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THE CRIMINAL CASES REVIEW COMMISSION (CCRC) OF ENGLAND, WALES, AND NORTHERN IRELAND

John Weeden†*

I. THE HISTORY

On 21 November 1974 two bombs, left in plastic shopping bags, went off in crowded public house bars in Birmingham, the second biggest city in the United Kingdom. The same year in Guildford, a smart suburban town to the south west of London, another “pub bomb” was detonated.¹ No warnings were given.² On both occasions the pubs were full of drinkers.³ 21 people were killed in Birmingham and 7 died in Guildford. Many more were seriously injured.⁴ There was a public outcry, the Irish Republican Army (IRA) was effectively the only suspect, and these attacks on the UK mainland were seen as an egregious example of the dangers posed by the IRA to the British government and its citizens.⁵

There was immense pressure for the police to catch those responsible and restore public confidence.⁶ In relation to the Birmingham bombings, 6 Irishmen were arrested that same evening, just as they were about to board a ferry for Ireland. They had travelled from Birmingham by train, leaving the city at about the time of the bombings. Similarly swift arrests were made concerning the Guildford bombings, this time 4 Irishmen. Both sets of detainees were interviewed at length and confessed their involvement. Pictures of them were published in the newspapers and they became the most hated people in the country. All

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1. Sir John May, *Report of the Inquiry into the Circumstances Surrounding the Convictions Arising out of the Bomb Attacks in Guildford and Woolwich in 1974, Final Report* (1993-94 HC 449).

2. In Birmingham, a warning was transmitted by telephone but arrived only six minutes before the bombs exploded and omitted to name the locations; see Sean O’Neill, *The Man Behind the Pub Bombs in Birmingham that Killed 21*, *THE TIMES*, Nov. 18, 2004.

3. *Id.*

4. *Id.*

5. This suspected IRA activity prompted, as Clive Walker argues, Parliament to pass the first of the draconian Prevention of Terrorism Acts in 1974 – see CLIVE WALKER & KEIR STARMER, *MISCARRIAGES OF JUSTICE, A REVIEW OF JUSTICE IN ERROR*, 47 (Blackstones, 1999) and CHRIS MULLIN, *ERROR OF JUDGMENT: THE TRUTH ABOUT THE BIRMINGHAM BOMBINGS*, 3-11(4th ed., 1997).

6. *Id.*

were duly convicted of murder, receiving sentences of life imprisonment. They had not been well treated by the police, as became clear later,⁷ and they were to fare no better in prison at the hands of their fellow inmates.⁸

These two groups of prisoners became known as ‘the Birmingham 6’ and ‘the Guildford 4.’ Gerry Conlon, who was one of the Guildford 4,⁹ presented at the Cincinnati conference in April 2011. They attracted some distinguished campaigners who argued their innocence,¹⁰ claiming that their confessions had been beaten out of them or fabricated, and that the nitro-glycerine that had been found on the hands of the Birmingham 6 must have come from something other than explosives.¹¹ They appealed to the Court of Appeal (Criminal Division) but to no avail. Campaigners then started down the long road of trying to get the case returned to the Court of Appeal. At that time the only route was a referral from the Home Secretary.¹² During this journey some surprising judicial attitudes became public. The well-known and highly respected judge Lord Denning, in an article for a national news magazine, ‘The Spectator,’ indicated that he thought that it would have been better if the Birmingham 6 had been hanged, so as to avoid all the damaging campaigns in support of the men and against the criminal justice system.¹³ This was particularly controversial given that Lord Denning had sat in the Civil Division of the Court of Appeal in proceedings brought by the men against the Chief Constables of the West Midlands and Lancashire police forces in which they claimed damages for the injuries they had suffered in police custody. During the course of his judgment of one of those cases, *McIlkenny v. Chief Constable of the West Midlands*¹⁴ Lord Denning said:

“Just consider the course of events if this action is allowed to proceed to trial. If the six men fail, it will mean that much time and money will have been expended by many people for no good purpose. If the six men win, it will mean that the police were guilty of perjury, that they were guilty of violence and threats, that the confessions were involuntary and

7. This topic was discussed at some length in MULLIN, *supra* note 5.

8. MULLIN, *supra* note 5, at 140-148.

9. ROBERT KEE, TRIAL AND ERROR, 177 (2nd ed., 1989); LJ Devlin & LJ Scarman, *Justice and the Guildford Four*, THE TIMES, Nov. 30, 1988; GERARD CONLON, PROVED INNOCENT (1990).

