Report of the Working Group on the Prevention of Miscarriages of Justice

NATIONAL CRIMINAL JUSTICE SECTION
CANADIAN BAR ASSOCIATION

August 2006

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PREFACE

The Canadian Bar Association is a national association representing 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the National Criminal Justice Section of the Canadian Bar Association, with assistance from the Legislation and Law Reform Directorate at the National Office. The submission has been reviewed by the Legislation and Law Reform Committee and approved as a public statement of the National Criminal Justice Section of the Canadian Bar Association.

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I. INTRODUCTION

The Canadian Bar Association National Criminal Justice Section (CBA Section) appreciates this opportunity to provide comments to the Federal/Provincial/Territorial Heads of Prosecution Committee on the 2005 report of the Working Group on the Prevention of Miscarriages of Justice (the report). The CBA Section represents both Crown and defence counsel from each province and territory.

The CBA Section and its Committee on Imprisonment and Release have previously considered ways to avoid miscarriages of justice in submissions responding to the 1999 Department of Justice Consultation Paper, *Addressing Miscarriages of Justice: Reform Possibilities for Section 690 of the Criminal Code*, and Bill C-15A, *Criminal Code* amendments, an omnibus bill that included changes to section 690. In December 2002, we also responded to a letter from Mr. Rob Finlayson, Assistant Deputy Attorney General of Manitoba, offering input to the Working Group on some practical changes to prosecutorial and police practices to avoid miscarriages of justice.

The CBA Section has advocated the creation of an independent body, similar to that in the United Kingdom, to best ensure that claims of wrongful convictions are impartially investigated when appropriate, and promptly addressed when discovered. Clearly though, the priority must be on avoiding miscarriages of justice in the first place. We appreciate the report's many practical suggestions for achieving that goal, and we commend the Working Group on its recommendations. We also refer to and commend the recommendations recently made by the *Lamer Commission of Inquiry pertaining to the cases of Ronald Dalton,*

Gregory Parsons and Randy Druken.[1] We hope that our observations and suggestions will add to the existing recommendations, with the goal of ensuring that wrongful convictions are prevented to the fullest extent possible.

II. TUNNEL VISION

The report defines "tunnel vision", as "the single minded and overly narrow focus on an investigation or prosecutorial theory so as to unreasonably colour the evaluation of information received and one's conduct in response to the information", and notes it is a leading cause of wrongful convictions in Canada.

After reviewing the recommendations of inquiries into the cases of *Sophonow*, *Marshall* and *Morin*, the report notes that continuous efforts must be made in situations where police and prosecutors typically develop this tunnel vision. The report's recommendations have three main components:

A. Independence of Crown counsel and police;
B. Consultation and scrutiny; and
C. Training.

A. Independence of Crown and Police

The report suggests that the best protection against tunnel vision is constant awareness of the distinction between the role of the Crown prosecutor and the role of the police. It also stresses that the prosecutor must remain independent from, and be prepared to challenge police officers, and must always critically assess the evidence gathered by the police.

The CBA Section agrees with these observations. It is also important to remember that prosecutors are not responsible for gathering evidence, nor are they responsible for the quality of the evidence gathered. The separate and vital role of the police must be recognized.

1 *Lamer Commission of Inquiry pertaining to the cases of Ronald Dalton, Gregory Parsons and Randy Druken*, herafter referred to as the *Lamer Report*; available at http://www.justice.gov.nl.ca/just/lamer/.

B. Consultation and Scrutiny

Another important theme of the report's recommendations is that the Crown must remain receptive to contrary theories that might be advanced by either defence counsel or other parties. We note that this recommendation would require defence counsel to engage in full and frank discussions with the Crown at an early stage in the proceedings. Police may not always be aware of other suspects, and ideally defence counsel should be prepared to discuss cogent alternative avenues of investigation with the Crown and police.

When a prosecutor becomes aware of an alternative suspect from any source, the police should be immediately notified, and be prepared to act on and investigate that information as expeditiously as possible, and to the fullest extent possible. The accused must also be notified. When police or the Crown too readily dismiss or ignore information that may suggest another suspect, perhaps because they believe that the investigation is already complete, the dangers of tunnel vision are present.

