

The Criminal Cases Review Commission: Hope for the Innocent?

Edited by Dr. Michael Naughton
Palgrave Macmillan, 2010, 304 pages

Review of the book by Hans Sherrer
(Book page numbers are in brackets)

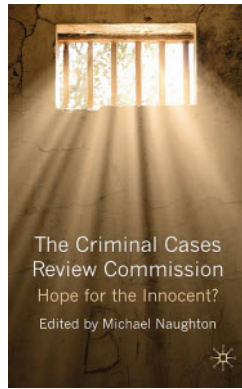
The Criminal Cases Review Commission: Hope for the Innocent? has valuable insights for anyone interested in correcting the conviction of innocent people.

The book is an anthology of 14 essays that critically examine the effectiveness of the Criminal Cases Review Commission (CCRC) for England, Wales and Northern Ireland. The essays were written by law professors, lawyers, journalists and advocates for the wrongly convicted.

The idea of an organization modeled after the CCRC has been suggested for Australia, New Zealand, Canada and the United States. So the information in the book's essays is invaluable for evaluating whether establishing such an organization is worth pursuing in those and other countries.

The CCRC was created by the Criminal Appeal Act of 1995 in response to several high profile exonerations between the late 1980s and the early 1990s of people convicted in the 1970s of Irish Republican Army (IRA) bombings in England. Publicity about those cases swayed public opinion toward believing that the then current method of reviewing cases of a possible miscarriage of justice was inadequate. Those bombing cases included the Guildford Four, the McGuire Seven, and the Birmingham Six. The Guildford Four case is depicted in the 1993 movie "In The Name of the Father," that starred Daniel Day-Lewis as Gerry Conlin and Emma Thompson as solicitor (attorney) Gareth Peirce.

Prior to creation of the CCRC, the C3 division of the British Home Secretary's Office reviewed cases of a possible miscarriage of justice and referred meritorious cases to the Court of Appeal -- Criminal Division (CADC). (The Attorney General is roughly the U.S. equivalent of the Home Secretary.) The IRA bombing cases revealed that political considerations were affecting C3's referral of possible miscarriage of justice cases to the CADC. To remedy that "apparent constitutional problem" the CCRC was created to take over the function of C3. (1)



conviction overturned or the sentence reduced.

There is a wealth of information in the book's essays about how the CCRC has performed in practice, in contrast with how it was expected to perform by those who advocated for it to replace C3.

The overwhelming sentiment based on the author's analysis is that the CCRC has not just failed to live up to the expectations that it would provide an effective mechanism to correct the conviction of innocent people, but that large numbers of innocent people are languishing in prison because the CCRC will not even investigate their cases, much less refer their cases to the CADC.

The CCRC's failure is so spectacular that miscarriage of justice cases referred to the CADC by the Home Office's C3 division would not today be referred to the court by the CCRC, because they wouldn't consider there is a "real possibility" of a successful outcome. Dr. Michael Naughton, the book's editor and founder and chairman of the Innocence Network UK, levels the most damaging accusation possible against the CCRC by asserting it is unlikely it would refer the Birmingham Six case to the CADC. Naughton writes: "This is because the evidence of police misconduct and incorrect forensic expert testimony that led to the quashing of their convictions in the third appeal was available at the time of the original trial and appeal, so it does not constitute the kind of 'fresh evidence' normally required by the CCRC to encourage a referral." (4) The irony of Naughton's observation is that one of the impetuses behind creation of the CCRC was a lack of public confidence in the legal system caused by publicity about the exoneration of the Birmingham Six that only happened because C3 referred their case to the CADC.

The statutory role and responsibilities of the CCRC set out in the Criminal Appeal Act 1995 are defined as:

* Reviewing suspected miscarriages of justice and referring a conviction, verdict or finding or sentence to an appropriate

court of appeal where it is felt that there is a "real possibility" that it would not be upheld.

* To investigate and report to the Court of Appeal on any matter referred to the Commission.

* To consider and report to the Secretary of State on any conviction referred to the Commission for consideration of the exercise of Her Majesty's prerogative of mercy.

The Act creating the CCRC specifically states it will be an independent organization, "the Commission shall not be considered as the servant or agent of the Crown." (55) However, it is explained in the book that the CCRC is effectively a servant of the appeals court because it evaluates cases based on the "real possibility" of success if referred to the CADC.

