

## North Carolina Innocence Inquiry Commission Aids in Overturning Wrongful Convictions

By: Lindsey Guice Smith, IAPE Board Member

Wrongful convictions erode the public's confidence in the criminal justice system, but, when addressed, allow criminal justice stakeholders to learn how to better ensure justice is served. With each wrongful conviction, a dangerous perpetrator remains free, while victims of crime falsely believe they have received justice. Moreover, innocent men and women spend years in prison for crimes they did not commit.

The North Carolina Innocence Inquiry Commission is a state agency charged with investigating and evaluating post-conviction claims of factual innocence. It is unique in that it is the first state agency of its kind in the nation and remains the only state agency of its kind in the nation. Created in 2006 by the North Carolina General Assembly, the Commission is designed to find truth from a neutral perspective, outside of the adversarial criminal justice system. The creation of the Commission was based on the recognition that the unique Commission process would bring confidence to the criminal justice system and that the Commission was the best way for North Carolina to manage its review of post-conviction claims of factual innocence. It therefore seems appropriate to go back to the session law that created the Commission in 2006 and read the Preamble as a backdrop to understanding the Commission:

"Whereas, postconviction review of credible claims of factual innocence supported by verifiable evidence not previously presented at trial or at a hearing granted through postconviction relief should be addressed expeditiously to ensure the innocent as well as the guilty receive justice; and

"Whereas, public confidence in the justice system is strengthened by thorough and timely inquiry into claims of factual innocence; and

"Whereas, factual claims of innocence, which are determined to be credible, can most effectively and efficiently be evaluated through

complete and independent investigation and review of the same..."

While much goes into evaluating and investigating post-conviction claims of factual innocence from a neutral standpoint, the focus of this article will be the intersection of the Commission's investigations and property/evidence rooms across North Carolina. While other states do not have state-run innocence commissions, it goes without saying that there are individuals and groups across the country, and beyond, interested in the "gold" that evidence custodians have in their property rooms. This "gold" includes evidence that could potentially free the innocent and help convict the guilty.

Before moving on to our focus on the intersection of the Commission's investigations and property/evidence rooms, I want to take a minute to share some statistics that will help shape this discussion. Based on data last compiled in October 2019: 2,710 claims have been received since the Commission's creation, and 2,635 of those claims have been closed. The Commission has conducted 15 Commission hearings. Twelve individuals have been exonerated based on the work of the Commission. Of the 15 cases that have been presented at Commission hearings, 13 were sent forward to a three-judge panel and 2 were not. Of the 13 cases sent forward to a three-judge panel, 8 resulted in the exonerations of 9 individuals (one co-defendant case). Two cases sent forward to a three-judge panel resulted in a denial of relief by the three-judge panel. Three cases sent forward to a three-judge panel are still pending a hearing before the panel (including one co-defendant case). Three individuals have had their convictions vacated through post-conviction Motions for Appropriate Relief (MAR) that were based on the Commission's investigation of their innocence claim. These three individuals chose to pursue an MAR after the Commission's investigation of their claim but before the Commission could move forward with a hearing on their claim. Additionally, three other individuals (one case; 3 co-defendants) have had their convictions vacated through Motions for Appropriate Relief after denial of relief by the Commission at a Commission hearing.

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## North Carolina Innocence Inquiry Commission - cont'd.

In creating and developing the Innocence Inquiry Commission, the North Carolina General Assembly gave the Commission broad statutory authority to obtain files and evidence necessary to its inquiries. This includes the right to access and inspect physical evidence, as well as take custody of physical evidence and subject it to forensic testing, including consumption where necessary. In working with agencies across North Carolina, the Commission first asks an agency to produce a list of evidence it maintains in the case in question. If no evidence is maintained by the agency, the Commission requests a record of disposition or destruction and associated chain of custody documentation. When an agency cannot produce documentation of disposition or destruction, the Commission then requests a search for the evidence be conducted by the agency itself and often requests to conduct a search of its own.

At this stage, Commission staff typically sets out to more fully understand the agency's policies, procedures, practices, and evidence storage facility set-up. We ask questions such as:

- What is the oldest piece of evidence you have in your custody?
- Do you have evidence to a case that you can't identify?
- Where are all of your storage locations?  
Are any outside of your main evidence storage area?  
Any outdoor storage locations?  
Any off-site storage locations?
- Have you conducted a full inventory of all evidence in your care, custody and control?
- What discrepancies, if any, were there in your last inventory?
- Where do you keep disposition/destruction records?
- Are older cases treated differently than current cases?
- When did you move to your current system?  
Were cases from before that date entered into the old system?

All of these questions provide us with valuable data so that we know whether a search needs to be conducted and so that we can be efficient with both our time and the time of the agency when we conduct a search. Agencies who are following IAPE's best practices standards will likely either have disposition/destruction documentation, or if the case is older and

they don't have documentation from that timeframe, will have done a recent full inventory of every item in their custody, care and control, such that any need to search is narrowed considerably.

