

**A CALIFORNIA INNOCENCE INQUIRY COMMISSION:**  
*Part of the Solution to the Problem of Wrongful Convictions.*

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RESEARCH QUESTION

Should the California Commission for the Fair Administration of Justice (CCFAJ) submit a proposal to the state legislature for creation of an innocence commission to adjudicate wrongful conviction claims in California?

INTRODUCTION

Governor Schwarzenegger has lauded California's pioneering spirit and its citizenry's (and politicians') willingness to embrace controversial change. Governor Schwarzenegger has joyfully urged Californians to "show the world what [California] can do" [1]. The Governor's enthusiasm comes with political ease when it concerns issues of telecommunications, energy, and health care. When it comes to the harder issues of criminal justice (such as instances of police and prosecutorial misconduct, as well as the lack of access to post-conviction DNA testing, of a review process for inmates with innocence claims, and of compensation for inmates wrongly convicted), the same passion is sadly lacking. This attitude results in the perpetuation of law and policy that contribute to wrongful convictions [2]. Such inertia may be politically understandable given the development of the "get-tough-on-crime" movement beginning in the late 1980's, which has made it difficult for any legislator to propose reforming the criminal justice system in any way that might be publicly perceived as "soft on crime."

The fact that hundreds across the United States have been exonerated through DNA testing (25 of these in California alone) raises serious questions about the fairness of the judicial process nationwide and in California [3]. Questions remain, such as: How many more innocent people have been wrongfully convicted and are unable to prove their innocence without access to DNA testing? Did prosecutors and/or police act in bad faith to put innocent people in jail? Did the "get-tough-on-

crime” movement play a role in these wrongful convictions? And what process should California engage in in order to reconsider the validity of contested convictions?

Samuel R. Gross sheds some light on these questions in a study of exonerations in the United States from 1989 to 2003. The study reveals that there have been over 340 DNA and non-DNA exonerations in that four-year period, strongly suggesting that there are significant egregious failures of justice occurring regularly across the nation [4]. Most recently, the Innocence Project has reported that since 1989 there have been 208 DNA exonerations across the country [4a]. The failures of the California justice system pose a danger that innocent people will continue to get convicted in the future. This raises the urgent call for the creation of an Innocence Inquiry Commission to investigate and correct wrongful convictions. California is an influential state whose political innovations are frequently emulated by other states. As such, California has the unique opportunity to correct serious problems affecting its criminal justice system while also having a significant impact on the issue nationally.

### ***JUSTIFICATION FOR AN INNOCENCE INQUIRY COMMISSION***

On October 10, 2007, during an oral argument before the 9<sup>th</sup> Circuit Court of Appeals, Peter Neufeld, co-founder of the Innocence Project, a non-profit legal clinic dedicated to exonerating wrongfully convicted people through DNA testing and through criminal justice reforms in order to prevent future injustices, spoke about the need to resolve the problem of wrongful convictions [5]. Mr. Neufeld was advocating for a particular petitioner’s right to access and test potentially exculpatory evidence in a criminal case that had been decided long ago. Mr. Neufeld’s primary argument was that a convicted person has a Constitutional right to access evidence that was used to convict him so that he may subject that evidence to a more discriminating DNA test to conclusively prove his guilt or exonerate him [6]. Mr. Neufeld also emphasized an important public policy consideration which should guide both courts and the legislature in California. Mr. Neufeld argued that the sufficiency of

evidence required to convict a defendant is an evolving standard, such that with the advent of a new technology, a petitioner should have the right to subject the evidence used to convict him to the scrutiny enabled by the new technology. This approach ensures that there will be no question as to the validity of the conviction. Mr. Neufeld's argument is derived from Herrera v. Collins where the Supreme Court emphasized that, "[T]he sufficiency of evidence review authorized by *Jackson* is limited to 'record evidence,' and ... does not extend to ... newly discovered evidence" [7].

