

PROJECT REPORT

**ENSURING A RELIABLE AND EFFECTIVE
CRIMINAL JUSTICE SYSTEM**

Report on a Workshop for Teams from Eight States

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FOREWORD AND ACKNOWLEDGEMENTS

The fair and effective administration of justice is a cornerstone of a free society and an essential component of public confidence in the institutions of government. In recent years, an increasing body of evidence has indicated that there is an unacceptably high risk that innocent persons can be erroneously convicted of crimes. This project was designed to help raise consciousness about the problem on the part of leading criminal justice policy-makers and practitioners, and to stimulate the development of action plans aimed at addressing the systemic flaws that can lead to wrongful convictions. In this report, we summarize the work of the project, provide information about initial impacts of the project, and make recommendations for further activities.

The project has been conducted by The Justice Management Institute (JMI), with funding from the Open Society Institute and with significant help from two collaborating organizations—the American Judicature Society (AJS) and the National Judicial College. JMI as an organization and I personally are deeply appreciative for the cooperation and support that we received from each of these organizations. I want to particularly note the generous help given to us by the leaders of the collaborating organizations—President Larry Hammond and Executive Director Allan Sobel of the American Judicature Society and President Bill Dressel of the National Judicial College. The three of them, together with Laurie Robinson, Director of the Masters Program in Criminology at the University of Pennsylvania, formed an informal steering committee for the project. Laurie Robinson served as the project’s principal consultant, and was an invaluable resource at every stage of the project.

A number of other individuals contributed to the work of the project, both in shaping its direction and in helping to conduct the workshop that was held in Chapel Hill, North Carolina, in December 2004. They include the members of the project’s Advisory Board (listed in Appendix C), the members the faculty (listed in Appendix D), and two of my colleagues at JMI—Aimee Baehler and Alan Carlson—who were instrumental in the preparations for the workshop and in reviewing drafts of this report. Christine Mumma, Executive Director of the North Carolina Actual Innocence Commission, helped enormously with arrangements for the workshop. Jackie Baillargeon, Program Director of the Gideon Project of the Open Society Institute, was a consistent source of support and constructive suggestions concerning the project.

As this report indicates, we believe that the approach taken the project—in particular, the emphasis on collaboration and the building of coalitions that bridge the institutional divides that characterize much justice system activity—has been effective in raising awareness of systemic flaws and holds promise of helping to catalyze reforms that are clearly needed. I look forward to further work on this complex set of issues, and wish to convey heartfelt thanks to everyone who helped with the work of this project.

Barry Mahoney
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Project Report

ENSURING A RELIABLE AND EFFECTIVE CRIMINAL JUSTICE SYSTEM

INTRODUCTION

This report is the final product of a project conducted by The Justice Management Institute (JMI) that has been designed to help states and local jurisdictions take steps to significantly improve criminal justice system operations. The project, which was funded by a grant from the Open Society Institute (OSI) to JMI, has been undertaken in collaboration with the American Judicature Society (AJS) and the National Judicial College. The principal activity of the project has been the design and presentation of a workshop on *Ensuring a Reliable and Effective Criminal Justice System* that was conducted in December 2004 for interdisciplinary teams from eight states: Virginia, North Carolina, Georgia, Mississippi, Louisiana, Texas, Wisconsin, and Idaho.

The project was planned as a complement and follow-up to the National Conference on Preventing the Conviction of Innocent Persons conducted by the American Judicature Society in January 2003, in Alexandria, Virginia.¹ Because several of the states that participated in the national conference had made significant progress in addressing key systemic issues underlying the problem of wrongful convictions of innocent persons, the workshop deliberately sought to build on those experiences—together with the experiences of other groups and organizations that have examined systemic flaws in criminal justice system operations—in planning this workshop.

The report is organized in five main sections, plus a set of appendices. Section I provides basic background information about the project, beginning with the work done by a few dedicated individuals and groups who started bringing the systemic flaws to national attention through sustained attention to the cases of individuals who had in fact been innocent of the crimes of which they had been convicted. Section II provides an overview of the workshop planning process, including very valuable suggestions made during the meeting of the project's advisory board in February 2004. Section III describes the workshop itself, with particular attention to the topics covered in the plenary sessions and to the team and other small group sessions. Part IV provides information on follow-up activities in the states that were represented at the conference. Section V discusses our main conclusions and makes recommendations for possible future work in this area.

One of the objectives of the project has been to develop curriculum materials that could be used by national and state organizations to present similar programs. The

¹ For a summary and discussion of the 2003 AJS national conference, see John Stookey, "A Cooperative Model for Preventing Wrongful Convictions," 87 *Judicature* 159 (January-February 2004), pp. 159-162.

appendices to this report include the agenda for the workshop (Appendix A) and a list of the contents of the resource notebook—containing recent materials on key topics covered in the workshop—that was provided to workshop participants (Appendix B). Additionally, Appendix C is a list of the members of the project’s advisory board and Appendix D is a roster of workshop faculty members.

The advisory board members—drawn from a broad range of disciplines and very knowledgeable about the issues in this area—contributed enormously to the planning of the workshop. Much of their advice, which is summarized below in Section II, is also relevant to the planning of future education and training programs focused on justice system improvement. The faculty members—almost all of them active practitioners in different organizations and institutions integrally involved in criminal justice operations—were also a diverse group of highly regarded leaders, with backgrounds that include law enforcement, prosecution, defense services, the judiciary, and experience as a victim in a case involving mistaken eyewitness identification of an innocent person. The fact that the advisory board and the faculty were drawn from such diverse backgrounds, yet were clearly united in their commitment to catalyzing needed improvements that will produce more reliable and effective criminal justice systems, has helped to convey to workshop participants both the need for the reform and the practical feasibility of making the needed changes.

I. Background

Recent advances in technology have helped to catalyze re-examination of many long-established practices in the field of criminal justice and have led a number of thoughtful practitioners to consider the need for reforms. Beginning in the 1990s, as the new science of DNA analysis became increasingly accepted as a valuable tool in criminal investigations and the trial of criminal cases, application of DNA tests to evidence introduced in earlier trials that had resulted in convictions led to the exoneration of scores of individuals. As of mid-2003, when planning for this project got started, more than 120 persons convicted of serious offenses had been exonerated on the basis of DNA evidence showing conclusively that another person had committed the crime. Scores of other persons had been exonerated on the basis of post-conviction investigations that used other evidence (e.g., fingerprint evidence coupled with a confession by the actual perpetrator) to show that a person other than the convicted person was responsible for the crime.

The consequences of such erroneous convictions are obviously severe: innocent persons can spend years in prison (sometimes on Death Row), actual perpetrators remain free to commit further crimes, and public trust and confidence in the reliability and integrity of the institutions responsible for the administration of criminal justice is undermined. In addition to the exonerations—most of them highly publicized—there have been other indicators of the severity of the problem and its impact on public confidence in criminal justice processes. For example, national news magazines and television shows had started devoting major segments to stories highlighting cases of wrongful convictions and exploring the causes. The extensive media coverage of the April 2003 exoneration in New York of several young men who had been erroneously

convicted seven years earlier of the brutal rape of a young woman in the “Central Park Jogger” case is a prime example. Public opinion surveys indicated that a growing number of Americans were having doubts about the reliability of the justice system—so much so that a 2003 Harris poll showed that 95 percent of Americans agreed that innocent persons are sometimes convicted of murder.² In a 2000 Gallup poll, 73 percent of the respondents said they thought that an innocent person had been executed within the past five years.³

Perhaps most important for purposes of planning this project, it was becoming clear that a significant percentage of criminal justice practitioners were realizing that wrongful convictions are a problem that must be addressed. In a survey of policymakers and practitioners (prosecutors, criminal defense lawyers, victim services providers, judges, law enforcement officials, and legislators) conducted by the American Judicature Society in advance of the January 2003 National Conference on Preventing the Conviction of Innocent Persons [hereafter “the 2003 AJS national conference”], only 16 percent indicated that they felt it was not a problem in their state. Seven percent felt that wrongful convictions were a serious problem in the state. Another 31.5 percent felt that, while not a pervasive problem, there was evidence that there was evidence that some innocent persons had been convicted in the state and that this was a problem that should be addressed.

Thoughtful examinations of the problem of wrongful convictions in the years leading up to the 2003 AJS national conference had led to some useful analysis of the causes of such convictions, and to a number of suggestions for ways to address the flaws that had been exposed. The common causes of wrongful convictions include:

- Mistaken identification of the defendant as the perpetrator of the crime, by the victim or another person, and use of the faulty “eyewitness” testimony at trial.
- False testimony by an informer (often a “jailhouse snitch”) who has an incentive to give perjured testimony.
- Reliance on forensic evidence and “expert” testimony that is not grounded in sound science (e.g., use of microscopic hair comparisons and “bite mark” evidence).
- Police misconduct or inadvertent mistake, including use of suggestive identification procedures, coercion of a confession or inculpatory statement by a suspect, non-pursuit of alternative lines of investigation after initial identification of a strong suspect, and failure to provide the prosecutor with evidence that could point to a person other than the defendant as the perpetrator.

² See <http://www.pollingreport.com/crime.htm>.

³ Id.

- Prosecutorial mistake or misconduct, including failure to disclose evidence that could tend to exculpate the defendant, use of untrustworthy evidence (e.g., testimony of a jailhouse snitch, testimony based on “junk science”), and inflammatory statements during the trial.
- Poor defense lawyering, including failure to obtain timely disclosure of evidence in the possession of the prosecutor or other state agencies, failure to make an adequate investigation of the case and identify witnesses who might be helpful to the defense, and poor trial tactics.
- Inadequate resources and organization of defense services—e.g., systemic under-funding of indigent defense services, resulting in heavy caseloads of public defenders, lack of effective training and supervision of lawyers representing poor or indigent defendants, inability to conduct thorough investigations, and insufficient time to devote to individual cases.