The report recommends that Crown offices foster an atmosphere of consultation and supervision. We believe that a team approach would assist the prosecutor responsible for a particular file. In fact, many Crown offices have already established teams of prosecutors who collectively review files, and discuss them in consultation with the group. We expect that such an approach would encourage identification of alternative solutions and relieve pressure for a prompt resolution at any cost, and having more people involved would make it more likely that anything overlooked would be identified, and alternatives raised.

C. Training

Crown counsel will normally assess the relative strength of the case against a suspect by considering the evidence available through police and continuation reports. Police officers must receive ongoing training to stress the vital importance of their role in the investigation and evidence gathering process, and in preventing wrongful convictions. That process is critical for identifying suspects and ultimately, solving the case. If the police neglect leads that might implicate more than one particular suspect, they cannot be confident that they have considered all the evidence.

Without this openness and diligence on the part of police, the Crown, in turn, cannot be assured that all relevant evidence has been collected and delivered. To properly review the evidence of a particular case and accurately determine the likelihood of conviction, the Crown must have all relevant pre-charge and post-charge information, and then be able to objectively assess any weaknesses in the case because of the presence of other suspects.

III. EYEWITNESS IDENTIFICATION AND TESTIMONY

The report observes that mistaken identification by eyewitnesses has led to many miscarriages of justice. This chapter of the report outlines practical suggestions, provides guidelines and makes recommendations for police agencies and prosecutors. In doing so, the report relies on the findings of the various commissions of inquiry into wrongful convictions, the *MacFarlane Paper*[2] and Canadian case law. It does not consider international research or jurisprudence.

A. Recommendations for Police

The report provides seven "reasonable standards and practices" that police agencies should implement and employ. Three general recommendations and eight "practical suggestions" are offered for prosecutors in assessing eyewitness evidence.

We expect that generally police agencies already employ the seven "reasonable standards and practices". For example, recommendation (b) notes that a witness should be told that the actual perpetrator may not be in the line-up and that the witness should not feel that they must identify someone. We agree with this recommendation, and anticipate that it is part of the instructions routinely given to any witness asked to view a line-up.

2. Bruce MacFarlane, "Convicting the Innocent: A Triple Failure of the Justice System", based on a paper presented at the Heads of Prosecution Agencies in the Commonwealth Conference at Darwin, Australia on May 7, 2003 and to the Heads of Legal Aid Plans in Canada on August 25, 2003; August 25 revision; available at http://www.canadian criminal law.com, referred to hereafter as the *MacFarlane Paper*.

Recommendation (a) states:

> If possible, an officer who is independent of the investigation should be in charge of the lineup or photospread. This 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's degree of confidence afterward.

We appreciate the report's various recommendations to police agencies, but this one is especially valuable. In our view, it is a simple, practical and fairly inexpensive precaution that is likely to reduce wrongful convictions. Often the main investigator prepares and presents the line-up to the witnesses (live line-ups are actually quite rare), and this recommendation would add distance and neutrality. It could mean another officer would have to be added to the witness list at trial, but that is a relatively minimal cost. In our view, it would be preferable to have an independent officer present the photo line-up in all cases.

Interestingly, there is no specific suggestion that photo line-ups should be audio or video recorded to demonstrate the absence of influence on the witness's selection by the officer. While it may be unnecessary that all line-ups be audio or video recorded, in serious cases that extra step may be valuable to assist the trier of fact in determining the witness' credibility.

Recommendation (d) says:

> All of the witness's comments and statements made during the lineup or photospread viewing should be recorded verbatim, either in writing or if feasible and practical, by audio or videotaping.

For the most part, any comments made are to be recorded *verbatim* on the line-up instruction sheet. Though the recommendation does not specifically require a line-up instruction sheet, we believe that every line-up should use one. Further, it should be read back by the officer, signed by the witness, and any comments made by the witness should be recorded and also signed. Again, audio or videotaping would be helpful, but are not absolutely necessary.

We believe that recommendation (f) bears special comment:

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

In our experience, show-ups (defined on page 53 of the report as the act of presenting one suspect only in person to a witness for identification during the pre-trial process) are dangerous. They can easily suggest to the witness that the police have located someone, and therefore that person must be the perpetrator. As we believe that show-ups should have no more weight than in-dock identification, we suggest that this recommendation be more strongly worded.

B. Recommendations for Prosecutors

The eight recommendations for prosecutors contain very practical suggestions that, in our view, prosecutors should always keep in mind, regardless of years in the profession. For example, recommendation (e) states that a prosecutor should never tell a witness that they are right or wrong in their identification.