This compelling public policy rationale is the basis upon which the California legislature can be persuaded to create and fund an innocence inquiry commission, as well as the means by which the legislature can justify such a potentially controversial reform of the criminal justice system. The judicial system in California should be an evolving structure that endeavors to conclusively prove a defendant's guilt, especially in light of the "twin constitutional imperatives of 'protecting the innocent from erroneous conviction and ensuring the integrity of our criminal justice system'" [8]. These dual aims have always been a standard for which courts in the United States have strived. Justice Harlan has reinforced this notion when he stated that, "[I]t is far worse to convict an innocent man than to let a guilty man go free" [9]. Only through the creation of an Innocence Inquiry Commission can we be assured that our criminal justice system adequately protects the innocent while it punishes the guilty.

The fundamental question of fairness justifies the creation of an Innocence Inquiry Commission. An Innocence Inquiry Commission would give a petitioner with a viable innocence claim a last fair chance to test the validity of his conviction. The inconsistencies rife in the judicial system raise the question of its effectiveness [10]. Professor Tom Stacy assesses this point when he reveals that:

Some of the [Supreme] Court's decisions restrictively interpreting truth-furthering rights conflict with accurate adjudication and cannot be defended as sacrificing accuracy to values that the Court can describe as more compelling. Yet surprisingly, a serious commitment to accuracy can be seen to underlie other substantial aspects of the Court's apparently restrictive treatment of truth-furthering rights. To see the Court's work in this light, however, one must understand the Court as having redefined the very meaning of accurate adjudication. This transformed conception of accuracy affects a fundamental

and dramatic shift in the law. The conception of accuracy implicit in the reasonable doubt standard and traditionally operative in the criminal process presumes that the erroneous conviction of an innocent person is worse than an erroneous acquittal of a guilty one [11].

Although this analysis was applied to inaccuracies in the Supreme Court, it is no leap to apply this perspective to the entire judicial system, especially since lower federal and state courts are bound by Stare Decisis. When the reliability of convictions are questioned, controversy ensues and threatens the system currently in place. An Innocence Inquiry Commission would play a vital role in staving off the potential social and political upheaval stemming from questions about the reliability of the truth-seeking functions of the judicial system in California.

An Innocence Inquiry Commission would go a long way in preventing miscarriages of justice in California, such as that experienced by Peter Rose, a man wrongly convicted of a serious crime after being implicated by a false identification [12]. Mr. Rose's case was fraught with police and prosecutorial misconduct, as well as an incompetent attorney [13]. If it were not for the pure luck of discovery and testing of the biological evidence in his case (due in large part to the efforts of the students and faculty of Golden Gate University Law School's Innocence Project), Mr. Rose would still be behind bars, enduring constant physical threats to which convicted sexual predators are subjected to every day [14].

One significant aspect of Mr. Rose's case is that despite fully utilizing the state's appeal process, his convictions were affirmed: not one of the appellate judges who read and reviewed his case recognized the ineffective assistance rendered by his attorney or the other factors that combined to cause the conviction of an innocent man. An Innocence Inquiry Commission would have dramatically improved and expedited Mr. Rose's quest for exoneration and saved him years of unnecessary prison time.

Today in California, an innocent person is left with virtually no means to prove their innocence. The perception that our judicial system is frequently fallible and does not provide those with a valid

innocence claim with the opportunity to prove their innocence is one that California and other states should avoid at all costs. An Innocence Inquiry Commission is sorely needed.

### ***NATION-WIDE LEGISLATIVE APPROACHES TO THE PROBLEM OF WRONGFUL CONVICTIONS***

While there are currently many innocence projects in many states, which to varying degrees of formality are actively investigating the causes and possible remedies of wrongful convictions, as well as pending legislative proposals in a number of states, only one state has enacted a statutory scheme to address the problem directly. The CCFAJ may wish to look to North Carolina's statute as a potential model for a similar approach in California as well as to gain a sense of the issues and challenges that arose in the course of enacting it.