10. Amongst them, Chris Mullin, Labour MP for Sunderland, and author of ERROR OF JUDGMENT, *supra* note 5, and Sir John Farr, Conservative MP for Harborough. Patrick Cosgrave, *Obituary: Sir John Farr*, THE INDEPENDENT, Nov. 5, 1997.

11. WALKER, *supra* note 5, at 47.

12. LAURIE ELKS, RIGHTING MISCARRIAGES OF JUSTICE? TEN YEARS OF THE CRIMINAL CASES REVIEW COMMISSION, 11 (2008).

13. A. N. Wilson, ‘England, his England,’ THE SPECTATOR, Aug. 18, 1990.

14. *McIlkenny v. Chief Constable of the West Midlands* [1980] 2 All ER 228.

were improperly admitted in evidence and that the convictions were erroneous. That would mean that the Home Secretary would either have to recommend they be pardoned or he would have to remit the case to the Court of Appeal. This is such an appalling vista that every sensible person in the land would say: It cannot be right that these actions should go any further.”¹⁵

We all know now that the English criminal justice system had not lived up to its reputation. There was indeed an ‘appalling vista.’

It was some years after Lord Denning’s remarks, and following persistent campaigning, that the Home Secretary of the day was eventually persuaded to refer the two cases back to the Court of Appeal. After 16 years of imprisonment, the Birmingham 6 and the Guildford 4 finally had their convictions quashed in 1992. Evidence had been obtained that the police had indeed seriously mistreated those arrested, had used violence to force confessions and had grossly misled the court. Furthermore, in the case of the Birmingham 6, the Crown’s forensic evidence was shown to have been faulty – it turned out that the traces of nitro-glycerine on the hands might well have come not from explosives but from the finish on the particular brand of playing cards used by the Birmingham 6 on their train journey that evening.¹⁶ The campaigners were ecstatic, but the country, let alone the government, was thoroughly embarrassed, and public confidence in the criminal justice system was shattered.¹⁷

Lord Runciman was appointed to head up a Royal Commission to investigate what had gone wrong and to make recommendations on future practice. He found that the Home Secretary could not properly be the person to decide whether cases should be referred back to the Court of Appeal. The Home Secretary was, after all, also responsible for the police and the prisons, and in Lord Runciman’s view such an arrangement was incompatible with the constitutional concept of separation of powers.¹⁸ The small Home Office department then dealing with alleged miscarriages of justice had been notoriously slow¹⁹ and had only referred 4 or 5 convictions a year out of 700 applications. The Home Office was reactive only to points put to it. It did not go out to investigate or consciously look for new grounds of appeal.²⁰

The Royal Commission proposed a new statutory organisation to take

15. *Id.* at 240.

16. MULLIN, *supra* note 5, at 324-325.

17. VISCOUNT RUNCIMAN OF DOXFORD, ROYAL COMMISSION ON CRIMINAL JUSTICE, ch. 1, para. 22 (HMSO Cm 2263, July 1993).

18. *Id.* at ch. 11, para. 9.

19. Home Affairs Committee, *Miscarriages of Justice*, (1981-82 HC 421).

20. This number representative of figures between 1981-1988. VISCOUNT RUNCIMAN OF DOXFORD, *supra* note 17, at ch. 11, para. 5.

over the Home Secretary's responsibilities in this regard: a Criminal Cases Review Authority.²¹ This proposal later led to the formation of the Criminal Cases Review Commission, or CCRC. The CCRC was created by the Criminal Appeal Act 1995²² and, despite its government funding, is an independent statutory body designed to investigate alleged or suspected miscarriages of justice in England, Wales and Northern Ireland. Most importantly, it has the power to refer convictions and sentences back to the Court of Appeal.²³

The CCRC is located in Birmingham, deliberately away from the seat of government in London. By statute it should have 11 Commissioners appointed by the Queen on the recommendation of the Prime Minister,²⁴ but due to a reducing budget it has had only 9 Commissioners for the last 12 months.²⁵ The Commissioners make all the final decisions on cases, and are supported by a total staff of around 85. The majority of the Commissioners and caseworkers are lawyers and have a wide range of experience of the criminal justice system. It was the first organisation of its kind in the world and remains the largest. There are only 2 countries that have followed suit, Scotland²⁶ and Norway,²⁷ although a bill to establish a fourth such body is currently before the Parliament of South Australia.²⁸ The CCRC has now been in existence for over 14 years and in that time has dealt with some 13,000 cases and referred 480 of them to an appeal court. Most involved serious offences including murder, sexual assault and drug supply. Of the appeals which have to date been dealt with by those courts, the relevant conviction has been quashed – or the sentence varied – in approximately 70% of cases.²⁹

