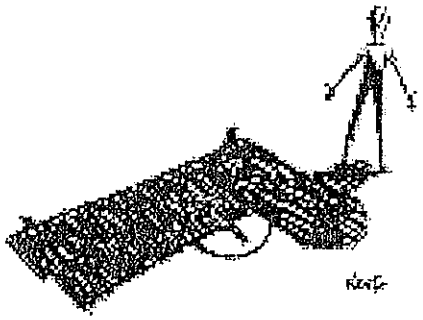
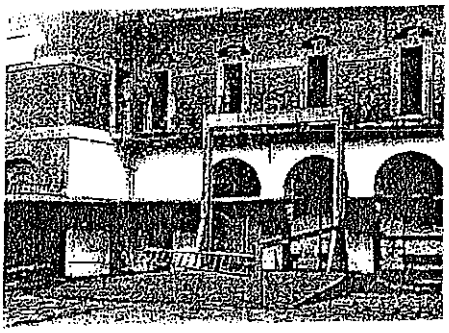




CRIMINAL LAWYERS ASSOCIATION
OF THE NORTHERN TERRITORY

In conjunction with the

CRIMINAL LAW SECTION OF THE LAW
INSTITUTE OF VICTORIA

NINTH BIENNIAL CONFERENCE
PORT DOUGLAS 29 JUNE - 4 JULY 2003

A MATTER OF PROFOUND REGRET
DEREK WILLIAM BENTLEY'S BIRTHRIGHT
TO A FAIR TRIAL

CRIMINAL LAWYERS ASSOCIATION OF THE NORTHERN TERRITORY

in conjuction with

CRIMINAL LAW SECTION OF THE LAW INSTITUTE OF VICTORIA

presents

A MATTER OF PROFOUND REGRET DEREK WILLIAM BENTLEY'S BIRTHRIGHT TO A FAIR TRIAL

REGINA

V

DEREK WILLIAM BENTLEY

&

CHRISTOPHER CRAIG

> *It must be a matter of profound and continuing regret that this mistrial occurred and that the defects we have found were not recognised at the time.*
>
> *[2001] Cr. App. R.. 307, 340*

> *All man's regret is no more*
> *than Attila with a cold*
>
> Peter N.F. Porter (1929 -)
> *The Sadness of the Creatures*

The original working title of this short paper, and the accompanying play-reading, was ***Let him have it,* Chris!** I had read the decision of the England Court of Appeal in the matter of **Derek William Bentley (Deceased)** [2001] 1 Cr. App.R. 307, but superficially only, and seen a film made in the early nineties using that catchcry or exhortation as its title.

The theme seemed to be that the words *Let him have it* had been misinterpreted. They actually meant, so the critics of the original verdict would say, that Bentley wanted Christopher Craig (his co-accused and co-factory breaker) to hand over the gun he had with him at the time and **not** to blast away at any police officer in sight.

I was fortunate enough, through a friend in the Crown Prosecution Service, to obtain a copy of the original transcript of the trial. It was conducted in December 1952 in the

Old Bailey before Lord Goddard, the Lord Chief Justice. It is, already, a marvellous historical document. I will provide, later in this introductory paper, a chronology of the Bentley/Craig affair, which will include a summary of the trial.

Why the Bentley & Craig Trial?

The short answer is **because it was there.** It had been the subject of considerable controversy over the years, a plea for mercy and public outrage at Bentley's hanging ignored, a reference to the Court of Appeal by the Criminal Cases Review Commission, a feature film and at least one book and a song by Elvis Costello (*Let Him Dangle).* But what is more, I had the original transcript. This last point might be said to be the most persuasive.

This is the fifth play-reading presented to the biennial CLANT Conference. In each case an original transcript has been available and this has been used, very faithfully in each case, as the script for the presentation. There is a significant correlation between the themes of each of the trials.

1995	*The Popish Plots*	-	*Golden threads, golden silences and silver tongues : The right to a fair trial.*
1997	*Ned Kelly*	-	*The benefit of Counsel.*
1999	*Tuckiar*	-	*A fair trial : interpreters and the right to a defence and the right to understand*
2001	*Eureka Trials*	-	*The resilience of the jury system: serving the community.*
2003	*Bentley & Craig*	-	*A Matter of Profound Regret: Derek William Bentley's Birthright to a fair trial.*

In the first, a plot to kill the King was involved. Prosecuting counsel and the presiding judge were determined to achieve a conviction. In *Kelly, Tuckiar* and *Eureka* police officers had been killed. The judges in each case appeared to be partisan.

In the *Bentley* case, you will have the opportunity to judge for yourselves.

As I explored the subject, read the original transcript and studied the 1998 Court of Appeal decision, I realised that *Let him have it, Chris!* did not merit its significant position. The title changed. You will understand why when the story unfolds.

The Story

On 2nd November 1952 two youths were spotted breaking into Barlow & Parker, a wholesale confectioner's in Croydon, London. The police were called and they arrived at about 9.25 pm in a van and a car. Bentley and Craig spotted the police and tried to hide behind a lift-housing on the flat roof of the warehouse. DC Frederick Fairfax noticed a footprint on a windowsill and climbed a drainpipe onto the flat roof. Fairfax called on the pair to surrender but was met with a stream of defiance from Craig. He charged at them and grabbed the nearest figure, which happened to be Bentley. Bentley broke free and is alleged to have called to his partner, *Let him have it, Chris!* Craig fired and wounded DC Fairfax in the shoulder. Fairfax caught up with Bentley and flattened him with a punch. Fairfax stripped Bentley of his weapons, a knife and a knuckle-duster. By this time armed reinforcements had arrived and surrounded the building. PC Miles, who had been in the first car to arrive, had located the manager of the building and had obtained the keys. Miles entered the building and went up an interior staircase to the roof. He fell dead, shot through the left temple. Craig continued to fire and scream threats at the police until he ran out of ammunition. He then leapt from the roof of the building, a drop of twenty-seven feet. The fall broke his spine, breastbone and left wrist. In the meantime, Bentley had been escorted from the roof under arrest.

At their trial at the Old Bailey they were both charged with murder, even though Bentley was under arrest when Craig fired the shot that killed Miles. Craig, being sixteen at the time, could not be hanged. There were many contentious points at their trial. The defence maintained that Craig had not been aiming at the policemen when he fired, but over their heads. A ballistics expert, Mr Lewis Nicholls, gave evidence that the gun, a sawn-off, First World War .45 Eley service revolver, was widely inaccurate at distances over six feet. No one was sure how many shots had been fired on the roof. Craig stated that he had reloaded the gun once and had fired eleven times, two of them being misfires. Police only found two bullets on the roof and one in Fairfax's clothing. No trace could be found of the bullet that killed Miles. Many of the judge's continual interjections during the trial were damaging to the defence. The main point of the prosecution's case was based on the pair having a common purpose while the defence maintained that the *joint enterprise* had ended fifteen minutes before Miles' death, when Bentley was arrested.