### ***NORTH CAROLINA'S RESPONSE TO WRONGFUL CONVICTIONS***

On August 3, 2006, North Carolina's Governor Easley signed House Bill 1323 into law, creating the nation's first statutory process for the adjudication of claims of wrongful conviction: The North Carolina Innocence Inquiry Commission (hereinafter, "the Commission" or NCIIC). In North Carolina, as in other states, many were very concerned about egregious miscarriages of justice that had come to light as a result of DNA evidence. The North Carolina Innocence Project, like its sister organizations in other states, had sought to publicize claims of wrongful conviction in the state and to advocate for an adequate system to address those claims. Unlike other states, however, the judiciary acted quickly to address the problem posed by wrongful convictions. Former Chief Justice I. Beverly Lake, Jr. of the state's Supreme Court established the North Carolina Actual Innocence Commission (NCAIC) in 2002. (It was later dubbed the Criminal Justice Study Commission.) The purpose of this body was to investigate and evaluate the causes of wrongful convictions and to provide "an independent and balanced truth-seeking forum for credible claims of innocence" [15]. While similar to California's Commission for the Fair Administration of Justice, the NCAIC was solely focused on the

problem of wrongful convictions. The resulting study produced by the NCAIC lead directly to the drafting and passage of House Bill 1323 which created the NCIIC. The North Carolina legislature defined the procedure for the new commission in the following:

S.L. 2006-184 (HB 1323) establishes the North Carolina Innocence Inquiry Commission, an eight-member body appointed by the Chief Justice of the North Carolina Supreme Court and the Chief Judge of the North Carolina Court of Appeals. The Commission is charged with the responsibility of hearing claims of factual innocence by persons convicted of felonies. If the person pled not guilty to the felony charge, at least five members of the Commission must conclude that there is sufficient evidence to merit judicial review. Upon a majority of five Commission members concluding that review is warranted, the Chief Justice would then appoint a panel of three Superior Court judges to hold an evidentiary hearing. If the person pled guilty to the felony charge, then the Commission must be unanimous in finding that the claim merits judicial review in order for the panel of judges to be appointed. The judicial panel must unanimously rule that the innocence of the defendant has been proven by clear and convincing evidence for the charges to be dismissed. Decisions of the Commission and the judicial panel cannot be appealed [16].

The North Carolina Innocence Commission is exceptional in that it creates an avenue for a petitioner to make a freestanding claim of innocence, without the usual requirement of making substantive or procedural errors claims [17]. Richard B. Glazier, a member of North Carolina's State Assembly, who represented an exoneree for nine years, introduced the legislation that created the Commission. Mr. Glazier commented that, based on his experience in helping to free his wrongfully convicted client, he learned firsthand of "the human frailties of the system and of the need to have a fail-safe [process] when we make an error" [18].

The Inquiry Commission statute, NCGS § 15A-1460-1475, may serve as a model for other states in creating their own legislative response to the problem of wrongful conviction. One commentator has noted that, "All eyes will be on North Carolina" for its pioneering initiative that will be a model for other states if it succeeds [19]. This paper will address the North Carolina legislature's rationale in creating the statute and the legislative process that brought the law into being. [20].

## ***THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION***

### **Addressing the Causes of Wrongful Convictions**

Chief Justice Lake's NCAIC sought to identify causes of wrongful convictions, educate criminal justice professionals in the state about those causes and to develop procedures to eliminate wrongful convictions [21]. The NCAIC looked carefully at erroneous eyewitness identification and issued recommendations to law enforcement to minimize such errors, including double-blind sequential identification techniques [22]. The NCAIC also recommended that all homicide investigation interviews be recorded and that the state's DNA preservation laws be strengthened [23]. The NCAIC then looked generally at how the state dealt with post-conviction claims of innocence and found it sorely lacking.

### **Getting Through the Legislature**

The NCAIC drafted a proposal, modeled on the United Kingdom's Criminal Cases Review Commission (CCRC), for a North Carolina statutory reviewing body to address such post-conviction innocence claims [24]. This proposal initially floundered in the General Assembly, but it was modified so that bipartisan support for the bill could be garnered [25]. The changes made to the bill were based upon discussions that lead to compromises being made among various parties. Specifically, the following changes were written into the law and resulted in its passage by the House and Senate. The changes listed below were ultimately acceptance by the Governor:

In Section 15A-1463(a), with the addition of an acting sheriff to the NCIIC, the number of voting members was increased from seven to eight; (2) In Section 15A-1463(a), instead of the Chief Justice appointing all of the voting members, appointing authority was shifted, such that the Chief Justice appoints five members (including the two discretionary appointments) and the Chief Judge of the Court of Appeals appoints three members; (3) In Section 15A-1467(b), a sentence was added stating that the waiver of procedural safeguards and privileges does not apply to matters unrelated to the defendant's innocence claim; (4) In Section 15A-1468(c), the standard for cases where the defendant was convicted on a plea of guilty was changed, such that a unanimous vote of the eight NCIIC members is required for judicial review; and (5) a sunset provision was added that disbands the NCIIC in four years unless legislators renew the law [26].