From the modern perspective it perhaps seems obvious that simple justice requires wrongful convictions to be acknowledged and rectified. On the same basis, it is clear that, whereas public confidence in our criminal justice systems may be jolted by the occasional revelation that

21. *Id.* at ch.11, para. 11.

22. CRIMINAL APPEAL ACT, (1995) c.35. (Gr. Brit.).

23. *Id.* at s.9.

24. *Id.* at s.8(3).

25. *Criminal Cases Review Commission Annual Report 2010/11* (2011) 1225 HC 24.

26. Further information on the Scottish Commission, set up in 1999, can be found at www.sccrc.org.uk.

27. Further information on the Norwegian Commission, set up in 2004, can be found at www.gjenopptakelse.no.

28. More information on this can be sourced from the office of the Hon. Ann Bressington MP, the politician responsible for introducing the Bill. At the time of writing this article, the Criminal Cases Review Commission Bill is currently undergoing a second reading, the debate on which has been adjourned. A good starting point for research is provided by the press release at www.netk.net.au/CCRC/MediaRelease.pdf.

29. For the full statistics, please see the Commission's website, which publishes updated statistics regularly at http://www.ccrcc.gov.uk/cases/case_44.htm.

an error has been made and (only belatedly) rectified, public confidence in those systems will wholly disappear if we attempt to pretend that such errors simply cannot and do not occur. Although the UK does not have to grapple with the particular complications of the death penalty *vis-à-vis* miscarriages, there is no doubt that people have always been – and always will be – wrongly convicted for a variety of reasons in every civilised society. It is essential to recognise this and have a mechanism to address it. The CCRC is that mechanism for England, Wales and Northern Ireland. It is necessarily independent, not only of Government, of the police, of the prosecuting authorities and of the Courts, but also independent of the applicant. An applicant to the CCRC is just that – an applicant and not a client. The Commission is not a campaigning organisation and at no stage acts for an applicant. If it decides to make a referral, the Commission (once it has served a Statement of Reasons which sets out its findings and conclusions) drops wholly out of the picture – leaving it to the applicant and his or her lawyers to pursue the appeal in the court.

Although the jurisdiction of the CCRC extends to Magistrates' Courts offences, its workload mainly relates to the more serious offences tried in the Crown Courts from which appeals lie to the Court of Appeal (Criminal Division).³⁰ This paper does not seek to deal with the Magistrates' Court jurisdiction.

II. THE PROCESS

The CCRC is a creature of statute, and the test it has to apply when deciding whether or not to refer a case back to the Court of Appeal involves a series of statutory hurdles set out in the Act which established it. There normally has to have been an unsuccessful first appeal. If a reference is to be made, the Commission has to conclude that there is a 'real possibility' that the conviction or sentence will not be upheld by the appeal court. Furthermore, save in exceptional circumstances, the Commission can only refer a case to the Court of Appeal on the basis of evidence or argument not previously raised at trial or on appeal – there must be 'something new.'

Section 13 of the Criminal Appeal Act 1995 sets out the position:

s.13 "Conditions for making of references

(1) A reference of a conviction, verdict, finding or sentence shall not be made under any of sections 9 to 12B unless—

(a) the Commission consider that there is a real possibility that the

30. See ELKS, *supra* note 12, at 264. The author points out that, in the period from its inception to December 2007, only 6.6% of all applications involved summary convictions in the Magistrates' court.

conviction, verdict, finding or sentence would not be upheld were the reference to be made,

(b) the Commission so consider—

(i) in the case of a conviction, verdict or finding, because of an argument, or evidence, not raised in the proceedings which led to it or on any appeal or application for leave to appeal against it, or

(ii) in the case of a sentence, because of an argument on a point of law, or information, not so raised, and

(c) an appeal against the conviction, verdict, finding or sentence has been determined or leave to appeal against it has been refused.