Many of these flaws are systemic—i.e., they arise from established practices that developed in earlier times, are widely accepted as the way that criminal justice processes function in a jurisdiction, and have not been closely examined by policymakers and practitioners in recent years. Many of these traditional practices could be revised to produce processes that are more reliable and less likely to result in the conviction of innocent persons and the consequent erosion of public confidence in the justice system. For example, at the initial stages of crime investigations the procedures through which suspects are identified by victims and other witnesses can be improved to strengthen the likelihood of accurate identification. Procedures that will lessen the chance that false or unreliable testimony will be introduced at trial can be adopted by police departments and prosecutors’ offices. Forensic laboratories can be subject to external review to ensure that their practices meet modern standards.

Once charges are filed and the adversary process begins, disclosure practices can be improved to ensure that the defense counsel has an adequate opportunity to learn the substance of the case against the defendant and conduct an adequate investigation. Standards for good quality performance by counsel for both the prosecution can be developed and enforced. Courts and individual judges can develop procedures for the conduct of trials and pretrial proceedings that will help reduce the risk of conviction based on unreliable evidence or inadequate representation by defense counsel. Overall, the standards and expectations for performance of those involved in criminal justice processes can be strengthened, essential training can be provided, and the actual performance of institutions and individuals involved in criminal justice processes can be markedly improved. This project was designed to help get the process of systemic reform off the ground in a representative group of states.

As planning for this project began in 2003, some starts had been made on making these types of changes in states and local jurisdictions, spurred in part by the work of innocence projects started at a number of law schools and by the findings of a special Illinois commission that had examined the cases of individuals in that state—many of

them sentenced to be executed—who had been found to have been wrongly convicted. The 2003 AJS national conference marked the first time that a national conference involving participants from a broad spectrum of criminal justice disciplines had convened to focus on the set of issues related to wrongful convictions. Teams from eleven jurisdictions participated in that conference and by late 2003 some of the teams had already begun implementing plans initially developed at the conference. For example, a police captain in the Madison Police Department who had been a member of the Wisconsin team that attended the conference had helped arrange for training on eyewitness identification procedures for officers in that department and for other law enforcement personnel. Subsequently, the Madison Police Department adopted sequential identification procedures similar to those previously put in place in New Jersey. Members of the Wisconsin team had also organized a half-day program on the topic of preventing the conviction of innocent persons at the annual conference of the state judiciary, were planning to present a similar program for the state's prosecutors, and had developed support from the state's two law schools and the state bar association for the formation of a state criminal justice study commission. In Minnesota, the Hennepin County District Court had initiated plans to hold a half-day conference for members of the bench on ways that judges can help address the problem. In Massachusetts, plans were underway for a major statewide conference on the topic, with co-sponsorship of the Supreme Court and the Attorney General. In North Carolina, a broad-based state-level innocence commission, organized at the initiative of the State's Chief Justice, had begun work on key issues identified at the conference and was working on development of improved procedures for asking eyewitnesses to a crime if they could identify a suspect from a lineup or photo array.

Nationally, the Criminal Justice Section of the American Bar Association had organized an Ad Hoc Innocence Committee that had begun work on a set of resolutions and position papers that would address many of the key systemic flaws contributing to wrongful convictions. The American Judicature Society organized a special conference on key issues, covering two half-days, that was held in August 2003 in conjunction with the ABA's annual meeting. And innocence projects, based mainly at law schools around the nation, continued their work of examining prisoners' claims of innocence and, where there appeared to be merit to the claims, undertaking in-depth investigations and sometimes commencing litigation.

It was against this background that initial planning for this project began in the summer of 2003. From the outset, the planners recognized that this project would necessarily have to be limited in scope. It would have to focus on a limited number of substantive issues and seek to obtain the greatest possible impact from a well-designed educational program that would have two main objectives: First, the program should be effective in creating a heightened consciousness—on the part of policymakers and practitioners who have leading roles in the institutions that shape and conduct the criminal investigation, prosecution, provision of defense services, and adjudication—that major improvements are needed, are feasible, and will result in improved public safety and a better quality of justice. Second, the program should lead to concrete changes in

actual practices, designed to remedy flaws that have been identified, and thus produce models of system improvement that could be adapted by other jurisdictions.

II. Planning for the Workshop

A. General Approach

The basic plan for the workshop was described in JMI's original grant application. It provided for a three-day workshop for multi-disciplinary teams from eight jurisdictions, focused on development, by the participating teams, of concrete action plans for addressing problems—within specific institutions and across the local and/or state system—that can contribute to the conviction of innocent persons. Drawing on the experience of the National Conference and of JMI programs in other policy areas, the workshop would have four types of sessions:

- *Plenary sessions* would cover basic concepts and convey ideas and information relevant to all participants.
- *Concurrent sessions* would focus in greater depth on specific problems and implementation issues.
- *Peer group* sessions would enable practitioners who have similar positions in their own justice systems (e.g., judges, prosecutors, defense attorneys, law enforcement officials) to exchange ideas on topics that are of concern to them.
- *Team sessions* would take members of the participating teams through a series of structured planning exercises focused on (1) problem identification and goal-setting; (2) identification of potential obstacles and of resources that can be tapped to help support the proposed changes; and (3) preparation of an action plan that includes goals, tasks and timelines.

B. The February 2004 Advisory Board Meeting

To help plan the workshop, JMI organized a fifteen-member advisory board during the winter of 2003-04. The board was co-chaired by Larry Hammond and Laurie Robinson, both of whom had been closely involved in planning the 2003 AJS national conference. Mr. Hammond, a lawyer who practices criminal law with a leading Phoenix law firm, was at this time the President of the American Judicature Society. Ms. Robinson, who had been the Assistant Attorney General in charge of the Office of Justice Programs in the U.S. Department of Justice for seven years during the 1990s, was at this time the Director of the Masters Program in Criminology at the University of Pennsylvania. They were joined on the advisory board by fourteen persons—all of them leading figures in their fields—with broad experience in law enforcement, prosecution, criminal defense services, the judiciary, and journalism. Eleven of the fourteen were able to participate in an in-person meeting of the advisory board that was held February 25, 2004, in Washington, D.C. Additionally, representatives of three organizations that had informally expressed strong interest in the project—the American Bar Association's

Criminal Justice Section, the National Association of Criminal Defense Lawyers, and the Council of State Governments—sent liaisons to the February meeting.⁴

At the February meeting, advisory board members contributed a number of thoughtful comments and suggestions about the general approach to the project and the workshop that had been outlined in the original project proposal. They included the following:

- It is important to recognize, from the outset, that this project (and the workshop) is one piece of a much larger set of efforts to achieve significant change in criminal justice practices and processes. The project should seek to complement—not duplicate or conflict with—the work of other groups.
- Keep the scope and focus reasonably narrow. Don't try for broad-scale criminal justice system reform through this project, but be aware that getting states and local jurisdictions to address issues in this area can help lead to broader system change.
- Stay with the basic approach of a workshop for jurisdictional teams, built around work by the interdisciplinary teams to develop action plans.
- Focus on conducting an excellent workshop for jurisdictions where there is real prospect of significant change. Try to select jurisdictions where participation in the workshop and delivery of related technical assistance can help to catalyze needed change.
- Take a broad-based, inclusive approach. Include relevant professional disciplines, other groups and organizations with stakes in this set of issues.
- Tailor the key messages to make it clear that it should appeal to responsible leaders in law enforcement, victims' groups, forensic sciences, etc. Emphasize the importance, for everyone involved, of getting it right from the outset, and show how adoption of proposed reforms increases the likelihood of convicting the guilty and avoiding future victimization by criminals who remain free because of flawed practices.
- It is desirable to have (and be able to point to) “models”—jurisdictions where potentially controversial reforms have been undertaken and where there is evidence that they succeeded without undue costs.
- Strategically, it may be desirable to build on what has been accomplished in some jurisdictions—i.e., expand from the beachhead already established in some jurisdictions that can serve as potential models. Try to consolidate and enhance the gains made in those jurisdictions and also bring in some new jurisdictions where the situation seems right for potential change. The jurisdictions that have made good progress already can be embryonic models; can at least show how potential proposed reforms have worked in practice and how potential obstacles have been overcome.

⁴ The names and contact information for members of the project's advisory board can be found in Appendix C of this report.

- Plan to make technical assistance available to participating jurisdictions, to assist them in implementing plans developed at the workshop, to the extent possible given project budget limitations.
- Try to set up the workshop as a forum for peer learning about how jurisdictions are handling problems in this area, not as experts teaching “what should be done”.

Several members of the advisory board had been at the 2003 AJS national conference. They had very positive comments about that conference, notably including an endorsement of the basic approach of that conference—many different perspectives represented on the teams and the faculty, and with opportunity for the jurisdictions to develop their own action plans. That approach, which was similar to the approach planned by JMI for this workshop, had been successful in getting people talking across institutional boundaries and had clearly led to action in some places. One board member made the cogent observation that the Alexandria conference had demonstrated that the public conversation about criminal justice processes had progressed from questioning whether innocent persons really do get convicted to recognition that they do, and then to questioning why this happens and what can be done to prevent such occurrences. Thus, the timing would be good for a workshop aimed at further consciousness-raising coupled with an emphasis on developing practical solutions to the systemic problems.

One of the key issues considered at the advisory board meeting involved selection of teams to participate in the workshop. A number of suggestions were offered, but no clear consensus on a selection strategy emerged from the meeting. Drawing on discussions at the meeting, JMI staff subsequently developed a list of five main criteria for selection of teams for the workshop:

1. **The situation in the jurisdiction (state or locality).** Are there significant problems that require action? Have any steps already been taken to address key problems? Is there likely to be some momentum toward change?
2. **The composition of the team.** Does it have the range of perspectives needed to address the problems? Does it include key leaders whose buy-in will be necessary to achieve significant changes in policy and practice?
3. **A structure for planning and implementation.** Are there established mechanisms for collaboration in criminal justice system improvement? Is there any recent history of collaborative criminal justice system problem-solving?
4. **Leadership.** Who, with credibility in the jurisdiction and a track record of success in achieving organizational change, will take a leadership role in organizing the team and spearheading implementation of an action plan for major improvement in system operations?
5. **Staff support.** Who will have the time, energy, and resources to provide the on-going staff support needed to ensure that plans are translated into action?

