

The Irish Innocence Project and the Student Learning Experience:

1: Initial Points:

It should be stated at the outset that although this paper will focus in the final section on the student learning experience from The Innocence Project. In order to understand that experience fully we need to place it within the structure of the project. It will thus be necessary to trace the inception and outline the structure of the project at the outset and also to say a few things about the aims of the project.

In substance it should be summarised that the essence of The Irish Innocence project is where student caseworkers under the supervision of lawyers work on closed case files with a view to determining whether a serving or in some instances former prisoner is factually innocent. The endgame of the project in bringing case back before the court is under the Criminal Procedure Act 1993 and in particular the idea that a new or newly discovered fact may lead to a conclusion by that court that there has been a miscarriage of justice and thus an exoneration of the individual in question.¹

2: The Beginning and Aims of the Project

The Irish Innocence project was set up in September 2009² at Griffith College Dublin. The idea for the project resulted from a suggestion made to the present author. I had been teaching clinical legal education at The Kings Inns for a period of 5 years when I was appointed Dean of Griffith College Law faculty.³ In this context I was asked as to how conduct a desk top review as to how the law school at Griffith might enhance the clinical component in the teaching of law. I should also add that the genesis of the project also stemmed from the fact that I am a practising constitutional and human rights barrister and have always been very interested in criminal justice issues with a historic background also as a criminal defence lawyer.

I made a number of clinical suggestions most of which have been incorporated in the teaching of various subjects on the syllabus⁴ but, rather hopefully, I might add I suggested that an Innocence project be started in Ireland with the assistance of the college. The overall perspective was that the project would achieve two salutary and interlocking ends:

¹ For a more detailed survey of the question of miscarriages of justice in Ireland See Langwallner: Miscarriages of Justice in Ireland; Irish Journal of Legal Studies Vol. 2 (1) at 22.

² Though I initially proposed it significantly earlier and a detailed proposal document was finalised in June of that year.

³ Though I was senior lecturer in law at the college and historically was briefly head of faculty.

⁴ Such as for example advocacy skills being assessed in first year and blind negotiations being used in the teaching of contract.

1: Inculcate in students clinical skills in a way which made learning interesting and personally rewarding⁵

2: Help free innocence people that are either serving prisoners or have been released from prison.⁶

It might be added that these were the pre-eminent thought in my mind at the outset and still are but there is a third very important aim and that is to foster a human rights consciousness among students something I perceive as lacking in an overly commercially orientated legal profession.

The college was very supportive from the outset⁷ and agreed to provide rooms and conference facilities which have been inordinately useful. There was a wellspring of interest among the student fraternity and it must be added we were significantly helped by other US and International projects in the setting up period.⁸ We enlisted the aid of initially two supervising criminal defence barristers who have become a mainstay of the project.⁹ It might be added that in the two years since that number of supervising lawyers has risen now to eight.

There was a significant amount of initial interest after careful and select publicising of the project and we attracted cases very quickly. It was very quickly discernible, borrowing a vernacular expression, and one also used in the law of patent, that we were filling a *long felt want* and that there was a pressing need for an Innocence project in Ireland.

At various stages over 40 people have contacted the project.

As I write there are some 20 active files.

3: Structure of The Project:

The project has 12 student case workers. Initially such caseworkers were drawn exclusively from Griffith College daytime and part-time students but in September 2010 the project on my suggestion sought to involve students of other institutions. The Dean of Trinity College Dublin Dr Hilary Delaney was extremely helpful and supportive and there is now and continuing next year four students who come from Trinity College Dublin who are caseworkers on the project. It should be added that the project is in effect open to

⁵ In parenthesis it should be noted as to how difficult in many respects it is to make certain clinical skills interesting. Anyone who has had to teach legal drafting will attest to that fact!

⁶ The second category evolved organically the project had no conception in advance as to the fact that it would be contacted by released prisoners who felt hugely aggrieved. These were people largely not motivated by compensation considerations but out of a visceral desire to clear their name for the monstrous injustice that was perpetrated upon them.

⁷ Without the support of Ronan Fenelon it just would not have happened.

⁸ Everybody who helped is thanked but particular gratitude goes to Dr Greg Hampikian of the Idaho Project and formerly of the Atlanta project for his enormous assistance in April 2010 when the project had been active for a few months and the hugely useful assistance he provided in streamlining and customising our documentation and structures.

⁹ Elaine Finneran BL and Barry Glynn BL

students of all third level institutions at this stage and that some of our students are doing masters or post graduate programmes in places other than Griffith or TCD. It should be added also that we contacted other institutions one in particular for formal involvement with disappointing results.