The degree to which the CCRC adheres to its statutory mandate can be gleaned from analyzing its success rate. From 1997 to February 2011, 314 of the 449 cases the CCRC referred to the Court of Appeals had their conviction quashed or their sentence reduced. (See, http://www.ccr.gov.uk/cases/case_44.htm) It is observed in several of the book's essays that the high success rate (70%) of referred cases is because the CCRC rigorously adheres to its statutory mandate to only refer cases that have a "real possibility" of being granted relief by the CADC.

The CCRC has contributed to quashing the conviction or reducing the sentence of an average of less than 23 cases yearly (314/14). Yet, it has conservatively been estimated that there are an average of almost 5,000 convictions annually in the United Kingdom that can be considered a miscarriage of justice (166) -- and that doesn't even take into account cases involving an unjust sentence.

That is why Kevin Kerrigan writes in his essay "Real Possibility or Fat Chance," that for "an increasing number of campaigners, lawyers and academics, the CCRC has come be seen not as a solution, but as a contributor to systemic injustice in criminal law. Initially high expectations among prisoners, families and their representatives have developed into cynical rejection of the CCRC as a maintainer of the status quo and a means of taking the political sting out of the continuing reality of wrongful convictions." (166)

The illusion that the CCRC appreciably contributes to rectifying miscarriages of justice in England is reflected by considering there were 57,000 felony convictions in 2006, and through the direct appeal process almost 300

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convictions were quashed and almost 1,700 sentences were reduced. (152-153). That is a total of 3.5% of convictions (2,000/57,000). In 2006 the CCRC referred 33 cases to the CACD that resulted in a quashed conviction or a reduced sentence. So in 2006 the CCRC added 0.0165% (33/2,000) to the convictions that were quashed or sentences reduced by the direct appeal process. That situation was even worse in 2009-2010 when only 23 referrals by the CCRC were successful in the CACD.

The general ineffectiveness of the CCRC to assist in correcting miscarriage of justice cases is detailed in the essay, "After Ten Years: An Investment in Justice?" The Home Office's C3 division reviewed between 700 and 800 possible miscarriage of justice cases annually, of which around 10% were referred to the CACD. (151) So C3 referred 70 to 80 cases annually to the CACD. (151) The CCRC's budget is almost 10 times what C3's budget was (adjusted for inflation), yet during its first 14 years of operation it referred an average of 32 cases to the CACD (449/14). The math is basic: The Home Office's C3 division was more efficient than the CCRC in referring possible miscarriage of justice cases to the CACD. It is disturbing to consider, but the question that begs to be asked and seriously considered is how many more miscarriage of justice cases would have been referred to the CACD since 1997 if the CCRC had not been established, and the C3 office had not been closed? Was the CCRC not a solution, but has it in fact increased the difficulty any given innocent person has to expose the truth and have their conviction overturned?

Naughton discusses that a key flaw with the CCRC is it relies on the same standard to determine if a case is a miscarriage of justice as the CACD uses to evaluate the legality of a conviction. He calls it the "legalification process, shifting from a concern with the possible wrongful conviction of the innocent to an entirely legal notion that sees miscarriages of justice in terms of the need for convictions to be safe in law." (18) Neither the CACD nor the CCRC is *per se* concerned with the actual innocence of a convicted person -- they are primarily concerned with determining if there is "fresh" (new) evidence that legally undermines the "safety" (i.e., reliability) of the person's conviction.

The book's essays identify two very negative consequences of the CCRC replacing the Home Office's C3 division. First, the press largely lost interest in reporting on cases of people claiming innocence. Second, the grass roots organizations that had been working on cases of people claiming

innocence largely stopped doing so.

However, there has been a backlash to the CCRC's reluctance to investigate cases involving a person claiming actual innocence. Only 7 years after it began operating the Innocence Network UK was founded in 2004 at the University of Bristol. The INUK is currently comprised of more than 30 innocence projects at universities in England, Scotland and Wales. Those projects are currently investigating around 100 possible actual innocence cases. ¹ So advocacy for imprisoned people claiming innocence has come full circle in the UK -- there has been a rebirth of the grassroots organizations that were displaced by the CCRC under the false assumption it would assume the torch of championing their cases.