Another significant sticking point was whether defendants who “admitted guilt” through a plea should be allowed to bring claims of wrongful conviction before the NCIIC. The conference committee compromise provided that no claims by such defendants could be heard by the NCIIC within its first two years [27].

### ***THE UK’S CCRC COMPARED TO THE NCIIC***

It is important to understand how the UK formulated its commission (the CCRC) since the structure of the North Carolina commission was modeled after the CCRC. Although the legal systems of the two countries differ on some fundamental points, they are similar on many levels. Among the similarities between the innocence commissions are: 1) The CCRC and the NCIIC are intended to be independent bodies in both systems, and immune to political influences; 2) both commissions are comprised of individuals from a variety of backgrounds within the field of criminal justice; 3) both commissions screen claims prior to allowing review and require that such review be based upon new evidence in an attempt to avoid challenging a jury verdict; and 4) hearings before both commissions are not generally open to the public. Differences between the two commissions are that the CCRC does not require that claimants give up their other appellate rights. The CCRC will also not turn over evidence of a crime to Prosecutors. Alternatively, unless the evidence is regarding a crime unrelated to the claim, the NCIIC will submit evidence to prosecutors [28]. Another huge difference is the level of funding provided to each organization. Budgetary problems have hampered the CCRC and similar issues have also been experienced by the NCIIC already. The budget approved by the legislature was less than half the \$500K the drafters wanted. While the NCIIC is relying on the free labor of law students to assist it in its mission, it is not yet clear to what extent funding will limit its effectiveness.

## ***AN OVERVIEW OF THE NORTH CAROLINA LAW: CREATION IMPLEMENTATION***

The law's primary purpose is to provide a neutral avenue to investigate claims of innocence after a defendant has been convicted. The Commission has members from the judiciary, law enforcement, defense bar, prosecutors, victim's advocates, and the public [29].

The North Carolina Innocence Inquiry Commission is comprised of 8 voting members [30] and reviews claims of innocence after a convicted person or someone on his or her behalf writes to the Commission requesting a review [31]. If the claim does not present any evidence of innocence that was not presented during trial, the claim is not reviewable. Additionally, the petitioner must agree to waive certain rights and privileges, cooperate with the Commission, and agree to disclose all relevant information to the Commission. If the Commission finds enough evidence of innocence, then the claim will be referred to a three-judge panel for a hearing [32].

### **Rules and Procedures**

Pursuant to N.C. G.S. § 15A-1460-1475, the North Carolina Innocence Inquiry Commission adopted its Rules and Procedures (Rules) on May 25, 2007 [33]. These Rules were last revised on August 24, 2007. The Rules guide the Commission and its staff in all the functions, and are reviewed annually to ensure efficiency. Changes can be made to the Rules by a majority vote of the members. With respect to exceptions, the Commission Chair must approve all actions taken that are not in compliance with the Rules, and if one of the Rules can be interpreted in more than one way, an appendix is utilized to flesh-out the intent of the Rules [34].

The Rules begin with a Preamble, consists of ten Articles, and ends with an Appendix. The Preamble provides a brief history of the Commission; the Articles lay out the applicability of the statute (N.C. G.S. § 15A-1460-1475) (*Article 1*); provide the criteria for review of an innocence claim (*Article 2*); provide the process of initiation of an innocence claim (*Article 3*); map out the innocence claim review (*Article 4*); outline the investigation of an innocence claim (*Article 5*); provide rules on the presentation [of the claim] to the North Carolina Innocence Inquiry Commission (*Article 6*);

describe the post-commission three-judge panel (*Article 7*); speak to the effect on other post-conviction motions (*Article 8*); provide disclosure rules of uncovered evidence (*Article 9*); and explain other duties of the commission (*Article 10*). The Appendix consists of an annotated list of criteria for review of an innocence claim, and a flow chart illustrating the case progression through the commission process.