C. Gaining State Participation in the Workshop

Following the advisory board meeting, JMI staff had a series of telephone calls and e-mail communications with key project collaborators—advisory board co-chairs Laurie Robinson and Larry Hammond, AJS Executive Director Allen Sobel, National Judicial College President Bill Dressel, and OSI Program Manager Jackie Baillargeon—about organization of the conference, including selection of a suitable location and selection of jurisdictions to invite to participate in the program. From these discussions, a series of related decisions were made:

- The workshop would be held in North Carolina, a state which had made significant progress in addressing problems related to wrongful convictions. As noted above, the Chief Justice had taken the initiative in organizing what had become the North Carolina Actual Innocence Commission. By early 2004, that commission had made significant headway in developing revised procedures for the conduct of lineups of crime suspects (to minimize the risk of eyewitness error in making identifications) and was studying the thorny issues involved in possible taping of police interrogations of crime suspects. Additionally, North Carolina had recently made major strides in upgrading indigent defense services, including establishment of a new (and highly regarded) state-funded Office of Indigent defense Services. Practitioners involved in the work of the Actual Innocence Commission and the Office of Indigent Defense Services could serve as faculty members at the workshop.
- Efforts would be made to interest key justice system leaders in several southern states in organizing interdisciplinary teams to participate in the workshop. With the program located in North Carolina, travel time and costs could be kept relatively limited for practitioners in nearby states. Additionally, North Carolina's experiencing in achieving significant change could serve as something of a model for other jurisdictions in the region.
- In addition to North Carolina, one other state that had participated in the 2003 AJS national conference would be invited to organize a team to participate in the workshop. Wisconsin was a unanimous first choice on this score, because of the significant progress made in that state on issues related to improved procedures for eyewitness identification and success achieved in gaining the interest of key legislators in the improvement process.
- In extending invitations, JMI—which has worked extensively in and with courts across the country—would speak with court system leaders, to inquire about the judiciary's interest in this area and explore possible participation of judicial leaders in organization of the team and participation in the workshop.
- The curriculum for the workshop would be developed with a view to addressing issues identified—in communications with the persons who took the lead in

organizing teams within the participating states—as especially salient for those states.

- Faculty for the workshop would be drawn mainly from practitioners who had had direct experience with the issues and had been involved in crafting successful approaches to improving operations in their own organizations.

During the summer and fall of 2004, the workshop gradually came together. By August, a venue—the Carolina Inn in Chapel Hill, NC—had been selected, with the program to be held December 9-11, 2004. By October, commitments to organize a team for the workshop had been received from key justice system leaders in eight states. In the meantime, more exonerations had occurred, new materials relevant to the workshop had been developed in several states and, significantly, through adoption by the American Bar Association of a series of resolutions recommending specific action improvements in areas such as eyewitness identification, recording of police interrogations, and use of forensic evidence. During the fall of 2004, JMI staff would be responsible for developing the curriculum for the workshop and organizing the faculty.

D. Curriculum Development

In phone conversations with the individuals who had agreed to take the lead in organizing a team from their state, JMI staff sought to gain a sense of which issues—among the many that could conceivably be addressed at the workshop—would be most salient to the teams from those states. From these conversations, four substantive issues emerged as especially important:

1. Practices used in criminal investigations – especially practices relevant to the accuracy of eyewitness identifications of crime suspects, standards for forensic laboratories, and possible recording of police interrogations of suspects.
2. Prosecution practices, including ways of ensuring that prosecutors get all relevant evidence from law enforcement agencies (including evidence that might tend to exonerate a suspect) and practices concerning provision of discovery information to the defense.
3. The organization, funding, operating practices, and evaluation of indigent defense services – in particular, approaches to improving the quality of these services and obtaining needed funding.
4. The experience of states in organizing and making effective use of state commissions or task forces to address systemic problems contributing to the conviction of innocent persons.

In addition to these substantive issues, the workshop planners felt that in presenting the workshop it would be important to pay attention to several key themes and ideas. These included why the subject matter of the workshop is important for the justice systems of the nation, the costs of failure to respond to the problems, and the necessity for cross-institutional collaborative planning and implementation to address systemic

problems. As described below in Section IV, all of these ideas were incorporated in workshop sessions. A copy of the agenda for the program is in Appendix A.

On the advice of the advisory board and the leaders of the collaborating organizations, the time for the conference was shortened from three full days to two half days and one full day. It would begin early in the afternoon of Thursday, December 9, continue all day the following day, and conclude with a morning session on Saturday, December 11. The original design of having a mix of plenary, concurrent, peer group and state team sessions remained intact, and proved to be very effective in capturing participants' attention and engaging them in developing action plans for their states. The workshop curriculum provided for plenty of opportunity for peer-to-peer learning, with opportunity to explore ideas advanced by faculty members and other participants in all of the sessions.

As recommended by the advisory board, the faculty included practitioners from the key institutional actors: law enforcement, prosecution, defense, and the judiciary. Additionally, a crime victim who was involved in mistaken identification of a suspect and has since become an outspoken advocate for improving traditional practices was asked to participate in the opening portion of the program. Her participation proved to be stunningly effective in capturing participants' attention to the systemic problems and the need for constructive change.

E. Resource Materials

During the fall of 2004, JMI staff assembled resource materials relevant to the topics that would be covered at the workshop. A resource notebook containing over 200 pages of materials was assembled and made available to all participants at the workshop. The table of contents for the resource notebook is reproduced in Appendix B.

III. Workshop Sessions

As noted above, the basic plan for the workshop was to use plenary sessions to provide an overview of basic concepts and information thought to be relevant to all participants. In smaller sessions—the concurrent sessions, peer group sessions, and team sessions—there would be opportunity for the participants to discuss the concepts with each other and with knowledgeable faculty. Additional opportunity for informal discussions would be available at a reception on the first evening of the workshop, at the Friday luncheon, and during coffee breaks. The workshop program was designed to begin with opening presentations that would provide an overview of the issues, followed by a series of plenary sessions that—by the mid-point of the conference—would give the participants plenty of information and ideas about key topics. The second half of the conference would be devoted mainly to small group and team sessions during which participants could consider how the ideas and information could be applied in their own jurisdictions.

A. The Opening Sessions: Framing the Broad Problem and Spotlighting Specific

Issues

JMI staff and the informal steering committee recognized that, as at any educational program in a relatively new area, there would probably be persons attending the workshop who had widely varying levels of knowledge about the topics being covered. Additionally, some of the participants would be likely to be skeptical about the whole idea of making significant changes in well-established criminal justice practice processes and practices. It would be important, at the outset of the workshop, to convey some key ideas about the importance of the basic idea of making criminal justice systems more reliable and effective, and to draw attention to key issues that need to be addressed. Three speakers on the opening afternoon of the workshop accomplished this set of tasks, framing the issues extraordinarily effectively:

Chief Justice I. Beverly Lake opened the program by welcoming the participants to North Carolina and providing background information about the North Carolina Actual Innocence Commission. He noted that several highly publicized exonerations in North Carolina had negatively impacted public confidence in the justice system, and said that he had established the commission in November 2002 for three main reasons: to raise awareness of the issues that caused wrongful convictions; to identify improvements to the criminal justice system which would increase the reliability of convictions; and, through the Commission's work, to increase public confidence and trust in the criminal justice system. The Chief Justice emphasized that the 33-member Commission reflected many diverse perspectives, and attributed its success to date—notably in the area of developing new guidelines for eyewitness identification procedures—to the members' commitment to a common goal: justice.

Thomas P. Sullivan, a senior partner in a leading Chicago law firm and former U.S. Attorney for Illinois, was the co-chair of the Illinois Governor's Commission on Capital Punishment during 2000-2003. That commission had examined what had gone wrong in the investigations and trials that led to the wrongful convictions of at least thirteen persons who had been sentenced to death in that state, and his experience with that commission, together with other experience over his lifetime in law, convinced him of the need—and urgency—of reforms. He spotlighted seven key areas for consideration by participants at the workshop:

- Eyewitness identification procedures – in particular, the desirability of law enforcement agencies moving to sequential identification procedures that are administered by a person who does not know which of several individuals shown to an eyewitness is the actual suspect.
- Video-recording or audio-recording of interrogations conducted by police when a suspect is in custody.
- Guidelines to minimize the risk of false testimony by informers or “jailhouse snitches.”

- Development and required use, by judges, of jury instructions that would caution jurors about accepting testimony resulting from eyewitness identifications, custodial interrogations, or statements of informers, unless improved procedures were in place to minimize the risks of such testimony.
- Funding for markedly improved indigent defense services, including adequate compensation for public defenders and appointed counsel.
- Improvements in forensic laboratories, provisions for use of depositions of forensic experts instead of requiring in-person testimony, and funding to enable much more extensive use of DNA evidence.
- Special training for law enforcement officers to help overcome the pernicious effects of “tunnel vision” or “confirmatory bias”—the tendency, once a particular person has been identified as the likely culprit, to seek evidence in support of that conclusion and explain away evidence indicating that suspect’s innocence or pointing to other possible perpetrators.

Tom Sullivan emphasized that the issues being dealt with at this workshop were not confined to the criminal justice systems of states and localities, and were not relevant solely to those involved in criminal justice. The implications are far broader: the way the criminal justice system functions (and is perceived as functioning) is the main way that the public in this country judges the justice system. It is also the main way that people in many other countries judge the United States.

Jennifer Thompson, who was the third speaker on the first afternoon of the workshop, was the victim of a horrific rape in 1984. At that time, she identified the man that she thought had been her assailant in a police lineup. She then testified about her experience and identified the defendant—Ronald Cotton—at two trials, the first having resulted in an appellate court reversal on grounds not related to the identification. Eleven years later, she learned—as a result of DNA testing—that a different man had been the rapist, and in fact had gone on to commit at least ten additional rapes before being apprehended for a different crime. Ms. Thompson’s presentation at the workshop, including her story about becoming reconciled with the man she had mistakenly identified and caused to spend eleven years in prison for a crime he did not commit, was riveting for everyone in the room. It brought home, in a very direct way, the human costs—to the victim of the offense, the victims of other offenses committed by the actual perpetrator, and the individual wrongly convicted and that person’s family—of flawed systems that could be made more reliable.