The jury considered their verdict for just seventy-five minutes before returning guilty verdicts on both youths, with a recommendation for mercy in Bentley's case. Bentley was sentenced to death. Craig, who the judge described as *one of the most dangerous young criminals who has ever stood in that dock* was sentenced to be detained during Her Majesty's Pleasure. Derek Bentley, aged nineteen, was hanged in Wandsworth Prison at 9 am on 28 January 1953 by Albert Pierrepoint. Craig was released from prison in May 1963 and he settled in Buckinghamshire.

A Short Chronology

This is taken directly from the introductory remarks of Lord Bingham in the judgment of the Court of Appeal delivered on 30 July 1998, following a three day hearing earlier that month.

On the evening of November 2, 1952 Police Constable Sidney Miles was shot dead in the execution of his duty on the roof of a warehouse in Croydon. Two men were charged with his urder: Christopher Craig, who was then aged 16, and Derek William Bentley, who was 19. On November 17, 1952 they were committed to stand trial on December 9 at the Central Criminal Court, where they were tried before Lord Goddard C.J. and a jury. They were convicted on December 11, in Bentley's case with a recommendation to mercy. The trial judge passed on each the only sentence permitted by law: on Craig, because of his age, that he be detained during Her Majesty's pleasure; on Bentley, sentence of death. An appeal by Bentley against conviction was dismissed by the Court of Criminal Appeal (Croom-Johnson, Ormerod and Person JJ.) on January 13, 1953. He was executed on January 28.

The Criminal Cases Review Commission has referred the conviction of Derek Bentley to this Court under section 9 of the Criminal Appeal Act 1995. By section 9(2) of that Act a conviction so referred is to be treated for all purposes as an appeal against conviction under section 1 of the 1968 Act. We are accordingly required by section 2 of that Act to allow the Appeal Against Conviction if we think that the conviction is unsafe, and otherwise to dismiss the appeal. Maria Bentley-Dingwell, a niece of Derek Bentley, has been approved by this Court under section 44A of the 1968 Act to begin and conduct the appeal on his behalf. We shall henceforward refer to him as ***the appellant.***

On July 29, 1993 the appellant was granted a royal pardon in respect of the sentence of death passed upon him and carried out..

The Australian observer, from fifty years away in respect of the original legal drama and from five years after the Court of Appeal decision, must be struck by the speed with which the British criminal justice system dealt with the original matter. It took only 87 (an ominous number) days from committing the offence to execution. In the meantime there was committal, trial, an appeal to the Court of Criminal Appeal, an application for leave to appeal to The House of Lords and appeals to the Home Secretary and speeches in Parliament.

The consideration by the Home Secretary of the jury's recommendation for mercy fell on deaf ears.

The Criminal Justice system since then had 45 years, of course, to consider, at leisure, the tragic errors made at trial and endorsed by the Court of Criminal Appeal.

The Judge and the Lawyers

The presiding judge at the trial was the Lord Chief Justice, Lord (Rayner) Goddard of Aldbourne. Born in 1877, he was a barrister who served as a Recorder from 1917 before being appointed a Judge of the High Court in 1932. He was appointed Lord Chief Justice of England in 1946 and served until 1958. He was aged 75 at the time of the trial. He died in 1971, aged 94. A cryptic note indicates *he was seldom lenient but always respectful of legal proprieties. He set a valuable example to the judiciary in controlling the crime wave that followed World War II in England.* (So it was said in his biographical material).

Christmas Humphreys was the leading prosecutor. He was a practising Buddhist (which makes his given name rather ironic) and famous for his writings. He was the son of a Barrister and Judge, Sir Travers Humphreys. He was born in 1901, called to the bar as a member of the Inner Temple in 1924. He became a prosecutor (Junior

Treasury Counsel) in 1932 and in 1950 became Senior Prosecuting Counsel. He later took Silk in 1959. He had been a Recorder at different periods from 1942 – 1968 and

became an Additional Judge at the Old Bailey in 1968. He was involved in some other famous hanging cases (*Evans/Christie/Ellis).* He was known as an eccentric but gentle judge and his lenient sentences stirred up the press. They eventually led to his resignation being sought in 1976. He was then 75. He died in 1983. He was regarded as a fair and decent prosecutor. His presentation on *The Duties and Responsibilities of Prosecuting Counsel* [1955] Crim.L.R.739 is often quoted.

I cannot tell you much about Frank Cassels who appeared for Derek Bentley. He was a veteran of the Old Bailey and a contemporary picture shows him as a senior man, to say the least. He was said to be extremely competent, cool and dispassionate but a man of conservative views and inclinations.

John Parris who appeared for Craig was of a different style altogether. He had made his reputation as an outspoken advocate in the north of England, briefed in several murder trials. He quit the Bar in 1959, after 12 years in practice, and wrote *Most of My Murders* about some of the murder trials in which he had acted as defence counsel.

Much later Parris wrote a book *Scapegoat,* which tells the tale of the Craig & Bentley trial. He claimed that Bentley was the scapegoat – someone had to suffer the ultimate punishment given that a police officer had been killed in the course of his duty. The book suggests that Lord Goddard waged a vindictive campaign against Parris leading to him being disbarred. In this connection, the comments by the Court of Appeal in 1998 (p. 342) in dealing with the possible reception of statements by Parris as part of the evidentiary material are illuminating.

> *As we indicated during the course of the hearing we have some anecdotal background knowledge of matters which would cause us to approach the testimony of Mr Parris with some reserve. Our decision in relation to this statement is not in any way related to these matters, but it might well be of some relevance if we had to consider whether what he says is capable of belief.*

I have been unable to discover anything about John Bass, who was junior to Humphreys.

The Course of the Trial

There is no need in this introduction to the play-reading to do more than set out important excerpts of the Court of Criminal Appeal 1998 judgment.

The main thrust of the prosecution case was straightforward. Craig had deliberately and wilfully murdered P.C. Miles and the appellant had, to use prosecuting counsel's words in opening:

> *Incited Craig to begin the shooting and although technically under arrest at the actual time of the killing of Miles, was party to that murder and equally responsible in law.*

In order to prove the appellant's participation, the prosecution relied heavily on what counsel described as the most important observation that Bentley made that night, namely Let him have it, Chris! That was said to be a deliberate incitement to murder Detective Constable Fairfax,

who had just arrested the appellant. It led, it was said, to Craig immediately firing at and wounding D.C. Fairfax. Counsel said in opening:

> *It was spoken to a man who he, Bentley, clearly knew had a gun. That shot began a gunfight, in the course of which Miles was killed; that incitement ... covered the whole of the shooting thereafter, even though at the time of the actual shot which killed P.C. Miles, Bentley was in custody and under arrest.*

Craig's defence was that he was not guilty of murder, but guilty only of manslaughter because, although he had pulled the trigger and fired the shot, he had intended only to frighten the police officers and the killing had been an accident. Because of the doctrine of constructive malice, to which we shall have to return later in this judgment, the trial judge considered that Craig had no defence to murder even if his account was believed, and he expressed that view to the jury. Notwithstanding that, he left it to the jury to consider manslaughter. In reality, the case against Craig that he had deliberately murdered P.C. Miles was very strong; and on the law as it then stood any verdict other than guilty of murder in his case would have been perverse.