. There is one final layer of the project that needs to be mentioned, apart from caseworkers, supervising lawyers, students and indeed me as Director and that is the supervisory board of the project. The supervisory board arose as a result of a suggestion by Dr Greg Hampikian which was acted upon. Greg's idea had to be tailored to an Irish Context and in effect we set up a board to advise and counsel the project which has had two substantial meetings thus far and is chaired by a judge of the Irish High Court as well as representing different stakeholders in the legal system such as civil rights activists, criminal defence lawyers, professional representatives including a former chairman of the law society and noted academics in the field. Recently Professor William Binchy of Trinity has been appointed to the supervisory board of the project.

The board in particular has provided excellent advice including but not limited to the question of case progression and the decision taken in the last two months to progress one particular case back before the Irish courts. This one case has resulted in an international expert report being procured and the project is in the process of handing over various documents to solicitors including the expert report with a view to those solicitors ultimately going back before the high court and the court of criminal appeal to establish in that case a miscarriage of justice and two ancillary constitutional rights.

- 1: The right to post conviction preservation of evidence
- 2: The right to post conviction testing of the evidence.

Finally, the project has an office manager who spends a considerable amount of her time on Innocence project work. We have highly detailed procedures and documents in place for the dealing with correspondence and a detailed and recently revamped questionnaire.¹⁰ Recently one case worker member of the project has been delegated to deal with the administrative burden of the project.

Once the completed questionnaire is received a desk top review of a case is conducted for the purposes of determining its admissibility with our criteria. At this stage in the process several applications have been filtered and determined to be inadmissible.

For example:

- 1: A client who does not state in the clearest terms in response to questions on the questionnaire that he is factually innocent. We have had several people contact the project complain about many things including what might be termed in the US ineffective

¹⁰ We received assistance from the network in the preparation and content of our standard documents including our questionnaire but obviously had to customise them from an Irish standpoint.

assistance of counsel but simply not state they are factually innocent. We often highlight this in further correspondence and wait for an appreciable period of time before a file is closed.

2: We have had contact with several people who although they accept that they did the act and thus are guilty of manslaughter they did not for whatever reasons have the requisite intent for murder. We have had a lively discussion in respect to such case a discussion I understand mirrored by other innocence projects and have decided not to accept such case. A potential caveat to the above was raised that because someone was committing a minor criminal damage offence in the vicinity of – but in no way connected to – a murder should not of itself rule out this person from being a innocence project client? Thus an amendment to our admissibility criteria refusal was accepted to the effect that “unless the lesser offence is minor in character and in no way connected with the offence”

After the desk top review takes place with a caseworker and supervising lawyer involved in the process and will report back to a plenary meeting of the project.¹¹ At that stage a general discussion takes place of the case, caseworkers and lawyers are assigned and if admissible the process of the collection of evidence ensues which in practice often means the procuring of the case file and all relevant transcripts. The project, has found by experience that it might be necessary, and around this time, to send a letter to the Irish Garda for the preservation of all relevant evidence.¹²

Once all of that is complete the caseworkers and supervising lawyers are in a position to prepare a detailed report on the case often after interviewing witnesses or and/or conducting prison visits.

4: Clinical Skills

The main purpose of this paper is to outline how the project assists students in learning clinical skills.

I suppose the initial point to note is that employers continuously observe that students do not see how law operates in practice and they recruit students who although they are good on paper and know the principles of legal subjects have no practical experience.¹³ In a sense in terms of clinical criminal practice the project goes a significant way towards lessening that culture shock from a student and indeed employer point of view. In a sense the project

¹¹ I should perhaps have mentioned it earlier in the paper that there is a plenary meeting of the projects every two weeks where all caseworkers, the directors and supervising lawyers are expected to be present and where common substantive issues are discussed. On occasion outside agencies such as forensics experts will be asked to give submissions to the project.

¹² The practice of the Irish police though it is not statutorily regulated is to preserve all relevant evidence on an ad hoc basis whilst the prisoner is still serving a sentence.

¹³ Of course it seems otiose to say but in these present recessionary times there is a crying need for students to have any form of experience to get their foot in the door. This also is a benefit of participation in an Innocence project.

mirrors much of the experience that a student would get if they were an intern at a criminal law firm.

First,

The student gains exposure to real court documents. Thus the project collects and collates court pleadings, the book of evidence, trial transcripts, legal opinions pertaining to the case et al. This is a complex and time consuming business but the student in almost all cases that are taken to a final review stage will have had significant exposure to the various documents that are part and parcel of criminal practice. The student will thus be familiar with the structure of such documents, will have read and absorbed same and will have prepared various reports arising out of exposure to such documents. The academic legal principles they have absorbed in college will be given a structure a context and the student will gradually be aware as to how they fit in in practice.

