

ALL EYES ON US: A COMPARATIVE CRITIQUE OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

JEROME M. MAIATICO

INTRODUCTION

For over eighteen years, Darryl Hunt sat in his prison cell searching for ways to tell the world he was an innocent man.¹ He was convicted for the 1984 rape and murder of a woman in Winston-Salem, North Carolina.² Over the next two decades, he filed eleven motions in four different courts, but to no avail.³ The criminal justice system condemned the wrong man, and then made it nearly impossible for that man to be heard. Eventually, thanks in large part to the press that kept digging up exculpatory information and drawing attention to his case, DNA testing identified the right man.⁴ That man confessed, and Darryl was cleared. In 2004, a judge vacated the murder conviction, and Darryl was pardoned by Governor Mike Easley.⁵ Stories like this shake the very foundation of the criminal justice system and can cause the public to lose faith in the system of laws. North Carolina has had many of these stories.⁶

Although wrongful convictions are not unique to North Carolina, the state's response to this growing problem has been very unique. In fact, North Carolina has taken the lead and established a model for addressing wrongful convictions. On August 3, 2006, Governor

Copyright © 2007 by Jerome M. Maiatico.

1. Phoebe Zerwick & David Rice, *Governor Pardons Hunt: 20-year Ordeal Ends for Man Wrongly Convicted*, WINSTON-SALEM J., Apr. 16, 2004, at A1.

2. *Id.*

3. Christine Mumma, Editorial, *An Escape Route from Prison for the Innocent*, NEWS & OBSERVER (Raleigh, N.C.), Aug. 30, 2005, at 9A.

4. Zerwick & Rice, *supra* note 1.

5. *Id.*

6. *See infra* notes 18–31 and accompanying text.

Easley signed House Bill 1323⁷ into law, making North Carolina the first and only state in the United States to establish an innocence inquiry commission—an independent review commission set up to investigate prisoner’s claims of innocence.⁸ Former Chief Justice I. Beverly Lake Jr. of the Supreme Court of North Carolina greeted this commission by saying, “I think it will be a significant step forward for the criminal justice system in North Carolina and across the nation I think other states may follow.”⁹ North Carolina’s innocence inquiry commission could indeed become a model for how states, and even the federal government, should handle wrongful convictions, but only if it is successful. All eyes will be on North Carolina.¹⁰

To evaluate the likelihood that the North Carolina innocence inquiry commission will be successful, this Note examines the United Kingdom review commission after which it was patterned.¹¹ The United Kingdom review commission has achieved moderate success in correcting mistakes made by its own criminal justice system.¹² From a comparative perspective, the North Carolina innocence inquiry commission should be able to match that success if it can avoid budget and resource pitfalls, and operate in a manner that improves judicial economy. Just as the appellate process in the United Kingdom was not designed to handle miscarriages of justice,¹³ the prior avenues for postconviction relief in the North Carolina judicial system were not equipped to address claims of innocence. The North Carolina innocence inquiry commission ameliorates that problem by

7. H.R. 1323, 148th Gen. Assemb., Reg. Sess. (N.C. 2006).

8. Kytja Weir, *N.C. to Look at Innocence Claims: State is 1st in Nation to Create an Independent Review of Possible Wrongful Convictions*, CHARLOTTE OBSERVER, Aug. 4, 2006, at B1.

9. Henry Weinstein, *N.C. to Weigh Claims of Innocence*, L.A. TIMES, Aug. 4, 2006, at A18.

10. Stephen Saloom, the policy director for the Innocence Project at the Cardozo School of Law, said the “whole nation will be watching” what happens in North Carolina. Weir, *supra* note 8.

11. The United Kingdom’s Criminal Cases Review Commission (CCRC) was enacted by Parliament under the Criminal Appeal Act of 1995. Christine Mumma, *The North Carolina Actual Innocence Commission: Uncommon Perspectives Joined By a Common Cause*, 52 DRAKE L. REV. 647, 654 (2004). The CCRC is an independent body responsible for investigating miscarriages of justice in England, Wales, and Northern Ireland. *Id.*

12. *See infra* notes 177–180 and accompanying text.

13. *See infra* notes 127–129 and accompanying text.

providing an effective forum for prisoners like Darryl Hunt where new evidence strongly supports their innocence claims.

This Note is divided into four sections and provides background and analysis of “innocence commission” issues in North Carolina. Part I discusses the need for change in the North Carolina criminal justice system and advocates the idea of an innocence commission. Part II provides background on the new North Carolina Innocence Inquiry Commission (NCIIC) and details the process through which the NCIIC will review factual innocence claims. Part III provides background on the United Kingdom’s Criminal Cases Review Commission (CCRC) and details its process for reviewing miscarriage of justice claims. Part IV analyzes the differences between the North Carolina and United Kingdom commissions and predicts the success of the NCIIC. The Note concludes by describing how the innocence inquiry commission in North Carolina may provide the foundation for reform of the postconviction relief available in the federal and state criminal justice systems.

I. THE NEED FOR AN INNOCENCE COMMISSION IN NORTH CAROLINA

The criminal justice system fails society when an innocent person is convicted and the actual criminal remains free. As with any system operated by humans, though, the criminal justice system is imperfect and makes mistakes. Unfortunately, for many years there was no real way to gauge the accuracy of the system or pinpoint specific cases where the system made mistakes.¹⁴ This changed with the advent of DNA technology and its application in forensic investigations in the 1980s.¹⁵ In 1989, an Illinois inmate became the first innocent man to be exonerated by DNA technology, marking “the beginning of a revolution in the American criminal justice system.”¹⁶ Since 1989, a body of specific cases—both related and unrelated to DNA evidence—has developed in which it is evident that the criminal justice system convicted the wrong person. Between 1989 and 2003,

14. See Keith Findley, *Learning From Our Mistakes: Criminal Justice Commission to Study Wrongful Convictions*, 38 CAL. W. L. REV. 333, 334 (2002) (stating that without a valid measure “it is so very hard to know which outcomes are accurate and which are not”).

15. *Id.*

16. Samuel R. Gross et al., *Exonerations in the United States: 1989 through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 523 (2005) (“Since 1989, these once-rare events [exonerations of falsely convicted defendants] have become disturbingly commonplace.”).

340 individuals in the United States were exonerated from crimes for which they had been previously convicted, including 144 individuals cleared by DNA technology.¹⁷ North Carolina has been significantly affected by this “revolution.” In addition to Darryl Hunt, many high-profile cases of exonerations have emerged in the state over the past decade:

- Ronald Cotton from Burlington, North Carolina served eleven years in prison after being convicted of two 1984 rapes.¹⁸ In 1995, DNA tests proved that Cotton was innocent of the crimes.¹⁹
- Lesly Jean was arrested in Jacksonville, North Carolina in 1982 and convicted of rape and sexual assault.²⁰ Jean served nine years in prison before his conviction was overturned because police had failed to disclose important evidence.²¹ In 2001, DNA tests proved that the criminal justice system had convicted the wrong man.²²
- Terence Garner served nearly four years in prison for the 1997 armed robbery of a finance company and shooting of a secretary in Johnston County, North Carolina.²³ After Garner’s trial, three alibi witnesses emerged and another

17. *Id.* at 524. Gross describes his study as follows:

The exonerations we have studied occurred in four ways: (1) In forty-two cases governors (or other appropriate executive officers) issued pardons based on evidence of the defendants’ innocence. (2) In 263 cases criminal charges were dismissed by courts after new evidence of innocence emerged, such as DNA. (3) In thirty-one cases the defendants were acquitted at a retrial on the basis of evidence that they had no role in the crimes for which they were originally convicted. (4) In four cases, states posthumously acknowledged the innocence of defendants who has already died in prison

This is the most comprehensive compilations of exonerations available, but it is not exhaustive.

Id. at 524–25 (citations omitted).

18. Phoebe Zerwick, *Closed Doors: Case Review Finds that a Series of Troubling Decisions Cast a Dark Shadow of Doubt over a Divisive Case*, WINSTON-SALEM J., Nov. 23, 2003, at A1.

19. *Id.* Cotton’s case involved the misidentification of Cotton by one of the victims. *Id.*

20. Rebecca J. Britton, *The Lesly Jean Story: A Quest for Truth, A Quest for Justice*, TRIAL BRIEFS, Jan. 2002, at 38, 38, available at <http://www.ncmatorium.org/site/documents/BrittonJan02.pdf>; The Innocence Project, *Case Profiles: Lesly Jean*, <http://www.innocenceproject.org/Content/183.php> (last visited Mar. 29, 2007).

