

# INNOCENCE PROJECT

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**SUBMISSION OF STEPHEN SALOOM,  
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TO THE CALIFORNIA COMMISSION ON THE FAIR ADMINISTRATION OF JUSTICE  
OCTOBER 17, 2007**

**RE: CREATION OF A PERMANENT CRIMINAL JUSTICE REFORM COMMISSION & THE  
PROPER PRESERVATION OF BIOLOGICAL EVIDENCE**

Thank you for the opportunity to submit written comments for the Commission's consideration.

I would like to begin by noting that the Commission's work to date has been invaluable, both to the state of California and the nation at large. Indeed whenever a person convicted of a crime is found to have been innocent of that crime, a failure has occurred in the criminal justice system which wrongly convicted an innocent person and allowed the real perpetrator to elude justice. Determining how these wrongful convictions happened and what can be done to prevent them is of critical importance not just to the public safety, but also to the quality of justice in California. With all due respect for elected officials (and the pressures under which they labor), by taking these questions out of the glare of the political spotlight, and instead empowering a cross-section of experts from throughout your criminal justice system to explore them and issue recommendations, you have greatly increased your state's ability to identify the most effective steps for increasing the accuracy and justice of your criminal justice system. And by conducting your business in such a thorough, professional, and balanced manner, you have provided other states with a model for addressing such questions, and ultimately improving the accuracy and justice of their systems as well.

But despite the Commission's significant accomplishments, there is work that remains. Justice is not static; neither is technology, policing, nor the ingenuity of those who break the law. Although the Commission's work has already provided a significant start in the effort to minimize the possibility of future wrongful convictions in California, it is obvious that the Commission's advice – or that of an entity very similar to the CCFAJ – is necessary to ensure the effective implementation and operation of its recommendations as well as to take on the non-addressed and future issues related to the accuracy of the California criminal justice system.

The work of this Commission puts it in the category of the nation's other most successful wrongful conviction reform commissions, along those in North Carolina and Wisconsin. In both of those states, when the originally mandated Commission completed its work, policymakers recognized the enduring value of such expert advice, and convened permanent criminal justice reform commissions to address these and related issues on an ongoing basis.

The North Carolina Actual Innocence Commission is composed of thirty members from the judiciary, law enforcement, defense, academic, and victims' rights communities appointed by the Chief Justice. While authorized to study individual exoneration cases, the Commission has focused its work on studying the causes of wrongful convictions in general.



The Commission's first major work involved the problem of mistaken eyewitness identifications. In 2003, they issued recommendations for the improvement of procedures in North Carolina, and distributed those recommendations to all law enforcement officials. Since then, the Commission has successfully tackled a range of innocence-related issues. North Carolina is currently primed to be a national leader in its examination of the preservation and storage of biological evidence.

In Wisconsin, a Criminal Justice Study Commission was established by the State Bar of Wisconsin, Marquette University Law School, the Wisconsin Attorney General's Office, and the University of Wisconsin Law School to identify and remedy problems with Wisconsin criminal justice system in July of 2005. The Commission is comprised of members from all facets of the criminal justice system, including police, defense attorneys, prosecutors, judges, and victims' advocates, as well as individuals outside of the system with the hope that they will contribute novel and innovative ideas. Since membership does not include legislators, the Commission has identified four legislators to serve as liaisons in the event that the Commission's work should require a legislative response. Most recently, the Commission examined the DNA backlog at the Wisconsin State Crime Laboratories.

Indeed, permanent commissions are primed to address issues that transform over time, due to a variety of factors that include enhanced technologies, fresh laws, and new government administrations. One good example of an issue that needs the broad, expert attention that such a Commission could provide is the preservation of biological evidence. As we recognize the incredible identification power of DNA evidence, it has also become clear that amazing crime solving potential resides, latent, in biological evidence from crime scenes. This crime scene DNA can enable us to link an unknown perpetrator of a given crime to other crimes - across time periods and across jurisdictions - for which that perpetrator is also responsible thereby identifying the culprit. Preserved biological evidence can also enable the wrongfully convicted to prove their innocence in cases where, for whatever reasons, a DNA profile was not generated from that evidence during the investigation or prosecution of the offense.