The Rules were created because the statute does not provide sufficient instructions on several aspects of the Commissions' operations. According to Kendra Montgomery Blimm, a former district attorney, who was hired to spearhead the Subcommittee whose task was to create the Rules, the Commission provided Ms. Blimm with guidelines regarding what the Rules and Procedures should address. [35]. Ms. Blimm became Executive Director of the Commission in April, 2007. [36].

According to Ms. Blimm, the process of creating the Rules and Procedures was "very smooth" [37]. To start, she dissected the Statute with a fine-toothed comb and did so in order to find any gaps in the process. It took about a month to create the first draft of the Rules and the process involved a great deal of correspondence with numerous people. [38].

Ms. Blimm presented her original draft to the Rules and Procedures Subcommittee. [39]. After a full-day meeting during which the Subcommittee discussed the draft Rules, the members came to an agreement and together drafted another version of the Rules and Procedures. After the meeting, the Subcommittee met with the Commission to finalize the Rules and Procedures. Everyone on the Commission was involved with and engaged in the decision-making process. [40].

Ms. Blimm reported feeling a lot of pressure when she created the Rules and Procedures. [41]. She indicated that because North Carolina is the first state to create a state-wide Commission of this kind, she expects other states to look to the Rules and Procedures she helped create as a model. Ms. Blimm recognizes that the Rules and Procedures are an evolving document and expects them to undergo more changes. [42].

A Sunset Clause in the Statute calls for cessation of the Commission in 2010. [43]. This means that the North Carolina Legislature will review the Commission's work in 2010 and decide if the value of the Commission is such that the legislation should be renewed. Ms. Blimm is optimistic and believes that the Legislature will recognize that the Commission has a large caseload and will realize that the Commission is accomplishing enough to justify its continued existence. [44].

### ***THE CURRENT STATUS OF THE COMMISSION***

Kendra Blimm made a positive assessment when asked about the current status of the Commission. [45]. She reports that the Commission currently has an excellent staff and although the staff is very small (there are only 3 full-time employees), the employees are all highly qualified and extremely dedicated to the Commission's mission. The Commission has a lot of government support, as well. The Administrative Office of the Courts provided them with excellent office space and supplies. Finally, the current attitude of North Carolina's citizens towards the problem of wrongful convictions has greatly contributed to the Commission's success -- Ms. Blimm believes that if the people did not share the belief that too many innocent people are in jails and prisons, the Commission would face greater obstacles in executing its mission. [46].

Ms. Blimm's greatest complaint about the Commission is its lack of resources. [47]. Despite the fact that the current staff is composed of excellent employees, a larger staff would make its everyday operations more efficient. Currently, the staff consists of the Executive Director, one Staff Attorney and one Administrative Assistant. These three people are entirely responsible for conducting the investigation of claims after the claim has passed the screening stage. This problem will probably be resolved when the Commission begins recruiting interns. [48]. Adequate funding appears to be the underlying source of the Commission's current limitations. Phoebe Zerwick reports that "advocates of the Innocence Inquiry Commission had hoped to get it started with an annual budget of \$480,000 to

pay for a staff of lawyers and investigators. The legislature appropriated less than half of that, \$210,000.” [49].

Three hundred and thirty prisoners have so far applied for Innocence Claim Review in North Carolina. [50]. The non-profit North Carolina Center on Actual Innocence conducts all of the initial screening of cases, including collecting and documenting letters from prisoners as they come in. Once a claim has passed the initial screening stage, it moves into the investigative phase, where there are currently four pending cases. If there is a finding of substantial credible evidence of actual innocence, the claim will be submitted to the Commission for a decision on whether the claims should be sent to the three-judge panel. [51].

Because the Commission is still in its infancy, the staff is scheduled to make their first presentation to the Commission panel in December. [52]. Currently, that panel is composed of a superior court judge, a district attorney, a defense attorney, a sheriff, a victim’s advocate, and a member of the public. In addition, there are two discretionary appointments to the Commission panel that are currently being filled by a police chief, and another defense attorney. [53].

