

Preventing Wrongful Convictions and Learning about Rights

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The Association in Defence of the Wrongly Convicted

OJEN Summer Law Institute

August 27, 2014

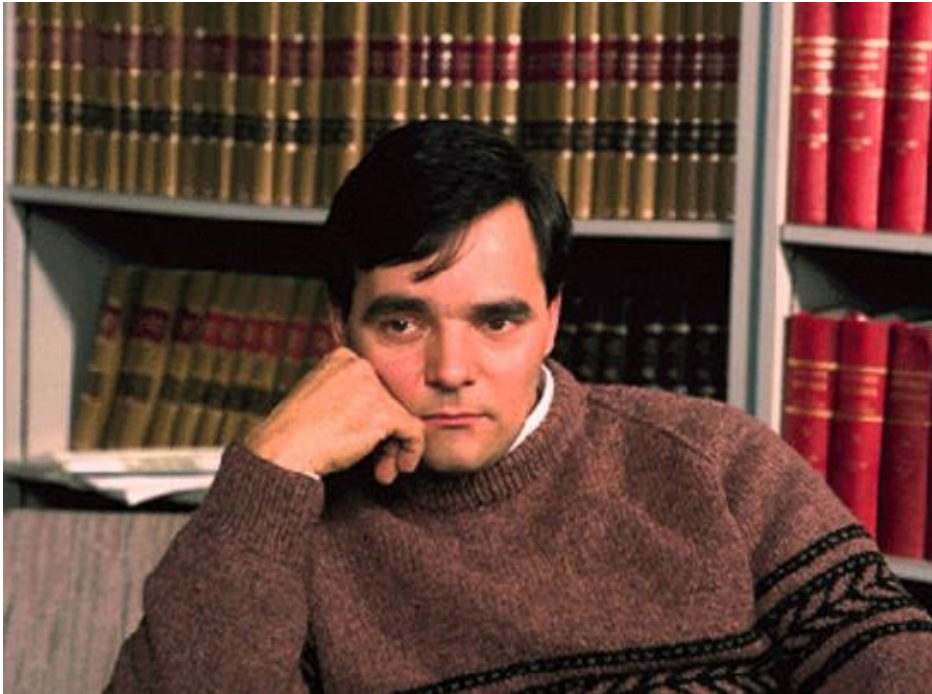


Legal Information vs. Legal Advice

Amanda cannot give you legal advice!

Amanda cannot be your lawyer!

AID-WHAT? AIDWYC!



- National Non-Profit
- No Government Funding
- Successor of Justice for Guy Paul Morin Committee
- Founded in 1993

AIDWYC's Mandate

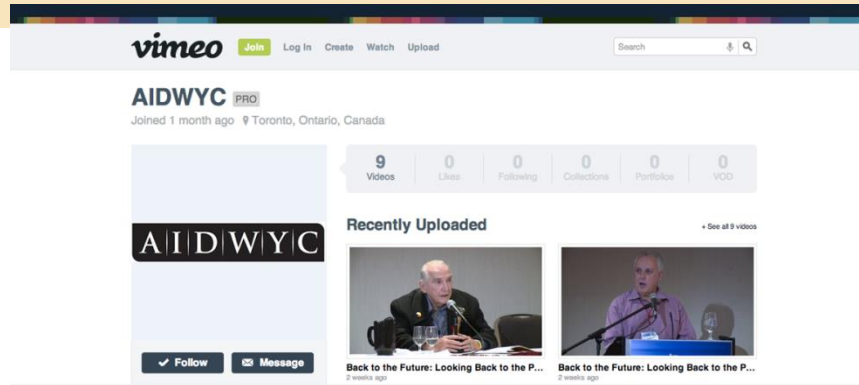
AIDWYC has two objectives:

- 1) Review and correct past wrongful convictions
- 2) Prevent future wrongful convictions through legal education and legislative change



PROBLEMS *with* EYEWITNESS IDENTIFICATION

Why do eyewitnesses sometimes get it wrong?



- Continuing Professional Development Lecture Series, Case Reviewer Training
- Public Legal Education – printed materials, presentations, podcasts, videos and more!
- Awareness building with www.aidwyc.org



Education



Morin Inquiry – Ontario, convened June 1996

Sophonow Inquiry – Manitoba, convened June 2000

Parsons, Dalton and Druken Inquiry –
Newfoundland and Labrador, convened March 2003

Milgaard Inquiry – Saskatchewan, convened
December 2003

Driskell Inquiry – Manitoba, convened
December 2005

Goudge Inquiry – Ontario, convened April 2007

Inquiries



Interventions at the SCC

- ***R. v. Biniaris***, 2000 SCC 15; ***R. v. Molodowic*** 2000 SCC 16; and ***R. v. A.G.***, 2000 SCC 17
- ***United States of America v. Burns***, 2001 SCC 7
- ***Odhavji v. Woodhouse***, 2003 SCR 69
- ***Hill v Hamilton Wentworth Regional Police Services et al.***, 2007 SCC 41
- ***R. v. Hart***, 2014 SCC 52