21. The Innocence Project, *supra* note 20. “[Jean’s] conviction was based, in part, on prosecutorial error and erroneous eyewitness testimony.” *Id.*

22. *Id.*

23. Jane Ruffin & Adrienne Lu, *Retrial Ruled Out for Garner: For Prosecutor, SBI Report Raises Doubts*, NEWS & OBSERVER (Raleigh, N.C.), June 12, 2002, at 1A.

man confessed to the crime.²⁴ The PBS documentary series “Frontline” aired Garner’s story in January 2002, and one month later Garner was released from prison.²⁵ The district attorney dismissed all charges against Garner in June 2002.²⁶

- Leo Waters served twenty-one years in prison after being convicted in the 1981 rape and sexual assault of a woman in Jacksonville, North Carolina.²⁷ Waters was cleared of the crime by a DNA test in 2003, and all charges against him were dismissed.²⁸
- Alan Gell served nearly nine years in prison, including four years on death row, for the 1995 murder of a North Carolina man.²⁹ Gell was granted a new trial shortly after the local newspaper ran a series outlining problems with the first trial, including prosecutorial misconduct.³⁰ In 2004, Gell was acquitted of the murder.³¹

Given these cases, it is evident that innocent persons are sometimes convicted in North Carolina while the real criminals remain at large. These cases are representative of widespread problems that plague the criminal justice system, such as misidentifications, “false confessions, lab errors, prosecutorial misconduct, false witness testimony, poor legal representation, and ‘investigative tunnel vision.’”³² Studies have consistently demonstrated that Americans have less confidence in the criminal justice system than in other institutions,³³ which likely results in part

24. *Id.*

25. *Id.* Garner’s attorney, Mark Montgomery, credits the PBS documentary series with providing the impetus for his client’s release: “It’s humbling to realize I spent four years trying to get this kid, who I believe to be innocent, out of prison using all my lawyer skills, and a 90-minute television documentary springs him like magic.” *Id.*

26. *Id.*

27. Associated Press, *Massachusetts Inmate is Charged in ‘81 Rape*, CHARLOTTE OBSERVER, Aug. 18, 2005, at 4B; The Innocence Project, *Case Profiles: Leo Waters*, <http://www.innocenceproject.org/Content/284.php> (last visited Feb. 21, 2007).

28. The Innocence Project, *supra* note 27.

29. Joseph Neff, *Gell Found Not Guilty*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 19, 2004, at 1A.

30. *Id.*

31. *Id.*

32. Mumma, *supra* note 3.

33. U.S. DEP’T OF EDUC., BUREAU OF JUSTICE STATISTICS, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 112 (2003) (providing statistics in Table 2.10, “Reported Confidence in Selected Institutions,” that show Americans have less confidence in the criminal justice system than in institutions such as banking, the medical system, public school, and television news).

from such documented, high-profile mistakes. The issue is not whether the North Carolina criminal justice system makes mistakes, because it clearly does. Instead, the issue has become how the system can be improved to limit and correct these mistakes, so that the government may rebuild public confidence in the system.

Currently, the North Carolina criminal justice system provides little or no redress for innocent prisoners with factual innocence claims.³⁴ The criminal justice system generally provides a right to direct and collateral review; however, the scope of this review is limited to fixing legal and procedural errors, not reassessing guilt or innocence.³⁵ A convicted prisoner with a factual innocence claim can pursue three avenues for relief: 1) a post-trial Motion for Appropriate Relief based upon newly discovered evidence, 2) federal relief based upon the writ of habeas corpus, or 3) executive clemency from the Governor. Each of these avenues has significant flaws that make it ineffective. First, the remedial scope of the Motion for Appropriate Relief is substantially restricted by *State v. Britt*.³⁶ Second, the Supreme Court's decision in *Herrera v. Collins*³⁷ and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)³⁸ severely limit the scope of habeas relief in federal courts.³⁹ Finally, executive clemency, a prisoner's last resort, is often considered an arbitrary process affected by wholly political factors.⁴⁰

In North Carolina, all post-trial motions relating to the trial, including factual innocence claims based on newly discovered evidence, must be brought under a Motion for Appropriate Relief

34. Gary D. Robertson, *N.C. Senate Panel Eyes "Innocence Commission,"* STAR-NEWS (Wilmington, N.C.), Apr. 14, 2005, <http://search.starnewsonline.com/apps/pbcs.dll/article?AID=/20050415/NEWS/50414021&SearchID=73272979646223> (last visited Feb. 21, 2007) (paraphrasing Dick Taylor, member of the N.C. Actual Innocence Commission and Executive Director of the North Carolina Academy of Trial Lawyers); Interview with James Coleman, Professor, Duke Univ. School of Law, in Durham, N.C. (Dec. 8, 2005).

35. See, e.g., *Herrera v. Collins*, 506 U.S. 390, 400, 404–05 (1993) (holding that factual innocence is not a freestanding basis upon which a federal court generally may grant habeas relief).

36. See *State v. Britt*, 360 S.E.2d 660, 664 (N.C. 1987) (applying a seven-factor test narrowly, making it difficult for defendants to get a new trial).

37. *Herrera v. Collins*, 506 U.S. 390 (1993).

38. Antiterrorism and Effective Death Penalty Relief Act, 28 U.S.C. §§ 2261–2266 (2000).

39. *Herrera*, 506 U.S. at 404–05.

40. See Daniel T. Kobil, *The Quality of Mercy Strained: Wresting the Pardoning Power from the King*, 69 TEX. L. REV. 569, 608–10 (1991) (arguing that political pressures cause executive clemency to be an ineffective remedy for wronged prisoners).

(MAR).⁴¹ An MAR, which is generally reviewed by the trial judge, allows a defendant to contest the trial court's decision even after all direct appeals have been exhausted.⁴² A defendant is allowed to file an MAR within a "reasonable time" after new evidence is discovered.⁴³ However, under the North Carolina statute and *Britt*, there is a strict standard for evaluating an MAR on the grounds of newly discovered evidence, and relief is rarely granted.⁴⁴ The *Britt* court explained that to meet this standard, the defendant must prove each of the following elements:

1. That the witness or witnesses will give newly discovered evidence.
2. That such newly discovered evidence is probably true.
3. That it is competent, material and relevant.
4. That due diligence was used and proper means were employed to procure the testimony at trial.
5. That the newly discovered evidence is not merely cumulative.
6. That it does not tend only to contradict a former witness or to impeach or discredit him.
7. That it is of such a nature as to show that on another trial a different result will probably be reached and that the right will prevail.⁴⁵

Factual innocence claims under an MAR also suffer from procedural and judge-related limitations.⁴⁶ For example, MARs based

41. N.C. GEN. STAT. § 15A-1411(c) (2005 & Supp. 2006).

42. N.C. GEN. STAT. § 15A-1415(a) (2005). Unless the defendant files an MAR within ten days after entry of judgment, however, this form of relief is available only when the defendant appeals on one of several enumerated grounds. *See id.* § 15A-1415(b) (enumerating "the only grounds which the defendant may assert by a motion for appropriate relief made more than 10 days after entry of judgment").

43. *Id.* § 15A-1415(c).

44. *See State v. Britt*, 360 S.E.2d 660, 664 (N.C. 1987) (restricting the remedial scope of section 15A-1415(c)). According to statute, the defendant has the heavy burden of establishing that the newly discovered evidence was "unknown or unavailable to the defendant at the time of trial . . . could not with due diligence have been discovered or made available at that time . . . and . . . has a direct and material bearing upon . . . the defendant's guilt or innocence." § 15A-1415(c).

45. *Britt*, 360 S.E.2d at 664 (quoting *State v. Cronin*, 262 S.E.2d 277, 286 (1980)).

46. Eli Paul Mazur, "I'm Innocent": Addressing Freestanding Claims of Innocence in State and Federal Courts, 25 N.C. CENT. L.J. 197, 204-16 (2003). Mazur contends that the MAR in North Carolina is subject to three pervasive limitations: (1) "[t]he [d]ue [d]iligence [p]roblem," in which "North Carolina courts consistently deny MAR . . . because the evidence was available at trial, [thus] punish[ing] factually innocent and wrongfully incarcerated inmates because of the lack of resources or the ineptitude of trial counsel," *id.* at 205-06; (2) "the [s]tatutory

upon newly discovered evidence are often denied for failure to meet the due diligence standard.⁴⁷ This standard prevents the submission of evidence if it was available at the time of trial but simply not discovered by defense lawyers, possibly due to lack of time or funding.⁴⁸ Relief also will not be granted on an MAR if the newly discovered evidence is “merely cumulative,” meaning that judges will not consider new, stronger exculpatory evidence that is related to evidence already admitted at trial.⁴⁹

Moreover, the judge who presided over the trial generally entertains the MAR⁵⁰ and must determine “that on another trial a different result will probably be reached.”⁵¹ One study of MAR proceedings uncovered “a tension between the trial judge’s investment in the original trial result and the petitioner’s protected interest in presenting newly discovered evidence of actual innocence.”⁵² In Darryl Hunt’s case, it took eleven motions over an eighteen-year period to overcome the procedural and judge-related limitations imposed by North Carolina law.⁵³

Federal courts also provide prisoners with little redress for factual innocence claims. Under federal habeas corpus law, prisoners must overcome a high burden for relief to be granted based on newly discovered evidence.⁵⁴ In addition, federal law makes it difficult for

[p]reference for the [t]rial [j]udge to entertain the MAR,” in which the trial judge is more likely to cast doubt on new evidence that would change the trial result and is “subject to direct electoral pressure [and thus] less likely to find error . . . in state post-conviction proceedings,” *id.* at 207; and (3) “[r]ecanted [t]estimony of [c]odefendants,” in which “North Carolina courts consistently dispose of MAR based upon the recantation or repudiation of codefendant testimony by holding that the recantation is ‘exceedingly unreliable,’” *id.* at 214.

47. *Id.* at 205.

48. *Id.* at 204–05.

49. *Britt*, 360 S.E.2d at 664.

