

University of Cincinnati Law Review

Volume 80 | Issue 4

Article 8

September 2013

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Recommended Citation

Huang Shiyuan, *Chinese Wrongful Convictions: Discovery and Rectification*, 80 U. Cin. L. Rev. (2013)
Available at: <https://scholarship.law.uc.edu/uclr/vol80/iss4/8>

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CHINESE WRONGFUL CONVICTIONS: DISCOVERY AND RECTIFICATION

*Huang Shiyuan**†

I. INTRODUCTION

Many wrongful conviction cases have been rectified recently in China. It is undoubtedly very important to find the causes of these erroneous cases and reform the Chinese criminal judicial system to prevent miscarriages of justice from happening again. But no matter how hard we try, some wrongful convictions are inevitable. So it is also very important to establish an effective mechanism to discover and rectify erroneous cases.

In this Article, I discuss how Chinese wrongful convictions have been discovered and rectified and make suggestions for how to establish a more effective mechanism in China to discover and rectify erroneous cases. When I studied how Chinese wrongful convictions have been discovered and rectified, I selected twenty-six widely reported, officially acknowledged wrongful convictions as my objects of research. These wrongful convictions include the cases of: Chen Jinchang, Chen Shijiang, Du Peiwu, Hao Jinan, Huang Yaquan, Li Detian, Li Huawei, Li Jie, Liu Qian, Meng Cunming, Pei Shutang, Qin Junhu, She Xianglin, Sun Wangang, Teng Xingshan, Wang Haijun, Wang Junchao, Wen Chongjun, Wu Daquan, Wu Hesheng, Xu Jibin, Xu Jingxiang, Yang Mingyin, Yang Yuzhong, Zhao Xinjian, and Zhao Zuohai.

Part II of this Article discusses the evidential basis for the rectification of the twenty-six wrongful conviction cases. Fourteen cases were corrected because the real perpetrators were found. In six cases, the courts of retrial asserted that the inculpatory evidence was insufficient to prove the guilt of the convicted. The other six cases were rectified because of the reappearance of the alleged murder victims, new expert testing, or witness perjury. No effective conviction was overturned as a result of new DNA testing in China. Some of these cases were corrected easily, but others were corrected with great difficulty.

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† This article is being published as part of a symposium that took place in April 2011 in Cincinnati, Ohio, hosted by the Ohio Innocence Project, entitled The 2011 Innocence Network Conference: An International Exploration of Wrongful Conviction. Funding for the symposium was provided by The Murray and Agnes Seasongood Good Government Foundation. The articles appearing in this symposium range from formal law review style articles to transcripts of speeches that were given by the author at the symposium. Therefore, the articles published in this symposium may not comply with all standards set forth in Texas Law Review and the Bluebook.

Part III discusses the organizations that make the rectification of wrongful convictions possible. Generally speaking, courts, procuratorates, congresses, Politics and Law Committees (PLCs), and media all played an important role in the rectification of wrongful convictions. Certainly, many wrongful convictions have been rectified mainly because of the involvement of one of these organizations.

Part IV makes suggestions on how to establish a more effective mechanism in China to discover and rectify erroneous cases. In China, the procuratorates are reluctant to present protests against wrongful convictions to courts, and courts are reluctant to retry, on their own initiative, the wrongful conviction cases, even if there is strong evidence proving the innocence of the convicted. PLCs and congresses sometimes successfully prompt courts to rectify wrongful convictions, but their role in the rectification of wrongful convictions should be eliminated because their involvement is unprofessional and undermines judicial independence. China should establish Criminal Case Review Commissions, drawing heavily on the Criminal Case Review Commission of the U.K. and the Public Inquiries of Canada, with some significant modifications. Further, China should establish innocence projects, copying the Innocence Projects of the U.S. These independent and professional organizations will help to prompt courts to rectify erroneous cases.

II. THE EVIDENTIAL BASIS FOR RECTIFICATION OF WRONGFUL CONVICTIONS

In the twenty-six wrongful conviction cases, three cases were rectified because the alleged murder victims turned up alive, one because new testing by experts showed that the convicted was not the real perpetrator, two because witnesses admitted that they perjured themselves against the convicted, six because courts found that there was insufficient inculpatory evidence, and fourteen because the real perpetrators were found.

A. The Reappearance of the Alleged Murder Victims

In three cases, the men convicted of murder were proved to be innocent when the alleged victims turned up alive. These wrongful convictions were rectified easily and quickly because the errors were so obvious and sensational, and because the media reported them widely.

In the first case, in 1998, Zhao Zhenshang's nephew reported to the police that his uncle had been missing since 1997 and that he suspected that Zhao Zuohai, who lived in the same village with Zhao Zhenshang,

killed him. On May 8, 1999, a beheaded body was found near the village. Zhao Zuohai was coerced into making a confession and convicted of murder in 2003. On April 30, 2010, Zhao Zhenshang reappeared in the village. He said that he had a fight with Zhao Zuohai and fled after the fight because he feared that Zhao Zuohai would kill him. Henan Province Higher People's Court overturned Zhao Zuohai's conviction on May 8, 2010. One day later, Zhao Zuohai was exonerated.¹

In the second case, on January 20, 1994, Zhang Zaiyu, She Xianglin's wife, disappeared. Her relatives suspected that she had been murdered by She. On April 11, 1994, a corpse was discovered in a pond. Zhang's relatives identified the corpse as Zhang. In 1998, She was sentenced to fifteen years imprisonment for murdering Zhang. On March 28, 2005, Zhang returned to her hometown. On March 30, Jingmen City Intermediate People's Court threw out She's conviction and ordered that Jingshan County People's Court retry the case. She was released from prison on April 1 and was declared to be innocent on April 13.²

In the third case, a corpse was discovered in Mayang County of Hunan Province in 1987. The police found that Shi Xiaorong, a maid at a hotel of Mayang County, went missing at the same time. Shi's sister told the police that the discovered corpse was Shi. Teng Xingshan, a butcher, was sentenced to death for Shi's murder and was executed in 1989. Four years later, Shi turned up alive in her hometown in Guizhou province. She had been abducted and trafficked to Shandong province in 1987. Teng Xingshan's wife heard about this in 1994 but did not petition to the court to overthrow the conviction. At the end of 2004, she told her daughter Teng Yan that the victim had reappeared. When Teng Yan asked her mother why she did not tell her earlier, her mother said that "we are so poor and I am afraid to engage in a lawsuit against the government."³ On December 12, 2004, Teng Yan applied to Tenghua City Legal Aid Center for legal assistance, and the center appointed a lawyer to help her present a petition to Hunan Province Higher People's Court. The court held a meeting late into the night to discuss the case on the day it received the petition. In the following half year, relevant government agencies of Hunan made thorough investigations in more than ten cities and counties in seven provinces. On July 8, 2005, Hunan

1. *Zhao Zuohai bei Wuzui Shifang* [Zhao Zuohai Was Exonerated], JINGHUA SHIBAO (Beijing), May 10, 2010, available at http://epaper.jinghua.cn/html/2010-05/10/content_546910.htm.