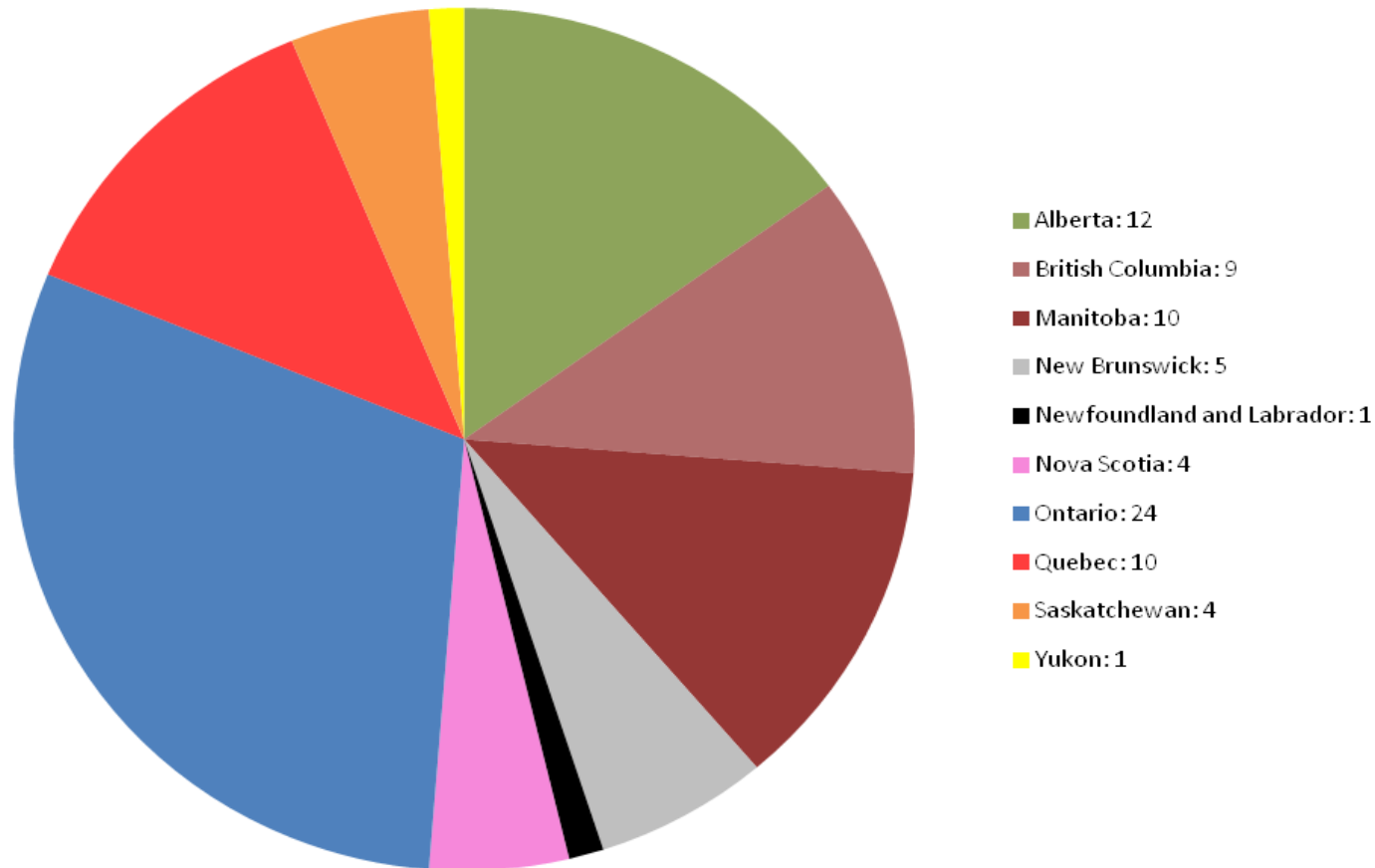
AIDWYC Staff: Toronto



AIDWYC
Volunteers:
Everywhere!

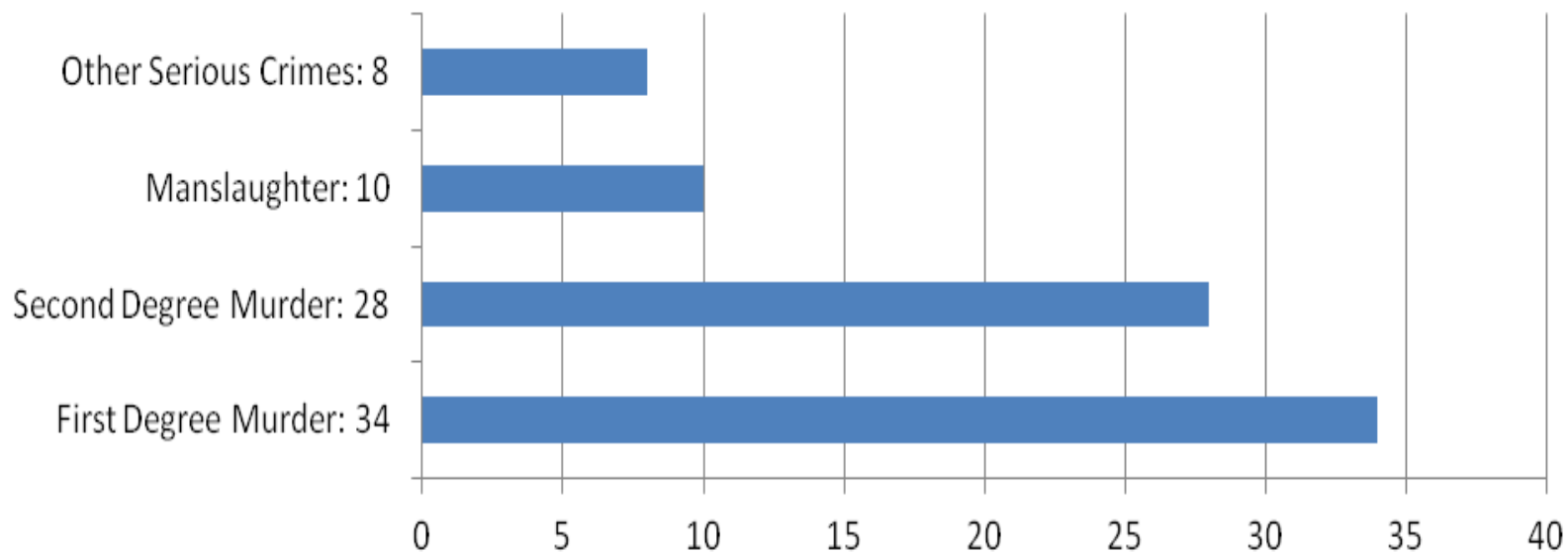
AIDWYC Cases: Everywhere!