50. N.C. GEN. STAT. § 15A-1413(a)–(c) (2005). This statute has a strong built-in preference for the trial judge:

The judge who presided at the trial is empowered to act upon a motion for appropriate relief. . . . When a motion for appropriate relief may be made before a judge who did not hear the case, he may, if it is practicable to do so, refer all or a part of the matter for decision to the judge who heard the case.

Id. § 15A-1413(b)–(c).

51. *Britt*, 360 S.E.2d at 664.

52. Mazur, *supra* note 46, at 214.

53. Mumma, *supra* note 3; *see also supra* notes 1–5 and accompanying text.

54. FED. R. CRIM. P. 33. A motion for new trial based on newly discovered evidence must be made within three years of final judgment and will be granted only “if required in the interest of justice.” *Id.*

claims of factual innocence to be heard by federal courts,⁵⁵ and prisoners face a strict one-year statute of limitations on most federal habeas petitions.⁵⁶ The AEDPA further restricts innocent prisoners by requiring greater deference to state courts,⁵⁷ some of which offer very limited avenues for postconviction relief, like in North Carolina.⁵⁸ For example, one provision of the AEDPA limits the power of federal courts to grant relief unless the state court's handling of the claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law . . . [or] was based on an unreasonable determination of the facts in light of the evidence presented in the State court."⁵⁹

The Supreme Court has seldom ruled on the availability of federal habeas relief for factual innocence claims.⁶⁰ In *Kuhlmann v. Wilson*,⁶¹ the Court held the door open to freestanding factual innocence claims, stating "[e]ven where . . . the many judges who have reviewed the prisoner's claims . . . have determined that his trial was free from constitutional error, a prisoner retains a powerful and legitimate interest in obtaining his release from custody if he is

55. 28 U.S.C. § 2254(b)(1) (2000) ("An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that . . . the applicant has exhausted the remedies available in the courts of the State."); *id.* § 2254(e)(2)(A)(ii) (forbidding federal courts from holding evidentiary hearings on claims for which an applicant failed to develop the factual basis in state court proceedings, unless that factual basis "could not have been previously discovered through the exercise of due diligence").

56. *Id.* § 2244(d)(1).

57. *Id.* § 2254(d)(1).

58. *See supra* notes 41–53 and accompanying text.

59. 28 U.S.C. § 2254(d)(1)–(2).

60. *See, e.g.*, *House v. Bell*, 126 S. Ct. 2064, 2086–87 (2006) ("[The] question [is] whether federal courts may entertain convincing [freestanding] claims of actual innocence We decline to resolve this issue."); *Schlup v. Delo*, 513 U.S. 298, 328 (1995) (distinguishing the freestanding factual innocence claim in *Herrera v. Collins*, 506 U.S. 390 (1993), from *Schlup*'s gateway innocence claim); *Herrera*, 506 U.S. at 398–99 (*see infra* text accompanying notes 64–68); *Sawyer v. Whitley*, 505 U.S. 333, 339 (1992) ("[A] federal court may hear the merits of the successive claims [through the 'actual innocence' exception] if the failure to hear the claims would constitute a 'miscarriage of justice.'"); *Kuhlmann v. Wilson*, 477 U.S. 436, 452–53 (1986) (*see infra* text accompanying notes 61–63); *Townsend v. Sain*, 372 U.S. 293, 313 (1963) ("[T]he existence merely of newly discovered evidence relevant to the guilt of a state prisoner is not a ground or relief on federal habeas corpus."). This Note provides only a brief overview of federal habeas relief jurisprudence. Because this Note focuses on innocence commissions, the remainder of the discussion of federal relief in this Part concentrates on the finality principle in *Kuhlmann* and the ultimate issue of whether habeas relief can be granted on a freestanding factual innocence claim in *Herrera*.

61. *Kuhlmann v. Wilson*, 477 U.S. 436 (1986).

innocent of the charge for which he was incarcerated.”⁶² It noted, however, that a prisoner’s strong interest in access to a forum to test the fundamental correctness of his conviction must be carefully balanced against the state’s interest in the finality of its criminal justice proceedings.⁶³

Subsequently, in *Herrera*, the Court said that factual innocence is not a freestanding basis upon which a federal court may generally grant habeas relief.⁶⁴ It concluded that factual innocence claims based solely upon newly discovered evidence do not raise a constitutional issue,⁶⁵ with the possible narrow exception of those involving a “truly persuasive demonstration of ‘actual innocence’” in capital cases.⁶⁶ The Court further reasoned that determinations of guilt or innocence are reserved for the state courts, and that trial evidence should not be reconsidered in federal courts.⁶⁷ It viewed executive clemency as the “fail safe” that allows the criminal justice system to correct wrongful convictions.⁶⁸ Since *Herrera*, no federal habeas relief has been granted to any prisoner based on a freestanding factual innocence claim.⁶⁹

62. *Id.* at 452.

63. *Id.* at 452–53. The Supreme Court stated:

[T]he deterrent force of penal laws is diminished to the extent that persons contemplating criminal activity believe there is a possibility that they will escape punishment through repetitive collateral attacks. Similarly, finality serves the State’s goal of rehabilitating those who commit crimes because “[r]ehabilitation demands that the convicted defendant realize that ‘he is justly subject to sanction, that he stands in need of rehabilitation.’” Finality also serves the State’s legitimate punitive interests. When a prisoner is freed on a successive petition, often many years after his crime, the State may be unable successfully to retry him. This result is unacceptable if the State must forgo conviction of a guilty defendant through the “erosion of memory” and “dispersion of witnesses” that occur with the passage of time that invariably attends collateral attack.

Id. (quoting *Engle v. Isaac*, 456 U.S. 107, 127–28 & n.32 (1982)) (citations omitted).

64. *Herrera*, 506 U.S. at 400.

65. *Id.* at 404 (“Claims of actual innocence based on newly discovered evidence [do not] state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding.”).

66. *Id.* at 417.

67. *See id.* at 401 (“Federal courts are not forums in which to relitigate state trials.” (quoting *Barefoot v. Estelle*, 463 U.S. 880, 887 (1983))).

68. *See id.* at 415 (“Executive clemency has provided the ‘fail safe’ in our criminal justice system. . . . [H]istory is replete with examples of wrongfully convicted persons [and] [c]lemency provided the relief mechanism . . .”).

69. Lissa Griffin, *The Correction of Wrongful Convictions: A Comparative Perspective*, 16 AM. U. INT’L L. REV. 1241, 1305 (2001); *see, e.g.*, *House v. Bell*, 126 S. Ct. 2064, 2087 (2006) (stating that “the threshold for any hypothetical freestanding innocence claim [is] ‘extraordinarily high’” and “that House’s showing falls short of the threshold”).

The executive clemency provision of the North Carolina Constitution vests the governor with the power to “grant reprieves, commutations, and pardons, after conviction, for all offenses . . . upon such conditions as he may think proper.”⁷⁰ However, executive clemency is often considered an arbitrary process, and the governor’s decision may be affected by wholly political factors.⁷¹ As one commentator suggests, “The most important factor in successful clemency applications appears to be the widespread support of influential individuals in the community.”⁷² Clemency requests are rarely granted, and when they are, it is generally only after the prisoner has been released from the criminal justice system.⁷³ The governor also has complete and unfettered authority to reject requests. For example, Governor Easley once refused to recuse himself from a clemency decision regarding a case he prosecuted as district attorney—a seemingly obvious example of a conflict of interest.⁷⁴ For these reasons, clemency is often not viewed as a practical alternative for prisoners with factual innocence claims.⁷⁵

Why have North Carolina courts and federal courts chosen to make it so difficult for prisoners to obtain postconviction review? The answer may lie in what the Supreme Court calls the principle of finality. In *Kuhlmann*, the Court stated that the “[u]nlimited availability of federal collateral attack burdens our criminal justice system as successive petitions divert the time of judges, prosecutors,

70. N.C. CONST. art. III, § 5, cl. 6.

71. See Kobil, *supra* note 40, at 608–10 (arguing that political pressures cause executive clemency to be an ineffective remedy for wronged prisoners).

72. *Id.* at 610.

73. Governor Easley is currently considering about 250 clemency requests. He has taken action on four requests since he took office in 2001, granting clemency to Lesly Jean and Darryl Hunt (with DNA evidence to exonerate them) and commuting two death penalty sentences to life in prison. *Power To Pardon in N.C. Ends with Governor*, NEWS & OBSERVER (Raleigh, N.C.), Mar. 20, 2005, at 14A. Prior to Governor Easley’s administration, only three North Carolina death row inmates in nearly a quarter of a century had had their sentences commuted to life in prison by the governor. Death Penalty Information Center, *Clemency News and Developments: 2002-2001*, <http://www.deathpenaltyinfo.org/article.php?did=2056> (last visited Mar. 31, 2007).

74. Associated Press, *Convicted N.C. Man Won’t Be Pardoned*, USATODAY.COM, Aug. 18, 2005, http://www.usatoday.com/news/nation/2005-08-18-nopardonnc_x.htm (last visited Mar. 3, 2007).

