



When Rachel Cohen (L'10) — now an attorney at the Habeas Counsel Resource Center in San Francisco — received word last year that a Virginia man named Michael Hash had been freed from prison after being wrongfully convicted of murder and sentenced to life without parole, she thought that justice had been way too long in coming. “He was a guy with no criminal history to speak of and it just completely destroyed his life,” Cohen says of Hash — who was convicted in 2001 for the killing of 74-year-old Thelma B. Scroggins. Hash spent 12 years in jail before Senior U.S. District Judge James C. Turk granted his federal habeas corpus petition in 2012. “It’s horrible that this took so long ... but hopefully he’ll be able to move forward and rebuild his life.”

Brian Dugdale (L'09), now a real estate attorney in Boston who works on pro bono cases, says the decision produced one of the happiest feelings of his life. “For me, the case had been just so horrible — to think that this young person was going to be in jail for the rest of his life,” he says. “With all the time I spent looking at the case, I believed he was innocent, but I didn’t know how the case was going to turn out.”

Four years earlier, when Cohen and Dugdale were students in the Wrongful Convictions practicum class taught by Professor Wallace Mlyniec (L'70) and Adjunct Professor Shawn Armbrust (L'04), the likelihood that Hash would be freed seemed remote. Winning federal

habeas corpus relief in the Western District of Virginia is not easy, and an earlier state habeas petition had met with defeat. “This has been one of those cases that has kept me up at night and I didn’t know if we’d ever win,” says Armbrust, who is the executive director of the Mid-Atlantic Innocence Project (MAIP). “[It was] clear that a miscarriage of justice had happened, but it wasn’t clear that we were going to have a way out of it in the legal system.”

In this experiential learning class, which Mlyniec and Armbrust have co-taught since 2007, students act as intake investigators in conjunction with MAIP to determine if a prisoner’s claim of innocence should be pursued. The 2012 win in the Hash case resulted from the collective work of investigators, lawyers and Hash’s parents as well as the Innocence Project. During the 2008-2009 school year, Georgetown Law students did a great deal of work that was passed on to the lawyers, who followed the case through to completion.

The case counts as the first true “win” for the class, says Mlyniec. “The students gave this case legs, but if Hash’s parents didn’t believe in him as they did, and if Mid-Atlantic didn’t get this petition and see something in it, no one would have heard of the case. If Mid-Atlantic hadn’t sent it to our students ... nothing would have happened.”



Adjunct Professor Shawn Armbrust (L'04) speaks to the 2012-2013 Wrongful Convictions class co-taught with Professor Wallace Mlyniec (L'70). Opposite: Rachel Cohen (L'10) introduces a Georgetown Law Innocence Project when she was a student.

SAM KARP

From Theory to Practice

Students in Wrongful Convictions Class Help Free an Innocent Man



BILL PETROS

GETTING INVOLVED

Armbrust had been serving less than a year as executive director of MAIP in 2005 when she got a call from Michael Hash's mother, Pamela, asking Armbrust to meet with her and her husband. The Hashes were convinced that their son, who by then had spent several years in jail, was innocent of Scroggins's murder.

The couple came to the right person. When Armbrust was taking a class in investigative journalism at Northwestern University, she used her parents' dining room to interview a witness in a murder case. The video wound up on the CBS evening news and helped lead to the exoneration of Anthony Porter, a wrongfully convicted prisoner on death row, in 1999.

After graduating from Georgetown Law, Armbrust went straight to being director of MAIP, a nonprofit organization dedicated to correcting and preventing wrongful convictions in D.C., Maryland and Virginia. MAIP had already considered the Hash case before Armbrust came on board — and decided not to get involved, since Hash already had a lawyer.

But something about Pamela Hash's persistence, and her objective way of looking at the case, clicked with Armbrust and she agreed to meet Hash's parents for Sunday brunch halfway between Culpeper and D.C. "They started talking to me about the case, and they also gave me a trunk load of binders," Armbrust says.