In a panel discussion that followed Ms. Thompson’s presentation, several relevant points were made by two lawyers who had been closely involved in the case—Richard Rosen, a University of North Carolina Law Professor who had been one of the lawyers representing Mr. Cotton in post-conviction proceedings, and Rob Johnson, who is now a

District Attorney but in 1995 was the assistant district attorney who had agreed to have the DNA of Mr. Cotton and another man (who turned out to have been the actual rapist) tested in light of Cotton's continued protestations of his innocence. Their first point was that the mistaken conviction had resulted in significant part from routine use of established and then well-accepted identification practices. In 1984, there was little or no awareness of the desirability of alternative procedures for conducting eyewitness identifications, use of DNA testing was in its infancy. Second, the conviction was in significant part the result of the type of confirmatory bias that Tome Sullivan had discussed. Once the police had someone in custody (Cotton) who had been identified as the rapist, they did not pursue alternative possibilities even though there was a plausible second suspect who ultimately turned out to be the actual rapist. Third, in contrast to the many cases in which wrongful convictions can be attributed at least in part to poor representation of the defendant by a lawyer, in this case, the exoneration was to a significant extent the result of good lawyering—by both prosecution and defense—during the post-conviction process. Rosen's co-counsel in post-conviction proceedings was one of Mr. Cotton's original trial lawyers, who had continued to believe in his innocence and had actively pursued possible remedies. On the prosecution side, the prosecutors had been open to re-examination of the evidence and the conviction, in the interest of doing justice.

B. Addressing the Main Issues and Making Needed Changes: Ideas and Examples

At the workshop, a number of different ideas and suggestions were made, by faculty members and other participants, for practical ways to address specific issues and bring about improvements in operating practices. This section of the report discusses three such areas that were covered in both plenary sessions and small group discussions: (1) improving police and prosecutorial practices, including practices related to the use of forensic evidence; (2) ensuring good quality (and adequately funded) defense services; and (3) the potential roles of state-level commissions or task forces in examining system operations and catalyzing needed change.

1. Improving police and prosecutorial practices.

Discussions in this area centered around four main topics: eyewitness identification procedures, the recording of custodial interrogations, tunnel vision or confirmatory bias in the conduct of investigations, and use of forensic evidence.

a. Eyewitness identification procedures. At the workshop, there was considerable interest in North Carolina's work on improving eyewitness identification procedures followed by law enforcement agencies. In North Carolina, the broad-based Actual Innocence Commission had conducted extensive plenary discussions of the pros and cons of changing procedures, and had brought in outside experts to make presentations. For North Carolina practitioners, it was apparently important that the state of New Jersey had successfully implemented new procedures, and the Commission drew heavily on the New Jersey experience in developing its own recommendations

concerning identification practices. As set forth in the recommendations of the Actual Innocence Commission, there are several key components of the new procedures:

- Lineups are presented sequentially (individuals or photos are shown to a witness one at a time), not simultaneously.
- The individual conducting the photo or live lineup does not know the identity of the suspect.
- Witnesses are instructed that the suspect may or may not be in the lineup
- A minimum of eight photos are used in photo identification procedures.
- A minimum of six individuals are used in live lineups.
- Witnesses do not receive any feedback during or after the identification process.
- Witnesses are asked to indicate, in their own words, their level of confidence in their identification.

In addition to these elements, Tom Sullivan suggested the desirability of videotaping the lineup and identification process, to provide documentation of what actually happened. Professor Andy Taslitz noted that research has indicated that having a larger number of photos or live persons will increase the reliability of the identification.

The recommendations of the North Carolina Actual Innocence Commission, with details about how to implement them and why they have been adopted, have been incorporated into police training in North Carolina. Consistent with Tom Sullivan's comments about this subject, the North Carolina practitioners at the workshop reported that the change in procedures has so far not resulted in any decrease in the number of identifications and that the identifications made by witnesses were ones in which both the police and the prosecutors had a higher degree of confidence.

b. Recording custodial interrogations. The North Carolina Actual Innocence Commission has this topic on its agenda, but has not yet gotten into full-scale examination of the topic. The most relevant experience discussed at the workshop was that of Minnesota, where police departments—as a result of a state supreme court decision in 1994⁵—had had instituted video-taping or audio-taping of custodial interrogations as a matter of course. Robert Olson, a workshop faculty member who served as the Chief of Police in Minneapolis for nine years, observed that such recording of interrogations had proven to be feasible, not unduly costly, and extremely helpful in the actual prosecution of cases.

c. Addressing the tunnel vision problem. Law enforcement personnel at the workshop agreed with Tom Sullivan that tunnel vision or confirmatory bias is a significant problem. Chief Olson noted that achieving change in this area involves changing deeply entrenched police cultures. He offered several practical suggestions:

⁵ *Minnesota v. Scales*, 518 N.W.2d 587 (Minn. 1994).

- Leadership from the top down – the chief has to make it clear that the case doesn't end once a suspect is in custody and there is evidence pointing toward that individual's guilt; evidence tending to exonerate the suspect or pointing toward others must be pursued.
- Training for officers on this subject, beginning in police academies and continuing through their careers is essential.
- College-level criminal justice textbooks and courses on police practices can address this subject.
- Operations manuals stressing policies aimed at minimizing confirmatory bias can provide helpful guidance for officers.
- Checklists aimed at ensuring thoroughness in investigations can be valuable tools in minimizing tunnel vision.

d. Improving forensic laboratories and the use of scientific evidence. Andrew Taslitz, a former prosecutor now teaching at Howard University Law School, drew on research in this field to offer a number of suggestions for addressing problems in this area, including the following:

- Institute, by legislation or by voluntary agreement, accreditation standards for forensic laboratories.
- Provide for proficiency testing for forensic lab personnel.
- Provide for forensic labs to have and follow written protocols, consistent with established scientific standards, in conducting forensic tests.
- Provide for continuing education and training of lab personnel.
- Establish governance structures and funding streams for forensic labs that ensure their organizational independence from law enforcement.
- In the rare case where there appears to be fraud or gross negligence on the part of an individual employed by a forensic lab, ensure that an audit is made of all cases in which the same examiner was involved.

At the workshop, there was broad agreement that this was an area that needed attention. However, because all of the teams had previously identified other issues as top priority and none of them included any forensic scientists or experts in forensic law, problems in the area were not the subject of extensive discussion.

2. Improving defense services

In telephone conversations during the fall of 2004, the persons responsible for organizing the teams in six of the eight states represented at the workshop identified defense services as a key problem area. In the other two states—North Carolina and Georgia—significant progress had been recently made in improving defense services, with the organization of state-level indigent offices of indigent defense services in both states. The workshop program was designed to afford ample opportunity for everyone at the workshop to learn about the Georgia and North Carolina successes and the challenges that leaders in the field saw ahead in those states.

Gary Parker, Deputy Director of the Georgia Public Defender Standards Council, provided a brief history of the movement toward state funding and substantial upgrading of indigent defense services in that state. A statewide system of public defender offices, funded by the state and covering all but a few of the judicial circuits, would become operational in January 2005. Judicial leadership—in particular, the leadership of two successive chief justices who made indigent defense a top priority issue for the state—was clearly an important factor in initiating these changes in Georgia. Former Chief Justice Benham had commissioned a special study group to examine the issue of indigent defense in the courts of the state in 2000, and the commission’s report—issued in 2002—had generated considerable attention from the media and in the organized bar. The report documented the problems in a system that was mainly county-funded, varied widely in organization (and competence) from county to county, had no overall management or supervision, and in many instances failed to effectively protect the rights of indigent defendants. Chief Justice Fletcher, who succeeded Benham, made reform of the indigent defense system his signature issue during his two years as the leader of the Georgia courts.

Over the next two years, support was gradually developed for legislation that would provide for a state-level entity—the Public Defender Standards Council—that would oversee the provision of indigent defense services in the state, including providing direct funding for public defender offices, developing standards for workload and performance, and providing needed training for lawyers and staff. Parker emphasized that it had been very important for proponents of the legislation to work with key legislators and staff of the Governor in identifying anticipated costs of the system and developing a revenue package (including increased court filing fees and a \$50 fee for applying for indigent defense services) in order to help pay for the increased costs to the state. Gaining media attention and support for the reforms was important, and was helped in Georgia by the fact that lawsuits had highlighted the plight of defendants who found themselves incarcerated in overcrowded jails and without a lawyer (or without effective representation by an appointed counsel), sometimes for length periods of time before indictment or trial. As work on the legislation proceeded, it was clear that having a broad-based oversight board (the Council) was also an important part of the strategy for establishing a central statewide entity that could oversee and advocate for the delivery of good quality indigent defense services.

One of the first steps taken by the Public Defender Standards Council was to develop and promulgate performance standards for criminal defense representation in Georgia. Looking toward the future, Parker identified training for lawyers who provide defense services (to help assure adherence to the standards) as a top priority issue. Other issues to be faced by the new office in the near future include developing caseload standards for defenders, developing standards for disciplining lawyers who failed to comply with the standards in representing clients, and ensuring effective budgetary planning and management while faced with ever-growing caseloads.

Tye Hunter, the Executive Director of North Carolina’s Office of Indigent Defense Services, noted that his office—established in 2000 on the recommendation of a

legislative study commission—has faced many of the same issues as Georgia now faces. Like Georgia, North Carolina has a commission that oversees the work of the Office of Indigent Defense Services. The commission serves valuable roles in providing guidance for the office and support for appropriations requests and related legislation. Hunter noted three key areas for his office at this stage of its development: (1) education and training for lawyers providing indigent defense services, to increase the quality of representation for clients; (2) development of a system for evaluating the performance of lawyers who provide defense services; and (3) strengthening management systems in order to ensure both the delivery of high quality defense services (including sound use of investigators and experts) and effective use of the limited resources available for indigent defense. Hunter noted that one of the main reasons for the establishment of his office was the legislature’s interest in bringing management to what had been, in his words, “the largest unmanaged program in the state budget.”

Commenting on the developments in Georgia and North Carolina, Professor Rich Rosen observed that it was only when an organizational structure to support indigent defense services is in place can there be meaningful work on development of standards, performance measures, training on standards implementation and compliance, and meaningful accountability for resources expended for defense services. Ultimately, this set of approaches should lead to better quality and more cost effective representation for indigent defendants, and to fewer convictions of innocent persons whose representation by counsel was inadequate.