### ***ADVICE TO NEWLY-CREATED COMMISSIONS***

Newly-Created Commissions should ensure that they are adequately staffed. [54]. Further, the language in the Attorney-Client Privilege Waiver must be clear and unambiguous. Under the North Carolina scheme, it is unclear whether the waiver also applies to a petitioner’s current appellate attorney. Finally, in order to encourage witnesses and others to come forward with exculpatory evidence, innocence inquiry commissions should provide immunity from further prosecution for perjury if a petitioner were to recant their testimony. [55].

## ***APPROACHES IN OTHER STATES***

Five states have replicated North Carolina's bill with some variations. None have yet to be enacted into law. All states have modeled their legislation to that of North Carolina's with some distinctions. Only the differences will be discussed.

### **Arizona**

Arizona's proposed legislation allows any judge in the jurisdiction where a petitioner's conviction took place to review that petitioner's wrongful conviction claim [56]. As a consequence, it is possible that the judge who presided over a petitioner's case where he was convicted would also be able to review the wrongful conviction claim. Such a formulation is problematic for the fair determination of claims because a biased reviewer is allowed to make determinations about the credibility of the claim. Most notably, North Carolina's law prevents the presiding judge and all appellate judges from reviewing innocence claims.

### **Indiana**

Indiana's proposed legislation requires that a petitioner exhaust all state and federal appeals before making an application for relief on a wrongful conviction claim. Further, if a petitioner musters enough votes to meet the sufficiency standard, the application does not get sent to a higher-level judge for review, but instead goes to the state's Office of the Public Defender for drafting and filing of a post-conviction application [57]. This scheme would result in a delay of years while a potential innocent petitioner remains behind bars. North Carolina's statute does not require an exhaustion of post-conviction relief. Rather, an application to the Commission can be made immediately after a conviction [58].

### **Florida**

In Florida, proposed legislation would have placed an innocence commission under the administrative umbrella of the Governor's office [59]. There is no indication in the proposed legislation whether the administration by the Governor's office would include fiscal management. If

the Governor's office is in control of the finances, the process of adjudicating innocence claims could become as arbitrary and tainted by political considerations as that for applications for clemency. A positive aspect of Florida's legislation was that the proposed commission would be able to find a petitioner factually innocent through unanimous vote by the commission members. This procedure would obviate the need to subject a claim to additional judicial review, thereby shortening the process and allowing an innocent person to be free sooner. This method also conserves judicial resources.

### **South Carolina**

South Carolina's proposed legislation would require a petitioner not only to waive his or her due process protections for the case related to the innocence claim, but would also require a waiver for matters unrelated to the claim [60]. Such waivers would allow commission members to probe petitioners regarding other possible crimes and to allow authorities to use any incriminating evidence that resulted against the petitioner or a third party. This requirement could substantially defeat the underlying purpose of an innocence commission by shifting the focus of the commission's activities from uncovering the truth about a petitioner's innocence claim to a law enforcement emphasis on solving or preventing crimes.

### **New York**

Finally, New York's proposed legislation for an innocence commission is the weakest model legislation and does not directly tackle the issue of innocence claims. The New York bill, which passed the Assembly and is now in the Senate, does not provide for a state investigative/determinative body [61]. The law would merely mandate the creation and funding (for a few years) of three non-profit organizations that would be tasked with investigating innocence claims. These non-profits would be similar to existing innocence projects around the country. Among other problems, the non-profit entities do not have the authority to properly investigate innocence claims because they lack subpoena powers. Despite positive aspects, such as requiring electronic recordings of police interviews and

interrogations, the New York bill unfortunately does not address the need for the creation of an effective means for those who are truly innocent to prove their innocence.