Recommendation (d) is vague. It states:

> When meeting with witnesses in serious cases, it is wise, if it is feasible and practical, to have a third party present to ensure there is no later disagreement about what took place at the meeting.

It leaves open what should be considered "a serious case". Sometimes, even routine cases require this type of third party observer.

Practical difficulties might arise from implementing this procedure, since witnesses often first recant or "forget" without advance notice. However, as stated in recommendation (f), a prosecutor confronted with the problem of a recanting or forgetful witness has a professional obligation to disclose the content of the discrepancy, regardless of the time in the trial process.

C. General Recommendations

As in other chapters, the report recommends ongoing training for police and prosecutors concerning proper interviewing techniques and the pitfalls of eyewitness identification. We applaud this recommendation, and believe it is relatively uncomplicated and cost effective to implement. The report cautions that expert evidence on the frailties of eyewitness identification is unnecessary, which seems in accordance with the Supreme Court of Canada ruling in *R. v. Mohan*[3] and the use of expert evidence at trial. A proper charge by the trial judge about such frailties would be sufficient to address any concerns.

One specific suggestion omitted in the report is training for prosecutors in the actual presentation of line-ups and eyewitness identification. In addition, we recommend that police receive more comprehensive training in taking accurate notes of all statements given by all witnesses, even in unexpected situations.

IV. FALSE CONFESSIONS

A. Background

The report begins with considerations from Canadian Commissions of Inquiry and the *MacFarlane Paper* on the impact of false confessions. While we agree that these sources provide valuable insights for taking statements from both accused and witnesses, there has not yet been an inquiry focused solely on the problem of false confessions. While some international reviews have considered that subject, those have been inadequately considered in Canadian reports on false confessions to date. Detailed consideration of all available information on the subject is critical, especially because false confessions have been acknowledged[4] as the second most common source of miscarriages of justice.

Some additional resources are mentioned in Chapter 2 of the report. As this is a relatively new area of study compared with that of eyewitness identification, we realize that any innovations should proceed cautiously. The recommendations emphasizing education and

3 [1994] 2 S.C.R. 9.

4 *Supra*, note 2 at 26 and 58.

training are consistent with the nascent stage of study in this area.[5] However, the need for change must be noted, as without improvements, miscarriages of justice based on false confessions will continue to occur.

Generally, false confessions occur out of some interaction between the police and an accused, and this reality should be considered. While the report mentions the common law confession rule and the *Charter* as current protections against false confessions, the effectiveness of these protections, or what should be changed to address existing problems, is not discussed. Certainly, skepticism has been expressed about the confessions rule,[6] and while the *Charter* protects against the improper use of confessions (false or otherwise), it does not prevent problems in the interview room. It would be wrong to assume that the law has done all that it can in this regard, or that we can afford to become complacent.

More consideration should be given to ways to support the recommendations in this chapter on preventing false confessions leading to miscarriages of justice.

B. Recommendations

The first recommendation says:

> Custodial interviews of a suspect at a police facility in investigations involving offences of significant personal violence (e.g., murder, manslaughter, criminal negligence causing death or bodily harm, aggravated assault, aggravated sexual assault, sexual assault of a child, armed robbery, etc.) should be video recorded. Video recording should not be confined to a final statement made by the suspect, but should include the entire interview.

The report accurately notes the findings of Canadian Commissions and the *MacFarlane Paper* concerning the importance of video recording. Case law that emphasizes the need for video recording for a finding of admissibility is also canvassed.

However, the report recommends limiting this important first step to address false confessions to cases of "significant personal violence". This limitation is not found in the case authorities relied upon in the report, and it also seems inconsistent with the quote in the

5 *R. v. Warren,* (1995) 35 C.R. (4th) 347.

6 For example, see Christopher Sherrin, "False Confessions and Admissions in Canadian Law", (2005) Queen's L.J. 601 at 639.

introduction to Chapter 6, "How can such errors be prevented?" If video recording of interviews provides valuable prevention against wrongful convictions, then prevention should not be rationed.

In our view, the justifications offered for limiting video recording are also unconvincing. While the current use of video recording across the country is acknowledged, the capital cost of extensive video recording is offered as justification for limiting its use. If the cost has been absorbed to date, it does not seem that a prohibitive additional cost would be involved to use the technology more frequently. It is also unclear that video recording is currently limited in police facilities across the country in the way recommended.