(2) Nothing in subsection (1)(b)(i) or (c) shall prevent the making of a reference if it appears to the Commission that there are exceptional circumstances which justify making it.”

If there has already been an appeal, which is normally the situation, the Commission is the ‘last chance saloon’ for the individual. The only way their case can return before the appeal court for a second time is if the CCRC refers it. Any Innocence Project or other group that has been working on a case must, therefore, seek to persuade the Commission to refer it. However, once a case is referred by the Commission the appellate court has no option but to hear that appeal – even if it might prefer not to.

As the Commission is required to assess what the appeal court will do if a referral is made, it is inevitably and inextricably linked by current statute to the test which will be applied by the Court of Appeal in any appeal. That test is set out in the 1968 Criminal Appeal Act³¹ and is, quite simply, whether or not the conviction is ‘safe.’ There is no mention of the word ‘innocence,’ and this ‘safety’ test can clearly be satisfied in circumstances where there is no new evidence which establishes factual innocence. Importantly, the test can be satisfied if new evidence raises sufficient doubt about guilt and/or where issues arise as to matters which have fallen foul of what might sensibly be referred to as ‘due process’ or ‘procedural fairness.’ Such issues would include, for example, where there has been misdirection by the trial judge to the jury, the non-disclosure of vital information, or wholly inadequate legal representation at trial.

The principles involved were perhaps best set out in the judgment in the case of *Hickey*³² in 1997, the year in which the CCRC opened its doors for business. The Court of Appeal declared what its own focus and concerns were:

“This court is not concerned with guilt or innocence of the appellants, but only with the safety of their convictions. This may, at first sight, appear

31. CRIMINAL APPEAL ACT (1968) c. 19, s.2(1)(a).

32. R v. Hickey, [1997] EWCA Crim. 2028.

an unsatisfactory state of affairs, until it is remembered that the integrity of the criminal process is the most important consideration for the courts which have to hear appeals against conviction. Both the innocent and the guilty are entitled to fair trials. If the trial process is not fair, if it is distracted by deceit or by material breaches of the rules of evidence or procedure, then the liberties of all are threatened.” (per Roch LJ)³³

A few critics completely misunderstand the Commission when it echoes the words in *Hickey* by indicating that it is not concerned with guilt or innocence.³⁴ Of course the Commission cares about factual innocence. Nothing is more likely to lead to a reference by the Commission than compelling new evidence of factual innocence. The Commission will look for such evidence whenever and wherever it is sensible and practical to do so but evidence of that type is, unfortunately, rarely discoverable. Although campaign groups and journalists understandably focus on the convictions of those who they believe to be innocent, the Commission has a wider remit. It works to overturn not only the wrongful convictions of those who others believe to be innocent, but also the wrongful convictions of those who only may be innocent (though others doubt it) and even, indeed, of those who, though they seem clearly guilty, have been convicted only after substantial systemic error or wrongdoing.

Very few people who are convicted of an offence can hope to prove their factual innocence and many victims of miscarriages will lack supporters who believe in them. Their ‘victimhood’ is not diminished by that fact nor can it be assumed that their applications to the Commission are in consequence less meritorious. The Commission makes no apology for concerning itself not only with the convictions of those who others consider to be factually innocent, but rather with all wrongful convictions and with the need to keep the system ‘clean’ and, by doing so, to reduce the risk of injustices in the future. Furthermore, the Commission’s reviews of cases, whatever the result may be for an individual, are an important assurance of the general integrity of the criminal justice system.

Some critics have expressed disapproval of the ‘real possibility’ test.³⁵ However, approaching the matter from an objective perspective, would it not be completely unrealistic if the Commission was able to refer convictions to appeal courts where there was no real possibility

33. *Id.*

34. For specific criticisms of the Commission, see MICHAEL NAUGHTON, *THE CRIMINAL CASES REVIEW COMMISSION, HOPE FOR THE INNOCENT?* (2009) and Michael Naughton, *Justice on Trial: Why ‘Safety in law’ may Fail the Innocent – The Case of Neil Hurley*, *THE GUARDIAN*, Feb. 11, 2010.

35. Naughton, *supra* note 34; see also Bob Woffinden, *The Criminal Cases Review Commission has Failed*, *THE GUARDIAN*, Nov. 30, 2010.

that those convictions would be quashed? In any event, any change to the requirement for the Commission to apply the real possibility test can only come from amendment of the Criminal Appeal Act 1995, which is a matter for parliament.