75. See, e.g., Arleen Anderson, *Responding to the Challenge of Actual Innocence Claims After Herrera v. Collins*, 71 TEMP. L. REV. 489, 514–15 (1998) (contending that executive clemency is not a meaningful alternative for those with actual innocence claims because of the lack of procedural safeguards and considerable discretion given to one individual).

and lawyers from the important task of trying criminal cases.”⁷⁶ The finality principle stands for the practical reality that courts do not want to be flooded with petitions from prisoners claiming they are innocent, especially given that those prisoners’ guilt has already been adjudicated. This same principle also applies at the state level, as commentators suggest that the current MAR law was written to “control the volume of claims” in the North Carolina criminal justice system.⁷⁷ The court system was not designed to provide comprehensive review of factual innocence claims and is not equipped to handle an influx of such claims. An independent review commission relieves the burden placed on the criminal justice system by providing an important screening mechanism for the courts.

II. THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

In response to highly publicized wrongful convictions in North Carolina, such as those of Terence Garner and Ronald Cotton, Chief Justice I. Beverly Lake Jr. created a task force called the North Carolina Actual Innocence Commission (NCAIC) in November 2002.⁷⁸ The NCAIC was established to address wrongful conviction issues and to improve “North Carolina’s justice system and [its] citizen’s [*sic*] faith in it.”⁷⁹ More specifically, the primary objective of the NCAIC

is to make recommendations [to North Carolina] which reduce or eliminate the possibility of the wrongful conviction of an innocent person. Through its work, the [NCAIC] hopes to raise awareness of the issues surrounding wrongful convictions[,] . . . increase the conviction of the guilty, positively impact public trust and confidence in [North Carolina’s] justice system, and decrease the overall cost of the prosecution, trial and appeal processes.⁸⁰

76. *Kuhlmann v. Wilson*, 477 U.S. 436, 453 n.16 (1986) (citations omitted).

77. *E.g.*, Interview with Christine Mumma, Exec. Dir., N.C. Actual Innocence Comm’n, Duke Univ. School of Law, in Durham, N.C. (Feb. 15, 2006).

78. Staff of Carolina Journal Online, *Friday Interview: Wrongful Convictions*, CAROLINA J. ONLINE, Oct. 28, 2005, http://www.carolinajournal.com/exclusives/display_exclusive.html?id=2883 (last visited Feb. 24, 2007).

79. Mumma, *supra* note 11, at 649.

80. *Id.* at 651.

Representatives of each arm of the criminal justice system in North Carolina sit on the NCAIC.⁸¹

The NCAIC's first study was on erroneous eyewitness identification, which is recognized "as the leading factor in the wrongful conviction of those exonerated nationally by DNA evidence."⁸² In October 2003, after months of research, the NCAIC issued recommended procedures for law enforcement officials conducting eyewitness identification in North Carolina.⁸³

The NCAIC next studied the postconviction availability of factual innocence claim review, with members agreeing "that neither the appellate nor adversarial process is conducive to postconviction review of claims of innocence."⁸⁴ Members of the NCAIC discussed the structural and procedural considerations for factual innocence claim review under North Carolina's criminal justice system.⁸⁵ They drafted a proposal for the creation of an independent "innocence commission" that would review factual innocence claims,⁸⁶ looking to the United Kingdom's Criminal Cases Review Commission as a prototype.⁸⁷ In March 2005, the NCAIC voted nineteen to nine to send the proposal to the North Carolina General Assembly.⁸⁸

81. *Id.* The NCAIC is a group of approximately thirty members, including "the Chief Justice . . . the State Attorney General . . . law enforcement, defense attorneys, [and] victim advocates." *Id.*

82. *Id.* at 652.

83. *Id.* at 653.

84. *Id.* at 654.

85. *Id.*

86. Associated Press, *Innocence Commission Proposes Review Board*, INJUSTICEBUSTERS, Mar. 9, 2005, http://injusticebusters.com/05/North_Carolina.shtml (last visited Feb. 23, 2007).

87. Mumma, *supra* note 11, at 654.

88. Associated Press, *supra* note 86.

The bill stagnated in committee, but with a few modifications⁸⁹ eventually found strong bipartisan support and was approved by the House and Senate in late July 2006.⁹⁰ The most significant compromise was between House and Senate members who disagreed over whether the commission should allow defendants who admitted guilt at trial to later claim innocence.⁹¹ On August 3, 2006, Governor Easley signed the North Carolina Innocence Inquiry Commission Act into law, and North Carolina became the first state in the United States to establish a standing innocence commission to review possible wrongful convictions.⁹²

The North Carolina Innocence Inquiry Commission (NCIIC) Act⁹³ created a new independent review commission “to investigate and determine credible claims of factual innocence” in North Carolina.⁹⁴ It includes a sunset provision that disbands the NCIIC in four years unless the General Assembly renews the law.⁹⁵ The NCIIC consists of eight voting members appointed by the Chief Justice of the North Carolina Supreme Court and the Chief Judge of the Court of Appeals. Its members must include one superior court judge, one prosecuting attorney, one victim advocate, one criminal defense

89. The proposal drafted by the NCAIC underwent five modifications in the General Assembly before being passed: (1) 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. *Compare* H.R. 1323, 147th Gen. Assemb., Reg. Sess. (N.C. 2005), *with* H.R. 1323, 148th Gen. Assemb., Reg. Sess. (N.C. 2006) (enacted).

90. H.R. 1323, 148th Gen. Assemb., Reg. Sess. (N.C. 2006). The bill passed the House by a vote of 86 to 28 and passed the Senate by a vote of 46 to 2. North Carolina General Assembly, <http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2005&BillID=H1323> (last visited Feb. 24, 2007).

91. Andrea Weigl, *Innocence Bill Passed by House*, NEWS & OBSERVER (Raleigh, N.C.), Jul. 26, 2006, at 5B. A conference committee devised the following compromise: The commission will not allow claims from defendants convicted on a guilty plea in the first two years of its operations. *Id.*; *see infra* notes 107–110 and accompanying text.

92. Weir, *supra* note 8.

93. N.C. GEN. STAT. §§ 15A-1460 to 15A-1475 (Supp. 2006).

94. § 15A-1461.

95. 2006-3 N.C. Adv. Legis. Serv. 79 (LexisNexis).

attorney, one acting sheriff, one member of the public,⁹⁶ and two other members at the discretion of the Chief Justice.⁹⁷

The NCIIC will only review claims of factual innocence—not legal or procedural claims—and these will be heavily screened at the discretion of the NCIIC’s staff to ensure that only credible claims generate formal inquiries.⁹⁸ Some NCAIC members believe that current law school innocence projects, such as the Duke Law Innocence Project, could assume initial screening responsibilities on behalf of the NCIIC.⁹⁹ The NCIIC requires that a defendant filing a claim assert “complete innocence of any criminal responsibility for the felony for which the [defendant] was convicted and for any other reduced level of criminal responsibility relating to the crime.”¹⁰⁰ Moreover, the defendant has to provide “credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.”¹⁰¹

In addition, the Act seeks to minimize gratuitous claims of factual innocence by requiring the defendant to sign an agreement, before any formal inquiry is granted, in which the defendant voluntarily “waives his or her procedural safeguards and privileges, agrees to cooperate with the [NCIIC], and agrees to provide full disclosure regarding all inquiry requirements of the [NCIIC].”¹⁰² If any evidence of a crime is disclosed to the NCIIC during the proceedings, it will refer that evidence to the prosecution¹⁰³ unless it is unrelated to the crime for which the defendant is claiming factual

96. The member of the public must be neither an attorney nor a judge. § 15A-1463(a).

97. *Id.*

98. § 15A-1466; Mumma, *supra* note 3.

99. Memorandum from the N.C. Actual Innocence Comm’n, Structural and Operational Discussion Points 3 (Oct. 15, 2004) (on file with the *Duke Law Journal*).

100. § 15A-1460(1).

101. *Id.*

102. § 15A-1467(b).

103. *See* § 15A-1468(d) (“Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority.”); Staff of Carolina Journal Online, *supra* note 78. Christine Mumma, Executive Dir. of the North Carolina Actual Innocence Commission, stated, “Another way of weeding [noncredible] cases out . . . is [that] there has to be consequences for inmates who claim innocence when indeed they are not. So anything uncovered during an investigation . . . would be turned over to the prosecution.” *Id.*

innocence.¹⁰⁴ It will also disclose to the defendant and his attorney any favorable evidence that it discovers.¹⁰⁵

In return for prisoners' full cooperation, the NCIIC will independently investigate prisoners' claims. It is entitled to full disclosure from the trial-level defense and prosecution teams and has the authority to compel the attendance of witnesses and the production of evidence.¹⁰⁶ Once a formal inquiry is complete, the relevant evidence is presented to the full NCIIC, which can conduct open or closed hearings at its discretion.¹⁰⁷ Except in cases where the defendant pleaded guilty, if at least five of the eight voting members believe that "there is sufficient evidence of factual innocence to merit judicial review," then the claim will be referred to a postcommission three-judge panel appointed by the Chief Justice.¹⁰⁸ For the first two years of its existence, the NCIIC will not allow any claims from defendants who pleaded guilty;¹⁰⁹ after two years, such claims can only be referred to the three-judge panel upon a unanimous vote from the eight-member commission.¹¹⁰

The three-judge panel cannot include any trial judge with "substantial previous involvement in the case."¹¹¹ After an evidentiary hearing in which the state is represented by the district attorney or a designee, and the defendant is represented by an attorney,¹¹² the three-judge panel decides "whether the [defendant] has proved by clear and convincing evidence that the [defendant] is innocent of the charges."¹¹³ If the three-judge panel is unanimous, the panel dismisses all charges against the defendant.¹¹⁴ Although decisions of the NCIIC and the three-judge panel are not subject to further review, defendants can file additional claims of factual innocence with the NCIIC.¹¹⁵

104. See § 15A-1467(b) ("The waiver under this subsection does not apply to matters unrelated to a [defendant's] claim of innocence.").