Hash's parents, as it turned out, had organized everything related to the case into notebooks that would prove

helpful later in the students' work. The notebooks would also prove helpful in convincing Armbrust to take the case. "I essentially came out of this brunch thinking OK, if half of what they said is true, their son didn't do this and this case is a mess."

To Armbrust — who had screened innocence cases at Northwestern's Center for Wrongful Convictions for three years even before coming to Georgetown Law — something just didn't smell right. She began looking for biological evidence to see if there was anything that could be tested. She then got a former FBI agent, Larry Smith, to assist in the investigation, financed through the Innocence Project.

By the fall of 2008 — while the state habeas petition filed by Hash's former lawyer was making its way toward the Virginia Supreme Court — Armbrust had decided to bring some of the students in the Law Center's Wrongful Convictions class on board.

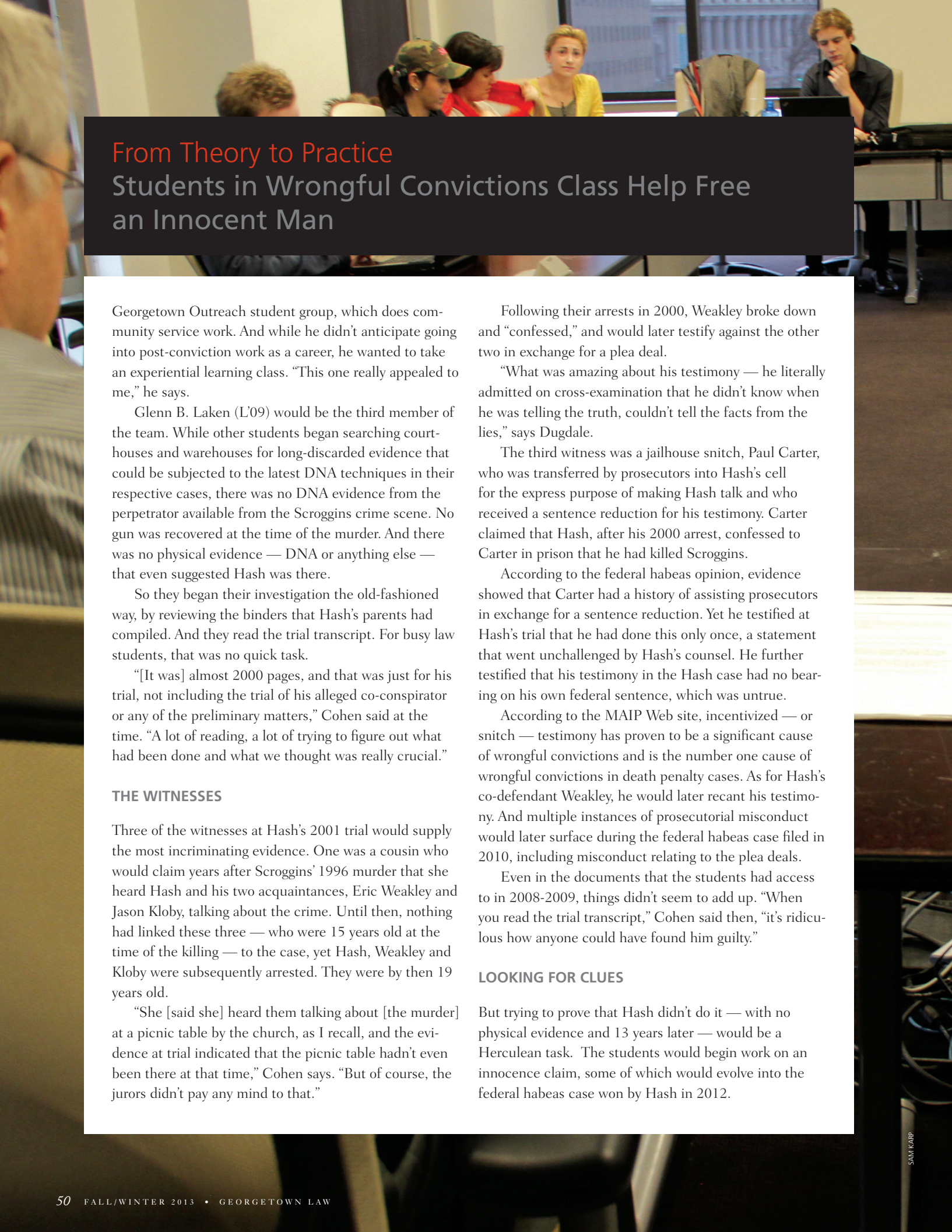
"I thought that there was a lot the students could do," Armbrust says. "During the course of the academic year, the law firm Hunton & Williams did get involved, but they weren't full throttle until after the students had looked at the case."