2. *Hubei she Xianglin "Shaqi" an: Yuanan shi Zemyang Xingcheng De?* [The Murder Wife Case of She Xianglin of Hubei Province: How the Innocent Person Was Wrongfully Convicted], YAHOO!, <http://news.cn.yahoo.com/05-04-/361/2ap4l.html> (last visited Oct. 6, 2011).

3. Chen Tuo, *Nongmin 17 Nian Qian yin Sharen Suishi bei Qiangjue Beihairen Reng Zaishi* [A Farmer Was Executed 17 Years Ago for Murder and Mutilation and the Victim Is Still Alive], MINZHU YU FAZHI SHIBAO (Beijing), Feb. 13, 2006, available at <http://news.qq.com/a/20060213/000867.htm>.

Province Higher People's Court declared that Teng Xingshan had been innocent.⁴

B. New Testing by Experts

Only one of the twenty-six cases was rectified through new expert testimony; the case was rectified quickly. In Xu Jibin's case, three medical experts retained by the police concluded that Xu's blood type matched the semen collected at the crime scene. Xu was convicted of rape in 1991 and released after completing his sentence in 1999. In early 2006, an attorney suggested that Xu ask other medical experts to do a blood test for him. Several experts retained by him examined Xu and found that his blood type was type O. Since the blood type of the semen left at the crime scene was type B and the testimonies of the three experts retained by the police played a vital role in his conviction, Xu presented a petition to Hebei Province Higher People's Court. The court ordered Handan City Intermediate People's Court to handle the case, and the latter overthrew Xu's conviction and ordered Quzhou County People's Court to retry the case. On July 28, 2006, Xu was declared to be not guilty.⁵

It is not surprising that this wrongful conviction was rectified quickly because the testimony of new experts clearly showed that the convicted was innocent.

C. Witness Perjury

Two convicted persons, Pei Shutang and Li Detian, were found to be innocent because the codefendant or the alleged victim admitted that each had committed perjury. The rectification of these convictions was very difficult, because the courts disfavored the recantation of the testimonies and gave little probative value to it. The Pei Shutang case, which involves witness perjury, is discussed below.

On March 8, 2006, Li Detian was sentenced to twelve years imprisonment for committing mayhem with four other men. In December, 2006, Li met one of the four codefendants in prison. This codefendant told Li that it was Zhang Baoyu and Cai Shulan who provoked him and the other three codefendants to commit the mayhem; Zhang Baoyu and Cai Shulan also asked them to tell the police that Li was the instigator. On September 25, 2008, Li Detian was declared to be

4. *Cuo sha Teng Xingshan [Teng Xingshan Was Wrongfully Executed]*, XIAOXIANG CHENBAO (Changsha), June 9, 2008, available at <http://www.xxcb.cn/show.asp?id=913519>.

5. *Fazhi Zaixian: Xuezheng [“The Rule of Law Online”: Blood Evidence]*, YANGSHI, available at <http://news.sina.com.cn/s/2006-09-19/163411050148.shtml>.

innocent by the Liaoning Province Higher People's Court.⁶

D. Insufficient Evidence

In the cases of Chen Shijiang, Liu Qian, Meng Cunming, Sun Wangang, Wen Chongjun, and Xu Jingxiang, there was no new evidence showing that the convicted persons were innocent; however, the courts of retrial claimed that there was insufficient evidence to prove the crimes, so the courts overturned these convictions. The rectification of all of these cases was difficult. The process of the rectifications of the Chen Shijiang case, the Meng Cunming case, the Sun Wangang case, and the Xu Jingxiang case is discussed below. It is no surprise that when there is no new evidence, a judge is reluctant to overthrow a conviction just because his opinion on whether there is sufficient inculpatory evidence is different from the judge who made the conviction.

E. Finding the Real Perpetrator

The other fourteen wrongful convictions were corrected because the real perpetrators were found.

Some wrongful convictions were corrected because real perpetrators who were detained for other crimes confessed to the previous crimes. In one case, Du Peiwu, a police officer of Kunming City Police of Yunnan Province, was convicted of shooting dead two police officers, his wife, and Wang Junbo in 1999. On June 17, 2000, Yang Tianyong was arrested for other reasons by the Kunming City Police, and the police found in Yang's house a pistol belonging to Wang Junbo that was used to kill the two police officers. Yang Tianyong confessed that he robbed Wang of his pistol and killed him and Du's wife with it.⁷ Having obtained the evidence, Kunming City Police reported this case immediately to Kunming City PLC, which ordered that the police, the procuratorate, and the court of Kunming City work together to investigate the case. On July 7, Yunnan Province PLC called a conference of the officials from Kunming City PLC and Kunming City

6. Huo Shiming & Zhang Guoqiang, *Bei Xuangao Wuzui de Qianqianhouhou Liaoning Jiuzheng Yiqi Xingshi Yuanan* [The Whole Story of the Exoneration: A Wrongful Conviction Was Rectified in Liaoning Province], FAZHI RIBAO (Beijing), Sept. 28, 2008, available at <http://unn.people.com.cn/GB/14748/8119469.html>.

7. See Guo Guosong & Zeng Min, *Shishang Haiyou Baoqingtian ma—Du Peiwu de “Siqui Yishu” Cuirenlexia* [Is There Still a Justice Bao: The Letters of Dui Peiwu Written on Death Row Move People to Tears], NANFANG ZHOUMO (Guangzhou), Aug. 24, 2001, available at <http://news.sohu.com/36/45/news146364536.shtml>; Peng Xiancai & Shi Jiasan, *Dui Peiwu Cuoan de Qianqianhouhou* [The Whole Story of the Wrongful Conviction Case of Dui Peiwu], DIANCHI CHENBAO (Kunming), Nov. 8, 2000, available at <http://unn.people.com.cn/GB/channel23/176/842/200011/08/6165.html>.

Police and decided to rectify the Du Peiwu case as soon as possible. On July 11, Yunnan Province Higher People's Court declared that Du was innocent.⁸

In a second case, Hao Jinan was convicted of murdering Liu Yinhe in 1998. At two a.m. on April 11, 2006, several police officers who were patrolling found three men walking in a suspicious manner. When the officers approached them, the men fled. One of them wanted to jump into a river but fell to the bank and broke one leg. The officers caught him and found in his pocket a screwdriver that was used to burgle. They took him to the hospital and took care of him. One month later his heart was touched by the officers' kindness, and he confessed that he was one of the perpetrators that killed Liu Yinhe.⁹

Chinese police officers generally believe that some suspects probably have committed other crimes aside from the ones under investigation, so they not only try their best to solve the crimes under investigation, but also other crimes.