Congress, in the Justice for All Act of 2004, recognized the importance of preserved biological evidence by strongly enhancing federal preservation of evidence policies and making hundreds of millions in authorized state grant programs contingent upon proper preservation practices. Given the value of preserved biological evidence to solving cold cases, we expect to see more federal grant programs based on the use of such evidence coming in the future.

My comments that follow will show how the accessibility of preserved evidence is critical to ensuring justice in our criminal justice system. Specifically, I will explain why the accessibility of preserved evidence has become such an important part of our criminal justice system, demonstrate how and why the current state of preserved evidence in California is inconsistent at best, and a travesty at worst, and propose the straightforward measures that California could undertake to remedy the problem, and thus greatly improve the administration of justice.

In short, properly preserving biological evidence is simply creating a simple, new practice to keep up with technology's crime solving potential. A non-political, expert entity such as the CCFAJ can clearly understand that the benefits far outweigh the costs, that it is a practice most

efficiently and effectively undertaken statewide, and how to guide the practice to its greatest crime solving potential. I will attempt to explain this and more below.

***Technological advances make preserved evidence a critically important tool for justice***

Modern DNA technology, coupled with today's comprehensive information and communications technology, has exponentially increased the power of preserved evidence, to levels unimaginable just a generation ago. As a result, evidence preservation practice that may have seemed adequate – if still a bit disconcerting – in the early 1980's is today an incredible waste of criminal justice potential. Our governments can be forgiven for their failure to anticipate the future power of preserved evidence, but there is no excuse for perpetuating this situation in light of preserved evidence's new power to provide justice in some of our most serious and violent cases.

Tapping this potential is as simple as properly identifying, collecting, preserving, storing, and organizing biological crime scene evidence. Preserving criminal evidence is standard practice in California, so the task before us is simply to store and organize that evidence in a way that makes it – and in particular, biological evidence - readily accessible when we seek to use DNA to advance justice.

The alternative is for California to fail to preserve evidence in a manner which allows its ready retrieval, and thus needlessly fail to solve solvable crimes, deny justice to victims, prevent the wrongfully convicted from proving their innocence, and leave the public at large vulnerable to previously unidentified offenders who are eminently identifiable. This is true because DNA found at crime scenes can now, with a simple keystroke, be compared to DNA found at other crime scenes as well as the DNA of millions of individuals.

***The Specific Problems with Preserved Evidence in California***

The methods of storing, organizing and retrieving preserved evidence vary by jurisdiction, as well as by type of entity charged with preserving evidence, throughout California. The inability to locate evidence in California has frustrated efforts to both solve crimes and prove innocence post-conviction, thwarting efforts to solve cold cases and causing the closure of innumerable cases where post-conviction testing of evidence could prove innocence. The fact is that all too often, when testable evidence is located, it is simply the result of serendipity.

The following issues provide just a flavor of the troubles experienced when seeking to locate evidence in California:

- **Lack of standardized cataloguing system:** There is no central repository for information about the location of evidence. Even within jurisdictions, there is no centralized database that can tell you if, for example, the rape kit in a particular case is at the police station, the hospital, the crime lab, or the court. Evidence custodians must check multiple files and manually search numerous storage areas in order to locate evidence.
- **Antiquated organization system:** While advanced technology, such as barcoding, is now readily available and regularly used for various inventory functions, it has not yet

become standard practice for tracking preserved evidence in California.

- **Missing or Confusing Inventory Information:** Because of the ad hoc and antiquated methods of storing evidence, at times, information corresponding to particular evidence is missing, illegible, or confusing. In such cases, save for a physical search of all of the property, the evidence will not be located. As well, a single case may yield multiple listings that correspond to numerous pieces of evidence located at various locations.
- **Missing Records:** Often there is no record of destruction of evidence. Without proof of the destruction of evidence, attorneys spend limitless hours petitioning for the testing of evidence that is gone. In addition, there is no proof that the evidence was actually destroyed, leaving lingering innocence claims forever unanswered.
- **Lack of Documented Inventory Policy:** There is no documentation or explanation of policies, especially pertaining to old cases. It is unclear how far back in time the evidence has been preserved.

One attorney likens the evidence searching process to a “low-tech scavenger hunt through a paper and property haze.” Lost or destroyed evidence spells a dead end for justice. Sometimes cases that are close to closure are rekindled through the discovery of evidence, usually after needlessly lost years.