AIDWYC 2014: Geographical Distribution of Cases



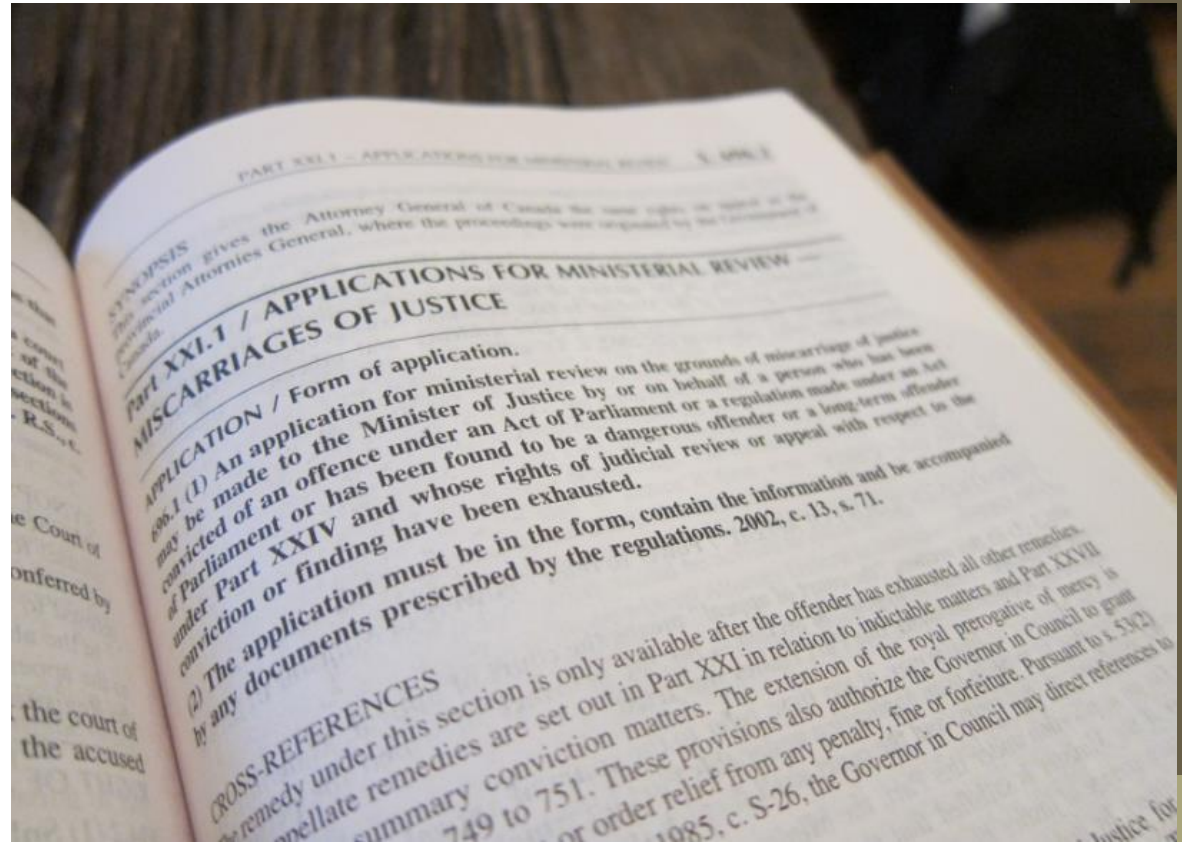
What kind of cases do we take?

Distribution of Cases by Type of Conviction



Criminal Code s. 696.1

The Minister
must be satisfied
that there is a
reasonable basis
to conclude that a
miscarriage of
justice likely
occurred



Fresh Evidence?

- New matters of significance?
- Not previously considered by Courts or the Minister?
- Relevant to the issue of guilt, reasonably capable of belief and, if taken with the trial evidence, could reasonably have affected the verdict?
- Ministerial review $\neq$ Another Appeal!



Who Reviews the Application?

The screenshot shows a web browser window with the address bar displaying www.justice.gc.ca/eng/pi/ccr-rc/index.html. The browser's toolbar includes a search bar with the Google logo and various extension icons like "Most Visited", "AIDWYC Email", "EGNYTE", "weblogin - University ...", "Google", "Dropbox - Sign in - Si...", "LexisNexis® Quicklaw...", "AIDWYC (The Associat...", "iCloud", and "The Law".

The website header features the Canadian flag, the text "Department of Justice Canada" and "Ministère de la Justice Canada", and the "Canada" logo. Below the header is a green banner with a red maple leaf and the text "Department of Justice" and "www.justice.gc.ca".

The main navigation bar includes links for "Français", "Home", "Contact Us", "Help", "Search", and "canada.gc.ca". Below this is a breadcrumb trail: "Home > Programs and Initiatives > Criminal Conviction Review".

The left sidebar contains a table of contents with the following sections:

- The Department**
 - The Minister and Attorney General
 - Mandate
 - Organization
 - Strategic Outcomes
 - Programs and Initiatives
 - Consultations
 - Work for Justice
- Newsroom**
 - News Releases
 - Media Notices
 - Judicial Appointments
 - RSS Feed
- Resources**
 - Key Publications
 - Browse by Subject
 - Site Map
 - Helpful Links
- Transparency**
 - Acts and Regulations
 - Completed Access to Information Requests
 - Predictive Disclosure

The main content area is titled "Criminal Conviction Review". It contains the following text:

The *Criminal Code* gives the Minister of Justice the power to review a conviction to determine whether there may have been a miscarriage of justice. This power has been part of Canada's justice system since the original *Criminal Code* of 1892. Today, the Minister's power to review convictions is set out in sections 696.1-696.6 in Part XXI.1 of the *Criminal Code*. The Regulations Respecting Applications for Ministerial Review-Miscarriages of Justice outline the requirements for an application as well as the procedure that is followed once an application has been completed. The Criminal Conviction Review Group (CCRG), is comprised of lawyers who assist the Minister in this function. They review and investigate the applications, and make recommendations to the Minister.