Through this search process the Commission has located evidence or documentation of destruction in 27 cases, where the evidence had otherwise been deemed missing or destroyed, but where no documentation of disposition or destruction could be located. In some cases documentation showed that the agency should still have the evidence, but had simply been unable to locate it prior to the Commission's involvement. This list of 27 cases does not include cases where evidence was located where it was supposed to be or cases where a subsequent search turned up no evidence or records of destruction.

These 27 cases create an interesting data set to study. In six of the 27 cases, DNA testing conducted at the request of the Commission confirmed guilt, thus providing closure. Seven of the 27 cases resulted in the exoneration of nine individuals. To put that in perspective, 75% of the Commission's exonerations involve cases where others had been told that no physical evidence could be located, but for which there was no record of disposition or destruction. For 9 of the 12 individuals exonerated based on the Commission's work, but for the Commission's statutory authority to demand more, they would have been left believing that physical evidence no longer existed in their cases when in fact, it did.

OUTCOME	# OF CASES / # OF INDIVIDUALS	
Confirmation of Guilt	6	6
Exonerated	7	9
Pending 3-Judge Panel Hearing	2	3
Case still active with Commission	1	1
Evaluation of evidence and/or Forensic testing did not provide definitive answers with respect to guilt or innocence	10	10
Located destruction records that had not previously been located	1	1

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In at least three of the 27 cases, a judge had previously issued an order denying the convicted person's Motion for Appropriate Relief because a search for physical evidence had returned no results. Our judges should expect that a court-ordered search will result in the correct determination as to whether evidence exists or doesn't exist in a case. Although your state may not have a state agency that is charged with investigating post-conviction claims of innocence that is vested with the authority to access and inspect physical evidence, this article serves to highlight the importance of documenting evidence disposition or destruction and the importance of putting in the effort to search for physical evidence when requested.

I could talk for days about the state of the evidence rooms that the Commission has been in, but many of you know what I would say because you are living in the middle of that storm right now. Instead, I will give a few examples of where Commission searches have resulted in the location of physical evidence.

- In one case, Commission staff had been informed that several items of evidence could not be located at a local law enforcement agency. Commission staff was told that both the local agency and the State Bureau of Investigation had searched for the evidence and could not locate it. Commission staff requested to conduct its own search. The search spanned four days and covered evidence storage areas in the Sheriff's department, the courthouse, and off-site storage building owned by the County, and off-site ConEx units stored at the County surplus lot. Commission staff went through every item of evidence in each of the locations. Commission staff located evidence for this case in a row of locked lockers that had not been searched because no one had a key to them. Commission staff also located evidence for this case in the very back of a ConEx unit, at the bottom of a large stack of boxes. The individual in this case was ultimately exonerated. In this case, this agency was unable to account for the evidence it maintained as no full inventory had ever been conducted.

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• In another case, Commission staff was informed that a rape kit and other evidence associated with the case could not be located at a local law enforcement agency. The agency provided a property record that purported to show that the evidence had been destroyed. Careful review of the record showed that while some of the evidence may have been destroyed, the rape kit had not been destroyed. After speaking with the local law enforcement agency and viewing the evidence room, Commission staff learned that evidence was stored on each shelf by officer. After requesting that a box that should contain evidence from the officer originally assigned to this case be pulled, Commission staff located the rape kit in this case. Testing of the rape kit in this case confirmed the guilt of the convicted person. In this case, this agency was unable to account for the evidence it maintained as no full inventory had ever been conducted.

• In a third case, the Commission staff was informed that several items of evidence could not be located at a local law enforcement agency. Commission staff was informed that a search had been conducted, but was invited to come and conduct its own search. This search did not result in the location of evidence for this case; however, based on the status of the evidence room, Commission staff essentially conducted a full inventory of the evidence in the evidence room, taking handwritten notes about every item that staff saw. In 2019, another case from that agency came to the Commission. Using the inventory from the Commission's 2013 search, the Commission was able to provide information related to where the evidence for this case was located in 2013 and the agency was able to locate the evidence for this unrelated case very quickly. The agency to date had not conducted its own full inventory of its evidence room.

These stories are not just anecdotal. They are small representation of what many of you face every day in your evidence rooms. When the "mess" you inherited seems insurmountable, remember that you are not alone. IAPE has best practices to help you along the way. My advice is to develop a plan to identify the "gold" in your evidence room and at the very least, to search for that "gold" when requested. Post-conviction testing can provide answers that the criminal justice system previously did not have, whether those answers result in the exoneration of an individual and potential conviction of the true perpetrator, or simply confirm guilt, thereby reaffirming the conviction, providing closure to the Victim and ensuring trust in the criminal justice system.

Post-conviction testing can only provide those answers if first, the evidence can be located, and second, the evidence has not been contaminated or degraded from improper packaging/storage.

For those in decision-making positions who are reading this, I cannot stress enough the importance of providing your evidence room personnel with the resources they need to ensure that their evidence rooms meet the best practices standards set out by IAPE so that when agencies like the Commission, or others, ask for evidence, they are able to confidently inform the agency or individual asking as to whether they have the evidence in their custody. We all acknowledge that agency heads change, but when it comes to evidence, it doesn't matter that the evidence was collected before your administration; you inherit it all.

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