The Commission is not a court or tribunal and it does not hold oral hearings but deals mainly with written submissions. If the Commission is contemplating turning a case down a draft statement of the reasons for doing so is sent out to allow the applicant and his/her lawyers time to make further representations as to why the Commission should change its mind. Sometimes it does. These statements of reasons are lengthy documents, often stretching to hundreds of paragraphs. Wherever possible they are written in a way that is as comprehensible to the applicant, who does not necessarily have legal representation or the best education, as to the Court of Appeal. The Commission will not only look at the submissions an applicant makes but will also consider the papers generally. It has regularly found referral grounds that applicants never knew they had – sometimes because the Commission has been able to obtain documents that the defence were not able or allowed to see at the trial.

When the Commission refers a case for a second appeal the Crown is again represented by the Crown Prosecution Service (CPS) and sometimes by the same lawyer who prosecuted at the trial and/or who represented the Crown at the first appeal. In a minority of cases the reasons for referral have been so persuasive that the CPS will not contest the appeal, but in most cases they do so and argue that the conviction remains safe. The final decision on whether a conviction is upheld is of course for the court itself. If it is quashed then a retrial can be directed by the appeal court, but this occurs in relatively few cases.

Applicants can apply to the Commission again and again – but they must have new evidence or argument each time. That can often be a difficult task to satisfy, particularly in respect of charges which go back a long way. A group of “Care Homes” cases has thrown up particular problems in these areas.³⁶ These homes were usually run by local authorities for orphans or, more commonly, children with behavioural problems. They were boarding establishments with live-in staff. Towards the end of the 1990s there were numerous police investigations around the UK into allegations that in the 1960s, 1970s and 1980s headmasters and other teachers or care staff at those homes had been sexually and physically abusing the children there. Those children, by then in their 30s and 40s, had made complaints about their treatment in

36. For an expression of the difficulties and complexities within these types of cases, see Faye Wertheimer, *History Revision*, THE GUARDIAN, Nov. 29, 2006.

the homes. Numerous former staff were taken to trial on indecent assault and rape charges and many were convicted. Some pleaded guilty. The difficulty was, at least for those who were innocent, that there was little evidence they could rely on to show that the complainants were wrong. Sometimes they could not even remember the child in question, often colleagues of the time who might have been able to assist had died, and all the records of the home, which could have shown when staff were on leave or when a particular trip took place, had been long since destroyed. In addition to these factors, the majority of complainants, all of whom had had a poor start to their lives, by the time of the trial tended to have accumulated numerous previous convictions as adults, including convictions for dishonesty. These were usually adduced as evidence, and yet many juries still convicted and the teachers and carers, most of whom had long retired, went to prison. New evidence in such circumstances is very hard to come by.

III. THE POWERS

In order to refer a case, the Commission will usually have to be satisfied that there is some genuinely *new* evidence or argument available to the applicant. It is therefore vital that it has – and utilises – the extensive investigatory powers set out by the Criminal Appeal Act 1995.

Under section 17 of the Act the Commission is entitled to obtain any material held by any public body, regardless of any obligation of secrecy or confidentiality which that body may owe, whether by statute or otherwise. That means that the Commission can and does obtain files and other material (whether or not confidential or covered by Public Interest Immunity) not only from the Courts, the police and the prosecuting authority, but also from bodies such as prisons, the Ministry of Defence, the Security Services, the body dealing with police complaints, the National Health Service, Social Services and so on. Section 17 reads as follows:

17. “Power to obtain documents etc.

- (1) This section applies where the Commission believe that a person serving in a public body has possession or control of a document or other material which may assist the Commission in the exercise of any of their functions.
- (2) Where it is reasonable to do so, the Commission may require the person who is the appropriate person in relation to the public body—
 - (a) to produce the document or other material to the Commission or to give the Commission access to it, and

(b) to allow the Commission to take away the document or other material or to make and take away a copy of it in such form as they think appropriate, and may direct that person that the document or other material must not be destroyed, damaged or altered before the direction is withdrawn by the Commission.

(3) The documents and other material covered by this section include, in particular, any document or other material obtained or created during any investigation or proceedings relating to—

(a) the case in relation to which the Commission's function is being or may be exercised, or

(b) any other case which may be in any way connected with that case (whether or not any function of the Commission could be exercised in relation to that other case).