Below this text is a section titled "Applying for a Conviction Review" with the following text:

This area explains the basic principles of conviction review, the review process, and how to apply. It also includes the forms that applicants are required to complete in order to apply for a Criminal Conviction Review.

At the bottom of the main content area is a section titled "Annual Reports".

The right sidebar features a section titled "Featuring..." with a sub-section "Victim Services Directory". It includes a graphic of a magnifying glass over a document with the text "Victim Services Directory". Below the graphic is a description: "The Victim Services Directory helps connect individuals with victim service providers across Canada." and a "More..." link. Below this is a "Stay Connected" section with social media icons for Facebook and RSS.

The Review Process

- Preliminary Assessment
- Investigation
- Investigation Report
- Minister's Decision



Why
should
I care?



**Why should I teach my students
about wrongful convictions?**

Donald Marshall Jr.

- 17 years old
- Sydney Nova Scotia
- The Son of Donald Marshall Sr., Grand Chief of the Mi'kmaq for 27 years



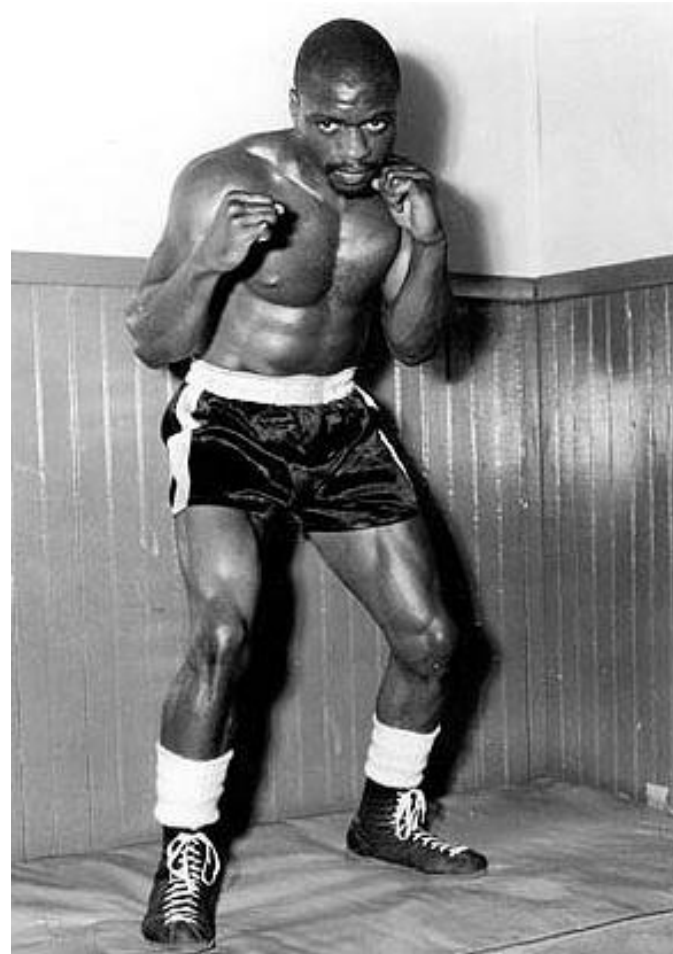
Tammy Marquardt

- 23 years old
- Toronto, Ontario
- Mother of two



Rubin “Hurricane” Carter

- 30 years old
- Paterson, New Jersey
- Professional Boxer



Rob Baltovich



- 24 years old
- Scarborough, Ontario
- Recent Grad of the University of Toronto (B.A. in Psychology)