The fundamental goal of preventing miscarriages of justice must always be kept in mind. Financial considerations are certainly not irrelevant, but neither should they be decisive when the cost of miscarriages of justice is so high from many perspectives. If it is important for the police to take a statement from an accused at a police facility, then a video recording is a reasonable investment.

We support the recommendation of the *Lamer Report*, which states "in all major crime investigations, police station interviews should be videotaped and field interviews should be "audiotaped".[7]

The second recommendation is:

> Investigation standards should be reviewed to ensure that they include standards for the interviewing of suspects (and witnesses) that are designed to enhance the reliability of the product of the interview process and to accurately preserve the contents of the interview.

We support this recommendation for its focus on the reliability of witness interviews, as well as suspect interviews. The reliability of witness interviews is important in any discussion of false confessions. It is not unusual that the statement of a witness is used in the interview of an accused, and so possibly leads to a false confession. In addition, given the reliance often

7 *Supra,* note 1 at 109 and the summary at 327.

placed on statements of witnesses who may not actually even testify before the trial judge, we support this recommendation.

If what is meant by "accurately preserve the contents of the interview" is that a video recording ought to be more than simply the actual interview, we also support this recommendation. It is necessary to capture the entire interaction of the police and the accused in the interview context. Information that can be quite powerful in detecting a possible false confession may be lost without this.

The importance of video recording is recognized in the first recommendation and, to some extent, in the second. Recording alone will not prevent false confessions, and is only a first step. The interaction of police questioning and the suspect is important, and unfortunately, the second and third recommendations do not delve far into this area.

We realize that the "investigation standards" in the second recommendation cannot be specifically defined. What appropriate standards ought to look like will become clearer as the necessary training and education occurs. However, clearer direction as to what would enhance "the reliability of the product of the interview process" would assist. For example, would these standards contain, as the U.K. rules do, specific time periods for rest and duration of interviews, or would a general guideline be a sufficient "standard"? Other considerations are whether the standards apply just to the interview process or to the investigation preceding the interview itself, for example, concerning vulnerabilities of a particular suspect. When the standard is not met, the prosecution's response is an especially important consideration. For example, should the prosecution screen for interviews that did not "enhance the reliability of the product"?

In summary, parts of the second recommendation would result in improvements to address false confessions, but the recommendation does not address all issues that might enhance "prevention" against wrongful convictions.

The third recommendation is:

> Police investigators and Crown prosecutors should receive training about the existence, causes and psychology of police-induced confessions, including why some people confess to crimes they have not committed, and the proper techniques for the interviewing of suspects (and witnesses) that are designed to enhance the reliability of the product of the interview process.

In the field of false confessions particularly, the importance of training and education cannot be overstated. However, the recommendation should consider what ought to flow from that training. For example, written protocols or best practices for conducting interviews would assist. Indeed, recommendation 101 of the *Morin Inquiry*[8] seems to suggest such protocols.[9] Written protocols would remind police interviewers and prosecutors about the pitfalls of false confessions, and set out information that should be gathered about a suspect relevant to false confessions, but should not be considered exhaustive checklists.

The recommendations dealing with eyewitness identification are silent as to the role of experts in the trial process. We question whether the same position is taken with respect to experts in false confessions. It seems logical that training and education should be carried forward into questions as to how experts are best used in this important area.

C. Conclusion

The general scope of the recommendations in this portion of the report is narrow, and in our view, should be broadened to deal with the important issue of false confessions.

V. IN-CUSTODY INFORMERS

We support the findings in this portion of the report.

8 *The Commission on Proceedings Involving Guy Paul Morin*, hereafter referred to as the *Morin Inquiry*.

9 At 62 of the report.

VI. DNA EVIDENCE

A. Background

The report acknowledges that DNA alone constitutes only circumstantial evidence to identify a perpetrator of a crime. Still, it is a compelling and useful tool in linking a suspect to a crime.

DNA is useful to the police and Crown for convicting criminals, and has been instrumental in exonerating innocent people. Cases like *Milgaard* and *Morin* in Canada, or the New York "innocence project" which has reported 143 DNA exonerations to date, demonstrate the value of DNA in fighting wrongful convictions.