The appellant's case was that he had not incited Craig to fire the gun and had at no time been party to its use. He had not known that Craig had a gun until the first shot was fired and he had not used the words ***"Let him have it, Chris"*** *or any words which amounted to an incitement to use the gun. He had been standing with D.C. Fairfax for an appreciable time, making no effort to get away from him and behaving in a wholly docile manner,* when *Craig had fired the fatal shot. He had not participated in the murder. (311-312)*

There were a number of discrepancies between the accounts given by the three police officers who claimed to have heard Bentley shout Let him have it, Chris. It was suggested by Counsel for Bentley (in 1998!) that these discrepancies supported an argument of invention or, at least, unreliability. But the matter was never explored thoroughly at trial.

There was a separate suggestion at appeal that the expression *Let him have it* was invented, and lifted from an earlier English case of *Appleby* in 1940 (28 Cr App R 1).

But these arguments were not run at trial (or the 1953 appeal) and seemed to have emerged much later. Counsel on trial for Bentley did argue to the jury that the words, if used (which was denied, it must be noted) were not capable of that strong meaning. What meaning were they capable of, then? Mr Cassels did not assist the jury, probably according to the 1998 Court, as to what that other meaning could be, perhaps because he realised the difficulty he was in, having regard to the appellant's denial that the words had been used at all. The appellant's subsequent conduct may have thrown some light on what he meant by the words, if they were spoken. (*Bentley,* 316)

I have jumped ahead slightly; (well, by 45 years).

The trial started on the morning of Tuesday 9 December. There were no preliminary arguments, it appears, on that date. The accused (termed *prisoners* from the outset) pleaded not guilty, a jury was empanelled (it is noted that Mr Parris, for Craig, challenged two female jurors) and Mr Humphreys opened his case. He called seven

witnesses before lunch and another fifteen in the afternoon. An empanelment, opening and 22 witnesses in a murder trial first day!

On the second day the Crown called two more witnesses and closed its case. Each of the accused was called, but no further evidence. There was legal argument about the effect of causing the death of a police officer while unlawfully resisting arrest. This was determined in favour of the Crown. The Crown then delivered its closing address followed by each of the defence counsel. The trial judge interrupted Mr Parris, during the course of his address, to correct what counsel said about the applicable law. Mr Parris does seem to have deliberately set out to traverse the judge's ruling given earlier. In this instance, at least, the manner of dealing with him does not seem unfair.

The Court adjourned at the conclusion of the addresses and resumed at 10.30 am on the morning of Thursday 11 December 1952. His Honour delivered what the Court of Criminal Appeal in 1953 thought was a fair summing-up. The Court in 1998 did not! It took only 45 minutes. It was a powerful speech, from a position of power, advocating conviction for murder. It followed what can only be seen, at this distance, as an aggressive and obtrusive conduct of an important and sad case where the judge's own views were always obvious and appeared to dominate the proceedings.

The jury was out for 75 minutes returning with Guilty verdicts at 12.30 pm. Interestingly, the finding in respect of Bentley was *with a recommendation to mercy.* There was to be none!

The whole trial, including 24 prosecution witnesses, and with both accused giving evidence, took less than two-and-a-half days. It is said that *justice delayed is justice denied,* but a little delay here may have lead to a bit more justice.

The 1953 Appeal

Craig did not appeal.

Frank Cassels appeared on the appeal for Bentley which was heard on 13 January 1953, a bare month after the trial. There were only two grounds of appeal.

The Court of Criminal Appeal in 1998 regarded the summing-up as highly emotive, providing advocacy rather than explanation and proper direction, and driving the jury to one result. It was surprised that this was not a ground of appeal.

> *These complaints formed no part of the appellant's appeal against conviction. We do not know why not. We question whether, in the light of the authorities to which we have referred, this summing-up would have been thought acceptable even by the standards prevailing at the time. Complaint was made on appeal of the trial judge's failure to put the appellant's case adequately to the jury, but this ground of appeal was dismissed; the court, it seems, held that* ***the idea that there was a failure on the part of the Chief Justice to say anything short of what was required in putting that sort of case to the jury is entirely wrong.*** (333)

The second ground of appeal was whether it could be said that Craig and Bentley were acting together at the time of the shooting. This ground was also dismissed.

On 22 January Bentley was refused leave to appeal to the House of Lords and the execution was fixed for 9.00 am on Wednesday 28 January 1953.

The Execution[1]

Even after the rejection of the appeal, few people really believed that Bentley would hang. All the signs were that a reprieve would be granted, and a life sentence substituted.

First, there was the jury's recommendation for mercy with which judging by his remarks in sentencing Craig, Lord Goddard seemed to agree.

Second, there was Bentley's youth. Offenders who had only just reached 18 years, were often reprieved. Third, there was the fact that no accomplice to a capital crime had ever been executed, when the principal had, for reason of youth or insanity, escaped the death penalty. Finally, there was Bentley's mental condition. Although not brought out at the trial there was ample evidence of Bentley's lack of intelligence and tendency to epilepsy.

All these reasons gave the Bentley family hope, but none guaranteed a reprieve. Ultimately, Bentley's life was in the hands of the Home Secretary, Sir David Maxwell Fyfe.

The sentiment of the public was clearly on Bentley's side, and petitions for mercy were signed by huge numbers of people, including 200 MPs from all parties. But the Home Secretary was known for being exceptionally blunt towards murderers' appeals, and even the pleas of his fellow Conservative politicians in the name of political expediency failed to convince him.

Petitions for a reprieve were circulated nationwide, swiftly gathering 100,000 signatures. Car stickers proclaiming *BENTLEY MUST NOT DIE* appeared on 18 January. Letters of support arrived by the sackful at the Bentley's house.

On Monday 26 January, the press telephoned the Bentley home to ask the family to confirm that there was to be no reprieve. No message or telegram had been received but on sorting through the morning post, William Bentley found among the letters of support one sent by the Home Office on Saturday expressing *deep regret.*

Feelings ran high when the decision, and the callous way it had been delivered, was made public. MPs and the Home Office were overwhelmed with calls, telegrams and letters of support for Bentley.

The Home Secretary's colleagues in the House of Commons were more in tune with the true public mood. On Monday 26 January, two days before the date fixed for Bentley's execution, the Labour MP, Sydney Silverman, an ardent campaigner against capital punishment, and 50 others put forward a motion for debate.

