

It couldn't happen to you...

Annabelle James gives a personal view of a possible wrongful conviction.

Newspaper headlines such as "Jailed for 18 years for a crime they did not commit" seem far removed from reality. That is, however, until it is you or your loved one who is the person being jailed. Seven years ago we were simply an ordinary family living out a perfectly normal family life in North London. And then, before we could even realise what was happening, we got caught up in a nightmare that changed our lives forever. My father, Colin James, a former business executive and pilot, has now been in prison for almost six years for the alleged murder of his friend David Martin. Not only does he deny committing this murder, but someone else has subsequently come forward with evidence suggesting another person is responsible. In this article I wish to review the processes which led to this miscarriage of justice.

Some 20 years ago Colin James struck up a friendship with David Martin, an Australian, who had a successful audio business that has provided sound systems for groups such as the Rolling Stones and Pink Floyd. This friendship was based upon their mutual enthusiasm for vintage cars, and it became stronger in the late 1980s when Martin got his flying licence and became interested in helicopter renovation. Martin was a bit of a loner, had previously experienced mental problems and may, as we have now found out, have been involved in the transportation of drugs.

On December 29th 1992, Martin's girlfriend arrived at his house in Buckinghamshire to find

that he had gone missing, his car was gone, and the doors had been left unlocked. Traces of what was alleged to be blood were found in an area of his garage floor that had been mopped up. Colin James had been to Martin's house that afternoon, which he does not deny, and after being placed under surveillance for four months and being frequently interviewed by the police, he was arrested for the murder of Martin. Yet, neither Martin's body nor the murder weapon were, nor have ever been, found. After a year on remand and following a six week trial at Reading Crown Court, James was found guilty of Martin's murder and sentenced to life imprisonment. His appeal was dismissed in February 1996.

At James' trial the prosecution relied heavily on forensic evidence which related to blood stains that were found in the garage and which showed Colin James' footprints. The presence of the footprints was never disputed, indeed it would have been more strange had there not been any. What is disputed, however, is the nature of the so-called blood stains as the test that the prosecution used does not conclusively show that the substance was even blood, let alone that of David Martin. The test merely indicates the presence of protein which shows up in many substances, such as coffee, engine oil and even dog mess. Even so, and despite the fact that the trial judge described the prosecution's evidence as being "less than professional", the presence of James' footprints was accepted as relevant evidence, even though the fact that all of David Martin's shoes tested positive to the substance on the floor while Colin James' did not, was dismissed by the trial judge as not being relevant!

The prosecution's case also rested on the contention that Colin James had been defrauding Martin and owed him money. However, there were no records of any cash movement. Furthermore, following Martin's disappearance, several people made statements that he had been seen after Colin James had returned home that day. Two women, for example, who worked in a local garage said that they had served Martin with cigarettes. The prosecution contended that the women had got the date wrong and that it had been the week earlier, before Christmas.

The women disputed this, arguing that Martin had wished them a Happy New Year when Christmas greetings would have been more appropriate, had it been the earlier date.

Further important evidence has come to light since the 1996 appeal, and since James's new solicitor Simon McKay took over the case, a jailed contract killer has subsequently confessed to his involvement in the disposal of Martin's remains. This man, who has links with organised crime in the home counties, has told McKay that Martin was murdered by members of a drugs gang, whom he named. Furthermore, he also claims to have helped feed the Australian to pigs and to have buried his remains on a pig farm in southern England. A dig of the alleged burial site was carried out with a Channel Four television team in June by McKay and a forensic archaeologist. During the dig an "anomaly" was found on X-ray equipment that had been used to detect soil disturbances. At this point, the evidence was handed over to the police as it was deemed inappropriate to go any further. In addition, this new witness has linked Martin's death to those of other contract killings around that time, including that of Donald Urquart, the millionaire who was gunned down from a motorbike in central London only days after Martin's disappearance.

It could be thought, therefore, that this compelling new evidence would be enough to cast reasonable doubt on Colin James' guilt. So how did twelve jury members come up with a unanimous finding of guilt? How did a subsequent appeal get dismissed? And how did an innocent man continue the sixth year of a life sentence?