- 45 years old
- Shelburne, Nova Scotia
- Carpenter & Former High School Teacher



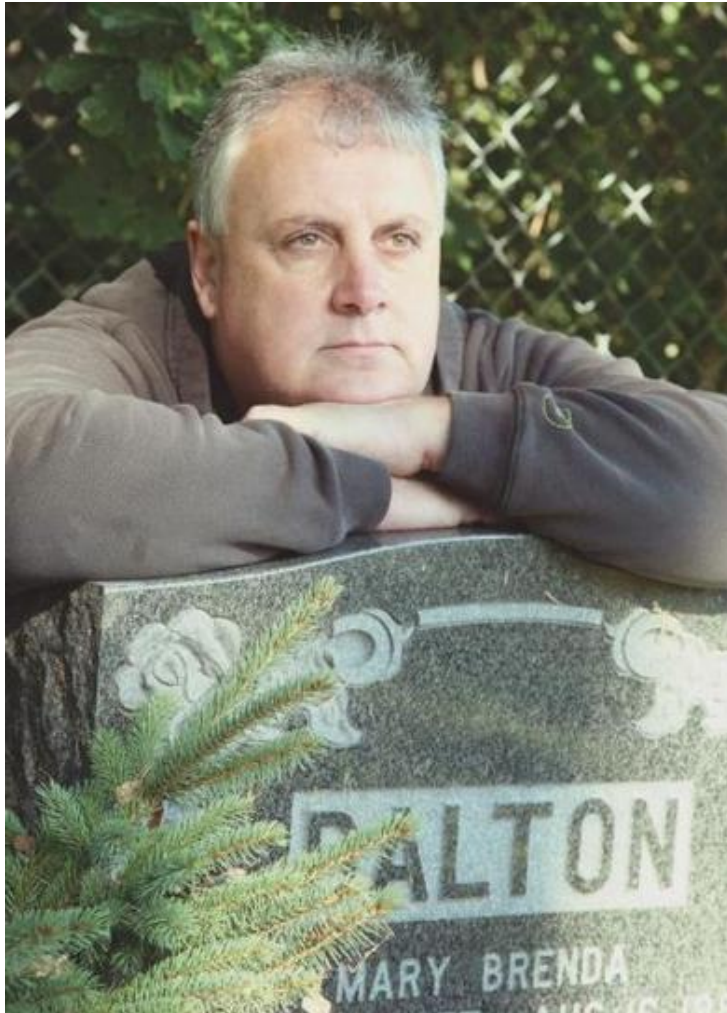
Clayton Johnson

David Milgaard



- 17 years old
- Regina, Saskatchewan

Ron Dalton



- 32 years old
- St. John's Newfoundland
- Bank Manager
- Father of three

& Because the actual
perpetrator goes free!



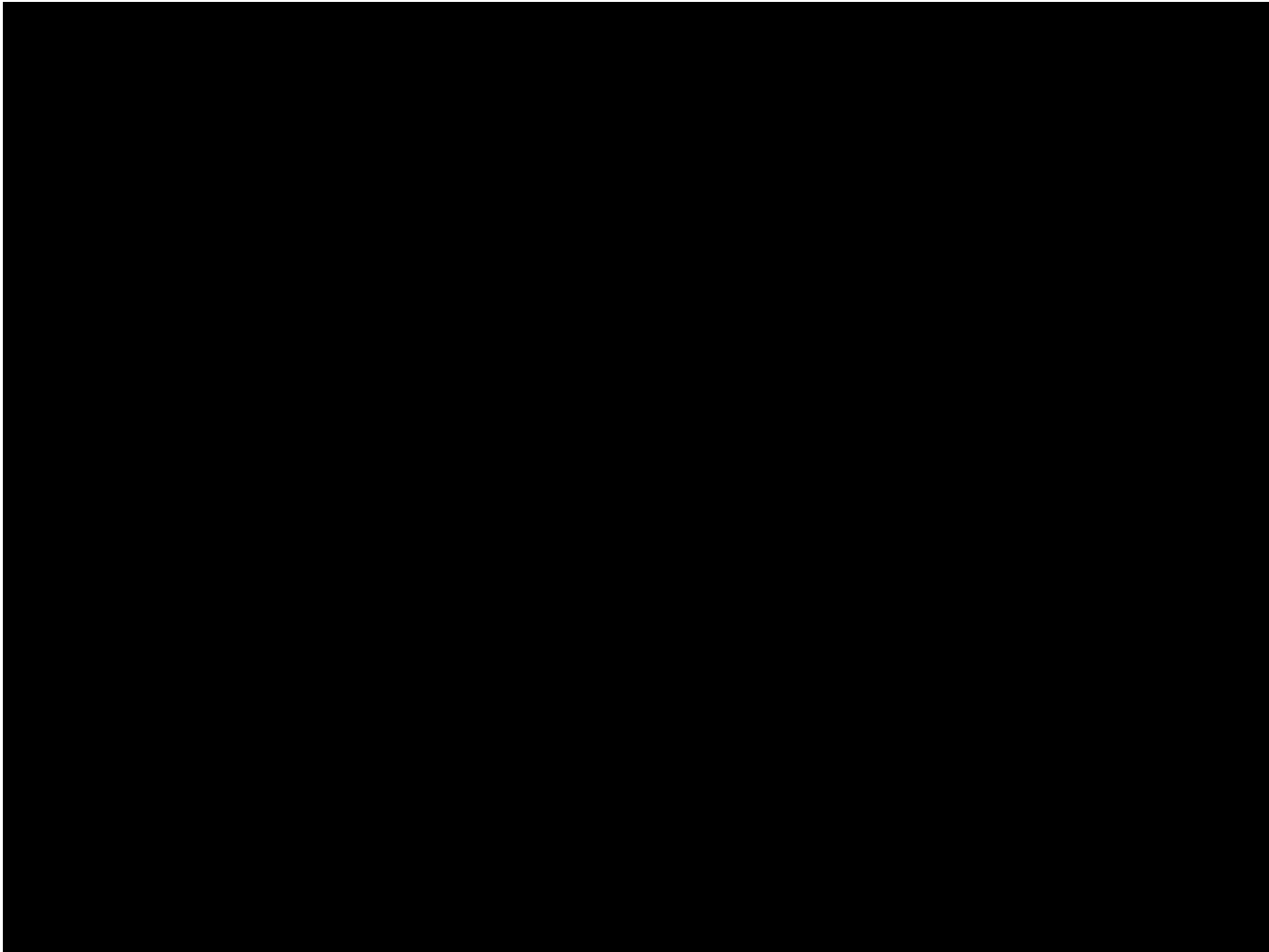


- 14 years old
- Clinton, Ontario
- Grade 8 student

Steven Truscott



Wrongful Convictions: Causes & Cases





Eyewitness Identification

In 36% of American exonerations mistaken eyewitness evidence contributed to the wrongful conviction