(4) The duty to comply with a requirement under this section is not affected by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of an enactment) which would otherwise prevent the production of the document or other material to the Commission or the giving of access to it to the Commission.”

The Commission cannot sensibly reinvestigate every aspect of every case which comes before it. It does, however, make extensive use of its investigatory powers and will, in virtually every case, use them to obtain relevant material from public bodies. The powers were used over 1700 times in the last year.³⁷ Extensive though these powers are, they are subject to limitations which the Commission has long been attempting to overcome. In particular, for years the Commission has been pressing for the power (already enjoyed by the Scottish CCRC) to obtain material from private bodies, as well as a new and appropriately qualified right to require witnesses to answer its questions. The need for such powers has grown as functions have been transferred from the public to the private and/or charitable sectors and as concerns about data protection have led to increased concerns about confidentiality. The desirability of transnational investigatory powers has also become ever more apparent as the years have passed. There must always be a much greater chance that a wrongful conviction will be overturned by even the most conservative and recalcitrant of appeal courts if the Commission can present that court with compelling new evidence of ‘unsafety.’ The Commission would welcome any alteration in the present arrangements which would make it easier for it to find such evidence.

37. This statistic was obtained using an internal CCRC system interrogation. For further information, see the website, *supra*, or contact the Commission directly.

IV. SOME FEATURES THAT HAVE REDUCED MISCARRIAGES

Although police misconduct probably provided a common reason for miscarriages in the initial post-war decades, the situation was much improved by the passing of the Police and Criminal Evidence Act 1984,³⁸ known as ‘PACE.’ This made compulsory the tape-recording of interviews of suspects (with the defendant entitled to a copy tape), and introduced the concept of custody officers who were responsible for a suspect’s welfare at a police station and were not part of the investigating team. Identification parade procedure was closely prescribed and also required to be run by an officer unconnected with the investigation. The PACE reforms, now well over 25 years old, were a major step forward in fairness and propriety in police investigation, substantially reducing the number of courtroom challenges to confessions and to identifications at formal parades. Undoubtedly PACE has helped to reduce the risk of miscarriages of justice.

Another aspect of the English system, when compared to the US and some other criminal justice systems, and which may also be responsible for reducing the potential for miscarriages, is the fact that the criminal justice system in England and Wales, with only cosmetic differences in Northern Ireland, is essentially a federal system where the main players are independent of any political influence. Neither the local Chief Constable of Police, nor the Director of Public Prosecutions (who runs the CPS) nor the judge at the trial or appeal court is elected. No aspect of their appointment has any connection with their political affiliation and they would not hold their posts without being highly experienced in their field.

Furthermore, it is well recognised that the English process is far more open from the defendant’s viewpoint than in many other jurisdictions, both before and after the trial. Pre-trial disclosure has to take place in accordance with various guidelines, including those within the case of *Hickey*.³⁹ These require that, subject to some minor exceptions, information must be disclosed by the police and prosecution to the defendant if it would assist him to make his best possible case.⁴⁰ This obligation even extends after conviction, and if the authorities later come into possession of information that might assist in overturning a conviction then they are obliged to disclose it to the individual. If there is a reasonable request from a convicted person for the provision of an

38. POLICE AND CRIMINAL EVIDENCE ACT (1984) c.60.

39. *R v. Hickey*, [1997] EWCA Crim. 2028.

40. The rules were laid out by the Criminal Procedure and Investigations Act (1996) c.25, s.3. Additionally, the Code of Practice introduced by s.22 provides detailed principles on how the prosecution should consider disclosure issues.

exhibit from the trial, such as an item of clothing which could be subjected to DNA testing, then assuming the item is still available (and it should be in any serious case) the police must allow access to it for such a purpose.

V. SOME EXAMPLES OF CCRC WORK

In addition to obtaining and examining material the Commission will often take many other steps in its review of a case. The following give a flavour of the Commission's work.

The Commission may arrange for 'new' witnesses to be interviewed – perhaps about the incident giving rise to the conviction or, not infrequently, about post-trial admissions or retractions that witnesses are alleged to have made and which are said to be inconsistent with their trial evidence.