The CCRC's general ineffectiveness is consistent with the one experience in the United States with a quasi-criminal case review commission. The North Carolina "Innocence Inquiry Commission," is a state agency that began operating in 2007.

Although the number of wrongful convictions in the U.S. is unknown, it is credibly estimated to range from 2% to 15% of convictions. North Carolina has a prisoner population of over 41,000 (41,174 on March 14, 2011). So there are likely anywhere from 820 to 6,150 innocent persons imprisoned in North Carolina. Yet, in its first four years of operation the NCIIC has assisted in overturning *one* person's conviction. ²

There are differences in the respective legislation establishing the CCRC and the NCIIC, however the end result is the same: Neither one is effective at assisting in the exoneration of innocent people. ³

The unvarnished picture painted by *The Criminal Cases Review Commission* and the experience in the U.S. with the NCIIC is it is a fools Nirvana to expect an organization created by the government to vigorously pursue correcting the conviction of innocent persons. The most effective advocates for the innocent are people and organizations outside the system that have no self-interest in maintaining the *status quo* or currying favor with the police, prosecutors, or judges involved in a conviction.

Naughton writes in the book's Conclusion: "It is clear from this book, however, that the CCRC is not the solution to the wrongful conviction of the innocent, and that the problem that caused the public crisis of confidence in the criminal justice system that led to the RCCJ and the CCRC remains: the flaws of the criminal justice system mean that innocent people can be

wrongly convicted and the system (still) does not contain the appropriate means of ensuring that wrongful convictions will be overturned when they occur." (228)

The Criminal Cases Review Commission: Hope for the Innocent? is a must read for any person with a serious interest in understanding what approaches may and may not work to help with overturning the conviction of innocent persons.

The book's \$95 price in the U.S. is steep, but a person can request that their local public, university or law school library purchase a copy for general circulation.

Endnotes:

1 "The Innocence Project: the court of last resort." By Sarfraz Manzoor, *The Guardian* (London), January 9, 2011. Those are all serious criminal cases, while the CCRC even involves itself with referring to the CACD cases involving a person convicted of a traffic violation.

2 North Carolina Innocence Inquiry Commission website is at, www.innocencecommission-nc.gov

3 This reviewer predicted *before* the NCIIC began operating that it would fail to assist in the exoneration of an appreciable number of innocent people. As the editor and publisher of *Justice Denied -- the magazine for the wrongly convicted*, this reviewer wrote in the editorial, "Worse Than Nothing: The North Carolina Innocence Inquiry Commission is a huge step in the wrong direction":

"The byzantine rules under which the NCIIC and the three-judge panel appointed to review a case referred by the commission operates, raises the question: Who will be successful in having erroneous charges dismissed against him or her?"

4) North Carolina has 38,000 adult prisoners (Dec 2006), so if perchance several of them a year overcome the NCIIC's procedures and succeed in having their charge(s) dismissed, they will likely be used as examples of the legal system's effectiveness, and how rarely it errors by convicting the wrong person.

... The NCIIC is worse than nothing. It can only be hoped that no other state relies on it as a model to establish a comparable statutory scheme ..."

Justice Denied, Issue 34, Fall 2006, 22-23, www.justicedenied.org/issue/issue_34/jd_issue_34.pdf

In a subsequent *Justice Denied* editorial this reviewer wrote after the NCIIC had been operating for more than a year:

"... as we prophesized in our editorial, the NCIIC is fulfilling its true function of falsely confirming "... the legal system's effectiveness, and how rarely it errors by convicting the wrong person." We repeat our call for repeal of the legislation creating the NCIIC, and we repeat that it is worse than nothing."

Justice Denied Editorial — "There Is No Political Will In The United States To Correct Wrongful Convictions," *Justice Denied*, Issue 40, Spring 2008, 16, www.justicedenied.org/issue/issue_40/jd_issue_40.pdf

Sources:

Innocence Network UK website, www.innocencenetwork.org.uk

North Carolina Innocence Inquiry Commission website, www.innocencecommission-nc.gov
Criminal Cases Review Commission website, www.ccrc.gov.uk/index.htm