Thomas Sophonow

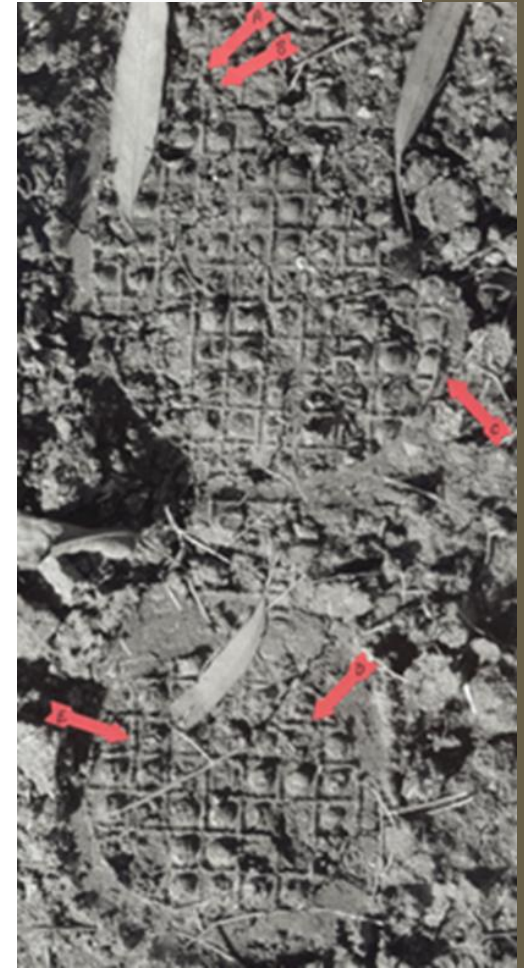
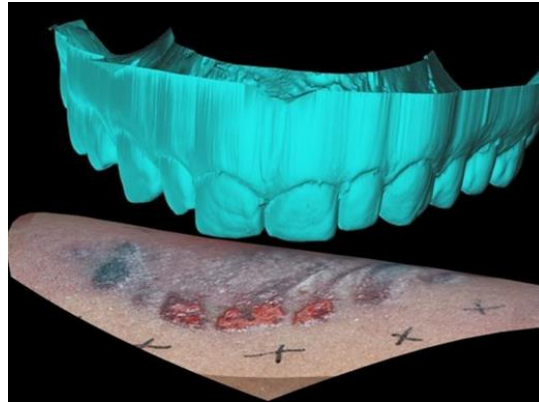
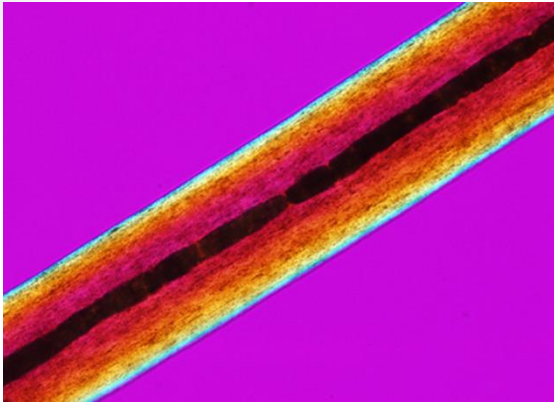
- In 1981 Barbara Stoppie was strangled at her place of work
- After **three** trials, Sophonow was convicted of her murder
- 45 months in jail
- 15 years before his name was cleared



Own Race Bias



A person is 1.4 times more likely to remember and correctly identify the face of a person who is the same race as she or he is when compared to their ability to remember and identify the face of a person from another racial group



Unreliable Forensic Science

In 22% of the American exonerations, false or misleading forensic science contributed to the wrongful conviction



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"I know nothing about the subject,
but I'm happy to give you my expert opinion."

"Expert" Evidence

William Mullins-Johnson

- Convicted of first degree murder and aggravated sexual assault
- Appeals dismissed by the Court of Appeal for Ontario and the Supreme Court of Canada
- Spent 11 years in prison



The Goudge Inquiry

- Charles Smith was a *pediatric* pathologist
NOT a *forensic* pathologist
- Charles Smith had NO forensic pathology training



Sherry Sherret-Robinson

- Convicted in 1999
- Forced to give her surviving child up for adoption
- Exonerated in 2009
- Spent 8 months in jail for a crime that did not occur

