

## Innocence regained

**When students at York University's law school take up lost causes, they're not only fighting for justice for the wrongfully convicted – they're also learning to be good lawyers.**

***by Sheldon Gordon***

Every Wednesday afternoon, eight law students gather around a seminar table with Professor Dianne Martin in the brown brick building known as Osgoode Hall. For three hours, they discuss issues of criminal law and examine a number of individual cases, earning nine to 15 credits for their LLB degree.

But this isn't your typical law-school seminar. The select group of second- and third-year students doesn't merely study legal principles and precedents. Instead, they reopen old cases and work to exonerate people they believe have been wrongfully convicted, while at the same time researching the factors that contribute to miscarriages of justice.

The Innocence Project, as it's called, began at York University's Osgoode Hall Law School in 1997. Since then, it has taken up several causes célèbres. But mostly it champions forgotten convicts who continue to maintain their innocence and turn to the York program as a last resort.

Professor Martin, a former criminal lawyer, founded the Innocence Project with her colleague Alan Young. He had met Barry Scheck, co-founder of the original Innocence Project at Yeshiva University's Cardozo School of Law in New York, in 1992. Professor Young was impressed by Mr. Scheck's project and especially by its dual role – the legal aid that it lends to inmates seeking to overturn their convictions and the hands-on experience that it gives the law students.

"A university project should not only be practical and effective but also educational for the students," says Professor Young, who is currently on leave. "Being able to determine why a case went awry is probably the best way to educate students on the proper process."

Whereas Mr. Scheck's program will only take on cases that rely on DNA evidence, the York program accepts all clients who have exhausted the appeal process.

Students like the program for several reasons. Certainly, they're eager for hands-on experience and participation looks good on a law graduate's resumé. But, according to Professor Martin, the students overwhelmingly are motivated by their idealism. "They say to me over and over: 'This is a chance to work on something important, a chance to make a difference.' "

Pieter Joubert, a second-year student, joined the Innocence Project in part because he believes a friend had been wrongfully convicted of a crime. "You mustn't let your passions interfere with your initial investigation of a case," he explains. "But that's not to say that when you realize a client is innocent, after the long process of verifying the alibis and the

evidence, that you're not passionate for the individual."

Patrizia Bruzio signed on after participating in Osgoode Hall's community legal aid program. The third-year student plunged into the project's nitty-gritty activities, including riding along on police patrols and visiting the coroner's office to view an autopsy. She plans to research a paper on false confessions, but she isn't sure whether she will practise criminal law. "I haven't narrowed my area yet," she says, "but if anything, the Innocence Project, by showing me the inadequacies of the criminal law, has moved me in that direction. If you're going to be working 12 hours a day for a cause, it's a worthy one."

Even if some of the students don't become criminal lawyers, says Professor Martin, they still gain basic skills that every lawyer needs: how to do an interview, how to speak to people and obtain information on the phone, and how to draft letters to clients and professionals that are written in everyday English rather than legalese.

"But more importantly," she says, "the students learn how to be determined and how to solve difficult problems. The problems facing someone claiming a wrongful conviction are overwhelming. There's no right to disclosure. No one believes you. So the task is daunting. But all lawyers need to learn how to struggle with a difficult task. Any lawyer can handle an easy problem."

One of the project's first clients was Gary Staples, convicted in 1971 of murdering a Hamilton, Ontario cab driver. He served 22 months before being acquitted in a second trial (after his mother found witnesses who corroborated his alibi). He was already free when the Project took up his case, so the students tried to win him an apology from the Hamilton police and recognition from the province that he had been wrongfully convicted, which would normally include compensation, says Professor Martin. "They refused and said that we had to have either DNA evidence or produce the real killer, which was a shockingly cynical position."

Undeterred, two Innocence Project students reviewed the Hamilton police files on the murder investigation and stumbled on fresh evidence that was favourable to Mr. Staples. That became the basis for a \$6.1-million civil action against the Hamilton police in 2001. In December 2002, the police service settled with him out of court for an undisclosed amount and an apology.