3. Potential roles of state-level commissions and task forces

As illustrated by the experiences of Georgia and North Carolina in developing statewide offices responsible for indigent defense services, state-level study commissions or task forces can be important forces in catalyzing criminal justice reforms. One of the panel sessions on the second day of the workshop focused on the experiences of three other state-level groups currently in operation that have focused on aspects of the broad problem of wrongful convictions of innocent persons.

Two of the three groups—the North Carolina Actual Innocence Commission and Wisconsin’s Avery Task Force—were formed in part as a response to highly publicized exonerations that raised serious questions about aspects of the criminal justice processes in those states. In North Carolina, the moving force was the chief justice. In Wisconsin, it was the Chairman of the Assembly’s Judiciary Committee, Rep. Mark Gundrum, who initially formed the task force to examine what had happened to cause the lengthy imprisonment of a wrongly convicted defendant named Steven Avery. In both states, the state-level groups (which included substantial representation from local-level law enforcement officials and other criminal justice practitioners) were not envisioned as long-term new entities, but rather as vehicles for focusing on and addressing specific problems.

In both North Carolina and Wisconsin, the first focus of attention of these state-level groups was on eyewitness identification procedures, which were found to have

contributed to mistaken convictions in both states, and on the development of new guidelines and plans for training of police officers in improved procedures. As indicated above, law enforcement agencies in North Carolina have adopted the recommendations developed by the commission. In Wisconsin, work had started on new guidelines at the time of the workshop and accelerated during the months that followed (see Section IV below). As of the time of the workshop, both groups had begun initial discussions on the topic of custodial interrogations, but had not yet made any concrete policy decisions on these topics. Both groups were also considering what approach might be followed to put in place more permanent mechanisms for enabling claims of innocence to be raised and to address systemic problems that as they come to light.

In Texas, the state's 13-member Task Force on Indigent Defense has a very different history and role than the North Carolina and Wisconsin groups. It was created in 2002, under provisions of the Texas Fair Defense Act—legislation that responded to long-standing criticisms of that state's approach to indigent defense by introducing a number of reforms in practice while leaving operation of the system basically at the county level. The Task Force is essentially a grant-making and technical support body whose members are appointed by leaders in the three branches of state government. It serves as a standing committee of the Texas Judicial Council and is authorized to distribute grant monies to counties to help support county-based indigent defense systems. Since it also has authority to collect information on the operation of the county-based programs (in exchange for the fiscal assistance it provides), the Task Force and its staff are in a position to document problems in the delivery of indigent defense services. The Task Force is also authorized to develop policies and standards, identify and promote best practices, conduct research, and provide training, and through these means can potentially stimulate significant improvement in delivery of indigent defense services. As of the time of the workshop, the Texas Task Force was still in early stages of development, and its priorities for the future were still being shaped.

C. Organizing for Effective Action

Janet Reno, who served as Attorney General of the United States for eight years beginning in 1993, spoke to the participants on the morning of the second day of the workshop. Her message was plain: in her words, “we are now at a critical stage in American criminal justice.” Noting that the exonerations of well over a hundred innocent persons have made it clear that there are major flaws in existing systems that must be addressed, she reinforced Chief Justice Lake's observations that we must have a justice system that people can respect and believe in. To achieve this, Ms. Reno emphasized that it would be essential for the police, prosecutors, defense attorneys, and judges to work together, both to shape the needed changes and to persuade funding bodies and the general public of the importance of adopting the reforms. She had a number of specific recommendations for members of the participating teams to consider as they worked on plans for action in their own jurisdictions, including the following:

1. Build on the North Carolina experience, creating state-level commissions or task forces to examine the problems and develop better policies and practices.

2. Develop mechanisms for examining plausible claims of innocence, using the most modern technology available,
3. Continue the work on improved eyewitness identification procedures that has begun in New Jersey and North Carolina.
4. Develop effective guidelines to protect against misuse of “jailhouse snitch” testimony
5. Establish procedures for forensic lab standards, certification, examiner training, and audits.
6. Develop ways to guard against the problem of tunnel vision that can afflict both police investigations and prosecution practices.
7. Develop protocols for taping custodial interrogations and expect them to be followed.
8. Develop checklists that line staff and supervisors in criminal justice agencies can use to help ensure the thoroughness and integrity of investigations and decisions in individual cases.
9. Invest in education about the importance of the problem and about the benefits of implementing essential reforms.
10. Reach out to national associations; engage them in the process of educating their members and the broader audiences of policymakers and the general public about the need for significant criminal justice system improvement.

D. Shaping State-specific Action Plans

Two sessions at the workshop were scheduled for work by the state teams, by themselves. In the first session, on the second day of the workshop, team members were asked to review the information and ideas suggested by plenary session speakers in light of the situation in their own states; to identify one to three main goals for system improvement; and to begin identifying potential obstacles to achieving the goals and potential resources that could aid in achieving them. The assignment for the second session, on the final morning of the program, was specific: First, review the goals and revise or modify them if necessary. Then, taking account of the obstacles and resources identified, develop the outlines of a plan for achieving the goals, with tasks and time lines.

Each team developed a plan, and every plan was presented by a member of the team—with the aid of overhead transparencies that outlined the main points—at the closing plenary session of the workshop. No two plans were alike, but there were some common themes that ran through the presentations. For example:

- The plans of six state teams focused on improvement of indigent defense services as one main area for follow-up work. This was the sole focus of the Louisiana team.
- Five of the state teams targeted both eyewitness identification procedures and the recording of interrogations as key areas for attention.
- Cross-training (workshops and conferences involving participants drawn from across the spectrum of agencies and institutions involved in criminal justice) was a component of the plans of six of the states, though the approaches varied. Five of these teams expressed interest in organizing some type of statewide conference or “summit” involving justice system leaders in the state, to consider the types of problems and possible solutions discussed at the workshop.

E. Participant Evaluations of the Workshop

Participant evaluations of a workshop or seminar provide at least an initial sense of the program’s effectiveness. The evaluations of this workshop were very positive. Using a five-point scale (1=Not Useful; 5=Very Useful), the workshop received an average overall rating of 4.7. Ratings for specific aspects of the workshop—including the different types of sessions, the resource notebook and other materials, and logistical arrangements were similarly high, with no aspect rated at less than 4.0. Most of the open-ended comments about the program were very complimentary. For example:

- “Very effective and helpful. The networking and ideas will save us from reinventing wheels.”
- “Not only was there good collaboration among team members from a given state, there was good cross-pollination among states.”
- “Having representatives from all areas of the criminal justice system was helpful.”
- Overall I thought the workshop was very beneficial.”

Several of the respondents noted that they found particular parts of the program especially valuable. Comments in this vein included the following:

- “Ms Thompson’s personal story was most effective in that she put a face on the issue. Hearing from a crime victim and the impact a wrongful conviction has on them was quite an eye opener.”
- “I enjoyed hearing from Janet Reno.”
- “Good discussion of indigent defense issues, particularly hearing Georgia’s story.”

A few respondents noted that, for future programs on this topic, it might be desirable to change the title and/or description of the workshop to place greater emphasis

on the collegial nature of the program and avoid references to terms such as flaws and defects in the criminal justice system. As one response phrased it, “point toward improvements, not faults.” Others, however, simply encouraged presentation of future programs of a similar nature.

IV. Follow-up Activities

Ultimately the most meaningful evaluation of a workshop such as this is whether it has any impact over time, in actual accomplishments on the ground in the states of the teams that participated in the program. In the seven months that have passed since the workshop, there has been progress in implementing the teams’ action plans in most of the participating states. The progress cannot, of course, be attributed solely to the workshop. Indeed, in most of the states where progress has been made in the half-year since the workshop was conducted, there was already some interest in the topics addressed at the program. In several of these states, the discussions at the workshop appear to have helped key policymakers and influential leaders to make helpful linkages with potential allies and to develop strategies for legislative initiatives and educational programs to address issues of particular salience in their states.

Considerable progress has been made in **Wisconsin**, where the Avery Task Force—appointed by the Chair of the Judiciary Committee in the Assembly and named after an exonerated person who had been convicted on the basis of mistaken eyewitness identification testimony—completed work on eyewitness identification model guidelines. The Task Force also developed draft legislation that would require every law enforcement agency in the state to adopt policies on such identifications that are designed to minimize the risks of eyewitness error. Contemporaneously, members of the Wisconsin team worked on new eyewitness identification policies and procedures, consistent with the Avery Task Force guidelines, that were issued as recommendations by the Wisconsin Attorney General. The new eyewitness identification procedures will be a main focus of regional training programs to be conducted for police in the state by the Wisconsin Department of Justice during 2005.

The recording of interrogations has been a second major area of attention in Wisconsin. One idea being considered is legislation that would provide grant money to law enforcement agencies to help them purchase recording equipment, and at the same time provide that if an interrogation is not recorded by 2009, defendants will be entitled to a jury instruction warning jurors to consider unrecorded confessions with caution. In a third area considered by the Wisconsin group, the preservation and use of DNA evidence, legislation has been introduced to strengthen safeguards against destruction of biological evidence used in prosecution of crimes for which a person is still imprisoned, give priority to testing for DNA evidence that might prove the innocence of a person, and provide additional funding to forensic laboratories for this purpose. The legislation aims to ensure that all necessary biological evidence is preserved. The outcomes of these legislative initiatives are uncertain, but it is clear that a number of significant reforms are being considered. Finally, as the Avery Commission nears completion of the work that it was created to do, members of the Wisconsin team have been working with the state bar and the law schools in the state on plans to develop a new Innocence Commission that

would continue to examine systemic problems revealed through analysis of cases that resulted in wrongful convictions and develop ways to improve the functioning of the criminal justice system.

In **North Carolina**, the Office of Indigent Defense Services organized a conference on evaluation of indigent defense services that was held in March 2005, and has developed plans to develop and test performance measures. The state's Actual Innocence Commission has prepared draft legislation, now introduced on both houses of the state legislature that would create a new Innocence Inquiry Commission to review post-conviction claims of factual innocence not previously presented at a trial or other post-conviction proceeding.

