we will make submissions accompanied by an invitation to this body to work constructively with us to educate our students as to support for, and obstacles to, our casework. We intend to keep a diary and share it via our website, so that others may experience our ongoing learning.

Finally, in my view it would be a timely opportunity lost if the CCRC failed to acknowledge issues raised in the book³² other than the factual innocence point that Mr Jessel addresses. I hope that this book might be the turning point which leads on different levels to a constructive dialogue being recommenced between stakeholders rather than an entrenching of positions, which would serve no purpose and would certainly not help those innocent people who remain in prison.

END

³² The contributors comprise academics, practitioners and the voluntary sector, and list various and common problems. See footnote 30 for details of the book.