105. § 15A-1468(d).

106. § 15A-1467(d)-(f).

107. § 15A-1468(a).

108. § 15A-1468(c).

109. Weigl, *supra* note 91.

110. *Id.*

111. § 15A-1469(a).

112. § 15A-1469(c)-(e).

113. § 15A-1469(h).

114. *Id.*

115. See § 15A-1470(a) ("[D]ecisions of the Commission . . . are final and not

III. THE UNITED KINGDOM'S CRIMINAL CASES REVIEW COMMISSION

The Criminal Cases Review Commission (CCRC) is the independent review commission in the United Kingdom that reviews suspected miscarriages of criminal justice.¹¹⁶ Given that many of the fundamental characteristics of the NCIIC were based upon those of the CCRC, it is important to understand the CCRC's origin and structure.

The criminal justice systems in the United Kingdom and the United States, although not identical, are quite similar with respect to the characteristics relevant to a comparison between the NCIIC and the CCRC.¹¹⁷ Both systems employ substantially the same basic procedures to carry a case from arrest to conviction, and from conviction through appeal.¹¹⁸ For example, in both countries law enforcement officials investigate criminal offenses and a central prosecutors' office prosecutes the offense on behalf of the government.¹¹⁹ In addition, the Crown Courts and the Criminal Division of the Court of Appeal in the United Kingdom are analogous to state trial and appellate courts in the United States, and the House of Lords is similar to the U.S. Supreme Court in that it decides only appeals on points of law of general public importance.¹²⁰ Thus, the CCRC can provide a useful model for the NCIIC in North Carolina.

One difference between the two systems is that separation of powers issues do not exist within the parliamentary system of the United Kingdom, but are fundamental to North Carolina's tripartite

subject to further review"); Robertson, *supra* note 34 ("There are no appeals to the judges' ruling, but defendants could file additional requests for review with the commission.").

116. 2004–2005 CRIMINAL CASES REVIEW COMM'N ANN. REP. 10 (U.K.) [hereinafter 2004–2005 CCRC ANN. REP.]; 1998–1999 CRIMINAL CASES REVIEW COMM'N ANN. REP. 6 (U.K.) [hereinafter 1998–1999 CCRC ANN. REP.].

117. Findley, *supra* note 14, at 100–05; Griffin, *supra* note 69, at 1243–46.

118. David Horan, *The Innocence Commission: An Independent Review Board for Wrongful Convictions*, 20 N. ILL. U. L. REV. 91, 102 (2002) ("[T]he overall structure of the English courts is very similar to that of the criminal courts in the United States." (quoting J. DAVID HIRSCHL & WILLIAM WAKEFIELD, *CRIMINAL JUSTICE IN ENGLAND AND THE UNITED STATES* 127 (1995))).

119. *Id.*

120. *Id.* at 103.

government.¹²¹ A separation of powers issue is, however, unlikely to arise over the NCIIC because, as with the CCRC, the judiciary makes the actual decision on each defendant's case. The nonbinding nature of the recommendations made by the NCIIC and CCRC preserves their independence and insulates them from political pressures.¹²² Another difference is that North Carolina allows postconviction challenges through direct appeals and collateral remedies, such as the MAR and federal habeas relief, whereas the United Kingdom provides only limited opportunities for direct appeals and no mechanism for collateral remedies.¹²³ Unlike the NCIIC, the CCRC provides a forum for postconviction challenges that otherwise does not exist in the United Kingdom.¹²⁴ However, as discussed in Part I, the collateral remedies in North Carolina also provide little or no redress for prisoners with factual innocence claims.¹²⁵ Given the procedural and judge-related limitations, such claims are rarely litigated under the current system. Therefore, the NCIIC, like the CCRC, does not simply add another layer of review, but instead serves an essentially unique function.¹²⁶

The CCRC was established in response to concerns similar to those that undermined public confidence in the criminal justice system throughout the United States. Before 1997, miscarriage of justice claims in the United Kingdom were made to the home secretary under Section 17 of the Criminal Appeal Act of 1968, and were referred to the Court of Appeal at the secretary's discretion.¹²⁷ In practice, cases were referred only when new evidence emerged after the trial; even then, the Court of Appeal took a narrow view of these claims.¹²⁸ The system of review by the home secretary "was . . .

121. *See id.* at 101 (contrasting the United Kingdom's system with state governments generally).

122. *See* Barry C. Scheck & Peter J. Neufeld, *Toward the Formation of "Innocence Commissions" in America*, 86 JUDICATURE 98, 104 (2002) (asserting that an essential element of innocence commissions is that their recommendations should not be binding).

123. *Id.* at 104-05.

124. Findley, *supra* note 14, at 345.

125. *See supra* notes 34-75 and accompanying text (discussing remedies under North Carolina law for innocent prisoners with factual innocence claims).

126. *See* Griffin, *supra* note 69, at 1303 (responding to hypothetical objections to an independent review commission).

127. CRIMINAL CASES REVIEW COMM'N, INTRODUCING THE COMM'N (2002) (UK), available at <http://www.ccrc.gov.uk/about.htm>.

128. *Id.*

thought to be unacceptably slow, insufficiently independent, and to deliver too many wrong decisions.”¹²⁹

High-profile cases of wrongfully convicted persons, such as those concerning the West Midlands Serious Crime Squad and the Birmingham Six, highlighted weaknesses in the United Kingdom’s criminal justice system. In 1989, the West Midlands Serious Crime Squad was disbanded amid allegations of wrongdoing, and an independent police inquiry produced evidence that the squad fabricated evidence, tortured suspects, and coerced confessions.¹³⁰ This evidence led to thirty convictions being quashed by the Court of Appeal.¹³¹ In 1991, six men, known as the Birmingham Six, were released from prison after serving sixteen years for crimes they did not commit. The men were arrested in 1974 after bombs exploded in two Birmingham pubs, killing twenty-one people and injuring more than 160 in the bloodiest IRA attack to that date.¹³² They were released after a government inquiry revealed irregularities in the police investigation, including altered statements and imperfect forensic tests.¹³³

In response to such cases and growing public concern, the home secretary announced the establishment of a Royal Commission on Criminal Justice in 1991.¹³⁴ The Royal Commission was established to review “the effectiveness of the criminal justice system in securing the conviction of the guilty and the acquittal of the innocent.”¹³⁵ The Royal Commission presented a report to Parliament in July 1993 that recommended the creation of an independent body to screen and investigate suspected miscarriages of justice and refer appropriate cases to the Court of Appeal.¹³⁶ This proposal received a mixed reaction from commentators. Some believed it would add an

129. SELECT COMM. ON HOME AFFAIRS, THE WORK OF THE CRIMINAL CASES REVIEW COMM’N, FIRST REPORT, 1998–99, H.C. 106, at 1, available at <http://www.parliament.the-stationery-office.co.uk/pa/cm199899/cmselect/cmhaff/106/10602.htm>.

130. Ian Burrell, *West Midlands Serious Crime Squad*, INDEP. (London), Nov. 1, 1999, at A8.

131. *Id.*

132. *On This Day: 14 Mar. 1991: Birmingham Six Freed After Sixteen Years*, BBC NEWS ONLINE, http://news.bbc.co.uk/onthisday/hi/dates/stories/march/14/newsid_2543000/2543613.stm (last visited Feb. 24, 2006).

133. CRIMINAL CASES REVIEW COMM’N, *supra* note 127.

134. *Id.*

135. *Id.*

136. *Id.*

unnecessary layer of bureaucracy and obscure the role of the courts.¹³⁷ Others commended the proposal because it recognized the system's failure to seek out new evidence of innocence and proposed an independent body that would be more insulated from political and judicial pressures.¹³⁸

The proposal gained widespread acceptance from members of Parliament—across all political parties—as politicians generally recognized the need for an independent review commission.¹³⁹ The Criminal Appeal Act of 1995, which established the Criminal Cases Review Commission (CCRC), was subsequently passed, and the CCRC began handling cases in March of 1997.¹⁴⁰

The CCRC is an independent public body, accountable to the home secretary, that reviews suspected miscarriages of criminal justice.¹⁴¹ By statute, the CCRC may consist of no fewer than eleven commissioners.¹⁴² Commissioners are appointed by the Queen on the advice of the Prime Minister;¹⁴³ at least one-third must be lawyers and at least two-thirds must have expertise in the criminal justice system.¹⁴⁴

The CCRC refers cases to the Court of Appeal where “there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made.”¹⁴⁵ A miscarriage of justice claim must be based on “an argument, or evidence, not raised in the proceedings . . . [or] exceptional circumstances.”¹⁴⁶ Absent

137. Horan, *supra* note 118, at 131–32 (citing *A Just Commission: The Runciman Report is Good in Most of its Parts*, TIMES (London), July 7, 1993, at A17).

138. *Id.* at 133–34 (citing Gareth Williams, *In the True Interests of Justice*, TIMES (London), July 7, 1993, at A16).

