

INNOCENCE PROJECT 2011/12 AND EARLY 2012-13

Innocence Project Team

The Innocence Project Plymouth (IPP) had been running for two years by the start of 2011-12. It has grown in sophistication year on year and continues to do so. It provides an invaluable 'clinical' experience for law undergraduates enabling them to work on actual cases, equipping them with many useful legal and non-legal transferable skills and crucially provides their clients with legal assistance when the legal system is unable to continue to do so. IPP operates under Innocence Networks UK and is grateful for the support it provides.

In 2011-12 IPP had 12 student members, a mixture of second and third year law undergraduates, five of which were using it for their Work Based Learning module, ie. it formed part of their degree. They worked on two murder cases, both of which continued from the previous academic year. Reports from each case are below. All students attended a two day induction course prior to starting casework. These consisted of presentations on the criminal litigation system from Plymouth University's law lecturers and the IPPs' supervising solicitor and barrister, together with a presentation by two caseworkers from the Criminal Cases Review Commission (CCRC) on the work that they do.

IPP also hosted the IPP Question time style Debate, in conjunction with the Law and Criminal Justice Society (LCJS). This year IPP chose to focus on the role of experts. We were delighted to host an extremely experienced panel, chaired by Judge Taylor, who was the senior Circuit judge for the city of Plymouth since 1990 and is currently Chairman of Governors of Plymouth University. The four panel members were Dr Michael Powers QC, Head of the Medical Law Group at Clerksroom, Nigel Lyons, a partner and Head of Advocacy at Foot Anstey Solicitors, Jason Beale of Devon Chambers, a barrister of 20 years standing with an extensive criminal practice and Dr Neil Stoodley, a very experienced medical expert who has given expert testimony in approx 250 cases and been involved out of court in the same number again. The

questions from the floor gave rise to an interesting and lively debate and on occasion some very divergent views from the panel. We also hosted drinks afterwards to allow the debate to continue informally and those who had not had a chance to ask questions of the panel during the debate, to do so then. Students from IPP also attended INUK's Autumn and Spring Conferences in London, picking up many interesting and helpful tips on casework. The Director of IPP, Pippa Trimble, attended a fascinating conference at the CCRC, which worked through 2 actual case reviews they had previously undertaken.

Case A: Report by Danielle Lowther, Adam Simmons, Katrina Short

At the start of the first term the team consisted of four members, three of whom were new to IPP, a fifth joined later. After the induction course, the team began to familiarise themselves with the case papers. The previous year's work had involved tracking down as much documentation as possible and they discovered that many of the original case papers had been destroyed due to an error on the part of the firm of solicitors who acted at Trial. However, they did manage to track down most of the key documents and quite a number of these were received over the summer.

It was clear that the case was based heavily on complex medical evidence. Consequently, it was vital that they got to grips with the science behind the relevant medical condition, diabetes, as quickly as possible in order to understand expert witness reports and testimony. Having done so, they also reviewed the standing and reputations of all 5 of the medical experts who gave evidence at Trial. Their first priority was to identify potential routes of investigation. They amalgamated the existing case papers with the new documentation, and listed potential inconsistencies and unanswered questions that arose. As a result they then wrote to the client and one of the Defence's expert witnesses to clarify certain issues and to discuss potential avenues of investigation, both medical and non-medical. The Defence's medical expert reiterated that, in his opinion, the jury had simply got the decision wrong.

One of the routes of investigation they considered was whether drugs or alcohol had been used, what evidence there was or might have been that they had been used and if they had, what effect they would have on a diabetic. They also considered the

possibility of misuse of prescribed medication. They contacted the Forensic Science Service (FSS) to try and obtain information about what they were holding. They contacted the firm used by the Defence to review and advise on the forensics, although they discovered this was limited to forensic material rather than pathology. Predictably, they were not successful in obtaining any information from the FSS and the material from the Defence's forensic agents was not as helpful as they had hoped.