The next day the House was crowded and expectant but Silverman's motion was not on the order paper. The Speaker explained that he had ruled it out of order, citing the

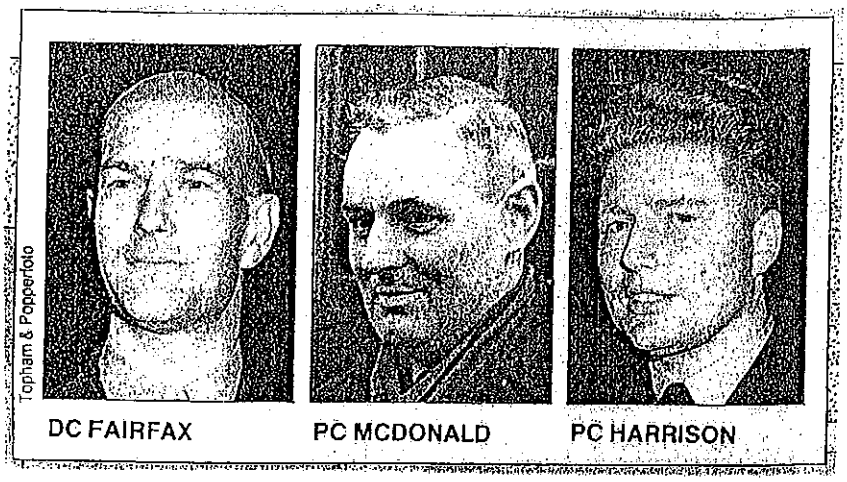
---

[1] These notes were cobbled together from ***Too Young to be Hanged, Murder Casebook Vol 1, 327-360, published 1990.***