In **Virginia**, in March 2005, the Innocence Commission for Virginia issued a report examining the cases of eleven exonerations of persons who had been wrongly convicted of serious crimes in Virginia,⁶ and recommending reforms aimed at preventing future wrongful convictions. The report was prepared independently of the workshop, but the Chair of the Innocence Commission—Professor Jon Gould—was a member of the Virginia team at the workshop. In seeking to obtain support for implementing the report's recommendations the Commission plans to work with the other members of the Virginia team. That approach would be consistent with the team's goal of organizing a criminal justice system "summit" that would bring together leading criminal justice system practitioners from throughout the state to help develop legislative initiatives.

In **Mississippi**, the Mississippi Judicial College has started developing educational programs for judges that will address evidentiary issues in areas such as eyewitness identification testimony and use of unrecorded interrogations. Plans are underway to meet with prosecutors and law enforcement groups.

In **Texas**, one major development has been the creation in March 2005 of a new Governor's Criminal Justice Advisory Council. The nine-member Council, which includes leading legislators and criminal justice practitioners, is charged with advising the Governor on procedures that are needed to meet advances in technology, including matters of investigation and forensic testing; methods of ensuring that state and local law enforcement procedures are accurate and available; and processes which provide for public safety and confidence in convictions. The Council is to report its findings at least annually, beginning in January 2006. Additionally, appropriations legislation approved during the 2005 legislative session will provide increased funding for the Texas Task Force on Indigent Defense. The new appropriation includes funds for an additional Task Force staff member to monitor county-level compliance with the requirements of the Fair Defense Act and for support of the innocence projects that are in operation at four Texas law schools.

Work has also continued on the development of standards for indigent defense representation and on evaluation of the performance of lawyers providing indigent

⁶ Innocence Commission for Virginia, *A Vision for Justice: Report and Recommendations Regarding Wrongful Convictions in the Commonwealth of Virginia* (Arlington, VA: The Innocence Commission for Virginia, March 2005); available at <http://www.icva.us>.

defense services. A member of the Texas Indigent Defense Task Force attended the March conference on evaluation of defense services that was organized by the North Carolina Office of Indigent Defense Services.

In **Georgia**, the main emphasis has also been on indigent defense, with 42 circuit public defender offices in operation as of January 1, 2005 and others expected to become operational in the near future. During the recently concluded legislative session, the full budget request of the Public Defender Standards Council was funded. Work on drafting and publication of defender standards has continued, focusing on caseload standards and standards for disciplining public defenders; a full schedule of training for public defenders is underway; and an ambitious honors program for young lawyers has been developed by the Council.

In **Louisiana**, Chief Justice Calogero—who was a member of the Louisiana team that participated in the workshop—focused on issues addressed at the workshop during his biennial State of the Judiciary address to a joint session of the Louisiana Legislature. His talk stressed the importance of fixing the state’s indigent defense system, which a recent decision of the Louisiana Supreme Court’s had described as “terribly flawed.”⁷ In addition to his strongly worded call for improving (and adequately funding) the state’s indigent defense system, the Chief Justice also made a number of suggestions for overall system improvement that were consistent with the action plan developed at the workshop. These included adoption of cost-effective strategies for diverting cases from the formal system and reduction in the number of re-trials made necessary by faulty police line-up and photo spread procedures, inappropriate or outmoded interrogation procedures, unaccredited and under-funded forensic laboratories, and other sources of wrongful conviction. Of particular interest, his closing remarks during the linked the need for improved indigent defense with the interest of victims and the wrongly convicted:

“Provide for a workable and adequately funded indigent defense system so that another victim does not have to go through the agony of an overturned conviction and repeat of grueling trial testimony, or so that an innocent person is spared the ordeal of an unjust conviction and punishment.”

In addition to the Chief Justice, other members of the Louisiana team that participated in the workshop have had key roles in follow-up work aimed at implementing the team’s action plan. Their efforts have concentrated on legislation that would provide for structural reform and adequate funding for indigent defense services in the state. A set of reform bills was introduced in the state legislature under the auspices of the Task Force on Indigent Defense Services, six of whose members were on the Louisiana team that participated in the workshop. Additional pressure has been added by the Louisiana Supreme Court’s April 2005 decision authorizing trial judges to stay criminal prosecutions in the absence of adequate state funding of indigent defense services. The outcome of the legislative efforts has been very positive: (1) the life of the

⁷ *State v. Citizen*, 898 So.2d 325, 2005 Lexis 865 (April 2005). The decision authorized trial judges to halt the prosecution of poor defendants if the state does not provide funds to enable the provision of adequate defense services.

Task Force on Indigent Defense Services will be extended; and (2) the Louisiana Indigent Defense Assistance Board has been reorganized to include a substantial majority of members committed to high quality indigent defense and has been authorized to collect information from the judicial districts on workloads, resources, and expenditures as a predicate for more sweeping reforms during the 2006 legislative session.

Members of the **Idaho** team had planned to try to organize a broad-based policy group to focus initially on three possible areas of action: the recording of interrogations, improved eyewitness identification procedures, and evaluation of defense services. Shortly after their return to Idaho, they learned that the Governor was planning to form a Criminal Justice Commission, mainly to focus on prison population issues. The Commission would include a Justice of the Supreme Court and three other judges. Justice Daniel Eismann, who had been the leader of the Idaho team at the workshop, was designated by the Chief Justice to be the Justice on the Commission. Justice Eismann presented the Idaho suggestions about key areas of system improvement to the Administrative Conference of the Idaho Judiciary, which voted unanimously to recommend that the Governor's Commission include those three items on its agenda for action.

V. Conclusions and Recommendations

A. Conclusions

From the experience of this project, several conclusions seem clear: First, the workshop model used for this program can be effective in catalyzing action to institute needed reforms. This basic educational model, which was also used for the 2003 AJS national conference, has several key characteristics:

- Participating teams that include leaders in the main functional areas involved in criminal justice, including police, prosecution, defense, and adjudication, as well as others involved in or affected by justice system policies.
- A workshop faculty that is drawn from outstanding practitioners with experience in law enforcement, prosecution, defense, the judiciary, and the legislature, as well as leading academics and consultants with relevant expertise.
- A curriculum that focuses on a manageable number of key topics and emphasizes peer-to-peer learning.
- Time set aside during the workshop or conference that provides an opportunity for members of the teams to work collaboratively to identify the key issues and develop plans for specific improvements in their home states.
- Motivational leadership from faculty members who reflect the diversity of the roles of workshop participants, *and* who can quickly and convincingly communicate to participants the existence and seriousness of problems, the need for improvement in existing practices, and the efficacy and feasibility of identified reforms. It is especially helpful when faculty members have themselves been instrumental in catalyzing significant reforms.

Second, the involvement of crime victims—especially individuals who have been doubly victimized by having been directly involved in the prosecution of a person who turned out to be actually innocent—can be enormously valuable in dramatizing the negative impact of outmoded practices and the need for modernization of the system. At the 2004 JMI workshop, the negative impact of wrongful convictions was vividly described by Jennifer Thompson. Her account of her experiences made a strong impression on everyone at the workshop, and brought home the point that system improvement is not a “defense” issue but rather one that affects—and should receive support from—the full range of criminal justice policy-makers and practitioners.

Third, judicial leadership—especially the leadership of chief justices--can be extremely important in stimulating system improvement efforts in a state. In North Carolina—which has probably gone furthest in instituting changes designed to minimize the likelihood of wrongful convictions—Chief Justice I. Beverly Lake has been the person who brought a broad range of practitioners together to explore the issues and begin looking for sensible improvements in areas such as eyewitness identification practices. In Louisiana, Chief Justice Pascal Calogero has been a strong leader in efforts to improve that state’s indigent defense system, and his 2005 State of the Judiciary address effectively linked victims’ concerns with the need for better indigent defense and overall system improvement. Because they naturally have the role of a neutral, judicial leaders can be uniquely effective in drawing attention to systemic problems that impair a state’s ability to provide effective justice.

Fourth, the involvement and demonstrated interest of leaders in law enforcement and prosecution as members of the faculty—able to speak from their own experience about the desirability and feasibility of proposed reforms—is very helpful in generating interest and support for change across a broad range of practitioners and policymakers.

Fifth, the news media—although not included in any of the teams at either the 2003 AJS national conference or the 2004 JMI workshop—can be very important in focusing attention on system flaws and the need for improvements in long-established practices. For example, the news media’s attention to exonerations of innocent persons who had been wrongly convicted (and to the practices that caused the wrongful convictions in the first place) have been instrumental in the establishment of the North Carolina Actual Innocence Commission and Wisconsin’s Avery Task Force. The media can also have a key role in monitoring the impacts of change and in drawing attention to inaction in the face of growing evidence of the need for reform.

Finally, it seems evident that there have been significant changes, over the course of several years, in practitioner attitudes toward the cluster of issues addressed at the 2004 JMI workshop. The thoughtful discussions at the 2004 workshop are one indication of a growing awareness, on the part of criminal justice practitioners in many parts of the United States, that steps must be taken to improve criminal justice processes and make them more reliable and effective. Consciousness about the issues has definitely been raised. As one member of the project’s advisory board noted during the board’s February 2004 meeting, the conversation has progressed from questioning whether innocent

persons really do get wrongfully convicted to recognition that they do and to more detailed questioning of why this happens and what can be done to prevent it. Thus, this is a good time—with consciousness raised through the exonerations and the initial implementation of needed reforms in a few jurisdictions—to develop a range of initiatives aimed at achieving significant change in a much larger number of jurisdictions, at both the state and local levels.

B. Recommendations

All of the recommendations outlined in this section flow from a common premise: that, in order to achieve significant change in a wide range of jurisdictions, it will be necessary to develop a broad base of support for reform, including support from all sectors of the criminal justice field. It is not necessary to have total support from all of these sectors, but it will be important to develop a cadre of leaders from each of the sectors who can speak to the need for system improvement and the importance of the proposed reforms. This was the key premise upon which planning for the North Carolina workshop discussed in this report was planned and conducted, and the experience of the workshop and follow-up activities tends to confirm its soundness.

To develop support from the diverse groups involved in or affected by criminal justice operations, the members of these groups—and particularly their leaders—must be convinced that (a) significant problems exist that, if left to fester, will become much worse; (b) there are realistic and economically feasible ways to address the problems and make significant improvements; and (c) the investment of time and energy (and political capital) in developing and implementing improved practices will, in fact, result in a significantly improved justice system—one that is fairer, more reliable, and more effective. The recommendations that follow focus principally on the development of educational programs aimed at conveying these messages in a variety of ways and reinforcing them through targeted research and technical assistance. The recommendations are directed principally toward foundation, private sector, and governmental leaders who recognize the need for markedly improved criminal justice processes and practices.