The team identified the potential for confusion between the medical issues arising in the case and the resulting legal issues. The team were very fortunate in being able to consult a QC who was both medically and legally qualified to discuss some of these issues. They also managed to make contact with the solicitor who worked on the case at both Trial and Appeal. She very kindly agreed to offer any assistance we might need and provided both some further paperwork and answered a number of questions.

The biggest casework event in term 2 was meeting with the QC to discuss the case. It was extremely helpful in pin-pointing the most likely areas where there might be grounds for a potential appeal and where there would not. The team were also give a couple of new leads to follow up by their client, who in response to a query from the team, indicated that he felt a number of issues in the case had never been fully explored. One such issue related to an article in an American medical journal, the Merck Medical Manual, on the effect of physical stress on a diabetic.¹ The client had been convicted on the basis that physical stress to a diabetic victim had caused hyperglycaemia, which caused or accelerated fatal ketoacidosis. The client also revealed that despite having been told we had been sent all the case papers that currently existed, one of the previous firms of solicitors were still holding documents we had not seen, including some that showed, like us they had also investigated links with and the possible effects of drugs.

¹ Merck Manual: Home Health Handbook, '*hypoglycaemia*', (reviewed by Crandall, J., in 2006). Accessed 31 October 2012

http://www.merckmanuals.com/home/hormonal_and_metabolic_disorders/hypoglycemia/hypoglycemia.html?qt=diabetes&sc=&alt=sh

Three of the team members from 2011-12 have continued in 2012-13 and were joined by a new fourth member. Thus far they have followed up the client's request to investigate the Merck Manual, contacted the relevant author by email and received a very helpful response. They have also met with the solicitor who acted at Trial and on Appeal who was able to fill in many gaps which were not evident from the very limited paperwork available in the case and brought some actual experience of events during the litigation process and the personalities involved. The case group is shortly due to meet with two very experienced medical Consultants (not previously involved) to discuss the science and medical aspects of the case.

Case B: Report by Emily Bowden and Kathryn Fanous

At the start of the first term the case team consisted of seven students, four of whom were new to the project. After the induction course, work began on bringing the new team members up to speed with the case and discussing relevant lines of enquiry. Much of the work in the previous year had been tracking down the vast number of case documents. They were successful in locating and retrieving a significant number; unfortunately, these were not in any logical format for review. Therefore the main priority for 2011-12 was to review all the documents with a view to getting them into a logical, indexed and organised system. Having done so, they would then be copied and the originals returned to the holder. The case team spent a considerable amount of time deciding on and then sorting the documents into a sensible system. They wanted to ensure the system would allow new members of the team to read into the case quickly and that documents could be located with ease. As well as organising the documents, team members chose an area of interest to pursue. These included the police investigation, the expert testimony in handwriting, DNA and bullet matching as well as the very extensive body of witness testimony.

The case work of term 2 began by reviewing what progress had been made in establishing useful lines of enquiry. The case team decided to focus on some of the witness testimony. They contacted the legal representative from the Trial and Appeal to ask for his assistance. He kindly agreed and the case team therefore prepared and sent him a list of questions for discussion which he answered by way of telephone conference. During the course of the telephone conference the case team

were given some explanations on what evidence was and was not used at Trial and Appeal and the people and reasons behind those decisions. The team also discussed the number and role that PII statements may have played in the original trial and the process and nature of the police investigation.

Two of the members from 2011-12 have continued in 2012-13 and were joined by three new members. Thus far the case team has re-reviewed the CCRC's Final Statement of Reasons, the Trial Judge's Summing Up and the Appeal Judgment to identify the areas that would be worth exploring this year. The different areas that are going to be researched have been allocated to each member of the group as there were thought to be five potential leads of investigation. These include: research into DNA evidence; lead bullet matching; reliability of handwriting experts; research into particular witness testimony and reviewing the police procedures and investigation. These are on-going but are confidential to the case.