B. The Morin Inquiry and the MacFarlane Paper

Three recommendations from the *Morin Inquiry* are discussed in the report:

- Protocols for DNA testing (basically, that all stakeholders should be involved in establishing protocols for DNA testing of original evidence)
- Revisions to Crown Policy Manual respecting testing (that forensic material should be retained, where practicable, for replicate testing)
- DNA data bank (that it should be adopted in Canada)

The report also acknowledges the *MacFarlane Paper* recommendation that DNA results should be used instead of microscopic hair comparison evidence on significant matters.

C. The DNA Data Bank

The DNA data bank was created through the *DNA Identification Act*,[10] as was the power of a judge to make an order, post conviction, for taking bodily substances from a person convicted of a designated offence under the *Criminal Code*.

The report describes the mechanics of the data bank, consisting of a Crime Scene Index and a Convicted Offenders Index. When a match occurs, the police force investigating the matter

10 S.C. 1998, c. 37.

is notified. The match itself is not evidence but serves as the grounds for obtaining a warrant for seizing a bodily substance from a suspect.

The constitutionality of the DNA warrant scheme was upheld in *R. v. S.A.B,*[11] where the court acknowledged that the scheme strikes an appropriate balance between the public interest and the rights of the individual.

D. Related Developments in the United States

The report's only analysis of experiences in other jurisdictions is of recent developments in the U.S. The *Innocence Protection Act* of 2003 is aimed at reducing the risk of innocent people being executed, primarily through greater access to DNA testing by convicted offenders and by improving the quality of legal representation in capital cases. The Act establishes other rules and procedures that dictate how inmates can apply for post-conviction testing, and how such evidence is to be maintained or disposed of while a federal inmate remains incarcerated. The report discusses a study commissioned by the National Institute of Justice that identified 28 cases where DNA testing led to persons wrongfully convicted of murder or rape being exonerated.

E. Recommendations

The report acknowledges the great impact that DNA has on the criminal justice system and the importance of such evidence for reducing miscarriages in the criminal justice system.

1. Promotion of DNA Sampling

The recommendation urges that strong policies and procedures for both Crown and police be implemented across the country to ensure that DNA data bank provisions are used to their full potential. This recommendation might suggest that more DNA orders would be beneficial, such as when the offence is a secondary designated offence. The CBA Section has argued that DNA orders should only be made for serious violent offences.[12]

11 [2003] 2 S.C.R. 678, 2003 S.C.C. 60.

12 National Criminal Justice Section, *Submission on DNA Data Bank Legislation Consultation Paper* (Ottawa: CBA, 2002).

2. Establishing a Tracking System

The report suggests a national tracking system in relation to DNA data bank orders. It suggests the goal is to indicate "where gaps exist in the system" and to also illustrate geographical differences. It is unclear what is meant by the term "gaps" and what utility there is in identifying geographical differences. For instance, how would data about differences in the frequency in which judges make orders in different provinces be used?

3. Education of Justice System Participants

The CBA Section supports this recommendation and any initiatives designed to further educate all those involved in the criminal justice system.

4. Implementation of Policies to Allow for Access to DNA for Independent Forensic Testing

This recommendation reiterates a recommendation from the *Morin Inquiry* that would facilitate the release of forensic material for independent testing upon request by the defence. The example provided is the Ontario policy that states that "wherever practicable" there should be retention of sufficient material to allow for replicate testing by the defence.

We support this recommendation and policies like those in Ontario. However, we suggest a modification to urge that where forensic testing runs the risk of destroying all of an original sample, a scientist should be required, not simply encouraged, to consult with Crown counsel, who should then be compelled to contact defence counsel and arrange for observation of the examination process.

5. Expansion of the DNA Data Bank

The report recommends expanding the data bank, while respecting *Charter* protections to ensure the respect of individual rights and freedoms.

The CBA Section has opposed further expansion of the DNA data bank, and specifically, an expansion of the list of designated offences. The best safeguard against any unwarranted post-conviction DNA orders is through a scheme that allows for discretion in the

pronouncement of these orders by an independent arbiter. This safety valve is effectively turned off when legislation imposes these orders under a mandatory scheme.

6. Post Conviction DNA Testing

The report cites this issue as one falling outside the mandate of the group, though it supports further examination of this issue. We also support further inquiry into this area and we would be pleased to participate in future examination of this issue.