139. *See, e.g., Righting the Past: It's Society Versus the Courts*, GUARDIAN (London), July 21, 1998, at 15 (noting that the creation of the CCRC “reflected a widespread unease—across society and the political parties—at the growing number of miscarriages of justice”).

140. *Id.*

141. 2004–2005 CCRC ANN. REP., *supra* note 116, at 10; 1998–1999 CCRC ANN. REP., *supra* note 116, at 6.

142. Criminal Appeal Act, 1995, c. 35, § 8(3) (Eng.). In 2007, the eleven commissioners were Professor Graham Zellick (Chair), Alastair R. MacGregor QC, Michael Allen, Penelope Barrett, Mark Emerton, Jim England, Julie Goulding, David Jessel, Ian Nichol, Ewen Smith, and John Weeden. Criminal Cases Review Comm'n, *Commissioners*, http://www.ccrc.gov.uk/about/about_29.htm (last visited Mar. 27, 2007).

143. Criminal Appeal Act, 1995, c. 35, § 8(4).

144. *Id.* § 8(5)–(6).

145. *Id.* § 13(1)(a).

146. *Id.* § 13(1)(b)(i), (2). Exceptional circumstances include cases in which evidence was not discovered by the defense at the time of trial because of, for example, “legal incompetence.”

“exceptional circumstances,” only cases that have exhausted their appeals are eligible for referral.¹⁴⁷ Though the Criminal Appeal Act does not define the standard for “real possibility,” the Court of Appeal describes the standard as “more than an outside chance or a bare possibility but which may be less than a probability or a likelihood or a racing certainty” that the conviction, verdict, finding or sentence would be found “unsafe.”¹⁴⁸

Stage One¹⁴⁹ of the CCRC review process is an eligibility assessment. Once the CCRC receives an application from a person making a miscarriage of justice claim, a commissioner determines whether it is eligible for review.¹⁵⁰ About one-third of the applications are closed during Stage One.¹⁵¹ The vast majority of applications determined to be ineligible are applications where the appeals process has not been exhausted.¹⁵² An application is also ineligible for review if it arises from a criminal conviction outside of England, Wales, or Northern Ireland.¹⁵³

Stage Two of the review process is screening and intensive review. Commissioners study the applications passed from Stage One and preserve the documents held by public bodies that are relevant to the applications.¹⁵⁴ Cases requiring limited review are screened and usually completed within ninety working days.¹⁵⁵ Cases requiring more

“mistaken tactical decision,” or a “failure to appreciate its full significance.” Griffin, *supra* note 69, at 1276.

147. Criminal Appeal Act, 1995, c. 35, § 13(1)(c) (“A reference . . . shall not be made . . . unless an appeal against the conviction, verdict, finding or sentence has been determined or leave to appeal against it has been refused.”); 2004–2005 CCRC ANN. REP., *supra* note 116, at 22 (“If the appeals process has not been exhausted and . . . there are no exceptional circumstances, the case is closed.”).

148. R v. CCRC, ex p. Pearson, (1999) 3 All E.R. 498 (Q.B.). “The Court of Appeal is the highest court within the [U.K. court system], which also includes the High Court and Crown Court.” Her Majesty’s Courts Service, Information About—Court of Appeal, <http://www.hmcourts-service.gov.uk/cms/1235.htm> (last visited Feb. 24, 2007).

149. The CCRC annual reports designate three different stages of the review process: Stage One is an eligibility assessment; Stage Two is screening and intensive review; and Stage Three is the appointment of an investigative officer. See generally 2004–2005 CCRC ANN. REP., *supra* note 116; 1998–1999 CCRC ANN. REP., *supra* note 116.

150. 1998–1999 CCRC ANN. REP., *supra* note 116, at 8.

151. 2004–2005 CCRC ANN. REP., *supra* note 116, at 22.

152. 1998–1999 CCRC ANN. REP., *supra* note 116, at 8.

153. *Id.*

154. 2004–2005 CCRC ANN. REP., *supra* note 116, at 22. By statute, the CCRC has the power to obtain documents from public bodies. Criminal Appeal Act, 1995, c. 35, § 17 (Eng.).

155. 2004–2005 CCRC ANN. REP., *supra* note 116, at 22.

intensive review are assigned to caseworkers and may be investigated through the use of CCRC resources, the appointment of an outside expert, or the formal appointment of an investigative officer.¹⁵⁶

Stage Three of the review process is the appointment of an investigative officer. The CCRC will appoint an investigative officer if the case is particularly complex or involves other alleged crimes.¹⁵⁷ However, few cases proceed to Stage Three: between 1997 and 2005, only thirty-seven cases required the appointment of an investigative officer.¹⁵⁸

Case reviews result in either a decision by the CCRC to refer the application to the Court of Appeal, or a decision that the CCRC is “not minded to refer.”¹⁵⁹ A decision of “not minded to refer” is made by one commissioner with no previous involvement in the case.¹⁶⁰ If a referral seems likely after Stage Two or Stage Three, the application is passed to a committee, and a caseworker presents an overview of the case to the commissioners.¹⁶¹ A decision to refer a case can only be made by a committee of at least three commissioners with no previous involvement in the case.¹⁶²

Following a referral by the CCRC, the Court of Appeal makes a decision on the case. The standard for granting relief based on new evidence is far lower in the United Kingdom’s courts than in the United States. The United Kingdom’s Court of Appeal must receive new evidence if (1) the evidence is capable of belief, (2) the evidence may afford any ground for an appeal, (3) the evidence relates to an issue on appeal, and would have been admissible in the proceedings giving rise to the appeal, and (4) there is a reasonable explanation for the failure to adduce the evidence in those proceedings.¹⁶³ Given the

156. *Id.*

157. *Id.* at 23; Criminal Appeal Act, 1995, c. 35, § 19. The investigative officer has always been a senior police officer. 2004–2005 CCRC ANN. REP., *supra* note 116, at 23.

158. 2004–2005 CCRC ANN. REP., *supra* note 116, at 23.

159. 1998–1999 CCRC ANN. REP., *supra* note 116, at 9.

160. 2004–2005 CCRC ANN. REP., *supra* note 116, at 22–23. If a decision of “not minded to refer” is made, the applicant is provided an opportunity to respond to CCRC’s provisional statement of reasons. *Id.* The applicant’s response is considered before a final decision is made. *Id.* at 23. In practice, the primary reasons given for non-referral decisions have been “the court’s sense that the defendant was merely seeking a chance to put in a new defense after the first one had failed or because new evidence was insufficiently compelling to render the conviction unsafe.” Griffin, *supra* note 69, at 1280.

161. 1998–1999 CCRC ANN. REP., *supra* note 116, at 9.

162. *Id.*; 2004–2005 CCRC ANN. REP., *supra* note 116, at 23.

163. Criminal Appeal Act, 1995, c. 35, § 4 (Eng.).

new evidence, the Court of Appeal must “allow an appeal against conviction if they think that the conviction is unsafe.”¹⁶⁴ A survey by one commentator revealed that the Court of Appeal is quite liberal in reversing convictions based on new evidence, investigative misconduct, eyewitness misidentification, and scientific evidence.¹⁶⁵

The CCRC received “unanimously benign press” in its first year of operation, but commentators began to criticize it more frequently as CCRC decisions came under judicial review and its caseload increased.¹⁶⁶ Some called the review process “too meticulous” and said “the CCRC . . . appears to be performing supererogatory functions.”¹⁶⁷ In 2004–2005 forty-one applicants mounted challenges by judicial review against the CCRC, a fivefold increase from the prior fiscal year.¹⁶⁸ Some of these challenges related to, for example, delays in processing a claim and decisions not to pursue particular investigative steps.¹⁶⁹ However, media coverage of the CCRC—both positive and negative—has faded in recent years.¹⁷⁰

The CCRC received a total of 7,602 applications between 1997 and 2005, including 955 applications in 2004–2005.¹⁷¹ As of March 31, 2005, the CCRC had referred 271 (4.4 percent) of 6,842 cases it reviewed to appeals courts.¹⁷² As these statistics indicate, a significant backlog developed in the CCRC’s initial years.¹⁷³ An unexpectedly high volume of cases combined with a lack of resources overwhelmed the CCRC in its first few years and caused delays in processing new

164. *Id.* § 2(1).

165. Griffin, *supra* note 69, at 1282–87.

166. Bob Woffinden, *Justice Delayed*, GUARDIAN (London), Oct. 6, 1998, at 17.

167. *Id.*

168. See 2004–2005 CCRC ANN. REP., *supra* note 116, at 27 (“In 2004–05 there were 41 such challenges compared to eight in 2003–04.”).

169. *Id.* The CCRC has established formal policy and procedures for judicial review that allow applicants to “challenge breach[es] . . . of the public law principles of lawfulness, fairness and reasonableness.” CRIMINAL CASES REVIEW COMM’N, JUDICIAL REVIEW BY APPLICANTS, DOCUMENT NO. 621938, 1, available at http://www.crc.gov.uk/documents/JUDICIAL_REVIEW_BY_APPLICANTS.pdf.

170. Cf. David Jessel, *Turning a Blind Eye*, GUARDIAN (London), July 13, 2004, at 16. Commissioner David Jessel has suggested that the CCRC has caused a precipitous decline in investigative journalism because miscarriage of justice claims have become the CCRC’s domain. *Id.*

171. 2004–2005 CCRC ANN. REP., *supra* note 116, at 24. The CCRC has also received 540 reapplications, of which 21 have been referred to appeals courts. *Id.* at 27.