It is quite clear now that James was a victim of the phenomena, known as case construction, which permeated various levels of the investigation. The investigating police force, for example, was under considerable public pressure to clear up the crime. In this case it was even before they were sure that a crime had been committed. From the start, Colin James was seen as "the suspect" as he was the last person at the time who could be proved to have seen Martin alive. From then on, all efforts focused upon finding evidence to fit James to the crime, rather than trying to establish the actual

circumstances of the disappearance of Martin. Throughout this case, the police have vehemently disputed that they could have made a mistake, but a senior detective has even said off the record that they know that James is not guilty. Consequently, the evidence provided by the new witness was met firstly by apparent disinterest, then by threats made to the safety of the witness. The original investigating force has recently been removed from the case by the Criminal Cases Review Commission and both the case and the way that it was investigated is now being scrutinised by another police force.

Things are (hopefully) now looking up for Colin James. His case has been accepted for review by the Criminal Cases Review Commission, following a lengthy submission entered by his solicitor. It is hoped that the case will be referred back to the Court of Appeal later this year, following the completion of a new police investigation. It is hard, after six years, to believe that my father will ever come home, but it seems equally impossible to imagine that this travesty of justice can be allowed to continue for much longer.

It has been said that the wheels of justice grind slowly. For people like Colin James, it must seem interminable.

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The recent spate of well publicised wrongful convictions, such as the Birmingham Six and the Guildford Four, has drawn considerable attention to the ability of the criminal justice system to recognise and rectify more quickly its mistakes. However, for the individuals involved, the

Fixing the price for spoiled lives

Nick Taylor argues for a fairer system of compensation for victims of wrongful conviction.

overturning of a wrongful conviction is often the beginning of a long and arduous struggle to piece their lives back together again. On the one hand, it is recognised that the state's responsibility in relation to wrongful convictions should not, and does not, end with the quashing of such a conviction. But on the other hand such recompense does not arrive quickly and neither can it compensate for the horrors that have been endured by defendants and their families. This article will look at the systems which exist to provide compensation for wrongful conviction.

Ex gratia payments

Currently there are two compensation schemes in operation. The first involves compensation payments wholly within the discretion of the Home Secretary. In certain instances an ex gratia payment will be offered if the case involves negligence on the part of the police or some other public authority. Examples of such awards include £2000 paid to Luke

Dougherty in 1973 for eight months spent in prison following a wrongful theft conviction, and Albert Taylor, released in 1979 after serving five years of a life sentence for murder, received £21,000 following the quashing of his conviction.

Compensation awards under the 1988 Criminal Justice Act

This discretionary scheme alone, however, failed to meet the UK's international obligations under article 14(6) of the UN International Covenant on Civil and Political Rights in that it has no basis in law. A second scheme was therefore established by the *Criminal Justice Act 1988*. The ex gratia scheme continues to operate in those cases which may fall outside the Act. A positive application for compensation must be made to the Home Office who then consider the question of whether or not there is a right to compensation in a particular case. The Home Office insists that a guiding factor behind state compensation is that it is not a payment in recognition of a miscarriage of justice per se, but is designed to recognise "the hardship caused by the conviction." The Home Office interpretation of its role under the Act is, however, regrettably narrow, failing to recognise that the hardship caused extends beyond the applicant, and further failing to recognise the limitations of financial compensation alone.

Compensation payments under the statutory scheme are calculated in a way that are the same as the calculation of damages for civil wrongs. Personal financial losses include a calculation of the loss of earnings and the reduction in the applicants future earning capacity. Complex calculations involving such things as loss of pension rights may also mean that securing the services of a forensic accountant could prove invaluable. Other losses that may be compensated include the cost of the applicant's legal assistance and the potentially considerable travel expenses incurred by the family when visiting the applicant over a period of years.