The Zhao Xinjian case was corrected because police caught the real perpetrator under pressure from the victim and the defendant. In this case, a young girl was raped and killed in the Bozhou City of Anhui Province in 1987. The police summoned Li Weifeng and collected his hair. He fled, but his hair and the hair left at the crime scene were sent to the laboratory of the Ministry of Public Security for testing. The results showed that they matched. Zhao Xinjian was arrested because his clothes were found at the crime scene. He received a death sentence with reprieve. The relatives of the victim insisted that he should be sentenced to the death penalty and be executed at once. The relatives of Zhao believed that he was innocent and should be freed from prison. Both sides presented petitions to local authorities. These petitions attracted the attention of the director of the Bozhou City Public Security Bureau. He ordered his subordinates to catch Li Weifeng. After Li Weifeng was caught, he confessed to the rape and murder.¹⁰

In the Yang Mingyin case, the real perpetrators were caught because the suspect in another case told investigators that it was they who committed the crime. Yang Mingyin was convicted of murdering a couple in 2000. In 2005, Zhang Ming was detained for embezzlement of public funds. Investigators told him that he would probably be sentenced

8. Xiancai & Jiasan, *supra* note 7.

9. *Henan Nongmin Mengyuan Ruyu 10 Nian zao Xingxun Bigong Pizang bei Zha* [A Farmer of Henan Province Has Been Wrongfully Imprisoned for 10 Years and One of His Spleens Was Resected as a Result of Torture], ZHONGGUO QINGNIAN BAO (Beijing), Dec. 26, 2007, available at <http://news.163.com/07/1226/09/40KJSOFQ0001124J.html>.

10. Li Guangming, *Anhui Bozhou Jiuzheng yi qi Yuanan* [A Wrongful Conviction Was Rectified in Bozhou City of Anhui Province], FAZHI RIBAO (Beijing), Nov. 6, 2006, available at <http://legal.people.com.cn/GB/42733/5001936.html>.

to five years imprisonment, but that if he could produce important leads for solving other cases, his sentence would be commuted to a lighter punishment. He told the investigators that Zhu Faquan, Tian Zhong, and Li Yong murdered the couple. Zhu Faquan and Zhang Ming were relatives. One day when drinking together, Zhu had admitted the crime to Zhang.¹¹

In some cases the real perpetrators were found because they surrendered themselves to the police. One example of this is the case of Qin Junhu and Lan Yongkui. In June 2000, Qin Junhu and Lan Yongkui were convicted of murdering a teacher. When Lan was detained in jail waiting for trial, Ya Hansheng, who was charged with larceny, was detained in the same jail. They were detained together for three months. Lan was older than Ya and often helped him when Ya was bullied by other prisoners. Lan often told Ya that he was innocent. As one of the real murderers (the other one was Qin Jian), Ya was moved by Lan's help and felt guilty for Lan's detention. He also knew that, because Qin Jian frequently committed crimes, Qin would be caught by the police sooner or later. All of these factors made Ya confess the murder when his sentence for larceny was completed in August 2000.¹²

In the Wu Daquan case and the Wang Junchao case, the wrongfully convicted man met the real perpetrators in prison and persuaded them to confess to the police.

In 2007, Wu Daquan was convicted of murdering a woman with Shi Biyao. After Wu Daquan had been in prison for one year, he met Ban Cunquan, who had actually killed the woman with Shi Biyao and was put into prison for another murder. Wu Daquan persuaded Ban Cunquan to confess to the police.¹³

In 1999, Wang Junchao was convicted of raping his ten-year-old niece. In prison, he met Wang Xueshan, who was convicted of raping another young girl. Wang Xueshan asked him whether he was Wang Junchao. Wang Junchao denied it out of distrust of the stranger. Wang Xueshan then said that it was not Wang Junchao who had raped his niece. Wang Junchao reported this to the official of the prison. Under investigation, Wang Xueshan confessed that he had raped Wang Junchao's niece. He

11. Li Yin & Yang Jiang, *Hunan Nongmin qu da Cheng Zhao Shinian Yuanyu hou bei Ruanjin* [A Farmer of Huan Province Received House Arrest After Being Wrongfully Imprisoned for Ten Years as a Result of a Coerced Confession], XINMIN ZHOUKAN (Shanghai), Sept. 27, 2006, available at <http://news.163.com/06/0927/13/2S1F51U900011SM9.html>.

12. Jiang Guibin & Qu Dan, *Xingxun Bigong Zaocheng de Yuan jia Cuoan* [A Wrongful Conviction as a Result of Coerced Torture], GUANGMING RIBAO (Beijing), Feb. 4, 2005, available at http://www.gmw.cn/content/2005-02/04/content_177726.htm.

13. Liu Gang, *Wu Daquan: Ruo bu Ouyu Zhenxiang, wo hai Mengyuan Yuzhong* [Wu Daquan: I Would Still Be in Prison if I Had Not Come Across the Real Perpetrator], XIN JING BAO (Beijing), Nov. 15, 2010, available at <http://society.people.com.cn/GB/13209669.html>.

said that, after he had committed the crime, his conscience was troubled and that he repented having done it.¹⁴

Of the fourteen cases, some cases, such as the Du Peiwu case, were rectified quickly. But most of them, such as the Wang Haijun case which is discussed in detail below, were rectified only with great difficulty.

As DNA technology has become widely used in the identification of corpses in present-day China, the possibility of the misidentification of a corpse is very small, as will be the possibility of rectifying a wrongful conviction as a result of reappearance of an alleged murder victim. Although “finding the real perpetrator” is the main evidential basis for correcting erroneous cases so far, it is mere coincidence that the wrongfully convicted person meets the real perpetrators in prison. Furthermore, with the strengthening of the rights of the suspects (especially the right not to be tortured), it is unlikely for the police to obtain a confession from a person—arrested for one crime—that the person had also committed another crime. As for witness perjury, it led to the correction of only two of the twenty-six wrongful conviction cases. With more and more witnesses being called to trial and subjected to cross-examination in China, witness perjury is less likely to be an evidential basis for correcting wrongful convictions. Although six wrongful conviction cases were rectified because the courts of retrial claimed that the inculpatory evidence was insufficient, there is no doubt that this kind of rectification will not occur frequently. When no new evidence is found, judges are generally reluctant to overturn an effective conviction just because they and the judges who made the conviction have different opinions on whether the inculpatory evidence is sufficient.

There is only one case that was rectified because of new expert testing. Although most of the physical evidence of the alleged wrongful conviction cases probably has been lost or destroyed, there may still be some evidence (including DNA evidence) which is well preserved. If the police agree to use independent labs to test the evidence at the request of the convicted, maybe many wrongful convictions, especially those in which DNA evidence is preserved but DNA testing was not conducted, will be corrected. It should be noted that there have been 273 postconviction DNA exonerations in the United States through September 26, 2011,¹⁵ but not one in China.

14. Jing Changshui, Yang Wanzhou & Zhang Huijun, *Henan yi Liqi Xingan Qidong Zaishen Chengxu* [A Strange Criminal Case Was Brought Up for Retrial], *FAZHI RIBAO* (Beijing), Aug. 12, 2005, available at <http://news.sohu.com/20050812/n226654666.shtml>.

15. *Know the Cases*, INNOCENCE PROJECT, <http://www.innocenceproject.org/know/> (last visited Sept. 26, 2011).

III. ORGANIZATIONS THAT MAKE THE RECTIFICATION OF WRONGFUL CONVICTIONS POSSIBLE

Nearly all of the twenty-six wrongfully convicted persons insisted that they were innocent. They presented petitions to courts, procuratorates, police officers, PLCs, and congresses. Most of them paid a high price for the exoneration of the wrongful conviction. Their relatives helped them to present petitions.

The case of She Xianglin provides a case in point. She presented petitions when he was imprisoned and asked his relatives to present petitions for him whenever he met them on visiting days. His mother was detained for several months by police for not ceasing to present petitions, and she passed away shortly after she was released from jail. His brother was detained for more than forty days for presenting petitions and was intimidated into stopping.¹⁶ Clearly, all of this occurred before the alleged “victim” turned up alive.