Second as aforementioned, the student will also prepare a series of reports on the case.

The student will in substance prepare an initial report assessing whether a case is suitable for further review after various documents have been acquired and analysed, interim reports and then a final closing report in a case.

All of said reports involve the student in assessing or evaluating issues of fact and evidence as well as substantive principles of inter alia criminal law and the law of evidence as well as constitutional due process considerations. Thus the students have exposure to the practical application of substantive legal principles as well as the practical and lateral skills of fact evaluation and speculation. Increasingly we are determined to encourage *what if* thinking and creativity in the students to speculate as to alternative ways of theorising about a case.¹⁴

Moreover, the student as well as writing reports also can go on prison visits and interview witnesses if the case at hand warrants it.¹⁵

The student who go on prison visits are encouraged to ask the prisoner questions under the supervision of a lawyer as well as developing critical thinking and questioning skills which assists the student is coping with a difficult atmosphere and a somewhat intimidating one. Again it gives the student something tangible to say to a prospective criminal solicitor employer and in addition if you think about it laterally could assists the student in her/his own performance in a stressful interview situation. It also assists in self reliance skills.

It should be added that questioning skills are intrinsic to the art of the advocate knowing what to ask, when to ask, anticipating a response et al. The student is thus getting valuable experience in this respect.

¹⁴ A recent report has been written about what if thinking by caseworker Jayne McGowan who completed a secondment with the central foundational New York Innocence project.

¹⁵ We prefer in general to garner the documents and make a provisional assessment of the case before a prison visit though prison visits in complex case are becoming the norm not least for the fact that prisoners feel more comfortable in divulging facts one to one.

The onsite interviewing of witnesses develops similar skills and if anything in a starker and more difficult atmosphere as the witness may not be fully co-operative. In a sense this mirrors the real life challenges lawyers are faced with when asking questions of difficult witnesses.¹⁶

Thus a student participant in an innocence project can honestly say to a prospective employer

1: I have read court documents and transcripts.

2: I have attended at prison visits

3: I have prepared reports on cases

4: I have interviewed witnesses.

It is noticeable also though we have not quantified it statistically yet that the academic performance of the students who assists on the innocence project though it is a very time consuming process is not adversely affected. In fact the opposite appears to be the case that students who participate in the project excel academically.

The student who perhaps did most for the project last year also got a first and came top of his class and won an academic prize. Students who participated in the project secured masters slots in some of the leading universities in Britain and Ireland.

There are other skills that are usefully acquired. The student works in teams of students often two caseworkers are assigned to case and there is a supervising lawyer. Thus essential teamwork skills are acquired. Also by learning from a supervising lawyer the student mirrors the relationship that might be the case when he or she is a in a real law firm or bar situation where they are learning from their master.¹⁷

In fact The Innocence project is in effect a form of pro bono law firm whose remit is factual innocence.

3: Closing

In summary participation in an Innocence project from the student learners perspective assisted in inculcating in that learner inter alia the following skills:

1: Knowledge of and practical application of certain core law subjects.

¹⁶ Students are insured in general and in particular for onsite visits. They have the option not to go on such a visit.

¹⁷ The rather antiquarian term master is the phrase utilised in the devilling experience in the law library. The devil now called pupil barrister is assigned to one senior barrister his her master from who he hopefully learns the ropes. It is far from an ideal system.

2: Research skills.

3: Teamwork skills.

4: Creativity and lateral what if thinking.

5: Interview and Questioning skills.

Further, there is something very important that I have not stressed in detail but have saved till now the student learner gains in these increasingly commercial times a sense of the law's role in promoting social justice and heightens the students awareness of the law in that respect. The Innocence project is after all in its core a human rights project.

Two final points that are related to the college at my suggestion is now opening up the project whilst preserving confidentiality to the wider student population via a series of guest lectures from national and international project members to the second year criminal law students who get to do their assignment on The Innocence Project. Thus we are trying to be creative with the syllabus as to how the Innocence project can enhance the learning experience

In this context one of the constructive comments made about the initial draft of the paper was that we should be aware of the works of Shulman and I suspect in particular of "*pedagogical content knowledge*" as the content knowledge that deals with the teaching process, including "*the ways of representing and formulating the subject that make it comprehensible to others*"

We are trying I think instinctively to follow such guidance and trying to blend content and pedagogy by integrating "*the aspects of content most germane to its teachability*" (Shulman, 1986)

We are I think, in the spirit of Schulman, as teachers also seeking to interpret the subject matter and finding different ways to represent it and make it accessible to learners.

However, teaching and learning aside we are dealing with real emotions and real people who claim they are victims of miscarriage of justice and the primary purpose of the project is to further the release of the factually innocent.

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