### ***CONCLUSION: CALIFORNIA NEEDS AN INNOCENCE COMMISSION***

In 2004 alone, California authorities arrested over 520,000 adults for alleged felony violations and convicted 243,365 of these [62]. Although there are no statistics to tell us how many of these were erroneous convictions, it would not be an overstatement to say that there could be numerous factually innocent people among those convicted, who remain incarcerated to this day and without recourse. A California Innocence Inquiry Commission is sorely needed in order to provide innocent people with a fair and expeditious way to prove their innocence without lingering in jail for decades while appeals are heard and in most circumstances denied. California's Commission must be comprehensive, fair and clear in its mission – and it must have the authority to investigate valid innocence claims thoroughly and effectively. California must avoid the pitfalls experienced by other states, whose legislative proposals are either too weak or diluted to actually accomplish their necessary purpose or which have foundered in state legislatures, victims of a lack of political will.

Barry Scheck and Peter Neufeld, co-founders of the Innocence Project at Cardozo School of Law, suggest that innocence commissions can take a variety of forms, “through legislative enactment, executive order, or appointment by the chief judicial officer of a state[,] . . . an interdisciplinary group[,] a non-profit organization, or a state university system . . . as long as that entity is delegated appropriate legal authority and resources to conduct fact-based investigations. . . whose findings arise from direct review of actual cases.” [63]. There are certain key features that are recommended: 1) Independence; 2) subpoena power (to compel testimony and production of documents); 3) “first-rate” investigative resources (including expert forensic science); 4) public transparency and accountability; and 5) non-binding findings and opinions on cases (to preserve political autonomy) [64]. Some have suggested that the CCRC in Britain (and its progeny, the NCIIC) may not be the best model to

implement in the U.S. because, although it has proven to be an effective tool in investigating and remedying wrongful conviction claims, its structural solution to the problem of wrongful convictions may open it to fatal criticism such as it creates a potentially costly governmental bureaucracy in a political environment hostile to both bureaucracy and criminal justice reform [65]. Another solution may be the creation of a smaller body that would be modeled on the National Traffic Safety Board which operates independently of the Federal Aviation Administration. This would eliminate the problems of a “dual mandate” in agency investigations and efficiency by virtue of streamlining the process [66].

The authors of this paper recommend that a California Innocence Commission resemble the current best-existing model, the North Carolina Commission with additional features in place to ensure that the process is fair, credible, and efficient. The California legislation should create a permanent commission that does not require legislative reauthorization. The legislation should provide adequate funding to the commission to ensure that a budget will be sufficient to handle at least 100 cases a year. The legislation should also give the commission the authority to declare a petitioner factually innocent through a unanimous vote, to speed the adjudication of claims, to obviate the need for additional judicial review, and to conserve judicial resources. The legislation should mandate that the commission be under the supervision of the judiciary and not a governmental agency. This would promote the perception that the commission is fair, impartial and free from political pressures.

Jerome Maiatico concluded his recent review article regarding the North Carolina Innocence Inquiry Commission with this passage:

Innocence commissions like the NCIIC and the CCRC do not directly address these systemic issues because they are designed to provide a safety net for individual miscarriages of justice. However, innocence commissions can help identify patterns in these types of cases and draw much-needed scholarly attention to the fallibilities of the criminal justice system. The NCIIC represents progress because its statutory reporting requirement will offer invaluable information on wrongful convictions, and that information could become the basis for systemic reform. The NCIIC's reports and recommendations, along with high-profile findings of innocence, could help promote a

climate of reform within the North Carolina criminal justice system. Indeed, the NCIIC's pioneering approach to postconviction review of innocence claims could also serve as a model for positive reform throughout the United States [67].

There is no doubt that North Carolina's Inquiry Innocence Commission serves as a model for positive reform. However, were California's commission to meet and exceed the standards set by North Carolina, other states would certainly follow California's lead.

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[18]

*Id.*

[19]

Jerome M. Maiatico, *All Eyes on Us: A Comparative Critique of the North Carolina Innocence Inquiry Commission*, 56 Duke L.J. 1345, 1346 (2007).

[20]

See Lissa Griffin, *The Correction of Wrongful Convictions: A Comparative Perspective*, 16 Am. U. Int'l L. Rev. 1241 (2001) for a discussion of the need for independent commissions generally; and see Barry C. Scheck & Peter J. Neufeld, *Toward the Formation of "Innocence Commissions" in America*, 86 Judicature 98 (2002) for a discussion of particular aspects of commission structure.