Generally speaking, because there are no independent and professional organizations, like the Criminal Cases Review Committee of the U.K. or the Innocence Projects of the U.S., that can help them, wrongfully convicted persons in China can seldom produce strong evidence to support their petitions. Even if they can, only when these petitions gain the attention of at least one of the influential organizations might the wrongful convictions be rectified. When the courts pay attention to the petitions of particular wrongfully convicted persons, the convictions will *probably* be rectified. When the procuratorates, congresses, or PLCs give attention to a wrongful conviction and ask a court to rectify it, the wrongful conviction *possibly* will be rectified because these organizations, especially the PLCs, have great influence on the decisions of courts. Finally, the media sometimes plays an important role in the rectification of wrongful convictions.

A. Courts: The Pei Shutang Case

According to Articles 205 and 206 of the Criminal Procedure Law, if the president of a court at any level finds that the effective judgment of his court is wrong, he shall refer the judgment to the adjudication committee. If the adjudication committee decides that the case should be retried, a new collegiate bench shall be formed for the retrial. If the Supreme People’s Court finds that the effective judgment of a court at any level, or if a court at a higher level finds that the effective judgment

16. Zhang Li, *Yurenjie zhe Tian, ta “Wuzui Chuyu”* [On April Fool’s Day He Was Exonerated], NANFANG ZHOUMO (Guangzhou), Apr. 7, 2005, available at <http://www.southcn.com/weekend/top/200504070009.htm>.

of a court at a lower level, is wrong, it shall retry the case or demand that a court at a lower level retry the case.

In practice, when an effective conviction is overturned, whether or not the police officers, the prosecutors, or the judges who originally handled this case committed misconduct, they probably will face sanctions. The sanctions may include the decrease of salary, demotion, and even criminal punishment. In order to maintain good connections (*guanxi*) with the police officers, prosecutors, and judges who handled this case and the police, procuratorates, and courts to which they belong, the courts that have received the petitions of the convicted probably will not overturn a conviction even if they believe that the convicted should be exonerated.

It is worth noting that the Supreme People's Court and the courts at the provincial level are more likely to rectify wrongful convictions. These courts, especially the Supreme People's Court, are more detached than the courts at lower levels, because courts at their levels are less likely to be the courts that originally tried the erroneous cases. Thus there is no need to give way to pressure from the police, the procuratorates, or the courts that originally handled the case. A relevant case to consider on this point is that of Pei Shutang.

Pei Shutang, an official of Wuwei City Bureau of Culture in Gansu Province, was convicted of raping a young woman in his office and sentenced to seven years imprisonment in 1986. The alleged victim did not appear in court, but she told the police that Pei had raped her; the records of her statement were presented to the court and played a vital role in convicting Pei. Pei appealed, but his appeal was rejected on March 21, 1987. On the same day, Yin Ping, Pei's defense attorney, obtained a record of a statement in which the victim claimed that she had been forced by her husband and Pei's direct superiors to fabricate stories to implicate Pei in the alleged crime. Yin Ping then presented petitions to Wuwei City Intermediate People's Court, Wuwei City People's Procuratorate, Gansu Province Higher People's Court, Gansu Province People's Procuratorate, and the Supreme People's Court, asking for retrial of the case, but all of these petitions were rejected.¹⁷

From 1986 to 2010, Pei wrote 3,007 petitions and sent them to relevant government agencies at all levels. Before he was released in 1993, his wife also presented petitions for him. After he was released, he went to Wuwei City, Lanzhou City (the capital of Gansu Province), and Beijing to present petitions. The alleged victim left Wuwei City before Pei was released from prison. Pei went to many cities to find her, but

17. Ma Guoshun & Wen Jie, *Yige Mingyuan zhe de 25 Nian Shensu Lu* [25 Years of Petition of a Wrongful Convicted], GANSU RIBAO (Lanzhou), Jan. 28, 2011, available at <http://gsrb.gansudaily.com.cn/system/2011/01/28/011873009.shtml>.

failed. In October 2000, the alleged victim found Pei and gave him a letter in which she repented for what she had done to him. She told Pei that the director and deputy director of Wuwei City Bureau of Culture disliked him and promised that if she perjured herself against him, they would help her and her husband find jobs. Her husband then forced her to perjure herself. Offering the letter of the alleged victim, Pei presented petitions to the Supreme People's Court many times, but in vain. In May 2007, Pei took the alleged victim with him to present a petition to the Supreme People's Court, and finally it worked. On February 17, 2009, the Supreme People's Court ordered Gansu Province Higher People's Court to retry the case. On December 11, 2009, Gansu Province Higher People's Court ordered Wuwei City Intermediate People's Court to retry the case. On August 31, 2010, Wuwei City Intermediate People's Court ordered Liangzhou County People's Court to retry the case. On January 27, 2011, Liangzhou County People's Court declared that Pei Shutang was not guilty.¹⁸

B. Procuratorates: The Sun Wanguang Case, the Meng Cunming Case, and the Xu Jingxiang Case

According to Article 129 of the Constitution of the People's Republic of China (China's Constitution), the people's procuratorates are legal supervision organs of the state. In order to ensure the correct implementation of laws, when they find that an effective judgment of a court is wrong, they should present a protest to the court against the judgments.

According to Articles 205 and 206 of the Criminal Procedure Law, if the Supreme People's Procuratorate finds that the effective judgment of a court at any level is wrong, or if a procuratorate at a higher level finds that the effective judgment of a court at a lower level is wrong, it shall present a protest to the court at the same level against the judgment. Then the court shall form a collegial panel to retry the case.

In practice, the procuratorates seldom present protests against effective convictions. As mentioned above, when an effective conviction is overturned, the police officers, prosecutors, and judges who originally handled the case will probably assume responsibility for it. In order to maintain good relations with them, the procuratorates rarely present protests against effective convictions. Even if the procuratorates intend to present protests against a conviction, they will probably communicate with the courts before doing so. Generally speaking, protests always result in the overthrow of effective convictions, because if a court insists

18. *Id.*

during prior communications that the convicted is guilty, the prosecutor will not present protests.

In three of the twenty-six cases, the procuratorates presented protests against wrongful convictions to courts; the courts retried these cases and declared in each that the convicted was not guilty.