172. *Id.* at 26.

173. *Id.* at 25–26.

applications.¹⁷⁴ In 1998, the CCRC estimated that new applicants would “have to wait up to two years before their cases can be [reviewed] and it may be more than 30 years before the backlog is cleared.”¹⁷⁵ Additionally, limitations on the budget have led to fewer cases being completed and rising waitlists.¹⁷⁶

Despite this backlog, CCRC has achieved relative success in referring cases with a “real possibility” of reversal to the appeals courts and ultimately correcting miscarriages of justice.¹⁷⁷ Between 1997 and 2005, the appeals courts decided on 229 referrals, quashing 135 convictions and upholding 63 convictions.¹⁷⁸ Moreover, the CCRC has made great strides in restoring public confidence in the justice system by providing a receptive government forum for miscarriage of justice claims.¹⁷⁹ Although there are certainly some areas for improvement, the CCRC has been called “incomparably better” than the previous system of review.¹⁸⁰

IV. COMPARISON OF THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AND THE CRIMINAL CASES REVIEW COMMISSION

Both the NCIIC and CCRC operate as independent bodies, removed from the judiciary and executive, that conduct impartial investigations into factual innocence or miscarriage of justice claims.¹⁸¹ Their independence limits political pressures that invariably surround investigations into suspected mistakes by other government bodies. The representative diversity on the commissions, mandated by statute, allows for varied perspectives in the decisionmaking

174. Horan, *supra* note 118, at 162–63.

175. *Id.* (quoting Alan Travis, *Justice Body's Case Plea Rebuffed by Straw*, *GUARDIAN* (London), Dec. 16, 1998, at 12.)

176. 2004–2005 CCRC ANN. REP., *supra* note 116, at 6. Budget constraints led to a moratorium on CCRC hiring in 2004–2005; as a result, CCRC could not increase the number of case review managers to a level necessary to clear the backlog. *Id.*

177. See Grania Langdon-Down, *Justice Will Be Done*, *INDEP.* (London), Mar. 30, 1998, at 23 (suggesting that defense lawyers who had previously been critical of the CCRC have generally been pleased with its operations). Chairman Zellick has described the CCRC as a “conspicuous success.” Joshua Rozenberg, *Justice Watchdog Widens Appeal*, *DAILY TELEGRAPH* (London), Dec. 4, 2003, at 22.

178. 2004–2005 CCRC ANN. REP., *supra* note 116, at 26.

179. See Horan, *supra* note 118, at 155–56. Investigative journalists, for example, who had long provided a vehicle for uncovering miscarriage of justice claims, learned that the government was now willing to listen and cooperate with them. *Id.* at 155.

180. Langdon-Down, *supra* note 177.

181. See *supra* notes 92–97, 141–144 and accompanying text.

process.¹⁸² Moreover, as standing commissions, both the NCIIC and CCRC can routinely review all types of claims, not just high-profile claims, and uncover mistakes that would have otherwise been ignored.¹⁸³

The NCIIC and CCRC both preserve judicial economy by screening out meritless wrongful conviction claims and identifying for the courts the claims most deserving of further review. The CCRC's referral statistics indicate that it employs a heavy screening mechanism: only 4.4 percent of the completed cases were referred to appeals courts.¹⁸⁴ A similar procedure is envisioned for the NCIIC, where "claims would be heavily screened, to ensure that only credible claims are considered" before the formal voting members of the NCIIC.¹⁸⁵ Once there, the NCIIC must find sufficient evidence of factual innocence to refer the claim to the court system.¹⁸⁶ The NCIIC also hopes to screen gratuitous claims through a waiver of safeguards and privileges, discussed below.¹⁸⁷

Both the NCIIC and CCRC require that a defendant's claim be based on newly discovered evidence.¹⁸⁸ Thus, any objections that the NCIIC or the courts would be second-guessing juries are unfounded, because the NCIIC would not consider claims where the evidence was previously presented before a jury.¹⁸⁹

The NCIIC conducts public hearings at its own discretion; there is no statutory mandate to open its proceedings to the public.¹⁹⁰ Similarly, the CCRC's proceedings are generally closed to the public, as there is a general prohibition on the disclosure of any information to non-applicants.¹⁹¹ Peg Dorer, a member of the North Carolina Conference of District Attorneys, has argued that all the NCIIC's

182. See *supra* notes 96–97, 144 and accompanying text.

183. See Scheck & Neufeld, *supra* note 122, at 103–05 (identifying the essential elements of an innocence commission and proposing a model for investigating wrongful convictions based on the National Transportation Safety Board and Canadian Innocence Inquiry models).

184. 2004–2005 CCRC ANN. REP., *supra* note 116, at 26.

185. Mumma, *supra* note 3.

186. N.C. GEN. STAT. § 15A-1468(c) (2006).

187. See *infra* notes 196–198 and accompanying text.

188. See *supra* notes 101, 146 and accompanying text.

189. See § 15A-1460(1) (The defendant must provide "credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.").

190. *Id.* § 15A-1468(a).

191. Criminal Appeal Act, 1995, c. 35, §§ 23–25 (Eng.).

proceedings should be open to the public, just like most other proceedings in the criminal justice system. Prosecutors were already uncomfortable with the loss of control over these cases; closed meetings further compound the issue.¹⁹² However, closed proceedings allow the NCIIC “to exercise sensible control over the length and breadth of their proceedings” and prevent proceedings from turning into television dramas or political forums.¹⁹³ Like the CCRC, transparency can be achieved by the NCIIC through annual reports, website information, and budgetary disclosures.¹⁹⁴ In addition, the NCIIC’s evidence disclosure requirements provide another layer of transparency.¹⁹⁵

One of the major distinctions between the CCRC and the NCIIC is the NCIIC’s requirement that defendants waive their procedural safeguards and agree to provide full disclosure before a formal inquiry into their factual innocence claim begins.¹⁹⁶ In addition, if the NCIIC uncovers evidence of a crime, the NCIIC must disclose that evidence to the prosecution unless the evidence is unrelated to the defendant’s claim. The General Assembly wisely closed the loophole left by the NCAIC, which would have subjected defendants to prosecution for crimes—unrelated to their innocence claim—revealed during the investigation of their claim.¹⁹⁷ Such broad waiver and disclosure requirements could have screened out credible claims of factual innocence, because defendants would have feared exposure to unrelated charges.

Defendants probably remain wary that evidence obtained by the NCIIC may be used against them in other postconviction proceedings. Nevertheless, pursuing such “an extraordinary procedure to investigate credible claims should require an

192. N.C. Actual Innocence Comm’n, Minutes of the Meeting 2 (Feb. 18, 2005) (on file with the *Duke Law Journal*).

193. See Scheck & Neufeld, *supra* note 122, at 105 (describing the balance that must be struck between transparency and control).

194. *Id.*

195. See *supra* notes 103–105 and accompanying text. Evidence of criminal acts is disclosed to the prosecution, whereas favorable evidence is disclosed to the defendant and his attorney. *Id.*

196. N.C. GEN. STAT. § 15A-1467(b) (2006).

197. Robertson, *supra* note 34. State Senator R.C. Soles, D-Columbus, believed the waiver and disclosure requirements in the original bill were too severe, and he likely played a significant role in closing the loophole. *Id.* Soles had said, “If you’re sitting over there on death row and you know you’re not guilty and you can prove it, I don’t see why you need to waive your constitutional rights and admit you stole your grandmother’s purse.” *Id.*

extraordinary commitment by the defendant” to waive their rights and cooperate fully with all inquiries.¹⁹⁸ As a truth-seeking commission, the NCIIC depends on the full cooperation of all claimants for the system to work. This extraordinary commitment should act as a strong screening mechanism against frivolous claims and allow the NCIIC to avoid the backlog that plagues the CCRC.

While the CCRC allows miscarriage of justice claims regardless of the plea entered in the trial court, the compromise reached in the North Carolina General Assembly prevents defendants who pleaded guilty from seeking relief through the NCIIC in its first two years of existence;¹⁹⁹ after that, those defendants must meet a higher standard than any other claimants.²⁰⁰ Even so, state prosecutors are not pleased with the compromise; some have suggested that it is “making a mockery of the system.”²⁰¹ Critics maintain that allowing those who declared their guilt to now maintain their innocence is an affront to the integrity of the criminal justice system.²⁰² Nevertheless, defendants convicted on a guilty plea may still have credible innocence claims. Some defendants plead guilty because it is a plea bargain: they may be innocent, but do not want to risk a longer sentence at trial. Others may not have understood what they agreed to, or may have received bad advice from their counsel. According to the Innocence Project, 4 percent of the people exonerated by DNA evidence between 1989 and 2006 had pleaded guilty at trial.²⁰³ To provide full protection for such defendants, the legislature should consider relaxing the higher burden that applies to innocence claims brought by prisoners who initially pleaded guilty, and treating all claimants equally.

Unlike the CCRC, the NCIIC does not require by statute that defendants exhaust all appeals to be eligible for factual innocence

198. N.C. ACTUAL INNOCENCE COMM’N, BILL INTRODUCTION SUMMARY: INNOCENCE INQUIRY COMMISSION 2 (2005).

199. Weigl, *supra* note 91.

200. See § 15A-1468(c) (requiring all eight members of the commission to vote for judicial review for defendants who pleaded guilty versus only five votes needed for review for other defendants).