THE STUDENTS

Students in Mlyniec and Armbrust's Wrongful Convictions class work in teams, receiving cases at random. But as luck would have it, some in the 2008-2009 class were ideally suited to work on the Hash case.

Cohen, then a 2L, had started working on Innocence Project cases her first year in law school through Georgetown's Innocence Project student organization. She would serve as the organization's president during her second year in law school, successfully inviting author John Grisham to the Law Center in 2009 to speak on his book *The Innocent Man*.

Dugdale was a 3L who had already accepted an offer to practice at a law firm in Boston — a firm he had chosen due to its culture of inclusiveness and its emphasis on pro bono work. He was one of the founders of the



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Georgetown Outreach student group, which does community service work. And while he didn't anticipate going into post-conviction work as a career, he wanted to take an experiential learning class. "This one really appealed to me," he says.

Glenn B. Laken (L'09) would be the third member of the team. While other students began searching court-houses and warehouses for long-discarded evidence that could be subjected to the latest DNA techniques in their respective cases, there was no DNA evidence from the perpetrator available from the Scroggins crime scene. No gun was recovered at the time of the murder. And there was no physical evidence — DNA or anything else — that even suggested Hash was there.

So they began their investigation the old-fashioned way, by reviewing the binders that Hash's parents had compiled. And they read the trial transcript. For busy law students, that was no quick task.

"[It was] almost 2000 pages, and that was just for his trial, not including the trial of his alleged co-conspirator or any of the preliminary matters," Cohen said at the time. "A lot of reading, a lot of trying to figure out what had been done and what we thought was really crucial."

THE WITNESSES

Three of the witnesses at Hash's 2001 trial would supply the most incriminating evidence. One was a cousin who would claim years after Scroggins' 1996 murder that she heard Hash and his two acquaintances, Eric Weakley and Jason Kloby, talking about the crime. Until then, nothing had linked these three — who were 15 years old at the time of the killing — to the case, yet Hash, Weakley and Kloby were subsequently arrested. They were by then 19 years old.

"She [said she] heard them talking about [the murder] at a picnic table by the church, as I recall, and the evidence at trial indicated that the picnic table hadn't even been there at that time," Cohen says. "But of course, the jurors didn't pay any mind to that."

Following their arrests in 2000, Weakley broke down and "confessed," and would later testify against the other two in exchange for a plea deal.

"What was amazing about his testimony — he literally admitted on cross-examination that he didn't know when he was telling the truth, couldn't tell the facts from the lies," says Dugdale.

The third witness was a jailhouse snitch, Paul Carter, who was transferred by prosecutors into Hash's cell for the express purpose of making Hash talk and who received a sentence reduction for his testimony. Carter claimed that Hash, after his 2000 arrest, confessed to Carter in prison that he had killed Scroggins.


According to the federal habeas opinion, evidence showed that Carter had a history of assisting prosecutors in exchange for a sentence reduction. Yet he testified at Hash's trial that he had done this only once, a statement that went unchallenged by Hash's counsel. He further testified that his testimony in the Hash case had no bearing on his own federal sentence, which was untrue.

