Between A Rock And A Hard Place

By Ronald Dalton

The Association In Defence of the Wrongly Convicted (AIDWYC) is a non-profit Canadian organization devoted to investigating cases of alleged wrongful conviction throughout all of Canada. AIDWYC is based in Canada's largest city, Toronto, and it has been involved in the exoneration of numerous people.

In June 2005 AIDWYC hosted a conference on wrongful convictions in St. John's, the capital of Newfoundland and Labrador. St. John's was chosen for the conference because a Public Inquiry is just now completing a two-year investigation of three wrongful murder convictions that occurred in its jurisdiction within a recent five-year time span.

The conference's title — "Wrongful Convictions: Between a Rock and a Hard Place" — reflected the reality of dealing with wrongful convictions and incorporated the unofficial nickname of the Province of Newfoundland and Labrador, known affectionately as "THE ROCK." The conference agenda included several panels dealing with the all too pervasive causes of wrongful convictions. Many of the panellists were drawn from the ranks of AIDWYC'S talented Board of Directors with an interspersing of local jurists, lawyers, media representatives, law enforcement officials, and wrongly convicted individuals and members of their families. The conference was well attended by individuals interested in the issue of wrongful conviction and included such diverse interests as academics, jurists, police officers (including a sizable contingent of cadets in training), journalists, government attorneys, and members of the general public.

In addition to the formal agenda of the conference, AIDWYC hosted a fundraising concert with local and nationally recognized musical and other talent donated to further the ongoing work of the group. Another fundraising banquet featured a keynote address delivered by AIDWYC director James Lockyer. The theme of Lockyer's talk was that while there is the need to accept the inevitability of serious errors in any justice system operated by fallible human beings, there is also the necessity of remaining vigilant in order to minimize those errors and to try and correct them.

As one of the local wrongly convicted individuals I was pleased to be invited to participate in the conference and was particularly impressed with the paper presented by recently retired Justice William Marshall. He acknowledged the fallibility of our justice system and called for needed improvements. I consider it a privilege to have shared the conference stage with other wrongly convicted individuals, each and every one truly dignified men of exceptional character. I was equally impressed with the emotional sharing of painful experiences presented by members of our immediate families, those people who shared our suffering and continue to share our recovering lives.

JD Note: Ronald Dalton was wrongly convicted in 1989 of strangling his wife Brenda. Relying on a prosecution "expert" witness — a hospital pathologist whose knowledge of forensic pathology consisted of having taken a three-month course — the jury rejected Dalton's defense that she choked while eating dry cereal as they were watching television. The "expert" attributed bruises on her face and neck area to manual strangulation.

Dalton was sentenced to life in prison. After 8-½ years of imprisonment Dalton's conviction was overturned by the Newfoundland Court of Appeal and a new trial was ordered. He was released on bail. At his retrial in 2000, five renowned forensic pathologists testified that all the evidence indicated Brenda had in fact chocked to death. Testimony established that cereal was suctioned from her throat and her bruises were consistent with those that would have been caused during the hospital personnel's frantic efforts — described as "organized pandemonium" — to revive her. Two forensic psychologists testified that Dalton's initial lack of candor with police about what happened and his failure to disclose that he had recently been involved in an extramarital affair was attributable to his state of mind, and "that at the time of his wife's death Mr. Dalton suffered from acute stress disorder, which was brought on by watching his wife die before his eyes. At the time he made the false statements, therefore, Mr. Dalton's judgment was severely impaired." Dalton was acquitted in June 2000. He

Ohio Gov. Alludes To Innocence After Graft Conviction

By JD Staff

Ohio Governor Bob Taft was convicted on August 18, 2005, of four counts of failing to file state reports documenting the dollar value of golf outings, hockey tickets, meals and other gifts provided to him by several dozen influential Ohio corporate executives, lobbyists and politically powerful attorneys.

Ohio state law requires that all public officials, including the governor, must file an annual ethics report documenting the source and value of all gifts worth $75 or more.

Taft was convicted after pleading no contest to failing to report about $3,500 in gifts from 2001 to 2004. The charges were misdemeanors and Franklin County Municipal Judge Mark Froehlich fined Taft the maximum of $1,000 for each count – a total of $4,000. He also sentenced Taft to distribute an apology throughout Ohio. Judge Froehlich didn't sentence Taft to jail or probation, explaining that although it "would have been the popular thing to do," Taft seemed genuinely remorseful so it wouldn't have served any purpose.

After the hearing, Taft claimed he had no intent to violate the law, because he only became aware in the summer of 2005 that he had a legal obligation to report the source and value of the gifts. He took an *Alford* plea because it didn't involve admitting guilt for something that he made clear he considered a technical violation of the law. Taft characterized the unreported meals, and golf and hockey outings as "social events with friends."

After becoming Ohio's first sitting governor to be convicted of a crime, Taft said he would not resign. His current term ends in 2007.

Sources:
Taft Convicted, Fined, Sandy Theis and T.C. Brown, *The Plain-Dealer*, Cleveland, OH, August 19, 2005.

Timothy Fonseca Update

Timothy Fonseca has proclaimed his innocence since his arrest in 1995 by Los Angeles police in connection with the shooting death of Arthur Mayer. After being found guilty by a jury he was sentenced to 35 years to life. (See, Two Victims From One Bullet - The Timothy Fonseca Story, *Justice:Denied*, Issue 27, Winter 2005, p. 12) Fonseca contends he was poorly represented by an attorney with no experience in criminal cases, and whose specialty was civil and family law.