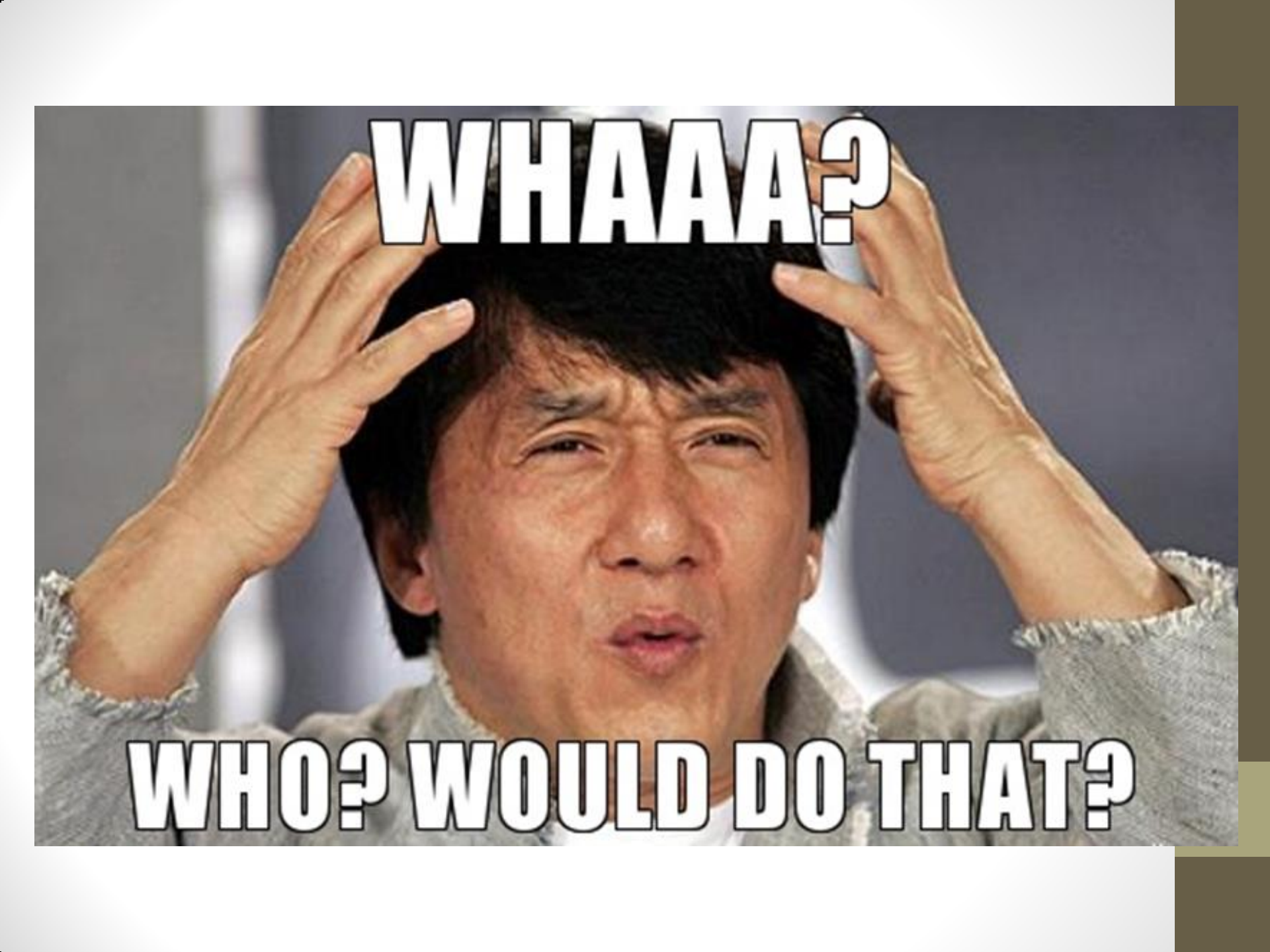


Tammy Marquardt

- Convicted in 1995
- Forced to give up her two surviving children
- Spent 14 years in jail for a crime that did not occur



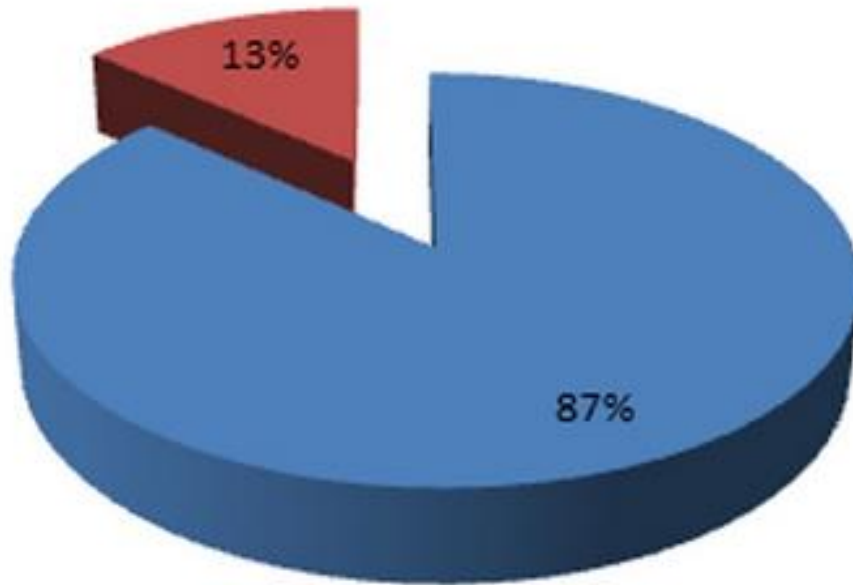
False Confessions

A close-up photograph of Jackie Chan. He has a confused or exasperated expression, with his eyebrows furrowed and his mouth slightly open. He is holding both hands to his temples, with his fingers spread. He is wearing a light-colored, possibly grey, jacket with a frayed or distressed hem. The background is out of focus, showing some vertical lines and a greyish-blue tone.

WHAAA?

WHO? WOULD DO THAT?

In 13% of American cases, the innocent person gave a false confession!



Youth and those
with FASD are
high risk!

In Homicide Cases Only...

In 20% of cases where the innocent person was convicted of murder, they falsely confessed



The Reid Technique

Have you ever had the cops in your face?



Romeo Phillion

31+ years later...



The “Mr. Big” Undercover Technique

- RCMP have run over 350 stings
- Costs \$10,000-100,000+ each time!



Kyle Unger

- In 1990 16 year old Brigitte Grenier was murdered in Manitoba
- Not enough evidence so the police did a “Mr. Big”
- In 1992 Unger was convicted of **First Degree Murder**



Larry tells me you whacked somebody. That's fine with me. That's, that's fuckin' excellent. It's the kind of thing that, uh, know that I'm dealing with somebody that's on my fuckin'-- somebody that I can trust...That's the kind of person I'm looking for.

The Exoneration

- Spent 13 years in jail
- When asked why he confessed to a crime he did not commit, Unger told media, *“when you’re young and naïve and desperate for money, they hold a lot of promises to you, so you say and do what you have to do to survive, just like in prison.”*