The Commission may arrange for new expert reports to be prepared, for example:

- a report from a paediatric pathologist in a 'shaken baby' case which deals with recent developments in the relevant science⁴¹;
- a report about the significance of evidence of firearms discharge residue (as was obtained in the *Barry George* case⁴² – a man who was convicted of shooting dead a popular female TV presenter – where it became apparent that the finding of a single particle of Firearms Discharge Residue would no longer be considered to be of probative value⁴³);
- a report about developments in thinking as regards the medical findings that are, or are not, suggestive of child sex abuse,⁴⁴ or;
- a report from a psychologist on the reliability of the confession evidence in a particular case.⁴⁵

The Commission has arranged for crime scene reconstructions or for further expert tests to be carried out – such as the reconstruction of a car driving into a river, DNA analysis of blood or semen samples, or in one case how long a murder victim's self-winding watch would have kept going after all movement of its owner's dying body had stopped.

Confession statements may also be undermined by uncovering the findings of disciplinary enquiries into the behaviour of the police

41. *R v. Clark*, [2003] EWCA Crim. 1020; *R v. Faulder*, [2005] EWCA Crim. 1980.

42. *R v. George (Barry)*, [2007] EWCA Crim. 2722.

43. *Id.*

44. Prompted by the 2008 Royal College of Paediatrics report entitled *The Physical Signs of Child Sexual Abuse*, the Commission arranged for further reports to be prepared – leading to the cases of *R v. Cooper*, [2010] EWCA Crim. 1379; *R v. Mockford*, [2010] EWCA Crim. 1380; and *R v. Aston*, [2010] EWCA Crim. 3067.

45. *R v. Kenyon*, [2010] EWCA Crim. 914.

officers who took them, reports on the psychological state of the defendants themselves, or in one case by the discovery that the defendant had in fact been in prison when one of the offences to which he had confessed had been committed.

The credibility of a complainant in a sex case may be damaged beyond repair – as it was in the case of *Warren Blackwell*⁴⁶ – by the discovery that the complainant had made numerous similar allegations of indecent assault against other men which had proved, on investigation, to be wholly unfounded. In that particularly disturbing case, the Commission established that the complainant had on one occasion been seen by her adult daughter punching herself and banging her head against a wall before alleging that she had been assaulted, and had on another occasion claimed that an attacker had scratched the word ‘HATE’ on her stomach – an allegation which was quickly determined to be false when it was noticed that the word had in fact been written backwards ‘ETAH’ – i.e. in mirror-writing.⁴⁷

Sometimes the enquiries made will produce evidence which undermines - or at least casts serious doubt on - the prosecution case at trial. Sometimes, however, they will do the opposite and point strongly to the defendant’s guilt – as a DNA test did in the notorious case of *Hanratty*,⁴⁸ who had been hanged in the 1950s when the UK still had the death penalty and who many had been convinced was innocent.

VI. THE CCRC AND THE UK INNOCENCE NETWORK

As to our interaction with the UK Innocence Network, it is excellent experience for the undergraduates to become involved in such cases under supervision. As indicated earlier, the legal position is that any case worked on by a UK Innocence Project must come through the CCRC in order to get back to the appeal court. A well-presented application from an Innocence Project can be very helpful. It is essential that the submissions dovetail in to the legal framework outlined above – i.e. the need for a judgment to be made by the CCRC as to a ‘real possibility,’ that judgment inevitably being one which takes account of the appeal court’s own test of ‘safety.’ It must be remembered that time spent on issues which have no chance of success under the applicable regulations may simply delay the potential referral of a case back to the appeal courts: closer liaison can help to achieve this.

46. *R v. Blackwell*, [2006] EWCA Crim. 2185.

47. *Id.*

48. *R v. Hanratty*, [2002] EWCA Crim. 1141.

VII. CONCLUSION

The CCRC is proud of what it has achieved in fourteen years, but is by no means complacent. Miscarriages will continue to occur and survive first scrutiny by the Court of Appeal. The Commission is lucky to have a dedicated staff. It is particularly fortunate to have extensive powers to assist it in fulfilling its task, and appreciates the advantages that it has over many other organisations in this respect.

In conclusion, the Commission has always subscribed to the sentiments expressed by Baroness Helena Kennedy QC:

*“When we no longer feel rage at injustice, we will have lost our humanity and our claims at living in a civilised society.”*⁴⁹

49. Baroness Helena Kennedy QC, *Sudden Unexpected Death in Infancy*, 15 (September 2004) (Report of a working group convened by the Royal College of Pathologists and the Royal College of Paediatrics and Child Health).