[21]

Christine Mumma, *The North Carolina Actual Innocence Commission: Uncommon Perspectives Joined By a Common Cause*, 52 Drake L. Rev. 647, 654 (2004).

[22]

[http:// www.innocenceproject.org/docs/NC\\_Innocence\\_Commission\\_Identification.html](http://www.innocenceproject.org/docs/NC_Innocence_Commission_Identification.html) (Last visited October 8, 2007).

[23]

James Romoser, *Convictions to get new scrutiny: Laws establish stricter standards, and commission will review cases*, Winston-Salem Journal, Sept. 10, 2007, at State regional News. (The two high-profiled cases referred to was that of Darryl Hunt and Dwayne Allen Dail. Two men exonerated by DNA after serving more than 18 years in prison for a crime they did not commit).

[24]

Mumma *supra* at 649.

[25]

Maiatico *supra* at 1358. See also House Bill 1323 / S.L. 2006-184 Summary of 2005-2006 Session; [www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2005&BillID=H1323](http://www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2005&BillID=H1323). (Last visited October 8, 2007.)

[26]

*Ibid.* footnote 89

[27]

N.C.G.S. § 15A-1468(a); Maiatico *supra* note 2.

[28]

Maiatico *supra* at 1371-1372.

[29]

According to “North Carolina Innocence Inquiry Commission Rules and Procedures” (2007), available at:

<http://www.aoc.state.nc.us/www/ids/Other%20Manuals/Innocence%20Inquiry/innocence%20commission%20rules%20and%20procedures,%20rev.%208-24-07.pdf>

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According to “Innocence Groups in North Carolina” (2007), available at:

<http://www.aoc.state.nc.us/www/ids/Other%20Manuals/Innocence%20Inquiry/Contact%20Info.pdf>

[31]

*id.*

[32]

*id.*

[33]

According to “North Carolina Innocence Inquiry Commission Rules and Procedures” (2007), available at:

<http://www.aoc.state.nc.us/www/ids/Other%20Manuals/Innocence%20Inquiry/innocence%20commission%20rules%20and%20procedures,%20rev.%208-24-07.pdf>

[34]

*id.*

[35]

Telephone interview with Kendra Montgomery Blimm, Executive Director of North Carolina Innocence Inquiry Commission, Raleigh, North Carolina. (October 30, 2007).

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Telephone interview with Kendra Montgomery Blimm, Executive Director of North Carolina Innocence Inquiry Commission, Raleigh, North Carolina. (October 30, 2007).

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[49]

See Benjamin Niolet, *Other reputations rose and fell, too*, The News & Observer, June 19, 2007 at A6, for critique related to Ms. Blimm's directorship of the Commission.

[50]

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AZ H.B. 2285 (2007).

[57]

IN S.B. 574 (2007).

[58]

For the first two years of the Commission's existence, it will only consider applications from petitioners who were convicted by a jury; 56 Duke L.J. 1345, 14 (2007) ("the NCIIC does not require by statute that defendants exhaust all appeals to be eligible for factual innocence review. Thus, defendants are allowed to make simultaneous claims through the NCIIC and court system.")

[59]

FL. S.B. 2564 (2007).

[60]  
S.C. S.B. 444 (2007).

[61]  
N.Y. A.B. 8693 (2007).

[62]  
Office of the Attorney General's Criminal Justice Statistic Center.  
[http://stats.doj.ca.gov/cjsc\\_stats/prof05/00/3A.htm](http://stats.doj.ca.gov/cjsc_stats/prof05/00/3A.htm) (Felony arrests);  
[http://stats.doj.ca.gov/cjsc\\_stats/prof05/00/6.htm](http://stats.doj.ca.gov/cjsc_stats/prof05/00/6.htm) (Adult felony disposition).

[63]  
Barry C. Scheck & Peter J. Neufeld, *Toward the Formation of "Innocence Commissions" in America*,  
86 *Judicature* 98 (2002) at 100.

[64]  
*Id.* at 101.

[65]  
*Id.* at 102.

[66]  
*Id.* at 105.

[67]  
Maiatico, *supra* at 1345.