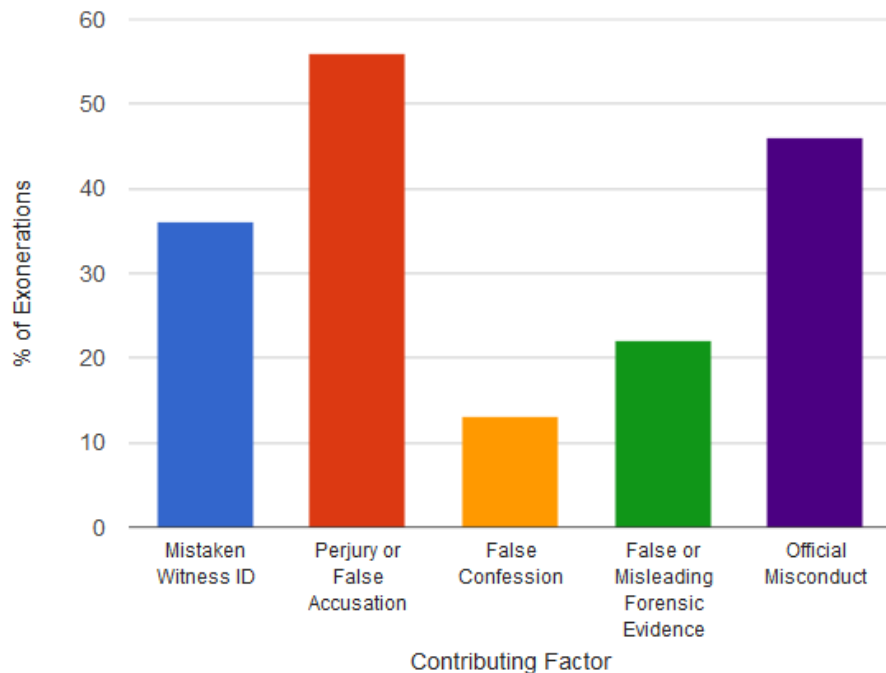
Target: Andy Rose



Video: the Targets



Other Causes of Wrongful Convictions



- Perjury (Jailhouse informants)
- Systemic Bias (race based, gender based, class based)
- Misinterpretation of Demeanor Evidence
- Police Tunnel Vision/Misconduct
- Prosecutorial Tunnel Vision/Misconduct
- Ineffective Representation of Counsel
- Inadequate Resources
- Misleading Circumstantial Evidence
- Judicial Bias

Why a graphic novel?



Who is Jakob Jackson?



What happens to Jakob?



Lessons!

FAULTY EYEWITNESS IDENTIFICATION

The human memory is not perfect. A person can be wrongly accused of a crime because of a mistake made by an eyewitness. The old woman mistakenly identified Jakob as the robber because he resembled the actual perpetrator.



Lessons!

TUNNEL VISION/RUSH TO JUDGMENT

A phenomenon sometimes referred to as 'tunnel vision' can contribute to a person being wrongly accused or convicted of a crime.



Lessons!

YOUR RIGHTS WHEN TALKING TO THE POLICE

If you are approached by a police officer, they can ask you simple questions, like:

- What is your name?
- What is your address?
- How old are you?



Lessons!

YOUR RIGHTS WHEN YOU ARE UNDER ARREST

Knowing your rights when you are under arrest can help prevent you from being wrongly convicted of a crime.



Lessons!

POLICE TRICKERY AND FALSE CONFESSIONS

The police have a difficult job to do, and they usually perform it well and with good intention. However, if the police are interrogating an innocent person who they believe to be a criminal, they can use interrogation techniques that could lead an innocent person to a false confession and wrongful conviction.



Lessons!

YOUR RIGHTS AT A BAIL HEARING

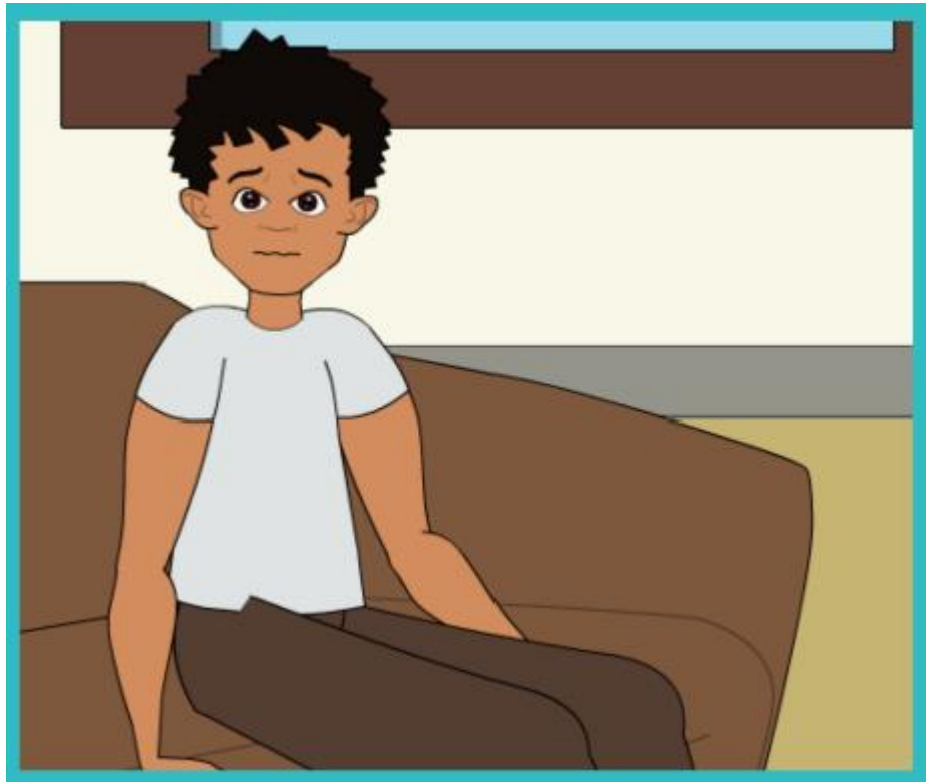
A bail hearing determines whether or not you will be released from a detention facility while you wait for your trial.



Lessons!

PLEA BARGAINING AND CONSEQUENCES OF A YOUTH COURT RECORD

A plea bargain is an agreement between the Crown attorney (the lawyer for the government) and an accused where the accused agrees to plead guilty to committing a crime in return for a compromise from the Crown attorney.



When should I teach this?

Wrongful Conviction Day



Thursday
October 2
2014

Questions?

Thank you!

AIDWYC