#### ***Recommended steps to properly store and organize preserved evidence in California***

Even the most well-intentioned evidence custodian can only do as good a job as the system allows. Systemic changes are needed. Order can only be brought to chaos through the requirement that all “old” evidence be re-catalogued and inventoried and that a centralized entity be charged with creating a tracking system, so that once it is re-catalogued, it can be easily retrieved.

Other jurisdictions, recognizing the crime-solving potential of old evidence for cold cases and observing the miscarriages of justice likely to occur when innocence claims cannot be addressed, have undertaken just such a process. For instance, police officials in Charlotte, NC, America’s 5<sup>th</sup> largest urban region, launched an initiative in 1995 to re-catalogue all of its evidence. In nine months, all of Charlotte’s evidence had been re-catalogued and placed in one 6,700 square foot storage space. The entire manpower cost was estimated at \$100,000. The pricetag for bar code printers and radio scanners, which allowed for a state-of-the-art searching tool, was \$40,258. Following the re-cataloguing of old evidence, Charlotte’s Police Department formed a Homicide Cold Case Unit. To date, the Cold Case Unit has cleared fifteen cases, charged fourteen persons with murder and is actively investigating a dozen reopened cases.

There are a number of steps that California should take to effectively preserve, organize, and make accessible biological evidence. Biological evidence should be preserved in all cases where it may be probative, for at least as long as a sentence or collateral consequence of a wrongful conviction is in effect. Biological evidence, as a general principle, should also be preserved as long as a case remains unsolved, so that it is readily available to law enforcement officers investigating old cases.

There is no reason why a permanent commission cannot address the details of an evidence overhaul plan over time. While some aspects can be specifically addressed in the statute, several of the following significant details can be delegated to the Commission, which, through its deliberative process, can implement a plan to:

- **Create a Centralized Entity to Administer Evidence System:** Identify a central entity that would be charged with administering a re-cataloguing process, including the establishment of standards regarding the proper collection, retention and retrieval of biological evidence.
- **Perform an Accounting of Relevant Evidence Facilities:** Identify all of the facilities (courthouses; hospitals; laboratories; prosecutors' offices; etc.) where old evidence is currently stored.
- **Inventory Evidence:** Provide a brief description of the evidence located in each facility.
- **Repackage Evidence:** Repackage, as necessary, all relevant biological evidence that may be vulnerable to degradation.
- **Organize and Catalogue Evidence by Case:** Identify and inventory all voucher numbers associated with evidence, link all to the specific pieces of evidence to which they correspond, ensuring that all pieces of evidence associated with a particular case are grouped together, and identify a means through which that evidence can be readily located. This can be accomplished, as was done in Charlotte, through a bar coding system.
- **Enter Evidence Into a Modern Database System:** The central entity charged with administering the process will also oversee the creation of an integrated database that would establish chain of custody and allow easy access to old evidence.
- **Clearly Articulate Policies and Procedures/Training:** Finally, the administering entity will create training programs for law enforcement and other relevant employees that are charged with preserving and retrieving biological evidence.

With today's technology, preserved evidence is nothing less than a goldmine of potential justice. Crimes can be solved, thus enhancing public safety and serving the victims whose cases were never before solved; and the innocent and their families will no longer have to endure the terrible nightmare of a wrongful conviction.

But as long as this important issue is largely ignored, victims, the wrongfully convicted, and the public at large are denied access to this incredible crime solving potential that is in our possession, yet beyond access. Indeed, reforming evidence preservation policies are integral to a 21<sup>st</sup> century justice system in the state of California.

The reliability of our criminal justice system cannot depend on the serendipitous discovery of evidence. By establishing a reasonable evidence preservation policy that is both comprehensive and provides ready access to those in need, California will tap into the potential of preserved evidence – and more importantly, provide Californians with the quality of justice that it would be unconscionable to deny.



Thank you for the opportunity to share these views with you. I hope you will contact me if there is any additional information that I can provide on these subjects.

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**Post-Script: Post-Conviction DNA testing**

While this is an area of particular specialty for the Innocence Project, I have reviewed the witness list and anticipate that the issues of post-conviction access to DNA testing and the practical obstacles facing Californians who are seeking post-conviction relief will be well-covered. That having been said, should the Commission have any additional questions on this issue for which the Innocence Project's perspective in other states and/or nationally could be helpful, I would be more than happy to provide whatever additional information would serve you.