In the first case, Sun Wangang was arrested for murdering his girlfriend, Chen Xinghui, by Qiao County Police in Yunnan Province in 1996. Two years later he was sentenced to the death penalty with reprieve by Yunnan Province Higher People's Court. He and his relatives insisted that he was innocent and presented petitions against the conviction to relevant government agencies of Yunnan Province, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Justice, and the National People's Congress, but all in vain. On June 30, 2002, Qiao County Police broke up a gang involved in robbery, rape, and murder. The relatives of the investigators told someone else that the leader of the gang, Li Maofu, confessed the murder of Chen Xinghui. Sun's father told Sun the news in a letter, and Sun wrote the information in his petitions and sent them to relevant government agencies. At the beginning of 2003, Chen Zhendong, director of the Prison and Detention Department of the Supreme People's Procuratorate, received the petition from Sun and immediately demanded that Yunnan Province People's Procuratorate review it. On June 20, 2003, Yunnan Province People's Procuratorate began to investigate the case and found that although Li Maofu was not the real perpetrator of Chen Xinghui's murder, Sun Wangang was probably wrongfully convicted. On September 18, 2003, Yunnan Province People's Procuratorate suggested that Yunnan Province Higher People's Court retry the case. Yunnan Province Higher People's Court retried Sun Wangang on January 15, 2004 and declared him to be not guilty on February 10, 2004.¹⁹

In the second case, Meng Cunming was convicted of rape in 1995 by Zhangjiakou City Intermediate People's Court of Hebei Province. He insisted that he was innocent, and his father helped him present petitions to Hebei Province People's Procuratorate. At the end of 1997, Hebei Province People's Procuratorate ordered that Zhangjiakou City People's Procuratorate review the case. On June 11, 2004, Zhangjiakou City Intermediate People's Court decided to retry the case. On September 14,

19. "Sixing fan" Sun Wangang bei Xuangao Quzui [The Condemned Sun Wangang Was Declared to Be Innocent], JIANCHA RIBAO (Beijing), Sept. 2, 2008, available at http://www.jcrb.com/zhuanti/fzzt/nwya/rwwz/200809/t20080902_68758.html.

2005, Meng was declared to be not guilty.²⁰

In the third case, in 1992, Xu Jingxiang was arrested for robbery by Luyi County Police in Zhoukou City, Henan Province. Li Chuangui, an investigator of the case, reported to the leaders of Luyi County Police that the case could not be transferred to prosecutors yet because there was still not enough evidence to prove Xu's guilt. In July 1993, a leader of Luyi County Police received a report alleging that Li Chuangui concealed some inculpatory evidence from the Xu case. In November, 1993, Luyi County People's Procuratorate charged Li with concealing inculpatory evidence, but Luyi County Court found him not guilty. Luyi County People's Procuratorate then presented a protest to Zhoukou Intermediate People's Court, who rejected the protest.²¹

Xu was indicted for robbery by Luyi County People's Procuratorate in 1996 and found guilty by Luyi County People's Court in March 1997. In November 1997, Zhoukou City People's Procuratorate requested that Henan Province People's Procuratorate present a protest against the effective verdict of Li. Jiang Hansheng, a prosecutor for Henan Province People's Procuratorate, reviewed all the documents and files from the Li case and the Xu case and found that the inculpatory evidence was insufficient. Henan Province People's Procuratorate then demanded that Zhoukou City People's Procuratorate present a protest against Xu's conviction to Zhoukou City Intermediate People's Court. Zhoukou City People's Procuratorate presented the protest, and Zhoukou City Intermediate People's Court demanded that Luyi County People's Court retry the case. Luyi County People's Court found Xu guilty again. Xu appealed the conviction, and Zhoukou City Intermediate People's Court upheld the conviction. On May 13, 2003, Henan Province People's Procuratorate presented a protest against the conviction to Henan Province Higher People's Court. On January 10, 2005, Henan Province Higher People's Court dismissed the conviction and demanded that Luyi County People's Court again retry the case. On March 7, 2005, Henan Province People's Procuratorate demanded that Luyi County People's Procuratorate withdraw the indictment against Xu. On March 15, 2005, Xu was released from prison.²²

The rectification of the above three cases all involved the Supreme People's Procuratorate or People's Procuratorates at provincial levels. In

20. Li Yanhong, *Nanzi Zaoyu Qiangjian Ruyu Niunian [A Man Convicted of Rape Was Wrongfully Imprisoned for Nine Years]*, YANZHAO DUSHI BAO (Shijiazhuang), July 20, 2007, available at <http://news.sina.com.cn/s/1/2007-07-20/021912237000s.shtml>.

21. Zhao Limin, Zhao Fang & Zhang Hongliang, *Xu Jingxiang Chonghuo Ziyou de Qianqianhouhou [The Whole Story of the Exoneration of Xu Jingxiang]*, JIANCHA RIBAO (Beijing), Apr. 13, 2005, available at <http://club.kdnet.net/dispbbs.asp?id=3167112&boardid=1&page=1&1=1#3167112>.

22. *Id.*

the Sun Wanguang case, the Supreme People's Procuratorate demanded that Yunnan Province People's Procuratorate review the case. In the Meng Cunming case, Hebei Province People's Procuratorate demanded that Zhangjiakou City People's Procuratorate review the case. In the Xu Jingxiang case, Henan Province People's Procuratorate demanded that Zhoukou City People's Procuratorate present a protest against Xu's conviction to Zhoukou City Intermediate People's Court. The reason why the Supreme People's Procuratorate and the People's Procuratorates at provincial levels are more likely to present protests is that, as the Supreme People's Court and the People's Court at provincial levels, they probably did not handle these cases before and need not give in to pressure from the police, the procuratorates, or the courts at the lower levels that had handled these cases before.

C. The Politics and Law Committee: The Chen Jinchang Case and the Huang Yaquan Case

PLCs form a functional branch of the Chinese Communist Party Committee at all levels. Their responsibilities include implementing the Chinese Communist Party's policy in legal affairs; nominating judges and prosecutors; and solving disputes among police, procuratorates, and courts. Once a PLC decides that a conviction should be overturned, a court will always retry the case and overturn the conviction.

For instance, in one case, Chen Jinchang was arrested in 1995 by Fuyuan County Police in Yunan Province and then convicted of murdering Fan Zefang. In May 1997, Fuyuan County Police arrested Zhang Rongdong for another crime, but Zhang mentioned that he had killed Fan two years earlier. Fuyuan County Police reported this to Fuyuan County PLC. The PLC organized a special team whose members came from the police, the procuratorate, and the court of Fuyuan County to investigate the case. In December 1997, the team concluded that Chen was innocent and that Zhang was the real perpetrator of the murder. On February 17, 1998, Chen was retried and found to be not guilty by Yunnan Province Higher People's Court.²³

In a second case, on July 17, 2001, Hainan Province Higher People's Court convicted Huang Yaquan, Huang Shengyu, and Hu Yadi of murdering Guo Taihe and sentenced them to the death penalty with reprieve. On December 30, 2001, Hu Yadi told Sanya City People's

23. Fang Sanwen, Zhao Jianwu & Zhang Ainong, *Wugu Qingnian qu da Cheng Zhao bei pan Sixing Yunnan Teda Yuanan Jiujiang Ruhe Shouchang* [An Innocent Young Man Was Tortured to Confess and Sentenced to Death Penalty, Who Knows How the Serious Erroneous Case Ends], NANFANG ZHOUMO (Guangzhou), May 15, 1998, available at <http://simon7217.blog.163.com/blog/static/20028200571649220/>.