Mr. Staples said the York students provided "a tremendous amount of help. They don't drag their feet. They do as much as they can. Without them, I wouldn't be where I am today."

His only caveat: the ongoing turnover of students in the five years the project worked on his case meant that students took time to "get up to speed" and the case moved more slowly than necessary.

Professor Martin agrees that the turnover is frustrating, but she doubts that law students could devote such a large part of both their second and third years to the program. (Typically, two students work on a case during their one-year stint with the Innocence Project, then give the file to two new students the following year.) While the project may not be the ideal resource for the wrongfully convicted, she says it's "better – much better – than nothing."

This is especially true when the students cooperate with the Association for the Defence of

the Wrongfully Convicted, or AIDWYC, the group of pro bono lawyers who won freedom for Donald Marshall, David Milgaard and Guy Paul Morin. Professor Martin, who belonged to AIDWYC during her years in the criminal bar, has encouraged mutual support.

With help from James Lockyer, an AIDWYC lawyer, the Innocence Project is readying an application asking the Justice Minister to review the conviction of Romeo Phillion, who has served 31 years for the murder of an Ottawa firefighter, under Section 690 of the Criminal Code. Section 690 allows prisoners to apply to the minister to review their convictions if they can produce new evidence.

The Innocence Project took up Mr. Phillion's case five years ago, then turned to AIDWYC "when they needed legal help above and beyond law students", says Mr. Lockyer. The Project's role in the case has been essential, he notes. "They're the ones who appreciated that there's substantial, if not overwhelming, evidence of his innocence."

He adds, "This is such an important case to the Canadian legal system that if it were all they'd ever done, the project would still be worthwhile. But it isn't all they've ever done."

Indeed, when Mr. Lockyer filed another Section 690 brief on behalf of Clayton Johnson (convicted of murdering his wife in Nova Scotia), the students on the project wrote the Justice Minister supporting the brief, as part of the lobbying effort. They also researched legal issues for the Section 690 application of Steven Truscott, who at age 14 was convicted of raping and murdering a classmate and served 10 years before being paroled. He has continued to proclaim his innocence and his application is currently under review.

Leonard Peltier, an activist with the American Indian Movement convicted in the U.S. in 1977 of murdering two FBI agents at Wounded Knee, South Dakota, is another of the project's well-known causes. Students developed new evidence challenging the validity of Canada's extradition of Mr. Peltier to the U.S. They then arranged two days of hearings in 2000 before a Canadian commissioner, where the main extradition witness testified that the FBI had coerced her into signing false affidavits. This sworn testimony formed the basis of a clemency brief to former president Bill Clinton. It was refused, but the evidence is now driving further litigation by Mr. Peltier's lawyers.

When Professor Martin and her students aren't probing specific cases, they're conducting research suitable for law journals, appearing as third-party interveners at Supreme Court hearings and submitting briefs to the federal government. All these efforts aim to reform the procedural weaknesses of the criminal justice system. For example, the project has been a harsh critic of the use of jailhouse informants to bolster prosecutions.

The Osgoode Hall program is also trying to replicate itself. A year ago the law students organized a two-day conference, Friends for Justice, to encourage students at other Canadian law schools to start their own Innocence Projects.

Professor Martin and her students know that much remains to be done to make the criminal justice system more just. But they're unsure whether the driving force will be further submissions to government or further high-profile exonerations. "You can write all the lawyerly briefs you want," says student Pieter Joubert. "But they're only going to have a limited impact, because it's only [discussed] in legal circles." On the other hand, he says, "we seem to have a lot of [wrongful conviction] cases where a commission of inquiry is formed, public confidence is shaken and yet the system of justice – the 'how-do-we-solve-

these-problems' – never moves much further.”

That's not resignation. Mr. Joubert and other participants in the project haven't lost their idealism – merely their innocence.

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