Dr. Louis Rovner is a nationally respected polygraph expert based in Woodland Hills, California. In the summer of 2005 Dr. Rovner conducted an intensive two-hour examination of Fonseca at Pleasant Valley State Prison in Coalinga, California. After analyzing the results, Dr. Rovner concluded,

Fonseca continued on page 44

Fonseca continued from page 10

> "To be considered truthful Mr. Fonseca's overall score would have to equal or exceed 6 points. His score for the test was 13. It is my professional opinion that Mr. Fonseca was telling the truth when he stated that he did not shoot Arthur Mayer."

Dr. Rovner, who has a Ph.D in Psychology, claims that when a polygraph examination is conducted properly by a highly trained and skilled examiner using state of the art computerized instruments, the results are accurate 96% of the time. He thinks that with today's sophisticated equipment, virtually no one can "beat" a test.

Fonseca is considering his options in light of the new evidence of Dr. Rovner's finding. Fonseca was assisted in arranging Dr. Rovner's exam by INNOCENT!, a Michigan-based non-profit organization that works with families and friends of the wrongly convicted. Meanwhile, Fonseca remains behind bars. Contact INNOCENT! at,

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20 W. Muskegon Avenue
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Or email, thedouger@chartermi.net

Dr. Rovner's email address is: rovner@polygraph-west.com. His website is, http://polygraph-west.com

JD Note: Contrary to popular mythology fueled by television programs and movies, there is not a blanket exclusion of polygraph results as evidence in state and federal courts. The U.S. Supreme Court has never directly ruled on the admissibility of polygraph test results, and their admissibility in federal circuits varies. Many states allow the introduction of polygraph examination results under different circumstances. In California, where Timothy Fonseca is located, polygraph results are admissible in a pretrial, trial or post-conviction proceeding if both parties stipulate to its admissibility. Cal. Evidence Code § 351.1. (a) states:

> Notwithstanding any other provision of law, the results of a polygraph examination, the opinion of a polygraph examiner, or any reference to an offer to take, failure to take, or taking of a polygraph examination, shall not be admitted into evidence in any criminal proceeding, including pretrial and *post conviction motions and hearings*, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court*, unless all parties stipulate to the admission of such results*.

Streamlined cont. from page 16

Almost a decade ago, AEDPA severely cut back on habeas protections that decisions by the Supreme Court over the previous 20 years had already trimmed substantially. Among other things, AEDPA imposed a novel statute of limitations (ordinarily, one year from final judgment); abolished "same-claim" successive petitions; greatly restricted successors containing claims omitted from an earlier application (usually requiring that the underlying facts strongly demonstrate actual innocence); and barred relief for any claim adjudicated on the merits in state court unless such adjudication "resulted in a decision that was contrary to, or an unreasonable application of, clearly established Federal law, as determined by the Supreme Court ... or ... was based on an unreasonable determination of the facts." Moreover, chapter 154 of AEDPA gave the benefit of even more favorable provisions in capital habeas cases to states that opted to put in place mechanisms for appointing and paying competent counsel to represent death-sentenced defendants in state post-conviction proceedings.

Impossible standards for review

The SPA goes even further toward rendering illusory federal protection of defendants' rights. Overruling a long line of Supreme Court precedent, it removes jurisdiction from habeas courts to consider claims that a state court refused to hear on the ground of some procedural error committed by the prisoner or his lawyer-even if the lawyer's inadequate assistance caused the default or the state court's action was unreasonable. To overcome this global barrier to review, a petitioner would generally have to show that "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and ... the facts underlying the claim ... would be sufficient to establish ... that, but for constitutional error, no reasonable fact-finder would have found the applicant guilty of the underlying offense." The proverbial camel could have navigated the needle's eye more easily than a prisoner will be able to satisfy this provision.

Other sections direct dismissal with prejudice of claims not exhausted in state court, where many defendants lack the aid of counsel in collaterally attacking their judgments, and severely restrict the right to amend habeas petitions. Again, the only escape hatch is the "mission impossible" innocence exception. Additional provisions would alter current tolling provisions, so as to trap unwary litigants into breaching the one-year statute of limitations, and impose rigid timetables on the processing of habeas appeals.

Finally, the House bill zeroes in on capital cases in further jurisdiction-stripping sections. It bars federal courts from hearing almost all claims of sentencing error that a state court has found to be harmless, and-subject to the innocence "out"-all claims by death row inmates, if the U.S. attorney general certifies that a state's system for furnishing counsel in post-conviction proceedings fulfills statutory standards. Significantly, existing law leaves the certification decision to the judiciary, not to a potentially biased executive official, and does not wholly deny the applicant a hearing in "opt-in" states.

Fueled by baseless hostility toward prisoners and federal judges, the SPA threatens to put habeas courts out of the business of safeguarding constitutional rights. It would reverse the results of decisions granting relief for such violations as ineffective assistance of counsel and racial bias in jury selection and place innocent lives at risk. Ironically, too, it would not lessen delays: The courts will have to interpret and review challenges to its provisions. The bill deserves capital punishment and quick burial.

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Sutton cont. from page 26

receive compensation. The law provides that people who were wrongly convicted can collect $25,000 per year of incarceration up to a maximum of $500,000 if they: (a) Served all or part. of their sentence; (b) Received a pardon based on their innocence or relief from a court based on their innocence; and (c) Can document the amount of time served. Under the law Sutton is eligible for over $100,000.

However, when Sutton applied for compensation, his claim was denied. Unbeknown to the law's original author, State Senator Rodney Ellis (D-Houston), someone changed the law he introduced prior to its enactment by the legislator in 2003. The added provision requires that people claiming compensation for wrongful imprisonment must first obtain a letter from the district attorney whose office prosecuted them. The letter must certify the claimant's "actual innocence."

Ellis said he was never consulted about the change to the law. "Someone has slipped

Sutton cont. on page 45