Appropriate levels of compensation

Other non-financial losses may also be claimed although by their very nature they are extremely

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difficult to quantify, especially those caused by emotional distress. In many miscarriages of justice, the victim may very well have been subjected to severe character assassination by prosecuting authorities seeking to justify their actions. A sum to compensate such injuries would obviously be very difficult to ascertain and would be unlikely to reflect the almost irreparable damage caused to a person's reputation by the criminal label. "It was with some irony that on the same day as details of John Preece's ex gratia award were leaked in the press [£77,000 for eight years in prison for a wrongful murder conviction] the newspapers reported that Billy Bremner, the former Leeds United and Scotland footballer, had been awarded libel damages of £100,000 by a jury over allegations that he (sic) offered bribes to influence the results of football matches". (Ingman, 1996:173)

Statutory compensation payments do not, however, appear to entitle the family of an applicant to claim for their own losses beyond their travel expenses. In many respects the hardship caused to the parents, spouses and children of the applicant can be as grievous as that suffered by the applicant. To ignore their distress fails to satisfy the Home Office's own rationale for compensation.

There have been few full and final settlements to date. Gerard Conlon, one of the Guildford Four, is reported to have settled for a final payment in the region of £400,000. Members of the Birmingham Six, however, were said to be insulted at similar offers following their sixteen years in prison. Such offers do not appear to compare favourably with the available guidance as to the appropriate level of compensation taken from awards of damages made in cases of false imprisonment.

In *Hsu v Commissioner of Police for the Metropolis*, (New Law Journal, 1997: 341) Lord Woolf spoke of guidance to be given to a jury to assist them in assessing the damages to be awarded in cases involving unlawful conduct by the police towards the public. He stated that, "In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £500 for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but that sum is to be on a reducing scale". Aggravating features could increase the award. Though the

Home Office does not accept any liability when making compensation payments a parallel can still be drawn with such cases when seeking an appropriate sum for compensation.

Conclusion

Rather than seeking to achieve the minimum international standards, the Home Office ought to attempt to satisfy its own rationale of seeking to compensate for the hardship caused by the wrongful conviction. The current position virtually demands proof of innocence before a claim is successful. This is clearly unfair. Though no one would wish to see payments made to those who have been cleared purely on legal technicalities, the balance should be in favour of compensating rather than not. The wrongfully convicted continue to carry the burden and stigma of conviction which is no doubt exacerbated by the lack of any form of rehabilitation programme. This treatment contrasts with that of prisoners who have rightly served long sentences. They have, for example, re-training schemes to help them find employment, somewhere to live and generally re-adjust into society. Without such help the original wrongful conviction can continue to wreck lives no matter how much monetary compensation is provided. Paddy Hill said, following the release of the Bridgewater Three, "There is not a week goes by when I don't wish I was back in prison" (The Times, 1997: 6). Less than two years after being released from a wrongful murder conviction lasting sixteen years Stefan Kiszko died. A family friend commented, "Stefan ... never recovered from what happened ... he could not face the world." (Sanders and Young, 1994:185) If our criminal justice system is going to be fair, and be seen to be fair, then we will have to openly accept that it can sometimes be wrong and that when it is wrong it should be prepared to repair these spoiled lives as swiftly as possible.

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Book reviews

Roger Matthews reviews

Sledgehammer: Women's Imprisonment at the Millennium (1998) by Pat Carlen, published by Macmillan and *Invisible Women* (1998) by Angela Devlin, published by Waterside Press.

Thirty years ago the Home Office was predicting that by the end of the century that women's imprisonment would be phased out by the end of the century. However, rather than decreasing, women's imprisonment has doubled over the past decade and the number of women in prison is currently in excess of 3,000.

A series of books and articles appeared during the 1980s which detailed the problems associated with women's imprisonment and seemed to be pushing towards a greater use of non-custodial sentences for women. Amongst the leading contributors to this literature was Pat Carlen who in her two influential studies on *Women's Imprisonment* (1983) and *Alternatives to Women's Imprisonment* (1990) provided a critical analysis of the dynamics of women's imprisonment and simultaneously a sense of optimism about the possibilities of radical penal reform.