1. Continue to promote seminars and workshops for jurisdictional teams, focused on problem identification and the development of action plans for improvements in the teams' home jurisdictions. The workshop model followed at both the 2003 AJS national conference and the 2004 JMI workshop were clearly successful in raising consciousness of the problems among the participants, and in catalyzing action in most if not all of the states that sent teams to the program. The greatest initial impacts were probably in Wisconsin and North Carolina, and we expect that time will show concrete impacts in the other states. In considering the possibility of future workshops using a similar model, two variations on the approach followed for JMI's North Carolina workshop should be explored:

- *Fewer jurisdictions.* A workshop with teams from 3-6 jurisdictions rather than eight is logistically easier to manage, less expensive in terms of travel costs, and would enable a focus on issues most likely to be of particular salience to the participating teams. Such a workshop could be organized on a regional basis, inviting teams from adjacent states or, alternatively, by inviting teams from states where key leaders have indicated interest in one or two specific major topics such as improvement of defense services, adopting standards and performance monitoring for forensic labs, and/or taping of police interrogations.
- *Clearly defined subject matter focus.* The JMI North Carolina workshop focused on four broad topic areas. Having some breadth in topic areas is desirable, because the breadth helps attract and interest leaders from a broad range of functional areas such as police, prosecution, defense, and the judiciary, and helps to build support for change across institutional and agency boundaries. (It is helpful, for example, for police chiefs and prosecutors to understand the systemic reasons why improved indigent defense services are important for all components of a criminal justice system.) However, there are good arguments for focusing on a somewhat limited number of major topic areas, while still having enough breadth in coverage to attract key leaders from all relevant sectors. It should be possible to have a range of significant topics that is broad enough to engage all of the relevant actors and make it clear that the problems are interrelated and systemic, while still keeping the scope of the program manageable.

2. *Develop plans for outreach to national organizations whose members include key criminal justice policymakers and practitioners, in order to engage the leaders and provide opportunity for educating the members about the nature of the criminal justice system problems and the need for specific reforms.* At both the 2003 AJS national conference and the December 2004 JMI workshop, the faculty included a range of outstanding criminal justice practitioners—leading prosecutors, police chiefs, defense lawyers, innocence project directors, judges, experts in forensic science issues, and representatives of victims’ groups. All of them could speak to specific issues from a solid base of experience, and they were clearly effective. However, these faculty members participated in the programs as individuals. There has not yet been much outreach to the national organizations and associations in these fields, but engaging them in a concerted multi-year effort to achieve significant reforms would be extremely valuable. A far from complete list of such organizations and associations would include the following:

- Law enforcement officials associations and organizations—e.g., Police Foundation, Police Executive Research Forum (PERF), International Association of Chiefs of Police (IACP).
- Prosecutors’ groups—e.g., National Association of District Attorneys (NDAA), American Prosecutors research Institute (APRI) [APRI is closely affiliated with NDAA.

- Defense lawyers groups—e.g., National Legal Aid and Defenders association (NLADA), National Association of Criminal Defense Lawyers (NACDL).
- Court-centered organizations and associations—e.g., Conference of State Court Administrators (COSCA), National Conference of State Trial Judges, American Judges Association (AJA), National Judicial College, National Association for Court Management (NACM).
- Forensic scientists associations—e.g., American Academy of Forensic Scientists, American Society of Crime Laboratory Directors.
- Victims' groups—e.g., National Organization for Victim Assistance (NOVA), National Center for Victims of Crime.

In addition to the groups whose members are practitioners involved in day-to-day criminal justice operations, there are other national groups whose attention to this area—and support for proposed reforms—can be extremely important. They include, for example:

- National organizations of state-level government leaders—e.g., the National Conference of State Legislatures (NCSL) the Council of State Governments (CSG), the National Center for State Courts (NCSC), the Conference of Chief Justices (CCJ), the National Governors Association (NGA), and the National Association of Attorneys General (NAAG).
- The National Association of Counties (NACO).
- The American Bar Association (ABA)—a particularly relevant group because of its influence with lawyers and its recent attention to the causes of wrongful conviction of innocent persons and adoption of policy positions favoring a number of specific reform measures.
- The news media—including reporters, editors, publishers, TV program producers and hosts.
- Business groups that recognize (or could become persuaded of) the importance to society of well-functioning, fair and reliable criminal justice system.

To develop an outreach and educational program that could be effective in reaching these diverse groups, it would be desirable to have an organizational locus for the effort. The effort should be led by an individual or group capable of making the necessary contacts and capable of developing and implementing a strategic plan for the educational outreach effort. From the experience of the 2003 AJS national conference and the 2004 JMI workshop, it is possible to identify faculty from a broad range of disciplines and institutional homes who could be very effective in presenting educational sessions ranging in length from half an hour to two days or more. The annual and midyear meetings of the national associations are especially appropriate forums for presentation of short educational sessions to members who are leaders of their own constituencies. Additionally, in some instances, organization or association leaders may be interested in sponsoring (or co-sponsoring) special workshops and seminars for their members.

3. Consider development of educational videos on systemic flaws, the need for system improvement, and specific reforms that are feasible and effective. Videos—ranging in length from ten minutes to two hours or more—can be effective vehicles for drawing attention to criminal justice system problems and the need for change. They can also be valuable for describing how specific reforms would work in practice. Videos can be stand-alone programs or can be used in conjunction with in-person education or training programs. The examples of cases in which innocent persons have been wrongly convicted and subsequently exonerated provide dramatic content that can illustrate the problems. The experiences of practitioners who have successfully instituted significant changes in their jurisdictions—many of whom have served as faculty at the 2003 AJS national conference and the 2004 JMI workshop—can provide substantive content that should be useful to other practitioners and policy-makers interested in reforms.

4. Design and conduct research projects that will highlight systemic problems and show the efficacy and feasibility of specific reforms. While there are numerous accounts of wrongful convictions that ultimately resulted in exonerations, there is a dearth of empirical data that shows the pervasiveness of systemic problems, their impact in terms of the numbers of persons wrongly convicted as a result, and the patterns of problems that recur repeatedly. Further, there at present no hard knowledge about the costs and impacts of adopting reforms such as sequential double-blind lineup procedures or videotaping of interrogations. Initial research might concentrate on a few key areas such as:

- *Re-examination of the records of exoneration cases, to identify systemic problems and determine the extent to which there are specific recurring problems that most need to be remedied.* To some extent this has been done by Barry Scheck et al in their book *Actual Innocence*⁸, and by the Illinois Governor’s Commission that examined capital cases in that state.⁹ These analyses would provide starting points for further analysis that would take account of more recent developments.
- *Case studies of the implementation of new procedures and other reforms.* For example, researchers could examine the processes, costs, and results of the adoption of new procedures for eyewitness identification in New Jersey and North Carolina or the recent adoption of new procedures for videotaping or audiotaping interrogations in a number of local jurisdictions. It would also be helpful to document and analyze the strategies and tactics that have led to the enactment and implementation of legislation creating new statewide indigent defense systems—with accompanying mandates to adopt performance standards and provide needed training—in states such as North Carolina, Georgia, and Montana.

⁸ Barry Scheck, Peter Neufeld, and Jim Dwyer, *Actual Innocence* (New York: Doubleday Books, 2000).

⁹ Report of the Governor’s Commission on Capital Punishment, April 2002. The report is available at http://www.idoc.state.il.us/ccp/ccp/reports/commission_reports.html.

- *Economic analyses of the costs of making v. not making needed system reforms, taking account of the benefits of a more just and reliable system and the costs of additional crimes committed by the actual perpetrators of crimes for which the wrong person is convicted.* This is a difficult area, but it should be possible to conduct a useful cost-benefit analysis that would identify the costs and benefits of instituting specific reforms (or a full package of reforms) as opposed to remaining with the status quo. Having documentation of the costs of specific reforms in a few jurisdictions, as suggested above, would provide a foundation for such analysis.
- *Prosecutions and convictions of persons in cases where no trial was held.* Virtually all of the knowledge about wrongful convictions and their causes has come from analysis of cases in which actual trials were held, usually on relatively serious charges. However, convictions after jury or bench trial constitute a small fraction—less than a tenth of all convictions in most jurisdictions. Additionally, there are a great many cases in which prosecutions are dropped after charges have initially been filed. Both sets of situations are ones that are likely to hold clues about the extent and nature of prosecutions that result in wrongful convictions. It would be extremely useful—though admittedly difficult, especially when there has been a conviction after a guilty plea—to get a sense of the number of cases in each category in which it is plausible that the defendant was actually innocent, and to learn why the prosecutions nevertheless went forward.¹⁰

5. Use a small focus group to develop practical guidelines for trial judges about ways in which they can help to minimize the risk that innocent persons will be wrongly convicted of crimes. Many of the causes of wrongful convictions can potentially be addressed, at least in part, through rulings or other actions taken by trial judges during the pretrial and trial stages of criminal cases. In both stages, judges often make crucial decisions about the admission or exclusion of specific items of evidence (e.g., forensic evidence, informer testimony, statements made by a defendant during custodial interrogation), about testimony concerning the reliability or trustworthiness of evidence once admitted, and about instructions to be given to juries concerning such evidence. It would be useful to bring together a small group of thoughtful judges and academics to consider how specific types of evidentiary issues can best be handled by trial judges in ways that will promote fairness and reliability in the process and minimize the risk of wrongful conviction. If practical guidelines for dealing with such issues can be developed by a credible group, these could then be the basis for instruction at national and in-state judicial education programs and could help spur changes in procedural statutes or rules of court.

¹⁰ Initial research has started in this area. See Samuel R. Goss et al, *Exonerations in the United States, 1989 Through 2003*. This monograph is available on the internet at http://www.soros.org/initiatives/justice/articles_publications/publications/exonerations_200404.pdf.