201. Mike Baker, *N.C. Lawmakers OK Innocence Commission*, BOSTON.COM, July 26, 2006, http://www.boston.com/news/nation/articles/2006/07/26/nc_lawmakers_ok_innocence_commission (last visited Feb. 24, 2007) (quoting Garry Frank, president of the district attorneys’ coalition).

202. Andrea Weigl, *N.C. Innocence Panel Awaits Easley’s Blessing*, NEWS & OBSERVER (Raleigh, N.C.), July 27, 2006, at 10A.

203. *Id.*

review.²⁰⁴ Thus, defendants are allowed to make simultaneous claims through the NCIIC and court system. To limit the number of claims filed with the NCIIC, many prosecutors wanted the NCIIC to review only claims where all appeals had been exhausted.²⁰⁵ Others argue that an exhaustion requirement would “ensure that defendants will not simply bypass appellate court remedies to try their claims with a possibly more sympathetic, quasi-judicial body.”²⁰⁶ However, this argument suggests that defendants with credible claims of innocence do not deserve timely review from an independent commission and must first petition appellate courts that are not designed to hear factual claims. This argument also overlooks the cases where the NCIIC would provide relief before the defendant exhausts all of his appeals. If the defendant has a credible claim of innocence, the NCIIC is likely to provide more immediate relief, obviating the defendant’s need to clutter the court system with additional claims. Thus, the NCIIC improves judicial economy because it acts as a screening mechanism for the courts.

In the United Kingdom, the standard for reversal of a conviction is whether the appeals court finds the conviction to be “unsafe.”²⁰⁷ This standard places the burden of defending the conviction on the prosecution. Under the NCIIC, the standard for reversal is whether the three-judge panel finds “clear and convincing evidence” of the defendant’s innocence.²⁰⁸ This standard places the burden of proving innocence on the defendant.²⁰⁹ The more-restrictive NCIIC standard balances the fundamental correctness of the conviction against the state’s interest in the finality of its criminal justice proceedings, giving more weight to the finality interest than the United Kingdom’s standard does.²¹⁰ Because of the passage of time associated with collateral remedies like the NCIIC, proceedings will likely be plagued

204. See *supra* note 147.

205. Cf. Andrea Weigl, *Innocence Principals Seek Accord*, NEWS & OBSERVER (Raleigh, N.C.), May 21, 2005, at 5B (listing the changes to the NCIIC sought by prosecutors and defense attorneys).

206. Horan, *supra* note 118, at 171.

207. See *supra* notes 145–48, and accompanying text.

208. N.C. GEN. STAT. § 15A-1469(h) (2006).

209. *Id.*

210. Cf. *supra* notes 60–63 and accompanying text (discussing how the United States Supreme Court is similarly concerned with balancing the fundamental correctness of a conviction against the state’s interest in the finality of proceedings in the context of federal habeas relief).

by the “erosion of memory” and “dispersion of witnesses.”²¹¹ Thus, the more-restrictive standard is acceptable because it protects the public from guilty defendants being released.²¹²

While the CCRC only has the authority to compel the production of documents from public bodies,²¹³ the NCIIC has full statutory authority to compel document production, just as the courts do.²¹⁴ This represents an improvement upon the CCRC model, and the CCRC has begun to lobby for more complete authority over private bodies based on the investigative limitations it has experienced.²¹⁵

While both the NCIIC and CCRC allow unlimited reapplications by defendants, only the NCIIC forecloses the right to judicial review of its decisions. In the United Kingdom, the benefits to judicial economy that the CCRC offers are threatened by the possibility that its decisions not to refer cases will be reviewed judicially.²¹⁶ The NCIIC avoids this issue because “the decisions of the [NCIIC] and of the three-judge panel are final and not subject to further review by appeal, certification, writ, motion, or otherwise.”²¹⁷

Finally, although the United Kingdom’s commission is entitled the Criminal Cases Review Commission, the North Carolina commission has a more narrow title: the North Carolina Innocence Inquiry Commission. The “innocence” moniker appears to limit the scope of the NCIIC and forms an implicit judgment about its mission: that the NCIIC is merely a “criminal defense movement when it really is much more.”²¹⁸ The NCIIC is concerned not only with protecting the innocent, but also with seeking justice. An effective and efficient criminal justice system is achieved by “both acquitting

211. *Kuhlmann v. Wilson*, 477 U.S. 436, 453 (1986) (quoting *Engle v. Isaac*, 456 U.S. 107, 127–28 (1982)).

212. *See id.*

213. Criminal Appeal Act, 1995, c. 35, § 17 (Eng.).

214. N.C. GEN. STAT. § 15A-1467(d)–(f) (2006).

215. Horan, *supra* note 118, at 159.

216. *See id.* at 168 (asserting that making decisions of the commission not judicially reviewable was a “more sensible design”).

217. § 15A-1470(a). This Note centers on comparisons between the NCIIC and CCRC, and it does not seek to address whether some defendants who have been denied review by the NCIIC could have valid due process or other constitutional claims, despite the statutory language foreclosing judicial review.

218. *See Findley, supra* note 14, at 353 (championing “Criminal Justice Study Commission” as a more appropriate title for proposed commissions instead of “Innocence Commissions”).

the innocent and convicting the guilty,”²¹⁹ and the NCIIC helps North Carolina achieve both of these goals. Thus, the legislature should have followed the United Kingdom’s model and adopted a more inclusive title; for example, it could have named the commission, the “North Carolina Criminal Cases Review Commission.”

The single greatest impediment to the success of the CCRC is a lack of funding and resources.²²⁰ Budget issues also plague the NCIIC at this early juncture. Supporters of the NCIIC had hoped for a budget of close to \$500,000, but the legislature appropriated only \$210,000.²²¹ The NCIIC hopes to close that gap by relying on the pro bono work of law students who would screen claims through their law school’s Innocence Project. An overreliance on volunteers may, unfortunately, lead to significant backlogs when these schools are not in session.

The CCRC has achieved relative success in correcting miscarriages of justice.²²² From a comparative perspective, the NCIIC should be able to match that success if it can avoid the budget and resource pitfalls, and operate in a manner that improves judicial economy. The average British citizen knows very little about the CCRC, but publicity from high-profile exonerations has helped to increase public confidence in the system. It may be difficult for the NCIIC to fly under the radar—instead it is likely that it will be subject to intense media scrutiny—but “conspicuous success”²²³ in its first few years may help it overcome some early obstacles and high-profile reversals would certainly aid the cause. Just as the appellate process in the United Kingdom was not designed to handle miscarriages of justice, the avenues for postconviction relief in the United States were not adequately equipped to address claims of factual innocence. The NCIIC fills that gap and provides a model for other states and the federal government.

219. *Id.*

220. *See supra* notes 171–176 and accompanying text.

221. Phoebe Zerwick, *New Panel Hopes, Hurdles; Three-Step Process Creates Another Chance at Freedom for the Wrongly Convicted; Innocence Commission First in Nation to Backstop Courts*, WINSTON-SALEM J., Aug. 20, 2006, at A1.

222. *See supra* notes 177–180 and accompanying text.

223. Rozenberg, *supra* note 177.

CONCLUSION

The cases of Darryl Hunt, Alan Gell, Ronald Cotton, and others have eroded public confidence in North Carolina's criminal justice system and demonstrated the need for change. Innocent people were wrongfully convicted, and before the NCIIC there was no effective mechanism to correct these mistakes because under other methods of postconviction review "the opportunity for bringing new evidence is extremely limited; the standard of review is intolerably high; and clemency is so rarely granted as to be virtually meaningless."²²⁴ Consequently, innocent prisoners in North Carolina had limited access to a forum for presenting their factual innocence claims. The NCIIC ameliorates that problem by providing an effective forum for those prisoners where new evidence strongly supports their factual innocence claims. By establishing this commission, North Carolina has expressed the importance it places on its criminal justice system and on its citizens: "When someone's freedom—or his very life—is at stake, the state should rush, not hesitate, to make sure it recognizes and corrects its errors."²²⁵

Criminal justice experts have identified multiple factors that contribute to wrongful convictions in North Carolina and across the United States, including false eyewitness identifications, coerced confessions, inaccurate lab reports, prosecutorial misconduct, and poor legal representation.²²⁶ 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.²²⁷ 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.²²⁸ 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

224. Griffin, *supra* note 69, at 1307.

225. Editorial, *New Innocence Panel Reflects Well on N.C.*, PILOT (Southern Pines, N.C.), Aug. 11, 2006, available at <http://www.thepilot.com/stories/20060808/opinion/opinion/20060808PilotEditorial.html>.

226. Mumma, *supra* note 3.

227. See Findley, *supra* note 14, at 347–48 ("A commission like the CCRC more directly seeks to identify and remedy individual injustices than recommend systemic reforms.").

228. *Id.*

reform.²²⁹ 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.

229. *See* N.C. GEN. STAT. § 15A-1475 (2006) (requiring that the NCIIC report on its activities to various legislative committees and the State Judicial Council); § 7A-409.1 (mandating that the State Judicial Council produce statistical reports regarding inquiries and any recommended changes for the General Assembly).