Lord Chief
Justice Goddard

Christmas Humphreys

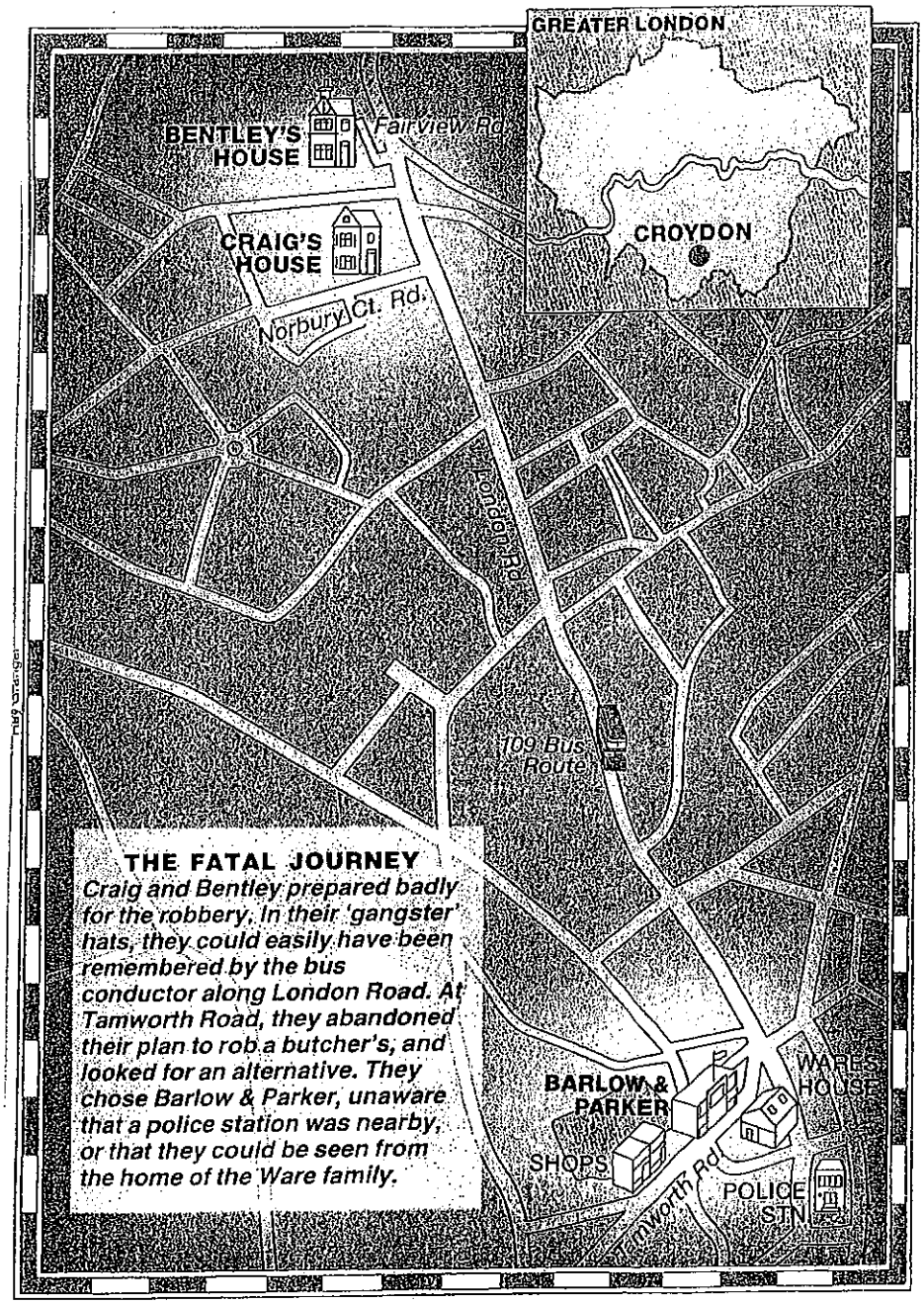
John Parris & Frank Cassels



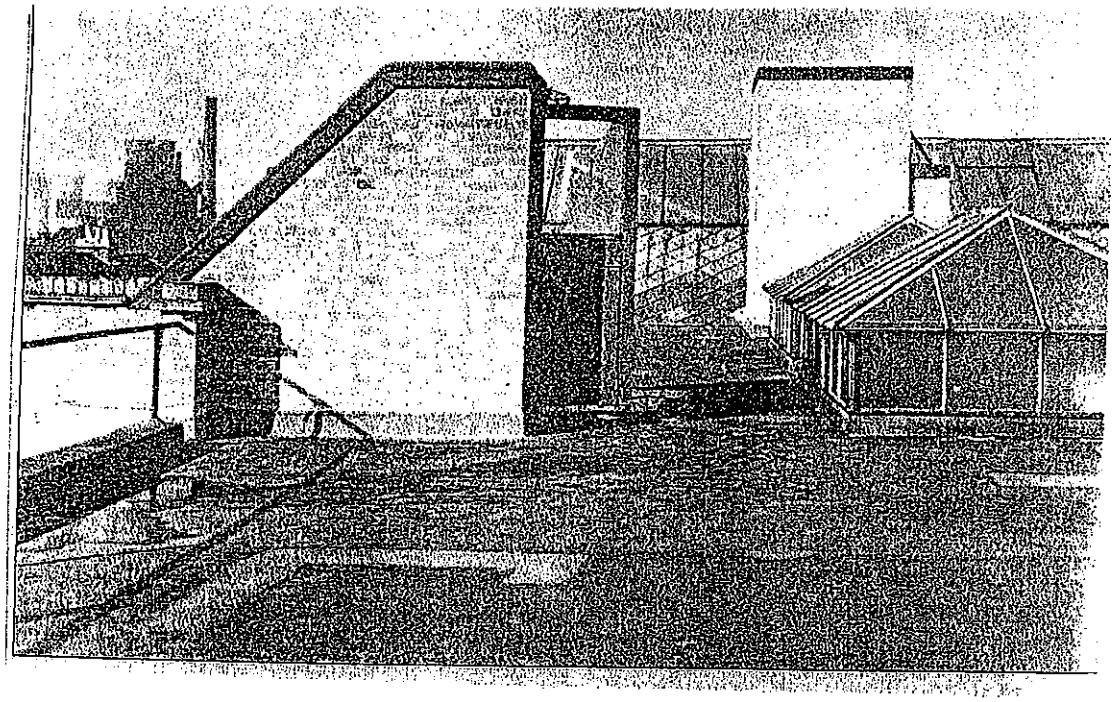
DCI Smith

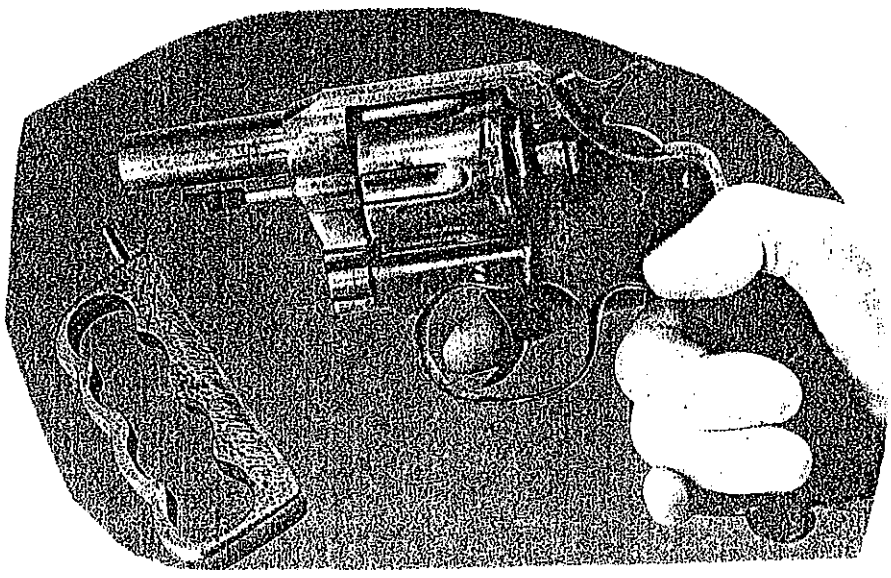
Christopher Craig

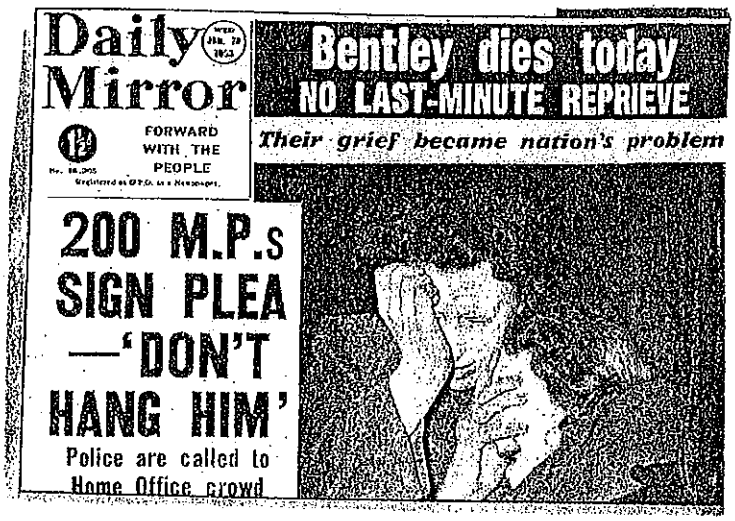
Derek Bentley


GREATER LONDON
CROYDON
BENTLEY'S HOUSE
Fairview Rd.
CRAIG'S HOUSE
Norbury Ct. Rd.
London Rd.
109 Bus Route
THE FATAL JOURNEY
Craig and Bentley prepared badly for the robbery. In their 'gangster' hats, they could easily have been remembered by the bus conductor along London Road. At Tamworth Road, they abandoned their plan to rob a butcher's, and looked for an alternative. They chose Barlow & Parker, unaware that a police station was nearby, or that they could be seen from the home of the Ware family.
BARLOW & PARKER
WARE'S HOUSE
SHOPS
Tamworth Rd.
POLICE STN.


WHOLESALE
CONFECTIONERS
BARLOW & PARKER LTD
MERCHANTS
CONFECTIONERS
KEY DATES
2–3 NOV 1952
(all times approximate)
9.30 p.m. Police scale roof
9.35 p.m. DC Fairfax arrests Bentley
9.40 p.m. Craig shoots Fairfax in shoulder
9.45 p.m. PC Miles shot dead
10.05 p.m. Craig throws himself off roof
11.30 p.m. Craig charged with murder
5.30 a.m. Bentley charged with murder







Daily Mirror

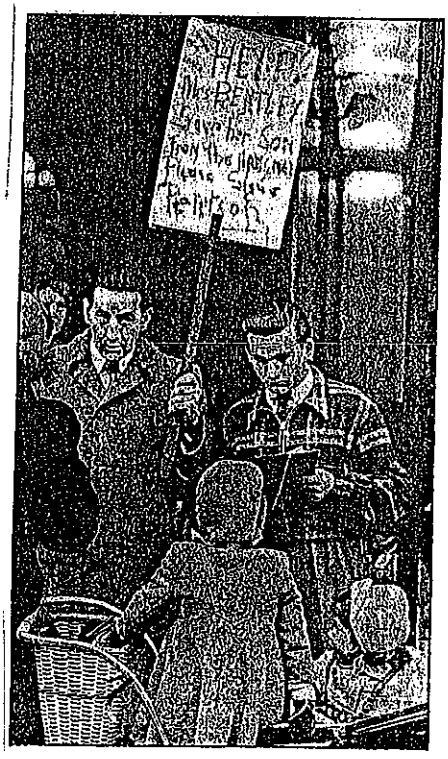
FORWARD WITH THE PEOPLE

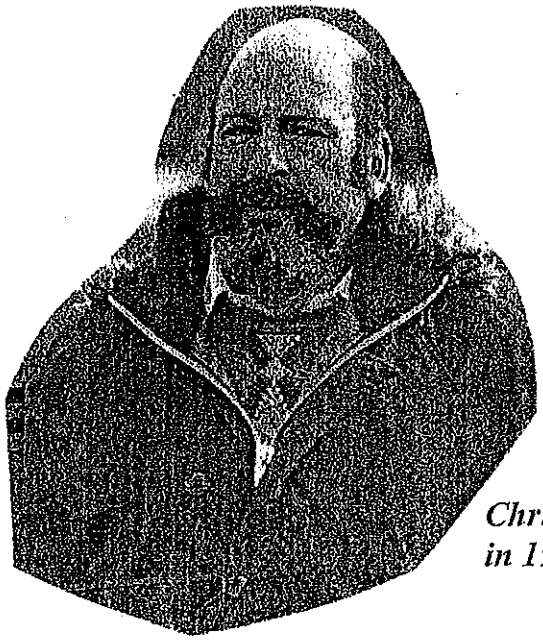
Bentley dies today
NO LAST-MINUTE REPRIEVE

Their grief became nation's problem

200 M.P.s SIGN PLEA —'DON'T HANG HIM'

Police are called to Home Office crowd





Christopher Craig in 1989

precedent that *while a capital sentence is pending the matter should not be discussed in the House.*

Despite a passionate and, at times bad-tempered debate, the decision that any discussion about sparing Bentley's life should have to wait *until he was dead* was apparently backed by precedent.