Procuratorate that it was Huang Changqiang and Huang Kaizheng, not Huang Yaquan or Huang Shengyu, who had killed Guo Taihe with him. Sanya City People's Procuratorate reported this to Hainan Province People's Procuratorate, and the latter demanded that the former investigate without delay. Later, Hu Yadi told the interrogators that his cousin, Hu Yawen, was involved in the case, too. The investigators then questioned Hu Yawen and he confessed. On April 8, 2002, Hainan Province People's Procuratorate requested that Hainan Province PLC demand that Hainan Province Police find and arrest Huang Changqiang and Huang Kaizheng as soon as possible. Hainan Province PLC did as requested, but the police did not take effective measures to track down the two escaped suspects. On February 25, 2003, the Hainan Province People's Procuratorate made the same request to Hainan Province PLC. On March 5, 2003, Hainan Province PLC called a meeting of the leaders of the police and the procuratorate and ordered the police to do all they could to arrest the two escaped suspects. On July 29, 2003, Huang Kaizheng, who had escaped for ten years, was arrested. On September 1, 2003, Hainan Province Higher People's Court overthrew the convictions of Huang Yaquan and Huang Shengyu.²⁴

In the Chen Jinchang case, the police reported to Fuyuan County PLC that they had arrested the real perpetrator, which showed that the police were willing to correct the wrongful conviction; the PLC simply organized a special team to investigate the case. But in the Huang Yaquan case, the police were not willing to arrest the real perpetrators, and without the pressure from Hainan Province PLC, the wrongful conviction probably would not have been corrected.

D. Congresses: The Chen Shijiang Case

Articles 2 and 3 of China's Constitution stipulate that all power of the state belongs to the people, and the organs through which the people exercise state power are the National People's Congress and the local people's congresses at different levels. The administrative, judicial, and procuratorial organs of the state are created by the people's congresses, to which they are responsible and by which they are overseen.

The convicted persons who insist on their innocence, along with their relatives, often present petitions against their effective convictions to the

24. TIM, *Hannan Sheng Wanning Xian Huang Yaquan Huang Shengyu Guyi Share An* [The Murder Case of Huang Yaquan and Huang Shengyu of Wanning County, Hainan Province], TIM Shequ [TIM Community] Apr. 14, 2007, <http://tm9mt.blog.sohu.com/42030039.html>; *Zhongshen pan Sihuan Zaishen pan Wuzui Qiong yi 10 Nian Chen Yuanan Zhong Zhaoxue* [A Man of Hainan Province Who Was Sentenced to the Death Penalty with Reprieve 10 Years Ago Was Declared to Be Innocent in a Retrial], HAINAN TEQU BAO (Haikou), Jan. 7, 2004, available at http://www.hq.xinhuanet.com/hainan/2004-01/07/content_1466778.htm.

congresses at various levels. When a congress asks a court to review a conviction in an exceptional case, the court usually will review the case and decide whether to retry it. Only one of the twenty-six cases was rectified in this way.

On March 23, 2001, Chen Shijiang was convicted of murdering Xu Meizhi by Yantai City Intermediate People's Court in Shandong province. Chen appealed, and Shandong Province Higher People's Court upheld the conviction. In the next five years, Chen's mother went to Beijing and Jinan (capital of Shandong Province) dozens of times to present petitions for her son. Shandong Province Higher People's Court demanded that Yantai City Intermediate People's Court review the case on December 23, 2003, but the latter rejected Chen's application for retrial in June 2004. In 2004, the National People's Congress Standing Committee demanded that Shandong Province People's Congress Standing Committee supervise the handling of the case. On March 8, 2005, the Internal and Judicial Affairs Committee, a special committee of Shandong Province People's Congress Standing Committee, suggested that Shandong Province Higher People's Court retry the case. On April 18, 2006, Shandong Province Higher People's Court retried the case and declared that Chen Shijiang was not guilty.²⁵

Although wrongful convictions might be rectified in exceptional cases due to the involvement of congresses, the involvement itself undermines judicial independence to some extent. Furthermore, in practice, most of the involvement of congresses is arbitrary and unprofessional because the overwhelming majority of the members of congresses have no knowledge or experience with any aspect of the criminal justice system.

E. Media: The Wang Haijun Case

The media has played an important role in the correction of many wrongful convictions. The case of Wang Haijun provides a case in point. Without the help of the media, this erroneous case probably would not have been corrected.

Wang Haijun was arrested for murdering his wife by Panshi City Police in Jilin Province in 1986. He was sentenced to fifteen years imprisonment by Panshi County People's Court in 1987 and was released in 1998 after serving his sentence. In June, 2001, Yantai City Police in Shandong Province arrested Jin Taizhi for killing four persons

25. Liu Zhuo & Qi Chongzhun, *Jianqing Muqin ba Nian Shangfang: Wo er Wuzui Qiang xia liu Ren* [A Tough-Minded Mother Petitioned for 8 Years: My Son Is Innocent and Should Not Be Executed], FAZHI ZHOUBAO (Beijing), July 3, 2006, available at <http://news.163.com/06/0703/12/2L40794300011229.html>.

in Shandong Province. Under interrogation, Jin confessed that he was also the murderer of Wang Haijun's wife, and his account of the murder matched the crime scene. Hearing the news from Yantai City Police, Jilin City Police in Jilin Province sent police officers to investigate. After interrogating Jin four times, these police officers refused to conclude that Jin had killed Wang's wife. Wang also heard this news. He retained two lawyers to help him collect evidence and present petitions. The lawyers went to Yantai City and obtained Jin's case files and then presented petitions with Wang against his conviction to many relevant government agencies. In 2003, Panshi County PLC organized a special team, whose members included leaders of the police, the procuratorate, and the court of Panshi County, to investigate the case. But the team made no conclusion. Responding to Wang's petition, Panshi County People's Court held a hearing in 2004, but the result of the hearing was to dismiss the petition. Finding that it was impossible to have his conviction rectified just through presenting petitions to relevant government agencies, in April 2005 Wang asked for help from *New Culture Daily*, a popular local newspaper. After investigating the case thoroughly for nearly three months, the newspaper's reporters found many reasonable doubts related to Wang's conviction. They then presented petitions with Wang to relevant government agencies of Jilin City. The director of Jilin City PLC paid much attention to the petition and, in June 2005, organized a special team to investigate the case. On July 29, 2005, Wang was finally declared to be not guilty by Panshi County People's Court.²⁶

It goes without saying that the citizens of the region where a wrongful conviction occurred are generally the most interested in the discovery and rectification of the wrongful conviction. It is thus worth noting that in some cases, such as the case of Hao Jinan,²⁷ it was not the local newspapers but the newspapers of other provinces that widely reported that the convicted person should be exonerated because of new exculpatory evidence. The reason is that local newspapers are usually controlled to some extent by the local governments, which do not want negative news that occurs in their jurisdictions to be reported by the media. If the freedom of press in China could be strengthened, more wrongful convictions probably would be rectified due to the reports of the media.

26. Liu Shuang, Wang Zhendong & Gu Ran, *19 Nian sha qi yi an Diaocha [The Investigation of a Wife Murder Case that Occurred 19 Years Ago]*, XIN WENHUA BAO (Changchun), July 25, 2005, available at <http://news.sina.com.cn/s/2005-07-25/15476524049s.shtml>.

27. Xiao Rui, *Hao Jinan Yuanan Cheng Jiucuo Dianfan [“The Wrongful Conviction of Hao Jinan” Becomes “The Model of Rectification”]*, XIN JING BAO (Beijing), Feb. 4, 2008, available at http://www.360doc.com/content/08/0204/10/142_1026062.shtml.

Although the traditional media, such as newspapers and television, still play an important role in the correction of wrongful convictions, the internet is becoming more and more important. In fact, the internet played a more important role than traditional media in the rectification of many wrongful cases, such as the She Xianglin case, the Teng Xingshan case, and the Zhao Zuohai case.