VII. FORENSIC EVIDENCE AND EXPERT TESTIMONY

We support the recommendations of the Working Group in this regard.

VIII. PROCEDURE FOR REMEDYING WRONGFUL CONVICTIONS

In our 1999 submission,[13] we stressed the many factors that can obscure the truth during a trial. These include incomplete investigations, premature investigative or prosecutorial judgments, financial limitations of the accused and inadequate legal aid, unwise strategic choices by counsel for the accused and sometimes even fabrications, official or otherwise. Mistaken or overconfident eyewitnesses, "experts" who confuse or impress juries with what can most aptly be characterized as "junk science" and an over-reliance on jail-house informants motivated by self-interest are other reasons that the truth can be obscured and miscarriages of justice can occur. Coerced confessions produced through psychological techniques or elaborate sting operations have also been identified as potential sources for wrongful convictions.

We summarized these considerations in our 1999 submission by saying that "wrongful convictions arise as a result of misplaced zeal, errors in the forensic process, single-minded investigations, and misinterpretations of circumstantial evidence". Clearly, many of these factors point to the urgent need for a cultural change with respect to some police investigative techniques and even the approach and discharge of some prosecutorial functions.

13 National Criminal Justice Section, *Submission on Wrongful Conviction Review (Section 690, Criminal Code)* (Ottawa: CBA, 1999).

This need for cultural change is reflected in the report, and also recognized in the *Morin* and *Sophonow Inquiries*, and the recent *Lamer Report*. Such a cultural change will occur only with persistent and ongoing recognition of the urgent need for such change.

The report calls for a resource center, a permanent committee, and recognizes the evolution of technology and research as ways to prevent wrongful convictions. We support the report's emphasis on education of all justice participants as key to any appropriate "systemic" response to the risk of wrongful convictions. Only by learning from our past mistakes can we prevent the same mistakes from recurring.

A. An Educational Remedy

Attention is properly paid to educating police and prosecution, but defense counsel and the judiciary must also be educated on measures to minimize miscarriages of justice. Beginning at page 143 of the report, the Working Group acknowledges this, and we support this approach.

We suggest expanding the report's recommendations for joint education, to include police, prosecution, defense, the judiciary and forensic experts. Each of these players could bring their own expertise to the educational table. The objective of preventing miscarriages of justice should be one common to all justice system participants, and no harm can result from sharing knowledge.

Such subjects for discussion could include the limited role a polygraph should play in investigation and arrest, proper interviewing techniques, the dangers of criminal profiling, the use of DNA as an exclusionary tool, and recognition by police and the public that *Charter* rights require adhering to the duty to act fairly and with an open minded attitude.

A web page is a good beginning, and should be open to the public, not only to those involved in the justice system. Any constraint because of "available resources" should keep in mind that the cost of *any* wrongful conviction is unacceptably high.

B. Disclosure Remedies

All Crown counsel should be required to disclose any material possibly relevant to an investigation, whether available pre-or post-charge, or even post-trial. This obligation must extend even to evidence that the Crown does not consider essential to its case, to avoid the danger that the Crown becomes locked into a particular position in an attempt to resolve an investigation. Comments in the *Lamer Report* are a particularly relevant reminder.[14]

C. Evidentiary Remedies

Expert testimony must not give scientific evidence more weight than it deserves. We agree with the recommendation 76A of the *Morin Inquiry* that extreme caution must be taken to the tendering and reception of so-called "consciousness of guilt" or demeanor evidence.[15] An even stronger approach must be taken to the use of jailhouse informers and to any derivative evidence that originates with such informers.

Such evidence should never be put to a jury unless it meets certain prerequisites of reliability. Again, all participants in the judicial process, from fact-finder to decision-maker, must be full and properly aware of the dangers of such evidence.

IX. CONCLUSION

Great care must be taken to avoid miscarriages of justice, as we know how easily they can occur, and at what cost. Miscarriages of justice are not restricted to wrongful convictions in high profile "serious" cases. Whenever someone is accused, questioned or standing trial, adequate and carefully monitored procedures must be employed to guard against miscarriages of justice. A seemingly insignificant error at an early stage of investigation and prosecution can eventually cause a miscarriage of justice. We commend the work and the recommendations of the Working Group, and appreciate the opportunity to provide input to this crucial project.

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14 *Supra,* note 1 at 134 *et seq.*

15 Cited by the Working Group at 137.