Bentley was executed on 28 January 1953, at Wandsworth Prison, less than three months from the date of the shooting. He was 19. He would have been 70 on 30 June 2003.

The Aftermath

The case continued to excite public interest. Sydney Silverman introduced his *Murder (Abolition of Death Penalty) Bill* in 1964. In large measure, his participation in the Bentley anti-hanging campaign sparked his passionate opposition to the death penalty.

Bentley's mother and daughter fought over the years to clear his name. This fight culminated in a pardon in 1993 and the acquittal by the Court of Criminal Appeal in 1998.

Elvis Costello the English rock singer wrote a song, *Let him Dangle.* It appeared on his album *Spike* in 1989. Here are the lyrics:

Let Him Dangle

Bentley said to Craig "Let him have it, Chris"
They still don't know today just what he meant by this
Craig fired the pistol, but was too young to swing
So the police took Bentley and the very next thing
Let him dangle
Let him dangle

Bentley had surrendered, he was under arrest,
when he gave Chris Craig that fatal request
Craig shot Sidney Miles, he took Bentley's word
The prosecution claimed as they charged them with murder
Let him dangle
Let him dangle

They say Derek Bentley was easily led
Well what's that to the woman that Sidney Miles wed
Though guilty was the verdict, and Craig had shot him dead
The gallows were for Bentley and still she never said
Let him dangle
Let him dangle

Well it's hard to imagine it's the times that have changed
When there's a murder in the kitchen that is brutal and strange
If killing anybody is a terrible crime
Why does this bloodthirsty chorus come round from time to time
Let him dangle

Not many people thought that Bentley would hang
But the word never came, the phone never rang
Outside Wandsworth Prison there was horror and hate
As the hangman shook Bentley's hand to calculate his weight
Let him dangle

Bring "back the noose" is always heard
Whenever those swine are under attack
But it won't make you even
It won't bring him back

Let him dangle
Let him dangle (String him up)

In 1966 William Bentley was given permission for his son's body to be exhumed from its unconsecrated grave in Wandsworth and reburied in Croydon cemetery, near where the ashes of PC Miles had been scattered.

Bentley had spent his latter years attempting to exonerate Derek and in 1960 published a book. *My Son's Execution.* In 1972, he was back in the news when a Croydon Council ruling prevented him from using the epitaph *A Victim of British Justice* on his son's headstone. William Bentley died in 1974. Two years later his wife died but their son's fate was not forgotten.

After their death, Bentley's sister continued to campaign for the Royal Pardon. She died after winning that victory in 1993. The appeal against conviction, which reached the Court of Criminal Appeal in 1998 was instituted through his niece Maria Bentley-Dingwall, whose status as appellant was approved under the *Criminal Appeal Act.*

Christopher Craig, served just over ten years in prison, mostly in Wakefield. He was a model prisoner and was released on licence in 1963. He married two years later, began a career as a plumbing engineer and at least until 1989 had not been in trouble with the police.

Craig now lives with his wife and two daughters in a village in Bedfordshire, where he is known to local people as a good, hardworking citizen. Although he refused to change his name after being released from prison, Craig remained silent about the events until he agreed to make a statement in support of the 1998 application. However, counsel did not call him on the appeal and his evidence (although read) was not considered.

In the meantime, in 1992 the film *Let him have it, Chris* was produced which starred Tom Courtenay. The film appears a reasonable presentation of what occurred in 1952, but does not of course, of course, deal with the legal issues at trial and on appeal in any depth. Worth a look!

The Play Reading

There were 26 witnesses at the trial. There are 14 in the play reading. There was only one woman among the key players and witnesses, Mrs Edith Ware. It was she who reported the break-in which lead to the tragedy. Other female parts have been allocated by creative casting and sex changes. You will find attached a list of the *dramatis personae* and the players.

The script is as faithful as I can make it to the actual transcript. For economies of scale, I have left out large portions of the speeches, some witnesses and chunks of examination and cross. The trial took only 2 and a half days but we have only ninety minutes. I have retained as far as possible all of the significant bits and the interjections and comments of the trial judge. At one stage Bentley's statement of interview is read to the jury. You will find it attached to this paper. You will have to read it yourself.

Despite the brevity of the performance, I hope that the full flavour of the trial will become clear. Once again we learn the lesson that the British legal system was never perfect. The fair trial which we all regard as the right of every citizen must always be defended.

Acknowledgements

In researching this play-reading (which I have discovered to my dismay, I commenced in June 2001 – before the last Conference!) I was assisted by these people, in particular. Firstly, Chris Pullen the Director of Casework with the Crown Prosecution Service of England & Wales who obtained for me a copy of the original transcript. As I said earlier, this is the most essential tool for an undertaking of this kind. Secondly, Senior Sergeant Peter Thomas the Officer-in-Charge of Summary Prosecutions Darwin (himself a qualified lawyer and great believer in the rule of law and a fair trial), found for me the video *Let him have it, Chris* and provided some very helpful internet research. Thirdly, my librarian at the Office of the Director of Public Prosecutions in Darwin, Coleen Harris, provided unfailing support and research information at short notice and always generously. She has provided the biographical details of some of the characters and the words of the Elvis Costello song. Finally, I thank my executive assistant, Trish Smith for managing to read my drafts and help get the play to a manageable size and within what turned out to be (even after two years!) strict time limits.

Separately, of course, I thank on your behalf those delegates who have been pressed into service, volunteered their participation or forced their way in as members of the cast. I hope the play provides some diversion while confirming, once again, the need to safeguard the right to a fair trial.