IV. ESTABLISHING A MORE EFFECTIVE MECHANISM TO DISCOVER AND RECTIFY ERRONEOUS CASES

As discussed above, generally speaking, procuratorates are reluctant to present protests against wrongful convictions to courts, but courts are reluctant to retry, on their own initiative, the wrongful conviction cases, even if there is strong evidence proving the innocence of the convicted. Therefore, China needs some organizations to prompt courts to rectify wrongful convictions. At present, these organizations mainly include PLCs, congresses, and the media. Because the involvement of PLCs and congresses is unprofessional and undermines judicial independence, I suggest that China eliminate their role in the rectification of wrongful convictions. At the same time, I suggest that China strengthen the freedom of press and establish independent, professional organizations to prompt courts to rectify erroneous cases. As for such organizations, China may refer to and learn from the Innocence Projects of the U.S., the Criminal Case Review Commission (CCRC) of the U.K., and the Public Inquiries of Canada, with some significant modifications based on China's unique situation.

China also should reform the current responsibility system. At present, as discussed above, when an effective conviction is overthrown, regardless of whether the police officers, the prosecutors, or the judges who originally handled the case committed misconduct, they will probably face sanctions. Therefore, sometimes they might try their best to obstruct the rectification of the wrongful convictions that they handled. China should stipulate that the police officers, the prosecutors, and the judges should not be disciplined when the convictions that they handled are overthrown as long as they have not committed misconduct.

A. Creating Innocent Projects

In 1992, Barry Scheck and Peter Neufeld started the first Innocence Project at the Benjamin N. Cardozo School of Law at Yeshiva University (Cardozo Law). Since then, seventy-eight Innocence Projects have sprung up in at least forty-three states of the U.S., and three Innocence Projects have been founded in Canada, three in Australia, two

in the U.K., and one in New Zealand.²⁸ All of these Innocence Projects are independent nonprofit organizations, but they coordinate to share information and expertise. In December, 2000, the Innocence Project at Cardozo Law and the Center for Wrongful Convictions at the Northwestern University School of Law teamed up to form the Innocence Network. At present, more than sixty organizations around the world belong to the Innocence Network.²⁹

Some Innocence Projects are affiliated with the offices of public defenders, but most are affiliated with universities. Of those affiliated with universities, most are affiliated with law schools,³⁰ but some are affiliated with journalism schools, criminology schools, and the like.

These Innocence Projects vary in size, scope, and criteria for case acceptance, but they all review requests from prison inmates and conduct investigations into the requests if it is determined that the requests meet certain review and screening criteria.³¹ Through September 2, 2010, 258 wrongful conviction cases had been overturned as a result of the work of the Innocence Project at Cardozo Law alone.³² In 2010, the work of Innocence Network member organizations led to the exoneration of twenty-nine people around the world who had served a combined 426 years behind bars for crimes that they did not commit.³³

The reason why Innocence Projects have played an important role in uncovering and remedying wrongful convictions is that they are impartial, professional, and influential. First, Innocence Projects are nonprofit organizations, and virtually all work performed by them is pro bono work, done at no cost to the incarcerated individuals.³⁴ Therefore,

28. *Other Projects Around the World*, INNOCENCE PROJECT, <http://www.innocenceproject.org/about/Other-Projects.php> (last visited Oct. 6, 2011).

29. *How to Help*, INNOCENCE PROJECT, <http://www.innocencenetwork.org/how-to-help> (last visited Oct. 6, 2011).

30. “Given the wide array of law school cultures and clinical sources, it is no surprise that innocence projects can and do take many different forms. Several schools have largely student-run volunteer projects with minimal faculty supervision, while others have full-fledged in-house clinics directed by faculty members.” Daniel S. Medwed, *Actual Innocence: Considerations in Selecting Cases for a New Innocence Project*, 81 NEB. L. REV. 1097, 1100 (2003).

31. As for the relationship between the Innocence Projects and their clients, there are essentially three different models: the “No Representation” Model, the “Full Representation” Model, and the “Limited Representation” Model. See Ellen Yankiver Suni, *Ethical Issues for Innocence Projects: An Initial Primer*, 70 UMKC L. REV. 921, 926–30 (2002).

32. Barry Scheck, *Overturning 258 Wrongful Convictions (And Counting)*, BIG THINK, <http://bigthink.com/ideas/23055> (last visited Oct. 6, 2011).

33. INNOCENCE PROJECT, <http://www.innocencenetwork.org/> (last visited Oct. 6, 2011).

34. Some projects charge for testing, but most do not charge for investigative services and legal representation. See Suni, *supra* note 31, at 924–25. For example, the Ohio Innocence Project does not charge inmates for its services, and inmates are usually only required to pay for DNA testing or other expert witness fees. *Ohio Innocence Project*, UNIV. OF CINCINNATI COLLEGE OF LAW, <http://teachlaw.law.uc.edu/institutes/rosenthal/oip.shtml> (last visited Oct. 6, 2011).

they have no financial interest in the outcome of their investigation. Compared with the investigations of the lawyers retained by the convicted, not to mention the investigations of the convicted's relatives, the investigations of Innocence Projects generally are deemed to be more reliable. Second, the investigations of the Innocence Projects are conducted by law professors or volunteer attorneys, or by law students who are closely supervised by law professors and volunteer attorneys. The professionalism of the investigations ensures their high quality. Innocence Projects also work closely with experts so that the Innocence Projects can provide courts with strong scientific evidence, mainly DNA. Finally, Innocence Projects maintain a friendly relationship with the mass media, and the wide media coverage of a wrongful conviction case may put some governmental agencies under pressure to investigate and correct wrongful convictions.³⁵

There is no Innocence Project in China so far. Chinese law schools may follow their counterparts in the U.S. by starting Innocence Projects to help the convicted people who claim to be innocent. Besides the advantages listed above in rectifying wrongful convictions, Innocence Projects also can provide law students with first-rate educational experiences.

B. Establishing the CCRC

1. The CCRC of the U.K.

In 1997, in response to several notorious wrongful conviction cases, the United Kingdom created the CCRC, an independent public body set up to investigate possible miscarriages of justice in England, Wales, and Northern Ireland.³⁶ Its main job is to review the cases of those who feel that they have been wrongly convicted of criminal offenses or unfairly sentenced. It considers whether there is new evidence or arguments that may cast doubt on the reliability of an original decision and refers a case back to the appropriate appeals court for reconsideration when it feels that there is a "real possibility" that the decision would not be upheld upon retrial.³⁷

According to Section 8 of the Criminal Appeal Act 1995, the CCRC

35. For a discussion of the role that journalists might play in this area, see Rob Warden, *The Revolutionary Role of Journalism in Identifying and Rectifying Wrongful Convictions*, 70 UMKC L. REV. 803 (2002).