According to the MAIP Web site, incentivized — or snitch — testimony has proven to be a significant cause of wrongful convictions and is the number one cause of wrongful convictions in death penalty cases. As for Hash's co-defendant Weakley, he would later recant his testimony. And multiple instances of prosecutorial misconduct would later surface during the federal habeas case filed in 2010, including misconduct relating to the plea deals.

Even in the documents that the students had access to in 2008-2009, things didn't seem to add up. "When you read the trial transcript," Cohen said then, "it's ridiculous how anyone could have found him guilty."

LOOKING FOR CLUES

But trying to prove that Hash didn't do it — with no physical evidence and 13 years later — would be a Herculean task. The students would begin work on an innocence claim, some of which would evolve into the federal habeas case won by Hash in 2012.



Since the best way to support an innocence claim is to prove that someone else committed the crime, they had to become detectives as well as law students — coming up with different theories, different possibilities and alternative suspects. (In his federal habeas corpus case, in fact, Hash would successfully claim that his trial counsel had been ineffective under the Sixth Amendment for failing to present an alternate theory of the crime.)

“We started by trying to come up with alternative suspects and then to work backwards to how we would prove that those people did commit the crime,” Cohen says.

The goal was not just to point fingers, but to also exclude possibilities, Dugdale says. “We [interviewed] other people who investigated the crime to learn their perspectives — people who worked in the sheriff’s office and other private investigators.”

One of those they worked with was David Carter, the original investigator in the case. Carter concluded that a single assailant had committed the murder; Carter had been replaced by new investigators in 1999, the ones who would develop Hash as a suspect.

And with the help of the Innocence Project investigator, Larry Smith, the students were able to visit the area around the crime scene, to gain a better perspective on the puzzle. “We drove by the house where the murder had taken place, and we looked at [things] like ... here’s a road where someone said they saw a white pickup truck and it sped around the corner,” Dugdale recalls. “A lot of it was just literally thinking everything through: what makes sense about this version versus that version, trying to work through what really had happened.”

Interviewing people connected to the three witnesses would prove tougher. Trying to visit someone in prison — an acquaintance of Hash’s cousin — was a dead end, since it was up to the warden to decide whether to let them in or not. Getting access to any potential evidence from the crime lab, or even trying to confirm that someone had received a fax they sent, led to a runaround. Hash, following his conviction, had no right to anything anymore, and Cohen and Dugdale were not his lawyers.

They drove down to Culpeper several times, just to knock on doors trying to get relevant information. Most times, there was simply no answer. They tried multiple

times to interview a neighbor who was connected to an alternate suspect. And multiple times, they were told to come back.

“COULD HAVE BEEN ANYONE”

The students were, however, able to find some of the documents related to how the witness Paul Carter was writing letters to a judge, seeking a deal for his testimony in the Hash case. This information, which did not come out in the 2001 trial, would form part of the habeas case.

Cohen and Dugdale would also meet with Hash’s parents. Though their contact with the Hash family was limited (usually Armbrust met with Hash on behalf of the group), they nevertheless experienced all the emotions of working on a very real and very tragic case. “It’s stressful, I think, as a student; you are trying to prioritize your schoolwork, but it’s hard to make that a priority when there’s something like this going on in the background,” Cohen says. “In Michael Hash’s case what made it so extraordinary was that he just really was not connected [to the crime]... I mean, he really could have been anyone.”

The students’ final memo indicated that there were inconsistencies between the trial testimony and the evidence as well as doubts regarding the credibility of the snitch testimony. While the students drew no conclusions, they recommended obtaining recantations from some of the witnesses, investigating other possible perpetrators and obtaining DNA testing on any biological material that hadn’t been tested.