ADDENDUM

CONVICTING THE INNOCENT

Every two years, a meeting is held of heads of prosecuting agencies of common law and related jurisdictions. The agencies represented are primarily from Commonwealth (or former) countries. This year's conference was held in Darwin. We call our conference ***HOPAC.*** A very significant paper on bad convictions was presented to the conference by Bruce MacFarlane QC who is the Deputy Attorney-General of Manitoba, Canada. He is effectively the Solicitor-General and DPP in that province. The paper may be viewed and downloaded on his website www.canadiancriminallaw.com

The paper contains a useful summary of its recommendations which HOPAC resolved to pursue in the following terms:

> *That, following the valuable discussion on the topic of the avoidance of wrongful convictions at the meeting of HOPAC in Darwin in May 2003, the Conference unanimously recommends that jurisdictions represented here continue these discussions and urges other jurisdictions to consider this issue also and commends the attached paper on "How to Avoid Wrongful Convictions" as a useful list of points that should be considered and as setting out possible strategies that might be appropriate to be implemented to achieve this end subject to local legislation, practices and resources and to further consideration.*

The Attorney-General for the Northern Territory had participated in that part of the conference when this paper was presented and discussed. He has forwarded the paper to his Department and asked that policy proposals consistent with the recommendations be developed for the Northern Territory. It is thus of some importance to CLANT members, but also to other Australian jurisdictions where similar referrals can be expected.

Bruce MacFarlane has kindly agreed for the recommendations to be distributed at this CLANT Conference. They appear as an attachment to this paper dealing as it does with the wrongful conviction of Bentley for murder. They may also be useful as an introduction and comparative piece to the next item on the present programme, *The Innocence Project.*

DRAMATIS PERSONAE - and - PLAYERS

The Trial Judge *Lord Chief Justice Goddard*	*Tom Pauling*
Prosecuting Counsel *Mr Christmas Humphreys*	*Jon Tippett*
Mr/Ms J Bass	*Suzan Cox*
Defence counsel for Bentley *Mr Frank (Ms Frankie) Cassels*	*Jenny Blokland*
Defence Counsel for Craig *Mr John Parris*	*John Lawrence*
Witnesses	
Niven Matthew Craig	*Shad McGee*
Edith Alice Ware	*Elizabeth Morris*
Det Sgt Frederick Fairfax	*Tom Berkley*
PC James McDonald	*David Grace*
PC Norman Harrison	*Dean Mildren*
PC Robert Jaggs	*Tony Cooper*
Police Sgt Edward Roberts	*Brian Deveraux*
Dr Nicolas Jazwon	*Glen Dooley*
Dr Douglas (Dorothy?) Freebody	*Elizabeth Fullerton*
Det Sgt Stanley Shepherd	*Jack Karczewski*
Det Chief Inspector John Leslie Smith	*Tim Ellis*
Lewis (Louise?) Charles Nickolls	*Nicole Spicer*
The Accused	
Derek William Bentley	*Martin Fisher*
Christopher Craig	*Stewart O'Connell*
Clerk of the Court	*Amanda Clark*
Foreman of the Jury	*Russell Goldflam*
Sir Charles Hardy	*Richard Coates*
President of the Court of Appeal *Lord Chief Justice Bingham*	*Director's Guest*
Narrator	*Rex Wild*

ATTACHMENT 1

statement of: DEREK WILLIAM BENTLEY, aged 19

1 Fairview Road, London Road
Norbury

Electrician

who saith:

I have been cautioned that I need not say anything unless I wish to do so, but whatever I do say will be taken down in writing and may be given in evidence.

(signed) Derek Bentley

I have known Craig since I went to school. We were stopped by our parents going out together, but we still continued going out with each other - I mean we have not gone out together until tonight. I was watching television tonight (2nd November 1952) and between 8pm and 9pm Craig called for me. My Mother answered the door and I heard her say I was out. I had been out earlier to the pictures and got home just after 7pm. A little later Norman Parsley and Frank Fazey called. I did answer the door or speak to them.

Signature D. Bentley

Signature witnessed by J.S.

My Mother told me that they had called and I then ran out after them. I walked up the road with them to the paper shop where I saw Craig standing. We all talked together and then Norman Parsley and Frank Fazey left. Chris Craig and I then caught a bus to Croydon. We got off at West Croydon and then walked down the road where the toilets are - I think it is Tamworth Road. When we came to the place where you found me, Chris looked in the window. There was a little iron gate at the side. Chris then jumped over and I followed. Up to then Chris had not said anything. We both got out on to the flat roof at the top. Then someone in a garden on the opposite side shone a torch up towards us. Chris said: "It's a copper, hide behind here." We hid behind a shelter arrangement on the roof. We were there waiting for about ten minutes. I did not know he was going to use the gun. A plain

Signature D. Bentley

Signature witnessed by J.S.

clothes man climbed up the drainpipe and on to the roof. The man said: "I am a police officer - the place is surrounded." He caught hold of me as as we walked away Chris fired. There was nobody else there at the time. The policeman and I went round a corner by a door. A little later the door opened and a policeman in uniform came out. Chris fired again then and this policeman fell down. I could see he was hurt as a lot of blood came from his forehead just above his nose. (signed) D. Bentley

The policeman dragged him round the corner behind the brickwork entrance to the door. I remember I shouted something but I forget what it was. I could not see Chris when I shouted to him - he was behind a wall. I heard some more policemen behind the door and the policeman with me said, "I don't think he has many more bullets left." Chris shouted "Oh yes I have" and he fired again. I think I heard him fire three times

Signature D. Bentley

Signature witnessed by J.S.

altogether. The Policeman then pushed me down the stairsand I did not see any more.I knew we were going to break into the place, I did not know what we were going to get - just anything that was going. I did not have a gun and I did not know Chris had one until he shot. I now know that the

policeman in uniform is dead. I should have mentioned that after the plain clothes policeman got up the drainpipe and arrested me, another policeman in uniform followed and I heard someone call him 'Mac'. He was with us when the other policeman was killed.

tis as B

This statement has been read to me and is true. Sgd

Derk [sic] Derek W. Bentley

Statement taken by me, written down by Det Sgt Shepherd, read over and signature witness by J. Smith DI.

Return to Derek Bentley Page

Last updated 15-Feb-97

ATTACHMENT 2

Recommendations on How to Avoid Wrongful Convictions

(a) *Reshaping Attitudes, Practices and Cultures within the Criminal Justice System*

A clear understanding of the role of the prosecutor is absolutely critical to the fair functioning of our system.

i. *Tunnel vision*: raising awareness of the simple existence of this phenomenon is critical. Police and prosecutors' seminars should openly discuss and confront the issue. During an investigation, even where a viable suspect has been identified, police should continue to pursue all reasonable lines of enquiry, whether they point toward or away from the suspect.

ii. *Avoiding the "game" theory of criminal prosecutions*: Again, raising awareness is critically important. Ethical responsibilities of both the defence and prosecution should be emphasized at law schools, and re-emphasized in practice as part of continuing legal education programs. The link of this dangerous trial philosophy to existing and past miscarriages of justice is important. Healthy working relationships involving prosecution and defence counsel *outside* of the adversarial process and casework is very useful: for instance, jointly planned and presented professional development seminars can assist in breaking down destructive barriers, and enhancing positive lines of communication. The media should be involved as well: sometimes a common enemy assists in bringing parties together. Bench and bar liaison committees also serve to act as a constructive forum to discuss irritants and emerging trends.

iii. *Police Culture*: Police services should endeavour to foster within their ranks a culture of policing that values the honest and fair investigation of crime, and the protection of the rights of all suspects and accused. Management must recognize that it is their responsibility to foster this culture. This must involve, at the least, ethical training for all police officers.