6. Develop ways to provide timely and effective technical assistance to states and local jurisdictions in which key leaders are interested in pursuing specific changes to improve system operations. Where possible, the technical assistance should follow educational programs, and should utilize relevant research. There are a great many ways in which technical assistance can be provided to states and localities. At present, most technical assistance in the criminal justice field is provided through various grant and contract programs funded by different agencies in the U.S. Department of Justice, especially the Office of Justice Programs and the National Institute of Corrections. However, most of these programs restrict technical assistance to specific categorical program areas authorized by federal statutes, without attention to the need for significant system changes and without any particular emphasis on the specific types of reforms advocated in this project. It seems desirable to develop ways of providing timely and effective short-term technical assistance to support the efforts of state and local leaders who are interested in achieving specific reforms.

If at all possible, it would be very helpful to be able to provide technical assistance in conjunction with educational programs such as the 2003 AJS national conference and the 2004 JMI workshop. If, for example, the action plan approach used at the workshop is followed in future programs, it would be desirable for teams to be able to incorporate short-term technical assistance into their initial planning or into follow-up work once the team returned home. Additionally, if there is an organizational locus for the technical assistance—whether it is the organization that presents the educational program or a different group—it would be desirable for the technical assistance provider to have the capacity for pro-active follow-up with the participating teams. With such outreach, specific needs and opportunities can be identified, and the technical assistance provider can arrange for follow-up consultation by a subject matter expert, conduct an on-site seminar for key actors, arrange for a site visit to a jurisdictions that has successfully instituted specific reforms, or provide some other type of assistance at a time when the assistance can be most helpful in catalyzing change.

APPENDIX A

WORKSHOP ON
ENSURING A RELIABLE AND EFFECTIVE CRIMINAL JUSTICE
SYSTEM

A COMMON QUEST FOR JUSTICE

Carolina Inn
Chapel Hill, North Carolina

December 9-11, 2004

AGENDA

THURSDAY, DECEMBER 9

- 1:30 – 2:00** **Registration**
- 2:00 – 2:30** **Welcome; overview of the workshop and of the work of the North Carolina Actual Innocence Commission**
- **Barry Mahoney, *Workshop Leader; President Emeritus, JMI***
 - **Christine Mumma, *Executive Director, North Carolina Actual Innocence Commission***
 - **Hon. I. Beverly Lake, *Chief Justice of North Carolina***
- 2:30 – 3:00** **Introduction of leaders of the sponsoring organizations and of members of participating teams**
- 3:00 – 3:25** **Keynote: The Importance of Getting It Right: Why We Need to Act to Strengthen Justice System Processes and Prevent Wrongful Convictions**
- **Introduction: Allan Sobel, *Executive Director, American Judicature Society***
 - **Speaker: Thomas P. Sullivan, *Partner, Jenner & Block, Chicago.***
- 3:25 – 3:40** **BREAK**
- 3:40 – 4:30** **Plenary: Case Study: Anatomy of a Justice System Failure**
- **Moderator: Bill Dressel, *President, National Judicial College***
 - **Christine Mumma, *Executive Director, North Carolina Actual Innocence Commission***
 - **Jennifer Thompson**
 - **Rich Rosen, *Professor, University of North Carolina Law School***

4:30 – 4:40 STRETCH BREAK

4:40 – 6:00 Plenary: Improving Police and Prosecutorial Practices

- **Moderator: Laurie Robinson, *Director, Masters Program in Criminology, University of Pennsylvania***
- **Robert Olson, *Consultant; Former Chief of Police in Minneapolis, MN***
- **Rob Johnson, *District Attorney, North Carolina Prosecutorial District 15-A***
- **Andrew Taslitz, *Professor, Howard University Law School***

6:00 – 7:15 No-Host Reception

FRIDAY, DECEMBER 10

8:00 – 8:30 Continental Breakfast

8:30 – 9:30 Plenary: Improving Defense Services

- **Moderator: Allan Sobel, *Executive Director, American Judicature Society***
- **Rich Rosen, *Professor, University of North Carolina Law School***
- **Tye Hunter, *Executive Director, North Carolina Indigent Defense Commission (NC)***
- **Gary Parker, *Deputy Director for Compliance and Training, Georgia Public Defender Council***

9:30 – 9:45 BREAK

9:45 – 10:45 Team Session I

- **Review ideas from plenary sessions; identify key areas for the team to address; agree on 1-3 main goals; begin identifying potential obstacles to achieving the goals and potential resources that can help achieve the goals.**

10:45 – 11:45 Plenary: Remediating the Flaws: The Roles of State and Local Commissions in Examining and Improving System Operations

- **Moderator: Barry Mahoney, *JMI***
- **Christine Mumma, *Executive Director, North Carolina Actual Innocence Commission***
- **Keith Findley, *Professor, University of Wisconsin Law School; Member of the Avery Commission***
- **Jim Bethke, *Staff Director, Texas Indigent Defense Commission***

11:45 – 12:15 Plenary: Organizing Criminal Justice Leaders for Effective Action

- **Introduction:** Laurie Robinson, *Director, University of Pennsylvania Master's Program in Criminology*
- **Speaker:** Hon. Janet Reno, *Attorney General of the United States, 1993-2001*

12:15 – 1:30 LUNCH

1:30 – 3:00 Concurrent Sessions: Special Topics (“Roundtable” format: follow-up on issues raised in previous sessions and more in-depth discussion of approaches discussed in preceding plenary sessions)

- **Police and prosecutorial practices – including eyewitness identification issues and possible taping of interrogations**
 - Discussion leaders – Bob Olson, Andy Sonner,
- **Forensic Science Issues**
 - Discussion leader – Andy Taslitz
- **Ensuring good quality (and adequately funded) defense services**
 - Discussion leaders – Rich Rosen, Tye Hunter
- **Effective statewide commissions**
 - Discussion leaders – Christine Mumma, Keith Findley

3:00 – 3:15 BREAK

3:15 - 4:30 Peer Group Session

- **Peer groups will consist of participants and faculty: judges, prosecutors, defense attorneys, law enforcement officials, legislators, and other participants. Each group will discuss the ideas developed in the previous sessions, then will develop lists in response to the following questions:**
 1. **What can persons in your position do, within your own organizations, to help prevent the conviction of innocent persons?**
 2. **What can be done by persons in your position working together with others in other organizations, both within the criminal justice system and outside of it, to help produce needed changes?**

Each group should designate a spokesperson to present the group's ideas at the closing plenary this afternoon.

4:30 – 5:30 Plenary: Reports from Peer Group Sessions; Faculty Comments and Discussion

- **Session Leader:** Bill Dressel, *President, National Judicial College*

- **Overnight assignment for teams: Meet for dinner; discuss today's sessions; begin considering what priorities should be set for action in your home states**

5:30 ADJOURN

SATURDAY, DECEMBER 11

8:00 – 8:30 Continental Breakfast

8:30 – 10:00 Plenary: Catalyzing Effective Action.

- **Moderator: Laurie Robinson, *Director, Master's Program in Criminology, University of Pennsylvania***
- **Panelists to be drawn from workshop participants**

10:00 – 10:15 Plenary: Introduction to Action Planning Session (Team Session II)

- **Barry Mahoney, *JMI***

10:15 - 10:30 BREAK

10:30 - 11:45 Team Session II

- **Review goals; modify or refine**
- **Review key obstacles**
- **Identify potential resources**
- **List key tasks**
- **Assign responsibilities**
- **Identify next steps. What will be done in the 3-6 weeks immediately following this workshop?**

11:45 – 12:30 BREAK and Box Lunch

12:30– 1:15 Plenary: Presentation of Team Plans

- **Goals**
- **Key Tasks**
- **Next Steps**

1:15 – 1:30 Concluding Session

APPENDIX B

RESOURCE NOTEBOOK CONTENTS

- TAB 1** **Agenda**
Participant Rosters
Faculty Roster
Faculty Bio-sketches
Advisory Board Roster
- TAB 2** **Best or Promising Practices in Criminal Case Investigations**
- **ABA Resolution and Statement of Best Practices for Promoting the Accuracy of Eyewitness Identification Procedures (August 2004) with accompanying report**
 - **North Carolina Actual Innocence Commission Recommendations for Eyewitness Identification**
 - **New Jersey Department of Law and Public Safety, *Attorney General's Guidelines for Preparing and Conducting Photo and Lineup Identification Procedures* (April 2001)**
 - **ABA Resolution Concerning the Videotaping and Audiotaping of Custodial Interrogations of Crime Suspects (February 2004) and accompanying report**
- TAB 3** **Standards for Forensic Laboratories and Use of Scientific Evidence**
- **ABA Resolution Concerning Needed Improvements in the Examination and Use of Forensic Evidence (August 2004) and accompanying report**
 - **American Society of Crime Laboratory Directors (ASCLD):**
 - **Ethics statement**
 - **Guidelines for Forensic Laboratory Management Practices**
 - **Enforcement Procedures of the ASCLD Code of Ethics**
- TAB 4** **Materials on the Organization, Funding, and Operating Principles of Law Enforcement Agencies and Prosecutors' Offices**
- **ABA Resolution Concerning Law Enforcement Agencies' Criminal Case Investigation Policies and Procedures (August 2004) and accompanying report**
 - **ABA Resolution Concerning Prosecutors' Policies and Procedures (August 2004) and accompanying report**

TAB 5 Materials on the Organization, Funding, and Operating Principles of Indigent Defense Services

- **ABA Ten Principles of a Public Defense Delivery System (February 2004)**
- **The Spangenberg Group and the American Bar Association Bar Information Program, *Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview* (August 2003)**
- **Georgia Public Defender Standards Council, *Performance Standards for Criminal Defense Representation in Indigent Defense Criminal Cases***

TAB 6 Miscellaneous Materials Concerning the Convictions and Exonerations of Innocent Persons

- **Center on Wrongful Convictions, Northwestern University School of Law – List of National and State Innocence Projects**
- **Illustrative News Stories**
- **Executive Summary of Findings from Research Study: Samuel Gross et al., *Exonerations in the United States, 1989 Through 2003*.**

APPENDIX C

ENSURING A RELIABLE AND EFFECTIVE CRIMINAL JUSTICE SYSTEM

A COMMON QUEST FOR JUSTICE

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Workshop on Ensuring a Reliable and Effective Criminal Justice System A Common Quest for Justice

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