36. CRIM. CASES REV. COMMISSION, <http://www.ccr.gov.uk/index.htm> (last visited Oct. 6, 2011).

37. *An Overview of Our Role*, CRIM. CASES REV. COMMISSION, http://www.ccr.gov.uk/canwe/canwe_27.htm (last visited Oct. 6, 2011).

shall consist of not fewer than eleven members, and the members shall be appointed by the Queen on the recommendation of the Prime Minister. At least one-third of the members shall be persons who are “legally qualified,” and at least two-thirds of the members shall be persons having knowledge or experience of any aspect of the criminal justice system.³⁸

The CCRC has wide-ranging investigative powers and can obtain and preserve documentation held by any public body. It does not have a similar mandate for materials in the possession of private organizations and individuals, nor does it have the power to carry out searches or make arrests; however, it can appoint an investigating officer, such as a police officer, who does have such power, to work on the CCRC’s behalf.³⁹

Since its establishment in January 1997, the CCRC has received 13,748 applications, 13,049 of which had been reviewed as of June 30, 2011, and 480 had been referred. Of the referrals, 458 had been heard by the Court of Appeal, and 320 had been quashed.⁴⁰ Many scholars have asserted that the CCRC is an admirably effective agency.⁴¹

The following factors make the CCRC an efficient and powerful organization. First, its independence from any branch of government makes it trustworthy. Second, the fact that most of its members are experts in criminal justice and that it has wide-ranging investigative powers ensures that it can clarify factual issues and then make appropriate decisions.

Barry C. Scheck and Peter J. Neufeld have claimed that, compared to the network of comparatively small and resource-starved Innocence Projects, the CCRC is an impressive, efficient, powerful, and superior institution.⁴²

The CCRC has two advantages over Innocence Projects. First, the CCRC is better resourced than Innocence Projects. The funds of Innocence Projects are raised from individuals, foundations, and corporations. For example, the Innocence Project at Cardozo Law receives 45% of its funding from individuals, 30% from foundations, 15% from its annual benefit dinner, 7% from Cardozo Law, and most of

38. Criminal Appeal Act, 1995, c. 35, § 8.

39. Barry C. Scheck & Peter J. Neufeld, *Toward the Formation of “Innocence Commissions” in America*, 86 JUDICATURE 98, 100 (2002).

40. *Case Library*, CRIM. CASES REV. COMMISSION, http://www.ccrcc.gov.uk/cases/case_44.htm (last visited Oct. 6, 2011).

41. See Lissa Griffin, *Correcting Injustice: Studying How the United Kingdom and the United States Review Claims of Innocence*, 41 U. TOL. L. REV. 107, 108 (2009); Keith A. Findley, *Learning from Our Mistakes: A Criminal Justice Commission to Study Wrongful Convictions*, 38 CAL. W. L. REV. 333, 348 (2002).

42. Scheck & Neufeld, *supra* note 39, at 101.

the rest from corporations.⁴³ The reality is that Innocence Projects are typically under-resourced.⁴⁴ Because the CCRC is a public body, it generally need not worry about the source of funds. Second, the CCRC can appoint an investigating officer from another public body to carry out searches and make arrests on the CCRC's behalf. This power helps the CCRC make thorough and effective investigations. Innocence Projects certainly do not have such power. However, it is worth noting that Innocence Projects do not have the problems of inertia and indifference generally found in government organizations.

2. Canadian Public Inquiries

Canadian "Public Inquiries," also known as Royal Commissions or Commissions of Inquiries, were first established more than 160 years ago as a way for sovereignties to conduct independent non-government-affiliated investigations regarding the conduct of public business or the fair administration of justice.⁴⁵ Now, the executive branch at all levels of government (federal, provincial, and territorial) of Canada has the power to charter Public Inquiries to have designated persons (frequently judges) investigate public events or issues. Canadian Public Inquiries have investigated a wide range of issues of public concern. Their purpose is to establish the facts and causes of an event or issue and then to make recommendations to the government.

More than ten years ago, two separate public inquiries were chartered to investigate two celebrated postconviction DNA exonerations, those of Thomas Sophonow and Guy Paul Morin.⁴⁶ The designated leader of the two inquiries had subpoena power, held hearings, recruited government laboratories or independent experts when necessary, issued reports that dealt with the specific causes of these wrongful convictions, and made policy recommendations about remedies to prevent wrongful convictions in the future.⁴⁷

One problem with the Canadian Public Inquiry is that its investigations must be triggered by a directive from the executive branch. Aside from the danger that the executive branch simply will not

43. *About the Organization*, INNOCENCE PROJECT, http://www.innocenceproject.org/Content/How_is_the_Innocence_Project_funded.php. (last visited Apr. 6, 2011).

44. See Robert Schehr & Lynne Weathered, *Should the United States Establish a Criminal Cases Review Commission?*, 88 JUDICATURE 122, 122 (2004).

45. Watson Sellar, *A Century of Commissions of Inquiry*, 25 CAN. B. REV. 1,1 (1947).

46. See THOMAS SOPHONOW INQUIRY REPORT, available at <http://www.gov.mb.ca/justice/publications/sophonow/index.html>; FRED KAUFMAN, REPORT OF THE KAUFMAN COMMISSION ON PROCEEDINGS INVOLVING GUY PAUL MORIN, available at <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/morin/>.

47. Scheck & Neufeld, *supra* note 39, at 100.

charter investigations it does not like, this approach also runs the risk that review of officially acknowledged wrongful convictions will only occur as a response to public pressure.⁴⁸

3. Establishing CCRC in Every Province of China

Obviously, the CCRC and the Public Inquiry are two distinctly different kinds of institutions. They both can address the problem of wrongful convictions, but the job of the CCRC is to investigate possible miscarriages of justice and decide whether or not to refer them to appeals courts for reconsideration, while the job of the public inquiry is to investigate officially acknowledged wrongful convictions, find the causes of the wrongful convictions, and make policy recommendations about remedies to prevent wrongful convictions in the future. The investigations of the CCRC occur before wrongful convictions are rectified, and those of the public inquiry occur after wrongful convictions are rectified.

Although currently operating as two different systems, these two kinds of institutions can be merged as one. I propose the creation of a CCRC (a standing committee, unlike the public inquiries) in each province of China that not only helps to correct wrongful convictions, but also investigates the causes of all the officially acknowledged wrongful convictions that occur in the province (including the wrongful convictions it helps to correct as well as those that it has nothing to do with) and makes reform recommendations.

The future CCRCs of China should be independent from any branch of government. Their members should be appointed by the congresses of the province where they are located, and they should be composed of diverse, respected members of the criminal justice community and the public. They should have the power to obtain documentation held by any other public body, compel sworn testimony, order forensic tests, and appoint police officers to carry out searches or make arrests. These broad powers ensure that the CCRCs can conduct thorough and effective investigations.

If particular convicted persons insist that they were wrongfully convicted, they may ask the CCRC of the province where they were convicted to review their convictions. Upon completion of an investigation, if the CCRC thinks that a conviction is probably wrong, it should refer the conviction to the Higher People's Court of the province for reconsideration.

The CCRC should investigate the causes of all the erroneous

48. *Id.* at 104.

convictions that have occurred in the province where it is located and make reform recommendations. It should deliver a public report on its findings and recommendations to the relevant branches of government; the branch(es) of government should issue a formal written response to the recommendations within a fixed period of time.

The PLC and the congresses should stop accepting petitions from the convicted and ordering the courts to review the cases of these convicted. Any convicted person who claims innocence may present petitions to the courts, procuratorates, the Innocence Projects, and the CCRCs.