“By the time our students were done investigating, we saw so many inconsistencies between the police investigation, the actual evidence in the case and the testimony of these witnesses,” Mlyniec says. “We became convinced that Mr. Hash was probably not guilty and [was] probably innocent.”

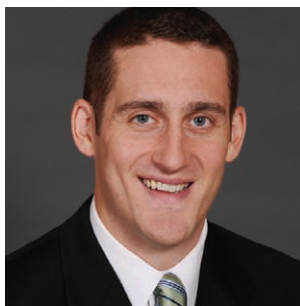
CONSTITUTIONAL VIOLATIONS

Ultimately, the case was turned over to lawyers at Hunton & Williams, whose discovery work and large resources would uncover “incredible” police and government abuses in the case, Mlyniec says.

“You had constitutional violations of *Brady* [*v. Maryland*], holding that withholding exculpatory evidence

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Brian Dugdale (L'09)

violates due process], and police manipulations of the witnesses, so that was sufficient to get this conviction overturned,” Mlyniec explained — adding that oftentimes, that’s what actually happens in the world of “innocence” cases. “You can’t really prove the person is innocent and that’s what the statutes require, but you can prove there were these [constitutional violations]: ineffective assistance of counsel, false confessions, bad IDs, police manipulation, perjured snitch testimony.”

But if it were not for the work of the students, Mlyniec claims, the case would have never gone to the law firm to attempt the federal habeas corpus in the first place. “There are thousands of people who want their cases reviewed, and so it comes down ultimately to who is doing the reviewing. If you have a bunch of unsupervised students ... they may not be reading the transcript four or five times over, they may not be indexing the transcript in the same way we index, and I doubt they would be going down to Virginia to talk to everybody they can find.”

The students’ work, Armbrust says, allowed the law firm investigator to start from a different place. “That’s not necessarily glamorous, but a lot of this work is checking off boxes so you can move onto the next thing, and the students having done that meant that we started further ahead with the firm than we would have done otherwise.”

THE AFTERMATH

Today, both Cohen and Dugdale have high praise for the Wrongful Convictions class. “Regardless of what your career goal is at Georgetown, regardless of what you come in to law school hoping to get out of it, it’s a really

great way to learn something about a major shortcoming in our justice system that people are really for the most part very ignorant about,” says Cohen, who went on to do post-conviction work in Kentucky before joining the Habeas Counsel Resource Center this past summer. “People don’t understand how it can happen and I think it’s really nice that there’s a class that opens people’s eyes to it.”

Dugdale says that the professors — as well as his student colleagues — exemplify what lawyers should be. “In terms of Georgetown, it’s known for its practical programs and they really are what you make of them ... if you want to dive into a case like this, it’s out there for you,” he says.

As for Michael Hash, he filed a civil suit in the U.S. District Court for the Western District of Virginia against state officials in the last days of 2012, for claims including false arrest, fabrication of evidence, malicious prosecution and false imprisonment. The civil case is slated to be tried in April 2014. But in spite of his victories, Hash has not been — as some might assume — legally exonerated. What has been proved is not “innocence” per se, but that a murder case against Hash cannot ever be won and probably never should have been brought in the first place, according to Mlyniec.

“We have not had a court ruling that Mr. Hash is innocent in this case. We have a court ruling that says this trial was unfair, and so they vacated the conviction and sent it back to the prosecutor to see if they wanted to try him again. The prosecutor said no,” Mlyniec explained. “So Mr. Hash is sort of in limbo in that he’s never going to be tried for this crime, [but] unless he’s given a pardon by the governor, this arrest at least will still be on his record.”

And the odds at this point that Scroggins’s true murderer will confess or be convicted are not good. Without one of those two things occurring, “there will never be any absolutely 100-percent conclusive way of proving Michael Hash didn’t do it,” Mlyniec says. “Nonetheless, I don’t think there is anybody left who believes he did.”



Professor Wallace Mlyniec (L'70) in his 2012-20123 Wrongful Convictions class.