Additionally, rather than relying on traditional safeguards and protective filters throughout the criminal justice system – such as prosecutorial review, committal proceedings and the trial process – police need to develop and maintain a culture that guards against early investigative bias, and emphasizes the importance of fact verification throughout the full investigation.

iv. *Adherence to Standards Set by the International Association of Prosecutors (IAP).*

(b) Eyewitness Misidentification

Six core rules can reduce the risk of an eyewitness contributing to the conviction of someone who is factually innocent. They are:

1. An officer who is independent of the investigation should be in charge of the lineup or photospread. The officer should not know who the suspect is – avoiding the possibility of inadvertent hints or reactions that could lead the witness before the identification takes place, or increase the witness' degree of confidence afterward.

2. The witness should be advised that the actual perpetrator may not be in the lineup or photospread, and therefore they should not feel that they must make an identification. They should also be told that the person administering the lineup does not know which person is the suspect in the case.

3. The suspect should not stand out in the lineup or photospread as being different from the others, based on the eyewitness' previous description of the perpetrator, or based on other factors that would draw extra attention to the suspect.

4. A clear statement should be taken from the eyewitness at the time of the identification, and prior to any possible feedback, as to his or her confidence that the identified person is the actual culprit.

5. On completion of the identification process, the witness should be escorted from the police premises to avoid contamination of the witness by other officers, particularly those involved in the investigation in question.

6. Show-ups should be used only in rare circumstances, such as when the suspect is apprehended near the crime scene shortly after the event.

There are two further steps that may be helpful. They should be done wherever reasonably practicable:

1. The identification process, whether by lineup, photograph or composite, should be recorded throughout, preferably by videotape but, if not, by audio tape.

2. A photospread should be provided *sequentially* and not as a package, thus preventing "relative judgments."

(c) ***Unreliable Scientific Evidence***

i. Organizational Issues

Forensic labs should be independent from the police. Ideally, that means an independent, stand-alone organization with its own management structure and budget. If located within a policing or law enforcement organization, it should minimally be segregated into a specific branch or division, with a separate management structure and budget, physically located away from investigative units.

ii. Reliability Issues

a) Microscopic hair comparison evidence should be abandoned in favour of DNA testing on any matter of significance.

b) Expert evidence which advances a *novel* scientific theory or technique should be subject to special scrutiny by prosecutors and the judiciary to determine whether it meets a basic threshold of reliability, and whether it is essential in the sense that the trier of fact will be unable to come to a satisfactory conclusion without the assistance of an expert.

c) Forensic experts should avoid language that is potentially misleading. Phrases such as "consistent with" and "match", especially in a context of hair and fiber

comparisons, are apt to mislead. Other examples include the assertion that an item "could have" originated from a certain person or object – when, in fact, it may or may not have.

iii. *Effective Cross-Examination*

a) Defence counsel should be provided with the underlying raw data: the actual test results, notes, worksheets, photographs, spectrographs, and anything else that will facilitate a second, independent assessment.

b) Defence counsel should be entitled to see the written correspondence and notes of telephone conversations between the investigators and the laboratory about the examination in question.

c) Defence counsel should receive a description of any potentially exculpatory conclusions that reasonably arise from any testing procedures undertaken by the laboratory relied upon by the prosecution.

iv. Preservation of Exhibits and Notebooks

Increased anxiety over the possibility of wrongful convictions heightens the need to preserve key elements of a case for later review. At a minimum, in homicide cases, the prosecution and police file, exhibits tendered at trial, and evidence gathered but not used ought to be preserved for 20 years.

(d) Jailhouse Informants

Jailhouse informants are the most dangerous of all witnesses. Prosecution services should:

i. Establish a screening committee of senior prosecutors to assess whether a jailhouse informant should be called at trial. Helpful assessment criteria were recommended by Justice Kaufman in the *Morin Commission Report* (1998). They were subsequently adopted by Justice Cory in the *Sophonow Commission Report* (2001), and were again referred to with approval by the Commission on Capital Punishment presented to Illinois Governor George Ryan in 2002.

ii. Establish a publicly accessible registry of all decisions taken by the jailhouse informant screening committee.

iii. Enter into a written agreement with the witness, in which all of the undertakings, terms and conditions of the testimony are agreed upon. It should then be provided to the defence as part of the pre-trial disclosure, and tendered in evidence when the witness testifies.

iv. Ensure the police videotape all interviews with the witness.

v. *Not* call more than one jailhouse informant in any given case, because of the cumulative effect of multiple witnesses.

vi. *Not* proceed to trial where the testimony of the jailhouse informant is the only evidence linking the accused to the offence.

vii. *Not* tender the evidence of a jailhouse informant who has a previous conviction for perjury, or any other crime for dishonesty under oath, unless the admission sought to be tendered was audio or video recorded, or the statements attributed to the accused are corroborated in a material way.

(e) Custodial Interrogations

First, custodial interrogations of a suspect at a police facility in a serious case such as homicide should be videotaped. Videotaping should not be confined to the statement made by the suspect after interrogation, but the entire interrogation process.

The second recommendation concerns police training. Investigators need to receive better training about the existence, causes and psychology of police-induced false confessions. There needs to be a much better understanding of how psychological strategies can cause both guilty *and innocent* people to confess. In addition, police need to receive better training about the indicia of reliable and unreliable statements, including narratives that are simply false. Testing the statements against other established case facts will also guard against tunnel vision, and potentially enhance the strength of the case for ultimate presentation to the courts.

(f) Post-Exoneration Reviews

i. *Public Commissions of Inquiry*: Easily the most transparent, and the most expensive. This type of inquiry can examine a specific case in the context of broader, systemic issues (as in Canada); or *start* from a broad social issue (e.g. the death penalty), and move into specific cases (as in the United States). It can also focus sharply on a specific case, assessing the causes in that case only (as in Australia and New Zealand). The fully public model invites open hearings, testimony, cross-examination and a report that government commits in advance to release publicly. The work of such commissions is three-fold: investigative, advisory to government and educational to the public.

ii. *Private, Judicial Reviews*: This model involves a judge, or panel of judges or other eminent persons, reviewing a case on one of the bases described above. Usually, it does not have coercive powers such as the ability to subpoena witnesses or documents, and it need not have a legislative basis.

iii. *Hybrid Models*: Review models exist between these two extremes. A review can begin privately, and then move into a public format, with coercive powers, should they become necessary.

iv. *Criminal Justice Study Commissions*: These have also been proposed in the United States. After exoneration, a study commission could examine the failings that caused a miscarriage.

v. *Forensic Evidence Audits*: Where wrongful convictions have occurred, and a causal pattern is discernable, government may wish, on its own initiative, to commence an audit of previous cases to ensure that there are no further wrongful convictions due to the same cause.

vi. *An Apology*: While this does not fit into the category of "post-exoneration reviews", government may wish to consider issuing an apology to the person wrongfully convicted.