In *Sledgehammer* she updates this analysis and reflects on the changing situation of the 1990s. She attributes the increased use of imprisonment for women to a 'New Punitiveness'. This 'New Punitiveness' involves a shift towards 'get tough' policies, a growing preoccupation with the sanctioning of single mothers, and an increased concern with prison security in terms of both the prevention of escapes and crackdown on illegal drugs.

A detailed investigation of the nature of women's lawbreaking, Carlen argues, reveals that it is significantly different from that of men's and therefore female offenders should be subject to a

different form of regulation than that directed towards men. At the same time the needs of women prisoners and their experiences of incarceration are such that imprisoning women has a substantially different significance than it has for male offenders. For these reasons Carlen calls for the development of a coherent and humanistic policy for the social regulation of women. Amongst her specific recommendations are the introduction of a Ministry of Social and Criminal Justice to monitor and regulate the sentencing of all female offenders and a Women's Prison Unit to monitor regimes in women's prisons. The overall strategy presented by Carlen involves a shift towards reductionism rather than the abolitionism which she outlined in her previous work. Although she maintains her position that prison has little or no effect on the level of crime and that imprisonment is an inappropriate sanction for the majority of female offenders she explores in more detail the possibilities of changing sentencing policies through the development of a Sentencing Council. She also advocates the establishments of different types of regimes for men and women and in particular the setting up of halfway houses and hostels. This package of reforms, she believes, will allow for both the reduction of the female prison population and the better treatment of those who are convicted of criminal offences.

In a number of ways Angela Devlin's *Invisible Women* can be read as a complementary or parallel text to Pat Carlen's *Sledgehammer*, for whereas Carlen focuses on strategies for penal reform Devlin describes in vivid detail the problems and paradoxes of women's imprisonment. Devlin provides a graphic picture of the lives and experiences of women in prison in the 1990s in order to render these largely 'invisible' women visible. Based on extensive interviews carried out with female offenders, male and female prison officers as well as female prisoners, Devlin provides a tour of a number of different women's prisons and introduces us to the lives and experiences of those confined in these institutions. Based on the statements of the women themselves, Devlin aims to describe the pains of imprisonment experienced by many women. She provides disturbing testimony from mothers who are separated from their children. In particular she draws attention to the often petty restrictions which are placed upon prisoners, which in this

context can be extremely irritating and depressing.

The picture she presents of women's imprisonment is grim. It is a world of monotony, tension and frustration. The routine is broken by the occasional mini-riot, an attempted or actual suicide, taking drugs or even absconding. Paradoxically, some of the women interviewed pointed out that one effect of the introduction of mandatory drug testing in prison is to encourage women who are due to be tested to abscond, because the penalty for absconding is considerably less than being tested positive for illicit drug use. The growing numbers of women who are incarcerated for drug related offences is changing the composition of the female prison population and introducing new tensions into the prison environment. The growing number of foreign nationals, who are mostly imprisoned for importing illicit drugs, has created a growing population of long term prisoners. In Holloway it is estimated that approximately 30 per cent of prisoners are foreign nationals.

Like Pat Carlen, Angela Devlin would like to see more female offenders given non-custodial sentences but notes that in fact the current direction of penal policy is towards the expansion of women's imprisonment through the building of new prisons and the adaptation of existing buildings. At the same time she points out that there is growing support from Sir David Ramsbotham, the Prison Reform Trust and the Howard League fundamentally to rethink the use of incarceration for women - particularly those under 18 - and to develop regimes which are more appropriate for those who continue to be given a custodial sentence.

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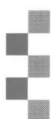
The teaching team contributing to the MA includes Dr. Eamonn Carrabine, Dr. Maggy Lee, Professor Ken Plummer and Professor Nigel South. Their interests cover: Theory in Criminology and the Sociology of Deviance; research methods for policy and practice studies; drugs; green criminology; sexuality; corporate and organized crime; policing; prisons; youth culture and the city; gender; youth justice; ethnicity and racism.

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